

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, JUNE 12, 2009

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The meeting convened in Room 540 at 624
Ninth Street, N.W., Washington, D.C. at 1:30 p.m.,
Gerald A. Reynolds, Chairperson, presiding.

PRESENT:

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

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
CHRISTOPHER BYRNES, Attorney Advisor to the OSD
DEBRA CARR, Associate Deputy Staff Director, OSD
SOCK-FOON MacDOUGALL
EMMA MONROIG, Solicitor/Parliamentarian
LENORE OSTROWSKY, Attorney/Advisor to the OSD and
Acting Chief, PAU

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

2 (1:40 p.m.)

3 CHAIRMAN REYNOLDS: All right. Good
4 afternoon. This is Chairman Reynolds. The meeting
5 will come to order.

6 This is a meeting of the U.S. Commission
7 on Civil Rights. It is 1:40 p.m., Eastern Standard
8 Time, on June 12th, 2009. The meeting is being held
9 at 624 Ninth Street, N.W., in Room 540, Washington,
10 D.C.

11 Commissioners Kirsanow, Yaki, and --

12 VICE CHAIR THERNSTROM: Thernstrom.

13 CHAIRMAN REYNOLDS: -- and Vice Chair
14 Thernstrom are participating by phone, and
15 Commissioners Melendez, Taylor, Heriot, Gaziano, and
16 the Chairman are participating in person.

17 COMMISSIONER TAYLOR: Mr. Chairman.

18 CHAIRMAN REYNOLDS: yes.

19 COMMISSIONER TAYLOR: Before we get into
20 the first item, a personal moment. I wanted to thank
21 everyone from the OCRE staff for the work they did on
22 the briefing. You all did a lot of work, and it was a
23 job well done, pulling the room together, getting our
24 panelists in place, and I just wanted to thank all of
25 you all for your work.

1 CHAIRMAN REYNOLDS: Yes, indeed. You did
2 an outstanding job. That was one of the best
3 briefings that we've had to date.

4 COMMISSIONER HERIOT: It is kind of
5 shocking and sad that C-SPAN doesn't want to see our
6 business meetings.

7 (Laughter.)

8 COMMISSIONER HERIOT: It's very sad.

9 VICE CHAIR THERNSTROM: Some of us
10 couldn't hear that, and Commissioner Heriot needs to
11 get somehow hooked up in a way that we're going to
12 hear it, too.

13 CHAIRMAN REYNOLDS: Okay. We're adjusting
14 our microphone.

15 COMMISSIONER GAZIANO: It was a hilarious
16 joke.

17 COMMISSIONER HERIOT: I'll tell you later,
18 Abby.

19 VICE CHAIR THERNSTROM: All right. I'll
20 hold my breath until you do.

21 CHAIRMAN REYNOLDS: Okay. First item on
22 the agenda is the approval of the agenda.

23 I. APPROVAL OF AGENDA

24 COMMISSIONER TAYLOR: So moved.

25 CHAIRMAN REYNOLDS: Second?

1 COMMISSIONER GAZIANO: Second.

2 CHAIRMAN REYNOLDS: Discussion.

3 COMMISSIONER KIRSANOW: Kirsanow here.

4 I move to amend the agenda to include
5 consideration of a letter that I think Dominique may
6 have distributed.

7 COMMISSIONER HERIOT: Second.

8 CHAIRMAN REYNOLDS: Discussion?

9 VICE CHAIR THERNSTROM: I have a question
10 about it. I, actually, Tim Fay on my behalf, asked
11 yesterday that it be noted explicitly with the names
12 that Commissioner Yaki --

13 COMMISSIONER HERIOT: Different letter.

14 CHAIRMAN REYNOLDS: Abby, different
15 letter.

16 VICE CHAIR THERNSTROM: Oh, different
17 letter. Sorry about that. What letter are you
18 talking about?

19 COMMISSIONER KIRSANOW: Abby, this is the
20 letter to the Civil Rights Division asking them to
21 give us an explanation as to their actions related to
22 the dismissal of charges against individuals who had
23 been accused of engaging in violation of the Voting
24 Rights Act in Philadelphia.

25 VICE CHAIR THERNSTROM: Very good. Okay.

1 Sorry about that.

2 I don't seem to have that letter, by the
3 way, but I'm --

4 CHAIRMAN REYNOLDS: That's Tim's fault.

5 (Laughter.)

6 VICE CHAIR THERNSTROM: Or it's my
7 distracted mind-fault.

8 CHAIRMAN REYNOLDS: Additional discussion?

9 (No response.)

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER HERIOT: Well, this is just
12 amending the agenda.

13 COMMISSIONER GAZIANO: The amended -- the
14 amended --

15 COMMISSIONER HERIOT: We're not talking
16 about the substance of the letter.

17 COMMISSIONER GAZIANO: Right.

18 CHAIRMAN REYNOLDS: Pete, assuming that
19 this passes, do you have a preference on where it
20 falls on the agenda?

21 COMMISSIONER KIRSANOW: The problem I
22 have, and I apologize, is I don't have a copy of the
23 agenda in front of me. So I'm not sure precisely
24 where it should be placed. So I'm amenable to where
25 anyone wants to place it.

1 CHAIRMAN REYNOLDS: Okay. Well, if that's
2 the case then --

3 VICE CHAIR THERNSTROM: Can somebody E-
4 mail me the letter, please?

5 COMMISSIONER KIRSANOW: I'll send it to
6 you, Abby.

7 VICE CHAIR THERNSTROM: Okay.

8 CHAIRMAN REYNOLDS: Okay. Pete, I'm going
9 to place it after the discussion of Management and
10 Operations.

11 COMMISSIONER KIRSANOW: Thank you.

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

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Any objections?

16 (No response.)

17 CHAIRMAN REYNOLDS: Any abstentions?

18 (No response.)

19 CHAIRMAN REYNOLDS: Commissioner Melendez,
20 how did you vote?

21 COMMISSIONER MELENDEZ: I voted yes.

22 CHAIRMAN REYNOLDS: Okay. The motion
23 passes unanimously. So it will be added to the
24 agenda.

25 Any other changes?

1 (No response.)

2 CHAIRMAN REYNOLDS: Okay. All right,
3 folks. Did you have a question, Commissioner Heriot?

4 No, I'm sorry. I was looking in your direction.

5 Okay. Next. The second item on the
6 agenda is the approval of the minutes of the meeting
7 held on May 15th, 2009.

8 II. APPROVAL OF MINUTES OF MEETING OF
9 MAY 15, 2009

10 CHAIRMAN REYNOLDS: Is there a second?

11 COMMISSIONER GAZIANO: Second.

12 CHAIRMAN REYNOLDS: Discussion?

13 (No response.)

14 CHAIRMAN REYNOLDS: All those in favor,
15 please say aye.

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Any objections?

18 (No response.)

19 CHAIRMAN REYNOLDS: Any abstentions?

20 COMMISSIONER HERIOT: I abstain.

21 CHAIRMAN REYNOLDS: Okay. Let the --

22 COMMISSIONER HERIOT: Only because I
23 hadn't read it yet. I was too fascinated by the
24 materials for the briefing.

25 CHAIRMAN REYNOLDS: Okay. Commissioner

1 Heriot abstains. The remaining Commissioners voted in
2 favor of the motion.

3 Okay. Next are the announcements for the
4 month of June.

5 III. ANNOUNCEMENTS

6 CHAIRMAN REYNOLDS: On June 6, 1873,
7 pioneering feminist Susan B. Anthony was fined for
8 voting in the 1872 presidential election. She led a
9 group of women who voted illegally to test their
10 status as citizens.

11 Following her death in 1906, after five
12 decades of tireless work, the Democratic and
13 Republican Parties both endorsed women's right to
14 vote. In August of 1920, the 19th Amendment to the
15 United States Constitution was finally ratified,
16 allowing women to vote.

17 Next I would like to recognize -- well, at
18 this point, Commissioner Yaki, would you please
19 introduce your special assistant?

20 Commissioner Yaki?

21 COMMISSIONER YAKI: I'm sorry. I have the
22 heat on.

23 Yes, I'd like to introduce Eric Deull. He
24 is a graduate of the University of Michigan and the
25 American University Law School. He has been in

1 private practice for a number of years, but also
2 served most recently as a magistrate judge in D.C.
3 family court, which unfortunately I would not do to my
4 worst enemy, but he did so serving with distinction
5 and aplomb until he retired a few years ago.

6 And I have coaxed him out of retirement,
7 and here he is.

8 CHAIRMAN REYNOLDS: Very good. Welcome.

9 MR. DEULL: Thank you.

10 CHAIRMAN REYNOLDS: And after spending
11 time as a magistrate judge here in D.C., I suspect
12 that you're well suited for the task ahead of you.

13 Okay. We also have three interns that are
14 already started working for the Commission. Where is
15 Christine Miranda?

16 Very good. She is a second year law
17 student from American University's Washington College
18 of Law, who is working the Office of General Counsel.

19 And where is Aman Sharma?

20 Very good. He is a second year student at
21 Ohio State Law School and he is working in the Office
22 of the Staff Director.

23 And finally, Ms. Zorn, Kelsey Zorn?

24 Very good. She is a senior at Reed
25 College, who is working in the Office of Civil Rights

1 Evaluation.

2 Amy Permalik from the University of
3 Chicago's Law School will be starting her internship
4 in the Office of General Counsel on June 22nd, and I
5 assume that she is not new.

6 Okay. At this point I turn it over to the
7 Staff Director for the Staff Director's report.

8 IV. REPORT OF THE STAFF DIRECTOR

9 STAFF DIRECTOR DANNENFELSER: Thank you,
10 Mr. Chairman.

11 And on the topic of personnel, the Office
12 of the General Counsel recently recruited a full-time
13 secretary, a position that had been vacant for a
14 number of years. The successful applicant was Lillian
15 Dunlap, whose official first day was May 26th, 2009,
16 and I would like to congratulate Lillian and thank
17 her for the service she is providing to the
18 Commission.

19 CHAIRMAN REYNOLDS: Is she in the room?

20 Okay. So you wouldn't let her out, eh?

21 (Laughter.)

22 STAFF DIRECTOR DANNENFELSER: Holding down
23 the fort.

24 And on other legal matters, OGC staff
25 attended to a past employment law claim resolved in

1 2007 as well as a pending EEO claim. The General
2 Counsel sent Commissioners a memo this week pertaining
3 to developments on another case relating to a former
4 employee.

5 The Office of Civil Rights Evaluation has
6 been dealing, again, with complaints processing, and
7 during this reporting period OCRE received 120 written
8 complaints, two congressional complaints, one walk-in
9 complaint, 28 E-mail complaints, two fax complaints,
10 and 107 telephone complaints, of which 62 were repeat
11 calls. In total staff received and processed 260
12 complaints during the reporting period.

13 On the Multi-Ethnic Placement Act briefing
14 report relating to minority children in foster care
15 and adoption, the editor has incorporated the findings
16 and recommendations into the report, and staff worked
17 with the editor to address two additional Staff
18 Director comments.

19 Also, with respect to the Office of Civil
20 Rights Enforcement, Sock-Foon MacDougall, a social
21 scientist in OCRE who has worked for the Commission
22 since January 2002, is retiring from the Commission to
23 pursue other opportunities, and she'll be leaving on
24 July 1st. And I want to thank Sock-Foon for her
25 service to the Commission and to the federal

1 government in several other positions and wish her
2 well in all of her future endeavors.

3 Within the Office of Management, they have
4 completed the transparency report for the month of
5 May, and it has been forwarded to OMB. Staff has also
6 been working with Citibank to get new credit cards
7 issued to resolve a billing issue with the card. I
8 think a couple of Commissioners are familiar that
9 development.

