

## U.S. COMMISSION ON CIVIL RIGHTS

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## COMMISSION MEETING

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FRIDAY

JUNE 1, 2007

+ + + + +

WASHINGTON, D.C.

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The Meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 11:30 a.m., Abigail Thernstrom, Vice Chairman, presiding.

## PRESENT:

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

KENNETH L. MARCUS, STAFF DIRECTOR

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## STAFF PRESENT:

TYRO BEATTY, Director, Human Resources Division  
DAVID BLACKWOOD, General Counsel  
MARGARET BUTLER  
TERESA BROOKS  
CHRISTOPHER BYRNES, Attorney Advisor to the Office  
of the Staff Director and Acting Deputy  
General Counsel, OGC  
DEBRA CARR, Associate Deputy Staff Director, OSD  
RANITA CARTER  
PAMELA A. DUNSTON, Chief, ASCD  
BARBARA FONTANA  
LATRICE FOSHEE  
MAHA JWEIED  
SOCK FOON MacDOUGALL  
EMMA MONROIG, Solicitor/Parliamentarian  
KARA SILVERSTEIN  
KIMBERLY TOLHURST  
AUDREY WRIGHT  
MICHELLE YORKMAN

## COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON  
LISA NEUDER  
RICHARD SCHMELCHEL

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## I-N-D-E-X

I.	Approval of Agenda .....	4
II.	Approval of Minutes of May 11 Meeting .....	6
III.	Announcements .....	7
IV.	Staff Director's Report .....	8
V.	Publication of the Briefing Report on ..... Affirmative Action in American Law Schools	28
VI.	State Advisory Committee Issues .....	37
	Virginia SAC	
	Michigan SAC	
VII.	Future Agenda Items .....	76
VIII.	Adjourn	

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

(9:48 a.m.)

VICE CHAIR THERNSTROM: Good morning.

Will the meeting come to order? This is a meeting of the U.S. Commission on Civil Rights at 624 Ninth Street, Room 540, Washington, D.C. All commissioners are physically present, except Commissioner Braceras, who will participate by phone, and Chairman Reynolds, who will not be participating today.

This morning we will have a brief meeting regarding the re-chartering of Virginia and Michigan State Advisory Committees. And afterwards, we will hold a briefing on School Choice, the Blaine Amendments, and anti-Catholicism.

#### I. Approval of Agenda

VICE CHAIR THERNSTROM: First item on the agenda is, our first item is approval of the agenda. Can I get a motion to approve the agenda?

COMMISSIONER KIRSANOW: So moved.

COMMISSIONER HERIOT: Could I make a motion to amend the agenda? Would that come now or later?

VICE CHAIR THERNSTROM: It comes now.

COMMISSIONER HERIOT: Okay. Because I would like to move to put the affirmative action in

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1 law schools briefing report on the agenda so that we  
2 can extend the time for it to be published on account  
3 of an ethics issue that I need to get resolved. I am  
4 employed by University, and it occurred to me last  
5 week as I was drafting my concurring remarks that that  
6 may have something to do with whether or not I'm  
7 allowed to participate in the matter, I guess given a  
8 memo that I think addresses part of my question. But  
9 I need to resolve whether or not I can participate  
10 before.

11 VICE CHAIR THERNSTROM: So your motion is  
12 simply to, your motion is to postpone?

13 COMMISSIONER HERIOT: Postpone publication  
14 --

15 VICE CHAIR THERNSTROM: Postpone  
16 publication.

17 COMMISSIONER HERIOT: -- on the report so  
18 we would have to have an amendment intended to include  
19 that.

20 VICE CHAIR THERNSTROM: And you're moving  
21 to amend the agenda?

22 COMMISSIONER TAYLOR: I'll second the  
23 motion to amend the agenda and further suggest that we  
24 have this discussion after the Staff Director's Report  
25 but before item five.

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1 VICE CHAIR THERNSTROM: Okay. So that's a  
2 further amendment of the agenda. It's a re-ordering  
3 of items on the agenda. Any further discussion?  
4 Okay. Any further discussion? All in favor?

5 (Chorus of ayes.)

6 VICE CHAIR THERNSTROM: All opposed?

7 (No response.)

8 VICE CHAIR THERNSTROM: Let the record  
9 show --

10 COMMISSIONER YAKI: Abstention. I  
11 abstain.

12 VICE CHAIR THERNSTROM: Okay. Let the  
13 record show that Commissioner Yaki has abstained and,  
14 otherwise, it was unanimous. Jennifer, did you vote  
15 on that?

16 COMMISSIONER BRACERAS: Yes, I voted with  
17 the majority.

18 **II. Approval of Minutes of May 11 Meeting**

19 VICE CHAIR THERNSTROM: Okay. Second  
20 item, approval of the minutes of May 11th, 2007. Can  
21 I get a motion?

22 COMMISSIONER TAYLOR: So moved.

23 VICE CHAIR THERNSTROM: Very good. Second?

24 COMMISSIONER KIRSANOW: Second.

25 VICE CHAIR THERNSTROM: Any discussion?

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1 (No response.)

2 VICE CHAIR THERNSTROM: Hearing none, all  
3 in favor?

4 (Chorus of ayes.)

5 VICE CHAIR THERNSTROM: Any opposed?

6 (No response.)

7 VICE CHAIR THERNSTROM: It's approved  
8 unanimously.

9 **III. Announcements**

10 VICE CHAIR THERNSTROM: I have one  
11 announcement before we begin. Last week, the nation  
12 lost an important figure in the civil rights movement,  
13 Marion King Jackson died May 22nd at the age of 74.  
14 She worked in Atlanta for Maynard Jackson and Andrew  
15 Young Administrations. In 1962, in an incident that  
16 came to echo through the campaign to desegregate the  
17 south, Ms. King Jackson was knocked down, kicked in  
18 the stomach, when she went to Albany in July 1962 to  
19 deliver food and supplies to her husband, Slater King,  
20 leader of the Albany movements. Later, King had been  
21 jailed, along with 113 civil rights activists, for  
22 staging protests against the city's segregated public  
23 facilities and businesses. King Jackson was six  
24 months pregnant. She lost consciousness, later lost  
25 her child. The next day, hundreds marched through the

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1 streets of Albany, Georgia in protest. And today we  
2 recognize the life of Ms. Jackson and her lasting  
3 legacy on the civil rights movement.

4 And with that, we move on to the Staff  
5 Director's Report. Mr. Staff Director, do you have  
6 anything to report?

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

8 STAFF DIRECTOR MARCUS: Thank you, Madame  
9 Vice Chair. I'm aware that the Commission has tried  
10 to streamline the business meeting in order to get as  
11 quickly as possible to today's briefing and that our  
12 witnesses are here. There is one matter that I think  
13 would be worth bringing to the attention of  
14 Commissioners, and it is that we are contemplating  
15 bringing on as a consultant an expert in process  
16 improvement matters to assist with process improvement  
17 analysis and implementation at the Commission,  
18 particularly with respect to national office projects  
19 and state advisory committee chartering. The  
20 consultant would be an expert in improvement  
21 methodologies and process mapping, such as Lean and  
22 Six Sigma methodologies. We would want someone who  
23 might be an expert consultant with prior experience  
24 working with public sector entities, reviewing agency  
25 processes, making concrete recommendations for

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1 improvement, and implementing recommendations and  
2 evaluating the results. This would be a part of a  
3 strategy to improve quality and timeliness of  
4 Commission reports and state advisory committee re-  
5 chartering. That's the one point I wanted to bring to  
6 people's attention.

7 COMMISSIONER YAKI: Who is this consultant  
8 that we're talking about?

9 STAFF DIRECTOR MARCUS: We would have an  
10 open competition, and we would see who bids. I am  
11 aware that there are a number of consulting firms who  
12 are in this business. Some of them are large major  
13 consulting firms, and some of them are specialists in  
14 process improvement. We would simply advertise it and  
15 see who the best bidder is.

16 COMMISSIONER YAKI: And where would we get  
17 the funding for this from?

18 STAFF DIRECTOR MARCUS: From our current  
19 operations. We would essentially be funding it out of  
20 the savings from attrition. We lost some staff  
21 members, and it's taken a little longer than we might  
22 have expected to fill some positions, which gives us a  
23 little bit of extra money.

24 VICE CHAIR THERNSTROM: Commissioner Yaki,  
25 you got anything further?

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1 COMMISSIONER YAKI: Not on that topic.

2 VICE CHAIR THERNSTROM: Well, I realize  
3 you might have a few things to say on other topics,  
4 but on that topic that's it?

5 COMMISSIONER YAKI: Yes.

6 VICE CHAIR THERNSTROM: Anybody else got  
7 any questions about the Staff Director's Report? If  
8 not, okay.

9 VICE CHAIR THERNSTROM: So I now need a  
10 motion, the publication of the briefing report on  
11 affirmative action in American law schools. It's a  
12 motion to postpone --

13 COMMISSIONER HERIOT: Motion to postpone  
14 pending resolution of the ethical issue.

15 COMMISSIONER MELENDEZ: I have a couple of  
16 questions --

17 VICE CHAIR THERNSTROM: Yes, Commissioner  
18 Melendez?

19 COMMISSIONER MELENDEZ: -- on the Staff  
20 Director's Report.

21 VICE CHAIR THERNSTROM: Wait a minute.  
22 Where were you just now?

23 COMMISSIONER MELENDEZ: Well, I didn't  
24 know you were going to close out the --

25 COMMISSIONER YAKI: Actually, and I

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1 actually thought it was just one topic of the Staff  
2 Director's Report, so I didn't know --

3 VICE CHAIR THERNSTROM: I see. Okay.  
4 All right. We'll go back to it.

5 COMMISSIONER MELENDEZ: Okay. I had a  
6 question as to, I know that we're having a number of  
7 vacancies within the office, and I didn't see it in  
8 the -- I know that in your last report we talked  
9 about, I mean you had basically said that there are a  
10 number of vacancies: Attorney Advisor; Office of  
11 Staff Director's Chief Budget and Financing; two staff  
12 assistants for Office of Management. Could you just  
13 give us a rundown as to the vacancies and whether or  
14 not these we're filling vacant positions or are we  
15 adding actually brand new positions to the office  
16 here? It relates to actually what's happening in  
17 general to even the regions as to number of vacancies  
18 in regions and the whole process of filling all these  
19 different positions both in the office here and in the  
20 regions. Could you kind of give us some insight as to  
21 what you're actually doing?

