

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, JULY 11, 2008

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

PRESENT:

GERALD A. REYNOLDS, Chairman
 ABIGAIL THERNSTROM, Vice Chairman
 TODD F. GAZIANO, Commissioner
 GAIL L. HERIOT, Commissioner
 PETER N. KIRSANOW, Commissioner (via telephone)
 ARLAN D. MELENDEZ, Commissioner
 MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

HYGIN U. AGUZIE
 DAVID BLACKWOOD, General Counsel
 CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
 MARGARET BUTLER
 DEBRA CARR, Associate Deputy Staff Director
 CHRISTINA CATAPANAG (Intern)
 DEMITRIA DEAS
 PAMELA A. DUNSTON, Chief, Admin. Services and
 Clearinghouse Division
 LATRICE FOSHEE
 BRITNEY GALLOWAY, (Intern)
 MICHAEL JOHNSON, (Intern)
 MEGAN KEMP, (Intern)
 MONICA KIBLER
 ROBERT LERNER, Assistant Staff Director for OCRE
 DORIS MANSFIELD, (Intern)
 TINALOUISE MARTIN, Director of Management
 EMMA MONROIG, Solicitor
 LENORE OSTROWSKY
 ANDREW SCHWARTZ (Intern)

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STAFF PRESENT CONTINUED:

JAMAL SOLTOBAEVA, (Intern)
KIMBERLY TOLHURST
RASHAWNA WILLIAMS, (Intern)
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD

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P R O C E E D I N G S

(9:33 a.m.)

CHAIRMAN REYNOLDS: The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights on July 11, 2008. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C.

The Commissioners present are Vice Chair Thernstrom, Commissioners Yaki, Melendez, Heriot --

COMMISSIONER YAKI: Here -- oh, you weren't calling roll. Sorry.

CHAIRMAN REYNOLDS: -- Gaziano, who are here physically, and Commissioner Kirsanow, who is participating by phone.

Pete, are you there?

COMMISSIONER KIRSANOW: Here.

VICE CHAIR THERNSTROM: Hey, Pete. Morning.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: Was he there?

CHAIRMAN REYNOLDS: Yes. Pete?

COMMISSIONER KIRSANOW: Yes.

COMMISSIONER YAKI: Wake up, Pete. Wake up.

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1 CHAIRMAN REYNOLDS: Okay. The first item
2 on the agenda is the approval of the agenda.

3 I. APPROVAL OF AGENDA

4 CHAIRMAN REYNOLDS: I move that we approve
5 the agenda. Is there a second?

6 COMMISSIONER HERIOT: Actually I have a
7 motion to amend that agenda.

8 CHAIRMAN REYNOLDS: Okay. We have a
9 motion to approve the agenda -- I'm sorry -- to amend
10 the agenda. I second it.

11 COMMISSIONER HERIOT: I need to say what
12 the motion is first.

13 VICE CHAIR THERNSTROM: Yes, Gerry.

14 COMMISSIONER HERIOT: You obviously want
15 to get out of here really quickly.

16 CHAIRMAN REYNOLDS: This is Todd's doing.
17 Okay.

18 COMMISSIONER HERIOT: I move that we amend
19 the agenda to include a discussion of the ABA
20 documents in the possession of the Department of
21 Education in connection with its pending renewal of
22 the ABA's accreditation authority.

23 I would like at the appropriate time, if
24 we amend the agenda, to make a motion that we would
25 have access to those documents. So I move to amend

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1 the agenda to include an item I think as a substitute
2 or, rather, before Item 9, Future Agenda Items; that
3 we discuss those ABA documents with an eye towards a
4 letter to the Department of Education seeking access
5 to those documents.

6 CHAIRMAN REYNOLDS: Okay. Second?

7 VICE CHAIR THERNSTROM: Second.

8 CHAIRMAN REYNOLDS: Discussion?

9 (No response.)

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

12 (Chorus of ayes.)

13 VICE CHAIR THERNSTROM: Hold on a second.
14 I'm looking.

15 COMMISSIONER MELENDEZ: I have another
16 item to add to the agenda. Would I do that after this
17 motion --

18 CHAIRMAN REYNOLDS: Yes.

19 COMMISSIONER MELENDEZ: -- or before?

20 CHAIRMAN REYNOLDS: After.

21 COMMISSIONER HERIOT: Did we have a chance
22 for discussion there?

23 CHAIRMAN REYNOLDS: Okay. I thought you
24 wanted to discuss --

25 COMMISSIONER MELENDEZ: No, no.

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1 COMMISSIONER HERIOT: Okay. If nobody
2 wants to discuss it, I'm happy.

3 COMMISSIONER YAKI: I do.

4 COMMISSIONER GAZIANO: Right now we're
5 just discussing whether to add it to our agenda,
6 right?

7 COMMISSIONER HERIOT: Yes, that's right.

8 COMMISSIONER YAKI: Well, that's what I
9 was going to address. What is your urgency of the
10 timing of putting it on the agenda at this time?

11 CHAIRMAN REYNOLDS: Why are you looking at
12 me?

13 COMMISSIONER YAKI: Because you're the
14 Chair and you always look at the Chair.

15 CHAIRMAN REYNOLDS: Okay.

16 COMMISSIONER YAKI: The rules of protocol
17 are that I look at the Chair, and then the Chair --

18 CHAIRMAN REYNOLDS: Okay. Now the Chair
19 is going to look at Gail.

20 COMMISSIONER YAKI: Exactly.

21 COMMISSIONER HERIOT: Because these
22 documents are there at the Department of Education and
23 I have time to look at them in the next month or so,
24 and so I would like to be able to do that sooner
25 rather than later.

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1 The ultimate action that the Commission
2 might take would be to add a briefing report or
3 perhaps even a statutory report in the future, but I
4 think it's important to look at the documents now, and
5 since it's fairly noncontroversial. Looking at
6 documents is not a big deal.

7 CHAIRMAN REYNOLDS: Any other discussion?

8 (No response.)

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

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: Those Commissioners
13 who voted against the motion?

14 COMMISSIONER MELENDEZ: Abstain. I just
15 don't know enough about it.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER HERIOT: This is just to put
18 it on the agenda.

19 CHAIRMAN REYNOLDS: And, Michael, you're
20 voting?

21 COMMISSIONER YAKI: Voting no.

22 CHAIRMAN REYNOLDS: Okay. All right. So
23 let the record reflect that Commissioner Yaki votes
24 against the motion.

25 COMMISSIONER YAKI: Which way does Pete

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1 vote?

2 COMMISSIONER KIRSANOW: Could I?

3 COMMISSIONER YAKI: Oh, good, good.

4 CHAIRMAN REYNOLDS: Commissioner Melendez
5 abstains. The remaining Commissioners vote in favor
6 of the motion. So it passes.

7 COMMISSIONER GAZIANO: Except for
8 Commissioner Taylor who is not present.

9 CHAIRMAN REYNOLDS: Well, yes.

10 COMMISSIONER GAZIANO: Okay.

11 VICE CHAIRPERSON THERNSTROM: That just
12 means it's on the agenda.

13 COMMISSIONER HERIOT: Okay.

14 VICE CHAIR THERNSTROM: We will get to the
15 substance, I assume.

16 COMMISSIONER HERIOT: Yes.

17 CHAIRMAN REYNOLDS: Where was I?

18 COMMISSIONER YAKI: You were still on the
19 agenda.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER YAKI: And you were going to
22 recognize Commissioner Melendez.

23 COMMISSIONER GAZIANO: Commissioner
24 Melendez has a motion.

25 CHAIRMAN REYNOLDS: Commissioner Melendez,

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1 would you like to make a motion?

2 COMMISSIONER MELENDEZ: Yes. I have a
3 motion to add to the agenda an issue that we had
4 talked about before, reevaluating the agency AI on the
5 order of precedence now that we have a new Staff
6 Director and that discussion as to who is in charge
7 should the Staff Director not be available, and I
8 think that discussion needs to be decided or looked at
9 again, based on the fact that Debra Carr's position
10 wasn't even created at the time that last AI was
11 actually written.

12 So it has to do with who supervises whom
13 and who has authority to do so. So I think we need to
14 discuss that.

15 CHAIRMAN REYNOLDS: Okay, and where on the
16 agenda would you like it to go?

17 COMMISSIONER MELENDEZ: It doesn't matter
18 where. Wherever you think it might fit as the Chair
19 would be fine.

20 CHAIRMAN REYNOLDS: Okay. If that's the
21 case, then I'll just put it right after the discussion
22 on the ABA.

23 VICE CHAIR THERNSTROM: It's really
24 Management and Operations, isn't it, Gerry?

25 CHAIRMAN REYNOLDS: It is. Okay. Okay.

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1 Any other motions to amend the agenda?

2 COMMISSIONER GAZIANO: Unless the Chair is
3 going to do so, I'd move to amend Section 6 of the
4 agenda to include a discussion of FY 2009 program
5 planning.

6 CHAIRMAN REYNOLDS: Okay. Is there a
7 second?

8 VICE CHAIR THERNSTROM: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 COMMISSIONER HERIOT: What do we do
11 with --

12 COMMISSIONER GAZIANO: You didn't vote on
13 the Melendez motion.

14 CHAIRMAN REYNOLDS: Okay, okay. Let's
15 slow down here. We have to vote on Commissioner
16 Melendez's motion. All in favor of the motion please
17 say aye.

18 (Chorus of ayes.)

19 CHAIRMAN REYNOLDS: Any votes in the
20 negative?

21 (No response.)

22 CHAIRMAN REYNOLDS: Any abstentions?

23 (No response.)

24 CHAIRMAN REYNOLDS: The motion passes
25 unanimously. Okay.

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1 COMMISSIONER GAZIANO: I renew my motion
2 to add as the first item to VI Program Planning for FY
3 2009.

4 CHAIRMAN REYNOLDS: And is there a second?

5 VICE CHAIR THERNSTROM: Second.

6 CHAIRMAN REYNOLDS: Discussion?

7 (No response.)

