

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, MARCH 7, 2008

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

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)
ABIGAIL THERNSTROM, Vice Chairman
TODD GAZIANO, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER (via telephone)
ARLEN D. MELENDEZ, COMMISSIONER
ASHLEY TAYLOR, COMMISSIONER (via telephone)
MICHAEL YAKI, COMMISSIONER

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

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
DEBRA CARR, Esq., Associate Deputy
Staff Director, OSD (via telephone)
DEMITRIA DEAS
BARBARA DELAVIEZ
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MONICA KIBLER
SOCK-FOON MACDOUGALL
TINALOUISE MARTIN, Director of Management
(via telephone)
EILEEN RUDERT
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN

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COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD

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

9:37 a.m.

VICE CHAIR THERNSTROM: This is Vice Chair Abigail Thernstrom and the meeting will please come to order. This is a meeting of the U.S. Commission on Civil Rights at 9:30 a.m. on March 7, 2008. The meeting is held at 624 9th Street, N.W., Room 540, Washington, D.C.

Chairman Reynolds, Commission Kirsanow and Commissioner Taylor, all three will participate in this meeting by telephone. The other Commissioners are present.

VICE CHAIR THERNSTROM: The first item on the agenda, Approval of the Agenda, is there a motion to approve the agenda?

COMMISSIONER YAKI: I have a point of order.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: Can we have a roll call of the people on the phone right now?

VICE CHAIR THERNSTROM: Sure. Roll call of people on the phone.

CHAIRMAN REYNOLDS: Chairman Reynolds.

COMMISSIONER TAYLOR: Commissioner Taylor.

COMMISSIONER KIRSANOW: Kirsanow here.

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1 COMMISSIONER YAKI: Okay. I didn't hear
2 the other Chair. I wanted to make sure.

3 VICE CHAIR THERNSTROM: Thank you.

4 **I. APPROVAL OF AGENDA**

5 VICE CHAIR THERNSTROM: The first item on
6 the agenda is the Approval of the Agenda. Is that
7 motion to approve the agenda?

8 COMMISSIONER TAYLOR: I'd like to make a
9 substitute motion or at least a motion to amend the
10 agenda so that we can discuss the minutes for the
11 January 11th meeting after we get the Staff Director's
12 report because I've noted that the Staff Director is
13 going to discuss Six Sigma.

14 VICE CHAIR THERNSTROM: Commissioner
15 Taylor, you need to announce and that goes obviously
16 for Commissioners Kirsanow and the Chair. You need
17 before you speak for purposes of the reporter to give
18 your name.

19 COMMISSIONER TAYLOR: I will do so.

20 CHAIRMAN REYNOLDS: This is Commissioner
21 Reynolds. I second the motion.

22 VICE CHAIR THERNSTROM: Okay. Is there
23 any discussion?

24 COMMISSIONER YAKI: On what? On that
25 particular motion?

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1 VICE CHAIR THERNSTROM: Yes.

2 COMMISSIONER YAKI: I just want the Chair
3 to know that I have additional motions to amend the
4 agenda. But I will make them separately.

5 VICE CHAIR THERNSTROM: Okay. Well, let's
6 vote on this one. All in favor, aye.

7 (Chorus of ayes.)

8 VICE CHAIR THERNSTROM: All opposed?

9 (No verbal response.)

10 VICE CHAIR THERNSTROM: Any abstentions?

11 (No verbal response.)

12 VICE CHAIR THERNSTROM: It is unanimous.
13 There are further motions to amend the agenda I
14 understand. Commissioner Yaki.

15 COMMISSIONER YAKI: Yes. Just a second.

16 COMMISSIONER MELENDEZ: I would like to
17 amend the agenda to discuss some issues that --

18 VICE CHAIR THERNSTROM: Hold on one
19 second. Can everybody hear Commissioner Melendez
20 because he's talking quite softly?

21 CHAIRMAN REYNOLDS: No.

22 COMMISSIONER MELENDEZ: Can you hear now?

23 CHAIRMAN REYNOLDS: Yes.

24 COMMISSIONER MELENDEZ: I'd like to amend
25 the agenda to talk about a few items that I think are

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1 important. One of the issues I'd like to put on the
2 agenda is to include discussions of whether future
3 hiring of special assistants must have White House
4 clearance. That's been an issue.

5 COMMISSIONER YAKI: I'll second that
6 motion. Do them one at a time.

7 VICE CHAIR THERNSTROM: Do them one at a
8 time. Do we have any discussion on that?

9 COMMISSIONER GAZIANO: This is obviously
10 just to amend the agenda. Right?

11 COMMISSIONER YAKI: Yes.

12 VICE CHAIR THERNSTROM: Vote please.

13 (Chorus of ayes.)

14 VICE CHAIR THERNSTROM: This is just not
15 the issue but just a vote to amend the agenda.

16 COMMISSIONER HERIOT: Where are we putting
17 it on the agenda?

18 VICE CHAIR THERNSTROM: Where?

19 COMMISSIONER HERIOT: What's the motion?
20 The motion to put it where on the agenda?

21 VICE CHAIR THERNSTROM: Where should this
22 go on the agenda?

23 COMMISSIONER MELENDEZ: After the Staff
24 Director's report maybe.

25 COMMISSIONER HERIOT: We could put it at

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1 the end.

2 (Off the record discussion.)

3 VICE CHAIR THERNSTROM: Management and
4 Operations, I'm told that is the right place for it.
5 Commissioner Melendez, is that all?

6 COMMISSIONER MELENDEZ: Yes. I would also
7 like to amend the agenda to discussion revising the
8 management order of precedence for times when our
9 Acting Staff Director is not going to be available for
10 whatever reason.

11 CHAIRMAN REYNOLDS: I'm sorry. I didn't
12 hear Commissioner Melendez.

13 COMMISSIONER MELENDEZ: I would like to
14 amend the agenda to discuss revising the management
15 order of precedence to provide for some backup for
16 times when even the OCRE Director is gone. I think we
17 need one more person behind him as a backup.

18 VICE CHAIR THERNSTROM: Well, is there
19 already, do people already have that covered?

20 (Off the record discussions.)

21 DR. LERNER: I don't think so. But we
22 need to check on it.

23 VICE CHAIR THERNSTROM: Yes, maybe you
24 could find out --

25 DR. LERNER: Okay. It's something to put

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1 on the agenda for next meeting.

2 VICE CHAIR THERNSTROM: -- if that
3 contingency is already covered.

4 COMMISSIONER GAZIANO: May I ask if your
5 agenda item is just a forward-looking discussion?
6 That's my understanding of it anyway.

7 It doesn't cover the existing situation
8 we're in right now.

9 COMMISSIONER MELENDEZ: Yes. Just to
10 discuss it.

11 COMMISSIONER GAZIANO: -- where we're at
12 with that.

13 COMMISSIONER MELENDEZ: And then the other
14 amendment to the agenda would be whether or not we
15 have to vote to confirm the OPM designation of Dr.
16 Lerner as the Acting Staff Director, whether or not we
17 have to vote to confirm that OPM recommendation.

18 COMMISSIONER YAKI: I'll second that.

19 VICE CHAIR THERNSTROM: Any discussion?

20 COMMISSIONER GAZIANO: We tabled that
21 motion last month and I'm not sure I have an objection
22 to it coming onto the agenda, but I probably renew my
23 motion to table it.

24 VICE CHAIR THERNSTROM: I've just been
25 informed and this is my main direction here but we

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1 have to vote on amending the agenda. We have to
2 take a vote on amending the agenda.

3 COMMISSIONER GAZIANO: Yes. I'm just
4 talking for clarification.

5 COMMISSIONER HERIOT: We didn't actually
6 vote on the first one.

7 COMMISSIONER YAKI: Yes, we did.

8 VICE CHAIR THERNSTROM: You were saying?

9 COMMISSIONER HERIOT: The very first one,
10 but not the one to move.

11 COMMISSIONER MELENDEZ: We'll have to do
12 the second one.

13 VICE CHAIR THERNSTROM: For the second
14 one, I understand.

15 COMMISSIONER HERIOT: We've gone on to a
16 third one.

17 VICE CHAIR THERNSTROM: We've gone onto a
18 third. Okay.

19 COMMISSIONER YAKI: I didn't know whether
20 we were doing it as a group or one at a time.

21 VICE CHAIR THERNSTROM: I'm sorry. Yes.
22 Can we do this as a group?

23 COMMISSIONER YAKI: That's fine.

24 VICE CHAIR THERNSTROM: Or do people
25 prefer to do one at a time?

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1 COMMISSIONER HERIOT: One at a time.

2 (Off the record discussion.)

3 VICE CHAIR THERNSTROM: We'll go one at a
4 time. Okay. The second one was the staff director,
5 the order of --

6 COMMISSIONER YAKI: Precedence.

7 VICE CHAIR THERNSTROM: Right. If for
8 some reason Dr. Lerner is unavailable for a week.

9 (Off the record comment.)

10 VICE CHAIR THERNSTROM: So did we have a
11 second on that? I think we did.

12 COMMISSIONER MELENDEZ: Yes.

13 VICE CHAIR THERNSTROM: All right. All in
14 favor?

15 (Chorus of ayes.)

16 VICE CHAIR THERNSTROM: Anybody opposed?

17 (No verbal responses.)

18 VICE CHAIR THERNSTROM: No. That was
19 unanimous. Anybody abstaining?

20 (No verbal response.)

21 VICE CHAIR THERNSTROM: That was a
22 unanimous vote. Okay. Now we're onto the third
23 motion which is the OPM designation of Dr. Lerner.

24 COMMISSIONER YAKI: I seconded that.

25 VICE CHAIR THERNSTROM: Discussion? You

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1 were starting a discussion.

2 COMMISSIONER GAZIANO: I'm going to
3 abstain when we take a vote on bringing this into the
4 agenda. But based on our ruling last month, I at the
5 appropriate time move to table.

6 VICE CHAIR THERNSTROM: All right. So can
7 we have a vote on including it in the agenda? All in
8 favor?

9 (Chorus of ayes.)

10 VICE CHAIR THERNSTROM: How many people
11 was that?

12 COMMISSIONER GAZIANO: Two.

13 VICE CHAIR THERNSTROM: Well, we have two
14 votes in favor here. All opposed?

15 (No verbal response.)

16 VICE CHAIR THERNSTROM: Abstentions?

17 COMMISSIONER GAZIANO: Abstain.

18 CHAIRMAN REYNOLDS: This is Commissioner
19 Reynolds. I abstain.

20 VICE CHAIR THERNSTROM: I abstain myself.

21 COMMISSIONER HERIOT: I abstain.

22 VICE CHAIR THERNSTROM: Four abstentions.
23 We have two other people on the phone.

24 COMMISSIONER KIRSANOW: Commissioner
25 Kirsanow abstains.

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1 COMMISSIONER TAYLOR: Taylor abstains.

2 COMMISSIONER GAZIANO: There you go. It
3 carries.

4 VICE CHAIR THERNSTROM: It carries. Okay,
5 and are there any other motions that Commissioners
6 Melendez or Yaki are hoping to add to this agenda?

7 COMMISSIONER YAKI: There are. Madam
8 Chair.

9 VICE CHAIR THERNSTROM: Yes.

10 COMMISSIONER YAKI: There are additional
11 motions, but I believe that they are more properly
12 brought up within subject matter jurisdiction of each
13 item that's currently on there.

14 VICE CHAIR THERNSTROM: Okay.

15 COMMISSIONER YAKI: Unless there's a
16 preference of the Committee to know before, or the
17 Commission, beforehand to know what it is I'm going to
18 be bringing up.

19 VICE CHAIR THERNSTROM: No, I don't think
20 so. This is simply a question of amending the agenda.
21 We have now amended the agenda with three items.

22 (Off the record comments.)

23 VICE CHAIR THERNSTROM: Right. And I have
24 a motion from somebody to amend the agenda to delete
25 discussion of FY 2010 Program Planning and under this

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1 motion the discussion of that program planning would
2 be tabled until the May 2008 business meeting.

3 COMMISSIONER YAKI: Second.

4 VICE CHAIR THERNSTROM: I skipped
5 something. I'm sorry. We'll have to go back to it.
6 Okay. Second. Any discussion?

7 COMMISSIONER HERIOT: Did you make the
8 motion?

9 VICE CHAIR THERNSTROM: Yes.

10 COMMISSIONER HERIOT: No, we seconded it.
11 We didn't have a motion.

12 VICE CHAIR THERNSTROM: You're right. I
13 said I know of a motion. All right. I turn it into a
14 motion.

15 COMMISSIONER HERIOT: Okay.

16 VICE CHAIR THERNSTROM: I'll turn it into
17 a motion and then we have a second here. Is there any
18 discussion of this?

19 COMMISSIONER YAKI: I heard a motion the
20 first time.

21 COMMISSIONER GAZIANO: Can I just for
22 clarification maybe amend the motion to postpone
23 consideration of any briefing of program planning
24 beyond July of this year?

25 VICE CHAIR THERNSTROM: Do we have a

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1 second on that?

2 COMMISSIONER HERIOT: Is there a need to
3 do that?

4 VICE CHAIR THERNSTROM: Is there a need to
5 do that?

6 DR. LERNER: Yes. You have to have a
7 second.

8 COMMISSIONER HERIOT: Is there a need for
9 the motion, not is there a need to have a second?

10 DR.LERNER: And a second.

11 (Off the record discussion.)

12 COMMISSIONER GAZIANO: Never mind. I can
13 cover that motion later. If there's not a second,
14 I'll renew the motion later.

15 CHAIRMAN REYNOLDS: No, this is
16 Commissioner Reynolds. I'll second it.

17 (Off the record comments.)

18 VICE CHAIR THERNSTROM: All right.

19 COMMISSIONER GAZIANO: I'm just trying to
20 save time.

21 VICE CHAIR THERNSTROM: No, no.

22 COMMISSIONER GAZIANO: But I can make the
23 motion later. That's going to be my intent later it
24 seems.

25 (Off the record comment.)

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1 VICE CHAIR THERNSTROM: All right. All
2 in favor? We have a second on this and I have managed
3 to skip a motion that we needed to do here.

4 (Off the record comments.)

5 VICE CHAIR THERNSTROM: Pardon me?

6 (Off the record comment.)

7 VICE CHAIR THERNSTROM: It's we're
8 encompassing what we just did.

9 COMMISSIONER HERIOT: Okay. This is
10 Todd's substitute motion that we're voting on.

11 VICE CHAIR THERNSTROM: We're voting on
12 Todd's substitute motion.

13 COMMISSIONER HERIOT: Okay. What is it
14 again?

15 COMMISSIONER GAZIANO: To postpone -- The
16 substitute motion is to postpone consideration of
17 briefing reports and other hearings beyond July of
18 this year.

19 COMMISSIONER HERIOT: Briefing schedules.

20 COMMISSIONER GAZIANO: Briefing schedules,
21 I'm sorry. You're right.

22 COMMISSIONER HERIOT: Not reports.

23 COMMISSIONER GAZIANO: Briefing schedules.

24 COMMISSIONER YAKI: So that mean you would
25 be wiping out an agenda item. Under Program Planning,

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1 you want to change the second, third and fourth
2 bullets with one substitute motion because that
3 encompasses all three of those.

4 COMMISSIONER GAZIANO: Correct.

5 COMMISSIONER YAKI: Okay. So the correct
6 motion is you wish to amend Item VI, Program Planning,
7 eliminate the second, third and fourth bullets with a
8 motion to only discuss changes to the briefing
9 schedule prior to July.

10 COMMISSIONER GAZIANO: And including July.

11 VICE CHAIR THERNSTROM: Including July.

12 COMMISSIONER YAKI: Including July of
13 2008.

14 COMMISSIONER GAZIANO: Correct.

15 COMMISSIONER YAKI: Which would be more
16 proper.

17 VICE CHAIR THERNSTROM: So that we're
18 taking one step at a time here, one big step at a
19 time, instead of looking so far forward.

20 COMMISSIONER YAKI: I'll second it.

21 VICE CHAIR THERNSTROM: All in -- Any
22 discussion?

23 (No verbal response.)

24 VICE CHAIR THERNSTROM: All in favor?

25 (Chorus of ayes.)

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1 COMMISSIONER TAYLOR: Taylor, aye.

2 COMMISSIONER KIRSANOW: Kirsanow, aye.

3 CHAIRMAN REYNOLDS: Reynolds, aye.

4 **II. APPROVAL OF MINUTES**

5 VICE CHAIR THERNSTROM: Okay. We need to
6 approve the minutes of December 3rd and February 8th.
7 As agreed upon, we will deal with the January 11, 2008
8 minutes after the Staff Director's report.

9 The minutes of December 3rd meeting were
10 tabled at the January meeting in order to ascertain
11 the date of the appointment of Commissioner Kirsanow.
12 In a certificate issued by the White House, the status
13 issue was resolved when the General Counsel provided
14 the supporting documents. The minutes for the
15 February 8th meeting was sent to the Commissioners.

16 Because the issues raised by the minutes
17 of each meeting are different I suggest voting on them
18 separately. Can I have a motion to approve the
19 minutes of December 3rd?

20 COMMISSIONER YAKI: So moved.

21 COMMISSIONER TAYLOR: Second, Taylor.

22 VICE CHAIR THERNSTROM: Okay. Any
23 discussion, questions, regarding the minutes?

24 (No verbal response.)

25 VICE CHAIR THERNSTROM: If not, can we

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1 vote the approval?

2 (Chorus of ayes.)

3 VICE CHAIR THERNSTROM: All right.

4 Anybody opposed?

5 (No verbal responses.)

6 VICE CHAIR THERNSTROM: Any abstentions?

7 COMMISSIONER GAZIANO: Abstain.

8 VICE CHAIR THERNSTROM: Okay. You have to
9 give your name.

10 COMMISSIONER GAZIANO: I was --

11 VICE CHAIR THERNSTROM: You were here?

12 COMMISSIONER GAZIANO: Yes, I'm here. I
13 wasn't here for the December and so I have no basis to
14 vote.

15 VICE CHAIR THERNSTROM: Right.

16 Commissioner Gaziano abstains.

17 (Off the record discussion.)

18 COMMISSIONER YAKI: I move approval of
19 February 8th minutes.

20 VICE CHAIR THERNSTROM: Wait a minute. We
21 have one abstention and otherwise unanimous vote that
22 is reported.

23 Yes, February 8th. You've just move to
24 approve them. Do we have a second? Second?

25 COMMISSIONER HERIOT: I'll second it.

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1 VICE CHAIR THERNSTROM: Any changes,
2 discussion, questions?

3 COMMISSIONER YAKI: You can be like an
4 auctioneer, Madam Chair. You just look at someone
5 even bobbing their head and that becomes a second.

6 VICE CHAIR THERNSTROM: All right. All in
7 favor, please indicate by saying aye.

8 (Chorus of ayes.)

9 VICE CHAIR THERNSTROM: Anybody opposed?

10 (No verbal response.)

11 VICE CHAIR THERNSTROM: Any abstentions?

12 (No verbal response.)

13 COMMISSIONER YAKI: Point of order.

14 VICE CHAIR THERNSTROM: Yes.

15 COMMISSIONER YAKI: I would like to find
16 out if we have -- If we've lost anyone on the
17 telephone line.

18 CHAIRMAN REYNOLDS: Commissioner Reynolds,
19 still here.

20 COMMISSIONER TAYLOR: Taylor here.

21 COMMISSIONER KIRSANOW: Kirsanow here.

22 COMMISSIONER YAKI: Okay. Then what was
23 that --

24 COMMISSIONER KIRSANOW: This is Kirsanow.
25 I would like to -- Commissioners to -- But it's

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1 extremely difficult for me from time to time to pick
2 up the voice. So if I'm silent, it's because I'm
3 listening intently.

4 VICE CHAIR THERNSTROM: You're so involved
5 in this complicated discussion.

6 COMMISSIONER YAKI: You mean it's not just
7 the mute button or something like that.

8 VICE CHAIR THERNSTROM: Please everybody
9 speak up for those of us who are not here.

10 CHAIRMAN REYNOLDS: Be careful of what you
11 wish for.

12 VICE CHAIR THERNSTROM: Right. And that
13 was for the month of March.

14 **III. ANNOUNCEMENTS**

15 VICE CHAIR THERNSTROM: Congress has
16 designated the month of March as National Women's
17 History Month. During this month, we recognize and
18 celebrate the rich and vital contributions of women to
19 the history and culture of the United States. The
20 vision and determination have both strengthened and
21 transformed our country.

22 Our nation is one of great opportunities
23 and today women are seizing those opportunities to
24 shape the future of America in all walks of life. A
25 record number of women are serving the halls of

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1 Congress. The number of women who owns businesses
2 continue to grow. Women in the Armed Forces are
3 making a vital contribution to our nation's security
4 by serving the cause of freedom and peace around the
5 world.

6 During National Women's History Month, we
7 honor the staff leadership and the hard work of
8 American women. The U.S. Commission on Civil Rights
9 calls upon public officials, educators, librarians,
10 all people of the United States to observe this month
11 with appropriate programs and activities that
12 highlight and honor the contributions that women have
13 made to our nation.

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

15 VICE CHAIR THERNSTROM: And with that, we
16 turn to Staff Director's report. Dr. Lerner, will you
17 please provide the Staff Director's report?

18 DR. LERNER: Thank you. Let me just
19 discuss briefly the Six Sigma Process. At the most
20 recent business meeting, the Commission heard from
21 Booz Allen Hamilton's Ken Thompson and our then staff
22 director just to describe the process by which he
23 might improve our performance in both the rechartering
24 process and in streamlining report writing. Here is
25 where it stands now. What I'm going to give is a

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1 progress report.

2 Regional staff has had training in the SAC
3 rechartering process. And it might add to this and I
4 participated in this myself and I discussed with some
5 detail how the SACs assisted by their regional offices
6 could help in producing our annual statutory report in
7 a more systematic way than has been hitherto been done
8 by helping us to produce case studies are particular
9 problems, the one governed in this case by the
10 statutory report in their particular locale.

11 This information is actually quite useful.
12 Just to give an example, this current year, the
13 report, the SACs in the Western Regional Office
14 produced some important and interesting information
15 about religious discrimination and the processes of
16 meeting such religious discrimination in Oregon and
17 Washington.

18 Now where does the process stand? On the
19 SAC rechartering that are on the agenda for today the
20 processes outlined in the Six Sigma Report are not
21 used. However, in future rechartering, we were
22 expecting to follow the procedures outlined and
23 therefore approved.

24 The report part of the process has not
25 moved forward because, in fact, it was unclear to the

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1 staff exactly what was agreed upon at that
2 particular meeting. So we wanted to wait to get
3 direction from the Commissioners as to how we should
4 proceed and are ready to proceed.

5 Okay. Let me just say a couple of other
6 announcements. As many of you know, we have a brand
7 new phone system and it's working quite well. Pam and
8 her staff deserve a lot of credit for getting this
9 thing operational. I want to add one thing.

10 VICE CHAIR THERNSTROM: Thank you, Pam.

11 DR. LERNER: Yes. I believe that that's
12 gratitude for that. I would just make one comment.
13 When we were having training, the woman who was
14 conducting the training sessions commented that our
15 previous phone system was so old that she had never
16 since she started doing training in 1993 had seen a
17 system so old. So she was totally unfamiliar with it.
18 So this is a change long overdue and I thank you, Pam,
19 and your staff for making it work.

20 One other comment is we have two interns
21 working on the statutory report. Neither is present
22 because Friday is not a day they report here. One is
23 Kelsey Barton who is a junior and Political Science
24 major and Afro American Studies major at Howard and
25 the other is Andrew (A.J.) Schiera who is a junior and

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1 Political Science major at the University of
2 Pennsylvania. The staff has found them very helpful
3 indeed.

4 That's the end of my report.

5 **II. APPROVAL OF MINUTES (Cont'd.)**

6 VICE CHAIR THERNSTROM: Okay. So we now
7 return to the question of approval of the January 11,
8 2008 minutes. Michael, yes. Michael.

9 COMMISSIONER YAKI: Is the Chair
10 recognizing Commissioner Yaki?

11 VICE CHAIR THERNSTROM: Yes, I am
12 recognizing Commissioner Yaki.

13 COMMISSIONER YAKI: Thank you, Madam
14 Chair.

15 A question about the Lean Six Sigma
16 Process that goes through issues brought up the former
17 staff director. In his report on Lean Six Sigma, he
18 noted that there would be required, probably be
19 required, changes to our administrative instructions
20 with regard to how we handle briefing reports if we
21 were to adopt Lean Six Sigma for national and briefing
22 reports.

23 How is that being accommodated and when
24 will those changes be brought up to a vote (1) and (2)
25 are those processes being used on the national report

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1 right now?

2 DR. LERNER: I can answer some of that.

3 VICE CHAIR THERNSTROM: The Staff Director
4 is going to answer those.

5 DR. LERNER: Yes, the changes that are
6 going to make as far as report writing processes to
7 the administrative instructions are going to have --
8 There are going to be changes in two kinds of things.
9 One is the nature of the first draft that
10 Commissioners will be receiving. This provided for
11 the Commissioners to receive an executive summary of
12 two to three pages long rather than the full scale
13 first draft that we have previously provided.

14 And that also will change the review
15 process. Commissioners will have 21 days to review
16 rather than the prior 30 days that were given and
17 because -- But in a sense and in exchange for that,
18 Commissioners will gain an additional 12 days of
19 review time altogether. They will be given 30 days to
20 review the second draft as opposed to the 14 days
21 currently allowed. Also the Commissioners will have
22 15 days to review before a vote is taken instead of
23 the seven to ten days currently allowed.

24 The changes to the administrative
25 instructions, Commissioner Yaki, that's quite right

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1 and AI 1-6 will have to be changed. But as I said
2 before, none of this has been done because it was
3 unclear to us exactly what the position the Commission
4 had taken. In other words, did the Commission intend
5 for the adoption of the Lean Six Sigma Process from
6 rechartering and report writing or simply for
7 rechartering? My reading of the minutes was ambiguous
8 I must admit. So we thought it was wise to await
9 instruction by the Commission before we proceed with
10 it.

11 VICE CHAIR THERNSTROM: And I would like
12 to have a motion to adopt this new process for our
13 statutory and briefing report as well as to authorize
14 the Office of the Staff Director to edit our
15 administrative instructions as needed to ensure this
16 occurs.