22 STAFF DIRECTOR MARCUS: I'll give it a  
23 try. It's a big topic. The Commissioners are  
24 probably aware that we currently have and for quite  
25 some time have had a large number of vacancies. I

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1 believe that the formal number of vacancies in the  
2 Commission is somewhere in the vicinity, and, perhaps,  
3 if we had someone from Office of Management, they  
4 might help me, but I believe it's in the vicinity of  
5 30 or so, which is to say we have slightly greater  
6 than 40, somewhere between 40 and 50 full-time  
7 employees. And I believe that we have in the vicinity  
8 of 70-some odd positions. So we have vacancies, I  
9 believe, and the Director of HR can correct me if I've  
10 gotten those numbers wrong, something in the vicinity  
11 of 30-odd vacancies. That's been true for some number  
12 of years as the Commission's size has shrunk.

13 We do have some positions that are high-  
14 level important positions that we are trying to fill.  
15 I'll try to give you a few examples. I believe,  
16 Commissioner Melendez, you mentioned the vacancy in  
17 the Office of the Staff Director. That's the position  
18 that was filled last time, and I introduced the new  
19 Attorney Advisor, Kara Silverstein. We have a  
20 relatively new vacancy for administrative assistant  
21 or, I forget the title, secretary in the Office of  
22 Management to replace someone who left the agency  
23 about a month or two ago.

24 But beyond that, there are a number of  
25 them in the regional structure which are very

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1 important. We have had for quite some time vacancies  
2 in the regional director positions for Kansas City and  
3 Los Angeles, and we more recently have vacancies for  
4 the Chicago and Kansas City offices. I developed a  
5 plan for dealing with it, which I believe is set out  
6 in a memo I issued on May 9 describing positions in  
7 the regional offices. But, essentially, what I've  
8 been planning to do is to fill the position of  
9 Regional Programs Coordination Unit Chief, which has  
10 been absent for quite some time, and to try to fill  
11 the four regional director positions at a level which  
12 is higher than the Civil Rights Analyst position of 13  
13 which we've had but lower than the 50. In other  
14 words, to get GS-14 for those slots. And in some  
15 cases, they may provide promotion opportunities for  
16 existing employees within the Agency.

17 We also have had a couple of secretarial  
18 vacancies within the regional structure which has  
19 provided an opportunity for promotional opportunities  
20 for a couple of internal secretaries. One secretary  
21 was recently promoted in Los Angeles, and there is a  
22 potential for promotion within the Kansas City office.

23 COMMISSIONER YAKI: Promoted from what to  
24 what in LA?

25 STAFF DIRECTOR MARCUS: In Los Angeles?

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1 COMMISSIONER YAKI: Yes.

2 STAFF DIRECTOR MARCUS: We had for some  
3 time both a junior secretary and a senior secretary,  
4 and I believe the Junior Secretary was at a GS-5 and a  
5 senior at a GS-7. The Senior Secretary, GS-7, retired  
6 after many years of service. And as a result, the GS-  
7 5 secretary was asked to do a higher level and greater  
8 volume of work than she had been doing previously and  
9 a greater volume of work and higher level than is  
10 usually expected of a GS-5. We created a promotion  
11 opportunity to a, I believe it was a GS-6 to reflect  
12 the higher level of work that she had been doing. She  
13 applied for the position and was accepted. She is now  
14 at a GS-6 level.

15 Similarly, we had a GS-7 and a GS-5 from  
16 Kansas City. The GS-7 secretary retired. The GS-5 is  
17 seeking a promotion to a -- I'm sorry, let me retract  
18 that last sentence. There is a position available for  
19 competition at a GS-6 level in Kansas City.

20 COMMISSIONER YAKI: What were the previous  
21 classifications for the Regional Director positions in  
22 Los Angeles, Kansas City, and Denver?

23 STAFF DIRECTOR MARCUS: There were civil  
24 service positions rather than Schedule A Attorney  
25 positions, if that's what you're asking.

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1 COMMISSIONER YAKI: Yes.

2 STAFF DIRECTOR MARCUS: If your question  
3 is more technical, I'm going to need some help with  
4 it.

5 COMMISSIONER YAKI: Well, I mean, help me  
6 with the understanding of the word excepted, E-X-C-E-  
7 P-T-E-D, when you talk about positions.

8 STAFF DIRECTOR MARCUS: That's a term that  
9 usually refers to certain professionals that are hired  
10 into federal government, including attorneys.

11 COMMISSIONER YAKI: And is that separate  
12 and apart from civil service standard filling of a  
13 position?

14 STAFF DIRECTOR MARCUS: The rules are a  
15 little bit different, yes.

16 COMMISSIONER YAKI: Why are we changing  
17 those classifications for those Regional Director  
18 positions?

19 STAFF DIRECTOR MARCUS: Well, that's a  
20 good question. In my experience -- well, let me give  
21 a little context for those who are not familiar. In  
22 the past, we have opened the positions only as a civil  
23 service position. More recently, we are advertising  
24 them as a civil service or, alternatively, an attorney  
25 position. In my experience prior to joining the

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1 Agency, it is, it may be easier to attract a greater  
2 range of applicants, including attorneys, if you  
3 advertise a position in both ways. There are some  
4 attorneys who may be qualified for a position but who  
5 will be less likely to apply for it if it is not  
6 advertised as an attorney position.

7 For instance, at the Department of  
8 Education, what we found was that, for regional  
9 director positions, when we advertised not only as a  
10 civil service position but also as a Schedule A or  
11 attorney position, we found we could encourage a  
12 greater number of attorneys, as well as non-attorneys,  
13 to apply for the position and then simply select the  
14 best qualified applicant. What I found is that there  
15 were many equal opportunity specialists who had many  
16 important skills to bring to that agency in the  
17 regional director position, and some of them were  
18 excellent directors. But there were also many  
19 attorneys who could bring to bear legal analysis and  
20 increase the legal quality of the office. And that by  
21 advertising positions in both ways, we could try to  
22 increase the range of people applying and simply to  
23 select the best person. That's essentially the  
24 technique we've been using in the newly-opened or  
25 recently-advertised regional director positions. It

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1 doesn't mean that we are preferring either to get  
2 attorneys or non-attorneys, it means that we are  
3 trying to encourage everyone who is qualified to  
4 apply.

5 COMMISSIONER YAKI: But, historically, how  
6 those positions have been advertised in vacancies for  
7 civil service only, or have they also been advertised  
8 previously with excepted attorney positions as well?

9 STAFF DIRECTOR MARCUS: To the best of my  
10 knowledge, it's been civil service only.

11 VICE CHAIR THERNSTROM: Why isn't it an  
12 improvement in review to expand the pool?

13 COMMISSIONER YAKI: I think that for an  
14 agency that has morale issues, such as ours, the  
15 ability to seek promotion from within or seek  
16 qualified people from other agencies in similar  
17 positions to come over and take over these  
18 responsibilities is, I think, preferable to wholesale  
19 opening up and bringing in new people who may not have  
20 the same kind of background, experience, or  
21 institutional memory for this agency, which I think  
22 has lost a lot of institutional memory in the past two  
23 years that I've been on the Commission. And this kind  
24 of a change is surprising to me and one that causes me  
25 some concern and why I'm asking the questions.

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1                   VICE CHAIR THERNSTROM:    Yes.    I mean, I  
2 frankly don't understand why the first criterion isn't  
3 getting the best person for the job and that maybe  
4 somebody with what you call an institutional memory,  
5 it may not.    I mean --

6                   COMMISSIONER YAKI:    Maybe I just have a  
7 preference for the idea that positions that  
8 historically have been within the civil service remain  
9 in the civil service.    And that's probably just a  
10 philosophical point that I have on this, but I also  
11 don't believe that absent the right kind of outreach  
12 and recruitment that you certainly can't find someone  
13 in that category, rather than opening the door up to  
14 the outside.

15                  VICE CHAIR THERNSTROM:    Yes, well, should  
16 we move on or somebody else got something to say?

17                  COMMISSIONER MELENDEZ:    I think the only  
18 point maybe Michael is making, including myself, is  
19 that if we are changed from, you know, going in a  
20 different direction or even expanding a process which  
21 we've had in place for a number of years of civil  
22 servants, I think that before we go that route we  
23 should talk about it within the Commission and really  
24 talk about the rationale.    The issue now is that the  
25 way we're putting out the applications or soliciting

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1 for people to fill these positions has already been  
2 put in effect and it's already been broadcast that  
3 we're trying to get applicants both ways. But I think  
4 that if we're going to change from here on out that we  
5 should talk about it as far as the rationale, what  
6 we're doing now after the fact. And I think that's  
7 the only point we're making is that we should, if  
8 we're going to deviate from standing practice, we  
9 should at least know the rationale behind it, and  
10 that's all we're saying.

11 COMMISSIONER YAKI: And as someone who in  
12 his first two or three months on the job here  
13 deliberately made a decision not to request a special  
14 assistant, along with others, for the specific purpose  
15 of ensuring that we had the budgetary means to keep  
16 the regional offices open, I have a very special  
17 interest in what's going on with the regional offices.  
18 I'm surprised at some of the changes that are going on  
19 in terms of how they're going to be staffed and the  
20 recruitment prospect for those jobs.

21 VICE CHAIR THERNSTROM: Well, I mean, it  
22 would seem to me we all have exactly the same interest  
23 in that we want quality people in these jobs. And  
24 especially within a slimmed-down agency, it's  
25 important that every person we hire be of the highest

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1 quality that we can find. I think the rationale has  
2 been stated by the Staff Director: expanding the pool.  
3 But maybe the Staff Director has something more --

4 COMMISSIONER YAKI: Just to let you know,  
5 in terms of that last statement that you made, Vice  
6 Chair Thernstrom, we had a little brouhaha a few  
7 months ago over the fact that whether or not, what the  
8 individual Commissioner's roles were with regard to  
9 the appropriations process. I can tell you right now  
10 that I had been contacted by members of the  
11 Appropriations Committee seeking input as to the issue  
12 of something that should normally bring cheer to  
13 everyone, which is increasing appropriations for the  
14 Agency above and beyond the President's request. But,  
15 you know, due to the various constraints of my  
16 knowledge of how we're proceeding, what we are doing,  
17 and what positions are or are not available, it's  
18 difficult for me to answer the Committee on those  
19 questions, other than to say, generally, we need more  
20 funds, we need these positions. One of the questions  
21 I have is, out of 30 positions that are vacant, how  
22 many of them have we left vacant over the years due to  
23 attrition? What are their classifications and pay  
24 grades? And I guess I'll state this for the record  
25 right now because it would be helpful for me to have

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1 that information in order to pass it on to individuals  
2 who may be interested in seeking to help us secure  
3 additional appropriations for this Agency. Now, I  
4 don't know if the Staff Director is allowed to tell me  
5 that, though, because he's bound to support the  
6 President's staff requests, so I'm kind of in a bind.