8 CHAIRMAN REYNOLDS: All in favor please
9 say aye.

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Any objections?

12 COMMISSIONER YAKI: Nope.

13 CHAIRMAN REYNOLDS: Any abstentions?

14 COMMISSIONER MELENDEZ: One.

15 CHAIRMAN REYNOLDS: Let the record reflect
16 that Commissioner Melendez abstained.

17 Pete, were you on this vote?

18 COMMISSIONER KIRSANOW: Aye.

19 CHAIRMAN REYNOLDS: Okay. Commissioner
20 Melendez abstained. The remaining Commissioners voted
21 in the affirmative. So the motion passes, and it will
22 be discussed as the first item under Program Planning.

23 COMMISSIONER GAZIANO: And the item that
24 Commissioner Melendez added, is that going to be under
25 Management and Operations or Other Business?

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1 CHAIRMAN REYNOLDS: Management and
2 Operations after the discussion of the 2009 budget
3 submission to Congress.

4 Okay. All right. Now it's time to vote
5 on the agenda as amended. Is there a second?

6 VICE CHAIR THERNSTROM: Second.

7 CHAIRMAN REYNOLDS: Discussion?

8 (No response.)

9 CHAIRMAN REYNOLDS: All in favor of voting
10 for the agenda as amended, please say aye.

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: Any objections?

13 COMMISSIONER MELENDEZ: Abstain.

14 COMMISSIONER YAKI: Abstain.

15 COMMISSIONER MELENDEZ: My reason for
16 abstaining is that I think we're still not getting
17 some of the items out in a timely manner. We're
18 supposed to get them a week prior to being here at
19 this meeting, and I think things are still coming in
20 after the fact. They're not giving us enough time to
21 really look at those thoroughly. So that's the reason
22 for my abstaining on this.

23 CHAIRMAN REYNOLDS: Okay.

24 COMMISSIONER YAKI: And I abstain because
25 I didn't get my agenda materials.

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1 CHAIRMAN REYNOLDS: At all?

2 COMMISSIONER YAKI: No, the hard binder
3 that was supposedly sent I never got.

4 COMMISSIONER MELENDEZ: This one?

5 CHAIRMAN REYNOLDS: All right.
6 Commissioners Melendez and Yaki abstain. The
7 remaining Commissioners voted in favor of the agenda
8 as amended. The motion is approved.

9 Next up is the approval of the minutes of
10 the June 6, 2008 meeting.

11 II. APPROVAL OF MINUTES OF JUNE 6, 2006 MEETING

12 CHAIRMAN REYNOLDS: Is there a motion to
13 approve the minutes, please?

14 COMMISSIONER GAZIANO: So moved.

15 CHAIRMAN REYNOLDS: Second?

16 VICE CHAIR THERNSTROM: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 (No response.)

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

21 (Chorus of ayes.)

22 CHAIRMAN REYNOLDS: Any objections?

23 (No response.)

24 CHAIRMAN REYNOLDS: Any abstentions?

25 (No response.)

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1 CHAIRMAN REYNOLDS: Pete, were you?

2 COMMISSIONER KIRSANOW: I said aye.

3 CHAIRMAN REYNOLDS: Sorry. We have
4 difficulty hearing you.

5 COMMISSIONER YAKI: Point of order.

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER YAKI: Could someone please
8 get me an agenda?

9 CHAIRMAN REYNOLDS: Is there a spare book
10 floating around that Mr. Yaki can use?

11 COMMISSIONER YAKI: Thank you.

12 CHAIRMAN REYNOLDS: Okay. Are you missing
13 any other materials, Commissioner Yaki?

14 COMMISSIONER YAKI: Oh, I'm missing the
15 binder.

16 CHAIRMAN REYNOLDS: Is there a spare
17 binder?

18 COMMISSIONER YAKI: Maybe yours, Mr.
19 Chairman, with all of your notes in it would be fine.
20 It will help me go along a lot faster.

21 CHAIRMAN REYNOLDS: Okay. Staff
22 Director's report.

23 III. STAFF DIRECTOR'S REPORT

24 CHAIRMAN REYNOLDS: At this point I turn
25 it over to the Staff Director.

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1 STAFF DIRECTOR DANNENFELSER: Thank you,
2 Mr. Chairman.

3 I want to update the Commissioners on some
4 developments since the last Commission meeting. On
5 June 19th, the Senate Appropriations Committee adopted
6 a committee report that included an 8.8 million FY
7 2009 budget for the Commission, and similarly the
8 House Appropriations Committee adopted a 8.8 million
9 FY 2009 budget for the agency on June 25th.

10 In the area of employment law, staff
11 continue to monitor an EEO appeal and participated in
12 a mediation regarding a separate EEO matter. Our
13 Office of General Counsel also began responding to a
14 claim filed against the Commission with the Merit
15 Systems Protection Board.

16 GAO has not yet issued a ruling on a
17 protest filed in response to the agency's award of a
18 contract for a procurement specialist. We believe
19 that ruling may come in August, and as a result of the
20 appeal, no work has begun on the contract.

21 Regarding complaints processing, between
22 May 19th and June 20th, the Office of Civil Rights
23 Evaluation received and processed 266 complaints.

24 The Commissioners received two briefing
25 reports for review since the last Commission meeting.

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1 There were a briefing report on education
2 effectiveness at historically black colleges and
3 universities and the report on deliberate creation of
4 racially identifiable school districts in Omaha,
5 Nebraska, and the Commissioners were asked to submit
6 comments on the HBCU report by July 18th.

7 The Commissioners also received the second
8 draft of the FY 2008 statutory enforcement report
9 enforcing prohibitions of religious discrimination in
10 prisons and comments on a statutory report are also
11 requested by July 18th.

12 The Commission's auditors, Walker &
13 Company, began work on the FY 2008 annual financial
14 audit following a kickoff meeting that was held in
15 late June.

16 And regarding the regions, they are
17 involved in planning SAC meetings in the month of July
18 the Connecticut, District of Columbia, Kansas, North
19 Carolina and Vermont State Advisory Committees are all
20 planning to hold meetings.

21 And last month somebody may recall I
22 introduced a number of interns who are helping the
23 agency this summer. We've had a few more come on
24 board, and I wanted to introduce them as well if
25 they're in the audience, and I believe in most cases

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1 they are.

2 Two interns are now working with the
3 Office of Civil Rights Evaluation, Christina Catapang,
4 a junior at Georgetown University, and Jamal
5 Soltobaeva, a senior at American University.

6 CHAIRMAN REYNOLDS: Welcome aboard.

7 STAFF DIRECTOR DANNENFELSER: Welcome.
8 Thank you.

9 And the regional offices are also
10 benefitting from the help of interns this summer. The
11 Eastern Regional Office welcomed Rashawna Williams,
12 who is part of D.C. Mayor Fenty's Summer Youth
13 Program. Rashawna will be entering the tenth grade at
14 Caesar Chavez Public Charter School for Public Policy,
15 and is she in the room?

16 (No response.)

17 STAFF DIRECTOR DANNENFELSER: Don't see
18 her.

19 And the Southern Regional Office has four
20 interns helping out this summer. They are Michael
21 Johnson, a student at Morehouse College; Doris
22 Mansfield, a student at Georgia State University;
23 Britney Galloway, a student at Spellman College; and
24 Megan Kemp, a student at Clark Atlanta University.
25 And we're very pleased to have the interns on board

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1 and appreciate the valuable help they'll be providing
2 us this summer.

3 That completes my report.

4 CHAIRMAN REYNOLDS: Okay. The Staff
5 Director has requested that the next portion of the
6 meeting be closed pursuant to Commission regulations
7 implementing the Sunshine Act.

8 IV. MOTION FOR EXECUTIVE SESSION

9 CHAIRMAN REYNOLDS: Will the Solicitor and
10 General Counsel please certify that the meeting can be
11 closed pursuant to the Commission regulations?

12 MR. BLACKWOOD: We certify.

13 MS. MONROIG: Certify.

14 CHAIRMAN REYNOLDS: Okay. I would like to
15 make --

16 COMMISSIONER MELENDEZ: I would ask the
17 question as to what the subject is that we're
18 discussing in closed session because we don't even
19 know that yet.

20 CHAIRMAN REYNOLDS: I'm sorry. It's a
21 personnel matter.

22 COMMISSIONER MELENDEZ: Okay. So we won't
23 know until we get into the closed session?

24 VICE CHAIR THERNSTROM: No, we can't know.

25 COMMISSIONER MELENDEZ: All right.

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1 CHAIRMAN REYNOLDS: Okay. I'd like to
2 move to close this meeting pursuant to Exemptions 2, 6
3 and 10 of the closed meeting procedures for Commission
4 meetings.

5 Furthermore, this motion will authorize
6 the Staff Director to place in a location accessible
7 to the public within one working day a public vote to
8 close the meeting reflecting an explanation of the
9 decision to close the meeting and a list of all
10 persons that attend the meeting.

11 Is there a second?

12 VICE CHAIR THERNSTROM: Second.

13 CHAIRMAN REYNOLDS: Discussion?

14 (No response.)

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

17 (Chorus of ayes.)

18 CHAIRMAN REYNOLDS: Any objections?

19 (No response.)

20 CHAIRMAN REYNOLDS: Any abstentions?

21 (No response.)

22 CHAIRMAN REYNOLDS: The motion passes
23 unanimously.

24 At this point I would ask everyone with
25 the exception of the Commissioners and our lawyers to

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1 leave the room, and of course -- okay. Well, the vote
2 was unanimous. So Commissioners Heriot, Gaziano,
3 Reynolds, Thernstrom, Melendez, Yaki, and Kirsanow
4 voted in favor to close the meeting.

5 At this point I would ask all other
6 individuals with the exception --

7 MR. BLACKWOOD: Kim Tolhurst also of the
8 OGC will stay.

9 CHAIRMAN REYNOLDS: I'm sorry?

10 MR. BLACKWOOD: Kim Tolhurst of OGC will
11 also be --

12 CHAIRMAN REYNOLDS: And she's a lawyer?

13 MR. BLACKWOOD: Yes.

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER YAKI: Point of order.