17 COMMISSIONER TAYLOR: This is Commissioner
18 Taylor.

19 VICE CHAIR THERNSTROM: Yes.

20 COMMISSIONER TAYLOR: If I may. I think
21 just so the record is clear, I believe, we should have
22 a motion with respect to how the Lean Six Sigma
23 Process applies to our statutory reports and our
24 briefing reports and would it be an appropriate time
25 to make that motion?

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1 VICE CHAIR THERNSTROM: Yes.

2 COMMISSIONER TAYLOR: After we adopt the
3 January 11th minutes.

4 VICE CHAIR THERNSTROM: It's -- I mean, we
5 should have a motion on the approval of the January
6 11th and then a discussion and that discussion would
7 have included Commissioner Yaki's remarks. But I
8 think at this point we do need, yes, a motion to adopt
9 the process to the reports.

10 CHAIRMAN REYNOLDS: This is Commissioner
11 Reynolds. I move that the Lean Six Sigma Process be
12 applied to both SAC rechararters and reports, both
13 briefing and statutory reports.

14 VICE CHAIR THERNSTROM: And we have a
15 second on that?

16 COMMISSIONER TAYLOR: With a friendly
17 amendment if I may.

18 VICE CHAIR THERNSTROM: Sure.

19 COMMISSIONER TAYLOR: That the motion
20 should make clear that we're talking about the fiscal
21 and non-statutory report and briefing reports going
22 forward, so we don't undo what we've already done.

23 VICE CHAIR THERNSTROM: Yes. And you had
24 to announce your name. That was?

25 COMMISSIONER TAYLOR: I'm sorry.

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1 Commissioner Taylor. I apologize.

2 VICE CHAIR THERNSTROM: So we accept that
3 friendly amendment.

4 CHAIRMAN REYNOLDS: This is Commission
5 Reynolds. Yes, I did.

6 VICE CHAIR THERNSTROM: Okay. So we have
7 a motion on the floor. We had a second on that
8 motion. Yes, we have with Commissioner Taylor
9 seconding it with his friendly amendment. So
10 discussion.

11 COMMISSIONER YAKI: I have a question,
12 Madam Chair.

13 VICE CHAIR THERNSTROM: Yes.

14 COMMISSIONER YAKI: Commissioner Taylor
15 rightfully talked about this as a prospective motion.
16 However, in the discussion that I believe we just had
17 with the Staff Director, it appeared that the `08
18 statutory report was being processed in accordance
19 with Lean Six Sigma. Is that correct?

20 DR. LERNER: No, it is not.

21 COMMISSIONER YAKI: Is not?

22 DR. LERNER: No. It's being processed
23 under the current regime.

24 COMMISSIONER YAKI: Okay. That was my
25 point of clarification.

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1 VICE CHAIR THERNSTROM: Are we ready to
2 vote on this? Everyone in favor please say aye.

3 COMMISSIONER YAKI: I have one more
4 question.

5 VICE CHAIR THERNSTROM: Yes. Sure.

6 COMMISSIONER YAKI: For the -- Will this
7 also apply to the backlog of reports that we currently
8 have or only for reports as we begin to -- new reports
9 for new briefings subsequent to this motion?

10 DR. LERNER: Our hope is that and our
11 expectation is that it will be applied to only
12 subsequent reports and briefings that are to be done,
13 not reports based on previous briefings. So in other
14 words, the old briefing reports that we're working on
15 for the Commission will be done under the old process
16 and the new ones going forward perhaps from April will
17 be under the new process.

18 COMMISSIONER YAKI: Just as a point of
19 inquiry, would it make some sense to -- Since this
20 apparently is a more streamlined functionality
21 approach toward reports, wouldn't it make sense to
22 apply it to some of the incredible number of backlog
23 reports that we currently have?

24 VICE CHAIR THERNSTROM: We've gone through
25 a lot of the process of those reports.

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1 DR. LERNER: Right.

2 COMMISSIONER TAYLOR: This is Commissioner
3 Taylor. One of the meanings to my friendly amendment
4 and, Commissioner Yaki, just to let you know my
5 thinking is frankly, I think, by making a clean break
6 and making this a prospective motion it would give us
7 a better sense of whether or not the Lean Six Sigma
8 Process is effective and improving our work product
9 and is timeliness. If we go back and rejiggle some
10 old ones the picture tube just won't be as clear. So
11 I'd like to do it prospectively so we all know whether
12 or not the process is effective and worthwhile.

13 VICE CHAIR THERNSTROM: There's also a
14 problem I believe with having to first amend the AIs
15 before we would -- If we're going backwards, we can't
16 do that without first amending the AIs.

17 COMMISSIONER YAKI: That's correct. Okay.

18 VICE CHAIR THERNSTROM: So I don't think
19 this is a possibility, Commissioner Yaki.

20 COMMISSIONER YAKI: Okay. Got to help
21 move things along.

22 VICE CHAIR THERNSTROM: Yes. No, I
23 understand. So let's have a vote on the motion.

24 COMMISSIONER YAKI: A lot of doggies still
25 in that corral back there.

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1 VICE CHAIR THERNSTROM: Pardon me?

2 COMMISSIONER YAKI: There are a lot of
3 doggies back in that corral.

4 VICE CHAIR THERNSTROM: We know that and I
5 hope that under the new process that in fact deadlines
6 will be taken seriously by everybody and that
7 everybody includes me because there has been a problem
8 of deadlines. For various reasons we just have not
9 met.

10 But, in any case, let's have a vote on the
11 motion that's on the floor. All in favor indicated by
12 saying aye. This is prospective only on reports.

13 COMMISSIONER YAKI: The motion included
14 the SACs.

15 VICE CHAIR THERNSTROM: Okay. The motion
16 included the SACs.

17 COMMISSIONER TAYLOR: Yes, it did.

18 VICE CHAIR THERNSTROM: That we had
19 already agreed on previously as I understand it.

20 COMMISSIONER YAKI: The Commission voted
21 in favor of it.

22 VICE CHAIR THERNSTROM: Yes. All right.

23 COMMISSIONER GAZIANO: Aye.

24 VICE CHAIR THERNSTROM: Is there --

25 (Laughter.)

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1 COMMISSIONER YAKI: Nay.

2 VICE CHAIR THERNSTROM: All in favor
3 please say aye.

4 (Chorus of ayes.)

5 COMMISSIONER YAKI: I move to divide the
6 question.

7 VICE CHAIR THERNSTROM: It's too late to
8 do that, Commissioner Yaki. We already have a motion
9 and it was seconded and we are voting on that motion.

10 COMMISSIONER YAKI: Until the vote is
11 taken, I can --

12 DR. LERNER: But we're halfway through it.

13 COMMISSIONER YAKI: She didn't call for
14 the vote. We just said aye.

15 DR. LERNER: No.

16 VICE CHAIR THERNSTROM: I did call it.

17 (Off the record comments.)

18 DR. LERNER: She did, yes.

19 VICE CHAIR THERNSTROM: So all in favor
20 please say aye.

21 (Chorus of ayes.)

22 COMMISSIONER KIRSANOW: Kirsanow aye.

23 VICE CHAIR THERNSTROM: Kirsanow aye.

24 COMMISSIONER YAKI: I abstain.

25 CHAIRMAN REYNOLDS: Reynolds aye.

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1 COMMISSIONER TAYLOR: Taylor aye.

2 VICE CHAIR THERNSTROM: Taylor aye.

3 COMMISSIONER MELENDEZ: Abstain.

4 VICE CHAIR THERNSTROM: So we have two
5 abstentions. Commissioners Yaki and Melendez have
6 abstained and the rest are ayes and no opposition.

7 COMMISSIONER YAKI: Now the minutes.

8 VICE CHAIR THERNSTROM: Now that we've
9 settled that question can I have a motion to approve
10 the minutes of January 11th?

11 CHAIRMAN REYNOLDS: So moved, Reynolds.

12 COMMISSIONER TAYLOR: Second, Taylor.

13 COMMISSIONER MELENDEZ: I have some
14 questions.

15 VICE CHAIR THERNSTROM: I'm opening that
16 up to discussion right now.

17 COMMISSIONER MELENDEZ: On the Staff
18 Director report.

19 VICE CHAIR THERNSTROM: Questions on the
20 Staff Director report. Why didn't you bring them up -
21 -

22 COMMISSIONER MELENDEZ: We're still under
23 that rubric, aren't we?

24 VICE CHAIR THERNSTROM: We can finish the
25 vote on this and then go back to the Staff Director's

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1 report. So let us -- We are now since we have a
2 motion simply to approve the January 11th minutes. We
3 have a motion, a second. All in favor -- Is there any
4 discussion of those minutes?

5 COMMISSIONER YAKI: Just a point of
6 information. Wasn't the fact that they were ambiguous
7 in the first place the reason why we just had this
8 corrective vote? So therefore should the minutes
9 reflect, be amended to reflect, that the ambiguity was
10 not resolved and perhaps the way the minutes thought
11 it was?

12 VICE CHAIR THERNSTROM: It seems to me
13 with the vote today that it's perfectly obvious that
14 we are resolving an ambiguity and the minutes should
15 reflect the ambiguity that existed at that time.
16 Unless somebody has a different view, they should
17 speak to it.

18 COMMISSIONER YAKI: Because the discussion
19 before was that there's a discussion whether there was
20 an ambiguity.

21 VICE CHAIR THERNSTROM: No, but really the
22 motion assumed there was an ambiguity that needed
23 clarification and so we've taken a vote on that. We
24 have clarified it. The minutes stand as minutes of
25 that meeting with the ambiguity buried in it. That

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1 ambiguity has been recognized and voted on and we
2 move forward.

3 COMMISSIONER YAKI: Okay. Remove the
4 question.

5 VICE CHAIR THERNSTROM: Thank you. All in
6 favor of approving the minutes of July 11th please say
7 aye. We have two -- We've already taken a vote on it.

8 COMMISSIONER HERIOT: January.

9 VICE CHAIR THERNSTROM: January. We've
10 already taken a vote. There were, do I understand
11 correctly, two nos and the rest --

12 COMMISSIONER GAZIANO: No.

13 COMMISSIONER HERIOT: No.

14 VICE CHAIR THERNSTROM: No. I'm sorry.

15 COMMISSIONER GAZIANO: That was on
16 something else.

17 VICE CHAIR THERNSTROM: I'm sorry. Okay.
18 Let's have a vote. All in favor please say aye.

19 (Chorus of ayes.)

20 CHAIRMAN REYNOLDS: Reynolds aye.

21 COMMISSIONER KIRSANOW: Kirsanow aye.

22 COMMISSIONER TAYLOR: Taylor aye.

23 VICE CHAIR THERNSTROM: Thernstrom aye.

24 COMMISSIONER YAKI: Yaki abstains.

25 VICE CHAIR THERNSTROM: Yaki abstains.

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1 COMMISSIONER GAZIANO: I abstain.

2 COMMISSIONER MELENDEZ: Abstain.

3 VICE CHAIR THERNSTROM: Three abstentions.
4 Commissioners Gaziano, Yaki and Melendez abstain. The
5 motion is approved.

6 Okay. Now further questions on the Staff
7 Director's report.

8 COMMISSIONER MELENDEZ: Yes, this is
9 Commissioner Melendez. I had a question whether or
10 not we responded to the Congressional request. I
11 think there were some letters that came in as per some
12 information. Did we respond to those?

13 DR. LERNER: We are in the process of
14 responding to them, yes. There was a fair amount of
15 information that was asked for and the staff is
16 pulling together the responses.

17 COMMISSIONER MELENDEZ: Okay. What is the
18 status of the campus anti-Semitism campaign? Are we
19 still working on that? I know we --

20 DR. LERNER: I believe so. Sock-Foon, do
21 you remember the status? What is the status of the
22 campus anti-Semitism campaign?

23 MS. MacDOUGALL: This is Sock-Foon
24 MacDougal. As my schedule permits, I continue to
25 research groups which we send campus campaign

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1 postcards.

2 (Off the record discussions.)

3 VICE CHAIR THERNSTROM: Anyway, your
4 question on this is, Commissioner Melendez?

5 COMMISSIONER MELENDEZ: He gave the
6 update. That was the --

7 (Simultaneous speakers.)

8 COMMISSIONER MELENDEZ: The last question
9 I had was on the statutory --

10 VICE CHAIR THERNSTROM: I thought maybe
11 you had something in mind. I didn't ask you that.

12 COMMISSIONER MELENDEZ: No. That was just
13 an update.

14 VICE CHAIR THERNSTROM: Okay.

15 COMMISSIONER MELENDEZ: The last question
16 was on the statutory report. The staff is currently
17 developing a systematic approach to selecting persons,
18 jails, advocacy groups and faith-based organizations
19 to which they send the interrogatories. Could you
20 please describe the criteria of Office of Civil
21 Rights' evaluation is using to determine who to send
22 these interrogatories to and how many institutions
23 you're planning to contact?

24 DR. LERNER: Yes. Because of the nature
25 of the OMB limitations and also the nature of the time

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1 involved we are not able to do a full-scale survey
2 which, of course, in an ideal world would be
3 desirable. So we selected specific cases suggested by
4 both people who had participated in the briefing
5 session and elsewhere. We asked them to indicate
6 instances that might select out. A thought might be
7 an especially egregious violators of religious right
8 of prisoners and we tried to select what we would call
9 in statistical jargon a purposive sample that would
10 reflect it, meaning that we can't generalize as you
11 would in the statistical sense. But this should give
12 a kind of a representation of those prisons and jails
13 where these deprivations of rights might be occurring.

14 Again, Sock-Foon, is there anything you
15 would like to add?

16 MS. MacDOUGALL: This is Sock-Foon
17 MacDougall. Dr. Lerner, I believe you characterized
18 it correctly.

19 DR. LERNER: Thank you.

20 COMMISSIONER MELENDEZ: Thank you.

21 VICE CHAIR THERNSTROM: Anything else on
22 the Staff Director's report?

23 Okay. We're moving onto a motion to adopt
24 policy of the reporting of Commissioner appointment
25 status and I'd like a motion that the Commission

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1 should adopt a policy, that the Commissioner
2 notifies the Staff Director or his designee of the
3 appointment dates, terms and party affiliation. Under
4 this motion, the Staff Director will ensure that this
5 information is posted on the Commission's website as
6 part of the Commissioner's biographies and any changes
7 to this information will be immediately distributed to
8 Commissioners in order to update it within five
9 business days of such notice. The Staff Director
10 shall prepare an administrative instruction to
11 implement this policy.

12 And I have a --

13 COMMISSIONER GAZIANO: I will make a
14 similar motion.

15 VICE CHAIR THERNSTROM: Does anybody want
16 to move this and then we can ask for a friendly
17 amendment?

18 COMMISSIONER GAZIANO: That's fine.

19 COMMISSIONER YAKI: I'll second it.

20 COMMISSIONER GAZIANO: I don't know that
21 anyone's moved it.

22 COMMISSIONER YAKI: She just read it.

23 COMMISSIONER HERIOT: Abby keeps calling
24 for a motion and you keep seconding it. You need to
25 have a motion first. Calling for a motion is not the

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1 same as moving it.

2 VICE CHAIR THERNSTROM: I will move it.
3 Okay. We have a second in Commissioner Yaki and you
4 want a friendly amendment.

5 COMMISSIONER GAZIANO: Since there's
6 disagreement, let me just -- Who has made the motion?

7 VICE CHAIR THERNSTROM: I just did.

8 COMMISSIONER GAZIANO: Okay. Let me just
9 make a friendly motion then. I don't know. There may
10 some Commissioners who don't know what the right term
11 is. I think it's improper --

12 VICE CHAIR THERNSTROM: What do you mean
13 by "term"?

14 COMMISSIONER GAZIANO: There seems to be
15 disagreement between branches of government as to when
16 certain terms begin and end. Isn't the -- I think the
17 real issue of concern is whether a Commissioner's
18 party affiliation is stable or whether a
19 Commissioner's party affiliation changes during the
20 course of their tenure so that the appointing
21 authority can make appropriate appointments under the
22 statute.

23 So I would ask that the motion be amended
24 just to specify that Commissioners need to inform the
25 officials as in the original motion of any change in

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1 their party affiliation.

2 VICE CHAIR THERNSTROM: I do believe we
3 now have from General Counsel a complete record of
4 beginnings and ends of terms. Is that not correct?

5 MR. BLACKWOOD: To the best we can.

6 VICE CHAIR THERNSTROM: To the best we
7 can.

8 MR. BLACKWOOD: Which was shared with
9 Commissioners.

10 VICE CHAIR THERNSTROM: Which has been
11 shared with Commissioners. Everybody should have
12 that. I don't think there's a lot of dispute over
13 what these terms are. I mean, I don't mind. I can
14 accept your --

15 (Off the record discussion.)

16 VICE CHAIR THERNSTROM: Commissioner
17 Gaziano does have a point and I'm happy to go along
18 with it. We can't have a conflict between the
19 appointing authority's understanding of the term of
20 appointments and our own understanding. Now is that a
21 possibility?

22 MR. BLACKWOOD: This is David Blackwood.
23 Unfortunately, it is a real possibility because since
24 the case of United States v. Wilson there have been
25 several appointments by Congressional authorities

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1 which have set term limits that are contrary to the
2 Wilson case, specifically, I believe each of the
3 Congressional appointees. Explicitly, I know Yaki and
4 Melendez, Commissioners, have terms dates. The House
5 sets terms dates that are directly contrary to the
6 Wilson case. There is an issue.

7 VICE CHAIR THERNSTROM: So that speaks in
8 favor of Commissioner Gaziano's friendly motion and I
9 accept that.

10 COMMISSIONER YAKI: Wait, wait, wait.

11 VICE CHAIR THERNSTROM: I'm not cutting
12 off discussion here. I'm just saying as the person
13 who made the original motion I'm accepting his
14 friendly motion. Yes.

15 COMMISSIONER YAKI: With all due respect,
16 friendly motions just can't be accepted. They still
17 have to be voted upon.

18 VICE CHAIR THERNSTROM: I understand that.
19 There hasn't --

20 COMMISSIONER YAKI: And in the absence of
21 the unanimous consent --

22 COMMISSIONER HERIOT: -- friendly
23 amendment to the motion. It still has to be voted on.

24 VICE CHAIR THERNSTROM: All right. I'm
25 sorry.

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1 COMMISSIONER YAKI: So there is no
2 unanimous consent. Before we do that, I have a
3 question for Mr. Blackwood. What exactly do you mean
4 by my term does not coincide with the -- What did you
5 mean in your reference to my term and Commissioner
6 Melendez's term?

7 MR. BLACKWOOD: Well, it's not -- This is
8 Mr. Blackwood again. I'm not referring to
9 Commissioners Yaki and Melendez. It's all the
10 Congressional appointments. By way of example
11 although I did not bring the guidebook down, your
12 term, for example, is several months, is designated
13 several months beyond what would be calculated using
14 the Wilson, the decision of Wilson.

15 COMMISSIONER YAKI: How so? I did not
16 know that I had an end date on my appointment.

17 MR. BLACKWOOD: Absolutely, you do.

18 VICE CHAIR THERNSTROM: We all do.

19 COMMISSIONER YAKI: No. What I mean is I
20 do not recall that in the reading of the appointment
21 into the Congressional record that an end date had
22 been specified.

23 COMMISSIONER GAZIANO: Michael, if you
24 would permit me to -- I don't know about yours but
25 that was the case with mine and based on my reading of

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1 U.S. v. Wilson the House had extended my, purports
2 to extend my, term about three months, two and a half
3 months, beyond what the term would be calculated under
4 the authority of U.S. v. Wilson. It may not be the
5 case with you.

6 VICE CHAIR THERNSTROM: But it has always
7 been the case.

8 COMMISSIONER GAZIANO: But there is a
9 conflict in the House or at least some of the
10 Congressional appointing authority at a minimum but
11 that it would be all done under U.S. v. Wilson.

12 I also don't think that it's necessary or
13 important for any particular purpose for the
14 Commissioners to state what their view of their term
15 is since it again operates as a matter of law. But it
16 does seem to make sense to me and I thought this was a
17 concern several Commissioners had raised including you
18 in your draft motion that we notify the Commission
19 regarding any change in our party affiliation. That
20 makes sense to me.

21 VICE CHAIR THERNSTROM: This would simply
22 strip the motion, the original motion, of the terms,
23 the appointment dates terms, and focus entirely on the
24 question of party affiliation.

25 COMMISSIONER YAKI: But, see, actually

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1 what Mr. Blackwood raises makes me wonder why we
2 would do that and why we would not amend the motion to
3 require that the General Counsel attempt to engage in
4 discussions to ensure that there is not conflict
5 between what our records state, what Congress may
6 state, and again I ask the question. I don't recall
7 anyone giving me an end date.

8 VICE CHAIR THERNSTROM: There was one on
9 the Congressional letter. There was one when I was
10 appointed in 2001.

11 COMMISSIONER GAZIANO: Just David can, if
12 he knows yours, he can speak to that. But I just
13 don't know that we need to resolve whether all four of
14 the Congressional appointees have. I think it's
15 somewhat inappropriate for an officer of the
16 Commission to try to resolve the legal conflict
17 between the two branches. That's irrelevant for this
18 motion. Why don't we just --

19 VICE CHAIR THERNSTROM: Yes, I mean, what
20 are we gaining?

21 COMMISSIONER GAZIANO: Why don't we just
22 tackle --

23 COMMISSIONER YAKI: I don't think it's --
24 Sorry. Go ahead.

25 COMMISSIONER GAZIANO: Why don't we just

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1 tackle the issue of concern and you, if you want to,
2 take up convincing the House or the Senate or the D.C.
3 Circuit to resolve that disagreement, then more power
4 to you.

5 VICE CHAIR THERNSTROM: But, Michael, what
6 are we gaining with including that information?

7 COMMISSIONER YAKI: I'm not saying we
8 include it. I would say I would move to amend the
9 amendment to reinstate that section. But instead of
10 having the General Counsel verify the dates, I would
11 have the General Counsel examine the effective dates
12 of every Commissioner appointment, reconcile it in
13 accordance with his or her understanding of the real
14 appointment time and U.S. v. Wilson and if there is a
15 discrepancy, communicate such to the appointing
16 authorities in order for these things not to become a
17 problem later on.

18 The dates become, just to answer your
19 question, Commissioner Gaziano, the dates become
20 somewhat important because, for example, one of the
21 issues that we had at the end of the year were a
22 number of the end of the year appointments that
23 involved Commissioner Thernstrom, Commissioner
24 Bracer's expiring appointment which was, of course,
25 Commissioner Kirsanow and what the exact dates even

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1 just the dates of those appointments became an issue
2 of inquiry because White House announced one thing.
3 The papers actually went another. That becomes an
4 issue in terms of when you calculate the timing and
5 when the effective date is.

6 So I think that it is important that this
7 be resolved with the assistance of the General Counsel
8 because that's what the General Counsel is supposed to
9 help do.

10 COMMISSIONER GAZIANO: Sure.

11 COMMISSIONER YAKI: And I think that in
12 addition to that, yes, I agree about that we have to
13 get at the issue of the ping pong registration. But I
14 think we can do that.

15 I think the motion takes care of that. I
16 have no problem with that part. I just wanted to make
17 sure on the second part the General Counsel actually
18 opened up a can of worms that I was unaware of. In
19 terms of my own appointment, I would like to see
20 rather than me go back, someone else go back. I think
21 the General Counsel is perfectly situated as the
22 counsel for the Commission to examine this issue, look
23 at where there may be a potential discrepancy or issue
24 and communicate with the appointing authorities as to
25 resolve that so that there is a safe harbor for all of

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1 us when the question of what the actual appointment
2 date is.

3 COMMISSIONER GAZIANO: Have you made --
4 Has your motion been seconded to amend the amendment?

5 COMMISSIONER YAKI: As you pointed out, I
6 had really set a motion. I know --

7 COMMISSIONER GAZIANO: Well, that's what
8 I'm trying to understand. My preference is --

9 COMMISSIONER YAKI: -- any of the
10 substance of what I wanted to do.

11 COMMISSIONER GAZIANO: I was confused
12 whether you made a motion. My preference -- I agree
13 with you that this is important. My preference is we
14 not do it with this motion.

15 VICE CHAIR THERNSTROM: I would like to
16 hear from the General Counsel on this.

17 MR. BLACKWOOD: If I might by way of
18 example, Commissioner Yaki, and I'm reading off the
19 Congressional record. The last line of your
20 appointment says that "you have been granted a six
21 year term expiring May 3, 2011."

22 COMMISSIONER YAKI: Okay.

23 MR. BLACKWOOD: That's directly contrary
24 to the calculation under the Wilson case which would
25 have your term expire December 15, 2010. That's

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1 approximately a six-month discrepancy. Commissioner
2 Melendez, I believe, has approximately seven or eight
3 months that he would lose because Congress
4 specifically picked a date directly contrary to the
5 holding in Wilson.

6 If you're asking who wins, I believe the
7 court controls. We have brought this to Congress's
8 attention. Copies of these binders were forwarded to
9 the appropriate committees, especially with regard to
10 knowing that Commissioner Gaziano's position was
11 coming up and it had no effect.

12 COMMISSIONER YAKI: Okay.

13 MR. BLACKWOOD: But it is an issue. I did
14 talk to Mr. Schmechel, for example. It's something
15 that the Commission is going to have to be aware of
16 three years from now. There were signals --

17 COMMISSIONER YAKI: To whom?

18 MR. BLACKWOOD: To Congress that they need
19 to address this before your dates expire.

20 COMMISSIONER YAKI: Okay.

21 CHAIRMAN REYNOLDS: This is Commissioner
22 Reynolds. Commissioner Yaki brings up an important
23 issue. But I believe that it should be addressed
24 separately. The way I read the motion the motion
25 would require Commissioners to notify the Staff

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1 Director. As it's currently written, it would
2 notify the Staff Director of the appointment date and
3 term. That is problematic because if a commissioner
4 picks a date that's not consistent with Wilson, we
5 have a problem.

6 VICE CHAIR THERNSTROM: But I believe it
7 is --

8 CHAIRMAN REYNOLDS: With respect to point
9 of clarification, we don't have that problem.

10 VICE CHAIR THERNSTROM: Okay, but I
11 believe there is a motion to, unless I'm confused,
12 strike. There's an amendment to --

13 CHAIRMAN REYNOLDS: Yes, I support that,
14 but I'm also making the point that Commissioner Yaki
15 has brought up an important point that we need to
16 address. But I'm saying that we should address it
17 separately.