7 STAFF DIRECTOR MARCUS: That information  
8 is certainly something we can share with you.

9 COMMISSIONER YAKI: Okay.

10 COMMISSIONER MELENDEZ: I have just one  
11 other question. Are we providing enough time as far  
12 as the, it sounded like we are on short time frames as  
13 far as when these positions close for filling. Do we  
14 have adequate time for getting the right person?  
15 Because I think they're important positions because  
16 they actually play into the issue of the SACs and all  
17 those different situations. My understanding they're  
18 real short time frames. It's almost as if, you know,  
19 anything we can do is move somebody in-house based on  
20 the fact that the time frames are really short for  
21 filling these positions.

22 STAFF DIRECTOR MARCUS: Well, we have two  
23 categories of positions. There are some, for  
24 instance, Regional Director positions, where we have a  
25 likelihood of highly-qualified internal applicants who

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1 we've provided a standard but rather short period, I  
2 believe in the vicinity of ten days. In the Los  
3 Angeles office where we are making a more aggressive  
4 effort for external outreach because we do not have  
5 the qualified applicants, at least in Los Angeles, we  
6 are opening it for a longer period. I believe that it  
7 is announced on a rolling basis for one year and that  
8 we will check the applicant pool on a regular basis, I  
9 think about every 30 days.

10 VICE CHAIR THERNSTROM: Are there any more  
11 questions about the Staff Director --

12 COMMISSIONER MELENDEZ: Yes. I know that  
13 we had one position, and we commend Barbara Fontana,  
14 who for 20 years I believe she has been with us as a  
15 librarian. Are we planning to fill that right away,  
16 or what's the status on that position?

17 COMMISSIONER YAKI: That means I've got to  
18 return my books.

19 STAFF DIRECTOR MARCUS: That's a good  
20 question, and I have not yet decided on that. There  
21 are, essentially, two ways we can go. First, we have,  
22 as you know, two professionals in the library: Ms.  
23 Fontana, whom we will sorely miss upon her retirement;  
24 and Ms. Williamson. They're very busy. We definitely  
25 can use two people in that office. On the other hand,

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1 we have other areas that have not been filled. For  
2 instance, congressional and public affairs. The  
3 question in my mind is whether to backfill for Ms.  
4 Fontana in the library or to backfill finally in a  
5 congressional and public affairs position that's been  
6 vacant. And I'd have to say, at this point, I'm still  
7 assessing the needs in the two areas.

8 COMMISSIONER YAKI: Okay. And that's  
9 going to be helpful for me to get that.

10 COMMISSIONER MELENDEZ: Even with the  
11 regional directors, it sounds to me, because of the  
12 short time frame for soliciting people, it almost  
13 appears that we're going to be moving in-house  
14 analysts into those positions. If that's true, then  
15 what's going to happen is we're going to have to  
16 backfill analysts, and the question would be if you  
17 move analysts into these regional directors, do we end  
18 up with the same situation as the librarians where  
19 you'll say, basically, there's no need to fill  
20 analysts, and we'll just end up with the analysts  
21 being the regional directors and then just basically  
22 cut costs or whatever. We'll have a skeleton  
23 operating regional offices with just a director that's  
24 filled by the analysts and no analyst being filled.

25 STAFF DIRECTOR MARCUS: Well, let me start

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1 by saying I like to have as many people in the  
2 regional structure as we can afford to have consistent  
3 with the budget. But the budget has been very tight,  
4 and that's been a continuing challenge for us. I  
5 think it would be, at a minimum, inappropriate to  
6 comment on who potentially would fill the position  
7 before it's selected because we are adhering very  
8 scrupulously to all the federal rules on applications,  
9 including not pre-selecting individuals. So after we  
10 fill them, we can figure out who has filled the  
11 position and what the ramifications would be. But  
12 what I can say generally is that, while I would like  
13 to get as many people as possible in the regional  
14 office, it is very much the case that I have fewer  
15 people than I would like to have and that I am sure  
16 that, after we've made whatever changes are made based  
17 on the applications and appointments, that we will  
18 continue to have a very tight skeletal staffing in the  
19 regional offices.

20 COMMISSIONER MELENDEZ: Okay. My only  
21 point is I hate to see the regional offices suffer  
22 because we build up capacity within the central office  
23 here, and I hope that doesn't happen.

24 STAFF DIRECTOR MARCUS: I don't think that  
25 will happen, but there is one thing I should say in

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1 connection with that, which is that I think that we  
2 have had some significant challenges as a result of  
3 having a vacancy in the office of the Regional  
4 Programs Coordination Unit Chief. Now, I don't know  
5 whether that's something you would consider to be  
6 national office or regional because the person  
7 actually sits in Washington headquarters but deals  
8 with regional work. It is my view that we can  
9 increase the efficiency and productivity of all of the  
10 offices best if we have someone in a full-time  
11 position.

12 Now, I should say that I very much respect  
13 the hard work which one of our regional directors has  
14 done on an acting basis as RPCU chief. But I do think  
15 that filling that position on a full-time basis, even  
16 though you might describe it as a headquarters  
17 national position, is going to be vitally important to  
18 the regional structure, even if it means having one  
19 fewer person in a regional office.

20 VICE CHAIR THERNSTROM: I am extremely  
21 concerned about the time, so if we could move on it  
22 would be --

23 COMMISSIONER YAKI: I just one, two quick  
24 requests. One, could I get, through electronic means,  
25 the listings for the job announcements for Regional

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1 Director positions in Denver, if available; Los  
2 Angeles; and any other Regional Director positions for  
3 which we're advertising, number one. And number two,  
4 if, in the course of my request for data regarding  
5 personnel, if someone could also give me a budget that  
6 would cover necessary travel for regional director and  
7 regional staff to cover their areas because I've also  
8 heard that sometimes regional directors can't go  
9 anywhere because they don't have the money to do it.

10 STAFF DIRECTOR MARCUS: Well, we've all  
11 been constrained on travel, myself included, and the  
12 Commissioners, I'm sure, have been doing less travel  
13 than they would like to. We can certainly provide the  
14 operational plan for --

15 COMMISSIONER YAKI: No, I already know  
16 about our travel. I was talking about the regional  
17 office travel.

18 STAFF DIRECTOR MARCUS: The operating plan  
19 for regional travel I'd be happy to provide.

20 COMMISSIONER YAKI: Okay.

21 STAFF DIRECTOR MARCUS: And I think the  
22 first point you asked for was the listings or public  
23 announcements on the positions?

24 COMMISSIONER YAKI: No, no, no. Yes, the  
25 first one for the regional directors. And the request

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1 before that had to do with the unfilled vacancies,  
2 what they are, what their pay grades are, what the  
3 budget authority is for them, whether they're not  
4 filled because of attrition or what have you, so that  
5 I can see what I can do to deal with it.

6 STAFF DIRECTOR MARCUS: That's fine.

7 COMMISSIONER MELENDEZ: Just a last  
8 question for this. RPCU Chief, that's here in this  
9 office?

10 COMMISSIONER YAKI: That's the regional  
11 programs chief, right?

12 STAFF DIRECTOR MARCUS: It's the head of  
13 regional programs who works within Washington  
14 headquarters, yes.

15 COMMISSIONER MELENDEZ: But that's going  
16 to be an in-house filling of that one, also?

17 STAFF DIRECTOR MARCUS: That's correct.

18 VICE CHAIR THERNSTROM: But that's not an  
19 also, that is the position that the Staff Director was  
20 talking about before.

21 COMMISSIONER MELENDEZ: Okay. So it's  
22 already filled or --

23 STAFF DIRECTOR MARCUS: No, no, it's been  
24 advertised internally, and my hope is that we will  
25 have qualified applicants from whom I can make a

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1 selection. And if so, then, yes, it will be filled  
2 internally.

3 COMMISSIONER MELENDEZ: But we're real  
4 limited, though, aren't we, if we're just in-housing  
5 it here?

6 STAFF DIRECTOR MARCUS: I believe we have  
7 some very qualified people, and I'm hoping that they  
8 will apply. It's true that there are not very many  
9 for that position, but we do have some good people.

10 VICE CHAIR THERNSTROM: Okay. We're  
11 moving on, and I apologize for those who have come as  
12 witnesses. The morning has been a bit delayed, but  
13 let's see if we can move quickly here.

14 **V. Publication of the Briefing Report on Affirmative**  
15 **Action in American Law Schools**

16 VICE CHAIR THERNSTROM: I need a motion on  
17 the postponement of the law school, affirmative action  
18 in American law school briefing report.

19 COMMISSIONER HERIOT: I want to move to  
20 delay it pending resolution of my issue, so I would so  
21 move.

22 VICE CHAIR THERNSTROM: Can I have a  
23 second on that?

24 COMMISSIONER KIRSANOW: Second.

25 VICE CHAIR THERNSTROM: Any discussion on

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1 that? Yes, Commissioner Yaki?

2 COMMISSIONER YAKI: I'd like to amend the  
3 motion to include delaying consideration of the State  
4 Advisory Committee issues on Virginia and Michigan  
5 until that answer is brought back up.

6 VICE CHAIR THERNSTROM: We're going to get  
7 to the State Advisory Committee issues in a minute.  
8 Why don't you simply hold your motion at that point to  
9 delay it? Why is it part of this package?

10 COMMISSIONER YAKI: Because I made the  
11 motion. Do I have a second?

12 COMMISSIONER MELENDEZ: I'll second that.

13 VICE CHAIR THERNSTROM: Any discussion of  
14 the motions? They're completely different topics. I  
15 need to consult with the parliamentarian evidently.  
16 It's a completely, the parliamentarian tells me it is  
17 a completely different topic. It is not appropriate  
18 to put the two topics together in one motion. You are  
19 saying -- I mean, yes, I mean the question can be  
20 divided. The law school briefing. We're going to get  
21 to the SAC question. You, at that point, make a  
22 motion on the SAC. What would you like to do at this  
23 point? The parliamentarian has just given us advice.

24 COMMISSIONER YAKI: Well, if you want to  
25 make the motion that it's out of order, then do so,

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1 but I'm not going to withdraw my amendment to the  
2 motion.

3 COMMISSIONER KIRSANOW: Why don't we  
4 simply vote on Michael's amendment, and then that will  
5 put forth square the severing of the two subjects.

6 VICE CHAIR THERNSTROM: It's out of order.  
7 I'm sorry, it's out of order. The parliamentarian  
8 informs me that it is out of order. So we are back to  
9 a motion that has been made and seconded, I believe,  
10 to postpone for two months --

11 COMMISSIONER HERIOT: Well, I didn't say  
12 for two months. I just said pending. This is just on  
13 my issue.

14 VICE CHAIR THERNSTROM: I see. I see.  
15 Okay.

16 COMMISSIONER TAYLOR: I was going to move  
17 to further refine the motion that we postpone it  
18 specifically for two months, and I think that should  
19 be a sufficient amount of time to have Commissioner  
20 Heriot, have her issues addressed by the staff, and  
21 that the Commission just ask the Staff Director to set  
22 a date. I understand you collect all this information  
23 to put on the web site, and you give us another date  
24 by which all the information from Commissioners on the  
25 report should be received so it can be collected on

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1 the web site.