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER YAKI: Is there a reason why
18 we need to do it now rather than at the end of the
19 meeting, which is traditionally when closed sessions
20 are usually held?

21 VICE CHAIR THERNSTROM: We've got
22 everybody here now.

23 COMMISSIONER HERIOT: Yes, it's too much
24 work to --

25 VICE CHAIR THERNSTROM: They may

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1 disappear.

2 COMMISSIONER HERIOT: We approved the
3 agenda. It's too late to shuffle it.

4 COMMISSIONER YAKI: Well, you can also
5 reopen the agenda to amendment.

6 CHAIRMAN REYNOLDS: I think that we can
7 have it now or we could have it at the end, and we
8 chose to do it at this point. Again, we have people
9 from time to time who leave early, and so since this
10 is a matter of some importance, the decision was made
11 to put it sooner rather than later.

12 I recognize that it's disruptive, and it
13 screws up the flow of the discussion, but I'd rather
14 do it now while we have everyone here.

15 STAFF DIRECTOR DANNENFELSER: There was
16 also concern expressed about whether there was any
17 potential budgetary impact for FY 2009 relating to
18 this matter, and I think that was the reason that it
19 was chosen here, but it's up to the Commissioners.

20 VICE CHAIR THERNSTROM: Well, we already
21 voted on the agenda.

22 COMMISSIONER HERIOT: We approved it.
23 Let's just not waste time.

24 STAFF DIRECTOR DANNENFELSER: He's asking
25 for reconsideration.

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1 VICE CHAIR THERNSTROM: No, I understand.

2 CHAIRMAN REYNOLDS: Okay. Additional
3 comments or questions?

4 (No response.)

5 CHAIRMAN REYNOLDS: Okay, and I should
6 have also listed Staff Director Martin Dannenfelser,
7 the General Counsel, David Blackwood --

8 COMMISSIONER YAKI: How can you vote on an
9 agenda you don't have a copy of?

10 CHAIRMAN REYNOLDS: -- Attorney Advisor,
11 Kara Silverstein, along with the Solicitor, everyone
12 in our group will participate.

13 MR. BLACKWOOD: And Kim Tolhurst.

14 CHAIRMAN REYNOLDS: And Kim Tolhurst, will
15 participate in the closed session.

16 So at this point will everyone leave the
17 room and we'll reconvene at this session.

18 (Whereupon, from 9:50 a.m. to 10:23 a.m., the meeting
19 was recessed for an Executive session.)

20 CHAIRMAN REYNOLDS: Okay. Let's go back
21 on the record.

22 Okay. Earlier this week the Staff
23 Director circulated a memorandum regarding the
24 Commission's status of funds for 2008. That memo
25 explained that as of May 31st of 2008 the Commission

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1 has a projected surplus and outlined some ways that
2 the Commission can help alleviate pressure on its '09
3 budget by paying for some '09 obligations with '08
4 funds to the extent allowed by federal procurement
5 regulations.

6 V. MANAGEMENT AND OPERATIONS:

7 STATUS OF FY 2008 BUDGET

8 CHAIRMAN REYNOLDS: With that I now turn
9 to the Staff Director to discuss this issue and
10 respond to any questions.

11 STAFF DIRECTOR DANNENFELSER: Thank you,
12 Mr. Chairman.

13 As noted in the memo that went out earlier
14 in the week, the latest status of funds report from
15 GSA indicated a year to date surplus of \$548,589 as of
16 May 31st, 2008, and I delineated in this memo some
17 explanation as to why that was the case. Most of it
18 relates to personnel issues in terms of hires that
19 were not made during the course of the year, late
20 hires, gaps in hiring where the Staff Director had
21 left. There was a four-month gap. There were some
22 other explanations relating to lower lump sum payments
23 and payment of unemployment benefits, lower spending
24 on printing and reproduction, and so on.

25 And then I did explain that we are in the

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1 process of shifting some obligations, some funds that
2 we feel like previously would be FY 2009 obligations
3 for some new items, particularly Smart Cards, the new
4 security ID for employees, and several other things,
5 and we are able to move the cost or a substantial part
6 of the cost for those Smart Cards into FY 2008 to take
7 advantage of the fact that we do have this money now
8 and then to hopefully alleviate some pressure on the
9 2009 budget.

10 But in spite of moving what we can right
11 now, we've identified a little more that \$117,000
12 worth of expenditures that we can pay for in 2008
13 instead of 2009. We're still projecting almost
14 \$260,000 of new obligations going into 2009, and we
15 also have to account for the strong possibility that
16 we'll be operating under a continuing resolution at
17 least at the beginning of the fiscal year.

18 So that while we are budgeting for 8.8
19 million, we may be looking at 8,460,000 or some other
20 number because Congress hasn't acted yet completely,
21 just at the committee level in the House and Senate.
22 So we can't assume necessarily that what's happened at
23 the committee is necessarily going to happen on the
24 floor of the House and Senate, and then there's the
25 President potentially vetoing the bills that this

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1 funding is attached to, which are both over the
2 President's budget request. So there is strong reason
3 to believe that they might be vetoed.

4 So I just wanted to lay some of these
5 things out to give some explanation as to where we
6 are, but also what we have to look at in the future,
7 the immediate future of FY 2009.

8 So I'd be happy to answer any questions
9 that Commissioners might have.

10 CHAIRMAN REYNOLDS: Questions?

11 COMMISSIONER MELENDEZ: Yes. How much of
12 a hand does the Commission have in the surplus, the
13 540,000 or 588,000? I know that in the last couple --
14 didn't we have a surplus last year also?

15 STAFF DIRECTOR DANNENFELSER: Yes, we did.

16 COMMISSIONER MELENDEZ: And what makes us
17 think that this year we wouldn't have a surplus also?

18 And if we have a track record of always having
19 surpluses, wouldn't it tend to push us in a direction
20 that it might be less risky to hire somebody like an
21 HR Director or somebody that's a vital position in the
22 agency, especially based on a track record of
23 surpluses the last two years, and who knows? We
24 probably could have one this year based on whatever.
25 That whatever an HR Director or somebody like that

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1 would come on board for, we'd still have 300,000 or
2 400,000 if we would have done it two years ago to
3 bring on an HR person. I brought that up a few years
4 ago as for the need for that position.

5 And then the other thing is I know that we
6 still haven't really addressed the regions. I know
7 that in the western region, which are vital to at
8 least some of us on the West Coast, you know, in the
9 States of Hawaii and Alaska and California and Nevada;
10 we still in that office have to be able to function in
11 a manner that's really going to give some input, SAC
12 selections and all of these different things to really
13 help us.

14 And I think that, you know, it's not
15 really happening, and the only way we can do that is
16 to really get a qualified person or a regional
17 director as we had before to really kind of take care
18 of -- at least in the West. I'm not sure about the
19 other regions. Since I come from the West, I'd like
20 to see that addressed.

21 But it just seems like we need to try to
22 get some. In this financial budget, I know that even
23 in Congress, I think, on some of the committees, they
24 noted that, you know, we should try to address the
25 outreach and the use of the SACs and the use of the

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1 regional offices.

2 So this budget has to in some way tie in
3 to try to accomplish a small degree of that goal, I
4 would think. So that's just my comments on this
5 budget.

6 CHAIRMAN REYNOLDS: Okay. Well, on your
7 comments, do you expect a response?

8 COMMISSIONER MELENDEZ: Well, yes. I'm
9 asking why can't we do that?

10 CHAIRMAN REYNOLDS: Okay.

11 STAFF DIRECTOR DANNENFELSER: All right.
12 Thank you, sir.

13 Regarding the SACs, we are continuing to
14 try to bring more of the SACs on line, and there has
15 been progress in that area, and we will continue to
16 strive to get up to full force with the SACs. Next
17 year, based on the projections that we have from the
18 regional offices, we're projecting between 60 and 70
19 meetings on behalf of the SACs nationwide.

20 So, again, that is something that we want
21 to continue to improve on and help the SACs do more in
22 that area.

23 Regarding should we assume that because
24 we've had these surpluses for a few years now that we
25 can have the assumption that we'll have them again

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1 next year, our goal here has been to really scrutinize
2 why that has happened and then to address some of
3 that. There was probably some higher expectations in
4 some areas in terms of the budget, and we've reduced
5 those expectations both in the unemployment and lump
6 sum payments. We've reduced that considerably. The
7 printing, some of the travel, we've reduced the
8 projections in those areas.

9 We do have in the budget a hire for a new
10 employee in the Office of Civil Rights Evaluation. So
11 our hope is that we could go forward and do that, but
12 that, again, is based on an \$8.8 million budget, and
13 we did have some savings during the course of the
14 year. We switched to Westlaw, for instance. We saved
15 \$50,000.

16 We are looking at some administrative
17 savings that we might make. There could be
18 retirements during the year that we don't know about
19 that could, you know, have the effect of reducing the
20 budget.

21 But the thing is looking at it now, we
22 can't assume things that might happen. We have to go
23 in based on, you know, what will happen unless
24 something changes, and that if things change during
25 the course of the year, we may be able to make some

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1 adjustments that perhaps we don't hire somebody at the
2 beginning of the year. If Congress then goes beyond a
3 continuing resolution and actually gives us an \$8.8
4 million budget, if during those intervening months we
5 are able to identify some additional savings, then we
6 may be in a position to hire in the early part of the
7 calendar year of 2009 perhaps.

8 But right now it would seem prudent not to
9 assume that savings are going to be there that we
10 don't know will be there.

11 COMMISSIONER MELENDEZ: Okay. The other
12 question had to do with the finance because I know
13 that at the time that we had a large amount of money
14 back for the federal government, it started then that
15 we really have to have somebody in charge of finance,
16 a director that really could make sure that doesn't
17 happen again, and I guess that would still fall in
18 line with surpluses.