18 COMMISSIONER GAZIANO: Yes.

19 VICE CHAIR THERNSTROM: I don't think
20 anybody's in disagreement with the fact that it is an
21 important question obviously if there's a six months
22 discrepancy in Commissioner Melendez's term between
23 the --

24 COMMISSIONER YAKI: I just vote the common
25 law rule of squatter's rights after December 2010.

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1 (Off the record comments.)

2 VICE CHAIR THERNSTROM: I think that
3 applies to all of us. Are we ready?

4 (Off the record comments.)

5 VICE CHAIR THERNSTROM: Commissioner
6 Melendez.

7 COMMISSIONER MELENDEZ: Mr. Blackwood, how
8 are the commissioners supposed to report their party
9 affiliation under this motion? Is it their voter
10 registration or their voting or what?

11 VICE CHAIR THERNSTROM: It can't be their
12 voter registration for those of us who live in the
13 state where there is no party registration.

14 DR. LERNER: Actually, we haven't --

15 MR. BLACKWOOD: This is Mr. Blackwood
16 again. I would suggest that the proper way to do it
17 is self certification. As Commissioner Thernstrom
18 pointed out, several states don't require party
19 affiliation to be recorded and therefore any -- I
20 think it has to be a process of self certification.

21 VICE CHAIR THERNSTROM: Self declaration.

22 MR. BLACKWOOD: Identification. Correct.

23 COMMISSIONER YAKI: I'm a Democrat.

24 VICE CHAIR THERNSTROM: You are?

25 COMMISSIONER YAKI: Absolutely.

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1 VICE CHAIR THERNSTROM: That is news.

2 (Laughter.)

3 COMMISSIONER YAKI: I'm self certifying
4 for the record right now.

5 VICE CHAIR THERNSTROM: Bring out the
6 cameras.

7 COMMISSIONER YAKI: -- of the Democratic
8 National Party.

9 VICE CHAIR THERNSTROM: All the national
10 media that's here please take note.

11 All right. Are we ready to vote on this
12 and I believe this is a motion that has been amended.

13 COMMISSIONER HERIOT: Could you reread the
14 motion?

15 COMMISSIONER GAZIANO: Before we read the
16 motion as amended, I may have one quick question.

17 VICE CHAIR THERNSTROM: Okay. The motion
18 reads "The Commissioners adopt a policy that the
19 Commissioners notify the Staff Director or his
20 designee of their party affiliation. Under this
21 motion, the Staff Director will ensure that this
22 information is posted on the Commission's website as
23 part of the Commissioners' biographies and any changes
24 to this information will be immediately distributed to
25 Commission and order updated within five business days

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1 of such notice. The Staff Director shall prepare an
2 administrative instruction to implement this policy."

3 COMMISSIONER GAZIANO: My one question
4 since I did amend other parts of the original, is an
5 administrative instruction important, valuable? Is
6 that necessary? If we just adopt a policy here, isn't
7 that good enough?

8 VICE CHAIR THERNSTROM: Mr. Blackwood.

9 MR. BLACKWOOD: The instruction is
10 necessary to instruct the staff what to do.

11 COMMISSIONER GAZIANO: I want
12 clarification of whether that's even necessary. But I
13 appreciate the clarification obviously that the AI
14 doesn't, wouldn't, necessary apply to the Commissioner
15 action. But is an AI even necessary if we have
16 instructed the Staff Director to see that it's
17 properly posted on the website?

18 MR. BLACKWOOD: Well, you need a
19 Commission vote to determine, to order, the staff what
20 to do.

21 COMMISSIONER GAZIANO: That's fine, yes.

22 MR. BLACKWOOD: And I think that part --

23 COMMISSIONER GAZIANO: Do we really need
24 then an AI to --

25 COMMISSIONER HERIOT: That puts it in the

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1 handbook. It makes it easier for continuity.

2 VICE CHAIR THERNSTROM: What is your
3 concern here? We have it in the AI. It becomes part
4 of the handbook. Commissioner Melendez. No, it's
5 Commissioner Yaki. Is that right?

6 COMMISSIONER YAKI: Yes, I have an issue
7 with the self certification. I think that if you're
8 in a state where there is no party affiliation listed
9 when you vote, that's fine. But I think that where
10 you do live in a state where party affiliation is part
11 of how you vote that the part of the attestation of
12 your party status. In other words, I just don't want
13 self certification just because a couple states don't
14 require it. I would like tangible proof in those
15 states that do allow for parties certification.

16 VICE CHAIR THERNSTROM: So you want an
17 inconsistent rule. One rule applies to people living
18 in certain states and another rule applies to people
19 living in states --

20 COMMISSIONER YAKI: No. As an
21 accommodating rule. I'm accommodating those who live
22 in those states that don't require party affiliation
23 and for those states that do I think that it's
24 perfectly reasonable to ask for that certification.

25 COMMISSIONER HERIOT: Then there's a third

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1 category of states, states that will automatically
2 list you. They will tell you "You may vote in the
3 Republican or Democratic primary." But they don't
4 bother to tell you that if you choose to do so then
5 you'll be automatically listed as a member of that
6 party.

7 VICE CHAIR THERNSTROM: What is the
8 downside, Commissioner Yaki, to having people identify
9 themselves?

10 COMMISSIONER YAKI: I think the issue is
11 self evident and I'll leave it at that.

12 VICE CHAIR THERNSTROM: I'm sorry. I may
13 be --

14 COMMISSIONER GAZIANO: I will take your
15 advice. Since you haven't put it in the form of a
16 motion, I think that we can take your advice under
17 advisement. Is there any further discussion on the
18 motion?

19 COMMISSIONER YAKI: No, I'm going to make
20 a motion to amend your motion to include that in
21 states where party registration is allowed that
22 attestation of party status through documentation is
23 required. For those states that do not require party
24 identification as part of their voter registration
25 process that self certification will suffice.

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1 COMMISSIONER GAZIANO: Is there a second
2 on that? I would like to address.

3 COMMISSIONER MELENDEZ: Yes, second.

4 COMMISSIONER GAZIANO: Okay. Can I just
5 ask how is that going to work? How is that going to
6 work? Who has the responsibility to obtain the
7 paperwork, to provide the paperwork?

8 VICE CHAIR THERNSTROM: And to enforce it.

9 COMMISSIONER YAKI: I don't know. I've
10 always found it very easy to go down to my local
11 registrar's and get a little printout that says I'm a
12 Democratic.

13 VICE CHAIR THERNSTROM: Well, it is --
14 Look. If you are an in a state like I was like
15 Massachusetts, your party identification which has a
16 category of un-enrolled, otherwise known as
17 Independent, your party identification switches for,
18 let's say, for two weeks and you've taken the ballot
19 of one party or another and then you return to
20 register in whatever party or get back to enrolled if
21 you please. So, you know, there isn't a consistent
22 party registration because the state allows you to
23 move back and forth.

24 COMMISSIONER HERIOT: What is the matter
25 of concern is that you move back and forth without

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1 even realizing it. A person can vote in a primary
2 not realizing that their jurisdiction will
3 automatically by operation of law cause them to be
4 considered a particular party member and might not
5 find out about that for years.

6 VICE CHAIR THERNSTROM: Yes, that's an
7 even stronger reason.

8 COMMISSIONER GAZIANO: I suppose. I move
9 the question. I think it's Mr. Yaki's amendment to my
10 amendment to the motion.

11 VICE CHAIR THERNSTROM: All those in favor
12 of Mr. Yaki's motion to amend.

13 COMMISSIONER YAKI: Commissioner Yaki.

14 VICE CHAIR THERNSTROM: Commissioner
15 Yaki's motion, sorry, to amend Commissioner Gaziano's
16 motion say aye.

17 (Chorus of ayes.)

18 VICE CHAIR THERNSTROM: All opposed.

19 (Chorus of nays.)

20 VICE CHAIR THERNSTROM: It fails. We are
21 back to the motion that Mr. Gaziano made which I did
22 read aloud. Do I need to read it aloud again?

23 CHAIRMAN REYNOLDS: No.

24 COMMISSIONER GAZIANO: My question was
25 answered. I move the vote on the motion unless there

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1 is further discussion.

2 COMMISSIONER HERIOT: I just want to make
3 a point for the record here is that we're not claiming
4 that any of this has any particular operation of law.
5 We are talking about a motion that would require us or
6 state what we believe our party affiliation to be.
7 But we're not endorsing any particular theory as to
8 how these decisions are made because those are
9 decisions made by a different authority.

10 You know, when the President of the United
11 States appoints someone they may have their view of
12 what constitutes a Republican or a Democrat or an
13 Independent.

14 VICE CHAIR THERNSTROM: Or may not even
15 ask.

16 COMMISSIONER HERIOT: Or may forget that
17 this is at issue. We're not. We're not making law
18 here. We're just --

19 VICE CHAIR THERNSTROM: Or may explicitly
20 say it doesn't matter.

21 COMMISSIONER HERIOT: It's just a
22 reporting of it.

23 COMMISSIONER GAZIANO: And I want to
24 associate myself with those remarks and add that the
25 statutory requirements may be unconstitutional and an

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1 appointing authority may have that view and an
2 appointing authority's judgment is probably non-
3 justifiable.

4 COMMISSIONER HERIOT: Or the OLC's memo
5 about how the wall works and that may or may not be
6 anybody else's view of how the wall works. We're just
7 talking about reporting what we consider our party
8 affiliation to be at any time.

9 COMMISSIONER YAKI: I would offer a
10 slightly contrary point of view and that is I think
11 that there's a long statutory history going to the
12 issue that party affiliation was important for the
13 purposes of --

14 (Off the record discussion.)

15 COMMISSIONER TAYLOR: This is Commissioner
16 Taylor. Do you have a question?

17 COMMISSIONER YAKI: No, I was pausing
18 because the Chair was on the phone.

19 VICE CHAIR THERNSTROM: I'm very sorry.

20 COMMISSIONER YAKI: Was on her cell phone?

21 VICE CHAIR THERNSTROM: I'll take it off.
22 I'm terribly sorry. I forgot to turn it off before.

23 COMMISSIONER YAKI: That's not an issue.
24 It happens to everyone, Madam Chair.

25 I think that this is an important issue.

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1 I think it goes toward issues of balance. I think
2 that to understand that commissioner -- I speak only
3 for myself, but at least for Commissioner Yaki and
4 perhaps the function that party affiliation changed
5 like a Kleenex for the purposes of complying with the
6 structural requirements is I think contrary to
7 statutory intent and certainly the spirit of the law
8 in which we were created and that is why I have a
9 concern about the self certification and why I have a
10 concern that it's more than just a non-issue according
11 to some other members of the Commission.

12 VICE CHAIR THERNSTROM: I just want to say
13 one thing. Evidently, there's a problem with the
14 rustling interfering with our communication with our
15 three commissioners coming by phone. So everybody try
16 to keep the rustle down.

17 Anyway, anybody else want to --

18 COMMISSIONER YAKI: Commissioner Taylor
19 had something to say.

20 VICE CHAIR THERNSTROM: Yes, Commissioner
21 Taylor.

22 COMMISSIONER TAYLOR: Yes, I have a
23 question. Is this motion -- Does this motion require
24 a commissioner to provide their "view" on party
25 affiliation or note the party that they are registered

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1 with if that state has party registration? In other
2 words, could a commissioner have a different view than
3 their registered party affiliation?

4 COMMISSIONER GAZIANO: Would you read the
5 sentence?

6 VICE CHAIR THERNSTROM: Yes. The sentence
7 reads, "The Commissioners notify the Staff Director or
8 his designee the party affiliation." So it seems to
9 me this is a matter of self identification. On the
10 other hand, we cannot have more than four members of
11 any one party on the Commission.

12 COMMISSIONER YAKI: This, of course, is a
13 basic question. If Commissioner Melendez and I have
14 some change in medical condition that prompts us to
15 self identify as Republicans right now, that you would
16 out of compliance with the statute as we are sitting.

17 COMMISSIONER GAZIANO: I'm not sure that's
18 correct, but I --

19 COMMISSIONER YAKI: The medical condition
20 --

21 (Laughter.)

22 COMMISSIONER GAZIANO: Which is why I
23 don't think we need to debate the motion.
24 Commissioner Taylor, I am sure you will self identify
25 with all of the proper considerations and I don't know

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1 that we need to specify in the motion anymore what
2 those proper considerations are.

3 COMMISSIONER YAKI: Commissioner Taylor, I
4 think if the President found out that you registered
5 with the Green Party you would be receiving a stern
6 letter or phone call in very short order.

7 VICE CHAIR THERNSTROM: Well, we do not
8 need to go there, Michael, Commissioner Yaki, I should
9 say. Can we have a vote on the motion as -- Is there
10 more discussion or can we have a vote on the motion
11 that's on the table?

12 CHAIRMAN REYNOLDS: Let's vote.

13 COMMISSIONER KIRSANOW: Kirsanow. Please
14 read the motion.

15 VICE CHAIR THERNSTROM: The motion reads
16 that the Commissioners adopt a policy that they notify
17 the Staff Director or his designee of their party
18 affiliation. Then it goes on to say and with this
19 motion the Staff Director will ensure that this
20 information is posted, etc.

21 COMMISSIONER KIRSANOW: Thank you.

22 VICE CHAIR THERNSTROM: Can we have a vote
23 on this? All in favor say aye.

24 CHAIRMAN REYNOLDS: Commissioner Reynolds
25 aye.

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1 COMMISSIONER KIRSANOW: Kirsanow aye.

2 COMMISSIONER TAYLOR: Taylor aye.

3 (Chorus of ayes.)

4 COMMISSIONER YAKI: No.

5 COMMISSIONER GAZIANO: Aye.

6 COMMISSIONER MELENDEZ: No.

7 VICE CHAIR THERNSTROM: Okay. So there
8 are two nos from Commissioners Yaki and Melendez and
9 otherwise everybody has voted aye.

10 **V. MANAGEMENT AND OPERATIONS**

11 VICE CHAIR THERNSTROM: We go on to the FY
12 2008 and FY 2009 budgets and that is for our Staff
13 Director to report on.

14 DR. LERNER: Thank you. Basically, 2008
15 is very straightforward. We are proceeding on
16 schedule. If we -- We have completed the first
17 quarter of our spending. So we have a report from the
18 GSA and we spent approximately the amount of money
19 that we had expected to be so that we're going to be
20 in compliance with the Anti-Deficiency Act and other
21 acts. In other words, we spent about a quarter of it
22 so far which is what we had hoped to do. Obviously,
23 that means the changes that were suggested by our
24 budget director and urged by our former staff director
25 are included which means that none of the new hiring

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1 and there was a slight diminution of, but not very
2 large one, of some OSSD travel moneys.

3 COMMISSIONER YAKI: I have a question on
4 that.

5 DR. LERNER: Let me just finish and then
6 yes. So that's our situation. So we're doing well
7 with the current constraint of what we have. I'm
8 sorry, Commissioner Yaki. Go ahead.

9 VICE CHAIR THERNSTROM: Wait a minute. Is
10 that the end of the 2008?

11 DR. LERNER: Pretty much.

12 VICE CHAIR THERNSTROM: Okay.

13 DR. LERNER: Well, wait a minute. I do
14 have one more thing.

15 VICE CHAIR THERNSTROM: Well, let's finish
16 with the 2008.

17 DR. LERNER: I had almost forgotten. I
18 think the staff under fairly difficult situation has
19 actually accommodated admirably and let me just make
20 one point in terms of procedure which is that because
21 of the nature of the number of people that we have
22 left on the Commission staff many people are working
23 more than one job and have many different
24 responsibilities.

25 VICE CHAIR THERNSTROM: More than one job

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1 within the Commission?

2 DR. LERNER: Yes, within the Commission
3 and they've taken on -- They're multi-tasking above
4 and beyond in some cases the original responsibilities
5 and their efforts as far as I'm concerned are most
6 appreciated.

7 VICE CHAIR THERNSTROM: Commissioners Yaki
8 and Melendez both have something to say and so do I.

9 COMMISSIONER YAKI: I have a question
10 about your statement about none of the new hiring.
11 It's my understanding that in this quarter, at least,
12 in the last month and a half, there have been two new
13 hires to the Commission now.

14 DR. LERNER: Those were hires that were
15 done under the previous dispensation.

16 COMMISSIONER YAKI: What do you mean by
17 that?

18 DR. LERNER: Well, what I mean by that is
19 they were done before (a) I became Acting Staff
20 Director and (b) they are not part of the list that
21 the previous staff director had actually put out.

22 COMMISSIONER YAKI: I understand that they
23 aren't part of the list. But they are nevertheless
24 two new hires. Correct? Did we not lose one special
25 assistant and then hire another one and did we not

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1 also hire a new attorney advisor?

2 VICE CHAIR THERNSTROM: We hired a
3 replacement for a special assistant.

4 COMMISSIONER YAKI: Well, the question is
5 -- Sorry.

6 VICE CHAIR THERNSTROM: It's just a
7 replacement.

8 COMMISSIONER YAKI: The question is in a
9 budget scenario that was documented by the former
10 staff director the issue was never brought up as to
11 what the impact of (a) hiring a replacement was and
12 (b) hiring the new attorney advisor was in terms of --
13 because that was certainly done at a situation and at
14 a time where there was full knowledge that the
15 rescission had indeed been placed upon our agency.

16 VICE CHAIR THERNSTROM: But there was if
17 you look at -- Pardon me?

18 DR. LERNER: Both hires are replacements.

19 VICE CHAIR THERNSTROM: Yes, and if you
20 look at the transcript from February 17 of 2006 it
21 does make it very clear, the record makes it very
22 clear, that we are refraining from hiring additional
23 special assistants. But we are not in any way putting
24 a hold on --

25 DR. LERNER: Replacements.

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1 VICE CHAIR THERNSTROM: On replacements.

2 COMMISSIONER YAKI: But we hired a new
3 attorney advisor.

4 DR. LERNER: Pardon me?

5 COMMISSIONER YAKI: We hired a new
6 attorney advisor.

7 DR. LERNER: No, it was we were replacing
8 one or one that we had previously had.

9 COMMISSIONER YAKI: Well, I think the term
10 "replacement" and "new hire" are being used rather
11 cavalierly in this situation because the replacement
12 actually still works as far as I can tell from the
13 emails I receive within the Office of OSD and so I
14 find that very peculiar.

15 DR. LERNER: Well, with a new person, of
16 course, there are issues of transition. But the
17 replacement is assuming and will totally assume the
18 duties of the --

19 COMMISSIONER YAKI: That may be true, Dr.
20 Lerner, but as I recall the person who was being
21 replaced has been supposedly in the other job for more
22 than several months and I'm just wondering what
23 transition we're talking about here.

24 DR. LERNER: Actually, I don't believe
25 that's correct. But okay.

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1 COMMISSIONER YAKI: At least, not
2 according to the Staff Director's reports as we go
3 back in time. Perhaps I can refresh your memory and
4 get you the appropriate citation.

5 VICE CHAIR THERNSTROM: Commissioner Yaki,
6 I would just like to read from this transcript so that
7 we have it in this record as well from the February
8 17, 2006 transcript. I said, "The point is we would
9 want to be able to replace the special assistant with
10 another special assistant and not necessarily the
11 person that is the commissioner." And the Chair
12 Reynolds says, "That's right." And then I go on to
13 say, "But we would want to keep the same number of
14 special assistants, the total number, so I would just
15 refrain from hiring additional commissioner special
16 assistants so the number, the total number, doesn't go
17 down. That's my only point. I'm not saying that any
18 particular commissioner is entitled to a special
19 assistant." And Commissioner Yaki says, "I agree."

20 So I think with respect to the special
21 assistant there's a clear record here.

22 COMMISSIONER YAKI: There is actually -- I
23 agreed because there was some information that was
24 available at the time. My question actually goes to
25 when was the new special assistant actually hired and

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1 did they go through White House clearance. My
2 understanding is that usually took about two months.
3 So I'm just trying to figure out exactly when this new
4 person was put into the system and then actually
5 hired.

6 VICE CHAIR THERNSTROM: And by the way,
7 the 2007 budget submission includes, contemplated, the
8 Commissioners approved, eight Commissioners, four
9 special assistants. I mean, this was the expectation.
10 This is for FY `08. I'm sorry. This was the
11 expectation we all agreed to.

12 I don't think that there's an issue with
13 respect with the special assistants and the answer to
14 the question of whether the White House, whether the
15 name was submitted to the White House. The answer is
16 yes.

17 COMMISSIONER YAKI: So when was that done?

18 VICE CHAIR THERNSTROM: The precise date,
19 I don't have that.

20 (Off the record comment.)

21 VICE CHAIR THERNSTROM: We may have it.
22 We can ask Myrna and Tim Fay can go ask Myrna when the
23 paperwork was submitted to the White House.

24 COMMISSIONER YAKI: I'll take that later.
25 You can move on.

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1 VICE CHAIR THERNSTROM: Yes, I mean this
2 is -- You do realize this is an OPM rule. It's not a
3 Commission rule.

4 COMMISSIONER YAKI: And that's exactly my
5 point.

6 VICE CHAIR THERNSTROM: I mean we don't
7 have liberty to simply disregard OPM.

8 COMMISSIONER YAKI: And then that's
9 exactly my point. I think that OPM has no
10 jurisdiction over our special assistants for White
11 House clearance and I'm trying to figure out exactly
12 the time line for when that occurred.

13 VICE CHAIR THERNSTROM: The Staff Director
14 just said to me that he believes OPM has jurisdiction
15 over everybody.

16 COMMISSIONER YAKI: I believe that's
17 correct.

18 MR. BLACKWOOD: The question is -- This is
19 Dave Blackwood again. The question has come up
20 several times about process and I'm not the expert on
21 it and unfortunately Ms. Martin is not here. But I
22 will give you my best explanation. OPM is the only
23 source that can process any sort of hire here at the
24 Commission, any, all Schedule Cs and we have the form.
25 We have pulled that up. And we have several

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1 publications from OPM that say all Schedule Cs must
2 be cleared by the White House.

3 We have tried to determine the source of
4 that policy. It appears, and I can't say for sure, it
5 is a policy. It is not a rule. It is not a
6 regulation. It is a policy, however, that appears to
7 have been followed by several White Houses going back
8 to the Reagan Administration.

9 I don't have the rule. We have requested
10 a copy of the source of the material from OPM and its
11 general counsel and we haven't received a response as
12 of this time.

13 So I will tell you this. We have -- I
14 have requested from OPM's counsel. If we submit an
15 request to hire someone and don't go through the White
16 House. What happens? And he said, "We'll cross that
17 bridge when we get to it." But we've also been
18 informally been told in essence it's simply not going
19 to get processed. We can submit the request and OPM
20 won't do anything.

21 COMMISSIONER YAKI: Okay.

22 VICE CHAIR THERNSTROM: Anything else?

23 COMMISSIONER MELENDEZ: Yes, I have a
24 question. As far as the approval of the Commission on
25 any of these special assistants, I know that there is

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1 times when we, the Commission, actually approved,
2 we've been before the Commission and we vote on --

3 VICE CHAIR THERNSTROM: We don't vote on
4 particular people. We voted to give you a special
5 assistant.

6 COMMISSIONER MELENDEZ: Okay. But we
7 didn't do that in this situation?

8 COMMISSIONER YAKI: It's a replacement.

9 VICE CHAIR THERNSTROM: No, it's a
10 replacement.

11 COMMISSIONER YAKI: So the answer is no.

12 COMMISSIONER MELENDEZ: But my concern is
13 that --

14 COMMISSIONER YAKI: Is it your
15 replacement? Is the person assigned to you,
16 Commissioner Thernstrom?

17 VICE CHAIR THERNSTROM: No, but it
18 specifically said as I read in those minutes that
19 person does not have to be assigned to me.

20 COMMISSIONER YAKI: May I ask a question?

21 VICE CHAIR THERNSTROM: Yes.

22 COMMISSIONER YAKI: Given my request
23 earlier in the year, why was there no consideration
24 that he'd be given to me?

25 VICE CHAIR THERNSTROM: Well, Tim Fay was

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1 regarded as my replacement and for complicated
2 reasons we decided to -- I mean, he is my assistant
3 and I was sharing Lisa with Gail and we're still
4 sharing an assistant. He was replacing the person
5 whom we are sharing.

6 COMMISSIONER GAZIANO: I'd like the record
7 to reflect that if any individual Commissioners have
8 special assistants individually assigned to them that
9 I would like one.

10 COMMISSIONER YAKI: I agree. Commissioner
11 Thernstrom, my only point is that my understanding of
12 the regs and the law is that the special assistants
13 are to a commissioner. Whether or not that person
14 chooses to assist another commissioner is an issue
15 between one commissioner and another. But that
16 special assistant is assigned to a particular
17 commissioner. I believe that the paperwork for Mr.
18 Fay specifies that he is assigned to Commissioner
19 Heriot. Is that correct?

20 VICE CHAIR THERNSTROM: That is correct.
21 On the other hand, we have not changed the ratio of
22 special assistants and we are in -- You know, I mean,
23 the question of whether it is meaningful legally to
24 have had Mr. Fay assigned to Commissioner Heriot
25 instead of me is a separate issue that we would have

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1 to discuss separately it seems to me. We did not
2 regard it as anything but continuing the sharing
3 arrangement.

4 And in these minutes specifically that I
5 read to you it talked about, we talked about, the
6 question of whether the replacement was for a
7 replacement for a specific commissioner. Look. There
8 are --

9 COMMISSIONER YAKI: No. The minutes
10 reflect the placing of special assistants which in my
11 view meant that if you lost one, if your person left
12 you, you would get one. But that is a different
13 situation where the person is no longer assigned to
14 you and is assigned instead to a new commissioner.
15 That's my point.

16 VICE CHAIR THERNSTROM: Well, I know it
17 is, but we have to resolve the basic disagreement over
18 whether Mr. Fay is still assigned to me or not. I
19 regard him as assigned to me in the same way that Lisa
20 Neuder was assigned to Gail Heriot and that is --

21 COMMISSIONER YAKI: You might want to ask
22 OPM on their view of whether that's something that
23 could formally assigned. In other words, if Special
24 Assistant Fay were to say to you, "Commissioner
25 Thernstrom, I'm sorry. I can't do it. I have to do

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1 this work for Commissioner Heriot." You say, "No,
2 we share this." If there were an issue, I think OPM
3 would say, "Commissioner Thernstrom, you lose."