2 COMMISSIONER YAKI: Woe, woe, woe, I think  
3 the time for collecting information from Commissioners  
4 was closed as of midnight --

5 COMMISSIONER TAYLOR: Well, she hasn't  
6 submitted anything, I know that.

7 COMMISSIONER YAKI: She submitted, she  
8 submitted information --

9 VICE CHAIR THERNSTROM: Are you suggesting  
10 re-opening the record for the Commissioners  
11 themselves?

12 COMMISSIONER TAYLOR: Yes, I am.

13 VICE CHAIR THERNSTROM: Is that part of  
14 your motion?

15 COMMISSIONER TAYLOR: For the  
16 Commissioners themselves, yes.

17 VICE CHAIR THERNSTROM: So could you  
18 restate the motion?

19 COMMISSIONER TAYLOR: I would move that,  
20 for purposes of publication, what would be included in  
21 the affirmative action report on American law schools,  
22 that we reopen the record insofar as it pertains to  
23 Commissioner submissions and that we extend the time  
24 for publication for two months, and I think that would  
25 give Commissioner Heriot time to have her issues

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1 addressed.

2 COMMISSIONER YAKI: One clarification. If  
3 the question is whether or not Commissioner Heriot's  
4 information can be included, that's separate and apart  
5 from opening the record for additional information.  
6 If you want to open it for additional information, I  
7 have deep problems with that.

8 COMMISSIONER TAYLOR: By additional  
9 information, I meant comments from Commissioners.

10 COMMISSIONER YAKI: But we're only dealing  
11 with a possible subtraction, not addition. I find it  
12 highly irregular that we would have a time that was  
13 negotiated for comments to this report and then now  
14 we're being told that we can reopen the whole books on  
15 it and rewrite everything that we've done before. I  
16 think that, in terms of staff delay or staff time,  
17 that the question is whether or not Commissioner  
18 Heriot's piece, statements that she wrote, can be  
19 adequately resolved through this ethics issue that she  
20 has raised. That is a different question. In other  
21 words, if it can't be resolved, then they're  
22 withdrawn. If they can be resolved, they can be  
23 included. But what you're doing is opening the whole  
24 thing up to everything.

25 COMMISSIONER BRACERAS: Well why don't we

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1 vote on two separate motions. Let's resolve  
2 Commissioner Heriot's issue, and then if Commissioner  
3 Taylor has other issues, we can raise that separately.

4 VICE CHAIR THERNSTROM: Well, if we do  
5 that, I would like the first vote to be on opening the  
6 record, once again, for Commissioner input.

7 COMMISSIONER HERIOT: You want to go with  
8 Ashley's motion as a motion without mine first? Is  
9 that --

10 VICE CHAIR THERNSTROM: I mean, if we're  
11 going to separate the two, I mean there doesn't seem,  
12 to me, any, and I'll turn to the parliamentarian  
13 again, this does not seem to be two issues that need  
14 to be separated. Commissioner Ashley has made one  
15 motion that's got two parts to it. They're both, you  
16 know, part of it, simply a package of postponement.  
17 Is there any reason why we have to separate these two?

18 MS. MONROIG: No, I don't think so.

19 VICE CHAIR THERNSTROM: Well, I would  
20 prefer then simply a vote on Ashley's motion, which  
21 has been seconded, I believe. Is that correct? It's  
22 been seconded?

23 COMMISSIONER HERIOT: Well, if it hasn't  
24 been, I'll second it.

25 VICE CHAIR THERNSTROM: Okay.

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1 COMMISSIONER TAYLOR: I'm in favor of that  
2 bridge.

3 VICE CHAIR THERNSTROM: All right. Is  
4 there any further discussion of voting on Ashley's  
5 motion --

6 COMMISSIONER BRACERAS: I'm sorry. What  
7 specifically is Commissioner Taylor's motion?

8 COMMISSIONER TAYLOR: It will allow  
9 Commissioners to submit reports, submit comments  
10 rather --

11 COMMISSIONER BRACERAS: Because if we're  
12 holding it open for Gail anyway

13 COMMISSIONER TAYLOR: Correct.

14 COMMISSIONER BRACERAS: -- anyway, if you  
15 or I --

16 COMMISSIONER YAKI: Wait, wait, wait.  
17 We're not holding it open for Gail to make new  
18 comments. We're holding it open for Commissioner  
19 Heriot to determine whether or not --

20 COMMISSIONER BRACERAS: No, I understand.  
21 Commissioner Taylor's motion, as I understand it, I  
22 think what he's saying is since Commissioner Heriot  
23 needs time to resolve an issue anyway, for those of  
24 us, we're not changing anything that's there, that  
25 those of us who may not have read now would have the

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1 time to do so.

2 VICE CHAIR THERNSTROM: Well, in addition,  
3 if Commissioner Heriot wants to write further, she  
4 would also have additional time.

5 COMMISSIONER HERIOT: Yes, but there is  
6 some new issues being brought up that I didn't expect  
7 to be brought up. There are all sorts of things in  
8 here.

9 COMMISSIONER YAKI: What do you mean by  
10 new issues? What do you mean by new issues?

11 COMMISSIONER HERIOT: Your extensive  
12 comments about procedures.

13 COMMISSIONER YAKI: I don't see how that  
14 was a new issue at all. We talked about it ad nauseam  
15 during many of the hearings, Commissioner Heriot. If  
16 you couldn't anticipate that, that's not my problem.  
17 The whole point of the deadline was the deadline. Now  
18 if we're going to open it all up, I expect that we'll  
19 have new comments of our own to put in. If we want to  
20 keep on playing this ping-pong of reopening it up,  
21 fine; we can do so. Not my problem.

22 VICE CHAIR THERNSTROM: We're not going to  
23 keep playing what you call ping-pong here, but if we  
24 are holding this open, if we are postponing the vote,  
25 which is the suggestion, which we actually voted on

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1 already. No, we amended the agenda; I'm sorry. We're  
2 postponing the vote. Then that time should  
3 additionally be available, it seems to me, for any  
4 additional comments from Commissioners, including  
5 additional comments of Commissioner Heriot. She's a  
6 commissioner. She would also have that privilege.

7 COMMISSIONER YAKI: As would I.

8 VICE CHAIR THERNSTROM: As would you  
9 absolutely.

10 COMMISSIONER KIRSANOW: Call the question.

11 VICE CHAIR THERNSTROM: I'm calling the  
12 question. All in favor?

13 (Chorus of ayes.)

14 VICE CHAIR THERNSTROM: All opposed?

15 COMMISSIONER YAKI: No.

16 VICE CHAIR THERNSTROM: Let the record  
17 show that Commissioners Yaki and Melendez have opposed  
18 and it was, otherwise, unanimous. So the record will  
19 be open for two months, and any commissioners can  
20 submit further comments on the substance of the report  
21 that they wish. Okay. We are now moving on now.

22 Distinguished members of the panel, I do  
23 want, once again, to apologize to you for the delay  
24 here this morning. We're really looking forward to  
25 what is an incredibly important discussion on what I

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1 call the mini-Blaine Amendment. Some people call them  
2 baby Blaine, but whatever. So we appreciate your  
3 being here and --

4 COMMISSIONER YAKI: Point of order. Are  
5 we skipping the State Advisory Committee reports?

6 VICE CHAIR THERNSTROM: No, we're doing  
7 them right this minute.

8 COMMISSIONER YAKI: Okay.

9 VICE CHAIR THERNSTROM: I simply  
10 apologize, once again, for the delay.

11 COMMISSIONER YAKI: I was here on time.

12 VICE CHAIR THERNSTROM: Commissioner Yaki,  
13 I'm sorry for the delay. I apologize to you, as well,  
14 for the delay.

15 **VI. State Advisory Committee Issues**

16 VICE CHAIR THERNSTROM: We are considering  
17 next the motions to re-charter the Virginia and  
18 Michigan State Advisory Committee. These motions have  
19 now been before the Commission for two months will be  
20 voted on at this meeting. At the April 13th meeting  
21 these motions were tabled in respect to the House  
22 Committee on the judiciary. At the time the Chairman  
23 wanted to have an opportunity to answer a letter  
24 received from Chairman Conyers and Chairman Nadler  
25 about the SACs. The Commission responded on May 10th,

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1 2007 to the letter. Congressman Nadler then sent a  
2 letter that requires both answers to interrogatories  
3 and the production of documents. On May 24th, the  
4 Chairman responded that the Commission would provide a  
5 response as soon as it was able to, which he estimated  
6 as four weeks from receipt of the May 10 letter.

7 At the May 11th meeting, the motion to re-  
8 charter the Virginia and Michigan SACs were tabled  
9 once again until today. After two months, we must act  
10 on these motions. The SACs need to assist the  
11 Commission with its fact-finding, investigative, and  
12 information dissemination functions. Too much time  
13 has obviously elapsed. Therefore, the first motion  
14 that will be considered is to re-charter the Virginia  
15 State Advisory Committee. Under this motion, the  
16 Commission appoints the following individuals to that  
17 committee based on the recommendation of the Staff  
18 Director: Linda Chavez recommended as Chairperson;  
19 Lloyd R. Cohen; Stanley A. Cook; Edmund Cooke; Horace  
20 Cooper; Toa Q. Do, and forgive me if I'm mispronounced  
21 the name; Rachel H. Fisher; Todd Gaziano; Louisa Coan  
22 Greve; James M. Hingeley; Curt Levey; Richard Samp;  
23 Jeanene E. Sims; Andrew Shannon; Ryung Suh; Jason  
24 Torchinsky; Lacy B. Ward, Jr.

25 I also move that the Commission appoint

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1 Linda Chavez as Chairperson of the newly-chartered  
2 Virginia State Advisory Committee. These members will  
3 serve as uncompensated government employees, and the  
4 Commission appreciates the hard work they will no  
5 doubt contribute to this State Advisory Committee.  
6 Under this motion, the Commission authorizes the Staff  
7 Director to execute the appropriate paperwork for the  
8 appointment. Can I have a second?