19 The real question is we don't know that
20 we're going to have surpluses until the very end of
21 the year, like now or close to September 30th, or are
22 we saying that we should have a Finance Director or
23 somebody that's an important position that tells us
24 that we have billed -- over a period of time they
25 could tell us at the quarter marks, first quarter,

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1 second quarter, and then the Commission would
2 basically -- you tell us that we have 250,000 built up
3 instead of 500,000 a month before the end of the
4 fiscal year, and we could make some adjustments to
5 hire or you could let us know with the help of a
6 Finance Director. You're going to reallocate funds
7 with the approval of the Commission rather than
8 waiting until the very end and telling us we have
9 500,000 two years in a row.

10 That's my reason for asking about a
11 Finance Director.

12 CHAIRMAN REYNOLDS: Let me jump in and
13 provide a partial response. I mean, our spending is
14 not levelized over the course of the year. It's a
15 little lumpy, but I do agree that we do need to get
16 better data. We need to get timely data, and it's not
17 clear to me that the system that we currently have in
18 place is a good tool for providing us with timely,
19 accurate information.

20 I know in the past we have had several
21 years where we have turned significant sums back to
22 the Treasury. It's always painful, and in one case we
23 had a Budget Director who was on board when that
24 happened and, in fact, I believe of the three years
25 that was the largest amount.

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1 We just need to improve and refine the
2 systems that we have in place. So at least personally
3 I need a higher level of comfort in terms of the
4 numbers that I'm looking at. I need to get a better
5 sense of what the assumptions are.

6 Just to throw some of the Commissioners
7 under the bus, including myself, for example, our
8 numbers, not all of us, including myself, will submit
9 time sheets in a timely fashion, and that distorts the
10 numbers that we review, and if we have an item that we
11 know that we're going to purchase at the end of the
12 year and it's a significant sum of money, if you look
13 in April -- there's a smile.

14 COMMISSIONER YAKI: I was knocking on this
15 table when you said purchasing something that's a
16 significant sum of money.

17 CHAIRMAN REYNOLDS: Ah, I see.

18 In any event, the bottom line is that I
19 agree that the tools that we have in terms of
20 monitoring our expenditures needs to be improved. I
21 think that we need to also, just to check ourselves,
22 look at what our budget is and what our expenditures
23 are at the end of the year and to see what the
24 variance is and to ask some questions.

25 For example, I saw some categories where

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1 there was a significant sum left at the end of the
2 year, and did we change our mind or was the budget
3 projection on the front end too high?

4 I think that we need to take a look at our
5 process, and do we need to hire more people? Yes, but
6 we need to make sure. We need to be comfortable that
7 we have reoccurring funds to pay the salaries and
8 benefits going forward. One time savings can't be
9 used to hire someone because those savings, we can't
10 depend on them.

11 STAFF DIRECTOR DANNENFELSER: Well, I
12 mean, the one thing we are doing right now in terms of
13 hiring, we can do temporary hiring where we have these
14 surplus funds, but we're not obligating ourselves into
15 the new fiscal year.

16 We did have in the budget a position for
17 an other person in OCRE. We did have in the budget a
18 position for a staff assistant in the Office of
19 General Counsel. What we're doing now is getting
20 temporary people, one person in each of those
21 departments, to help them with their backlog, to help
22 them be able to, you know, complete some of the work
23 that hasn't been completed up till now.

24 So those were things that we had budgeted
25 for, but we held off on making those hires, but what

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1 we can do at least in the last few months of the year,
2 we can hire temporary people to help them take care of
3 those duties.

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
5 then Commissioner Yaki.

6 VICE CHAIR THERNSTROM: Well, I'm in total
7 agreement with what both the Chair and Commissioner
8 Yaki said, that we can't operate with kind of
9 surprises late in the fiscal year. Well, look what
10 we've got, you know, this money that we've got. We
11 really need ongoing information here.

12 Now, two things. One, on the question of
13 hiring temporary staff, I'm troubled by that only
14 because we can't possibly get the same quality of
15 person when we're just picking up some temporary
16 people for really doing quite vital work. Am I wrong
17 on that?

18 CHAIRMAN REYNOLDS: Well, I think it
19 depends. Well, I don't think that we should hire
20 temporary personnel if they're not going to add value,
21 and so during the interview process if we conclude
22 that these individuals don't have the skill set that
23 we require or that skill set doesn't meet our minimum
24 requirements, then we shouldn't make the hire.

25 VICE CHAIRPERSON THERNSTROM: Right, but I

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1 mean, the question is we need to fill out the OCRE
2 staff. I mean, all other things being equal, that
3 person should be of high quality. That is extremely
4 often very intellectually complicated, complex work
5 that needs a very skilled --

6 STAFF DIRECTOR DANNENFELSER: In a case
7 like this, we're not necessarily getting another
8 social scientist. We're looking at trying to help
9 them with their writing and editing.

10 VICE CHAIR THERNSTROM: Okay.

11 STAFF DIRECTOR DANNENFELSER: In the case
12 of the Office of General Counsel, the General Counsel
13 has said that the attorneys in that office are
14 spending a great deal of time doing administrative
15 work --

16 VICE CHAIR THERNSTROM: I see. Okay.

17 STAFF DIRECTOR DANNENFELSER: -- that if
18 they had some administrative support --

19 VICE CHAIR THERNSTROM: That's helpful.

20 STAFF DIRECTOR DANNENFELSER: -- that
21 would free up those attorneys to spend more time doing
22 that. So that's part of our objective there.

23 VICE CHAIR THERNSTROM: I see. Okay.

24 CHAIRMAN REYNOLDS: Commissioner Yaki.

25 VICE CHAIR THERNSTROM: No, no, no. Just

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1 wait a minute. Last question.

2 I am very sympathetic to what
3 Commissioners Yaki and Melendez have repeatedly
4 expressed concern about, and that is the Western
5 Regional Director, and I just wonder, you know, what
6 our kind of priorities -- we discussed this problem a
7 number of times, and I think we do need to talk once
8 again about our priorities and the importance of them
9 in having --

10 CHAIRMAN REYNOLDS: Well, to respond to
11 that, how about, I mean, in terms of our needs here at
12 the agency, and that includes our regional office? I
13 think what we need to do is have a list in front of
14 us --

15 VICE CHAIR THERNSTROM: Exactly.

16 CHAIRMAN REYNOLDS: -- and then we're
17 going to have to make some choices.

18 VICE CHAIR THERNSTROM: Exactly. That's
19 what I was about to say. We need to make some
20 priorities.

21 COMMISSIONER GAZIANO: What would be --
22 I'm sorry. Out of turn.

23 COMMISSIONER YAKI: Thank you, Mr. Chair,
24 and thank you, Commissioner Gaziano.

25 With regard to the last issue brought up,

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1 and I know that this sounds like a broken record that
2 I continue to play time and time again, but to this
3 day I still do not understand the staffing decision
4 made by the previous Staff Director, not Mr. Lerner,
5 but Mr. Marcus, in having a Southern Regional Director
6 and then tasking out someone from the Office of the
7 Staff Director down there, Mr. Horne, as well. So we
8 have two highly paid positions in the Southern Region,
9 and it was done with no explanation.

10 I asked repeatedly to the Staff Director
11 why this was being done, and he kept on telling me
12 nothing, and you've got to look at that position and
13 what is that person contributing and whether or not
14 that's a position that should be moved to the Western
15 Region, number, one.

16 That's a hard question that continues to
17 be out there, and I just don't get any answer. I've
18 never gotten an answer on it.

19 Number two, in terms of what we can do at
20 the end, I'm speaking for myself, but others may speak
21 as well. The Staff Director is doing a great job of
22 starting to churn out the backlog of these reports. I
23 am having an incredibly tough time trying to keep up
24 with that.

25 And I could, and I know I could find

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1 someone because this is a good time of the year to
2 find someone like that, a temporary special assistant
3 just for the two or three-month period as we run these
4 things through to help me go through that. I'm not
5 talking about permanent. I'm just talking about
6 someone who would agree that their term would expire
7 September 30th, 2008, but who would nevertheless be
8 able to be useful to me, possibly to others on the
9 Commission, to help grapple with the fact that Omaha,
10 Census, other things are all coming, piling in.

11 Some things we have deliberately kind of
12 pushed back because we know the work load just from
13 review is becoming a little bit too much. I mean, why
14 haven't we looked at that? Because I certainly could
15 do that, and it would be a temporary assignment with
16 an express provision that expires at the end of the
17 fiscal year with no guarantee of anything beyond that.

18 But because of the number of reports that
19 we have coming out, it would be extremely helpful to
20 me.

21 CHAIRMAN REYNOLDS: I guess the first
22 thought that comes to mind is that would be a new
23 animal, a temporary special assistant, and that's not
24 suggesting whether it's doable or not, but that's the
25 first thing that comes to mind.

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1 Have we looked at whether that's --

2 STAFF DIRECTOR DANNENFELSER: Well, I
3 guess the issue is --

4 CHAIRMAN REYNOLDS: -- permissible?

5 STAFF DIRECTOR DANNENFELSER: Right. That
6 if special assistants are Schedule Cs, is it possible
7 to hire a temporary Schedule C?

8 As to hiring a temporary person from an
9 employment agency, that's what we're doing in the case
10 of these other two in OCRE and OGC, but if we're
11 talking about a special assistant who's a Schedule
12 C --

13 COMMISSIONER YAKI: But the -- but --

14 STAFF DIRECTOR DANNENFELSER: -- I'm not
15 sure is --

16 COMMISSIONER YAKI: -- but if that
17 Schedule C's budget authority expires at the end of
18 the year, isn't that the same thing?

19 VICE CHAIR THERNSTROM: Wouldn't we be
20 vulnerable to a Jack Daly kind of claim? You know, he
21 was temporary. He was hired temporarily.