4 VICE CHAIR THERNSTROM: Well, luckily, the
5 conditions under which he were hired, I mean, he
6 understood from the very beginning that we were, that
7 two of us in effect were, hiring him and all of this
8 boils down to budget issues.

9 We have no money and I'd like to interject
10 something here on that question. There are a lot of
11 people on this staff, I know, on the Commission staff
12 who are worried with this kind of discussion going on
13 that there will be layoffs and I would like to say
14 speaking only for myself here, but other commissioners
15 are free to join me, that I will do everything in my
16 power to protect layoffs on this Commission and that
17 furthermore I join Dr. Lerner's statement that I know
18 there are people working more than 40 hours a week
19 here. I know that there are people doing excellent
20 work and I personally feel very grateful to them and
21 in very tough times, they're pitching in and I'm again
22 going to do my best to see that there are no layoffs.
23 And any additional special assistants would mean
24 layoffs. We cannot in my view go there.

25 COMMISSIONER YAKI: I just raise the issue

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1 that when I brought up the desire to have a special
2 assistant because of the workload, because of the
3 immense backlog of reports that are out there and the
4 fact that it is difficult as a full-time lawyer to
5 have the time to devote the reports that come out as
6 they are coming out. At the very time that I raised
7 that with the former staff director he had not yet
8 extended an offer for the new attorney advisor. But
9 as soon as I did, he did that and that we can talk all
10 we like about how our budgets have been.

11 But I would like -- I'm sure the staff
12 knows full well that two years for reasons that are
13 still inexplicable, we returned \$500,000 to the
14 Treasury that last year we spent an inordinate amount
15 of money on the Hawaii special state advisory
16 committee issues in an attempt to try and juggle a
17 resolution from them which ultimately failed but at an
18 enormous expenditure at the end of the year to the
19 Commission and that I think for me any questions my
20 willingness to try and help the staff knows full well
21 that one of the first things I did when I came on
22 board was address this issue very directly with the
23 Chair on the issue of the regional offices, on the
24 issue of layoffs.

25 But part of me is extremely skeptical

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1 nowadays because of the fact that at the end of the
2 last two years we have had enormous sums of money, one
3 where we simply gave it back and the other one that we
4 just simply spent as much as we possibly could.

5 VICE CHAIR THERNSTROM: The attorney
6 advisor is a replacement. Now on the question of --

7 COMMISSIONER YAKI: It's not a
8 replacement. It is not a replacement. It is -- We
9 have two highly paid individuals who all we did is we
10 rotated positions from OSD elsewhere. We have someone
11 working in Atlantic right now who is earning, an
12 attorney advisor essentially position, salary and
13 there were two highly paid people in Atlantic and we
14 have very few in other parts of the country. That
15 person was in OSD and rotated out for reasons
16 unbeknownst. Why that happened, I have no idea.

17 Then we had another person who actually, I
18 think, does a very good job, Mr. Byrnes, who was with
19 OSD and rotated out again to do some other position
20 that was created with a new rubric.

21 So when you say replacement, I get a
22 little hot under the collar because I don't
23 necessarily view it as replacements and when we talk
24 about how hard the staff is working, I know how hard
25 the staff is working. I talk to them as much as I can

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1 even though pretty much I'm prohibited from talking
2 to them by directive of the former staff director.
3 But I know how hard they are working and I also know
4 that one of the reasons that they are working this
5 hard goes directly to one of the issues that I want to
6 raise later on in this report.

7 VICE CHAIR THERNSTROM: Well, I'd like the
8 Staff Director to address what you said. My
9 understanding is that no matter you can nitpick about
10 the budget here and there, the money spent on the
11 Hawaiian SAC meeting or whatever. You are not going
12 to get the money without layoffs for a special
13 assistant for every single commissioner. We're just
14 not going to get there. Dr. Lerner.

15 DR. LERNER: Yes. Let the record reflect
16 also that all the appointments are indeed
17 replacements. Mr. Byrnes is replacing a director of
18 the Regional Program Coordination Unit which is as
19 everyone knows here a very important part of the task
20 in managing the Commission having to do with --

21 COMMISSIONER YAKI: And who was that
22 person and how long was that position vacant?

23 DR. LERNER: We had an acting person there
24 and --

25 COMMISSIONER YAKI: And why was that

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1 position vacant? In other words, there was an
2 active person, but how long had that position been
3 vacant? I mean, we --

4 DR. LERNER: I think --

5 COMMISSIONER YAKI: We've can do budget
6 all day long, Dr. Lerner. I know this stuff very
7 well. So why don't we just end it because we should
8 have a discussion offline because we can go into all
9 the vacancies that have been there for years in the
10 agency and then all of sudden hires become
11 replacements for those when we froze a lot of those
12 for the specific purpose of keeping other parts of the
13 agency going.

14 VICE CHAIR THERNSTROM: I mean,
15 Commissioner Yaki, I'm a little confused here. You
16 have said SAC rechartering is a priority, but that is
17 one of the functions of the regional director. Look.

18 COMMISSIONER YAKI: Well, no. I just said
19 SAC priority, SAC rechartering is a priority, but that
20 to me is a substantive issue, not necessarily a timing
21 issue.

22 COMMISSIONER MELENDEZ: But you need a
23 body to do it.

24 VICE CHAIR THERNSTROM: You need a body to
25 do it and I am going to be very unhappy if a great

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1 deal of time of Dr. Lerner's is taken up with
2 arguing about was somebody a replacement and exactly
3 the details of this because we are --

4 COMMISSIONER YAKI: -- a long history of
5 the agency.

6 VICE CHAIR THERNSTROM: Well, hold on a
7 minute.

8 COMMISSIONER YAKI: -- having only been
9 here for four months.

10 VICE CHAIR THERNSTROM: Hold on a minute.
11 We are in theory -- I mean, Dr. Lerner has two jobs at
12 the moment. His other job is extremely important to
13 moving the briefing reports, the background of the
14 reports of and getting out a statutory report. We
15 will have a new staff director. It seems to me it is
16 at that point that you want to go over your concerns
17 about how money is allocated.

18 But in the meantime to the best of our
19 ability we should allow Dr. Lerner to do the job he
20 was hired to do in this agency at the start of his
21 tenure here.

22 COMMISSIONER YAKI: We'll address that
23 later on this agenda item. Thank you.

24 VICE CHAIR THERNSTROM: Yes.

25 COMMISSIONER YAKI: I have no more

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1 comments.

2 COMMISSIONER MELENDEZ: Going back to the
3 budget, I think that is probably the main issue that
4 we're talking about here. I have asked in January for
5 a specific line item, some type of budget item
6 actually because really what happened was that my
7 understanding was we ended up with a lot less money,
8 about \$440,000 less, starting October 1 running
9 through the fiscal year and the issue that I brought
10 up in January was that we needed to see a commission
11 what that actually looks like and whether those cuts
12 are going to be through the 2008 budget and basically
13 have a hand in making some recommendations. But we
14 have to see something as far as line items so that we
15 know where those cuts will actually be for 2008
16 because included in those are the -- I think, there is
17 a separate budget to cover SACs' meeting expenses.
18 You know, I'd like to see that budget as far as is it
19 still the same as far as the allocation going to the
20 SACs.

21 DR. LERNER: Yes.

22 COMMISSIONER MELENDEZ: And how much has
23 actually been expended already in the first quarter
24 which was October 1st through January 1st.

25 And you had mentioned or Mr. Marcus had

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1 mentioned that we were going to consider cutting
2 some of the briefings. So this whole issue plays into
3 whether or not we have any money at all and so I'm not
4 sure where we are with this budget as far as spending.

5 So that's really the crux of what we're
6 actually talking about here. Until I can see
7 something, some type of budget, that tells me where
8 we're at and I asked for that in January and I think
9 it makes us skeptical when -- The real question in
10 budgets is the question of whether or not you should
11 even fill a position and maybe it even goes to special
12 assistants because the Commission has to somewhere
13 look at the budget and say, "Well, it's nice that we
14 can fill a position in any thing that we call
15 replacement, not just the special assistants." But
16 the question would be do we have the money to do that
17 and how comfortable are we in looking at something on
18 paper that actually gives us a comfort zone to
19 support.

20 We talked about whether or not we should
21 hire a human resources person and all those things
22 that we think are major components of operation here.
23 So I think that until we can see a budget and have
24 some input into these key positions I think we're
25 still kind of in the dark as to where we are. But

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1 that's my -- That's something I brought up in
2 January.

3 DR. LERNER: Well, I think I would like to
4 reiterate what I said previously. That is we're not
5 engaging, we're not having -- Our budget is in fact --
6 We're on course to spend that money that we've been
7 allocated and no other. The direction that the
8 previously staff directors has taken is the one that's
9 being pursued now. Tina and I are monitoring it
10 closely to make sure that we're following -- we're not
11 going to fall short and we're not.

12 As far as replacing anybody now, unless
13 there are retirements or people leaving the agency, we
14 have no additional funds to replace anybody else. As
15 far as your requests are concerned, we're actually
16 looking at putting responses together to them but we
17 haven't finished them in terms of the memo that you
18 sent us.

19 CHAIRMAN REYNOLDS: This is Commissioner
20 Reynolds. What's the issue that's on the table now?

21 COMMISSIONER YAKI: No issue. Just
22 discussion of the 2008 budget.

23 VICE CHAIR THERNSTROM: It's a discussion
24 of the 2008 budget and which Commissioner Yaki has a
25 lot of budget related concerns.

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1 We have not yet heard from, Dr. Lerner,
2 on the 2009 budget which are you reporting on.

3 DR. LERNER: Yes, just in the most general
4 terms. As you all know, our allocation from OMB is
5 cut back to \$8.8 million as precisely was the year
6 before and we are trying to accommodate the schedule,
7 the program that was voted on and is part of our
8 strategic plan to have a national civil rights
9 conference in 2009, and we've actually worked it out
10 how we'll be able to do it in a scaled-down manner
11 consistent with our budget obligations but I'm not
12 ready to share the details with that yet. That's
13 pretty much all.

14 COMMISSIONER MELENDEZ: A question.

15 VICE CHAIR THERNSTROM: Yes.

16 COMMISSIONER MELENDEZ: Was there a
17 deadline date to actually submit the appropriations to
18 Congress? I thought it was past already and so what
19 are we doing to try to get it in late?

20 DR. LERNER: It has been the case in the
21 past -- right after the State of the Union is the
22 traditional deadline for turning in a budget and we
23 haven't that this year for various reasons.

24 But, in fact, we expect to be able to meet
25 it, we expect to be able to turn this in, reasonably

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1 soon and I understand from talking to people in
2 various agencies that the consequences are not
3 necessarily severe because this is something that many
4 agencies are in the situation of doing.

5 CHAIRMAN REYNOLDS: No.

6 COMMISSIONER YAKI: What?

7 VICE CHAIR THERNSTROM: I think
8 Commissioner, Chair Reynolds, has something to say.

9 CHAIRMAN REYNOLDS: Hello?

10 VICE CHAIR THERNSTROM: Yes. We recognize
11 you.

12 CHAIRMAN REYNOLDS: No.

13 (Off the record discussion.)

14 VICE CHAIR THERNSTROM: Chairman Reynolds.

15 CHAIRMAN REYNOLDS: I'm -- I didn't have a
16 comment to make at this point.

17 VICE CHAIR THERNSTROM: We heard this no.

18 CHAIRMAN REYNOLDS: It didn't come from
19 me. Unless my -- picked up the other line.

20 (Off the record discussion.)

21 VICE CHAIR THERNSTROM: All right. We'll
22 disregard. That's a -- statement.

23 COMMISSIONER YAKI: Point of intervention.
24 Is the 2009 budget coming before the Commission at
25 some point?

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1 DR. LERNER: Yes, absolutely.

2 COMMISSIONER MELENDEZ: Now what is the
3 specific time frame that we would expect this --

4 DR. LERNER: I'm hoping we have it by the
5 next meeting.

6 COMMISSIONER MELENDEZ: Okay.

7 VICE CHAIR THERNSTROM: Does anybody else
8 have anything to discuss about the FY 2009 budget
9 because we have a long discussion here of the briefing
10 report on racial categorization of the 2010 census and
11 I'm beginning to fear this meeting will go on for an
12 unacceptably long time.

13 So can we move onto that? We have to vote
14 on each finding and each recommendation with the
15 understanding, of course --

16 COMMISSIONER YAKI: Point of order. I
17 think there was an item with regard to Management and
18 Operations regarding in the order of precedence in
19 terms of --

20 VICE CHAIR THERNSTROM: You are right. We
21 did inject that. Okay. Do you want to make motion
22 with respect to that?

23 I just want to answer the question that
24 was raised before about -- Well, it's about to be on
25 the table about what happens when the staff director

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1 is absent and the deputy staff director or the
2 individual serving as acting staff director who has
3 assumed responsibility to manage the office, what
4 happens when he or she is absent as well and the AI in
5 1-18(b) Order of Precedence says "When the staff
6 director and the deputy staff director are both absent
7 the assistant staff director for the Office of Civil
8 Rights Evaluation shall assume the duties and
9 authority of the acting deputy staff director." And
10 there is nothing else.

11 COMMISSIONER YAKI: Right. And since he
12 was the assistant staff director, that's why we wanted
13 to put something behind him since he has now delegated
14 the authority of the staff director. Correct? Yes. I
15 mean, that was the title.

16 So I move that "the Commission amends its
17 AI 1-18(b) to insert in the Order of Precedence after
18 the assistant staff director that the associate deputy
19 staff director be fourth in order of precedence and to
20 require SES qualifications and Commission vote of
21 approval on any person assuming the duties the
22 administrative head for more than 14 consecutive
23 calendar days." I'm going to amend that to say "or
24 until the next calendar business meeting and to
25 restrict any person who has assumed the duties of

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1 administrative head and otherwise present the same
2 authority for exercising the authority for contracts
3 over 3,000 value without receiving an advanced
4 Commission vote of approval."

5 (Off the record discussion.)

6 VICE CHAIR THERNSTROM: Are you proposing
7 something, Commissioner Yaki?

8 COMMISSIONER GAZIANO: Is there a second?
9 Has there been a second, Madam Chair?

10 VICE CHAIR THERNSTROM: I'm sorry. I was
11 preoccupied here. Is there an actual motion?

12 COMMISSIONER YAKI: That I just read, yes.

13 VICE CHAIR THERNSTROM: I'm terribly
14 sorry.

15 COMMISSIONER YAKI: Okay.

16 VICE CHAIR THERNSTROM: Could you read it
17 for my benefit again?

18 COMMISSIONER YAKI: I move that the
19 Commission amend its administrative instruction 1-
20 18(b) regarding order of precedence to insert after
21 "assistant staff director" the "associated deputy
22 staff director as fourth in order of precedence, that
23 the associated deputy staff director would have SES
24 qualifications, that Commission vote of approval for
25 that person assuming the duties of the administrative

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1 head for more than 14 consecutive calendar days or
2 the next calendar business meeting of the Commission
3 and to restrict any person who has assumed the duties
4 of administrative head not otherwise possessing
5 assigning authority from exercising assigning
6 authority for contracts over \$3,000 value without
7 receiving in advance Commission vote of approval."

8 That's my motion.

9 VICE CHAIR THERNSTROM: Do we have a
10 second to that motion?

11 COMMISSIONER MELENDEZ: Second.

12 COMMISSIONER GAZIANO: Madam Chair, if
13 it's all right for me to ask a question. Before I
14 vote, I think there's some aspects of that motion that
15 don't make a lot of practical sense, particularly that
16 whoever has the authority of the staff director only
17 have such a limited budgetary authority. But I'd like
18 to know whether such a motion is consistent with law
19 should we approve it. Is it possible we could get an
20 opinion whether all of the parts of this motion are
21 consistent with law if we were to approve it, that
22 this motion would have any effect?

23 VICE CHAIR THERNSTROM: I think that's an
24 excellent idea.

25 COMMISSIONER YAKI: May I respond, Madam

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1 Chair?

2 VICE CHAIR THERNSTROM: Of course.

3 COMMISSIONER YAKI: This is sort of the
4 DEFCON 4 version of what happens when you go down the
5 chain of command and you're getting now toward less
6 and less senior albeit SES perhaps qualified
7 individuals who are temporarily heading the agency and
8 I think that it's prudent because such a person will
9 have had ostensibly limited experience in terms of
10 running the agency as a whole to place some
11 restrictions on that person from a budgetary point of
12 view simply because of the issue and experience.

13 We're talking about No. 4. We're not
14 talking about No. 1, No. 2 and No. 3. We're talking
15 about the person fourth in order and I think it's very
16 appropriate that the fourth person have less carte
17 blanche, shall we say, during that time period.
18 Otherwise, you can get into a situation where you may
19 have No. 4 totally disagreeing whoever was No. 3. No.
20 3 goes away on vacation and No. 4 signs a contract
21 obligating the agency to some insane consulting gig
22 and then we're stuck.

23 VICE CHAIR THERNSTROM: This is so
24 academic.

25 COMMISSIONER GAZIANO: Let me just -- If I

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1 can just raise something. Some of my legal
2 concerns, Madam Chair, if that's all right.

3 VICE CHAIR THERNSTROM: Absolutely. But I
4 do want to interject here that I have every hope we're
5 going to get a staff director before too long. I find
6 this unnecessary to address, but I --

7 COMMISSIONER GAZIANO: Well, if you don't
8 --

9 VICE CHAIR THERNSTROM: I do want to hear
10 the legal concerns here.

11 COMMISSIONER YAKI: Then I'll just point
12 this out. If Dr. Lerner has a medical emergency in
13 his family, if he needs to attend to some urgent need
14 and needs to go, there is right now nothing in place
15 to deal with the fact that there is anyone here to
16 sign on behalf of the agency. If that happens, God
17 forbid, during -- but if there is some instance that
18 requires Dr. Lerner's attention elsewhere and outside
19 from the agency where he could not perform the duties
20 assigned to him as the delegated authority of the
21 staff director, then issues such as Commissioner
22 Heriot and Commissioner Melendez's travel could be at
23 issue and there are just simple things that are part
24 of what the staff director does and having no
25 succession for Dr. Lerner I think is imprudent.

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1 COMMISSIONER GAZIANO: My legal concern

2 --

3 (Off the record discussion.)

4 COMMISSIONER GAZIANO: Madam Chairman, my
5 legal concerns sort of I think --

6 VICE CHAIR THERNSTROM: May I just say one
7 thing before that? I don't think you are correct to
8 say that, for instance, travel would be a problem as I
9 understand it. But go ahead.

10 COMMISSIONER GAZIANO: I think
11 Commissioner Yaki's concerns cut against his motion.
12 But skipping those, let me just mention my legal
13 concern is that the President is charged under the
14 Constitution to commission all officers. The statute
15 that organizes our Commission requires the President
16 to appoint -- Subject, of course, to our approval, it
17 is the President's responsibility to fill, to see,
18 that this Commission has a director.

19 Some of the conditions in Commission
20 Yaki's motion seem to put limits on the President's
21 authority. I don't know all of the body of the
22 Executive law, but I know some of the body of
23 Executive law from when I used to help advise the
24 President on filling in such positions and I am
25 dubious whether some of the conditions in the motion

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1 are consistent with the President's authority. I'm
2 not sure one way or the other.

3 But it seems imprudent, but let me put
4 that aside. I just think that we can make some order
5 of precedence but some of this doesn't make legal
6 sense to me.

7 COMMISSIONER YAKI: Madam Chair, I would
8 just say that I thank Commissioner Gaziano for making
9 the point I'm going to be making later on in the
10 meeting which is that if it is indeed the President
11 who is responsible for doing the appointing authority
12 for the staff director and somehow anything beyond
13 that may be unconstitutional, then the very question
14 of succession here is why I put it on the table.

15 COMMISSIONER GAZIANO: You missed --

16 COMMISSIONER YAKI: Under Commissioner
17 Gaziano's theory, how can we have any succession
18 whatsoever for this absent Presidential authorization
19 in regulations from OPM?

20 COMMISSIONER GAZIANO: I think you
21 misinterpret my point.

22 COMMISSIONER YAKI: I don't think I did at
23 all.

24 VICE CHAIR THERNSTROM: You have to speak
25 up for the --

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1 COMMISSIONER GAZIANO: I think you
2 misinterpret. The President has particular statutory
3 authority in appointing a permanent staff director.
4 He has other authority under the Constitution and a
5 number of other laws in filling a vacancy and such an
6 appointment and I think some of the conditions in your
7 motion may not be lawful. So until --

8 COMMISSIONER YAKI: So you would rather
9 have the agency have Dr. Lerner be required to stay
10 here at all times because we have nothing in hand to
11 alleviate him of his burdens should he be required,
12 should his attention be required elsewhere? Is that
13 basically it?

14 COMMISSIONER YAKI: No.

15 COMMISSIONER GAZIANO: Then how would you
16 propose to interpret that? Some of the conditions in
17 your motion make no sense.

18 COMMISSIONER YAKI: Why?

19 VICE CHAIR THERNSTROM: But also,
20 Commissioner Yaki --

21 CHAIRMAN REYNOLDS: This is Chairman
22 Reynolds. I just want to go back to Vice Chair
23 Thernstrom's comment that this is indeed an academic
24 question. Sure. We can spin out scenarios where we
25 would have to make some adjustments. But we're not

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1 there.

2 I don't see a concrete problem, the
3 problem in front of us, and if a concrete problems
4 arises, I think that we can address the issue in a
5 calmly fashion via poll vote or having a meeting via
6 telephone conference. So again, I fully support Vice
7 Chair Thernstrom's comments that the point, the issue,
8 is academic at this point.

9 VICE CHAIR THERNSTROM: And it is not
10 correct as I understand it that for instance
11 Commissioners Heriot and Melendez and Yaki could not
12 travel in the absence of if Dr. Lerner for some reason
13 could not approve those.

14 I would like to call the question on this.

15 COMMISSIONER MELENDEZ: I have one
16 question. I think the question is what would happen
17 if he was sick for a week and the question is who's in
18 charge. I mean, the staff here have to know that and
19 either you have to say there's nobody in charge,
20 everybody just does their jobs as to what their jobs
21 are. Either say that or say something because that's
22 the issue.

23 VICE CHAIR THERNSTROM: I think the
24 Chairman has just addressed that. If we get to that
25 point, let it address it at that time. I hope we will

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1 not get to that point. I hope we're going to have
2 our staff director in place before too long so that
3 Dr. Lerner can go back to what he was originally hired
4 to do and we desperately need him in that position and
5 in the meantime, the question is as the Chair just
6 said, as I said, before. It's abstract. I would like
7 to call the question.

8 COMMISSIONER YAKI: Madam Chair, I would
9 just like to add that it may be abstract. I would
10 just remind the Chair and wherever Mr. Chair is that
11 our record of getting timely notation votes in
12 telephone conferences is not exactly terribly --

13 VICE CHAIR THERNSTROM: Well, we have not
14 had an emergency before. I'm sure we could get it
15 passed. I would like to call the question. I'd like
16 to have a second on calling the question.

17 COMMISSIONER HERIOT: Second.

18 VICE CHAIR THERNSTROM: Okay. All in
19 favor of this motion.

20 COMMISSIONER YAKI: Of calling the
21 question.

22 VICE CHAIR THERNSTROM: Of calling the
23 question.

24 (Chorus of ayes.)

25 VICE CHAIR THERNSTROM: And we have two

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1 nays over there. Did I hear?

2 COMMISSIONER MELENDEZ: Yes.

3 VICE CHAIR THERNSTROM: So it's --

4 COMMISSIONER YAKI: The question is
5 called. Now the main motion.

6 VICE CHAIR THERNSTROM: The question is
7 called, but the reporter should note we had two nays,
8 Commissioners Yaki and Melendez.

9 Now the motion.

10 COMMISSIONER YAKI: No.

11 COMMISSIONER GAZIANO: Isn't it your
12 motion?

13 COMMISSIONER YAKI: No.

14 COMMISSIONER GAZIANO: Didn't you
15 substitute it?

16 COMMISSIONER YAKI: Okay. Then yes.

17 (Laughter.)

18 (Off the record comments.)

19 COMMISSIONER YAKI: I'm so used to voting
20 no. So I vote aye.

21 VICE CHAIR THERNSTROM: It is still your
22 motion.

23 COMMISSIONER YAKI: Good. I vote aye.

24 COMMISSIONER MELENDEZ: Aye.

25 (Chorus of nays.)

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1 VICE CHAIR THERNSTROM: The motion does
2 not carry. Two ayes. The rest are nays.

3 Okay. And then there was an additional
4 motion that, Commissioner Yaki, you wanted at this
5 point, the OPM.

6 COMMISSIONER YAKI: What?

7 VICE CHAIR THERNSTROM: Designation of Dr.
8 Lerner -- You had another motion before we move onto
9 the Census.

10 COMMISSIONER YAKI: Yes. I want to move -
11 - I want to discuss -- I put on the agenda the
12 discussion on whether to confirm the OPM designation
13 of Dr. Robert Lerner as Acting Staff Director and I
14 believe that there are certain --

15 COMMISSIONER GAZIANO: Point of order,
16 Madam Chair. Is there a motion?

17 COMMISSIONER YAKI: Well, I'm recognized
18 as speaking on the issue right now. I'm not speaking
19 on the motion. I have the floor.

20 The issue that I wish to bring a motion to
21 deals with I think a rather unclear area of law. The
22 courts have been unclear on it as well. But I think
23 from the perspective of what our authority is with
24 regard to the staff director that this is a situation
25 where in the absence of a Presidential authorization

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1 the Commission should be entitled to and should be
2 required to designate the person to whom the acting
3 duties of the staff director lie.

4 COMMISSIONER HERIOT: You need to make a
5 motion and then --

6 (Simultaneous speakers.)