10 CHAIRMAN REYNOLDS: Yes, indeed.

11 STAFF DIRECTOR DANNENFELSER: Hopefully,
12 that problem is now resolved.

13 And they have been working on implementing
14 the new limits on the transit subsidy for staff, also
15 working on the telephone services. They're in the
16 early stages of transitioning the agency to the new
17 GSA telephone contract. They have begun reviewing
18 inventories, doing cost analysis and reviewing vendors
19 in preparation for the transition.

20 Staff attended the first training, GSA
21 transition coordination training. The training is
22 necessary to assist ASCD and IT staff in transitioning
23 to the new telephone contracts for local and long
24 distance, wireless and Internet services.

25 Staff will need to attend the second

1 training session that has been scheduled for late
2 summer outside the D.C. area.

3 With respect to our Website, the total
4 number of Web visits during the month of April was
5 37,212, with 18,056 visitors. There were about 1,000
6 visits from the U.S. government domain. The top ten
7 were Department of Homeland Security, 132; the IRS,
8 104; Government Printing Office, 101; Department of
9 Health and Human Services, 93; Department of Justice,
10 49; Department of Transportation, 35; Housing and
11 Urban Development, 28; Veterans Administration, 23;
12 Federal Aviation Administration, 22; and the Equal
13 Employment Opportunity Commission, 19. There were 16
14 visits from the Executive Office of the President.

15 The library staff received 80 telephone
16 inquiries. They were completed. They completed 49
17 simple reference requests and performed 32 research
18 projects of various sizes. An additional 60 research
19 requests were completed utilizing automated search
20 services.

21 With regard to publications, there were
22 166 written requests and 185 E-mail requests for
23 publications received during this latest period. Four
24 hundred and ten publications were mailed and 44
25 different publications were requested. "Getting Uncle

1 Sam to Enforce your Civil Rights" and a catalogue of
2 publications were the most requested publications, and
3 there are currently 62 requests for publications in
4 process.

5 Within the Budget and Finance Division,
6 the Office of Management conducted several interviews
7 and selected a contractor to fill in until the Chief
8 of Budget and Finance vacancy is filled. That
9 position was posted on June 3rd and will be open until
10 June 24th. That is the Budget and Finance Chief.

11 The staff sent employee information to GSA
12 to begin the budget call cycle for the fiscal year
13 2011 budget. So that's something that the Commission
14 will be dealing with within the next several months.

15 The staff also worked on and sent out the
16 congressional submission for the 2010 budget. And the
17 staff is also working on reconciling travel card
18 payments that were erroneously charged to the agency's
19 centrally billed credit card.

20 And a couple of other personnel
21 developments. Within the Office of the Staff
22 Director, I'd like to announce two developments.
23 First is that Regional Program Coordination Chief
24 Chris Byrnes is moving into the role of senior
25 attorney advisor, and Southern Regional Office

1 Director Peter Menarik has agreed to assume the duties
2 of Acting Chief of RPCU. Peter will continue to serve
3 as Director of the Southern Regional Office and will
4 primarily be based in Atlanta. He is spending a few
5 days in Washington right now and will be traveling to
6 Denver next week to meet with the Director of the
7 Rocky Mountain regional office. He'd be traveling to
8 the other regions as well over the next few months and
9 will provide extra assistance to our western regional
10 office.

11 I want to thank Chris and Peter for
12 agreeing to serve in these new roles, and I trust that
13 they will help enhance our program planning and
14 regional operations.

15 And that concludes my report.

16 CHAIRMAN REYNOLDS: Questions?

17 COMMISSIONER MELENDEZ: Yes. Commissioner
18 Melendez here.

19 How much is the Commission currently under
20 budget for 2009? Are we under budget?

21 CHAIRMAN REYNOLDS: The projected surplus?

22 COMMISSIONER MELENDEZ: Two thousand nine,
23 the year we're in now.

24 STAFF DIRECTOR DANNENFELSER: We currently
25 are developing plans that would allocate most of the

1 money that we have. We had 340,000 additional. We
2 are about, I believe -- I don't have the latest
3 report. It hasn't arrived yet for this past month,
4 but I believe we're at about 150,000 or so in addition
5 to that 340,000. So in the neighborhood of \$500,000,
6 but we do have a number.

7 Then you have to take into account that
8 we're going to have the special assistants. One, of
9 course, is with us right now, and then we have a
10 couple other applicants that will be going in for the
11 specialist assistant's positions. We are looking at
12 potentially allocating some additional funds beyond
13 what's in our budget for the civil rights conference.

14 We have a number of technological things that we're
15 looking at in terms of computers, upgrading computers
16 and things like that. So I am in the process of
17 finalizing some preparations relating to that money,
18 but I think that once we -- the human capital plan
19 item and so on that's being considered.

20 So I think that once we do that, we will
21 allocate the money to some very good uses for the
22 Commission.

23 COMMISSIONER MELENDEZ: On the contractor
24 you mentioned, is that interim assistance until we get
25 the revised --

1 VICE CHAIR THERNSTROM: Would you speak
2 up? I can't hear.

3 COMMISSIONER MELENDEZ: Commissioner
4 Melendez here. I was asking whether or not this
5 contractor that they mentioned allocating funding for
6 was an interim step prior to hiring finance -- I think
7 you revised the finance director position to finance
8 something else.

9 STAFF DIRECTOR DANNENFELSER: Well, let me
10 go back. We had a budget officer who left in January,
11 and so this budget and finance chief is essentially
12 replacing that person, but this position will be at a
13 little bit higher level. That person was a GS-11. We
14 are looking to hire this person at a GS-14 level.

15 We also had a budget assistant who left
16 about a month ago and this temporary person that I
17 mentioned was hired temporarily to replace that
18 person.

19 COMMISSIONER MELENDEZ: So the contractor
20 again is who? You said we had a contractor?

21 COMMISSIONER YAKI: I can't hear.

22 COMMISSIONER MELENDEZ: You said we had
23 contracted with?

24 STAFF DIRECTOR DANNENFELSER: Yeah, the
25 person who -- well, since we've had two people leave

1 in the Budget Office right now we don't have -- we
2 would not, aside from this temporary person, we would
3 not have anybody in the budget office that would fall
4 to the Director of Management, but we did have an
5 individual who was with us for a couple of years, I
6 believe who left in January who was a GS-11. So we
7 have posted a position which is the budget chief
8 position at a GS-14 level, and that position is open
9 until June 24th, the application period.

10 But in the meantime, we did hire a -- we
11 also had a temporary person leave more recently who
12 was a temporary or was a -- it was a full-time person,
13 a non-permanent full-time person that was in the --
14 serving as a budget assistant. That person left. So
15 we have hired through an agency. We've hired a
16 temporary budget assistant. And that person will stay
17 on at least until the budget chief is hired, perhaps a
18 little bit longer as that person is transitioning to
19 his or her new duties.

20 COMMISSIONER MELENDEZ: Okay. The other
21 thing, I had asked I think a meeting or so ago about
22 the SAC overall tracker, status tracker.

23 VICE CHAIR THERNSTROM: I'm sorry. I
24 can't hear again.

25 COMMISSIONER MELENDEZ: Is my microphone

1 on?

2 COMMISSIONER YAKI: I can't hear anything
3 either.

4 COMMISSIONER MELENDEZ: This microphone is
5 not.

6 CHAIRMAN REYNOLDS: Who can provide us
7 with some technical assistance.

8 COMMISSIONER MELENDEZ: Can you hear me
9 now?

10 COMMISSIONER YAKI: No.

11 COMMISSIONER GAZIANO: You're so soft
12 spoken.

13 COMMISSIONER MELENDEZ: Okay.

14 COMMISSIONER GAZIANO: I think you just
15 need to speak up.

16 COMMISSIONER MELENDEZ: I had asked on the
17 status --

18 COMMISSIONER YAKI: I can't hear you
19 either, Todd.

20 (Laughter.)

21 COMMISSIONER GAZIANO: That's convenient.

22 COMMISSIONER YAKI: Of course, that's how
23 I mainly choose to hear you anyway. So we're set.

24 COMMISSIONER MELENDEZ: Okay. This is
25 Commissioner Melendez.

1 I had asked also from the Staff Director
2 on the SAC overall status tracker which shows the
3 status of the rechartering of all the SACs, and
4 basically it would give us a total picture as to what
5 the hold-ups are on rechartering the SACs in general.

6 So I haven't heard any response back on that request
7 which I made a couple of weeks ago.

8 STAFF DIRECTOR DANNENFELSER: We have been
9 in the Staff Director's report on a monthly basis
10 giving state-by-state updates on where the SACs are,
11 but I will compile something that shows which SACs are
12 chartered, which SACs are unchartered and when we
13 expect to move forward on those, and then some other
14 ones that are chartered, when they'll be expiring. We
15 can provide a list, a chart that will show that
16 information.

17 COMMISSIONER MELENDEZ: Okay, and also,
18 Commissioner Melendez here again.

19 We needed a specific date when we expect
20 that the backlog briefing reports are going to be
21 ready for Commissioner review.

22 CHAIRMAN REYNOLDS: A specific date?

23 COMMISSIONER MELENDEZ: Or some idea as to
24 what we're looking at here.

25 CHAIRMAN REYNOLDS: Okay.

1 COMMISSIONER MELENDEZ: As to how far
2 backlogged we are.

3 CHAIRMAN REYNOLDS: Well, I would suggest
4 at the next business meeting we put that on as an
5 agenda item.

6 STAFF DIRECTOR DANNENFELSER: Yeah, I
7 mean, we have one additional report that is ready that
8 I mentioned in my report, was the Multi-Ethnic
9 Placement Act. I have not sent that out. I think the
10 Commissioners are currently reviewing the statutory
11 report and a few other briefing reports, and I wasn't
12 sure whether that would overload people at the current
13 time.

14 CHAIRMAN REYNOLDS: It would.

15 STAFF DIRECTOR DANNENFELSER: But there
16 are several others that are in process towards
17 completion.

18 COMMISSIONER GAZIANO: And my request at
19 the last meeting was that it would be helpful to get a
20 more detailed description of what each of the pending
21 ones were so that we might be able to provide our own
22 direction as to whether some should be expedited, some
23 should be put ahead of others.

24 So I suppose if we're going to take up
25 that issue in July, it would be helpful to have

1 something like that in advance.

2 STAFF DIRECTOR DANNENFELSER: Okay.

3 COMMISSIONER MELENDEZ: My last question
4 is are we going to be able to hire a director for a
5 western region office. I've been asking that for
6 about a year.

7 STAFF DIRECTOR DANNENFELSER: Well, we
8 don't have that position budgeted in our fiscal year
9 2010 budget, but that is something that Peter Minarik
10 is going to pay special attention to. That is going
11 to be the one region that he is going to provide the
12 most hands on assistance to, and I know he and I have
13 both spoken in the last few days to the secretary in
14 the western regional office, and she is very
15 enthusiastic about the prospect of Peter coming out
16 there very soon to work with her and also providing
17 assistance to her over the phone and so on over the
18 next few months.

19 So that's our hope, that we can get more
20 of the SACs chartered in the western region. He is
21 actually also planning to work with her to get several
22 meetings scheduled within some of the states in the
23 western region.

24 COMMISSIONER MELENDEZ: That's all I have.

25 CHAIRMAN REYNOLDS: Okay. You mentioned

1 an error in billing. We were erroneously billed. Did
2 I understand?

3 STAFF DIRECTOR DANNENFELSER: Well, the
4 bills went to the Commission central billing account
5 as opposed to the individual Commissioners. So I
6 think they just have to do some record keeping to
7 straighten that out, but that is part of the reason
8 for the new credit cards as well, I believe.