22 CHAIRMAN REYNOLDS: Well, I don't think
23 that Mr. Daly has a strong claim. So --

24 COMMISSIONER GAZIANO: That's a matter for
25 the executive.

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1 STAFF DIRECTOR DANNENFELSER: Yes, we
2 don't want to go there.

3 VICE CHAIR THERNSTROM: Well, he's tying
4 us up. That's all I know.

5 COMMISSIONER YAKI: Yes, but this would be
6 tied to the actual budgeted position. In other words,
7 if the budget for that position expires, I don't think
8 there's a claim to be made that you have an
9 entitlement to that position beyond that period.

10 STAFF DIRECTOR DANNENFELSER: I guess the
11 question is is there a mechanism to do that.

12 COMMISSIONER YAKI: Right.

13 STAFF DIRECTOR DANNENFELSER: An
14 employment authority that would allow us to do that. I
15 think in concept the idea sounds interesting, but it's
16 a question of how do you make it happen.

17 CHAIRMAN REYNOLDS: Suggestion. Two
18 things. First, I believe that we'll need an August
19 meeting, which is not scheduled, and --

20 COMMISSIONER YAKI: Are you kidding me?

21 CHAIRMAN REYNOLDS: You don't like
22 spending time in Washington during August?

23 COMMISSIONER YAKI: There are things going
24 on in August for me that are happening.

25 CHAIRMAN REYNOLDS: Okay. Well, just to

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1 let you know, there will be a motion to have an August
2 meeting.

3 COMMISSIONER YAKI: If you hear a lot of
4 screaming and yelling in the background when I'm on
5 the phone, you'll know that I'm not having a good
6 time.

7 CHAIRMAN REYNOLDS: I understand. Glasses
8 clinking.

9 In any event, it seems to me in terms of
10 compiling a list of priorities, we could also include
11 -- well, we could do some research to see whether this
12 is feasible and then have a discussion.

13 COMMISSIONER YAKI: Is the HR Director in
14 the room? I mean, could she answer that?

15 STAFF DIRECTOR DANNENFELSER: The Director
16 of Management is in the room who oversees the HR.

17 CHAIRMAN REYNOLDS: Is Tina?

18 STAFF DIRECTOR DANNENFELSER: Tina, do you
19 want to come to the table?

20 CHAIRMAN REYNOLDS: Do we want to spring
21 it on you with no preparation?

22 STAFF DIRECTOR DANNENFELSER: Wait. Why
23 don't you get a microphone and sit at the table there?

24 MS. MARTIN: Yes, there are really only
25 two temporary authorities for Schedule C. One would

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1 be that 30-day appointment pending a critical need,
2 and the other is a 120-day appointment, but it still
3 has to go through OPM for approval. So you could set
4 it at 30 days with another 30 days, which is the Jack
5 Daly case, or you could do the 120 and get approval
6 from OPM.

7 CHAIRMAN REYNOLDS: Okay. So it looks
8 like, based on what we've just heard, that it's
9 feasible. Why don't we throw that on the list of
10 items to discuss in August as we prioritize?

11 COMMISSIONER YAKI: If we do it in August,
12 then all I have is at the most someone who can help me
13 for September. I was hoping --

14 COMMISSIONER HERIOT: You only get 30 days
15 anyway.

16 COMMISSIONER YAKI: What?

17 COMMISSIONER HERIOT: You'd only be able
18 to get 30 days.

19 COMMISSIONER YAKI: No, I know, but if we
20 could make a decision now, I could have someone help
21 me in August and September, especially if we're having
22 an August meeting.

23 STAFF DIRECTOR DANNENFELSER: Tina, could
24 you just clarify the point on the temporary
25 authorities? Did you say they have to go through OPM

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1 also or just the 120-day?

2 MS. MARTIN: One hundred and twenty-day,
3 and that is pending like if you have a new agency head
4 and you have to determine if, Marty, you are a new
5 agency head, then you can get the 120-day appointment.

6 The 30-day, OPM wants you to come to them,
7 but they do give us the authority to do it, but they
8 do want you to let them know that you're using the 30-
9 day appointment.

10 STAFF DIRECTOR DANNENFELSER: Are you
11 using the 30-day appointment with the premise that
12 this is somebody that you're going to be seeking on a
13 permanent basis?

14 MS. MARTIN: Right. Well, that, yes,
15 because the 30-day says pending permanent appointment.

16 CHAIRMAN REYNOLDS: Okay. That's somewhat
17 problematic.

18 Let me -- wheels are turning. A scheme is
19 about to be articulated.

20 COMMISSIONER YAKI: I just --

21 COMMISSIONER GAZIANO: Would you yield
22 while the wheels are turning?

23 COMMISSIONER YAKI: I will yield.

24 COMMISSIONER GAZIANO: I just wanted to
25 second appreciation so that when we do take up these

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1 priorities and at that point I hope we can be creative
2 about a number of the issues that other Commissioners
3 have raised, whether to consolidate regional offices
4 rather than just shifting them around --

5 CHAIRMAN REYNOLDS: Oh, you're talking
6 about a much larger conversation.

7 COMMISSIONER GAZIANO: I don't want to
8 have it now. I just want to suggest that we hopefully
9 can be creative. You know, if anyone else gets a
10 temporary special assistant, I'd like a temporary
11 special assistant.

12 CHAIRMAN REYNOLDS: I suspect -- I assume
13 so.

14 COMMISSIONER GAZIANO: And all I'm
15 suggesting, I also would like, I think, if money were
16 infinite, all eight of us would like our own special
17 assistants.

18 I'm not prepared right now to know the
19 relative importance of some of these other priorities.

20 So that's why I'd like to see what's -- you know, to
21 know what's coming, when this is coming so that we can
22 ask the right questions and hopefully come to the
23 right kind of priority and decisions.

24 COMMISSIONER YAKI: Will you yield back?

25 COMMISSIONER GAZIANO: Sure.

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1 COMMISSIONER YAKI: To Ms. Martin, for the
2 30-day appointment that you're talking about, I was a
3 little unclear about the wording that you were using.

4 So if you could just help me out, if I just wanted to
5 make a 30-day appointment because I was going to try
6 this person out, this person may not work, this person
7 -- dah, dah, dah, at the end of that 30 days, if I did
8 not review it, that position is gone, correct? Right?

9 MS. MARTIN: Right. You serve at the
10 pleasure of the appointing authority.

11 COMMISSIONER YAKI: So my question is --

12 CHAIRMAN REYNOLDS: Who's the appointing
13 authority?

14 MS. MARTIN: The Commissioner.

15 COMMISSIONER YAKI: The Commissioner. So
16 the question is I don't see why I couldn't take
17 advantage of that 30-day appointment now as a 30-day
18 thing with the idea that it would not be renewed.

19 CHAIRMAN REYNOLDS: Based on what was
20 said, I believe that, again, it's doable, but the idea
21 of having the August meeting was to set priorities,
22 and that would be on the list of everything else.

23 I understand your argument that you don't
24 want to wait until August because that eats up time,
25 but to do a one off and do it without comparing it to

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1 other priorities is somewhat problematic.

2 COMMISSIONER YAKI: Why?

3 CHAIRMAN REYNOLDS: They may have other
4 items that have --

5 COMMISSIONER YAKI: I mean, we can ask
6 what would be the budgetary impact of if I had one, if
7 Commission Gaziano had one anyone else who needed a
8 30-day temporary assignment.

9 CHAIRMAN REYNOLDS: But the others on the
10 list, the item -- well, do we hire someone to man the
11 Western Office? Do we transfer -- what I was hoping
12 to do was --

13 COMMISSIONER YAKI: But that's a permanent
14 budgetary issue. That's not going to be someone we're
15 going to hire for 30 days.

16 CHAIRMAN REYNOLDS: Okay, right.

17 COMMISSIONER YAKI: I'm talking about the
18 fact that we have right now an amount of money that
19 will be unspent between now and the end of the fiscal
20 year. For us to decide in August what it should be
21 spent on between now and September is really, you
22 know, closing the barn door.

23 CHAIRMAN REYNOLDS: I would be comfortable
24 making -- the concept, I'm comfortable with it, but I
25 need to increase my comfort level in terms of the

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1 budget. So let me turn to the Staff Director.

2 COMMISSIONER GAZIANO: If you don't mind,
3 Mr. Chairman, and also if I could ask Tina for a
4 clarification that there has to be an intention under
5 the legal authority.

6 MS. MARTIN: Well, there is a caveat there
7 that says you're waiting approval.

8 COMMISSIONER GAZIANO: There has to be an
9 intention to make this a permanent hire. So if our
10 intent as a Commission in authorizing this is that
11 it's going to end, then the legal authority may not
12 exist. I'm still unclear on that.

13 COMMISSIONER YAKI: Well, no, but I would
14 argue that that would mean that any time we hire
15 someone, their position here is indefinite. But the
16 fact is that you hire some people, and this is
17 probably turning into territory that we just want to
18 be careful how I state this. There are probably some
19 people who you hire that you decide don't quite fit
20 that bill.

21 The budget position is for someone to be
22 permanent. The person is not permanent, and I would
23 argue that you can exercise at the end of that 30 days
24 the decision not to pursue that person any further.

25 And I would also argue that, you know, if

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1 we need to take a notational vote or something really
2 quickly in the next week or so with a motion that
3 would state basically that you can do that providing
4 that you make it clear, blah, blah, blah, blah, blah,
5 blah, because I will go on record as stating that I
6 have no -- no I have no intention. I will
7 affirmatively declare in the written offer that I give
8 to someone that this position will expire at the end
9 of blank days.

10 COMMISSIONER GAZIANO: But that's the
11 problem. The legal authority would not allow that
12 kind of use of the 30-day appointment.

13 CHAIRMAN REYNOLDS: What Commissioner Yaki
14 meant to say is provided there isn't sufficient money
15 in the budget.

16 COMMISSIONER YAKI: Exactly, right.

17 STAFF DIRECTOR DANNENFELSER: Well, the
18 other thing, I think, is I don't believe an individual
19 Commissioner would have the authority to make a hire.
20 It would have to be made through the Commission. So
21 that would be something we have to --

22 COMMISSIONER YAKI: Well, that's not what
23 the statute says. The statute says that each
24 Commissioner may hire his or her own special
25 assistant.