7 VICE CHAIR THERNSTROM: You need to make a
8 motion here. You're into the discussion of a motion.

9 COMMISSIONER YAKI: That is why I'm about
10 to make a motion.

11 VICE CHAIR THERNSTROM: Then make the
12 motion.

13 COMMISSIONER YAKI: The issue is in
14 Robert's Rules I have the right to the floor to speak
15 to this.

16 COMMISSIONER GAZIANO: But you were
17 recognized. I think you were recognized to make a
18 motion.

19 COMMISSIONER YAKI: I was recognized to
20 have the floor.

21 COMMISSIONER GAZIANO: Madam Chair, did
22 you recognize him to speak?

23 VICE CHAIR THERNSTROM: I recognized him
24 to make a motion. If you would make the motion, you
25 can then say anything you want.

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1 COMMISSIONER YAKI: No, because as soon
2 as I make the motion he's going to make a motion --

3 COMMISSIONER GAZIANO: Yes, I need to make
4 a motion to table.

5 COMMISSIONER YAKI: So he was -- Because -
6 -

7 VICE CHAIR THERNSTROM: Well, you can't --

8 COMMISSIONER HERIOT: That's the whole
9 purpose of a motion to table is to get things off the
10 agenda.

11 VICE CHAIR THERNSTROM: Yes, you can't
12 have a discussion of --

13 COMMISSIONER YAKI: Fortunately, I just
14 did. So I would like to move that the Commission vote
15 on whether to confirm the OPM designation of Dr.
16 Robert Lerner as staff director. Do I have a second?

17 COMMISSIONER MELENDEZ: Second.

18 COMMISSIONER GAZIANO: I move to table the
19 motion for the same reasons that we agreed to table it
20 last month that it will be of no legal consequence --

21 COMMISSIONER HERIOT: Second.

22 COMMISSIONER YAKI: I'm sorry. While he's
23 talking, are we going into debate or not? If he
24 wishes to open up the debate, I will.

25 COMMISSIONER HERIOT: I have a question.

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1 VICE CHAIR THERNSTROM: I'm calling the
2 question.

3 COMMISSIONER YAKI: No. You can't call
4 the question. You just go --

5 COMMISSIONER HERIOT: It's a nondebatable
6 motion.

7 COMMISSIONER YAKI: You just go straight
8 to a vote.

9 COMMISSIONER GAZIANO: It's a nondebatable
10 motion.

11 COMMISSIONER YAKI: You can just go
12 straight to the vote.

13 VICE CHAIR THERNSTROM: It's a
14 nondebatable motion. I'm sorry.

15 All in favor?

16 (Chorus of ayes.)

17 COMMISSIONER YAKI: No.

18 COMMISSIONER MELENDEZ: No.

19 CHAIRMAN REYNOLDS: Ayes.

20 VICE CHAIR THERNSTROM: Commissioners
21 Kirsanow and Taylor.

22 COMMISSIONER DIRSANOW: Ayes.

23 COMMISSIONER TAYLOR: Ayes.

24 VICE CHAIR THERNSTROM: Okay. The motion
25 fails. I mean, the motion passes.

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1 COMMISSIONER HERIOT: The motion to
2 table carries.

3 VICE CHAIR THERNSTROM: The motion to
4 table passes. Sorry about that.

5 **VI. PROGRAM PLANNING**

6 VICE CHAIR THERNSTROM: We are moving onto
7 the Racial Categorization in 2010 Census. I believe
8 that is the next item.

9 COMMISSIONER MELENDEZ: Correct.

10 VICE CHAIR THERNSTROM: At the August 24,
11 2007 business meeting, Commissioners tabled the vote
12 on the briefing report on the racial categorization on
13 the 2010 Census which was based on a Commission
14 briefing held on April 7, 2006, a little while ago.
15 When the report came up for subsequent vote at the
16 October 12, 2007 business meeting, Commissioners again
17 tabled the report and requested that it be revised.
18 Commissioners also agreed to submit alternative
19 findings and recommendations on December 13, 2007.
20 OSD distributed a revised draft of the report
21 requesting that Commissioners submit proposed
22 alternatives, findings and recommendations. As of
23 January 24, 2008, staff had not received any proposed
24 alternative findings and recommendations. So OSD
25 circulated the report --

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1 (Telephonic interruption.)

2 Chair Reynolds, is that --

3 CHAIRMAN REYNOLDS: Yes, that's me.

4 VICE CHAIR THERNSTROM: Okay.

5 (Laughter.)

6 COMMISSIONER YAKI: We are Children's
7 Services right now.

8 VICE CHAIR THERNSTROM: -- alternative
9 findings and recommendations by February 15, 2008. On
10 February 29, 2008, OSD distributed a proposed final
11 draft addressing Commissioner's comments received by
12 that date.

13 Could I have a motion that the Commission
14 approve for publication alone with any concurring and
15 dissenting statements submitted by any Commission by
16 March 21, 2008. Part A of the report produced by the
17 staff and reflecting Commissioner and panelist's input
18 on the briefing the Commission held on April 7, 2006
19 on racial categorization in the 2010 Census.

20 Part A distributed in draft form on
21 February 29, 2008 contains a briefing overview and
22 summary of the issue, why the Commission chose to
23 conduct this briefing, summary of the proceeding
24 consisting with a synopsis of the panelists, all
25 statements during the briefing and synopsis of the

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1 question and answer session and copies of
2 panelists' written statements.

3 Under this motion, if a majority of the
4 Commission votes to adopt Part A of the briefing
5 report, the Commission will then open discussion of
6 Part B. If Part A fails to obtain a majority of
7 votes, discussion of Part B becomes moot. This
8 bifurcated vote is taken pursuant to the policy
9 adopted by Commissioners at the April 13, 2007
10 business meeting.

11 So moved by me and I need a second.

12 CHAIRMAN REYNOLDS: Commissioner Reynolds
13 second.

14 VICE CHAIR THERNSTROM: Okay. So changes,
15 discussion, questions? This is regarding the motion
16 to adopt Part A of the Census report. Yes,
17 Commissioner Yaki.

18 COMMISSIONER YAKI: Vice Chair Thernstrom,
19 I would like to amend the date for concurring and
20 dissenting statement to -- Hang on. Let me check my
21 calendar because I have a trial and this is something
22 that I want to write on. Could we push it to April
23 11th?

24 VICE CHAIR THERNSTROM: That's a motion.
25 Anybody -- Do we have a second on that?

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1 COMMISSIONER HERIOT: Second.

2 VICE CHAIR THERNSTROM: Okay. All in
3 favor?

4 (Chorus of ayes.)

5 COMMISSIONER HERIOT: That was April the?

6 VICE CHAIR THERNSTROM: Eleventh.

7 COMMISSIONER HERIOT: Eleventh.

8 VICE CHAIR THERNSTROM: Any opposition?

9 (No verbal response.)

10 VICE CHAIR THERNSTROM: Okay. That passes
11 unanimately. The date now for concurring and
12 dissenting statements is April 11th and if we all get
13 an email that reminded us of that date I would very
14 much appreciate it.

15 COMMISSIONER YAKI: I have a question,
16 Madam Chair, for the staff.

17 VICE CHAIR THERNSTROM: Yes.

18 COMMISSIONER YAKI: Again delegated
19 authority staff director person. One of the reasons
20 why this was pushed back had to do with the fact that
21 the Census Bureau had completed some of the testing on
22 the questions dealing with Hispanic identification. I
23 know this was one of the reasons why then Commissioner
24 Braceras also supported our pushing it back.

25 Do we have -- I was looking for something

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1 in the report that discussed what those findings
2 were and how they may -- what the findings of that
3 particular testing were and how it may affect the
4 findings and conclusions of the report. But I did not
5 see any. I was just wondering what there was with
6 regard to the Census Bureau.

7 VICE CHAIR THERNSTROM: Well, I've just
8 been informed by Dr. Lerner that if there is, whom I
9 should add knows a great deal about the Census I've
10 discovered, much more it seems to me than the rest of
11 us put together. But in any case, he is not aware of
12 such findings.

13 COMMISSIONER YAKI: Okay. The briefing
14 which was in April 2006 discussed testing that was
15 ongoing with regard to some of the variations of the
16 at the moment open ended questions as it pertained to
17 Hispanics. We received information that communicated
18 to the Commission at the time that those questions,
19 rather the testing sample, had been completed and that
20 the findings had not been. Since those findings were
21 somewhat critical to the discussion of Hispanic
22 identification in the findings of the report that they
23 needed to be contacted, discussed and reviewed in the
24 context of the report.

25 That was pretty much -- I remember there

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1 was pretty much unanimous agreement at the
2 Commission at the time that that was important enough
3 to warrant going back and ensuring that we were not
4 putting out a report that was out of date with the
5 most recent testing done by the Census with regard to
6 that.

7 VICE CHAIR THERNSTROM: Commissioner Yaki,
8 two things.

9 COMMISSIONER YAKI: Right.

10 VICE CHAIR THERNSTROM: One, we must get,
11 that is our household must get, three or four emails a
12 week from the Census. I do not recall but I could be
13 wrong any announcement of such findings.

14 COMMISSIONER YAKI: No, it wasn't like --
15 This was part of the testing process --

16 VICE CHAIR THERNSTROM: I understand.

17 COMMISSIONER YAKI: -- that went toward
18 the questions that were raised about --

19 VICE CHAIR THERNSTROM: I understand, but
20 there usually are announcements of findings with
21 respect to testing questions. Now what is your bottom
22 line here? What would you like the Commission to do?

23 COMMISSIONER YAKI: My bottom line is that
24 I have it on good authority that those questions were
25 precluded. Now if they have not finished the analysis

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1 yet, if it is something in process, and is at least
2 something that they should know, but they are
3 proceeding. In the testimony of the Census
4 Commissioner, he referenced the fact that they are
5 doing ongoing testing on some of these issues and they
6 are going to be completed by 2006.

7 VICE CHAIR THERNSTROM: Well, the problem
8 here is we don't have specifics. Dr. Lerner who keeps
9 up with the Census, I kind of keep up with the Census,
10 don't have any specifics and I'm not sure what you
11 would like to do at this point given the absence of my
12 knowledge.

13 (Off the record discussion.)

14 COMMISSIONER YAKI: Well, I am somewhat
15 distressed to hear that in the face of a specific
16 request with a specific reference to -- And I'm sorry,
17 I don't have it with me at this time, I did have it
18 with me at the first time that this was tabled, but in
19 that instance, I made a specific reference to begin
20 this.

21 VICE CHAIR THERNSTROM: I understand that.
22 But what would you like to do today?

23 COMMISSIONER YAKI: Well, in the absence -
24 - Yes?

25 MR. BLACKWOOD: This is David Blackwood.

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1 If I could, Commissioner, I believe and I was just
2 consulting with Kim Tolhurst who worked on the report.
3 You did make a citation to a specific, approximately
4 10-15 page report. We did look at it. It did not
5 change any part of the report substantively and that's
6 why we did not include it in this version.

7 COMMISSIONER YAKI: Okay. That's what I
8 wanted to know. That's all I wanted to know.

9 VICE CHAIR THERNSTROM: All right. So the
10 reason I didn't register on these there was no
11 substitute change.

12 COMMISSIONER YAKI: But there was a
13 report.

14 VICE CHAIR THERNSTROM: Okay. Well, it
15 didn't register on me because there was no substantive
16 change. But Commissioner Melendez.

17 COMMISSIONER MELENDEZ: Yes.
18 Administrative instruction 1-6 requires that a
19 checklist be physically sent to the Commissioners on
20 this process. Was that done?

21 (Off the record comments.)

22 MR. BLACKWOOD: No.

23 COMMISSIONER YAKI: That's right. Ken
24 would always send that out.

25 COMMISSIONER GAZIANO: A point of order,

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1 Madam Chairman. I'm sorry to ask what I'm sure is
2 maybe a question and an answer which is known to the
3 rest of you. But if we approve Part A and then we
4 have some disagreement about Part B or want to
5 postpone what would the consequence of the vote on
6 Part A be?

7 VICE CHAIR THERNSTROM: Part A does not
8 include the findings and recommendations.

9 COMMISSIONER GAZIANO: I understand that.
10 I'm just saying if we make some disposition other than
11 approving Part B and we've already approved Part A
12 what would the consequence of that be. I suppose we
13 could revisit that Part A. I just want to know what
14 the consequence of this vote on Part A is if we don't
15 approve at this particular meeting.

16 COMMISSIONER HERIOT: Let me add to that.

17 COMMISSIONER GAZIANO: Sure.

18 COMMISSIONER HERIOT: If we don't approve
19 of quite a few of the findings of fact and the
20 recommendations, are we better off voting no on Part A
21 or should we vote yes on Part A if we find it
22 obnoxious in itself but don't particularly want to see
23 it published but believe there are lots of changes
24 that we might want to make to the findings and
25 recommendations. I mean, are we better off with a

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1 motion to postpone this? Are we better off voting
2 no on Part A?

3 VICE CHAIR THERNSTROM: It's not going to
4 be published without findings and recommendations.

5 COMMISSIONER GAZIANO: That's my question.

6 COMMISSIONER HERIOT: That's part of the
7 question.

8 VICE CHAIR THERNSTROM: No. It doesn't
9 get published without findings and recommendations.

10 COMMISSIONER YAKI: Well, we have
11 published before without findings and recommendations.

12 VICE CHAIR THERNSTROM: Yes, I've just
13 been informed by Dr. Lerner that we can do any kind of
14 fixing we want to Part A while we wait for the rest.

15 COMMISSIONER HERIOT: Fixing to Part A?

16 DR. LERNER: Whatever changes are
17 necessary. What I meant was whatever changes are
18 necessary can be made in response to the vote on Part
19 A. You can make while we're waiting to hear about the
20 rest from the Commission. That's all I meant.

21 COMMISSIONER HERIOT: We can inspect A now
22 and then just hold that in reserve and then --

23 DR. LERNER: Well, if you --

24 COMMISSIONER HERIOT: -- negotiate on B.

25 DR. LERNER: If you approve of it, we can

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1 make sure the report conforms to whatever it is
2 you've approved for that particular part and we'll
3 wait for instructions about the rest of it.

4 VICE CHAIR THERNSTROM: Does that work?

5 (Off the record conversation.)

6 COMMISSIONER YAKI: For the listeners,
7 there's a conference going on.

8 VICE CHAIR THERNSTROM: Commissioner
9 Heriot, are you saying here, and it is certainly a
10 legitimate suggestion, that it makes no sense not to
11 do this as a package vote A and B together? What
12 would you like?

13 COMMISSIONER HERIOT: I don't -- I have
14 disagreements with Part B.

15 VICE CHAIR THERNSTROM: Right.

16 COMMISSIONER HERIOT: My disagreements
17 with Part A are simply that I'm not certain that it's
18 worth our time to deal with Part A if we don't have a
19 Part B.

20 VICE CHAIR THERNSTROM: Well, we will have
21 a Part B.

22 COMMISSIONER GAZIANO: I understand that
23 there is some previous agreement to how to proceed.
24 But would you prefer to amend whatever that previous
25 agreement is so that we consider Part A and Part B

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1 together?

2 COMMISSIONER HERIOT: I don't know what
3 our previous agreement is. What do you mean?

4 COMMISSIONER GAZIANO: I think we're
5 proceeding under Part A and Part B based on a previous
6 agreement that Commissioner Braceras suggested.

7 COMMISSIONER YAKI: It's an administrative
8 instruction.

9 COMMISSIONER HERIOT: That's an AI.

10 COMMISSIONER GAZIANO: Oh, that's an AI.

11 COMMISSIONER HERIOT: Yes.

12 (Off the record discussion.)

13 COMMISSIONER GAZIANO: We could amend it
14 for this particular report, could we not?

15 COMMISSIONER HERIOT: I don't know what's
16 going to be the easiest use of our time.

17 COMMISSIONER GAZIANO: Sure.

18 VICE CHAIR THERNSTROM: All right. I've
19 just been reminded of something by Kim Schuld that is
20 important to you which is that this process was
21 supposed to be approved, we have voted on a Part A.
22 Then we move onto a Part B and if we're not going to
23 move onto a Part B today then I think once again we
24 need to postpone this vote.

25 COMMISSIONER HERIOT: That's fine.

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1 COMMISSIONER MELENDEZ: Just a comment.

2 One of the reasons I asked on the administrative
3 instruction A-6 was that the checklist actually kind
4 of gives us some comfort level that it's been looked
5 at and by a pack of people.

6 COMMISSIONER YAKI: I'm not sure who the
7 external reviewers were.

8 COMMISSIONER MELENDEZ: I'm not sure who
9 that even is or whether or not it's even done. So I
10 think that's part of the process that I'm not sure
11 where we are with that. But I think --

12 MR. BLACKWOOD: Commissioner Melendez,
13 this is David Blackwood. It occurs to me and I may be
14 incorrect but you asked about the checklist. This
15 report goes back to 2006 and we can recall several
16 months ago there was a long discussion about when the
17 AI applied and when it didn't. I'm just -- While we
18 can look into whether the checklist was sent, this may
19 be a report that is so old that the checklist didn't
20 apply.

21 COMMISSIONER MELENDEZ: Okay.

22 MR. BLACKWOOD: I'm not saying it doesn't,
23 but I'm just saying that might be the explanation.

24 VICE CHAIR THERNSTROM: I have a question.
25 I'm sorry. Commissioner Melendez, do you want to

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1 continue?

2 While he's conferring, I have a question
3 here. Suppose this is postponed once again. What is
4 the process going to look like by which we arrive at
5 the -- and by which we can vote on both Parts A and B?

6 CHAIRMAN REYNOLDS: This is Commissioner
7 Reynolds.

8 VICE CHAIR THERNSTROM: Yes.

9 CHAIRMAN REYNOLDS: I think it would be
10 helpful if individuals would articulate what their
11 concerns are. I mean, it's one thing to postpone
12 this, but I think we would be in a better position to
13 vote on it at the next business meeting if we had, if
14 whatever concerns folks have were articulated.

15 VICE CHAIR THERNSTROM: At this meeting or
16 as a document circulated to all commissioner?

17 CHAIRMAN REYNOLDS: During this meeting.
18 I just want to get a better sense of what the issues
19 are.

20 COMMISSIONER HERIOT: Well, I sent in my
21 proposed recommendations awhile ago.

22 CHAIRMAN REYNOLDS: I'm sorry. I didn't
23 hear you.

24 COMMISSIONER HERIOT: I sent in my
25 proposed recommendations awhile ago. I thought there

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1 was actually room for a person in negotiations
2 among the commissioners and the differing views and I
3 offered to try to hammer that out and --

4 CHAIRMAN REYNOLDS: Can't we do that
5 during this meeting?

6 COMMISSIONER HERIOT: No, I don't think
7 you can draft something like that during a meeting.
8 That's much too complicated.

9 COMMISSIONER MELENDEZ: Just a comment. I
10 think even former Commissioner Braceras I know that
11 she had tremendous concerns on the Hispanic
12 categorizations and all those different things and
13 like Gail Heriot is saying I think that the Part B is
14 really -- Nobody is really satisfied with that. So I
15 think if we're going to go forward, it seems to me
16 that we're going to have to table this and probably do
17 extensive work on this because nobody seems to be
18 satisfied with Part B.

19 VICE CHAIR THERNSTROM: Yes, but look.
20 We're not going to get to the point of unanimity on
21 Part B. That is the function of allowing
22 concurrences and dissents by individual
23 commissioners.

24 I just -- You know, the way we're going on
25 this Census report it seems to me that --

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1 COMMISSIONER MELENDEZ: And I think too
2 the issue is so old and I would recommend that we just
3 go with no recommendations and take what these people
4 said at the hearing and put that together and send it
5 in.

6 COMMISSIONER YAKI: Commissioner
7 Thernstrom, I think the practical issue is that the
8 concerns expressed by Commissioner Heriot and I can't
9 speak for Commissioner Gaziano and the concerns that
10 may be expressed by Commissioners Yaki and Melendez
11 may actually result in a majority being unsatisfied
12 with the findings and recommendations as is. So I'm
13 not too certain whether you could even proceed to get
14 to the point where you have concurrences and dissents
15 because you may not get any consensus for majority on
16 anything in Part B for varying reasons.

17 VICE CHAIR THERNSTROM: Well, I mean,
18 there is such a thing as a plurality vote, it would
19 seem to me, for findings and recommendations.

20 COMMISSIONER HERIOT: You don't have a
21 plurality. You'll have four-four.

22 CHAIRMAN REYNOLDS: This is Commissioner
23 Reynolds. If you were to table this at the next
24 meeting I would recommend that we each submit to the
25 extent that we did reach from the current findings and

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1 recommendations that we each submit and circulate
2 our own findings and recommendations and that we sit
3 down at the next business meeting and negotiate and
4 have the written items in front of us.

5 COMMISSIONER HERIOT: I just want to say
6 that it's complicated and I think it's best to
7 negotiate at least in part via email where everybody
8 sees what everybody's proposal is and can make
9 comments on it so that we as the Commissioners take
10 more responsibility for our recommendations.

11 VICE CHAIR THERNSTROM: What if we
12 accepted, Commissioner Heriot, Part A, rejected Part B
13 and then went forward to asking each commissioner to
14 submit a statement with respect to Part B?

15 COMMISSIONER HERIOT: Is there any
16 advantage to passing Part A now when we're clearly not
17 going to be able to pass everything?

18 COMMISSIONER YAKI: What you're simply
19 saying is a Part A with eight potential commissioners'
20 statements and no findings and recommendations?

21 VICE CHAIR THERNSTROM: No.

22 COMMISSIONER GAZIANO: No, I think she's
23 just saying pass half now. Get to B later.

24 DR. LERNER: It's just a report.

25 COMMISSIONER GAZIANO: Yes, but I'm not

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1 sure that there is -- If we have to move ahead on
2 B, I'd slightly prefer postponing the whole thing.
3 But I'll claim my share of the blame in trying to
4 discern what the process was as a new commissioner in
5 participating in this report and my difficulty was
6 that I saw some findings and recommendations but I
7 understood other commissioners were going to be
8 sending in comments. So I didn't know whether my
9 comments to the findings would be relevant and it's
10 only lately that I've understood the content of one of
11 the other commissioner's comments.

12 So the suggestion that Commissioner Heriot
13 made makes sense to me and I'll be a better boy and
14 hopefully I'll have something more concrete to
15 participate in.

16 CHAIRMAN REYNOLDS: Okay. At this point,
17 this is Commissioner Reynolds, I move that we table
18 this issue until our next business meeting but during
19 the interim that we circulate our proposed findings
20 and recommendations to all the commissioners and try
21 to have negotiations offline if that's acceptable to
22 everyone else.

23 COMMISSIONER YAKI: Second. I'll second
24 it.

25 VICE CHAIR THERNSTROM: Fine. Any

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1 discussion on that proposal? Any further
2 discussion I should say?

3 COMMISSIONER YAKI: No.

4 VICE CHAIR THERNSTROM: All right. All in
5 favor aye.

6 (Chorus of ayes.)

7 VICE CHAIR THERNSTROM: We're missing two
8 votes via the phone.

9 COMMISSIONER TAYLOR: Yes. Commissioner
10 Taylor aye.

11 VICE CHAIR THERNSTROM: And Kirsanow?
12 Have we lost Kirsanow?

13 COMMISSIONER YAKI: No, he'll be leaning
14 over to hit the mute button.

15 COMMISSIONER KIRSANOW: Sorry. I'm still
16 here. Aye.

17 (Laughter.)

18 VICE CHAIR THERNSTROM: You have to undo
19 the mute button. Okay. It's passed unanimously I
20 believe.

21 So we've just gotten rid of pages and
22 pages of this script.

23 (Off the record comments.)

24 MR. SCHMELCHEL: I think it's fine. If
25 you want I can check with him at the end of the

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1 meeting.

2 COMMISSIONER YAKI: That's unanimous for
3 those who were present.

4 COMMISSIONER HERIOT: Yes, he's just not
5 here. It's just a vote.

6 VICE CHAIR THERNSTROM: Okay.
7 Commissioner Melendez was not here.

8 COMMISSIONER HERIOT: You can't verify
9 what he would have voted.

10 VICE CHAIR THERNSTROM: But it was
11 otherwise unanimous. And Commissioner Yaki assures us
12 that Commissioner Melendez is with him on this.

13 Okay. Proposed changes.

14 COMMISSIONER HERIOT: I would move to
15 strike that.

16 (Laughter.)

17 COMMISSIONER YAKI: I'm proud to share
18 anything with my fellow Commissioner Melendez.

19 VICE CHAIR THERNSTROM: Okay. I believe
20 we are up to Proposed Changes in 2008 Briefing
21 Schedule and there's a motion pertaining to the April
22 briefing in advance of this meeting. Two motions were
23 circulated with respect to changes, changing the
24 previously agreed upon topics for our April and June
25 briefings. Can I have a motion that the Commission

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1 conduct a briefing on the impact of illegal
2 immigration on wages and employment opportunities of
3 black workers. Tentatively on April 4th assuming the
4 availability of appropriate speakers, this briefing
5 will be based on the concept paper distributed to
6 Commissioners by email on March 5, 2008.

7 Under this motion, the briefing currently
8 scheduled for that date, the review of the Community
9 Reinvestment Act would be postponed. So I move that
10 we conduct such a briefing and I need a second.

11 CHAIRMAN REYNOLDS: Second. This is
12 Commissioner Reynolds.

13 VICE CHAIR THERNSTROM: So.

14 COMMISSIONER HERIOT: Would it be
15 appropriate to include in that a provision that if the
16 witnesses are not available for April that
17 alternatively it be held in May and that the business
18 meeting be held in April instead? Can we do that all
19 as one motion?

20 COMMISSIONER YAKI: That would mean that
21 the Census report would be April instead of May.

22 COMMISSIONER HERIOT: Yes.

23 COMMISSIONER YAKI: Okay.

24 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
25 do you accept the friendly amendment?

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1 VICE CHAIR THERNSTROM: I'm trying to
2 think of the implications of this. I'm just
3 conferring with the Staff Director on the availability
4 of witnesses here.

5 (Off the record discussion.)

6 VICE CHAIR THERNSTROM: I personally would
7 like to go ahead with the motion as it's now
8 structured and that is for the briefing on April 4th.
9 And if we can't get witnesses, we can't get people,
10 then we, of course, will have to have some kind of
11 reconsideration of this schedule.