9 COMMISSIONER KIRSANOW: Second.

10 COMMISSIONER YAKI: Point of order. The  
11 three resumes we got today, are they included in the  
12 motion?

13 STAFF DIRECTOR MARCUS: Yes, they are.

14 COMMISSIONER YAKI: Were they read? I  
15 didn't hear some of the names.

16 VICE CHAIR THERNSTROM: I am reading the  
17 names that I've got.

18 STAFF DIRECTOR MARCUS: The three names to  
19 which you're referring I believe would be --

20 COMMISSIONER YAKI: Gaziano.

21 VICE CHAIR THERNSTROM: Gaziano I named.

22 COMMISSIONER YAKI: Cooke.

23 STAFF DIRECTOR MARCUS: And Greve.

24 VICE CHAIR THERNSTROM: And Greve. I did  
25 name those.

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1 COMMISSIONER YAKI: Okay. Can I divide  
2 the question on the issue of the Chair?

3 VICE CHAIR THERNSTROM: Have we got a  
4 second on that?

5 COMMISSIONER MELENDEZ: Second.

6 VICE CHAIR THERNSTROM: Is that a motion?  
7 I guess we have to vote separately on dividing the  
8 issue, do we? Yes. All in favor of dividing the  
9 issue of the Chair versus the other appointments?

10 COMMISSIONER YAKI: Dividing the motion is  
11 not a motion that requires a vote.

12 STAFF DIRECTOR MARCUS: No, it does not.

13 VICE CHAIR THERNSTROM: It does not?

14 COMMISSIONER YAKI: You just divide it. It's  
15 just two votes.

16 VICE CHAIR THERNSTROM: Okay. Let us vote  
17 on the appointments other than the Chair. Is that  
18 what we're doing here?

19 STAFF DIRECTOR MARCUS: That would be  
20 great.

21 VICE CHAIR THERNSTROM: Yes. Okay. All  
22 in favor of --

23 COMMISSIONER YAKI: Is there discussion on  
24 this?

25 VICE CHAIR THERNSTROM: Oh, discussion.

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1 I'm sorry.

2 COMMISSIONER MELENDEZ: Yes. Commissioner  
3 Melendez. I just wanted to just elaborate a little  
4 bit. As you know, there are a number of issues that  
5 we have concerning, in fact, we sent a letter to the  
6 Staff Director and the other commissioners just May  
7 31st on some of our concerns. And I think one of  
8 those is the disparity issue on gender. That's just  
9 one of the many issues that we have in, basically,  
10 making sure our process is working here at the  
11 Commission as far as having a broad number of people  
12 that participate on these SACs. Not only that, with  
13 the inquiry by the subcommittee, the judicial, and all  
14 these different things all happening all at the same  
15 time, I think that we have to take the situation  
16 seriously because if we don't address it at some point  
17 and we just keep plowing forward, you know, I don't  
18 think that's responsible of the Commission, basically,  
19 on some of the statistics that we've looked on  
20 historically. When we see, you know, women are  
21 basically not participating on an equal footing as  
22 men, I mean we're the Commission on Civil Rights. And  
23 I think that gender and all those different things are  
24 basically part of what we're all about here at the  
25 Commission. So if we're just going to turn a blind

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1 eye to not even looking at the statistics and just  
2 move forward, I don't think that's responsible of what  
3 we're charged with doing.

4 COMMISSIONER BRACERAS: Can I be heard?

5 COMMISSIONER MELENDEZ: I'm still talking.  
6 Let me finish. Thank you, Ms. Braceras. But even if  
7 we look at the Virginia, when we talk about, you know,  
8 79 percent men, 21 percent women on this one, and it's  
9 just a continuing situation of what we pointed out.  
10 And there are only 12 SACs that actually have been  
11 approved so far, and I recognize that we still have,  
12 you know, 40 or so or 38, something like that, to  
13 charter. But I think we need to address this issue at  
14 some point. You know, I just don't think we're not  
15 really looking at that. I don't know. I'm just  
16 hoping for a discussion before we vote on this very --

17 COMMISSIONER BRACERAS: Yes, I'd like to  
18 discuss this, if I could be heard.

19 COMMISSIONER MELENDEZ: Sure.

20 COMMISSIONER BRACERAS: I guess my  
21 response is this. If you have specific concerns about  
22 this SAC or individuals on this SAC and their  
23 qualifications to serve on the SAC, then, by all  
24 means, bring them up. But if you have concerns about  
25 the statistical breakdown or the process of which we

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1 choose SAC members, then, frankly, I consider that  
2 discussion closed. I mean, we had lengthy, lengthy,  
3 lengthy meetings, discussions, and, ultimately,  
4 conclusions on how we were going to choose SACs. We  
5 made a deliberate decision to move away from a model  
6 of proportional representation and statistical  
7 analyses of specific groups, and we decided to choose  
8 people based on their resumes and their qualifications  
9 rather than their skin color and their gender. And we  
10 discussed that ad nauseam, and we voted on the  
11 procedure and the policy. So that is a closed issue.

12 If you want to talk about these particular  
13 members and whether or not they're qualified, there is  
14 that different issue, so be my guest.

15 COMMISSIONER MELENDEZ: My point -- this  
16 is Commissioner Melendez. If we were to end up with  
17 95 percent men and 5 percent women, and I think that  
18 nothing is set in stone. We can set some policy, but  
19 as we look at --

20 COMMISSIONER BRACERAS: Yes, if you have a  
21 majority to change the policy, you can do that, but I  
22 don't think you do.

23 COMMISSIONER MELENDEZ: But I'm saying I  
24 have the right to raise the issue to all of the  
25 commissioners --

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1                   COMMISSIONER BRACERAS:    Right.    And I'm  
2   telling you that we have a majority for a different  
3   policy, and that majority has not changed.    In fact,  
4   it's only increased.

5                   COMMISSIONER YAKI:     Well, I'm so proud  
6   that you're able to count it that way, Jennifer --

7                   COMMISSIONER BRACERAS:   Thank you.

8                   COMMISSIONER YAKI:     -- because just to  
9   point out this points out to me, as I stated in my  
10  separate dissent on the American law school report,  
11  that this Commission has taken quite a wrong turn.   I  
12  objected to the criteria as they were adopted by the  
13  majority a year ago.   I predicted that this kind of  
14  event would happen.   We are not talking nearly about,  
15  quote/unquote, best qualified individuals, but we are  
16  also talking about ensuring that there was a fairly  
17  balanced viewpoints spread across there.   And if you  
18  look at the statistics in terms of breakdowns among  
19  party lines, gender lines, in education, in fields,  
20  there is skewing in every single category that would  
21  not seem to lend any credence to the majority's claim  
22  a year ago that this would increase and broaden the  
23  balance of the Commission.   To the contrary, it has  
24  skewed it so totally to one side as to make the SACs  
25  pretty much a toothless laughing stock in terms of

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1 their ability to handle the issue of civil rights.

2 So, yes, Commissioner Braceras, you do  
3 have the majority. Yes, you did have the vote to  
4 change it. And, yes, it is the right of Commissioner  
5 Melendez and myself to point out the fact that those  
6 things which we knew would happen have indeed  
7 happened, and that Virginia is just yet another  
8 example down the road of the fact that the Commission  
9 of Civil Rights turns a blind eye to its  
10 responsibilities to promote and increase diversity,  
11 awareness of affirmative action, and civil rights in  
12 this country.

13 COMMISSIONER BRACERAS: I really didn't  
14 know that our mandate was to promote diversity and  
15 affirmative action.

16 COMMISSIONER YAKI: Well, you know, it may  
17 be that --

18 COMMISSIONER BRACERAS: Our statutory  
19 mandate is to study civil rights issues --

20 COMMISSIONER YAKI: Our statutory mandate  
21 --

22 COMMISSIONER BRACERAS: -- not to promote  
23 a particular policy agenda one way or the other.

24 COMMISSIONER YAKI: Commissioner Braceras,  
25 we can agree to disagree on that. That is certainly

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1 my point of view, and that was a point that was not  
2 carried in the majority vote on this issue. My point,  
3 though, continues --

4 COMMISSIONER BRACERAS: Your point --

5 COMMISSIONER YAKI: My point continues --

6 COMMISSIONER BRACERAS: -- racial  
7 preference. Is that your point of view?

8 COMMISSIONER YAKI: Well, shall we get  
9 into a debate on this right now?

10 COMMISSIONER BRACERAS: I just want a yes  
11 or no. Is that your perspective?

12 COMMISSIONER YAKI: I believe that this  
13 Civil Rights Commission has a commitment to do  
14 everything that it can in its power to increase  
15 awareness of, promote internal programs that ensure  
16 that the citizens of this country are afforded every  
17 opportunity to fulfill their highest qualities,  
18 regardless of race, color, or creed. And if the means  
19 by which to effectuate that include policies that  
20 recognize, promote, affirmatively take actions that  
21 are based upon race, gender, whatever, to remedy past,  
22 present, and future discrimination, yes, I do believe  
23 that. And that is my philosophy. It was a philosophy  
24 of the Commission back when it was created in 1957  
25 when they were --

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1 VICE CHAIR THERNSTROM: Affirmative action  
2 was not an issue in --

3 COMMISSIONER YAKI: Not affirmative, but  
4 they were charged with changing the way this country  
5 dealt with, they investigated without the benefit of  
6 congressional action in terms of where they could or  
7 could not go. They investigated, they subpoenaed.  
8 They boldly moved forward to say these things are  
9 wrong. You have managed to put together SACs that are  
10 going to sit around and twiddle their thumbs and talk  
11 about, oh, isn't everything great now, except for the  
12 fact all those pesky programs that help people of  
13 color?

14 COMMISSIONER BRACERAS: Okay. You know  
15 what? With all due respect, that's a complete non-  
16 sequitur. We are here to discuss at this moment the  
17 appointment of the Virginia SAC. You can discuss them  
18 on the merits and you can vote against them or you can  
19 vote for them. But the policy is not open to debate  
20 right now, and if you want to raise it --

21 COMMISSIONER YAKI: Well, it's fine that  
22 we would close debate when you were among the first  
23 people when I first came to the Commission who said we  
24 should be allowed to debate, we should be allowed to  
25 discuss, and now here you are saying let's close it

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1 all and change it all.

2 COMMISSIONER BRACERAS: We had that  
3 debate.

4 VICE CHAIR THERNSTROM: All right. We  
5 need to focus on the issue at hand. Everybody is in  
6 agreement on the goals that you stated, Commissioner  
7 Yaki. There is disagreement over the means. That is  
8 no surprise. There has been disagreement over the  
9 means. It is not part of our statutory mandate to  
10 promote racially-preferential policies, though you may  
11 think those are the only means that promote the goals  
12 that you were talking about of furthering racial  
13 equality in this country and gender equality. You  
14 seem to imply in your comments on gender that gender  
15 is a point of view and that, if there is a lack of  
16 proportional gender representation, we somehow, as  
17 Commissioner Braceras said, lack diversity in  
18 viewpoints, and I think that that's, as she has  
19 stated, a non-sequitur. I think there's a motion on  
20 the table, and it needs to be voted on.