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1 STAFF DIRECTOR DANNENFELSER: But, again,
2 we're talking about something outside. It sounds like
3 the discussion is going a little bit out --

4 COMMISSIONER YAKI: Oh, that is not --
5 David, that is absolutely not true.

6 STAFF DIRECTOR DANNENFELSER: -- partly
7 outside the special C.

8 COMMISSIONER YAKI: You mean someone else
9 could hire my special assistant? That is garbage.
10 The statute says I'm entitled to a special assistant.

11 CHAIRMAN REYNOLDS: Take it easy. Take it
12 easy. Take it easy.

13 MR. BLACKWOOD: Commissioner Yaki, this is
14 David Blackwood.

15 COMMISSIONER YAKI: Well, when David just
16 shoots off like that, he's wrong.

17 CHAIRMAN REYNOLDS: Well, let's -- he may
18 be wrong, but let's see what he has to say.

19 MR. BLACKWOOD: I would only point out,
20 Commissioner, the statute specifically says the
21 Commission hires. Now, the way it operates for
22 special assistants is the Commission authorizes you
23 and delegates to you to go hire the special assistant
24 of your choice, but no Commissioner has an individual
25 right automatically to go hire somebody.

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1 There is authorization in our --

2 COMMISSIONER YAKI: Actually that's not
3 what I -- maybe then I would --

4 CHAIRMAN REYNOLDS: He's right.

5 COMMISSIONER YAKI: No, no, no. That's
6 actually not right because I remember the day I was
7 sworn in, the day I was sworn in in February something
8 or other of 2005, the first thing that I was told by
9 Ken Marcus was you have a right to hire a special
10 assistant.

11 CHAIRMAN REYNOLDS: Well, what Ken says
12 and what the statutes say to the extent that what
13 Ken's state -- to the extent that a statement deviates
14 from the statutory language --

15 COMMISSIONER YAKI: The Commission does
16 not hire a special assistant for me.

17 CHAIRMAN REYNOLDS: Okay. This is --

18 COMMISSIONER YAKI: I choose who that
19 person is.

20 CHAIRMAN REYNOLDS: But, Michael, this is
21 a technical point --

22 COMMISSIONER YAKI: That person works for
23 me.

24 CHAIRMAN REYNOLDS: -- that is not even
25 worth talking about because the bottom line is the way

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1 it works is I don't hire your special assistant.
2 That's the way it works. So the technicalities --

3 COMMISSIONER YAKI: That person would be
4 gone in 38 minutes.

5 CHAIRMAN REYNOLDS: That is not true.

6 COMMISSIONER HERIOT: Thirty-eight?

7 COMMISSIONER YAKI: Yes.

8 CHAIRMAN REYNOLDS: Vice Chair.

9 COMMISSIONER GAZIANO: I have a question
10 about what he's talking about.

11 COMMISSIONER HERIOT: I would think
12 quicker than that.

13 VICE CHAIR THERNSTROM: Excuse me.

14 COMMISSIONER YAKI: No, no, I need some
15 interrogation rights.

16 CHAIRMAN REYNOLDS: Okay. Where is my
17 gavel?

18 Vice Chair Thernstrom.

19 VICE CHAIR THERNSTROM: A couple of
20 things. One, Commissioner Yaki, you keep reiterating
21 your belief that you have an entitlement to a special
22 assistant. That is not the way the statute reads, I
23 believe.

24 CHAIRMAN REYNOLDS: The Vice Chair is
25 right, but I really don't want to go down this road.

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1 VICE CHAIR THERNSTROM: All right. Fine.
2 Okay.

3 CHAIRMAN REYNOLDS: Let's try to deal with
4 the issue that was on the table.

5 COMMISSIONER YAKI: Should I put a report
6 right there from last year?

7 COMMISSIONER HERIOT: I've got one
8 clarification.

9 VICE CHAIR THERNSTROM: Wait a minute.
10 I'm not finished. I'm going to move off that topic.
11 I promise you that's my last word on that.

12 I am with the Chair in not being
13 comfortable deciding priorities. We're talking about
14 other temporary hires as well. We need to decide what
15 our priorities are, and --

16 CHAIRMAN REYNOLDS: There's a middle
17 ground though.

18 VICE CHAIR THERNSTROM: Okay. That's
19 fine, but we are talking about quite a bit of money
20 here, and I would like to hear from the Staff Director
21 exactly, you know. If one or two temporary special
22 assistants are hired, are we talking about, you know,
23 10K, 12K, something like that in a 30-day period?

24 CHAIRMAN REYNOLDS: Well, I think it's
25 somewhat unfair to ask that question without any

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1 preparation.

2 COMMISSIONER YAKI: I'd like to move --
3 can I make a motion? I would like to make a motion
4 that by -- what day is today?

5 CHAIRMAN REYNOLDS: Yes.

6 COMMISSIONER YAKI: -- by Monday --

7 CHAIRMAN REYNOLDS: Monday?

8 COMMISSIONER YAKI: Wait for the whole
9 thing. Wait for the whole thing.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER YAKI: Don't jump the gun,
12 Mr. Chair.

13 CHAIRMAN REYNOLDS: I've been picking up
14 bad habits.

15 COMMISSIONER YAKI: By Monday, by Monday
16 -- I know. I understand. It's very easy to want to
17 emulate me --

18 CHAIRMAN REYNOLDS: I didn't refer to you.

19 COMMISSIONER YAKI: On -- on -- and
20 flattering -- on Monday, I make a motion that on
21 Monday any Commissioner who currently does not have a
22 special assistant submit whether or not he or she is
23 interested in having a temporary special assistant for
24 the remainder of this fiscal year, number one.

25 CHAIRMAN REYNOLDS: We can do that now.

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1 COMMISSIONER YAKI: I'm just giving people
2 time.

3 CHAIRMAN REYNOLDS: To think about it?

4 VICE CHAIR THERNSTROM: We've all got the
5 same problem that you do.

6 COMMISSIONER GAZIANO: I've already
7 expressed my interest if the legal authority exists.
8 I still question the legal --

9 COMMISSIONER YAKI: You haven't heard the
10 rest of my motion.

11 CHAIRMAN REYNOLDS: Okay. Let's listen to
12 the motion.

13 COMMISSIONER YAKI: And then by Thursday
14 of next week, we receive a report and recommendation
15 on whether we can proceed or not and have that in the
16 form of a notational vote.

17 CHAIRMAN REYNOLDS: Well, I would propose
18 that we have a teleconference so that there can be
19 discussion, and I also believe that this
20 teleconference, other items should be included so
21 that, again, priorities.

22 VICE CHAIR THERNSTROM: August meeting.

23 CHAIRMAN REYNOLDS: Well, no. I don't
24 think we -- Commissioner Yaki makes a very good point.
25 His time is chewed up if we wait. I propose that we

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1 have a teleconference between now --

2 COMMISSIONER HERIOT: My question isn't
3 trivial.

4 CHAIRMAN REYNOLDS: -- between now and the
5 August meeting --

6 COMMISSIONER HERIOT: Can you get two 30-
7 day segments or can you only get one 30-day segment?

8 MS. MARTIN: It's 30 day with one 30-day
9 extension.

10 COMMISSIONER HERIOT: So you can extend
11 the 30 days for a second 30 days.

12 CHAIRMAN REYNOLDS: Okay. So is that
13 acceptable that we select a date to discuss our
14 priorities which will include the hiring of temporary
15 special assistants some time between now and the next
16 scheduled meeting, which will be -- well, I'm sorry --
17 the August meeting that we'll vote on.

18 COMMISSIONER GAZIANO: Mr. Chairman, do
19 you propose to discuss the other priorities at that
20 time?

21 CHAIRMAN REYNOLDS: Yes, yes, yes.

22 COMMISSIONER GAZIANO: Okay.

23 VICE CHAIR THERNSTROM: Well, we need a
24 lot of information from the Staff Director before we -
25 -

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1 STAFF DIRECTOR DANNENFELSER: Mr.
2 Chairman, I think the General Counsel has a question
3 about the proposal.

4 MS. MONROIG: If your proposal is to have
5 a telephonic meeting, you need to notify the Federal
6 Register a certain number of days before.

7 COMMISSIONER YAKI: That's why I wanted a
8 notational vote.

9 CHAIRMAN REYNOLDS: Okay. Is that --

10 COMMISSIONER YAKI: No, I'm just saying
11 the reason I want a notational vote just on this
12 specific issue and narrow it to this question is
13 because that can be -- I don't know. I would think
14 that if the report were to say this is how much money
15 we are projectioned to be remainder. This would be
16 the impact of having X number of special assistants on
17 a temporary basis as enunciated by -- as requested by
18 Commissioners blankity-blank blankity-blank, and maybe
19 everyone votes no and we have a broader discussion,
20 but I just think if we wait for a telephonic meeting,
21 you and I, Mr. Chairman, know our success rate at
22 scheduling telephone meetings.

23 CHAIRMAN REYNOLDS: Well, we don't --

24 COMMISSIONER YAKI: Which usually takes --

25 CHAIRMAN REYNOLDS: I don't think we have

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1 a problem scheduling them. I think that they don't go
2 well since we're not in the same room.

3 COMMISSIONER YAKI: My experience has been
4 that usually even trying to schedule in, say, a one to
5 two-week period and then we have to do the Federal
6 Register notice; by that time we're well into August.

7 CHAIRMAN REYNOLDS: Okay. How about this.
8 Let's off line have a discussion in terms of the
9 selection of a date to have this meeting. We would
10 have a conversation with Marty.