12 CHAIRMAN REYNOLDS: This is Commissioner
13 Reynolds. Vice Chair Thernstrom.

14 VICE CHAIR THERNSTROM: Yes.

15 CHAIRMAN REYNOLDS: Would we have enough
16 time to make that adjustment?

17 COMMISSIONER HERIOT: Yes, isn't it easier
18 to do it my way and that way we may not have to call a
19 telephone meeting if we can't schedule the witnesses;
20 whereas your way we're certain to have to schedule it
21 if we can't get the witnesses?

22 VICE CHAIR THERNSTROM: Well, we would
23 have enough time provided that the staff director can
24 decide.

25 COMMISSIONER HERIOT: Why create extra

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1 work for ourselves.

2 VICE CHAIR THERNSTROM: We'll know fairly
3 quickly who we can get. He is expecting to know.

4 COMMISSIONER HERIOT: Yes, but even if he
5 knows quickly, we possibly could save a conference
6 call my way. We won't save it your way.

7 CHAIRMAN REYNOLDS: This is Commissioner
8 Reynolds. Is there a downside to accepting the
9 friendly amendment?

10 COMMISSIONER HERIOT: If we decide that
11 the split isn't good again we can hold a conference
12 call. But there's a chance of saving a conference
13 call my way.

14 (Off the record discussion.)

15 VICE CHAIR THERNSTROM: I'm sorry.
16 There's a little discussion going on here about
17 holding the schedule of business meetings and -- Could
18 you speak to the issue of whether it would work or
19 not?

20 (Off the record discussion.)

21 VICE CHAIR THERNSTROM: I would like to
22 hear from the Staff Director on any concerns he might
23 have.

24 DR. LERNER: Are we not proposing to
25 adopt, what exactly, with respect to which version of

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1 this am I looking at?

2 VICE CHAIR THERNSTROM: Well, the question
3 is whether we simply hold the briefing in May instead
4 of April. Is that correct?

5 COMMISSIONER HERIOT: No.

6 COMMISSIONER YAKI: No.

7 COMMISSIONER HERIOT: The question is
8 should we have the motion and that motion is that in
9 April we will have the briefing unless speakers are
10 not available in which case we will have it in May
11 instead.

12 VICE CHAIR THERNSTROM: In which case May
13 because it already has a seemingly availability
14 approach.

15 COMMISSIONER HERIOT: Yes.

16 VICE CHAIR THERNSTROM: What we're doing
17 is --

18 COMMISSIONER HERIOT: I'm adding a big
19 certain for if we don't get the witnesses when we want
20 we'll hold it in May.

21 VICE CHAIR THERNSTROM: That's not a
22 problem it seems to me. I missed something.

23 COMMISSIONER HERIOT: And then that would
24 put the business meeting in April if the witnesses
25 weren't available in April.

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1 VICE CHAIR THERNSTROM: Yes. I
2 understand now. I'm sorry. Two many people talking
3 to me at once and I'm losing it. But as far as --
4 That's fine with me. Is there anybody opposed to
5 that?

6 COMMISSIONER MELENDEZ: Yes. I have a
7 question. Where did this briefing come from? Is
8 something new that we just added that wasn't
9 originally thought of last year as we scheduled
10 briefings for this year? And the other question is
11 what's the jurisdiction on this. Is this something
12 that has to do with -- I'm a little bit puzzled by
13 this briefing in general.

14 VICE CHAIR THERNSTROM: Does somebody else
15 want to talk to that? Chairman Reynolds, do you want
16 to talk to that? It was originally your idea.

17 CHAIRMAN REYNOLDS: Actually, it's not my
18 idea.

19 (Laughter.)

20 VICE CHAIR THERNSTROM: Giving credit
21 where credit is not due. Commissioner Kirsanow, was
22 it your idea?

23 COMMISSIONER KIRSANOW: I have no idea
24 what you're talking about.

25 (Laughter.)

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1 COMMISSIONER GAZIANO: The topic for
2 the April, was that your child?

3 COMMISSIONER HERIOT: That's on
4 immigration on wages.

5 VICE CHAIR THERNSTROM: This is impact of
6 immigration on wages and employment opportunities of
7 black workers. Wasn't that not your proposed topic?

8 COMMISSIONER KIRSANOW: I believe it was.

9 VICE CHAIR THERNSTROM: Would you like to
10 speak to Commissioner Melendez's concern that this is
11 somehow not an appropriate U.S. Commission on Civil
12 Rights topic.

13 COMMISSIONER MELENDEZ: Right. I think
14 I'm asking about the jurisdiction and whether or not
15 it's actually discrimination. I recognize that
16 there's immigrants. But I don't know if it's
17 particularly discrimination.

18 COMMISSIONER KIRSANOW: I do think that we
19 have jurisdiction possibly on two points. First is
20 the administration of justice. It strikes me that at
21 least debating the proposition that immigration laws
22 of the country are being enforced. And whether or not
23 that's a matter of policy or not, I'm agnostic. But
24 to the extent they're not and they have an impact on a
25 particular community that is a protected class over

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1 which we may have jurisdiction I think we have
2 jurisdiction.

3 The second is with respect to -- we don't
4 often have visions or assurances on the impact of
5 either policies or practices on certain protected
6 classes and here whether it's a policy or a practice,
7 I'm not sure. But it's one or the other and I do
8 think it has an impact or it may have. We'll see.
9 There is at least in the -- reports out there from
10 some credible sources that I've seen that suggest that
11 there is an impact on black workers or low income
12 workers passed the other protected classes. The
13 reason I used -- cohort is I thought we might be able
14 to more ably get our arms around that. That's why I
15 chose black workers.

16 VICE CHAIR THERNSTROM: It's a disparate
17 impact issue as does the area that immigrants have a
18 disparate impact on equal employment opportunity of
19 African Americans in this country. That seems to me a
20 legitimate Commission topic.

21 COMMISSIONER MELENDEZ: Wouldn't that
22 apply not just to African Americans, but to everybody
23 in general?

24 VICE CHAIR THERNSTROM: Well, it may have.
25 We have -- I don't want to speak for Commissioner

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1 Kirsanow here, but we do have disparities already
2 in wages and wealth between African Americans and
3 other groups in this society. So the question is
4 whether the immigrant population, the integral
5 immigrant population, is continuing to -- is
6 increasing the problem of -- reinforcing the problem
7 of those disparities.

8 Commissioner Kirsanow, do you want to
9 expand on that?

10 COMMISSIONER KIRSANOW: I'm not sure what
11 the question was, but if I understood it, it's why
12 it's not expanded to other categories.

13 VICE CHAIR THERNSTROM: Commissioner
14 Melendez says, well, look, integral immigrants may
15 have an impact on everybody's wages and --

16 COMMISSIONER KIRSANOW: I think that it
17 would be disparate for us to do a credible job on
18 expanding this to every protected class. That's why I
19 thought that using the category of black workers is
20 something we could get our arms around and in addition
21 because I haven't seen at least in a casual view of
22 the literature out there an studies that have been
23 done with respect to the impact of illegal immigration
24 on other protected classes. I am aware of that some
25 studies at least have attempted to address the issue

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1 with respect to black workers.

2 VICE CHAIR THERNSTROM: Yes, and I would
3 second that. There is quite a bit of scholarship on
4 that question. And I think in terms of protected
5 classes and inequality in American society it is
6 African Americans that we are most concerned about.
7 Commissioner Yaki.

8 COMMISSIONER YAKI: One point and if it
9 sounds a little sarcastic it probably is.

10 VICE CHAIR THERNSTROM: I was going to say
11 I'm sure it is.

12 COMMISSIONER YAKI: I mean, if this is the
13 majority's embracing of the disparate impact theory of
14 discrimination then why don't we put it out here in
15 the description of the project. I mean, as it is
16 written, I do not believe it fulfills our statutory
17 mandate. If we want to describe in particular the
18 administrative of justice or disparate impact as
19 Commissioner Thernstrom just referenced issues to be
20 raised that to me at least would arguably qualify it
21 for a discussion.

22 My own particular opinion is that I think
23 that this is a discussion and a debate that requires
24 more than one month's notice to what I would presume
25 to be the relevant universe of people who would want

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1 to testify about this. There are regional issues.

2 There are regional differences. As was noted
3 depending on what part of the country you may be in,
4 it may be the African American cohort as Commissioner
5 Kirsanow describes it. It may be Asian American. It
6 may just be low income workers in general.

7 And I think this needs seriously more
8 substantial refining to even qualify under our
9 statutory mandate. That being said, I would never
10 support this briefing in the first place because I
11 think that for the Commission to engage in what I
12 think is -- and this study is asking the wrong
13 question and the question is not whether illegal
14 immigration has an impact on low income jobs in this
15 country. I think anyone who would dispute that
16 obviously doesn't understand the nature of our
17 economy.

18 But to put it in the context of an either
19 or or limited resource issue I think leads dangerously
20 toward a path that I think the Commission does not
21 want to put its stamp on and I think that because of
22 that I would oppose that.

23 VICE CHAIR THERNSTROM: What do you mean
24 by an either or?

25 COMMISSIONER YAKI: That it posits this

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1 either or situation that between illegal immigrants
2 who -- And let's call it -- Let's not be coy about
3 this. It would involve the primarily Latino community
4 and the African American community. I think that's
5 sort of pitting one against the other in the way the
6 question is formed. I think that's unhelpful to the
7 state of race relations in this country.

8 VICE CHAIR THERNSTROM: Well, this is an
9 interesting --

10 COMMISSIONER YAKI: I still have the
11 floor, Madam Chair.

12 VICE CHAIR THERNSTROM: Yes.

13 COMMISSIONER YAKI: I have the resource
14 issue I need to ask and that is we had a briefing
15 scheduled for April. It is March How much work has
16 been done on that briefing in April and how much work
17 on this briefing has been done already prior to our
18 vote to authorize it? I direct that to the Staff
19 Director.

20 DR. LERNER: We have devoted relatively
21 little work to the April, the currently-scheduled
22 April briefing, and we've devoted some preliminary
23 work to the change of topic. But that's it.

24 COMMISSIONER YAKI: May I ask if I may
25 given that normally this -- Let me ask you this. Is

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1 it the normal course of business that we wait until
2 the month before or month of to issue invitations to
3 briefings?

4 DR. LERNER: Yes.

5 COMMISSIONER YAKI: So normally we would
6 just not do any work at all on the April briefing
7 until March.

8 DR. LERNER: Not as far as getting
9 speakers is concerned which is the critical part. No.

10 COMMISSIONER YAKI: Pardon?

11 DR. LERNER: The key part for our briefing
12 is of course having speakers or witnesses.

13 COMMISSIONER YAKI: Right.

14 DR. LERNER: That's the most important
15 part from my perspective.

16 COMMISSIONER YAKI: Right. And was that
17 work done for the April briefing?

18 DR. LERNER: No. It has not been done.
19 It has been contemplated but it's not been done.

20 COMMISSIONER YAKI: Why wasn't it done?

21 DR. LERNER: Because it was approximately
22 a month before we were going to have to do it. That's
23 why. We were going to start right now.

24 COMMISSIONER YAKI: But in my recollection
25 on briefings we've done in the past those invitations

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1 went out substantially earlier. I remember that
2 Staff Director Marcus and I would be communicating
3 about speakers as much as two to three months in
4 advance simply because depending on the quality on the
5 speaker, these are people who have reputations,
6 speaking engagements, classes, what have you. So I
7 guess I'm asking. Are you now instituting a policy
8 that we're going to be waiting a month before to start
9 contacting these speakers for briefings because I
10 would say that if that's the case that --

11 COMMISSIONER GAZIANO: I would suggest
12 that he's working two jobs and that he doesn't want to
13 create any policy for the new staff director. I
14 would cut him a break.

15 COMMISSIONER YAKI: Exactly.

16 VICE CHAIR THERNSTROM: Staff Director --

17 COMMISSIONER YAKI: I would say that if he
18 assumed this job and again we can have this debate
19 about if you're so worried about why he's working two
20 jobs, why didn't we have a discussion about this in
21 the first place? The issue is I want to know whether
22 or not preparations for the April briefing were cut
23 short because this briefing was contemplated already
24 and what action was taken on this briefing.

25 COMMISSIONER GAZIANO: Can I --

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1 COMMISSIONER YAKI: What action was
2 taken on this briefing prior to a vote by the
3 Commission to authorize it because we had this issue
4 before. I would remind the Commission. You were not
5 here and you were not here. But with regard to the
6 very first national statutory report that we did which
7 was the Adarand report we had issues with, and I think
8 the Chairman will agree, because the Chairman admitted
9 that it was a mistake, that they change the scope of
10 the report prior to ratification by the entire
11 Commission and the Chair admitted that that was a
12 mistake and should not have been done. Remember?
13 Interrogatories had been sent out with regard to the
14 changed scope of that.

15 And my concern is that why would we be
16 expending resources and time on a subject that had not
17 yet been authorized by the entire commission.

18 COMMISSIONER KIRSANOW: Madam Chair, could
19 I respond to it?

20 VICE CHAIR THERNSTROM: You can. I do
21 want to say just one sentence here. In terms of the
22 legitimacy of this topic, it is no more illegitimate
23 than, for instance, the economic stagnation of the
24 black middle class which we've had a briefing on.

25 COMMISSIONER YAKI: And which by the way

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1 had not findings and recommendations.

2 VICE CHAIR THERNSTROM: Whatever.
3 Commissioner Kirsanow.

4 COMMISSIONER KIRSANOW: Yes. Again, I
5 have difficulty hearing everything that's being said,
6 but if I get the gist of Commissioner Yaki's question
7 and I'll let the Staff Director respond also, but what
8 I understand is that, I'm interested in this
9 particular topic and I had posed it through my
10 assistant to the Staff Director to see if, in fact,
11 this was doable. It is something that we can put
12 together in relatively short order and I thought it
13 could be because I'm aware of a couple of pieces of
14 literature on this and who the authors are and I
15 thought we could probably put something together
16 fairly quickly.

17 But I wanted to get a sense for whether or
18 not my preliminary thought that it could be done
19 quickly was in fact correct. So I wanted to see if,
20 in fact, there was a possibility of getting the
21 witnessed lined up quickly. So I don't know. I'll
22 let Bob respond to what, in fact, has been done, but I
23 know that I wanted to see if, in fact, prior to
24 today's vote whether or not this could be done or
25 whether it's a moot point.

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1 VICE CHAIR THERNSTROM: Wait a minute.

2 Commissioner Gaziano wants to talk for a second. But
3 also Commissioner Heriot's motion covers the problem
4 of getting appropriate speakers and if we can't get
5 them it gets postponed. I just -- I think that has
6 been taken care of. Should we ask --

7 COMMISSIONER GAZIANO: If I could just
8 clarify because Commissioner Kirsanow sort of got to
9 my last point in a more factual way. The implication
10 of one of the commissioners is that if somehow our
11 acting staff director notified that we are going to be
12 taking up a motion to change the topic to a specific
13 topic in April, did anything in advance of our vote,
14 then that somehow would be improper. I find that
15 silly and I think Commission Kirsanow has correctly
16 pointed out that it was highly prudent for the staff
17 to at least do some preliminary work that would inform
18 our vote today and I thank them for that.

19 VICE CHAIR THERNSTROM: Yes, exactly. It
20 would be silly because we would not know whether this
21 is a legitimate topic to take up in April if we can
22 get the speakers. Dr. Lerner.

23 DR. LERNER: I think I've lost the
24 question at this point. What did you need me to say?

25 VICE CHAIR THERNSTROM: You wanted to say

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1 something on -- Well, I guess -- Commissioner Yaki,
2 do you have a question on the table for the Staff
3 Director to answer?

4 COMMISSIONER YAKI: I think that the
5 statements made by Commissioner Gaziano sort of says
6 it all and that is that if the Staff Director halted
7 action on the April 11th scheduled briefing in favor of
8 finding out if there are speakers available for an
9 April briefing on this particular topic then it's a
10 question about why similar calls couldn't have been
11 made about whether the April briefing speakers would
12 have been available as well in the case that we did
13 not approve this. It's just an observation at this
14 point. You know, you guys are going to do this. I
15 just want to get a vote and get it over with.

16 COMMISSIONER GAZIANO: I didn't hear him
17 actually say he called the witnesses. Maybe that's
18 wrong. I don't know what preliminarily he did. But I
19 just wanted the record to reflect and he can correct
20 me, but I don't know that calls have actually been
21 made.

22 COMMISSIONER YAKI: I thought I heard the
23 word "calls."

24 DR. LERNER: For the previously scheduled
25 briefing or for the one that's proposed to change?

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1 What are we talking about?

2 COMMISSIONER GAZIANO: I don't know that
3 that's necessary. I'm just saying that I don't
4 understand that. If you want to clarify it, then
5 you're welcome to.

6 DR. LERNER: Well, we've done a little bit
7 of work on the scheduled topic but we haven't formally
8 invited anybody or anything like that.

9 COMMISSIONER YAKI: But you have made
10 inquiries as to whether people would be available,
11 correct?

12 DR. LERNER: Actually not. We have
13 basically canvassed who would be an appropriate
14 speaker. That's as far as we have gotten.

15 COMMISSIONER YAKI: Okay.

16 VICE CHAIR THERNSTROM: All right, can we
17 have a vote on this? It's the Heriot motion, I
18 believe, that we are voting on. Do you want to
19 restate it?

20 COMMISSIONER HERIOT: Okay, I move that we
21 hold a briefing in the April slot -- April 4th on the
22 subject that was previously specified in --

23 VICE CHAIR THERNSTROM: Illegal immigration
24 and employment opportunities of black workers.

25 COMMISSIONER HERIOT: And that if we are

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1 unable to schedule speakers for the April meeting,
2 that we alternatively hold that briefing in the May
3 meeting slot and move the May business meeting to the
4 April meeting slot.

5 VICE CHAIR THERNSTROM: Right. Is there
6 any further discussion of this or can we vote on it
7 now?

8 COMMISSIONER MELENDEZ: I had a question.

9 VICE CHAIR THERNSTROM: We need a second.

10 COMMISSIONER KIRSANOW: Second

11 VICE CHAIR THERNSTROM: We have a second.
12 Go on.

13 COMMISSIONER MELENDEZ: Yes, isn't that a
14 real short time frame, now that you're saying April
15 4th.

16 VICE CHAIR THERNSTROM: We have just
17 discussed and nauseam this question and Commissioner
18 Heriot's motion takes care of that problem.

19 COMMISSIONER MELENDEZ: But my concern,
20 also just for the record, is that we just received
21 this list for 2009, I believe, all these priorities
22 for topics and briefings and --

23 COMMISSIONER HERIOT: But we've put that
24 off.

25 COMMISSIONER MELENDEZ: I understand that,

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1 but even when we scheduled for this year, we took a
2 lot of time in setting priorities. We picked the top
3 three all of us and we finally out of dozens of topics
4 get it down and not only that. Because the budget
5 plays into this because I still haven't had an answer
6 whether or not as Staff Director Marcus said that, one
7 of the statements, was that we could end up cutting
8 down to three briefings for 2008. So it makes it even
9 more important as to what three would we actually
10 listen to and if this was one of them, it sure would
11 be important to me to go back and analyze and try to
12 throw my contact with Staff Director and throw one of
13 mine that I think should replace the April meeting.

14 So I'm just saying in the fairness of how
15 to go about doing it anyone of us could connect the
16 Staff Director and say, "Start doing some research so
17 I can present it" and I would be competing to get Mr.
18 Kirsanow's topic also. That's the only point I'm
19 making. It's kind of like we are just interjecting
20 really not consistent with the way the process runs
21 and all the work we get in to prioritizing our top
22 three and all that stuff.

23 VICE CHAIR THERNSTROM: There is a problem
24 here. There's been a problem of deciding topics too
25 far in advance. We have taken care of that.

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1 The second thing is there is a motion
2 on the floor. It has been seconded and we need to
3 vote on it. All in favor of Commissioner Heriot's
4 motion.

5 (Chorus of ayes.)

6 COMMISSIONER MELENDEZ: Nay.

7 COMMISSIONER YAKI: No.

8 VICE CHAIR THERNSTROM: Commissioner
9 Taylor, are you on?

10 (No verbal response.)

11 VICE CHAIR THERNSTROM: We lost you? I
12 think Commissioner Taylor is now not participating in
13 the meeting or at least not at this moment and so the
14 ayes do prevail and there were two no.

15 So then we move onto the June briefing and
16 I would like a motion that the briefing on the Patriot
17 Act as it applies to anti-Arab and anti-Muslim
18 discriminations currently scheduled for June 6, 2008
19 be cancelled. The Commission instead will consider a
20 briefing on the efforts of the Justice Department to
21 monitor voting rights enforcement for the 2008
22 Presidential election which I believe was Commissioner
23 Yaki's suggested topic.

24 COMMISSIONER YAKI: Yes.

25 VICE CHAIR THERNSTROM: So is there a

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1 second on that?

2 COMMISSIONER MELENDEZ: Second it.

3 VICE CHAIR THERNSTROM: And let's have a
4 discussion on that.

5 COMMISSIONER YAKI: The reason, Madam
6 Chair, that I put this out there was (1), and again
7 Commissioner Gaziano was not here at the time, when we
8 were discussing the briefings for June with the former
9 staff director, I think Commissioner Heriot was here,
10 we were talking about the fact that the June 6th
11 briefing may have had substantial overlap with the
12 domestic surveillance briefing that we had earlier in
13 2005. And in the informal agreement that had been
14 worked out in terms of the Democratic members being
15 able to have a briefing scheduled of their choosing on
16 the calendar that we would have the discretion to
17 substitute. Rather than inject anything overtly
18 partisan, I thought that instead we should simply look
19 at the issues in a preemptive manner of voting rights
20 enforcement for the 2008 presidential election because
21 that is obviously going to be a very interesting and
22 exciting topic.

23 VICE CHAIR THERNSTROM: Anybody else?
24 Yes, Commissioner Gaziano.

25 COMMISSIONER GAZIANO: A couple of

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1 questions. Let me just ask you about the topic
2 first. Well actually, let the record reflect that we
3 don't need to say very much, that I think this
4 informal agreement as you refer to, this set-aside for
5 certain members of certain political parties is not
6 consistent with the best policies of the commission.
7 But if it is, then I want to know when I get my
8 hearing. And I don't know if Commissioner Heriot may
9 want to know when she gets her hearing, but if it is a
10 sort of ideological set-aside, I have a different kind
11 of concern with that. But let me just ask you to
12 elaborate -- the Justice Department is doing great
13 work enforcing the Voting Rights Act, so what is your
14 purpose in devoting commission time, money and energy
15 on highlighting their good work.

16 COMMISSIONER YAKI: Well I suppose that any
17 more than highlighting a racially charged issue such
18 as illegal immigration and their impact on jobs. This
19 would have -- the impact would actually have the
20 exact opposite impact which is that despite your
21 characterization which may be correct about what
22 Justice is or is not doing with regard to the voting
23 right enforcement I think the question is not what
24 their performance is but really what they see the
25 trouble issues are, potential issues, what states are

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1 places that they think special attention should be
2 played, where there have been problem opportunities in
3 the past. There have been numerous allegations made
4 about polling places in Ohio in 2004 presidential
5 election. There are questions that abound with regard
6 to how local registrars work and interpret.

7 This is not meant as an attack on the
8 Justice Department. It is meant more for the Justice
9 Department to illuminate us and the Congress and other
10 effected people, sort of what areas they are
11 highlighting, what areas they are focusing on and
12 quite frankly if there are those with differing
13 opinions on where that emphasis should be they would
14 be part of the hearing as well.

15 COMMISSIONER GAZIANO: Since we don't have
16 a concept paper, if we're going to vote on this at
17 all --

18 COMMISSIONER YAKI: We do have a concept
19 paper. Richard, do you want to pass this out? That
20 we have.

21 COMMISSIONER GAZIANO: I'd like to look at
22 the concept paper, but do I have your personal
23 agreement that I get to pick a hearing, either later
24 this year, or before it's your turn again?

25 COMMISSIONER YAKI: I have no problems

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1 with that, Commissioner. The fact is that
2 Commissioner Melendez and I come to agreement on what
3 we would ask for in terms of our briefings, when we've
4 had situations where briefings had to be cut back, and
5 whenever those couldn't get in, then we would make a
6 decision which one would proceed. I mean, it's
7 something that --

8 COMMISSIONER GAZIANO: Actually, I think
9 it makes no sense for you to agree to that, to mine.
10 But I might want to exercise that if --

11 VICE CHAIR THERNSTROM: Well, we have not
12 agreed as a Committee on how to proceed going forward.
13 Let's put that off for another day.

14 COMMISSIONER GAZIANO: I'm just raising
15 the issue that I do want to --

16 COMMISSIONER YAKI: I mean, if your view
17 is simply that whatever ideological event you have to
18 simply be the turn of every single hearing that we
19 have, that's fine, if you just want to eliminate it to
20 our ability to have any -- that's fine, if that's what
21 you're stating, go ahead and do that. I was
22 proceeding under a set of understandings that we
23 worked with the Chairman, Commissioner Taylor,
24 Commissioner Kirsanow, Commissioner Braceras, and
25 Commissioner Thernstrom. You, obviously, have a

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1 different -- you have your own way of doing about
2 it. Whatever you want to do, fine. Fine with me.

3 COMMISSIONER GAZIANO: I want to take up
4 your topic on the merits, too. Did you email this to
5 the other Commissioners on the call?

6 COMMISSIONER YAKI: No, we just brought it
7 up. Wait, wait, wait. On the other -- on the --
8 however, the subject matter was emailed, the first
9 paragraph was pretty much emailed in my proposed
10 motions email of last week.

11 COMMISSIONER GAZIANO: I don't think this
12 content was in your proposed email. I can pull it out
13 and --

14 (Simultaneous speakers.)

15 VICE CHAIR THERNSTROM: Commissioner
16 Taylor is back on the line. We've got a full
17 complement.

18 COMMISSIONER GAZIANO: Could we email this
19 to the other Commissioners.

20 COMMISSIONER YAKI: Sure.

21 COMMISSIONER GAZIANO: And perhaps move
22 another month while we all have an opportunity to
23 consider it? I'm just asking if that would be
24 inconvenient for anyone.

25 COMMISSIONER YAKI: Actually, Commissioner

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1 Thernstrom, I guess Commissioner Gaziano raises a
2 good point. And because we have just heard from the
3 delegated authority's system staff director that it
4 only takes a month to put together a briefing, I'm
5 willing to table discussion of this until the next
6 meeting. Okay? Does that meet with your approval,
7 Commissioner Gaziano?