9 CHAIRMAN REYNOLDS: So is the effect that
10 we haven't received bills from the individual
11 Commissioners, that there's an outstanding debt out
12 there and that the invoice hasn't reached us? Is that
13 the case?

14 STAFF DIRECTOR DANNENFELSER: I'll have to
15 check on that technical question relating to that, and
16 I can probably let you know early next week, Monday
17 hopefully.

18 CHAIRMAN REYNOLDS: Okay. Please do
19 because it would affect all of our credit scores.

20 Any other questions?

21 STAFF DIRECTOR DANNENFELSER: Well, I
22 don't think it would have been charged to you
23 individually if it went to the central billing
24 account.

25 CHAIRMAN REYNOLDS: So it was paid?

1 STAFF DIRECTOR DANNENFELSER: I believe
2 so. Tina is shaking her head yes. It was paid.

3 CHAIRMAN REYNOLDS: Oh, okay. Great. No
4 problem.

5 Okay. Unless there are additional
6 questions, we'll move on to an update on the 2009
7 statutory report.

8 V. UPDATE ON 2009 STATUTORY REPORT

9 STAFF DIRECTOR DANNENFELSER: Thank you,
10 Mr. Chairman.

11 At this point I'd like to turn to the
12 General Counsel, David Blackwood, who will provide us
13 with an update on the statutory report.

14 MR. BLACKWOOD: As the Commissioners know,
15 the latest draft was issued approximately two weeks
16 ago with a deadline of June 29th for the feedback.
17 Earlier this week we met with special assistants to
18 review the report generally and explain why various
19 editorial decisions get feedback from the special
20 assistants and just explain where we were in the
21 process.

22 Obviously it is a draft. It is nowhere
23 near completion. There are a variety of steps that
24 need to be taken. I spelled that out in the memo that
25 was issued with the report.

1 That said, one thing I anticipate some
2 time early next week is to issue a revised time line.
3 We're aware that the deadlines have been extended due
4 to the fact that the report has taken longer to
5 process than we originally contemplated.

6 I will say that the contemplated,
7 contemplated vote date would be August 14th, probably
8 by telephone, but that still remains to be agreed
9 upon. So hopefully early next week we will be issuing
10 a revised --

11 VICE CHAIR THERNSTROM: I'm sorry. I
12 couldn't hear that date.

13 MR. BLACKWOOD: August 14th.

14 VICE CHAIR THERNSTROM: August 14th, what
15 happens on August 14th?

16 MR. BLACKWOOD: That would probably be a
17 vote on the statutory report, probably by telephone,
18 but it remains to be seen. Obviously you all will
19 need to comment on the time line when you receive it.

20 CHAIRMAN REYNOLDS: Okay, and --

21 VICE CHAIR THERNSTROM: And do you know
22 that we are all available on August 14th?

23 MR. BLACKWOOD: Not at all. That's why
24 I'm telling you the proposed date.

25 CHAIRMAN REYNOLDS: Right. It's a

1 suggestion, Abby.

2 VICE CHAIR THERNSTROM: Okay.

3 CHAIRMAN REYNOLDS: And also I think that
4 we would be better served by having a substantive
5 discussion about the statutory report in person.

6 VICE CHAIR THERNSTROM: I agree.

7 CHAIRMAN REYNOLDS: But in any event, we
8 will wait until we get your recommended time line.

9 MR. BLACKWOOD: Okay.

10 COMMISSIONER HERIOT: Well, we're going to
11 need to schedule this.

12 COMMISSIONER YAKI: I just want to put out
13 there that most of August I am not going to be
14 available for an in-person meeting.

15 CHAIRMAN REYNOLDS: Okay. Commissioner
16 Heriot.

17 COMMISSIONER HERIOT: We need to schedule
18 this soon.

19 VICE CHAIR THERNSTROM: I can't hear you.

20 COMMISSIONER HERIOT: We need to schedule
21 this soon because it gets harder and harder to
22 schedule. I mean, already we've got one commissioner
23 saying that it's going to be difficult to be available
24 for in-person. You know, one person can call in.
25 That's no problem, but I think we should have a face-

1 to-face meeting.

2 COMMISSIONER YAKI: I'm glad you think
3 it's no problem, but I don't think it's no problem.

4 VICE CHAIR THERNSTROM: Well, are you
5 going to be able to call in, Commissioner Yaki?

6 COMMISSIONER YAKI: I can call in, but I
7 prefer to be there in person.

8 VICE CHAIR THERNSTROM: Yeah. No, I
9 prefer you to be there in person as well. So what are
10 --

11 COMMISSIONER HERIOT: -- schedule now
12 because it just --

13 VICE CHAIR THERNSTROM: When is it
14 possible? I mean, when do you become unavailable and
15 when do you become available again?

16 COMMISSIONER YAKI: I think I become
17 available starting that week all the way through Labor
18 Day. My work schedule has changed substantially. So
19 I have to take advantage of different time break, and
20 that time break I have already bought tickets for
21 family members, and I'm basically going to be away.

22 VICE CHAIR THERNSTROM: So starting -- I'm
23 looking at a calendar -- starting -- are you talking
24 about the 14th, starting --

25 COMMISSIONER HERIOT: Bear in mind the

1 academic schedule gears up about then. So that's when
2 I become unavailable.

3 VICE CHAIR THERNSTROM: Okay, but,
4 Commissioner Yaki, are you talking about starting the
5 10th you're unavailable or just --

6 COMMISSIONER YAKI: I'm taking a look at
7 my calendar now. Yes, starting the week of the 10th.

8 VICE CHAIR THERNSTROM: You are
9 unavailable until after Labor Day.

10 COMMISSIONER YAKI: Right.

11 VICE CHAIR THERNSTROM: Labor Day is very
12 late this year. All right. Well, I mean, we should -
13 - normally one day --

14 COMMISSIONER YAKI: Whatever happens, I
15 just wanted to put that out there.

16 CHAIRMAN REYNOLDS: Okay. All right.
17 Folks, let's look at some dates. Let's start with the
18 14th, with the understanding that it's unlikely
19 that --

20 COMMISSIONER GAZIANO: The 14th is one day
21 I cannot do it, the 13th and 14th. Most of the rest
22 of August I am probably free.

23 CHAIRMAN REYNOLDS: Okay.

24 COMMISSIONER YAKI: And the 14th is an
25 absolute dead no-no for me. That is actually a travel

1 day.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER YAKI: I am actually 100
4 percent unavailable that day.

5 CHAIRMAN REYNOLDS: Got you. How do you
6 folks feel about the 7th?

7 COMMISSIONER HERIOT: Hold on.

8 COMMISSIONER YAKI: I can be in town the
9 7th.

10 VICE CHAIR THERNSTROM: The 7th is
11 possible for me.

12 CHAIRMAN REYNOLDS: We're checking with
13 staff.

14 STAFF DIRECTOR DANNENFELSER: Well, the
15 main -- I think we may be able to make that work. The
16 main concern is the agency.

17 MR. BLACKWOOD: If we have to do the 7th,
18 we can do the 7th.

19 CHAIRMAN REYNOLDS: Okay. Commissioner.

20 COMMISSIONER GAZIANO: If we're ready for
21 it, I can do it.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER YAKI: Thank you very much.
24 I appreciate that.

25 VICE CHAIR THERNSTROM: So that means

1 we're having a meeting at the Commission on the 7th.

2 CHAIRMAN REYNOLDS: Yes, and, Michael,
3 anything for you?

4 COMMISSIONER YAKI: I knew you would say
5 that, Gerry, and I appreciate that.

6 CHAIRMAN REYNOLDS: Okay. Were you
7 finished with your report?

8 MR. BLACKWOOD: Yes.

9 CHAIRMAN REYNOLDS: Questions?
10 Commissioner Gaziano.

11 COMMISSIONER GAZIANO: Yeah, I want to
12 begin, first of all, with some thanks and some general
13 good compliments because particularly for you, David,
14 and the General Counsel staff. For this stage, it's
15 quite readable compared to the similar first draft for
16 some others.

17 And I do like how you try not to draw or
18 the staff that's drafted it draw grand conclusions
19 beyond our competence, but I do have a few other
20 questions.

21 The first and simplest is I note in your
22 memo to the Staff Director that you had not
23 incorporated a lot of the testimony from our briefing
24 and the Commissioner exchange, and I think a lot of
25 that ought to be captured. So I encourage you to send

1 us a revised draft, even before June 29, and not wait.

2 CHAIRMAN REYNOLDS: And start working on
3 it.

4 COMMISSIONER GAZIANO: Yeah. Where are
5 you in that? Has that been ongoing?

6 MR. BLACKWOOD: Yeah. Number one, we have
7 not stopped working on the report.

8 COMMISSIONER GAZIANO: I assumed so, but.

9 MR. BLACKWOOD: So I wanted to see what
10 feedback might happen today and also from the special
11 assistants.

12 I will tell you the transcript, while
13 valuable, we definitely can make cites. People don't
14 unfortunately speak in paragraphs generally. Some do;
15 most don't. So it doesn't lend itself as well to some
16 of the written statements and long quotations.

17 That said, we can cite to the transcript
18 to support various items.

19 COMMISSIONER GAZIANO: Yeah, and their
20 written testimony is fine, too. There are certain
21 discussions both in the written testimony that I
22 thought should be captured into the statutory report,
23 and I haven't gone back through to remember all of
24 them, but one I remember, for example. And we had a
25 couple of exchanges with the Commissioners that ought

1 to reflect more of our thought -- one of which was
2 Liebowitz's analogy of a certain group of drivers who
3 convinced the folks to change the rules of the road,
4 and then there were multiple traffic accidents, and
5 that group said, "Well, we are no more responsible
6 than any other group."

7 Well, by analogy, his point was if there's
8 a certain type of people who induced lenders to change
9 lending standards in a detrimental way, then that
10 should be captured.

11 And I did want to comment then on one
12 other matter, and if other Commissioners -- I want to
13 do so so that other Commissioners can chime in. I do
14 think the last appendix on the Boston Fed. study is
15 valuable. It's too technical for most of it to be
16 included into the final report, but I think it should
17 retain -- but I think that some summary of it goes in
18 for the following reasons.

19 That was a major part of the concept paper
20 that we approved. The plan for it and I think some of
21 the briefings we got from Dr. Lerner, and it certainly
22 is in my interest.

23 That seems to me to be one of the most
24 important aspects of the staff's and Commission's work
25 that actually relates to the issue of discrimination,

1 that particular study. And what I would suggest,
2 incorporating back into Chapter 4 and then references
3 be made to the appendix, is the idea that this Boston
4 Fed. study that found discrimination in the Boston
5 area had a tremendous impact, whatever the right
6 adjective is. I'm not suggesting what the right
7 adjective necessarily is, but had a significant impact
8 on public policy makers in the Boston Fed. study
9 itself, criticized law enforcement agencies or civil
10 rights enforcement agencies for their failure, and
11 that that seemed to drive certain other consequences,
12 one of which was the Boston Fed. then issued its
13 changes to its lending manual that lessened the
14 influence of credit scoring, and then HUD finally in
15 its guidelines sort of followed through

16 And that may be the change in the rules of
17 the road that surely wasn't the only factor. Many of
18 the other things that are discussed in the study are
19 important, but I think that the conclusion of
20 discrimination led to these results, and then I think
21 it's especially relevant to say that the FDIC did its
22 own investigation of the agencies that it was
23 responsible for that the Boston Fed. study covered and
24 found that the study was flawed, completely flawed.

25 So there's two things that are important

1 to me about that aspect. One is that it helps explain
2 how perceptions about racial discrimination may have
3 led to some of the policy changes.