11 COMMISSIONER YAKI: It's 15 days, right?

12 VICE CHAIR THERNSTROM: Look. An early
13 August meeting --

14 COMMISSIONER YAKI: Is it 15 days we have
15 to give --

16 STAFF DIRECTOR DANNENFELSER: The Federal
17 Register notice? Seven?

18 MR. BLACKWOOD: Actually it's a total of
19 ten in practice because of the days that they require
20 to print out the notice. So it's ten days.

21 COMMISSIONER YAKI: They're saying that
22 the Federal Register practice is ten days.

23 STAFF DIRECTOR DANNENFELSER: You have to
24 send a notice and it takes a couple of days until it
25 gets printed.

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1 CHAIRMAN REYNOLDS: There's the date, the
2 11th.

3 COMMISSIONER GAZIANO: Mr. Chairman, my
4 reason why I'd prefer discussion is that my opinion
5 may well turn on the legal authority. Again, the way
6 Commissioner Yaki describes it, when we're authorizing
7 individual Commissioners to hire temporary special
8 assistants, we as the Commission have to have the
9 serious intent to keep them on. That seems to me that
10 we would be making a commitment to find the funds in
11 FY 09 to keep them on.

12 CHAIRMAN REYNOLDS: We would take a look
13 at the budget to see if it --

14 COMMISSIONER GAZIANO: Okay. I just have
15 these legal questions I'd want answered at that point.

16 CHAIRMAN REYNOLDS: Sure, sure.

17 VICE CHAIR THERNSTROM: In order to have a
18 discussion about priorities, which it seems to me this
19 has got to be part of, don't we need more information
20 from the Staff Director and don't we need to give the
21 Staff Director time to generate that information?

22 CHAIRMAN REYNOLDS: Most of the
23 information, the budget information, we have. It's a
24 matter of analyzing it as opposed to collecting the
25 data, but, yes, I agree, that the Staff Director will

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1 have to do some work in terms of looking at the
2 numbers, making sure that and looking for reoccurring
3 streams of income.

4 VICE CHAIR THERNSTROM: Well, but also,
5 what positions were in the agency we're talking about
6 here that really need to be filled if this place is
7 going to function properly --

8 CHAIRMAN REYNOLDS: Yes, yes.

9 VICE CHAIR THERNSTROM: -- and so forth.
10 I mean we are going to be very close to the
11 possibility of an early August meeting as the clock
12 runs out here in terms of, you know, getting a
13 teleconference together, and I would like to have a
14 vote on having an early August meeting instead.

15 I mean, I just don't think we're going to
16 lose much time by doing that, and I think it's a much
17 more effective thing to do.

18 COMMISSIONER YAKI: I will be unable to
19 attend in any way, shape or form --

20 VICE CHAIR THERNSTROM: But you would be
21 able to --

22 COMMISSIONER YAKI: -- telephonically or
23 otherwise an early August meeting.

24 CHAIRMAN REYNOLDS: Commissioner Yaki, are
25 you being stubborn?

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1 COMMISSIONER YAKI: No. If you --

2 CHAIRMAN REYNOLDS: You can tell me.

3 COMMISSIONER YAKI: The schedule, if you
4 were to look at a schedule of another set of
5 activities I'm involved in, they all occur in the
6 first two weeks of August.

7 CHAIRMAN REYNOLDS: Okay.

8 COMMISSIONER YAKI: I mean, there are
9 things that have to be done, and it is --

10 VICE CHAIR THERNSTROM: But you are free
11 when to have some kind of participation?

12 COMMISSIONER YAKI: The week before
13 another event occurs, which occurs the week of the
14 24th of August, but by that time, you know, in terms
15 of a meeting, that would be fine for a regular
16 meeting, but I will only do it telephonically. I can
17 tell you that because I'm going to be somewhere trying
18 to rest up between the frenzy of the first two weeks,
19 whatever, but I don't want that to replace this other
20 thing because otherwise I'm out of luck in terms of
21 trying to get some help for all of these reports that
22 are just turning up.

23 VICE CHAIR THERNSTROM: Well, we're all in
24 that position in terms of help with reports.

25 CHAIRMAN REYNOLDS: Okay. I propose --

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1 COMMISSIONER YAKI: I would say not, with
2 all due respect.

3 CHAIRMAN REYNOLDS: Okay. I propose that
4 we take a break, a short break and continue the
5 discussion after we return.

6 (Whereupon, the foregoing matter went off the record
7 at 11:06 a.m. and went back on the record
8 at 11:38 a.m.)

9 CHAIRMAN REYNOLDS: Okay. Back on the
10 record.

11 The plan is to have a teleconference where
12 we discuss the feasibility and desirability of hiring
13 temporary special assistants to help us out with a
14 backlog of briefing reports, and this is also
15 contingent upon a determination by the General Counsel
16 that this is legal either through the 30-day
17 appointment process or the 120-day process.

18 I'm going to put that in the form of a
19 motion. Is that --

20 COMMISSIONER YAKI: Second.

21 CHAIRMAN REYNOLDS: Discussion.

22 COMMISSIONER GAZIANO: Before I vote, can
23 I ask Commissioner Kirsanow whether you would be
24 available on said date to participate?

25 COMMISSIONER KIRSANOW: I believe so.

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1 CHAIRMAN REYNOLDS: Thank you.

2 All in favor, please say aye.

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: Any objections?

5 (No response.)

6 CHAIRMAN REYNOLDS: Any abstentions?

7 COMMISSIONER GAZIANO: Can I ask for a
8 clarification on the motion?

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER GAZIANO: So that I can
11 reverse?

12 CHAIRMAN REYNOLDS: Yes, if you must.

13 COMMISSIONER GAZIANO: So this is on
14 temporary special appointments or, since we're going
15 to have to notice this in the Register ahead of time,
16 and if that fails other possible ways to spend this
17 money?

18 CHAIRMAN REYNOLDS: Yes, yes.

19 COMMISSIONER GAZIANO: Okay.

20 CHAIRMAN REYNOLDS: Okay. I'm sorry.

21 Let's do it again. All in favor please say aye.

22 (Chorus of ayes.)

23 CHAIRMAN REYNOLDS: Any objections?

24 (No response.)

25 CHAIRMAN REYNOLDS: Any abstentions?

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1 (No response.)

2 CHAIRMAN REYNOLDS: The motion passes
3 unanimately.

4 Okay. Somebody help me. Where are we?

5 VICE CHAIR THERNSTROM: In Management and
6 Operations, we still have to discuss the Staff
7 Director's succession problem and the budget.

8 CHAIRMAN REYNOLDS: So right now we're on
9 the budget submission to Congress.

10 V. MANAGEMENT AND OPERATIONS:

11 FY 2009 BUDGET SUBMISSION TO CONGRESS

12 CHAIRMAN REYNOLDS: Okay. In September of
13 2007, the Commission submitted to the Office of
14 Management and Budget a Fiscal Year 2009 budget
15 estimate for approximately \$11.7 million. Based on
16 input from the office or from OMB, the Commission will
17 be submitting, will submit an \$8.8 million budget
18 request to Congress, which is in line with the
19 President's request.

20 As the Staff Director noted in his report
21 on June 19th, the Senate Appropriations Committee
22 adopted a committee report that included and 8.8 FY
23 2009 budget for the Commission. Similarly, the House
24 Appropriations Committee adopted an \$8.8 million 2009
25 budget for the agency on June 25th.

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1 The Commissioners are in receipt of the
2 2009 budget narrative and related attachments,
3 including the Commission's staffing plan and operating
4 plan, which were distributed in June. Each of these
5 documents will be submitted to Congress upon
6 Commission approval of the 8.8 '09 request.

7 I move that we approve this admission of
8 an \$8.8 million request for Fiscal Year 2009 to
9 Congress.

10 Is there a second?

11 VICE CHAIR THERNSTROM: Second.

12 CHAIRMAN REYNOLDS: Discussion?

13 (No response.)

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

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Objections?

18 COMMISSIONER MELENDEZ: Abstain.

19 COMMISSIONER YAKI: Abstention.

20 CHAIRMAN REYNOLDS: Pete?

21 COMMISSIONER KIRSANOW: Yes.

22 CHAIRMAN REYNOLDS: That's good enough.

23 Okay. Let the record reflect that
24 Commissioners Yaki and Melendez abstain. The
25 remaining Commissioners voted in favor of the motion.

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1 The motion passes.

2 Next up, the issue that Commissioner
3 Melendez put on the agenda.

4 V. MANAGEMENT AND OPERATIONS:

5 REEVALUATING AGENCY AI ON ORDER OF PRECEDENCE

6 COMMISSIONER MELENDEZ: The issue that I
7 brought forward this morning was to reevaluate the
8 agency's AI on the order of precedence now that we
9 have a new Staff Director.

10 Again, for the record, I had presented a
11 motion to reevaluate the agency's AI on the order of
12 precedence now that we have a new Staff Director, and
13 that issue had to deal with who's in charge should the
14 Staff Director not be available, and I know that at
15 the time I believe the Assistant Staff Director, we
16 had that discussion, and I don't think we have an
17 Assistant Staff Director at this time, and it has to
18 do with the chain of command depending on whether or
19 not they're SES position or whether or not they're GS
20 positions, and I think you might be bound by that at
21 this point.

22 So I'm not sure who would be in charge
23 right now if you weren't available. So I'm not asking
24 for an answer today. We could actually have you go
25 back and look at the way it should be set in place as

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1 to what we have now, and if there's recommendations
2 that come out of the next meeting as to how you see
3 the chain of command and what would happen, that would
4 be fine also.

5 CHAIRMAN REYNOLDS: Okay. I propose that
6 we put this on the agenda for August so that we can
7 do --

8 COMMISSIONER MELENDEZ: Research on it.

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER MELENDEZ: And whatever you
11 have to do. That's fine.

12 CHAIRMAN REYNOLDS: Okay. Next up is a
13 discussion of a 2009 statutory report. That's a
14 report on the -- the focus will be the Home Sweet Home
15 Program. Based on the concept paper, the focal point
16 will be the Home Sweet Home Program.