8 COMMISSIONER GAZIANO: It meets with mine,
9 if it meets with others.

10 CHAIRMAN REYNOLDS: This is Commissioner
11 Reynolds. I will defer to Commissioner Yaki on this
12 point. We do have an understanding this phone call
13 set aside, I believe this issue was raised by
14 Commissioner Braceras, the understanding was reached,
15 and while I do have concerns about it, it does have a
16 beneficial effect in that it assures that there is
17 diverse viewpoint, ideological viewpoint.

18 COMMISSIONER HERIOT: Does it make more
19 sense to set it now?

20 VICE CHAIR THERNSTROM: Yes. Commissioner
21 Yaki, I think you've got the votes for this briefing.
22 I mean, I don't like these set-asides period, and I
23 think we do need to address that whole question down
24 the road whether we go forward with this set-aside
25 arrangement. But I think you've got the votes, and it

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1 would be in the interest of the staff to simply
2 settle this.

3 COMMISSIONER HERIOT: Otherwise, it will
4 just go on like another meeting.

5 VICE CHAIR THERNSTROM: Today. I mean,
6 I'm going to support you on this topic.

7 COMMISSIONER YAKI: Well, I was just
8 trying to be accommodating to the new Commissioner.

9 VICE CHAIR THERNSTROM: Well, I think the
10 new Commissioner --

11 COMMISSIONER GAZIANO: I can -- if you
12 give me three minutes, I'll --

13 COMMISSIONER HERIOT: Let's vote on this.

14 VICE CHAIR THERNSTROM: Commissioner
15 Heriot is saying let's vote on it. I suspect --

16 COMMISSIONER YAKI: Why don't we proceed
17 to the SACs and get that over with.

18 COMMISSIONER HERIOT: We're not done with
19 this topic.

20 VICE CHAIR THERNSTROM: No, I want to get
21 done with this topic. I want to vote on this. I
22 think you've got your votes to hold this briefing.

23 COMMISSIONER YAKI: Fine. I'm ready for a
24 vote. And I think we may have a proposal for July --

25 VICE CHAIR THERNSTROM: Okay. Let us vote

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1 on this proposal, that the June 6th meeting will be
2 a briefing on the efforts of the Justice Department to
3 monitor voting rights enforcement for the 2008
4 Presidential election. All in favor?

5 (Chorus of ayes.)

6 CHAIRMAN REYNOLDS: Commissioner Reynolds,
7 aye.

8 VICE CHAIR THERNSTROM: And Taylor?

9 COMMISSIONER TAYLOR: Taylor, aye.

10 VICE CHAIR THERNSTROM: And aye from me,
11 as well.

12 COMMISSIONER GAZIANO: Nay.

13 VICE CHAIR THERNSTROM: And Commissioner
14 Gaziano votes nay. So it has passed. That is going
15 to be the June 6th briefing. And we can address in the
16 future, and I hope we will, the question of set-asides
17 for --

18 COMMISSIONER YAKI: It's just a remedy for
19 disparate impact.

20 COMMISSIONER HERIOT: Yes, for the record
21 I'd like to say that I basically object to set-asides.
22 If there are going to be set-asides, I want my own
23 set-aside.

24 VICE CHAIR THERNSTROM: Okay. That's
25 fine.

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1 COMMISSIONER HERIOT: Nothing that we
2 have done today has anything to do with what we're
3 going to be able to do next year when our budget is
4 less.

5 VICE CHAIR THERNSTROM: Absolutely. I
6 sign on to that sentiment. When we're down to let's
7 say six briefings a year, we cannot possibly have set-
8 asides. So to be discussed in the future, it should
9 be a future agenda item.

10 I would like to take a break before we go
11 on to this --

12 COMMISSIONER HERIOT: Could we just do
13 July, because we haven't done July yet.

14 VICE CHAIR THERNSTROM: Oh, July.

15 COMMISSIONER HERIOT: I make a motion that
16 we hold our briefing in July on the subject of
17 increasing the number of minority math and science
18 majors in colleges and universities.

19 VICE CHAIR THERNSTROM: We got a second on
20 that?

21 COMMISSIONER GAZIANO: Second.

22 VICE CHAIR THERNSTROM: Okay. Look, I
23 would like to have before I vote on that, as
24 interested as I am in that topic, I would like to have
25 distributed a one-page concept paper of how you see

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1 this topic, what kind of evidence data we can rely,
2 -- whether we can rely upon, and how we can get our
3 arms around the whole subject. And, so I would just
4 like -- I'd like to stare as you are spinning this out
5 as interested as I am in that topic.

6 COMMISSIONER HERIOT: Well, I can't write
7 something in right away.

8 VICE CHAIR THERNSTROM: No.

9 COMMISSIONER HERIOT: I would much prefer
10 to have it voted on today, so that is not my
11 preference.

12 VICE CHAIR THERNSTROM: Right. But we are
13 talking -- this time, we're talking about July. We do
14 have a little time. We could vote on that.

15 COMMISSIONER HERIOT: Again, this is not
16 my preference.

17 COMMISSIONER GAZIANO: Would that be your
18 preference to every other topic that anyone else
19 suggests today for July?

20 COMMISSIONER HERIOT: I do have a second--
21 (Simultaneous speakers.)

22 COMMISSIONER YAKI: It's a business
23 meeting.

24 VICE CHAIR THERNSTROM: In July?

25 COMMISSIONER YAKI: Yes.

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1 COMMISSIONER HERIOT: That's why I want
2 it to be --

3 COMMISSIONER YAKI: And then we're hitting
4 the magic four.

5 VICE CHAIR THERNSTROM: Yes. Well,
6 depending on what happens with -- and the question is
7 whether we're going to need a business meeting in
8 July. I don't know.

9 COMMISSIONER HERIOT: Well, I did propose
10 to you that I was willing to do this motion as a group
11 to include all the things that we have now approved.
12 And I didn't do that, because you didn't want me to.

13 COMMISSIONER GAZIANO: Yes. I think we
14 should have a vote on that. But it's also -- what is
15 this magic four? Does that include the statutory
16 report briefing? I didn't think so, so we've got now
17 one for April, you all approved one for June, or we
18 approved one for June with me voting in the negative.
19 This would be the third briefing for the year.

20 COMMISSIONER YAKI: No, but the fiscal
21 year started in October. We had a briefing in
22 December, as well.

23 COMMISSIONER HERIOT: I would move to
24 reconsider the April motion then. In reliance upon
25 your statement, Abby, I shouldn't do this as a group,

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1 I didn't.

2 VICE CHAIR THERNSTROM: Well, because I
3 thought we couldn't do it as a group. People had
4 views on individual topics that we had to allow a
5 discussion, we had to allow the discussion that has
6 taken place.

7 COMMISSIONER HERIOT: You didn't mention
8 that you were not in favor of doing this without a
9 written statement.

10 VICE CHAIR THERNSTROM: Look, nobody has
11 to go along with me on this. I would like to see the
12 topic spelled out so that I can connect the dots and
13 see how we're going to do this, exactly. The rest of
14 the Commissioners are free to disagree with me on
15 this. I can't quite get my arms around --

16 COMMISSIONER GAZIANO: Can I ask if we can
17 just vote to put it on, and then we can always take it
18 back off, if the concept paper isn't persuasive to us.
19 Would that be a satisfactory solution to the Chair?

20 CHAIRMAN REYNOLDS: Sounds like a good
21 compromise.

22 VICE CHAIR THERNSTROM: Well, I am just
23 told that July is traditionally the month when we take
24 a vote on the statutory report.

25 COMMISSIONER GAZIANO: Well, I assume we

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1 can take a vote on the statutory report after a
2 hearing, can we not? After a briefing, can we not?

3 VICE CHAIR THERNSTROM: That usually takes
4 a really long time. It's a big report. It's
5 complicated.

6 COMMISSIONER HERIOT: Well, we did it by
7 telephone last time. And we didn't do it in July last
8 time.

9 COMMISSIONER YAKI: Several times.

10 COMMISSIONER HERIOT: And, again, I think
11 it's abusive to bring this up to me now.

12 COMMISSIONER GAZIANO: I don't know -- our
13 Chairman was joining in my compromise. My compromise
14 is that we vote today, we get the concept paper. And
15 we're always free at our next business meeting to
16 revise that if the concept paper is not persuasive. I
17 thought I heard Chairman Reynolds --

18 CHAIRMAN REYNOLDS: It's a compromise in
19 words, and provides us with the flexibility to really
20 look at the issue. If for whatever reason any -- the
21 majority of Commissioners have a problem with the idea
22 as spelled out on paper, we would have the flexibility
23 to revisit the issue. At the same time, though, we
24 could move forward.

25 VICE CHAIR THERNSTROM: Commissioner Yaki.

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1 COMMISSIONER GAZIANO: And we could
2 also move the date of this July hearing, possibly, if
3 that becomes an issue.

4 CHAIRMAN REYNOLDS: That is correct.

5 VICE CHAIR THERNSTROM: Commissioner Yaki.

6 COMMISSIONER YAKI: Yes, Madam Vice Chair.
7 My question -- when we talked about -- one of the
8 reasons I voted for the motion to table the
9 discussions on the 2010, 2009, and the 2008 briefing
10 schedules had to do with the issue of resource
11 allocation, timeliness, ripeness, staleness. One of
12 the things that we found is that we have -- sometimes
13 we just decide to do topics like when we voted on the
14 Patriot Act issue, and that's superseded by other
15 events. I assume that's the rationale behind the
16 April briefing, and perhaps for the proposed July
17 issue, as well.

18 But I would just like to say that if the
19 issue is one of submitting concept papers for
20 consideration at the next meeting, I would be in favor
21 of that, because there are other issues and briefings
22 that I believe are of a timely nature that I would
23 like to see the Commission consider as a whole, which
24 I think are non-partisan, which are within our
25 statutory mandate. And if we're going to be starting

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1 to add or change around briefings for the remainder
2 of the year, I would like that to be in the context of
3 everyone having the opportunity to do that, rather
4 than just simply one topic you would consider for
5 July.

6 There are issues that -- one of the, I
7 think, serious issues that I think that we need to
8 look at, and probably should have looked at a long
9 time ago is the -- what appears to be, and maybe I'm
10 wrong - but just simply by looking at the -- reading
11 the news, and other kinds of reports, the issue of,
12 for example, racism on college campuses that stems
13 beyond anti-semitism, but to issues where people are
14 holding parodies of Martin Luther King Day, where
15 there are hate topics, not hate topics, hate crimes
16 being committed by people of all races against others.
17 It's something that I think is extremely important and
18 timely. And although it's not directly connected,
19 that we know of, to the two campus hearings yesterday,
20 I think that it's something that's very important.
21 And I would want to present a concept paper for it, as
22 well. I would rather --

23 COMMISSIONER GAZIANO: Could you yield for
24 a minute to my question to you?

25 COMMISSIONER YAKI: Yes. I will yield.

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1 COMMISSIONER GAZIANO: I'm very
2 interested in that topic. Would you consider
3 substituting the campus racism topic for the DOJ?

4 COMMISSIONER YAKI: No, because I think
5 the DOJ --

6 COMMISSIONER GAZIANO: Okay. I want the
7 record to reflect that you have -- now that you've
8 gotten your DOJ one, you're promoting one that I find
9 more interesting.

10 (Simultaneous speakers.)

11 COMMISSIONER YAKI: I'm taking back the
12 floor from you.

13 COMMISSIONER GAZIANO: Certainly, go
14 ahead.

15 COMMISSIONER YAKI: The -- I'm not going
16 to sit here and defend one a priority, and the other
17 is not. I do believe that the 2008 election as it
18 pertains to --

19 (Static interference.)

20 COMMISSIONER YAKI: -- campus racism is
21 one that I believe is not partisan, is one that I
22 would bring up for the entire Commission to look at.
23 There are others, as well, and I would just propose
24 that if we're looking at -- first of all, I think
25 there are two questions that have to be asked. One,

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1 if we're refiguring our 2008, I think that we
2 should do it all at one time for the remainder to
3 decide, but what is out there, when is the --

4 (Static interference.)

5 COMMISSIONER YAKI: And, number two, and
6 more importantly is, I think the Staff Director has to
7 do an analysis before we commit ourselves any further
8 as to what are resources available for the remainder
9 of the year through October. It's not December, it's
10 the end of September, that we have resources for. And
11 I would just put that out there.

12 VICE CHAIR THERNSTROM: Commissioners
13 Kirsanow, Taylor, and the Chairman, do you have
14 anything to say on this whole question?

15 CHAIRMAN REYNOLDS: I guess I have mixed
16 feelings. The bottom line is, a Commissioner is free
17 to submit a concept paper, and submit a motion asking
18 to replace the scheduled briefings, so I am
19 comfortable with Commissioners Yaki and Heriot
20 circulating concept papers, and at least in the case
21 of Commissioner Yaki, then having a -- I assume he
22 would move to replace a scheduled briefing with one
23 that he's recommending.

24 VICE CHAIR THERNSTROM: Well, we're
25 talking about July here. We don't have any concept

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1 paper, I believe, for either topic.

2 COMMISSIONER YAKI: Nor a briefing
3 schedule for that.

4 COMMISSIONER GAZIANO: Madam Chairman, can
5 I ask, I suppose maybe it's the Acting Staff Director
6 one question. Is it conceivable that we have money in
7 the budget for a September briefing? What is your
8 best thought?

9 STAFF DIRECTOR LERNER: Actually, in the
10 schedule that was handed out by the previous Staff
11 Director, there is a September briefing.

12 COMMISSIONER GAZIANO: If we have a July
13 briefing, and a business meeting at the same time, is
14 there enough money in the budget to do a briefing in
15 September?

16 STAFF DIRECTOR LERNER: I'm not 100
17 percent certain. I'd have to find out. I think so.

18 COMMISSIONER GAZIANO: I thought that was
19 sort of scheduled. I don't know. I, obviously, have
20 a lot to learn as far as the Commission's finances,
21 but I would hope that July is not the last briefing
22 that we could do this fiscal year.

23 VICE CHAIR THERNSTROM: Chairman Reynolds,
24 let's just go back to what you were saying. You were
25 suggesting concept papers, and I said well, at the

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1 moment we don't have any concept papers on either -
2 - we don't have a concept paper for either topic. My
3 only -- this is not opposition to the topic. I have
4 simply suggested, I've been thinking about it this
5 morning, that I would like to see a concept paper
6 before we take a vote on this. I regret that I didn't
7 say it before, but I didn't.

8 COMMISSIONER GAZIANO: Madam Chair?

9 VICE CHAIR THERNSTROM: Yes.

10 COMMISSIONER GAZIANO: I would have liked
11 to have seen the concept paper for the June hearing,
12 but I yielded to the Commission to have the vote so
13 that we set that. And I doubt that that will be
14 changed, and so I, again, would urge the Commission to
15 make a tentative vote - I hope it's not tentative on
16 the math/science question, because I think it's an
17 incredibly important one. And, obviously, if any
18 other Commission -- if the concept paper, that is not
19 persuasive, and any other concept paper is more
20 persuasive for the July hearing, we can set that in
21 our next business meeting, whether it's in April or
22 May.

23 COMMISSIONER YAKI: Point of information.

24 VICE CHAIR THERNSTROM: Yes.

25 COMMISSIONER YAKI: Chair Reynolds, just

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1 for your information, the April briefing was
2 actually one of the two that Commissioner Melendez and
3 I put on the schedule. Actually, it wasn't
4 Commissioner Melendez, that was actually left over
5 from Commissioner Meeks, and then taken up by
6 Commissioner Melendez as part of his priorities for
7 the 2007 schedule. It was originally scheduled for
8 2006, and then bumped over to 2007. So for all
9 intents and purposes, one of the ones that we have put
10 on the agenda has already been replaced by something
11 else.

12 CHAIRMAN REYNOLDS: Can we vote on the
13 July motion, the motion --

14 COMMISSIONER HERIOT: I've been here for a
15 year now, and I haven't had any affect upon any of
16 these topics for briefings. This is the one that I
17 spoke to you about, Chairman Reynolds, and to many
18 other members of the Commission, and was led to
19 believe that they would support such a briefing. And
20 now after I voted in favor of other briefings, I'm
21 finding that some people are not in favor.

22 COMMISSIONER REYNOLDS: No, I don't
23 believe anyone --

24 VICE CHAIR THERNSTROM: I haven't said I
25 wasn't in favor.

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1 COMMISSIONER REYNOLDS: -- expressed
2 opposition. The only question was whether -- well,
3 this process requires that we circulate a concept
4 paper beforehand, that's our practice. I don't have a
5 problem voting now. As I said before, we will vote
6 today, assuming that the motion passes, you will
7 circulate the concept paper. I'm assuming that the
8 concept paper will be fine, and garner a majority of
9 votes. If not, then we would revisit the issue.
10 That's how I see this unfolding.

11 COMMISSIONER YAKI: Second.

12 COMMISSIONER REYNOLDS: Are we ready to
13 vote?

14 COMMISSIONER YAKI: Yes. It's called and
15 seconded.

16 VICE CHAIR THERNSTROM: Okay. All in
17 favor of --

18 COMMISSIONER YAKI: Calling the question.

19 VICE CHAIR THERNSTROM: Calling the
20 question.

21 COMMISSIONER HERIOT: You don't vote on
22 calling the question.

23 COMMISSIONER YAKI: Yes, you do.

24 COMMISSIONER HERIOT: It's supposed to be
25 bi-partisan.

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1 COMMISSIONER YAKI: It's a two-page --

2 COMMISSIONER GAZIANO: If it's unanimous.

3 COMMISSIONER YAKI: Well --

4 COMMISSIONER GAZIANO: There's no one
5 objected to calling the question?

6 VICE CHAIR THERNSTROM: Everybody is in
7 favor of calling the question. Now the motion that's
8 on the table, Commissioner Gaziano, is it your motion,
9 or --

10 COMMISSIONER KIRSANOW: It's Gail's
11 motion.

12 VICE CHAIR THERNSTROM: Your motion on the
13 table, but it was modified --

14 COMMISSIONER GAZIANO: No, I just
15 seconded. I just seconded and spoke in favor of it.

16 VICE CHAIR THERNSTROM: But --

17 COMMISSIONER YAKI: Where does the motion
18 start?

19 VICE CHAIR THERNSTROM: Included, but you
20 --

21 COMMISSIONER GAZIANO: I didn't modify the
22 motion. I just was describing how I thought we could
23 sort of proceed to confirm it, proceed to undo it, if
24 there's dissatisfaction, just to get support for the
25 motion. The motion is that we have a briefing on this

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1 topic in July. And unless we change that, and if
2 the motion passes, unless we change that, then we'll
3 have the briefing in July.

4 (Simultaneous speakers.)

5 COMMISSIONER HERIOT: Which makes it no
6 different from any other briefing.

7 VICE CHAIR THERNSTROM: Right. Is it
8 everybody's understanding, however, that there will be
9 some kind of, between now and the next meeting, some
10 kind of concept paper --

11 COMMISSIONER REYNOLDS: Yes, that's
12 already been agreed.

13 VICE CHAIR THERNSTROM: Okay. Now as part
14 of your agreement in --

15 COMMISSIONER YAKI: Is that part of the
16 motion?

17 VICE CHAIR THERNSTROM: As part of the
18 package of this motion, Commissioner Heriot.

19 COMMISSIONER HERIOT: I have no problem
20 with a concept paper.

21 VICE CHAIR THERNSTROM: Okay. Before the
22 next meeting. All right. Everybody in favor?

23 (Chorus of ayes.)

24 CHAIRMAN REYNOLDS: Commissioner Reynolds,
25 aye.

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1 COMMISSIONER KIRSANOW: Aye

2 COMMISSIONER TAYLOR: Taylor, aye.

3 VICE CHAIR THERNSTROM: I'm voting aye, as
4 well.

5 VICE CHAIR THERNSTROM: Commissioner Yaki,
6 I haven't heard from you.

7 COMMISSIONER YAKI: I said aye.

8 VICE CHAIR THERNSTROM: Aye. Oh, it's
9 unanimous.

10 COMMISSIONER YAKI: Do you want to take a
11 break?

12 VICE CHAIR THERNSTROM: Yes, I want to
13 take a break. Short break, everyone.

14 (Whereupon, the proceedings went off the
15 record at 12:51:27 p.m., and went back on the record
16 at 1:03:23 p.m.)

17 VICE CHAIR THERNSTROM: All right. Have
18 we got Commissioners Taylor, Kirsanow, and the Chair
19 back, still on?

20 COMMISSIONER TAYLOR: You have Taylor.

21 VICE CHAIR THERNSTROM: And Yaki. Yaki is
22 on the phone now. Okay. Have we got Chairman
23 Reynolds on the phone?

24 CHAIRMAN REYNOLDS: Yes.

25 VICE CHAIR THERNSTROM: Good. So we're

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1 moving on to the State Advisory Committee issues.
2 We're going to vote on the re-chartering of the
3 following five State Advisory Committees; Ohio, New
4 Jersey, Rhode Island, Texas, and Vermont. Is it
5 necessary for me to read every one of these names out
6 into the record? It seems to me not. Could I have a
7 motion to re-charter the Ohio State Advisory
8 Committee? Under this motion, the Commission appoints
9 the individuals in your briefing report. The Chair
10 would be George W. Dent. And this is based on the
11 recommendations of --

12 (Off mic comment.)

13 VICE CHAIR THERNSTROM: All right. I am
14 just told that I should read the names. The Chair
15 would be George W. Dent, as I said; Hal R. Arkes,
16 Cassandra A. Bledsoe, Diane E. Citrino, I hope I
17 pronounced that right, Ruth Colker, Dilip D. Doshi,
18 David F. Forte, Scott Gerber, David Harris, Jad A.
19 Humeidan, I am not pronouncing this name correctly,
20 and I apologize to him in advance, Robert C. Harrod,
21 Kelli L. Johnson, Kevin R. McDermott, John A. Powell,
22 William J. Shin, Edith Thrower, Aaron Wheeler. These
23 members will serve as uncompensated government
24 employees. The Commission appreciates the hard work
25 they will no doubt contribute to this State Advisory

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1 Committee, and to this motion, the Commission
2 authorizes the Office of the State Director to execute
3 the appropriate paperwork for the appointment. So
4 moved. Is there a second?

5 CHAIRMAN REYNOLDS: Second. Commissioner
6 Reynolds.

7 VICE CHAIR THERNSTROM: Any discussion?

8 COMMISSIONER MELENDEZ: Yes. Commissioner
9 Melendez here.

10 VICE CHAIR THERNSTROM: Yes. Speak up.
11 It's right there, Commissioner.

12 COMMISSIONER MELENDEZ: My concern is the
13 balance of men and women on this. Is it really
14 unbalanced, I believe.

15 VICE CHAIR THERNSTROM: Well, there are 12
16 men and 5 women. Any further discussion?

17 COMMISSIONER YAKI: I'm sorry. I didn't
18 hear that.

19 VICE CHAIR THERNSTROM: Commissioner
20 Melendez raised the question of the gender balance,
21 and I answered there are 12 men and 5 women.

22 COMMISSIONER YAKI: Well, I think what
23 Commissioner Melendez was relating was the fact that
24 we had raised last year the fact that the SACs were
25 tremendously imbalanced in terms of gender, and while

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1 I thought we made some progress, at least on two of
2 the SACs back to the former ratio, this one being 71
3 percent male, and I know that -- I think that New
4 Jersey being 69 percent male. But this is an
5 important issue with the dealings with the new
6 criteria by the majority in 2005 for SAC members, and
7 we should submit that for the record.

8 VICE CHAIR THERNSTROM: It's no to say
9 that, and for the record, does anybody else have any
10 comments on this?

11 COMMISSIONER GAZIANO: Just one question.
12 I think it's important to certainly re-charter these
13 SACs. I understand there's a maximum of about 19
14 could --

15 COMMISSIONER YAKI: I can't hear. Speak
16 up, please.

17 COMMISSIONER GAZIANO: Can other
18 candidates be added? I think it's terribly important
19 to re-charter them, but --

20 COMMISSIONER YAKI: Can't hear.

21 VICE CHAIR THERNSTROM: Commissioner
22 Gaziano is raising the question of whether there is
23 room still for additional members that if we vote on
24 it today, re-charter it, come up with some additional
25 names.

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1 COMMISSIONER GAZIANO: I'm not sure
2 that's necessary. I'm just saying, I think it's more
3 important to vote today, but I just, for point of
4 clarification, want to know if it's possible, if it's
5 necessary, we could add two more later. Is that
6 consistent with our AIs?

7 COMMISSIONER YAKI: We have done so in the
8 past, Commissioner Gaziano.

9 COMMISSIONER GAZIANO: Thank you. I
10 suggest we vote on the slate.

11 VICE CHAIR THERNSTROM: As you know,
12 Commissioner Yaki, it's not easy to find people who
13 want to serve on this uncompensated board. But, in
14 any case, I suggest that we vote on this today, as
15 well.

16 COMMISSIONER YAKI: Madam Chair, is that a
17 challenge, if I were to find people who are willing to
18 serve, being put on the Committee?

19 VICE CHAIR THERNSTROM: They would have to
20 be voted on, obviously. Is there further discussion?

21 COMMISSIONER MELENDEZ: Yes, I have a
22 question. Are we trying to determine certain groups
23 and organizations from which we're soliciting
24 recommendations for these SACs? According to the
25 record, we reached out to the National Association of

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1 Scholars, the Office of the Mayor, the City of
2 Columbus, Ohio Civil Rights Commission, Moritz
3 College, Alarent National Conference for Community and
4 Justice, Xavier College, McMicken College, and
5 University of Toledo in a nomination process. Is that
6 what we're trying to do, reach out to certain
7 organizations?

8 VICE CHAIR THERNSTROM: Well, I mean - I
9 think that's evident from his -- we reach out to a
10 wide variety of organizations. This isn't some kind
11 of right-wing conspiracy going on here. You want to
12 say something about this?