4 And number two, it's helpful to know that
5 those perceptions that led to those policy changes
6 were, in fact, unsupported. Whether they're false or
7 not is another matter, but I think that the appendix,
8 particularly the authority cited in the appendix,
9 makes a persuasive case that the Boston Fed. study
10 really was not sufficient to make many of the
11 conclusions that it did.

12 But in some ways that may be as important,
13 more important. I don't know, but there are two
14 aspects of that that I think could be brought into
15 Chapter 4. So I wanted to see if other Commissioners
16 had any other thoughts on that.

17 But that was the part of the concept paper
18 and the discussions that we had that seemed to get at
19 whether attempts to address discrimination -- what
20 role they played.

21 CHAIRMAN REYNOLDS: Okay. Commissioner
22 Melendez.

23 COMMISSIONER MELENDEZ: Yes. As far as
24 the overall report concerning mortgage lending to
25 minorities and the role those policies played in the

1 current lending crisis was a big part of what we were
2 supposed to be looking into I thought. There are
3 disputes about whether government --

4 COMMISSIONER YAKI: I'm really losing
5 volume on people right now.

6 COMMISSIONER MELENDEZ: There are disputes
7 about whether government policies intended to promote
8 minority home ownership backfired and helped create
9 the crisis. So if this is a --

10 (Commissioner Thernstrom speaking off
11 line.)

12 COMMISSIONER HERIOT: Abby, you're coming
13 in.

14 CHAIRMAN REYNOLDS: Abby, you're on. Your
15 personal conversation is being heard.

16 (Pause in proceedings.)

17 CHAIRMAN REYNOLDS: Okay. Let's try
18 again.

19 COMMISSIONER MELENDEZ: But anyway, that
20 was a predatory lending and mortgage fraud. You know,
21 that's a big component of what we were trying to look
22 into I thought. So are we saying that that's still in
23 the body of the report or has it become kind of like a
24 secondary appendix, a slight mention of it? I don't
25 know.

1 COMMISSIONER YAKI: I need everyone to
2 talk louder. I want to join Commissioner Melendez in
3 expressing my concern about where predatory lending
4 and mortgage fraud has been placed in terms of the
5 report. And I need to hear the response, and I'm not
6 -- the volume is extremely bad right now.

7 CHAIRMAN REYNOLDS: David, will you
8 respond in a loud voice.

9 MR. BLACKWOOD: I've never had a problem
10 with volume.

11 Let me respond to your specific request.
12 The reason the discussion of predatory lending is
13 currently in an appendix is twofold. One, as you
14 mentioned, the main gravamen of the report, the
15 purpose of the report is to examine whether policies
16 meant to increase minority home ownership in some way
17 backfired or were detrimental or were beneficial, and
18 that's the main body of the report.

19 Predatory lending or the issue of
20 predatory lending is separate from that. It's not one
21 of the policies. It's whether it occurred during the
22 framework.

23 Now, I will tell you we originally started
24 -- original drafts included predatory lending in the
25 body of the report. Frankly, it did not fit as a

1 topic because we discussed all of this time about the
2 CRA and also with regard to the HUD lending goals.
3 That doesn't lend all -- let's put it this way.
4 Predatory lending then is a jump. It's a totally
5 different topic. Let's see what has occurred.

6 Now, we have additional information about
7 predatory lending to put in, but frankly, it was my
8 view, and not frankly; it was also a consensus view of
9 those working on the report. It didn't fit into the
10 body, like the issue --

11 COMMISSIONER YAKI: I don't understand
12 what you mean by didn't fit in the body because when
13 we talked about this initially and we approved this,
14 we approved it with the concept of, with the idea of
15 the predatory lending practices and mortgage fraud
16 that were being perpetrated upon blacks and Hispanics
17 many of whom were prime candidates and steered into
18 subprime loans, and whether or not it fits into the
19 body of Part 1, why we can't put Part 1 and Part 2
20 because certainly if black Americans and Latinos were
21 being targeted for fraud and being steered into the
22 wrong types of financial instruments, why that
23 wouldn't be something that we would really care about
24 in terms of our jurisdiction and highlight as part of
25 the main report rather than being stuck into an

1 appendix is beyond me.

2 I mean, why you can't Part 1 and Part 2,
3 Section 1 and Section 2; I don't understand why you
4 decided on your own to make the decision to toss it
5 into the appendix.

6 CHAIRMAN REYNOLDS: Well, Michael, first
7 of all, this is a draft. Overall I agree with the
8 concerns that Commissioner Yaki just expressed. While
9 these issues, the two concepts may require some
10 additional writing to smooth out the transition, I
11 think it's more than doable. I think it is an
12 important issue, and an issue that probably should be
13 in the body of the document.

14 COMMISSIONER YAKI: Thank you, Mr. Chair.
15 Thank you very much.

16 CHAIRMAN REYNOLDS: I told you, Michael,
17 I'm here to serve.

18 But on a serious note, David, could you
19 describe the level of difficulty and the amount of
20 effort required in order to put that section into the
21 body?

22 MR. BLACKWOOD: We live to serve. We can
23 move it in.

24 CHAIRMAN REYNOLDS: That's a damned good
25 answer.

1 MR. BLACKWOOD: I'm hoping. It can be
2 done. My movement of that, as I have moved other
3 topics into the appendix, is an editorial decision and
4 it's subjective. So we can move it in.

5 CHAIRMAN REYNOLDS: There's nothing wrong
6 with your initial decisions. You are exercising your
7 judgment. The issue was not hidden. We all received
8 the documents, and the process is working. At least
9 two Commissioners voiced concern about the placement
10 of that section, and so, you know, to the extent that
11 the impression was created that you did something
12 wrong, I disagree.

13 MR. BLACKWOOD: I will say there have been
14 some proposals made when we met with the special
15 assistants about restructuring the report, which would
16 include moving predatory lending into the body. We
17 are looking at that. I will certainly take into
18 consideration what has been said here today.

19 CHAIRMAN REYNOLDS: Other questions?

20 COMMISSIONER HERIOT: Could I just weigh
21 in as well on this?

22 CHAIRMAN REYNOLDS: Sure.

23 COMMISSIONER HERIOT: My instinct also is
24 that predatory lending goes as well in the body as
25 some of the other chapters that are in the body at

1 this point.

2 So I don't think it's correct that this
3 part of the report uniquely belongs in the --

4 COMMISSIONER YAKI: I can't hear.

5 COMMISSIONER HERIOT: -- in the appendix.

6 CHAIRMAN REYNOLDS: She -- she --

7 COMMISSIONER HERIOT: I actually thought
8 that Chapter 2 --

9 CHAIRMAN REYNOLDS: She's agreeing with
10 you.

11 COMMISSIONER HERIOT: Yeah, I'm agreeing
12 with you. So hush.

13 It seems to me that, you know, it is
14 possible to move it to the body. It's also possible
15 to move some things that are currently in the body
16 into the appendices, but right now the report doesn't
17 hang together very well, and I don't see why there's
18 something unique about the predatory lending section
19 that means it should go in the appendix and not in the
20 body.

21 There are other things in the appendices
22 that maybe should go in the body of the report as
23 well.

24 CHAIRMAN REYNOLDS: All right. Unless
25 there are other comments or questions.

1 MR. BLACKWOOD: Well, I have a request of
2 the Commissioners.

3 CHAIRMAN REYNOLDS: Sure.

4 MR. BLACKWOOD: Which is feedback on one
5 particular issue. We deliberately did not put in any
6 findings and recs. in this draft. I would like some
7 feedback from you all whether in the next draft you
8 would like staff, as opposed to you all, to submit
9 findings and recs.

10 CHAIRMAN REYNOLDS: I am comfortable with
11 staff making recommendations. The Commissioners are -
12 - each Commissioner is well within his or her power to
13 offer up alternatives --

14 MR. BLACKWOOD: All right. Then I would
15 also ask though if someone does have alternatives that
16 they submit them. We can show different alternatives
17 in the body so when it comes time to vote as opposed
18 to an editorial review we can say pick A or B on this.

19 You all -- let's put it this way. You all will have
20 more alternatives to draw from, including ones that
21 you have drafted yourselves.

22 CHAIRMAN REYNOLDS: Okay. I think that
23 you folks are doing the day-to-day on this issue, and
24 I think that you have a sense of where the consensus
25 is around --

1 COMMISSIONER HERIOT: I'm not sure that's
2 correct.

3 CHAIRMAN REYNOLDS: Okay. Well, we will
4 find out, and we will have the opportunity to make
5 revisions and substitutions to whatever is put in
6 front of us.

7 MR. BLACKWOOD: Thank you.

8 CHAIRMAN REYNOLDS: Any other questions?

9 COMMISSIONER GAZIANO: Just when you -- I
10 know when you will circulate the next schedule that
11 we'll see this, but in part because there will be some
12 other things incorporated, we've made some
13 suggestions; I think we all want an opportunity to the
14 extent that that's still possible in the amount of
15 time we have to comment as much as we can.

16 So do you have -- first of all, just
17 confirm. I hope the answer is yes, that there will be
18 a second, at least a second opportunity for
19 Commissioners to provide comments, but that we -- that
20 you would encourage us to continue to bring comments
21 as new versions come to us.

22 MR. BLACKWOOD: One, I do hope to issue
23 another draft. You all have another two weeks, and I
24 was going to hold off until after that period, till I
25 got more substantive comments. That's why I tried to

1 outline in the memo the types of things that we're
2 trying to do.

3 Now, you all have given me some different
4 changes and I can start working on those, but I didn't
5 want to start adding things until I figured out where
6 the blocks would be. I can't say when the next
7 version would be. I'm not sure we'd have another one
8 that would address everybody's concerns in the next
9 two weeks, which is when your comments are due, but
10 certainly I envision another version that addressed
11 the changes today that you all would have another
12 opportunity to make comments on before the vote.

13 STAFF DIRECTOR DANNENFELSER: It would
14 have to be a pretty short comment period.

15 MR. BLACKWOOD: It would have to be short
16 and, frankly, this isn't contemplated by the sigma
17 process, but I do think based on what I've heard here
18 today and given the types of changes we're going to
19 make it makes sense to at least send out a version in
20 a quick way so you all can make more comments.

21 CHAIRMAN REYNOLDS: Okay. Next up,
22 Commissioner Melendez has submitted a number of
23 motions concerning the operations of the Commission.
24 We will consider four of the eight at this meeting.
25 Here is Commissioner Melendez's motion.

1 VI. MANAGEMENT AND OPERATIONS,

2 A. MOTION REGARDING EVALUATION OF STAFF

3 DIRECTOR'S PERFORMANCE

4 CHAIRMAN REYNOLDS: He moves that the
5 Staff Director be required to undergo an annual
6 performance review comparable to those required of
7 other SES personnel by an external panel of SES
8 personnel who will report the results directly to
9 Commissioners in writing.

10 I second the motion.

11 Discussion? Commissioner Melendez, would
12 you like to walk us through this?

13 COMMISSIONER MELENDEZ: Yes. The goal
14 here is to give the Commissioners an objective review
15 of the Staff Director's annual work performance, and
16 details of how that could be done are negotiable.
17 Nothing prohibits the Commission from requiring this
18 kind of review.

19 This will hopefully create more
20 accountability for performance in the Staff Director's
21 office and throughout the agency.

22 As with any employee, where work goals are
23 not being met, there needs to be an objective look at
24 whether the failure is because of a lack of resources
25 or individual performance. So basically it just gives

1 us more accountability.

2 And basically whether or not there's an
3 alternative to actually having a senior executive, you
4 know, personnel, but I think there needs to be some
5 discussion as to, you know, some measurement of how
6 not necessary Marty in general, but any Staff Director
7 that we have in the future, of how we see how they're
8 performing basically.