21 COMMISSIONER YAKI: I think that would be  
22 very surprising to the people back in the 1920s who  
23 chained themselves to the White House to vote thinking  
24 that the viewpoint, no further viewpoint of women  
25 should be included in the ability to vote for the --

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1 VICE CHAIR THERNSTROM: Nobody is  
2 excluding women. We do not have --

3 COMMISSIONER YAKI: We have 24-percent  
4 women in the Virginia SAC. Overall, we have 35  
5 percent --

6 COMMISSIONER BRACERAS: If we had 50-  
7 percent women and they all thought like Commissioners  
8 Thernstrom, Heriot, and myself, something tells me you  
9 wouldn't be pleased.

10 COMMISSIONER YAKI: I wouldn't be pleased,  
11 but, nevertheless, I wouldn't be thinking to myself  
12 this criteria that you adopted is so fatally flawed  
13 that it can't even do a good job of playing with the  
14 numbers for your own side.

15 VICE CHAIR THERNSTROM: I see. All women  
16 think alike, and I would like to move on to the  
17 question here. Can we have a vote on --

18 COMMISSIONER YAKI: Oh, I would disagree  
19 with that statement.

20 VICE CHAIR THERNSTROM: Well, you are  
21 implying --

22 COMMISSIONER YAKI: Not at all. Not at  
23 all.

24 VICE CHAIR THERNSTROM: I'm sorry. There  
25 isn't --

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1                   COMMISSIONER YAKI:     That was Jennifer's  
2 point.

3                   COMMISSIONER BRACERAS:   My point was that  
4 your professed concern for the gender balance on this  
5 Commission seems to me to be a pretext for something  
6 else because if, hypothetically, the SAC were 50-  
7 percent female, that they happened to be conservative  
8 women, and I'm not saying Commissioners Thernstrom,  
9 Heriot, and myself agree on every issue, but we all  
10 lean conservative. And if that were the case in the  
11 SAC, you'd be equally as displeased. So your  
12 professed concern with the gender balance is, in my  
13 view, a pretext for your view about what they should  
14 look like --

15                  COMMISSIONER YAKI:     You may choose to  
16 think what you want, Commissioner Braceras. I'm  
17 simply pointing out the fact that, apparently, your  
18 great criteria has resulted in a skewing of the SACs  
19 that is so far out of balance with what the goals,  
20 purported goals of your reforms were supposed to be.

21                  VICE CHAIR THERNSTROM:   Well, I do not  
22 think that is correct, and you are going to object, I  
23 can safely predict, to the appointment of Linda  
24 Chavez, who, of course, is a woman as Chair. But  
25 somehow that will not count. Commissioner Melendez,

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1 do you have a fast comment? Because I think we really  
2 need to take a vote on this. We do have people  
3 waiting here as witnesses, and this is not fair to  
4 them.

5 COMMISSIONER MELENDEZ: Well,  
6 unfortunately, when we put the controversial issue,  
7 like the SACs, before briefing, this is what we're  
8 stuck with, so it's not my fault. I'm just responding  
9 to the way this meeting is structured. So with that,  
10 you know, I have questions as far as the process, and  
11 I always had, as far as the responsibilities of the  
12 regions and the SACs themselves as to how we actually  
13 get a list of 11 people or 12 or whatever it is on  
14 getting, as to how these applications actually come in  
15 to the Commission. You know, that's my concern.

16 As you know, there were some applications,  
17 basically, that really had nothing, very little  
18 written as far as why they wanted to even be on the  
19 State Advisory Committee. Some of these applicants  
20 actually have resumes that have nothing to do with why  
21 they would want to be on the State Advisory Committee.  
22 Some of them, basically, just sent their resumes in.  
23 Even the situation with Linda Chavez, who you're  
24 recommending as Chair, I think there's just a resume  
25 there. It doesn't really even have a statement

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1 stating why she would want to be on the State Advisory  
2 Committee.

3 VICE CHAIR THERNSTROM: What would qualify  
4 as a statement as to why she wants -- I mean, she used  
5 to be Staff Director here.

6 COMMISSIONER MELENDEZ: Well, I mean, I  
7 think we're talking about a process here. So if  
8 somebody -- and I think on that application form  
9 itself it says something about saying something about  
10 why you want to be on the State Advisory Committee.  
11 If somebody sent one in blank with nothing there, the  
12 question is would we basically consider them at all.  
13 I'm just talking about processes here as to how we  
14 gain that.

15 And then I asked the question on whether  
16 or not the recommendations should come from the  
17 regions as far as who those people should be or even  
18 some solicitation from the SACs themselves or  
19 something like that because I know that there's a lot  
20 of question as to who actually makes the call and who  
21 puts these people actually on this list here, all the  
22 way from the office here of the Staff Director. And I  
23 think that, at some point, we need to actually  
24 determine how did those names get picked. There's  
25 some situations where some of these applications may

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1 not have been filled out by the person themselves, and  
2 they may have been filled out by even the office here,  
3 by staff or the Staff Director here, and I don't think  
4 that's actually appropriate for us to be doing that. I  
5 think that if a person is not going to fill out their  
6 own application and send it in they shouldn't even be  
7 considered for the appointment. Those are points that  
8 I think are valid questions that we need answered.

9 I would ask the question how many of the  
10 17 names in this recharger did the regional staff send  
11 applications to without any intervention from this  
12 office here? I mean, that's a valid question that I'd  
13 ask the Staff Director.

14 STAFF DIRECTOR MARCUS: So the question is  
15 how many applications were sent by regional offices  
16 without any involvement from the Staff Director?

17 VICE CHAIR THERNSTROM: Well, there's also  
18 been a charge that you are filling out applications,  
19 and the people themselves, the nominees themselves are  
20 not applying and filling out their own application.

21 STAFF DIRECTOR MARCUS: Let me take those  
22 two separately, and maybe I'll take the latter one  
23 first.

24 VICE CHAIR THERNSTROM: He has charged  
25 both. He has charged -- take the latter one first.

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1                   STAFF DIRECTOR MARCUS:   Okay.  I'll take  
2                   the latter one first.  We've had different ways of  
3                   trying to have the applications filled out.  And the  
4                   involvement of staff has deferred both regionally and  
5                   on a case-by-case basis.  The most common way is  
6                   simply to send the materials out to the applicant and  
7                   ask them to fill it out and send it in.  In some  
8                   cases, they will fill it out, they'll send it in, and  
9                   a staff member will say, well, there's some things you  
10                  might want to consider because a question isn't  
11                  answered or something could be added.

12                  In some cases, the staff will, at some  
13                  point, either at the beginning or in the middle, will  
14                  work with the applicant on the filling out of the  
15                  application.  And in some cases, the staff member will  
16                  begin the process.  In other words, it will  
17                  essentially help start the writing of the application  
18                  and then get in a dialogue based on information from  
19                  the applicant, then have a conversation with the  
20                  person.  If it's accurate, what you would add, and  
21                  essentially work with the applicant to get the  
22                  document filled.

23                  What I found was that, on a regional  
24                  basis, where the regional staff was doing more of the  
25                  work on their own, they were chartering the SACs must

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1 more rapidly and efficiently, and we were having much  
2 more success in getting SACs chartered than in those  
3 areas where the region was leaving the work entirely  
4 up to the applicants. So I've encouraged, in some  
5 cases, for staff to be more aggressive about working  
6 with the applicants, especially in cases where we've  
7 been falling behind or it's taken an unusually long  
8 period of time to get a particular state chartered, or  
9 where there was some reason why we wanted to get  
10 things done quickly.

11 So I would say that we've done it in all  
12 of those different ways, including having staff take a  
13 very active role in the preparation of the  
14 applications.

15 COMMISSIONER MELENDEZ: Okay. Let me ask  
16 this question. Have you sent or instructed regional  
17 staff to send applications to certain people, rather  
18 than the regional staff director himself making that  
19 call?

20 STAFF DIRECTOR MARCUS: Well, I've  
21 certainly asked them to reach out to various people,  
22 and I'm sure they've inferred that that might include  
23 sending out the application packets, so there's no  
24 question that there are many cases that application  
25 packages have been sent out because I provided a name.

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1                   VICE CHAIR THERNSTROM: This is, it seems  
2 to me, off track. I'm sorry. We need to have a vote  
3 on these names --

4                   COMMISSIONER MELENDEZ: I don't think it's  
5 off track at all. I think that we're talking about a  
6 process here that either the regional directors have a  
7 great say in coming up with a list of people in the  
8 region or either it's controlled by the Staff Director  
9 in the office here as to picking somebody out in  
10 California or people that you know out there and  
11 basically you send the applications to them directly  
12 rather than the regional directors really having  
13 control over that.

14                   And that's the same reason why we even  
15 question the issue on whether or not attorneys should  
16 actually hold those regional director spots or whether  
17 or not it should be under civil service because it  
18 raises in my mind, after we kind of see the process  
19 unfolding here, that there's tremendous influence as  
20 to the Staff Director of this office controlling who  
21 actually is going to end up on these SACs nationwide.  
22 That's a real concern to us, and my position has  
23 always been that we need to work on this so that we  
24 better define as the role of the regional directors as  
25 to how much say they have and basically setting forth

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1 a certain number of people within their regions with  
2 input from the SAC people. Otherwise, you know, we're  
3 always going to be scrutinized as to the process of  
4 how these people are selected.

5 And I think that it's the same situation  
6 where we kind of just don't really want to talk about  
7 those real important decisions on how these people are  
8 selected. And I think that's an important issue that  
9 we can't just sweep under the rug and just move on,  
10 and that's one of the concerns that I have on this  
11 whole issue.

12 COMMISSIONER KIRSANOW: Madame Chair, with  
13 all due regard to, I think, the very appropriate  
14 questions raised by Commissioner Melendez,  
15 Commissioner Braceras is correct insofar as at least  
16 two Commission meetings the process issues were  
17 debated, the selection issues were debated. This is a  
18 process question that doesn't go pertinently to the  
19 discrete issue of the Virginia SAC, and I would call  
20 to question.

21 VICE CHAIR THERNSTROM: Can I have a  
22 second on that?

23 COMMISSIONER TAYLOR: Second.

24 VICE CHAIR THERNSTROM: Yes. Okay. I  
25 would like to vote. We are going to vote right now on

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1 these members, and a separate vote will be taken on  
2 the chair. All in favor of appointing the members  
3 that have been listed to the Virginia SAC?

4 (Chorus of ayes.)