13 STAFF DIRECTOR LERNER: Basically, just to
14 reiterate it, we reach out to a wide variety of
15 organizations to make sure there's a --

16 COMMISSIONER MELENDEZ: There's probably a
17 lot of organizations we don't reach out to, do you
18 think?

19 CHAIRMAN REYNOLDS: This is Commissioner
20 Reynolds.

21 VICE CHAIR THERNSTROM: Yes.

22 CHAIRMAN REYNOLDS: I mean, any
23 Commissioner is in a position to make recommendations
24 as far as candidates are concerned, and that also
25 includes the ability to recommend organizations that

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1 the Commission should reach out to, to get
2 recommendations. The goal is to have a diversity of
3 viewpoints. I think that we've done a pretty good job
4 so far. But, again, if you folks have some additional
5 organizations that you would like for us to look at,
6 please make your recommendations. If there are
7 candidates that you would like to be considered,
8 please make your recommendations.

9 COMMISSIONER YAKI: Point of information.

10 VICE CHAIR THERNSTROM: Go on.

11 COMMISSIONER YAKI: Were these SAC
12 appointments done pursuant to the Leading Six Sigma
13 process?

14 VICE CHAIR THERNSTROM: No, I don't
15 believe so.

16 STAFF DIRECTOR LERNER: No, they were not.

17 VICE CHAIR THERNSTROM: Do you have
18 something more to say on that question?

19 COMMISSIONER YAKI: No.

20 VICE CHAIR THERNSTROM: Was that a yes, or
21 a no?

22 COMMISSIONER YAKI: No.

23 VICE CHAIR THERNSTROM: No. Are we ready
24 to vote, or is there more discussion about this SAC?

25 COMMISSIONER MELENDEZ: Well, I still have

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1 a concern that there's -- we have too many people
2 from one organization. I think it has to be more
3 balanced. I mean, we have four members from the
4 Leadership of, I think it's Federalist Society
5 Practice Group. You know, when you get four members
6 out of the group, then you're kind of -- are we as
7 balance as we should be, and as diversified as we
8 should be?

9 VICE CHAIR THERNSTROM: Does anybody want
10 to speak to that?

11 CHAIRMAN REYNOLDS: This is Chairman
12 Reynolds. It looks like this SAC has a diversity
13 appoint, it has members from the Federalist Society,
14 and it has viewpoints from the other end of the
15 spectrum, and everything in-between. So I'm ready to
16 vote.

17 VICE CHAIR THERNSTROM: And a lot of these
18 are new appointments, of course.

19 (Simultaneous speakers.)

20 VICE CHAIR THERNSTROM: Let's take a vote.

21 COMMISSIONER REYNOLDS: Got to work with
22 what you've got.

23 VICE CHAIR THERNSTROM: Let's take a vote
24 here. All in favor of re-charting the Ohio SAC?

25 CHAIRMAN REYNOLDS: Commissioner Reynolds,

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1 aye.

2 COMMISSIONER KIRSANOW: Kirsanow, aye.

3 COMMISSIONER TAYLOR: Taylor, aye.

4 COMMISSIONER YAKI: Yaki, absolutely no.

5 VICE CHAIR THERNSTROM: Aye. Is that
6 different from a no?

7 COMMISSIONER YAKI: Well, there could be
8 definitive no, unequivocal no, 100 percent no, end
9 result meaning no.

10 VICE CHAIR THERNSTROM: Okay. And
11 Melendez is no, as well?

12 COMMISSIONER MELENDEZ: Yes.

13 VICE CHAIR THERNSTROM: So we have two
14 nos, and the rest are ayes. New Jersey SAC, and I
15 will read the names here. And I'm making a motion to
16 re-charter the New Jersey SAC. Under this motion, the
17 Commission appoints the following individuals to that
18 Committee based on the recommendations of the Staff
19 Director; Leanna Brown recommended as Chair, Elisa
20 Basnight, Richard F. Collier, Jr., Jane R. Dunham,
21 Sherine El-Abd, Lora L. Fong, Brian M. Gaffney, John
22 H. Hart, Shavar D. Jeffries, Lawrence S. Lustberg,
23 David R. Oakley, Clement A. Price, Saulo Santiago,
24 Judd A. Serotta, Ruth J. Seehan, Morris G. Smith,
25 William J. Stephney, Jackson Toby, Peter W. Wood. Is

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1 there a second?

2 COMMISSIONER REYNOLDS: Second.

3 VICE CHAIR THERNSTROM: Okay. Discussion?

4 COMMISSIONER YAKI: Madam Chair?

5 VICE CHAIR THERNSTROM: Yes.

6 COMMISSIONER YAKI: I was curious that OSD
7 recommended five of the same individual that
8 Commissioner Heriot recommended. I mean, is that --
9 were they Commissioner Heriot's recommendations, or
10 were they OSD's?

11 VICE CHAIR THERNSTROM: Well, anybody -- I
12 mean, before Commissioner Heriot responds to that, I
13 have to repeat what the Chairman said, which is
14 anybody is free to recommend any names. And, indeed,
15 the Commission welcomes recommendations, names, and
16 names of organizations, as well. The Staff Director
17 has something to say.

18 STAFF DIRECTOR LERNER: There is --

19 VICE CHAIR THERNSTROM: Oh, you have to
20 continue to identify yourself when you're on the
21 telephone. That was Commissioner Yaki.

22 COMMISSIONER GAZIANO: I assume the Staff
23 Director can also ignore our recommendations. That's
24 part of the review process. It's great that we make
25 recommendations, but we don't have the power to,

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1 except as a Commission make these people happen.

2 VICE CHAIR THERNSTROM: Right. If
3 Commissioner Heriot recommended certain people, she
4 doesn't -- that's not an entitlement to have those
5 names in the final package. And nobody else has such
6 an entitlement, but we recommend -- we welcome all
7 recommendations. Commissioner Heriot, have you got
8 anything to say on this?

9 COMMISSIONER HERIOT: That my memory is
10 faulty, I'm afraid, and I don't even recall to whom I
11 made the recommendations. And of the four names
12 there, Peter Wood is the one that I'm most familiar
13 with, and the other three were recommended to me by a
14 former SAC member.

15 VICE CHAIR THERNSTROM: Right. And I'm
16 familiar with Peter Wood, as well, but I didn't
17 recommend him. I didn't make any recommendations.
18 Are we ready to vote on this, or is there --

19 COMMISSIONER MELENDEZ: I have a question.

20 VICE CHAIR THERNSTROM: Yes.

21 COMMISSIONER MELENDEZ: In New Jersey,
22 15.2 percent is Hispanic according to the 2005 census,
23 but only one of the 19 SAC nominees identifies as
24 Latino. That would be 6 percent of the SAC. I just
25 think that it's -- there should be, again, diversity

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1 in that population that we don't have in this SAC.

2 The other thing is that when we last saw
3 the New Jersey SAC charter in July of 2007, six of the
4 names were different. In other words, since we had
5 that SAC that was pending and we looked at those names
6 back then, they've been changed, so now they've been
7 inserted or replaced either by the Staff Director, or
8 some of the Commissioners, so I just have a concern
9 for people that were waiting, no fault of their's, and
10 all of a sudden they're kind of out of the picture.

11 VICE CHAIR THERNSTROM: Do you want to
12 respond to this Chris?

13 MR. BYRNES: Sure. The package reflects
14 adjustments sort of recommended by Commissioners, but
15 through the Office of the Staff Director. Once sort
16 of Commissioner recommendations come in, we've got to
17 re-evaluate sort of what impact those will have on the
18 overall balance. So there are changes, it's not that
19 anyone sort of did anything wrong, or there was
20 anything particularly wrong with an individual
21 candidate, it was more than the overall balance was
22 sort of reconfigured. But we appreciate your
23 question.

24 COMMISSIONER MELENDEZ: It also has a
25 gender imbalance, too. It's just like the other one

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1 that was two-thirds men, one-third women, I
2 believe.

3 COMMISSIONER GAZIANO: I would just like
4 the record to reflect, my question on the Ohio SAC and
5 this one, that it is commendable what the Commission
6 has done before I joined to eliminate strict notions
7 of proportionality on gender, race, ethnicity. And I
8 find it, again, a little bit disappointing to suggest
9 that men can't represent the interests of women, or a
10 similar analogy. So I just want to move on to vote on
11 this slate. If you have any reason to believe that -

12 COMMISSIONER YAKI: Madam Chair?

13 VICE CHAIR THERNSTROM: Yes?

14 COMMISSIONER YAKI: Well, I would just
15 like to put on the record that I find --

16 VICE CHAIR THERNSTROM: Please identify
17 yourself for the record.

18 COMMISSIONER YAKI: This is Commissioner
19 Yaki.

20 VICE CHAIR THERNSTROM: Yes. Thank you.
21 Go on.

22 COMMISSIONER YAKI: Actually, Commissioner
23 Yaki would like to state for the record that
24 Commissioner Yaki believes that New Jersey SAC, in
25 Commissioner Yaki's opinion, is one of the more

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1 egregious examples of how this SAC process is not
2 working, and how the SAC is not representative of the
3 populations that we're attempting to represent and
4 protect. That is the end of Commissioner Yaki's
5 statement.

6 VICE CHAIR THERNSTROM: Well, we do have
7 eight Democrats, seven Republicans, four Independents.
8 We've got four reappointments. I don't know. I have
9 to join Commissioner Gaziano on this, speaking as a
10 woman. I do not care how many women there are. I
11 care about the quality of the people on the SAC. I
12 will hope that we've done a good job in picking
13 quality people. I really don't care about their
14 gender, I'm sorry to say.

15 COMMISSIONER MELENDEZ: Just a comment,
16 again going back to the Hispanic population. I think
17 that, for the record, that the Commission ought to do
18 a better job in reaching out to those populations.
19 That's all I have.

20 VICE CHAIR THERNSTROM: And I believed
21 we've moved away from any notions of proportional
22 representation, as however you define that, as one of
23 the conditions of assembling these groups.

24 COMMISSIONER TAYLOR: Commissioner
25 Thernstrom?

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1 VICE CHAIR THERNSTROM: Yes.

2 COMMISSIONER TAYLOR: This is Ashley. I'm
3 going to state for the record, I absolutely believe
4 that composition of these SACs as reconstituted, and
5 re-chartered, is vastly improved with respect to a
6 diversity of viewpoint than the SACs as I recall
7 reviewing when I joined the Commission. And I think
8 that's an important point to make, and I think that
9 will add to, again, those diverse viewpoints being
10 provided by the various SACs around the country. And
11 I did not see that diversity when I joined the
12 Commission with the SACs in their current form.

13 VICE CHAIR THERNSTROM: And I will second
14 that. There certainly wasn't a diversity of
15 viewpoints, and that does not serve the Commission
16 well, or its reputation well. Can we have a vote on
17 the New Jersey SAC, unless other people have important
18 matters they want to discuss with respect to it. All
19 in favor, aye.

20 (Chorus of ayes.)

21 COMMISSIONER KIRSANOW: Kirsanow, aye.

22 CHAIRMAN REYNOLDS: Reynolds, aye.

23 VICE CHAIR THERNSTROM: And?

24 COMMISSIONER YAKI: Yaki's yipper nope, no
25 way, not a chance.

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1 CHAIRMAN REYNOLDS: I register a yes
2 for Yaki.

3 (Laughter.)

4 VICE CHAIR THERNSTROM: And Commissioner
5 Melendez has also voted nay. We are now going on to
6 the Rhode Island SAC. And under this motion, which I
7 make, the Commission appoints the following
8 individuals at the recommendation of the Office of
9 Staff Director; Norman Orodener, recommended as
10 Chair, Raymond Bell, Ann C. Clanton, Sara S. Enright,
11 Joseph M. Fernandez, Bennie Y. Fleming, Jodi L. Glass,
12 Patrick Guida, I guess it is, David B. Hammerstrom,
13 Ali B. Hassan, John E. Holt, Arthur C. Jones, Ann C.
14 Keefe, Lola M. Lange, Johanna L. LeClair, Pamela C.
15 Moffatt I guess it's Icart, but again forgive me if
16 I've got your name wrong, Jonathan D. Orent, James
17 Vincent, Darrell Waldron. And once again, these
18 members will serve as uncompensated government
19 employees. The Commission appreciates the hard work
20 they will, no doubt, contribute to the SAC. Under
21 this motion, the Commission authorizes the Office of
22 Staff Director to execute the appropriate paperwork
23 for the appointment. So I need a second on the Rhode
24 Island SAC.

25 CHAIRMAN REYNOLDS: Commissioner Reynolds,

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1 second.

2 VICE CHAIR THERNSTROM: Okay. Any
3 discussion? Hearing none, all in favor?

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Commissioner Reynolds,
6 aye.

7 COMMISSIONER KIRSANOW: Kirsanow,
8 absolutely, unequivocally, definitively yes.

9 (Laughter.)

10 COMMISSIONER KIRSANOW: Yaki is not the
11 only one --

12 (Laughter.)

13 COMMISSIONER GAZIANO: It's only the
14 double negatives that turn affirmative. The double
15 affirmatives don't turn negative, so it's only the
16 double negatives I have a concern with.

17 VICE CHAIR THERNSTROM: Commissioner Yaki,
18 are you on the phone? Commissioner Yaki?

19 COMMISSIONER YAKI: Yes.

20 VICE CHAIR THERNSTROM: Have you voted?
21 Oh, you voted yes. There's a unanimous --

22 COMMISSIONER YAKI: No, you asked is
23 Commissioner Yaki on the phone.

24 VICE CHAIR THERNSTROM: Oh.

25 COMMISSIONER YAKI: To which I answered

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1 yes.

2 VICE CHAIR THERNSTROM: How do you vote,
3 Commissioner Yaki?

4 COMMISSIONER YAKI: On Rhode Island --

5 VICE CHAIR THERNSTROM: Now, don't break
6 your record.

7 COMMISSIONER YAKI: No, I think I will
8 holding my nose vote yes.

9 VICE CHAIR THERNSTROM: And would you like
10 -

11 CHAIRMAN REYNOLDS: Now we closed the
12 voting. No, this is Commissioner Reynolds. Are you
13 holding your nose because you're voting with the
14 majority, or is the problem with the candidates?

15 COMMISSIONER YAKI: I leave that to your
16 interpretation.

17 VICE CHAIR THERNSTROM: You don't ask why.
18 We have a unanimous vote on the Rhode Island SAC.

19 COMMISSIONER GAZIANO: They'll be glad to
20 hear that.

21 VICE CHAIR THERNSTROM: And we move on to
22 the Texas SAC. And I move --

23 COMMISSIONER YAKI: This will not be
24 unanimous.

25 VICE CHAIR THERNSTROM: I thought you had

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1 had an episode here that wasn't going to last long.

2 I move the Commission re-charter the Texas SAC.
3 Under this motion, the Commission appoints the
4 following individuals to that Committee based on the
5 recommendations of the Office of Staff Director;
6 Russell B. Casey recommended as Chair, Elise M. Allen,
7 Charles Z. Burchett, Bill Calhoun, Lisa A. Callahan,
8 Francis A. Connot, Jason P. Casales, Cecilia R.
9 Castilio, Norvell D. Glenn, Vino M. Granya, Merrill
10 Matthews, Harriet Miller, Martha Orosko, Bobby Singe,
11 Leslie G. Carroll, Barbara J. Walters, and if I've
12 pronounced anybody's name wrong, please forgive me
13 once again. These members will serve as uncompensated
14 government employees. The Commission appreciates the
15 hard work they will, no doubt, contribute to the SAC.
16 Under this motion, the Commission authorizes the
17 Office of Staff Director to execute the appropriate
18 paperwork for the appointment. So I am making a
19 motion, and I need a second.

20 CHAIRMAN REYNOLDS: Reynolds, and I second
21 the motion.

22 VICE CHAIR THERNSTROM: Okay. Discussion.
23 We've certainly got discussion, I've already
24 understood from Commissioner Yaki.

25 COMMISSIONER YAKI: Madam Chair?

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1 VICE CHAIR THERNSTROM: Yes.

2 COMMISSIONER YAKI: Could the Staff
3 Director illuminate me about the qualification of
4 Russell Casey?

5 VICE CHAIR THERNSTROM: He's putting on
6 his microphone.

7 STAFF DIRECTOR LERNER: Would it be more
8 appropriate for Chris?

9 COMMISSIONER YAKI: Whoever.

10 STAFF DIRECTOR LERNER: Okay. Judge Casey
11 is a Justice for the Peace in Tarrant County, Texas.
12 He's also on the Real Estate Advisory Board, and has
13 been active in a number of capacities. He has been on
14 the City of Hurst Traffic Commission, the HEBISD
15 District Level Improvement Committee, Tarrant County
16 Election Judge, Delegate to the State Republican
17 Convention, Member of MENSA, Northern Tarrant County
18 Right-to-Life Education Advisory Board, Tarrant County
19 College Real Estate Advisory Board, and past
20 Republican Representative of the Tarrant County
21 Elections Signor Verification Committee.

22 COMMISSIONER YAKI: Okay. So what are his
23 qualifications, again to sit on a State Advisory
24 Committee for Civil Rights, other than the Right-to-
25 Life group?

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1 STAFF DIRECTOR LERNER: He's a Justice
2 of the Peace, and I consider that --

3 VICE CHAIR THERNSTROM: He's done election
4 process --

5 STAFF DIRECTOR LERNER: He's actually done
6 quit a bit about elections and election process, which
7 I think does, indeed, qualify him to be on this
8 Committee.

9 VICE CHAIR THERNSTROM: Other discussion?

10 COMMISSIONER MELENDEZ: Yes. Commissioner
11 Melendez --

12 COMMISSIONER YAKI: Are you serious,
13 that's your rationale?

14 COMMISSIONER MELENDEZ: We're proposing --

15 CHAIRMAN REYNOLDS: We're serious.

16 COMMISSIONER MELENDEZ: To be the chair?

17 COMMISSIONER YAKI: Well, he's your guy.
18 Don't hold me accountable for him.

19 CHAIRMAN REYNOLDS: Thank you, emphatic
20 no.

21 VICE CHAIR THERNSTROM: Commissioner
22 Melendez.

23 COMMISSIONER MELENDEZ: The proposal is to
24 have him to become the Chairman of the SAC. Is that
25 right? Okay. I just, for the record, this lady by

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1 the name of Mara Orosko, she's one of the returning
2 members of the SAC, so she would have been a good
3 Chairwoman.

4 The other issue is the Mr. Lino Graglia.
5 Is he taken off, or is he still on there, because my
6 understanding was that he had already served on, for
7 13 years on the Texas SAC from 1985-1998.

8 VICE CHAIR THERNSTROM: What are the rules
9 about coming back after an absence? We don't seem to
10 know whether that conflicts with any rule that the
11 Commission has established. Evidently, the question
12 of a break in service has not been addressed. It
13 should be.

14 COMMISSIONER HERIOT: Do we have the
15 wording of the rule?

16 VICE CHAIR THERNSTROM: We can take a vote
17 today, and if there is -- and look into this question.
18 And if there is a violation of the term limit, he has
19 to step down off the SAC. I suspect there will not be
20 any language that's going to answer the question for
21 us.

22 COMMISSIONER HERIOT: There might be.
23 There are also cases on this.

24 VICE CHAIR THERNSTROM: Well, we can look
25 into it. We can vote on this pending inquiry into the

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1 question of term limits, and if Professor Graglia
2 runs into a problem, Professor Graglia then steps off
3 the SAC.

4 COMMISSIONER HERIOT: I think we're going
5 to have to rebalance the SAC. Maybe what we should do
6 is vote pending whether or not this is a problem. And
7 if it is a problem, then we've got to rebalance the
8 SAC, rather than just have a SAC without Lino Graglia.

9 VICE CHAIR THERNSTROM: Why is one person
10 stepping down going to weigh the balance of, any of
11 you?

12 COMMISSIONER HERIOT: He's a pretty
13 assertive guy. I think it's a different SAC without
14 Lino Graglia.

15 VICE CHAIR THERNSTROM: Pardon me?

16 COMMISSIONER YAKI: What balance, we want
17 view point balance.

18 VICE CHAIR THERNSTROM: I'm sorry. What?

19 COMMISSIONER YAKI: We want view point
20 balance.

21 VICE CHAIR THERNSTROM: Ideological.

22 COMMISSIONER YAKI: We definitely want
23 view point balance. I don't know that that's a
24 problem.

25 VICE CHAIR THERNSTROM: A lot of outspoken

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1 people on this SAC.

2 COMMISSIONER HERIOT: I don't know which
3 way they're speaking, though.

4 VICE CHAIR THERNSTROM: Well --

5 COMMISSIONER HERIOT: I'm happy to vote
6 for it now.

7 VICE CHAIR THERNSTROM: What would you
8 like to do, Commissioner Heriot?

9 COMMISSIONER HERIOT: One possibility is
10 just to vote for it pending whether or not this is, in
11 fact, a problem. If it is, find a substitute for him,
12 and we go back --

13 VICE CHAIR THERNSTROM: How is that
14 different from what I just suggested?

15 COMMISSIONER HERIOT: I thought you were
16 suggesting that the SAC would carry on without a
17 substitute for him.

18 VICE CHAIR THERNSTROM: Well, we can
19 always add people to these SACS. But, fine, I'm happy
20 to go along with -- then that's a seat that we have to
21 find a substitute for. That's fine. I'd like to move
22 that we approve this SAC, but that Professor Graglia's
23 appointment to the SAC is dependent, his continued
24 service on the SAC is dependent upon the outcome of
25 research on breaks in -- research on the question of

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1 term limits, and that if he cannot serve, we find a
2 substitute. Got a second on that?

3 COMMISSIONER TAYLOR: Taylor, second.

4 VICE CHAIR THERNSTROM: Okay. All in
5 favor?

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: Reynolds, aye.

8 COMMISSIONER KIRSANOW: Kirsanow, aye.

9 COMMISSIONER TAYLOR: Taylor, aye.

10 VICE CHAIR THERNSTROM: And let the record
11 show that Commissioner Melendez is opposed. And we
12 are -- and Commissioner --

13 COMMISSIONER YAKI: Wait, wait, wait.
14 Hello!

15 VICE CHAIR THERNSTROM: Yes, I was about
16 to say you weren't on it, but you are.

17 COMMISSIONER YAKI: Commissioner Yaki says
18 no way, partner.

19 COMMISSIONER HERIOT: Commissioner Yaki,
20 is that the best you could do on that one? You're not
21 helping yourself.

22 VICE CHAIR THERNSTROM: Yes. Commissioner
23 Yaki, I was --

24 COMMISSIONER YAKI: I'm in the middle of
25 talking to --

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1 VICE CHAIR THERNSTROM: Yes, I was
2 about to say Commissioner Yaki was not on the phone
3 for the record, but you are on the phone. I was not
4 overlooking you. I was about to announce your absence.

5 COMMISSIONER GAZIANO: And he's worried
6 about the double negative, so I'm glad for that.

7 VICE CHAIR THERNSTROM: Okay. I'm going
8 to move on. I move that the Commission re-charter the
9 Vermont State Advisory Committee. Under this motion,
10 the Commission appoints the following individuals to
11 the Committee based on the recommendations of the
12 Office of the Staff Director; Curtiss G. Reed,
13 recommended as Chair, Frances Bazluke, John H.
14 Bloomer, Luther M. Brown, Ellen Mercer Fallon, Ann H.
15 Hagman, Leslie Ann Holman, Gary A. Kowalski, Terrance
16 D. Martin, Marion C. Milne, Cheryl W. Mitchell, Tara
17 O'Brien, Eric D. Sakai, I guess it is, Stephanie L.
18 Sidortsolva, Diane B. Snelling, Tracey H. Tsugawa, and
19 Stewart R. Wood. And, again, my apologies to anybody
20 whose name I got wrong. These members will serve as
21 uncompensated government employees. The Commission
22 appreciates their hard work where they will, no doubt,
23 contribute to the SAC. Under this motion, the
24 Commission authorizes the Office of Staff Director to
25 execute the appropriate paperwork for the appointment.

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1 I have made that motion. I need a second. Nobody
2 wants to --

3 COMMISSIONER GAZIANO: Second.

4 VICE CHAIR THERNSTROM: Okay. Thank you,
5 Commissioner Gaziano. Any discussion of the Vermont
6 SAC, which is our last discussion.

7 COMMISSIONER HERIOT: Madam Vice Chair?

8 VICE CHAIR THERNSTROM: Yes.

9 COMMISSIONER HERIOT: What happened to
10 Laurie Morrow? Wasn't she on this at one point?

11 VICE CHAIR THERNSTROM: I think she was --
12 she, evidently, withdrew her name from consideration.
13 I don't know what the story is there.

14 COMMISSIONER GAZIANO: I'm sorry. I don't
15 - I buried some of my papers. What's the number that
16 we're voting on today, the total number?

17 VICE CHAIR THERNSTROM: Of this SAC?

18 COMMISSIONER GAZIANO: Yes.

19 VICE CHAIR THERNSTROM: Seventeen. The
20 previous SAC had 14.

21 COMMISSIONER GAZIANO: I just understand
22 that there's an issue of -- that arises. The rule is
23 19 is the max, so this is another SAC that potentially
24 could take two more? Okay.

25 VICE CHAIR THERNSTROM: And it's another

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1 SAC in terms of imbalance, they have four
2 Democrats, five Republicans, eight Independents.

3 COMMISSIONER GAZIANO: That's imbalance?

4 VICE CHAIR THERNSTROM: No, I'm just
5 talking about the balance.

6 COMMISSIONER GAZIANO: Good.

7 VICE CHAIR THERNSTROM: Are we ready to
8 vote, or is there some discussion of the Vermont SAC?
9 All right. All in favor, please say aye.

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Reynolds, aye.

12 COMMISSIONER KIRSANOW: Kirsanow, aye.

13 VICE CHAIR THERNSTROM: Aye.

14 COMMISSIONER TAYLOR: Taylor says aye.

15 VICE CHAIR THERNSTROM: And Commissioner
16 Melendez says aye. Yaki?

17 COMMISSIONER YAKI: And Commissioner Yaki,
18 once again, holding his nose votes aye.

19 VICE CHAIR THERNSTROM: It is unanimous,
20 with one nose-holder. I believe that we can adjourn.

21 COMMISSIONER GAZIANO: I move to adjourn.

22 VICE CHAIR THERNSTROM: I was going to
23 say, we need a motion. And I second it. Thanks, guys,
24 who are on the phone. It's been long, and you've been
25 very patient. I very much appreciate it.

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1 (Whereupon, the proceedings went off
2 the record at 1:38:44 p.m.)
3
4

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