9 CHAIRMAN REYNOLDS: Commissioner Melendez,
10 I would like to offer a friendly amendment. I think
11 that the thrust of the motion is a good one. The
12 Staff Director needs to be accountable just like any
13 other person on staff, but the mechanics of your
14 proposal are cause for concern.

15 I would suggest that the Chair evaluate
16 the Staff Director using some criteria that would be
17 distributed and discussed amongst the Commissioners
18 beforehand as opposed to having an external panel do
19 this.

20 VICE CHAIR THERNSTROM: Mr. Chairman.

21 CHAIRMAN REYNOLDS: Yes.

22 VICE CHAIR THERNSTROM: I thought the
23 beauty of this motion and its strength lay in having
24 an outside group without an agenda of its own tied to
25 the Commission do the evaluation, and I would be very

1 strongly opposed to having putting in place a rule
2 that it is the Chair who does the evaluating.

3 CHAIRMAN REYNOLDS: Well, we have a
4 history on this issue. The recommendations that
5 Commissioner Yaki put on the table have been tried in
6 the past --

7 STAFF DIRECTOR DANNENFELSER: Commissioner
8 Melendez.

9 CHAIRMAN REYNOLDS: I'm sorry?

10 STAFF DIRECTOR DANNENFELSER: Commissioner
11 Melendez. You said Yaki.

12 CHAIRMAN REYNOLDS: Oh, I'm sorry.

13 COMMISSIONER YAKI: Excuse me?

14 CHAIRMAN REYNOLDS: I misspoke and blamed
15 you for something.

16 In any event (pause) --

17 VICE CHAIR THERNSTROM: Is there something
18 being said I should be able to hear?

19 CHAIRMAN REYNOLDS: No. I'm sorry. I'm
20 just reading something.

21 Okay. Here are my initial thoughts to
22 your concern, Vice Chair Thernstrom. First of all, I
23 think that it's -- I don't -- an outside panel will
24 not work with Marty on a regular basis or any other
25 Staff Director on a regular basis, and I think it

1 would be extremely difficult for an SES panel to
2 provide an accurate assessment of the strengths and
3 weaknesses of the Staff Director being that far
4 removed. Essentially once or twice a year they will
5 meet, and they would attempt to assess what's gone on
6 over the previous six months.

7 VICE CHAIR THERNSTROM: Well, it depends
8 on what the criteria will be and whether they're able
9 to assess it. I mean, the Chair may be able to assess
10 probably the Staff Director's performance; maybe not,
11 and we, of course, are going to have various Chairs
12 probably in the future. This makes me nervous.

13 COMMISSIONER GAZIANO: Mr. Chair, may I?

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER GAZIANO: I certainly think
16 some sort of review is a good idea, Commissioner
17 Melendez. I have some different concerns with or
18 additional concerns with someone outside our
19 Commission doing the reviewing.

20 The first is I would have some concerns
21 even if we knew some neutral, platonic, brilliant
22 guardians could be selected, but the selection process
23 itself is a little hard to figure out and a little
24 hard to necessarily put my necessary trust in.

25 The second is that we as Commissioners are

1 responsible for such oversight, and I maybe want to
2 suggest a friendly amendment to the friendly
3 amendment, and that is that the Chairman takes the
4 lead. I hate to ask you to do this, but with a
5 certain type of consultation with other Commissioners.

6 CHAIRMAN REYNOLDS: Well, that was
7 contemplated by my friendly amendment, the idea of
8 having some written objectives that would be
9 circulated for comment.

10 But also one other piece. I mentioned
11 before that this proposal has been tried and hasn't
12 worked out so well. Our institutional memory -- Ms.
13 Martin, would you care to?

14 MS. MARTIN: I'm sorry. I didn't hear the
15 question.

16 CHAIRMAN REYNOLDS: This idea of having an
17 SES panel to rate the Staff Director. We have
18 experienced -- we have attempted this in the past?

19 MS. MARTIN: We have talked about putting
20 the Staff Director on a performance plan, but it never
21 came to fruition. So we've never had to contact a
22 panel or anything because the elements were never
23 created for the Staff Director.

24 CHAIRMAN REYNOLDS: So do you know the
25 reason why you didn't move forward?

1 MS. MARTIN: It would have --

2 MR. BLACKWOOD: This is David Blackwood.

3 When --

4 COMMISSIONER YAKI: Can't hear.

5 MR. BLACKWOOD: This is David Blackwood.

6 When I heard the motion come up, I looked
7 at it again at our statute, and I've also raised it in
8 front of the small agency General Counsel group. No
9 administrative head of agency gets rated. You all
10 have supervision as a corporate body. You can demand
11 information from the Staff Director and determine his
12 performance, his or her performance as you wish. But
13 I was not able to determine any other agency in which
14 the head of the agency, the administrative head was
15 rated.

16 Part of that -- let me throw in a subpart.

17 The purpose of rating is to determine awards and
18 benefits. Mr. Dannenfelser or any other Staff
19 Director is not eligible for such. So frankly, it
20 serves no purpose other than, I guess, a third party
21 review of how the Staff Director is doing.

22 But you all already have the power to
23 evaluate.

24 COMMISSIONER HERIOT: Can I add something
25 here? It's not just that we have the power. We have

1 the responsibility. You know, this is something that
2 we really, really ought to do, and you can't kick it
3 to somebody else. Ultimately it just comes back to
4 us.

5 If an SES panel came to a decision that
6 wasn't one that the rest of us would endorse, you
7 know, it's ultimately going to be our decision whether
8 or not this is, you know, a good Staff Director or a
9 bad Staff Director or a terrific Staff Director or
10 whatever.

11 COMMISSIONER GAZIANO: Yeah, and related
12 to my concern about the selection criteria and of an
13 outside, such a review of an outside group has as much
14 potential to mislead and create just headaches for
15 those of us on the Commission as they do to inform,
16 and this is, again, a responsibility I think we have
17 and one that we ought not to dilute with some sort of
18 outside process.

19 COMMISSIONER YAKI: May I ask a basic
20 question?

21 CHAIRMAN REYNOLDS: Hold on, Michael. The
22 Solicitor is about to --

23 MS. MONROIG: I just wanted to mention
24 that part of the history was that some years back we
25 had a career SES who was appointed as Staff Director,

1 and that situation does not occur in the case of our
2 present Staff Director, and it was during that time
3 that there was some discussion because of the fact
4 that it was a career SES and certain evaluations -- it
5 was during the time of Ms. Mary Matthews -- there was
6 a discussion of it, but I concur with the General
7 Counsel that it's just not appropriate for the head of
8 an agency to get an appraisal.

9 He is the head of the agency, above the
10 Commissioners as far as administrative matters are
11 concerned.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER HERIOT: No, the Commission
14 is the Commission. All power is invested by the
15 statute in the Commission. The Staff Director has
16 delegated power from the Commission, but that still
17 leads us to the same conclusion. It would be
18 inappropriate for us to shirk our responsibility here.

19 CHAIRMAN REYNOLDS: Commissioner Yaki, you
20 were about to say something?

21 COMMISSIONER YAKI: Yeah, I just have a
22 very basic question. No matter who does the
23 evaluation, what becomes of that? You know, I don't
24 know what our authority is beyond that. Is it just
25 simply to say, well, the average is? Does that matter

1 ever?

2 And I'm not (unintelligible) this to
3 Marty, but say, you know, you had someone who, you
4 know, clearly was just off the chart and you did this
5 evaluation. Well, what is the remedy?

6 CHAIRMAN REYNOLDS: Well, let me ease into
7 an answer. I think that everyone needs -- well, it's
8 just good practice to have a regular performance
9 appraisal so that an individual will know, you know,
10 what they're doing right and what they're doing wrong.

11 Folks need an opportunity to improve, assuming that
12 there is a significant deficiency, and it's difficult
13 to --

14 COMMISSIONER HERIOT: Or even if there's
15 not. Improving is always good.

16 CHAIRMAN REYNOLDS: Well, I'm just dealing
17 with my personal directions on HR issues, but you're
18 right.

19 But, Michael, I think you raise a very
20 good point. I don't think that it -- the Staff
21 Director position is in some respects unique. I don't
22 know if it would be appropriate, and I doubt if it
23 would be appropriate, for example, if the Staff
24 Director's performance in a different context would
25 warrant putting the person on a, you know, some type

1 of improvement plan. You know, if it reaches a point
2 where it -- if it reaches a point where the
3 performance is unacceptable and, I guess, depending on
4 the political affiliation of the President and the
5 configuration of the Commission, under certain
6 circumstances you could go to the White House and seek
7 another -- well, to seek a replacement.

8 But you do raise a good question, but for
9 me I don't anticipate having a problem, a severe
10 problem for me. The benefit of going forward with
11 this good recommendation is to give good feedback and
12 to set expectations on the front end and to provide
13 feedback at regular periods.

14 So --

15 COMMISSIONER MELENDEZ: This is
16 Commissioner Melendez again.

17 Wouldn't we design some criteria or, you
18 know, benchmarks of certain areas of what the person
19 is supposed to do? I mean, the financial accounting
20 and reporting, the budget; it would be including all
21 of the reports that we have, and we're trying to meet
22 timely deadlines on all of these things. So you'd
23 have different categories where you would be
24 physically evaluating based on that, and I'm sure our
25 HR could come up with some type of the most important

1 components of what the Staff Director is supposed to
2 be meeting because time and time again I know I've
3 been asking these questions, having to do with the
4 budget, and even my motions that come after this are
5 going to address some of these same issues having to
6 deal with accountability.

7 And again, it's not saying -- it's really
8 determining whether or not it's performance or whether
9 or not it's something else, whether it's lack of
10 funding or something. We should have some idea.

11 CHAIRMAN REYNOLDS: Or interference from
12 the Chair.

13 COMMISSIONER MELENDEZ: Otherwise if you
14 decide to do something later, they'll say, "Well, what
15 do you have down in writing? Anything or are you guys
16 just kind of coming up collectively with your
17 assumptions that you've kind of discussed in the back
18 room somewhere that you don't like the Staff
19 Director?"

20 But at least you'd have something that
21 kind of gives at least the Chairman and whether or not
22 it ended up being a three-panel one, the Chairman and
23 one independent and the other party as a three-tiered
24 evaluation, you know, might be an idea, too. So I
25 don't know.

1 CHAIRMAN REYNOLDS: Okay. Well, I guess
2 that brings us full circle. I offered a friendly
3 amendment. How do you feel?

4 COMMISSIONER MELENDEZ: Well, if we were
5 going to go, I guess from my position it would be like
6 a three-panel person working with yourself, one from
7 either Michael or myself and one independent or -- and
8 it would be three people.

9 And it's not we would just go off, but
10 whatever criteria sheet you design, we evaluate our
11 special assistants. They have a sheet that we fill
12 out and we turn backed in. You know what I mean? So
13 it's really kind of set as to what we're marking.

14 VICE CHAIR THERNSTROM: Mr. Chairman.

15 COMMISSIONER HERIOT: I'm a little
16 confused here. We're talking about having a set of
17 criteria that are just bureaucratic. I don't think
18 those tend to be very helpful in evaluating candidates
19 for anything. I think they tend to just -- you know,
20 what if we made up a list of how to evaluate a
21 President? You know, we can't --

22 CHAIRMAN REYNOLDS: Well, there are
23 certain things that are easy. Stuff --

24 COMMISSIONER HERIOT: It's easy enough for
25 you just to say, "Look. I would like everyone on the

1 Commission to comment at least on the following
2 issues," one, two, three, four, five, and then we as
3 individuals can then give our comments to you.

4 CHAIRMAN REYNOLDS: Well, what I was
5 thinking about, things that are in the -- our
6 objectives, stuff that we submit to Congress, stuff
7 that we're committing, that we've made a commitment to
8 achieve. One easy one is getting the statutory report
9 done on time.