5 VICE CHAIR THERNSTROM: I have some  
6 opposition, I believe. All opposed?

7 COMMISSIONER YAKI: No.

8 COMMISSIONER MELENDEZ: Opposed.

9 VICE CHAIR THERNSTROM: Okay. Let the  
10 record show Commissioner Melendez and Commissioner  
11 Yaki have opposed. It is otherwise unanimous. Let us  
12 move on to the Chair. This is now a separate motion  
13 to appoint Linda Chavez as Chair of the newly re-  
14 chartered Virginia State Advisory Committee. May I  
15 have a second on that?

16 COMMISSIONER KIRSANOW: Second.

17 VICE CHAIR THERNSTROM: Is there further  
18 discussion at this point?

19 COMMISSIONER MELENDEZ: Yes. Again, as I  
20 pointed out, Ms. Chavez responded to the  
21 questionnaire's request for a statement of her  
22 demonstrated influence in civil rights by attaching a  
23 resume, as I pointed out. From my reading, that  
24 resume does not list any involvement in any civic,  
25 religious, civil rights, or other social organization

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1       whatsoever in Virginia.       Would the Staff Director  
2       please describe Ms. Chavez' experience in working with  
3       community issues in Virginia?

4                       STAFF DIRECTOR MARCUS: I would respond to  
5       that, and I'll say that there are some applicants who  
6       merely sent in a resume, and I said to staff, well, we  
7       should not just provide a resume but ask for a  
8       specific narrative response. But with Ms. Chavez, the  
9       material she provided demonstrates such an  
10      extraordinary level of experience that it seemed to me  
11      that everything that we might need was provided here.  
12      It indicates, among other things, that she has been a  
13      Staff Director of the U.S. Commission on Civil Rights,  
14      the Chairman of the National Commission on Migrant  
15      Education, the White House Director of Public Liaison.  
16      She's been a member of the Administrative Conference  
17      of the United States. She was elected to the United  
18      Nations Human Rights Commission to serve a four-year  
19      term as U.S. expert to the UN subcommission on the  
20      prevention of discrimination and protection of  
21      minorities. She does live in the Commonwealth of  
22      Virginia and is concerned about international,  
23      national, and state civil rights issues, and I think  
24      her credentials to serve as Chair are simply  
25      extraordinary.

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1 VICE CHAIR THERNSTROM: I mean, if you  
2 want to pick somebody, pick somebody on the list whose  
3 credentials you find questionable, certainly the last  
4 person to pick, it seems to me, is Linda Chavez.

5 COMMISSIONER MELENDEZ: Can I ask a  
6 question? Whether or not you can certify that Ms.  
7 Chavez is currently a resident of Virginia? I know  
8 that some of these applications have, you know, who  
9 knows how old they are.

10 VICE CHAIR THERNSTROM: She is a resident  
11 of Virginia?

12 COMMISSIONER MELENDEZ: Is that right?  
13 Okay. In the resume, she says that in 2001 she  
14 withdrew her name after being nominated by George W.  
15 Bush for Secretary of Labor. Do you know why she  
16 withdrew her name?

17 STAFF DIRECTOR MARCUS: Well, I read the  
18 book that she wrote, and I certainly remember the  
19 newspapers at that time. I can't say that I have any  
20 personal information. I just remember both the news  
21 accounts and her discussion in her writing.

22 VICE CHAIR THERNSTROM: And it's  
23 irrelevant to the question of her chairmanship here.

24 COMMISSIONER MELENDEZ: Okay. Ms. Chavez  
25 currently runs the Center of Equal Opportunity. To

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1 your knowledge, does --

2 VICE CHAIR THERNSTROM: No, she does not.  
3 Roger Clegg is President of the Center for Equal  
4 Opportunity.

5 COMMISSIONER MELENDEZ: Okay. But she's  
6 affiliated with that?

7 VICE CHAIR THERNSTROM: She's past  
8 president. She's Chairman of the Board.

9 COMMISSIONER MELENDEZ: Okay. What  
10 characteristics make you think Ms. Chavez will be the  
11 best chairperson for the SAC?

12 STAFF DIRECTOR MARCUS: Well, I've  
13 described some of her credentials. She is well known  
14 both in the state and nationally for her expertise on  
15 civil rights issues. She's prominent, she's well  
16 known, and has a depth of knowledge on the issues that  
17 we deal with nationally and within the Commonwealth of  
18 Virginia. And as she seems to me to be a very strong  
19 candidate.

20 COMMISSIONER MELENDEZ: Okay.

21 VICE CHAIR THERNSTROM: I mean, if she's  
22 not a candidate. She devoted her life to these  
23 issues, her professional life. If she's not a  
24 candidate, I don't know who is.

25 COMMISSIONER KIRSANOW: Why don't we just

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1 speed this up by highlighting the thing that  
2 disqualifies her in the minds of some for  
3 chairmanship, and that is that she's a conservative --

4 VICE CHAIR THERNSTROM: And a woman.

5 COMMISSIONER KIRSANOW: -- in favor of  
6 equal opportunities opposed to racial preferences.

7 VICE CHAIR THERNSTROM: Okay. And they  
8 would disqualify her that she's a woman.

9 COMMISSIONER YAKI: If you say so.

10 VICE CHAIR THERNSTROM: No, I don't, but  
11 we seem to be into gender issues here.

12 COMMISSIONER YAKI: Only in the twisted  
13 way that you're talking about them right now.

14 VICE CHAIR THERNSTROM: Whatever. It's a  
15 lame effort at making a joke.

16 COMMISSIONER YAKI: Then don't do it.

17 COMMISSIONER KIRSANOW: With due regard to  
18 the time issues and the fact that we've got some  
19 splendid witnesses, I would call the question.

20 VICE CHAIR THERNSTROM: Okay. All in  
21 favor of Ms. Chavez as Chair of the Virginia State  
22 Advisory Committee?

23 (Chorus of ayes.)

24 VICE CHAIR THERNSTROM: All opposed?

25 COMMISSIONER MELENDEZ: Opposed.

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1 COMMISSIONER YAKI: No.

2 VICE CHAIR THERNSTROM: Let the record  
3 state that Commissioners Yaki and Melendez were  
4 opposed, and it was otherwise unanimous.

5 VICE CHAIR THERNSTROM: Let us go on now  
6 to the re-chartering of the Michigan State Advisory  
7 Committee.

8 COMMISSIONER YAKI: Divide the question on  
9 the Chair, as well.

10 VICE CHAIR THERNSTROM: Divide the  
11 question on the Chair, as well. So let us discuss,  
12 actually let me put, I'm going to put all the names  
13 out without discussing, without reference to the,  
14 without separating any one name as Chair. William B.  
15 Allen; Lawrence Almeda; Marion A. Brown; Donna  
16 Budnick; Leon Drolet; James K. Fett; Imad S. Hamad;  
17 Kary L. Moss; Howard S. Schwartz; Arthur T. White;  
18 Levon R., and, again, forgive me if I mispronounce the  
19 name. Do you know how to pronounce his last name?  
20 Yuille. It's Y-U-I-L-L-E. Gerald L. Zandstra. These  
21 members will serve as uncompensated government  
22 employees. The Commission appreciates their hard  
23 work. They will contribute to the State Advisory  
24 Committee under this motion. The Commission  
25 authorizes the Staff Director to execute the

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1 appropriate paperwork for the appointment.

2 Have we got a motion? Well, we need a  
3 second actually on that, yes.

4 COMMISSIONER TAYLOR: Second.

5 VICE CHAIR THERNSTROM: Okay. Any  
6 discussion?

7 COMMISSIONER MELENDEZ: Yes. I have some  
8 questions on some of the individuals, like, for  
9 example, Howard Schwartz. In looking at his, I guess  
10 his resume or his experience, he lists no specific or  
11 social activities in his resume or statement. The  
12 only mention he makes of civil rights experience is  
13 from the 50s and 60s, before he says his radical  
14 politics dissolved into a deeper understanding of the  
15 world. Are you aware of any current or recent civil  
16 rights or community work that Mr. Schwartz is involved  
17 in?

18 STAFF DIRECTOR MARCUS: He has told me,  
19 and it's unfortunately been a few months so I don't  
20 recall the exact details, but he certainly has  
21 described to me various concerns and activities to  
22 ensure nondiscrimination and equal opportunity on the  
23 campus of his university. And there were a few  
24 examples over the years, and he, as I recall, worked  
25 very hard to ensure that the institution would comply

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1 with equal opportunity law. I also understand that  
2 he's been active in the last couple of years on  
3 Michigan State's civil rights issues, including the  
4 Michigan Civil Rights Initiative.

5 COMMISSIONER MELENDEZ: Okay. And then  
6 there was this Arthur White. He kind of stood out  
7 because where you check off your race affiliation, he  
8 had said he finds this item to be offensive. I don't  
9 know what he meant by that. So I guess he didn't --

10 VICE CHAIR THERNSTROM: There are people  
11 who do not particularly want to fill out check boxes.  
12 They regard themselves as Americans and are not  
13 interested in these racial and ethnic categories.

14 COMMISSIONER MELENDEZ: Okay. And not  
15 only that, but I think the other concern is, maybe I  
16 should have brought it up in the Virginia, but there  
17 are some highly, not that people are totally not  
18 qualified, but even on people that we think are  
19 qualified that have been rejected, for example Linda  
20 Parker of this proposed SAC, at least I felt that she  
21 was highly qualified. Ms. Parker previously reviewed  
22 in the U.S. Attorney's Office in Michigan but, since  
23 December 2003, has been Director of the Michigan  
24 Department of Civil Rights. So, you know, the same  
25 argument that's been said about Ms. Chavez about, you

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1 know, serving in civil rights capacity, when we see  
2 somebody that's actually serving in civil rights  
3 capacity that's rejected, well, we're going to also  
4 have concern going the other way.

5 STAFF DIRECTOR MARCUS: Generally  
6 speaking, I don't like to discuss candidates who've  
7 been rejected for fear of bringing embarrassment on  
8 people who may be distinguished public servants and  
9 who might be dissuaded from implying if they think  
10 they may be subjected to any sort of public  
11 embarrassment. In the case of Ms. Parker, her  
12 application was, as I recall, a strong one, and I  
13 think that there should be no cause for embarrassment.

14 As I recall, I received recommendation for  
15 two people from the same office. Both are employed  
16 from the Michigan Office for Civil Rights. I had the  
17 same situation within the State of Michigan with  
18 respect to another organization. Ms. Parker and one  
19 of her subordinates were both recommended, and my  
20 concern is that it would be awkward to have on the  
21 Committee two people, one of whom is a supervisor and  
22 the other of whom is a subordinate, for fear that  
23 there would be at least perceptions of a lack of  
24 independence.