10 COMMISSIONER HERIOT: Yeah, but I think --

11 VICE CHAIR THERNSTROM: Mr. Chairman.

12 COMMISSIONER HERIOT: -- that's a really
13 long, bureaucratic process about what are the
14 appropriate criteria. Shoot us four or five that you
15 think we should comment on, plus what else, you know,
16 we choose to comment on.

17 You know, if we want to comment on Marty's
18 ties, then we're being really silly. I love your tie,
19 by the way, Marty.

20 CHAIRMAN REYNOLDS: Yeah, but I don't.

21 (Laughter.)

22 COMMISSIONER HERIOT: You're a hard one on
23 ties.

24 STAFF DIRECTOR DANNENFELSER: Commissioner
25 Melendez will be the tie breaking vote.

1 (Laughter.)

2 MR. BLACKWOOD: This is David Blackwood.

3 I just wanted to address Commissioner
4 Yaki's question. The evaluation, for whatever reason,
5 and taking into consideration the Staff Directors will
6 come and go under various parties, the evaluation will
7 have absolutely no effect, no legal effect of any
8 kind.

9 CHAIRMAN REYNOLDS: Right, legal effect.

10 MR. BLACKWOOD: The Chair hit the nail on
11 the head. If the Commission makes a decision that the
12 Staff Director is not doing his job, they can go to
13 the White House to ask his or her removal.

14 COMMISSIONER GAZIANO: I hope we can
15 persuade him --

16 MR. BLACKWOOD: You already have that
17 power.

18 COMMISSIONER GAZIANO: -- other ways, too.
19 Yes.

20 MR. BLACKWOOD: You already have that
21 power. That's my point.

22 COMMISSIONER GAZIANO: Yeah, we're talking
23 about kind of putting it on our own schedule.

24 VICE CHAIR THERNSTROM: Folks, I turned
25 the phone off by mistake. Look. When I dropped out,

1 I mean, one of the things that was bothering me,
2 getting reports done on time, for instance. Well,
3 whose fault is it that we haven't gotten reports done
4 on time? Is it the Staff Director's or is it the
5 fault of the Commissioners?

6 This whole thing seems to me fraught with
7 problems. I don't like it, in a word.

8 CHAIRMAN REYNOLDS: Okay. So back to you,
9 Commissioner Melendez. Now, your idea of having a
10 committee, I don't like. I think that Marty's job is
11 hard enough just dealing with me and to subject him to
12 more Commissioners is problematic.

13 So I offer my friendly amendment again
14 with the --

15 COMMISSIONER HERIOT: So each individual
16 Commissioners is free to call Marty and say, you know,
17 "Why do you think that this happened this way?"

18 VICE CHAIR THERNSTROM: Well, exactly.

19 COMMISSIONER HERIOT: That's true now, and
20 it would be true under this evaluation, but I like the
21 idea of individually assessing and shooting you our
22 assessments.

23 CHAIRMAN REYNOLDS: Folks with --

24 COMMISSIONER HERIOT: And you can take
25 them for what they're worth.

1 CHAIRMAN REYNOLDS: Okay. I think that
2 that approach is fine.

3 VICE CHAIR THERNSTROM: So say it again.
4 So it's the status quo, you know. We've got problems;
5 call Marty up. "I've got a problem, Marty."

6 COMMISSIONER HERIOT: Yeah, but under the
7 status quo we also are free to tell Gerry what we
8 think, and this was just --

9 VICE CHAIR THERNSTROM: Well, we're free
10 now to say what we think. I'm free to call Gerry up
11 and say --

12 COMMISSIONER HERIOT: Then you're free to
13 vote yes on this.

14 VICE CHAIR THERNSTROM: -- I'm unhappy.

15 COMMISSIONER HERIOT: Well, we're not
16 coercing anyone to do it. We're just saying we're now
17 going to have a system where members of the Commission
18 can shoot Gerry their evaluation. That's always been
19 the case. We've always been free to do that. Now
20 we're going to make it something that we think might
21 be useful to do all at one time so that Gerry can get
22 the --

23 VICE CHAIR THERNSTROM: Well, I'm unhappy
24 about that. I just don't want this formalized. Most
25 people on the Commission are not around the Commission

1 very much. I would not like us to be evaluating his
2 performance. The things we do know are not
3 necessarily in his hands, and this whole thing seems
4 to me -- and if I were a --

5 (Simultaneous conversation.)

6 VICE CHAIR THERNSTROM: -- I would think
7 this is a terrible job for the additional reason that
8 we have this process.

9 CHAIRMAN REYNOLDS: Okay. Well, Vice
10 Chair Thernstrom, I understand your concerns and
11 objections. I have one quibble with you. The Staff
12 Director is in charge and responsible for the stuff
13 that happens on this side of the house.

14 VICE CHAIR THERNSTROM: He can't help it
15 if the Commissioners don't come through with the
16 things they are supposed to be doing.

17 CHAIRMAN REYNOLDS: That's not his side of
18 the house. So I agree with you.

19 COMMISSIONER MELENDEZ: Okay. So the real
20 question is on your amendment that you would do an
21 evaluation. You would end up having -- I guess you'd
22 do it on some type of criteria sheet that you draw up
23 similar to special assistants, those type things. So
24 if you pick four areas of criteria, one was financial
25 accountability, getting the budget in on time, submit

1 it to Congress, all those different things you put in
2 there; would you send that to us so that we know, that
3 we could call you and say, "Look, Gerry. Here's my
4 big complaint about the financial accountability" --

5 CHAIRMAN REYNOLDS: Yes.

6 COMMISSIONER MELENDEZ: -- which would
7 weigh in and you would consider that --

8 CHAIRMAN REYNOLDS: Yes.

9 COMMISSIONER MELENDEZ: -- and make you --
10 force you -- you would just say, "Here's Commissioner"
11 -- you get enough complaints as the financial
12 reporting, then you might mark him low. I don't know.

13 CHAIRMAN REYNOLDS: I would exercise --

14 COMMISSIONER MELENDEZ: I'm just saying --

15 CHAIRMAN REYNOLDS: -- my judgment. You
16 may think it's excellent or --

17 COMMISSIONER MELENDEZ: But just to have
18 something in place, I would go along with your
19 amendment right now because I don't think we're going
20 to get anywhere passing anything unless we kind of go
21 in that direction.

22 CHAIRMAN REYNOLDS: Okay. All in favor
23 please say aye.

24 (Chorus of ayes.)

25 CHAIRMAN REYNOLDS: Objections?

1 VICE CHAIR THERNSTROM: No.

2 CHAIRMAN REYNOLDS: Abstentions?

3 (No response.)

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom
5 voted against the motion. The motion as amended, the
6 motion passes.

7 Next up. Bear with me.

8 VI. MAINTENANCE AND OPERATIONS

9 B. MOTION REGARDING STAFF DIRECTOR'S
10 PROVISION OF QUARTERLY FINANCIAL REPORTS

11 CHAIRMAN REYNOLDS: Here's Commissioner
12 Melendez's second motion. "The Staff Director will be
13 directed to provide Commissioners with a detailed
14 quarterly report on the agency's financial
15 expenditures, to include expenditures on all current
16 projects and contracting services of all kind."

17 I second the motion.

18 You're on.

19 COMMISSIONER MELENDEZ: Okay. Again, the
20 Staff Director already has a duty per AI 3-25.02(b) to
21 keep Commissioners informed of changes in agency
22 finances and budget that have implication for
23 Commission program activities and goals. This
24 attempts to regularize reporting such changes. This
25 shouldn't take, you know, too much staff work.

1 Let's see. We have such a tight budget
2 and so many needs that it's important for
3 Commissioners to know when money is piling up because
4 of vacancy or other changes, and it is important that
5 this be a detailed report also, you know, so that we
6 kind of really know.

7 We saw early on some of the discussion on
8 the report how things are moving around, and I'm kind
9 of wondering, you know. I didn't catch all of it and
10 I'd have to go back and talk to Marty about what he
11 said about the movement of that contract and all these
12 interim people, and then I'm still concerned about the
13 western region, and I'm still concerned about money
14 piling up because in the past, you know, the next
15 thing you know somebody tells us at a meeting, well,
16 we bought a whole bunch of furniture, and we're kind
17 of going, "Well, thanks for telling us after the
18 fact."

19 So I'm just saying on reporting
20 accountability, I think it needs to be improved, and I
21 think most of us would agree with that because it
22 comes up all the time, at least by myself.

23 CHAIRMAN REYNOLDS: Okay. I have another
24 friendly amendment, and that would be that the
25 following financial information would be provided on a

1 quarterly basis. It would be the Transparency Act
2 report on agency procurement and contracting, the
3 project cost report of agency expenditures on all
4 current projects, and the status of funds report on
5 the agency's plan versus actual expenditures.

6 COMMISSIONER GAZIANO: Can you explain
7 what that means?

8 CHAIRMAN REYNOLDS: No. Marty.

9 (Laughter.)

10 STAFF DIRECTOR DANNENFELSER: These are
11 three reports that the Commission regularly provides,
12 and we received from the General Services
13 Administration, which is our current external
14 accounting services provider, status of funds report,
15 and we did provide that up through March. The
16 Commission has received that as well as the project
17 cost report, and we did provide the Transparency Act
18 report.

19 The Transparency Act report is something
20 that is submitted to OMB, and it lists the
21 procurements of \$3,000 or more and who those
22 procurements are to, and that's something that is
23 actually done on a monthly basis, and we could provide
24 that as part of a quarterly reporting process. We
25 could compile that information from the three months

1 into a quarterly report, but we can also produce these
2 project cost reports and the status of funds reports
3 on a quarterly basis as well.

4 I think the main point here would be that
5 when we're asking for information that we know exactly
6 what we're talking about, and this specifies the
7 language in Commissioner Melendez's proposal is
8 somewhat open ended and may not be entirely clear on
9 when you say services of all kinds, will that get into
10 very minute types of purchases and financial
11 transactions.

12 COMMISSIONER MELENDEZ: I think you have
13 to make a judgment call as to what you think that the
14 Commission would really want to know about. I mean,
15 we receive a copy of quarterly statements that have
16 been short reports, and they tell the net obligations
17 and also the available funds, but I think we need
18 details on those a little more than we've been
19 getting.

20 CHAIRMAN REYNOLDS: Well, and I think that
21 that's accomplished because in addition to the status
22 of funds reports, we would have the private cost
23 report along with the Transparency Act report.

24 Is that an acceptable friendly amendment?

25 COMMISSIONER MELENDEZ: Sure.

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

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: Objections?

5 (No response.)

6 CHAIRMAN REYNOLDS: Abstentions?

7 (No response.)

8 CHAIRMAN REYNOLDS: The motion passes
9 unanimately. No?

10 Abby? Vice Chair Thernstrom?

11 VICE CHAIR THERNSTROM: Yes.

12 CHAIRMAN REYNOLDS: How do you vote?

13 VICE CHAIR THERNSTROM: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Kirsanow?
15 Commissioner Kirsanow?

16 (No response.)

17 CHAIRMAN REYNOLDS: Commissioner Taylor?
18 Commissioner Taylor?

19 (No response.)

20 CHAIRMAN REYNOLDS: Okay. Let the record
21 reflect that Commissioners Kirsanow and Taylor did not
22 vote on the matter. The motion passes unanimately.

23 VICE CHAIR THERNSTROM: And, Mr. Chairman,
24 I need to get off this phone unfortunately, but I --

25 CHAIRMAN REYNOLDS: I have you for six

1 more minutes

2 VICE CHAIR THERNSTROM: All right. I'll
3 stay for six more minutes.

4 CHAIRMAN REYNOLDS: Well, that's what you
5 offered up, and you're trying to shortchange me now.
6 Okay.

7 VICE CHAIR THERNSTROM: All right. Six
8 more minutes. You've got it.

9 CHAIRMAN REYNOLDS: Thank you.

10 This is Commissioner Melendez's third
11 motion.

12 VI. MANAGEMENT AND OPERATIONS

13 C. MOTION REGARDING COMMISSION PREPARATION
14 OF PUBLIC SERVICE ANNOUNCEMENT

15 CHAIRMAN REYNOLDS: Which would be he
16 moves that the Staff Director be directed to prepare
17 possible topics and cost estimates for a new public
18 education project and a new public service
19 announcement that will be presented to Commissioners
20 within two months.

21 I second it.

22 Commissioner Melendez.

23 COMMISSIONER MELENDEZ: This is a
24 statutory duty. The Commission statute says that the
25 Commission shall prepare public service announcements

1 and advertising campaigns to discourage discrimination
2 or denials of equal protection of the laws under the
3 Constitution of the United States because of color,
4 race, religion, sex, age, disability or national
5 origin, or in the administrative of justice.

6 And so I just think that it's our
7 obligation to have at least one per year.

8 CHAIRMAN REYNOLDS: Okay, and so basically
9 you're asking for the Staff Director to prepare topics
10 for discussion.

11 COMMISSIONER MELENDEZ: Right, and it
12 could even relate to the health disparities or
13 something to do with, you know, a campaign to do
14 something along the health lines, but I think we
15 should be able to send some ideas into you relatively
16 shortly as to what we think that would be and do
17 something along those lines.

18 CHAIRMAN REYNOLDS: Mr. Staff Director, is
19 there any reason why we couldn't have topics and cost
20 estimates within two months?

21 COMMISSIONER GAZIANO: Could I ask a
22 friendly amendment?

23 CHAIRMAN REYNOLDS: Sure.

24 COMMISSIONER GAZIANO: The only thing I --
25 I would like the cost estimates to be zero. That's my

1 only friendly amendment. This sounds like a great
2 idea and we should be fulfilling our traditional
3 statutory goal here, but at least I think -- and I'll
4 recognize Commissioner Heriot who I understand used to
5 do a lot of public service announcements -- but we
6 should be able to do this without a lot of cost,
7 especially when we're under funded in so many other
8 areas.

9 CHAIRMAN REYNOLDS: Well, I think that our
10 obligation under the statute is tempered by how much
11 money we have in the till. We're not going to have
12 any expensive productions.

13 Commissioner Heriot.

14 COMMISSIONER HERIOT: I used to do a
15 constitutional minute for the largest AM radio station
16 in San Diego, you know, just doing one little minute
17 blurbs, and it was really -- you know, they wanted
18 these things. They were not going to charge us or
19 charge me to run them, and we ought to be able to come
20 up with something that's really quite inexpensive and
21 yet quite useful with one minute slots for radio, and
22 I think we could do a good job on that, and I've
23 written hundreds of these.

24 CHAIRMAN REYNOLDS: Okay. Mr. Staff
25 Director, any impediments to providing topics and cost

1 estimates within two months?

2 STAFF DIRECTOR DANNENFELSER: Well, one of
3 the things that has been discussed in terms of the
4 strategic plan was to have some consultation with some
5 other agencies on potentially doing something in
6 concert with those other agencies so that if there was
7 any of that type of process, that's something that
8 might take a little bit longer. We actually have had
9 some discussions in the fairly recent past with some
10 agencies about some joint initiatives.

11 So if we were to do that, that would be
12 another matter. It's a question of whether
13 Commissioners would rather do something internally or
14 whether they believe we should do something in concert
15 with another agency.

16 CHAIRMAN REYNOLDS: Well, I guess I repeat
17 the question. Whether you consult with other folks,
18 whether you decide to look at opportunities that just
19 involve the Commission or you choose to look into
20 opportunities to partner with other agencies, my
21 question is can all of this get done within two
22 months.

23 STAFF DIRECTOR DANNENFELSER: It can in
24 terms of producing some topics. It wouldn't be -- as
25 I understand the amendment it's not asking to produce

1 a concrete plan. This is topics and costs.

2 CHAIRMAN REYNOLDS: That's my
3 understanding.

4 STAFF DIRECTOR DANNENFELSER: Potential
5 topics and then what the cost is.

6 CHAIRMAN REYNOLDS: Commissioner Melendez,
7 did I get it right?

8 COMMISSIONER MELENDEZ: Yes, leading up to
9 getting something done.

10 CHAIRMAN REYNOLDS: Sure, sure.

11 COMMISSIONER GAZIANO: I just wonder what
12 the costs would be that -- I'm trying to lighten your
13 load, and I'm not sure what the cost would be if we're
14 just discussing topics and we think that -- but you've
15 heard my piece. I wouldn't go into a whole lot of
16 effort getting ranges of, you know, Hollywood
17 production.

18 CHAIRMAN REYNOLDS: Right, right.

19 COMMISSIONER GAZIANO: I wouldn't spend a
20 lot of time on that.

21 CHAIRMAN REYNOLDS: yeah.

22 COMMISSIONER GAZIANO: What would a
23 program be? What would a program be? How would we
24 develop a program?

25 CHAIRMAN REYNOLDS: Within the budget that

1 we have.

2 STAFF DIRECTOR DANNENFELSER: Well, then
3 there's also issues of distribution. That's another
4 question as to once you produce the product, how do
5 you distribute it. How do you promote it and
6 distribute it? There's a question do you use outside
7 people to help you do that and at what cost.

8 CHAIRMAN REYNOLDS: Okay. Well, these --
9 (Simultaneous conversation.)

10 COMMISSIONER HERIOT: Well, what's the
11 message and then we can determine how it is to be
12 distributed.

13 COMMISSIONER MELENDEZ: What were the
14 costs on the last one we did? Just kind of ball park

15 CHAIRMAN REYNOLDS: When's the last time
16 we --

17 COMMISSIONER MELENDEZ: Was it the anti-
18 Semitism one?

19 STAFF DIRECTOR DANNENFELSER: I'm not
20 sure. I mean, I've heard. We've had different
21 estimates that people have provided, staff has
22 provided. One figure that's been provided would be,
23 you know, \$40,000, but that involves a number of
24 different -- reaching out to professional companies
25 and so on in the development and production and that

1 sort of thing.

2 COMMISSIONER GAZIANO: Jerry is going to
3 be the voice of the Commission.

4 CHAIRMAN REYNOLDS: We can't spend a lot
5 of money. We're just not in a position to spend --

6 COMMISSIONER HERIOT: Think of the message
7 first.

8 CHAIRMAN REYNOLDS: Right. I agree.

9 COMMISSIONER HERIOT: This notion of
10 talking about the extras, think of content first and
11 then go from there.

12 STAFF DIRECTOR DANNENFELSER: Well, if the
13 Commissioners are going to recommend some content as
14 well. That certainly would be welcome.

15 CHAIRMAN REYNOLDS: Gail has hundreds of
16 ideas.

17 COMMISSIONER HERIOT: I may have one.

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

20 (Chorus of ayes.)

21 COMMISSIONER HERIOT: Can I ask will we
22 get something reported back to us within two months?

23 CHAIRMAN REYNOLDS: Within two months,
24 topics and estimates of cost.

25 Any objections?

1 (No response.)

2 CHAIRMAN REYNOLDS: Any abstentions?

3 (No response.)

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
5 how do you vote?

6 VICE CHAIR THERNSTROM: Yes. Well, aye.

7 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

8 (No response.)

9 CHAIRMAN REYNOLDS: Commissioner Taylor.

10 (No response.)

11 CHAIRMAN REYNOLDS: Again, please let the
12 record reflect that Commissioners Taylor and Kirsanow
13 did not vote. The motion passes unanimously.

14 VICE CHAIR THERNSTROM: And this is my
15 swan song.

16 CHAIRMAN REYNOLDS: Okay. I got an extra
17 minute out of you.

18 VICE CHAIR THERNSTROM: Thank you very
19 much.

20 CHAIRMAN REYNOLDS: Thank you.

21 VICE CHAIR THERNSTROM: Bye-bye.

22 CHAIRMAN REYNOLDS: Okay. The next
23 motion.

24 VI. MANAGEMENT AND OPERATIONS

25 D. MOTION REGARDING REVIEW AND STANDARDIZATION

1 OF AGENCY REGULATIONS, ADMINISTRATION INSTRUCTIONS
2 AND OTHER PRACTICES

3 CHAIRMAN REYNOLDS: Commissioner Melendez
4 moves that the General Counsel be directed to conduct
5 a review of agency published regulations, internal
6 administrative instructions, uncodified Commission
7 policies set by vote, and current practice, and
8 recommend to the Commission any changes to eliminate
9 conflicts, clarify and update materials.

10 I second the motion.

11 The floor is yours.

12 COMMISSIONER MELENDEZ: Do we still have a
13 quorum?

14 CHAIRMAN REYNOLDS: Yeah, there's four of
15 us.

16 COMMISSIONER MELENDEZ: We need five.

17 CHAIRMAN REYNOLDS: Okay. Good catch.

18 COMMISSIONER GAZIANO: You can always
19 assume the quorum when we've got potential people on
20 the phone.

21 CHAIRMAN REYNOLDS: Hello? Who joined us?

22 COMMISSIONER KIRSANOW: Kirsanow here.

23 CHAIRMAN REYNOLDS: Very good. Excellent.

24 Thank you, Pete. Thank you, Mr. Quorum.

25 Okay. I will read this back into the

1 record now that we have a quorum.

2 Commissioner Melendez moves that the
3 General Counsel be directed to conduct a review of the
4 agency's published regulations, internal
5 administrative instructions, uncodified Commission
6 policies set by vote, and current practice, and
7 recommend to the Commission any changes to eliminate
8 conflicts, clarify and update materials.

9 I second the motion.

10 Commissioner Melendez.

11 COMMISSIONER MELENDEZ: Yes. The
12 Commission's published regulations in certain
13 instances no longer reflect the structure of the
14 current Commission or its administrative instructions.
15 For example, the agency's published regulations
16 continue to refer to the Office of Deputy Staff
17 Director, while the agency's administrative
18 instruction 1-2 states that entire office has been
19 eliminated.

20 This motion would not make any changes.
21 It just requires a careful review by the Office of
22 General Counsel in getting the recommendation for ways
23 to update the regulations and AIs to better reflect
24 policies already approved by Commissioners.

25 If the General Counsel finds provisions in

1 the AIs and regulations where the practice has changed
2 but there has been no vote to change the policies,
3 they should bring those to the attention of the
4 commissioners. If while reviewing the regulations and
5 the A.I.s, the general counsel comes up with other
6 recommendations for ways to update and approve the
7 agency procedures the Commission would like to hear
8 those too. Also, the regulations, for example appear
9 to have conflicting language about what constitutes a
10 quorum. Then newest policy on determining
11 commissioner's party affiliation has never been
12 codified in the A.I.s or elsewhere and the newest
13 policy on briefing report procedures of the thirty day
14 response to commissioner's statements on reports and
15 other recent policies which procedures are required
16 for briefing reports and which discretionary have
17 never been codified into A.I.s or elsewhere.

18 The newest policy on collecting civil
19 rights information from administrative agencies -- I
20 believe that was Commissioner Kirsanow's motion a few
21 months ago -- has never been codified into AIs or
22 elsewhere, and the newest ethics policy that full-time
23 employees seek approval for outside employment has not
24 been published in the Federal Register as a
25 regulation.

1 The changes to statutory report time lines
2 following adoption of the Lean 6 sigma analysis by
3 outside consultants have not been codified into AIs.

4 So there's a number of them. There's some
5 work we have to do, and I'd just like our staff to
6 work on that basically.