25 And in this case, the other employee was

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1 the Indian or Native American specialist within the  
2 Michigan Office for Civil Rights, and my view was that  
3 both of the candidates were very strongly qualified  
4 for the office. But between the two, the woman who  
5 was an expert in Indian affairs brought a kind of  
6 civil rights experience and expertise that would be  
7 useful to have on the Committee and that, while Ms.  
8 Parker had various broad civil rights expertise and is  
9 certainly someone who has stature within the State of  
10 Michigan, that, giving balance to the Committee as a  
11 whole, having the candidate who had the Indian rights  
12 expertise would be helpful.

13 COMMISSIONER KIRSANOW: Madame Chair, I'm  
14 astonished and somewhat offended that the Staff  
15 Director would consider issues of diversity in his  
16 appointments to the Michigan Civil Rights SAC.

17 COMMISSIONER MELENDEZ: Ron Robinson also  
18 rejected, and I'm not sure exactly how many other  
19 people were rejected. My concern, going into the  
20 regional -- Ron Robinson was actually recommended by  
21 the region, but you decided not to follow their  
22 recommendation. So that's what I'm getting at.

23 VICE CHAIR THERNSTROM: I'm very reluctant  
24 to have the Staff Director go through the reasons why  
25 somebody was rejected. I don't think it's fair to

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1 them. I don't think that this is a proper public  
2 discussion.

3 STAFF DIRECTOR MARCUS: The only thing  
4 that I would add is that when I make recommendations,  
5 I'm recommending everyone in the committee, and I try  
6 to develop a committee that doesn't just have the best  
7 individuals but also that has a good balance. If  
8 someone is not selected, it may not have to do with  
9 any deficiencies they have. It may mean that a  
10 different group just seemed to have a better mix. And  
11 I have occasionally indicated to regional staff that  
12 just because a person is not accepted in one  
13 particular year doesn't mean that they might not be a  
14 strong candidate in a future year.

15 COMMISSIONER YAKI: But just on my point,  
16 and I also want to apologize to the speakers today.  
17 I'm sorry you got caught up in this. I was trying  
18 before the meeting to have this pushed back because I  
19 knew it was going to be, unfortunately, a lengthy  
20 discussion. But when the Staff Director talks about  
21 attempting to make sure there is balance or not too  
22 many people from the one organization, I just look at  
23 the fact of the seven of the nominees for the Michigan  
24 SAC, four of them all belonged or are members of or  
25 active in the same group, which is the director, which

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1 is the founder group of the Michigan Civil Rights  
2 Initiative, so-called civil rights initiative, the  
3 Prop. 209 clone that they passed in Michigan.

4 So, you know, we can talk all we want  
5 about how two people from an office both disqualified  
6 themselves from being involved, but we have four  
7 people who all belong to the same affinity group,  
8 organization, campaign, whatever you want to call it,  
9 who are nominated as well. And it just seems to me  
10 that the rationale for disqualification or balance is  
11 not quite as there as one would seek it to be.

12 VICE CHAIR THERNSTROM: Well, that is, of  
13 course, an organization that is not ongoing. It is  
14 not the same thing as an office in which there is a  
15 question of somebody's subordinate in status to  
16 somebody else on the Commission. I mean, you know,  
17 this is --

18 COMMISSIONER YAKI: But it goes to the  
19 idea of do you want people with some element of  
20 differences and distinctions, even if they are on the  
21 same page, or do you just want people who are all in  
22 lockstep on something? I mean, one of my issues, as  
23 you know, with the California SAC were the high number  
24 of people involved in Prop. 209 who were appointed to  
25 the, who were non-members of the California SAC.

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1                   VICE CHAIR THERNSTROM: I don't know why  
2 you assume that because they all worked on the  
3 Michigan Civil Rights Initiative they're all in  
4 lockstep on every issue that will come before the  
5 Michigan SAC.

6                   COMMISSIONER YAKI: Well --

7                   VICE CHAIR THERNSTROM: I'd like to call  
8 the question.

9                   COMMISSIONER MELENDEZ: Just a couple of  
10 questions. The Chair is saying that we shouldn't be  
11 asking questions like people that you rejected?  
12 That's inappropriate to ask those, so, basically, what  
13 you would be saying is that this Commission, all the  
14 power would be in the Staff Director to basically make  
15 the calls, override regional directors' recommendation  
16 or even the SACs themselves, and we should just take  
17 for granted that that basically is being done in an  
18 upright manner, so that our job as oversight of the  
19 Staff Director and the Commission in general, we  
20 shouldn't be asking those questions. Is that what  
21 you're saying?

22                   COMMISSIONER KIRSANOW: We can go to  
23 private session, which we have the capacity to do  
24 under our regulations and our administrative  
25 instructions, to discuss that out of the purview of

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1 the public. But there is public embarrassment. I  
2 think that Commissioner Melendez raises good issues  
3 that can very easily be addressed, but we simply  
4 should not and I would object to doing that in the  
5 public forum.

6 VICE CHAIR THERNSTROM: But not really  
7 that. Most of these names where you got resumes this  
8 morning have been available to you for some time. You  
9 could have called the Staff Director and raised the  
10 issues. The question of these SACs have been on the  
11 table for a couple of months now.

12 COMMISSIONER YAKI: I would object to  
13 that, Madame Vice Chair. I mean, the whole point of  
14 public debate and robust discussion is to discuss some  
15 of this in the light of day. And as much as we have  
16 and do continue to try and work behind the scenes in  
17 getting answers on questions, I think that there's  
18 some and I think that the SACs are, for Commissioner  
19 Melendez and I, important enough that this is a topic  
20 that we wish to raise on the public record. And, yes,  
21 these names have been out there for a time, but, yes,  
22 we've also postponed it numerous times in response to  
23 different sets of circumstances. And the chance for  
24 us to raise our concerns and objections on the public  
25 record is today.

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1                   VICE CHAIR THERNSTROM: Well, look, there  
2 are two different questions here. Could you have  
3 gotten the answer to the questions you specifically  
4 raised with the Staff Director about specific people  
5 who were rejected prior to this meeting? The answer  
6 is yes. Are you entitled to bring up general  
7 questions about process? Of course. But, you know,  
8 you have asked some questions about specific people  
9 that I think and his thinking on those specific people  
10 that I think could have been more efficiently  
11 discussed. And then on the basis of that information,  
12 you come to the Commission and discuss what you want.

13                   COMMISSIONER YAKI: Madame Chair, with all  
14 due respect, with regard to the proposed Chair on the  
15 Michigan SAC, I raised the issue in public over a  
16 month ago and have not received any information about  
17 that since.

18                   VICE CHAIR THERNSTROM: Well, we're going  
19 to get to the question of the Chair in a minute, so  
20 why don't we --

21                   COMMISSIONER YAKI: Well, I'm just saying  
22 if I raised it, there was an opportunity to have that  
23 discussion behind the scenes. That has not happened,  
24 so we're going to have to do it in open session.

25                   COMMISSIONER MELENDEZ: I just have one

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1 last question, and this will be it. I want to make  
2 sure that all of these applications are up to date  
3 because I know they've been pending for a while and I  
4 know that there's even one person, Mr. Zandstra, that  
5 says he's running for Senate. So I just want to make  
6 sure that we can certify that all these people are at  
7 least living in the same state right now. If I could  
8 ask that.

9 VICE CHAIR THERNSTROM: Well, I would say  
10 that we take a vote on this right now. If,  
11 subsequently, there is further information about their  
12 residential status, then that, of course, would need  
13 to be dealt with. But I doubt that there's going to  
14 be any question that everyone of these people are  
15 residents of Virginia. I think we can vote today on  
16 the assumption that they are. I mean Michigan. If we  
17 find out otherwise, obviously it disqualifies you.

18 Calling the question, can we have a vote  
19 on these names? We are separating the question. We  
20 are voting on all the names, but we are separating the  
21 question of which one of these people will be voted on  
22 as Chair. All in favor?

23 (Chorus of ayes.)

24 VICE CHAIR THERNSTROM: Aye. All opposed?

25 COMMISSIONER YAKI: Nay.

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1 VICE CHAIR THERNSTROM: Any other  
2 opposition aside from Commissioner Melendez?

3 COMMISSIONER MELENDEZ: I vote no.

4 VICE CHAIR THERNSTROM: He votes no.  
5 Anybody else vote no?

6 COMMISSIONER YAKI: I already said.

7 VICE CHAIR THERNSTROM: I didn't hear you.  
8 I'm sorry. So we have a unanimous vote with the  
9 exception of Commissioners Yaki and Melendez, who have  
10 voted no.

11 COMMISSIONER YAKI: Which was a non-  
12 unanimous vote.

13 VICE CHAIR THERNSTROM: I'm sorry. You  
14 nodded. Well, I didn't hear a nod. We move on to the  
15 question of the Chair, and I am going to recommend as  
16 Chair of the Michigan State Advisory Committee Leon  
17 Drolet. Can we have a discussion on that?

18 COMMISSIONER KIRSANOW: I think we need a  
19 second first.

20 VICE CHAIR THERNSTROM: Oh, well, I need a  
21 second, of course.

22 COMMISSIONER KIRSANOW: I'll second.

23 COMMISSIONER YAKI: What happened to Mr.  
24 Allen? Apparently, he was going to be recommended  
25 before. I'd just like to know on the record what

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1 prompted the change to Mr. Drolet.

2 VICE CHAIR THERNSTROM: Commissioner Yaki  
3 raised concerns last time about Mr. Allen. Those  
4 concerns have been duly noted. Mr. Drolet has very  
5 strong credentials for the position, and it was my  
6 belief that we should simply respond to your concerns  
7 and move to another name.

8 COMMISSIONER YAKI: I guess that the case  
9 was never closed after all. Okay. Thank you. Let's  
10 just vote.

11 VICE CHAIR THERNSTROM: Okay. All in  
12 favor?

13 (Chorus of ayes.)

14 VICE CHAIR THERNSTROM: All opposed?

15 COMMISSIONER YAKI: No.

16 COMMISSIONER MELENDEZ: No.

17 VICE CHAIR THERNSTROM: Oh, any  
18 abstentions? Commissioner Heriot abstains.  
19 Commissioners Melendez and Yaki voted in opposition,  
20 and the rest of the Commissioners voted in favor of  
21 Mr. Drolet as Chair of the Michigan Advisory  
22 Committee. Are we taking any kind of break?

23 **VII. Adjourn**

24 VICE CHAIR THERNSTROM: Yes, okay. The  
25 meeting is adjourned, the business meeting is

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1 adjourned, and we will begin the briefing. And, once  
2 again, I apologize to those people who are -- our  
3 briefers come forward please.

4 (Whereupon, the foregoing matter was  
5 adjourned at 11:19 a.m.)

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