7 CHAIRMAN REYNOLDS: I would recommend that
8 -- I would ask that we table this vote. I think that
9 you bring up some very good issues. I want to have
10 some conversations with General Counsel.

11 This is a huge undertaking, and it needs
12 to be done, and I'm just thinking about the slip and
13 folds and the employment cases that the office deals
14 with, as well as the work that the Office of the
15 General Counsel provides in terms of the substantive
16 work, in terms of our briefings.

17 So I want to have a conversation with him,
18 and then I'd like to have a conversation with you.
19 Would you mind if we dealt with this at a future
20 meeting?

21 COMMISSIONER HERIOT: Can I just add my
22 two cents?

23 I agree with Arlan this needs to be done.

24 CHAIRMAN REYNOLDS: Yes, yes.

25 COMMISSIONER HERIOT: Our AIs are a mess.

1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER HERIOT: Crazy, and they
3 really need overall overhaul.

4 CHAIRMAN REYNOLDS: Yes.

5 COMMISSIONER HERIOT: And it needs to be
6 really well thought out.

7 CHAIRMAN REYNOLDS: I have no objections
8 substantively with the proposal. It's the mechanics.

9 COMMISSIONER GAZIANO: I'm fourthing, but
10 I'm also seconding your motion to table because I
11 think it's such a big, huge undertaking that we
12 shouldn't just release the General Counsel to do it
13 all, whether it's a minor thing or big thing --
14 exactly.

15 CHAIRMAN REYNOLDS: He can't.

16 COMMISSIONER GAZIANO: I'm trying to -- we
17 ought to give more focused direction before the
18 General Counsel --

19 CHAIRMAN REYNOLDS: I'm looking out there,
20 looking at the attorneys and they're crying.

21 COMMISSIONER GAZIANO: No.

22 CHAIRMAN REYNOLDS: You can stop crying.
23 I hope that Commissioner Melendez would be agreeable.
24 Is that okay?

25 COMMISSIONER MELENDEZ: yes.

1 CHAIRMAN REYNOLDS: Great. Thank you.

2 Next up, SACs.

3 COMMISSIONER GAZIANO: Well, I think we
4 have Pete's letter.

5 CHAIRMAN REYNOLDS: Oh, oh, oh. Pete, are
6 you on the phone?

7 COMMISSIONER GAZIANO: Get Pete again.

8 CHAIRMAN REYNOLDS: Find the mute button.

9 COMMISSIONER KIRSANOW: I'm here. I've
10 got it.

11 COMMISSIONER GAZIANO: Your letter.

12 VII. LETTER TO CIVIL RIGHTS DIVISION

13 COMMISSIONER HERIOT: Move it.

14 COMMISSIONER GAZIANO: Move it.

15 CHAIRMAN REYNOLDS: Yeah, we have
16 basically 26 minutes left.

17 COMMISSIONER HERIOT: No, we don't. We
18 don't. I have a flight.

19 CHAIRMAN REYNOLDS: Okay. How much time
20 do you have?

21 COMMISSIONER HERIOT: I've got two
22 minutes. So let's --

23 CHAIRMAN REYNOLDS: Two minutes. Okay.
24 Pete.

25 COMMISSIONER KIRSANOW: Yeah, am I on?

1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER KIRSANOW: Yeah, I move that
3 we send the letter which should been distributed to
4 all Commissioners today. I think the letter is self-
5 explanatory, regarding the dismissal of the complaint
6 in a case of alleged voter-related threat in
7 Philadelphia, consistent with previous Commission
8 inquiries to DOJ that we've made, most recently the
9 inquiry that's referenced in the footnote pertaining
10 to our inquiry to then Attorney General Gonzalez
11 regarding the allegations that intimidating
12 correspondence was being sent to Spanish surnamed
13 voters in Orange County.

14 And the purpose of the letter is
15 consistent with our oversight authority, is to seek
16 some form of transparency regarding DOJ's rationale
17 for the dismissal of these allegations, given DOJ's
18 own allegations which were fairly striking in the
19 YouTube video that supports the allegations.

20 You know, it could be that as a matter of
21 prosecutorial discretion the rationale that DOJ
22 provides to us could be perfectly sensible, but I
23 would like to hear what the rationale is.

24 CHAIRMAN REYNOLDS: Do we need to discuss
25 this?

1 COMMISSIONER HERIOT: We need a second. I
2 second it.

3 CHAIRMAN REYNOLDS: Oh, I seconded it.

4 COMMISSIONER HERIOT: Oh, did you?

5 CHAIRMAN REYNOLDS: Yes.

6 COMMISSIONER HERIOT: The only comment I
7 had was I was a little hesitant to say that we're
8 saying this was a great disappointment because we're
9 supposed to be giving them a chance to respond first.

10 CHAIRMAN REYNOLDS: Do you have a friendly
11 amendment?

12 COMMISSIONER HERIOT: Friendly amendment
13 to sort of strike the "great disappointment" part and
14 say that we are baffled.

15 COMMISSIONER KIRSANOW: That sounds fine.

16 CHAIRMAN REYNOLDS: Do we have additional?

17 COMMISSIONER GAZIANO: I think this is
18 important, and depending on the answer, I think if
19 it's complete and satisfactory, I hope that we can all
20 be convinced, but if not, then we may need to look
21 further, but thank you, Commissioner Kirsanow, for
22 bringing this to our attention, and I think it's
23 important that we send something off because as far as
24 I know, no one has been able to get the Justice
25 Department to explain itself yet.

1 CHAIRMAN REYNOLDS: Okay. At this point,
2 all in favor please say aye to the revised motion.

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: Any objections?

5 (No response.)

6 COMMISSIONER MELENDEZ: One abstain.

7 CHAIRMAN REYNOLDS: Commissioner Melendez
8 abstains. Commissioner Yaki, are you on the line?

9 (No response.)

10 CHAIRMAN REYNOLDS: Commissioner Taylor?

11 (No response.)

12 CHAIRMAN REYNOLDS: The remaining
13 Commissioners voted in favor of the motion. The
14 motion passes.

15 Folks, folks have planes to catch, but
16 there's --

17 COMMISSIONER HERIOT: Can I call the SACs?

18 CHAIRMAN REYNOLDS: Okay.

19 VIII. STATE ADVISORY COMMITTEE ISSUES

20 CHAIRMAN REYNOLDS: I move that the
21 Commission recharter the California State Advisory
22 Committee. Under this motion, the Commission appoints
23 the following individuals for that committee based on
24 the recommendations of the Staff Director:

25 Luis A. Alejo

1 James Bolton
2 Sharon Browne
3 Jack Citrin
4 Marc Dollinger
5 John Dodd
6 Percy Duran
7 Thomas Gray
8 Gail Heriot
9 Joe Hicks
10 Lance Izumi
11 Manuel Klausner
12 Sanford Lakoff
13 Karen Joy Lugo
14 Leonard Mitchell
15 Velma Montoya
16 Matthew Rosenthal
17 Maimon --
18 COMMISSIONER HERIOT: Maimon.
19 CHAIRMAN REYNOLDS: Maimon Schwarzschild.
20 Furthermore, the Commission appoints Ms.
21 Montoya as the Chair of the rechartered State Advisory
22 Committee. These members will serve as uncompensated
23 government employees. Under this motion, the
24 Commission authorizes the State Director to execute
25 the appropriate paperwork for the appointment.

1 Is there a second?

2 COMMISSIONER GAZIANO: Second.

3 CHAIRMAN REYNOLDS: Okay. Discussion?

4 COMMISSIONER MELENDEZ: Yes.

5 COMMISSIONER HERIOT: Let me just say that
6 I had declined to be chairman this time around because
7 I'm too darn busy.

8 COMMISSIONER MELENDEZ: Yeah, just a
9 question here, and I'm sure Gail will do a great job
10 on the state SAC, but did we ever determine whether
11 or not Commissioners on this Commission could actually
12 participate on state SACs?

13 COMMISSIONER GAZIANO: Yes.

14 COMMISSIONER MELENDEZ: Has it been --
15 have we had Commissioners in the past that --

16 CHAIRMAN REYNOLDS: The last discussion
17 that we had I would be -- well, Commissioner Heriot
18 was already on the Commission. I saw no reason --

19 COMMISSIONER HERIOT: I was on the SAC.

20 CHAIRMAN REYNOLDS: I'm sorry. I'm sorry.
21 That's an important distinction.

22 She was already on the SAC, and I did not
23 think -- and this is my personal view, a view that I
24 expressed when we discussed this originally -- that we
25 had -- I don't believe that we had any reasons to ask

1 her to step down.

2 Now, as a policy though, if she had not
3 been on the California SAC, if she had been
4 Commissioner first and asked to be on the Commission,
5 I would vote against it, but looking at the
6 circumstances, looking at how this unfolded, I see no
7 reason not to have her on.

8 COMMISSIONER HERIOT: As a person on the
9 Commission, if somebody wanted to be on the SAC, in my
10 view, I would vote in favor of it.

11 CHAIRMAN REYNOLDS: We have different
12 views.

13 COMMISSIONER GAZIANO: And just to remind
14 you, we all can sit ex officio on any of these and we
15 should, and I have increased my participation in the
16 Virginia SAC since I resigned my official seat, and I
17 hoped that my seat could be filled by someone else,
18 but I continue to participate and will do so in all
19 SACs.

20 COMMISSIONER HERIOT: It's not just --
21 yeah, it's not just in our local SAC.

22 CHAIRMAN REYNOLDS: That's correct.

23 COMMISSIONER HERIOT: We need to
24 participate as Commissioners in any SAC.

25 CHAIRMAN REYNOLDS: That's correct.

1 COMMISSIONER MELENDEZ: All right. Again,
2 it was just our different personal philosophies on
3 that.

4 CHAIRMAN REYNOLDS: Well, yeah. I mean we
5 have different views on this. A different comfort
6 level.

7 Okay. All in favor please say --

8 STAFF DIRECTOR DANNENFELSER: I'm sorry.
9 Go ahead.

10 CHAIRMAN REYNOLDS: All in favor please
11 say aye.

12 (Chorus of ayes.)

13 CHAIRMAN REYNOLDS: Any objections?

14 COMMISSIONER MELENDEZ: Abstain, Melendez.

15 CHAIRMAN REYNOLDS: Okay.

16 COMMISSIONER HERIOT: Next SAC.

17 CHAIRMAN REYNOLDS: Commissioner Melendez
18 abstains. The remaining Commissioners vote in favor
19 of it.

20 Okay. Next is --

21 COMMISSIONER MELENDEZ: I'd like to make a
22 motion to pass the New Hampshire SAC. I've already
23 read it and it seems okay.

24 COMMISSIONER HERIOT: Second.

25 COMMISSIONER GAZIANO: Second.

1 (Laughter.)

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

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Any objections?

6 (No response.)

7 CHAIRMAN REYNOLDS: Any abstentions?

8 COMMISSIONER HERIOT: I am not going to
9 miss my plane.

10 CHAIRMAN REYNOLDS: The passes
11 unanimously.

12 Thanks, folks. I want to set up a
13 teleconference. We need to have a discussion about
14 August and meeting. We need to continue to flesh out
15 some issues.

16 STAFF DIRECTOR DANNENFELSER: Are we going
17 to do August 7th? Did people agree to that date?

18 CHAIRMAN REYNOLDS: I hope so. I hope so.

19 COMMISSIONER GAZIANO: I believe we can,
20 but we need to see the rest of the schedule.

21 CHAIRMAN REYNOLDS: Oh, yes, and there
22 will be another telephone call some time in June to
23 discuss the national conference.

24 (Whereupon, at 3:15 p.m., the Commission
25 meeting was concluded.)

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