17 VI. PROGRAM PLANNING: 2009 PROGRAM PLANNING/
18 2010 PROGRAM PLANNING

19 CHAIRMAN REYNOLDS: And I would like to
20 open up a discussion on whether it should be expanded.

21 I'm going to move that we expand it so that it
22 includes the subprime issues that are being discussed,
23 in addition to allegations of redlining.

24 Is there a second?

25 COMMISSIONER GAZIANO: Second.

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1 VICE CHAIR THERNSTROM: But, Mr. Chairman,
2 do we need at some point -- you just referred to the
3 office meeting, but there has not yet been a motion to
4 have such a meeting. Are we going to?

5 CHAIRMAN REYNOLDS: Oh, okay, okay. Let's
6 back up a little bit.

7 I move that we have a meeting in August
8 and that -- well, let's check our calendars to see
9 what's available.

10 COMMISSIONER GAZIANO: As I understand it,
11 it's the week of --

12 CHAIRMAN REYNOLDS: The 22nd. Check your
13 calendars to see if you're available on the 22nd.

14 VICE CHAIRN THERNSTROM: I'm okay. Pete?

15 COMMISSIONER KIRSANOW: Okay.

16 VICE CHAIR THERNSTROM: Would an August
17 meeting on the 22nd of August?

18 COMMISSIONER KIRSANOW: Yep.

19 COMMISSIONER HERIOT: Oh.

20 (Laughter.)

21 COMMISSIONER HERIOT: Not so great.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER HERIOT: I know I told you
24 that I wanted to get out of a party that was on that
25 day.

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1 CHAIRMAN REYNOLDS: And I was helping.

2 COMMISSIONER HERIOT: You were. You were.

3 Unfortunately, that means I have to commit Thursday,
4 too, to get there.

5 CHAIRMAN REYNOLDS: Okay. I'm find with
6 that.

7 COMMISSIONER HERIOT: If it's the only
8 date, I can take the Red Eye.

9 CHAIRMAN REYNOLDS: Okay. If that's the
10 case.

11 COMMISSIONER MELENDEZ: I'm fine for the
12 22nd.

13 CHAIRMAN REYNOLDS: Commissioner Yaki?

14 COMMISSIONER YAKI: Is earlier in the week
15 better for you, Ms. Heriot?

16 COMMISSIONER HERIOT: I don't know because
17 classes are going to start.

18 VICE CHAIR THERNSTROM: That was the week
19 you could do, Commissioner Yaki?

20 COMMISSIONER YAKI: I mean, I won't be
21 here in person.

22 VICE CHAIR THERNSTROM: But you can do it
23 by phone.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER YAKI: I love those 6:00 a.m.

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1 Commission meetings.

2 VICE CHAIR THERNSTROM: We can make it a
3 little later for you.

4 CHAIRMAN REYNOLDS: Okay, folks. It looks
5 like the 22nd will work.

6 VICE CHAIR THERNSTROM: Why don't we make
7 it ten o'clock for Commissioner Yaki?

8 COMMISSIONER YAKI: No, because people
9 have got to get planes.

10 (Laughter.)

11 CHAIRMAN REYNOLDS: Due to you.

12 COMMISSIONER YAKI: Commissioner
13 Thernstrom.

14 VICE CHAIR THERNSTROM: No, I just
15 complained about the early hour anyway.

16 COMMISSIONER YAKI: I wasn't complaining.

17 CHAIRMAN REYNOLDS: Oh, you mean ten
18 o'clock his time?

19 COMMISSIONER HERIOT: Six o'clock his
20 time.

21 CHAIRMAN REYNOLDS: Oh, okay. All right,
22 folks. Do we want to select a time at this point?

23 COMMISSIONER HERIOT: Okay with me.

24 CHAIRMAN REYNOLDS: I'd say what, ten
25 o'clock?

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1 COMMISSIONER HERIOT: Oh, here's actually
2 the reason. I am evidently getting the treat of the
3 Red Eye, which means that I'm going to be getting in
4 and I need to at least take a shower at my mother's
5 house.

6 CHAIRMAN REYNOLDS: Ten o'clock, does that
7 work?

8 COMMISSIONER GAZIANO: I'd actually, now
9 that I think about it, I may have a problem. Can you
10 check your law school calendar to see if earlier in
11 the week -- do we have to do these on Friday?

12 CHAIRMAN REYNOLDS: We don't have to, and
13 we have done them on other days in the past, but
14 infrequently.

15 COMMISSIONER GAZIANO: I may have --

16 COMMISSIONER YAKI: The infamous Strove
17 Tuesday in Mardi Gras, for example.

18 COMMISSIONER GAZIANO: I may be not
19 available that day.

20 CHAIRMAN REYNOLDS: Okay.

21 VICE CHAIR THERNSTROM: Can you make
22 yourself available that day?

23 COMMISSIONER GAZIANO: I may be supposed
24 to be flying to Gail and Yaki's fair state.

25 CHAIRMAN REYNOLDS: Okay. What about the

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1 18th?

2 COMMISSIONER HERIOT: I don't know. I
3 don't know my USD schedule. I can call.

4 COMMISSIONER GAZIANO: Can we just for now
5 maybe pause. Do it some time this week and she can
6 get her schedule and then we can move on.

7 COMMISSIONER HERIOT: Give me a second to
8 call and find out what date classes are.

9 CHAIRMAN REYNOLDS: Okay. Let's take a
10 short break. No one move except Gail.

11 (Whereupon, the foregoing matter went off the record
12 at 11:48 a.m. and went back on the record
13 at 11:52 a.m.)

14 CHAIRMAN REYNOLDS: Okay. Pete, does the
15 18th work for you?

16 COMMISSIONER KIRSANOW: One moment.

17 Yes.

18 CHAIRMAN REYNOLDS: Okay. So going around
19 the room --

20 VICE CHAIR THERNSTROM: Wait a minute.
21 Was that a yes or a no?

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER KIRSANOW: Yes.

24 CHAIRMAN REYNOLDS: That was a yes.

25 COMMISSIONER MELENDEZ: How about Tuesday,

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1 the 19th?

2 CHAIRMAN REYNOLDS: You're kidding me.

3 COMMISSIONER MELENDEZ: They can have a
4 weekend to fly out here.

5 CHAIRMAN REYNOLDS: Sunday.

6 COMMISSIONER MELENDEZ: I know. It's
7 still a weekend.

8 COMMISSIONER GAZIANO: The 19th?

9 CHAIRMAN REYNOLDS: Okay. Let's look at
10 the 19th. Are you there?

11 VICE CHAIR THERNSTROM: Pete, how about
12 the 19th?

13 CHAIRMAN REYNOLDS: Does the 19th work for
14 you?

15 COMMISSIONER KIRSANOW: Yes.

16 COMMISSIONER HERIOT: It does, but sort of
17 the convenience is the other way around.

18 CHAIRMAN REYNOLDS: Okay. We have a
19 battle of over convenience here.

20 COMMISSIONER HERIOT: I can do both. I
21 can do both.

22 CHAIRMAN REYNOLDS: Would you like to be a
23 gentleman about it and defer to Gail?

24 COMMISSIONER HERIOT: I can defer to Arlan
25 just as long as somebody remembers that I deferred to

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1 him.

2 (Laughter.)

3 CHAIRMAN REYNOLDS: Okay. We'll make a
4 note of it. We're on for the 19th, folks.

5 VICE CHAIR THERNSTROM: Okay, and, Mr.
6 Staff Director, there's no problem here at the
7 Commission having a meeting on a Tuesday?

8 STAFF DIRECTOR DANNENFELSER: There will
9 be some challenges, but we can work it out.

10 CHAIRMAN REYNOLDS: Okay. We just started
11 a conversation on the 2009 statutory report.

12 COMMISSIONER GAZIANO: Can I speak to the
13 motion I seconded?

14 CHAIRMAN REYNOLDS: Yes, indeed.

15 COMMISSIONER GAZIANO: Trying to look
16 ahead toward that, the Home Sweet Home operation I
17 found in the Department of Justice's Website a press
18 release dated October 26th, 2007, in which the
19 department announces the results of that operation
20 that was begun in February 2006 so that without
21 confirming this, the press release indicates that
22 these are retrospect or it is announcing what the
23 results are of the completed program.

24 So I think that makes it less interesting.
25 I would rather instead of expand our topic to go

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1 beyond that to actually switch to the more relevant
2 topics within fair housing, and the ones that you
3 mentioned, Mr. Chairman, seem more interesting to me.

4 CHAIRMAN REYNOLDS: Okay. Any other
5 comments?

6 (No response.)

7 CHAIRMAN REYNOLDS: Okay. All in favor,
8 please say aye.

9 COMMISSIONER GAZIANO: Aye.

10 CHAIRMAN REYNOLDS: Thank you.

11 COMMISSIONER HERIOT: What exactly is the
12 motion?

13 VICE CHAIR THERNSTROM: I'm sorry. Is
14 there a motion on the floor?

15 CHAIRMAN REYNOLDS: Yes. I, before the
16 discussion about the calendars, I had moved that we
17 expand the 2009 statutory report. Todd seconded it.

18 VICE CHAIR THERNSTROM: Without
19 specifying?

20 CHAIRMAN REYNOLDS: To look at --

21 COMMISSIONER GAZIANO: To other fair
22 housing topics. I don't know how then we're --

23 CHAIRMAN REYNOLDS: Subprime.

24 COMMISSIONER HERIOT: I guess I need more
25 discussion then. It seems --

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1 CHAIRMAN REYNOLDS: Well, that's why the
2 floor -- I mean, sure.

3 COMMISSIONER HERIOT: It seems to me that
4 we tend to make mistakes in having topics that are too
5 broad, and we end up with reports that are
6 unmanageable, and it seems to me that the old topic,
7 the Home Sweet Home Program, if it has been canceled,
8 maybe we should just switch to the topic that we're
9 expanding because these are really very different
10 things, the Home Sweet Home Program and the --

11 COMMISSIONER GAZIANO: That's what I had
12 meant to do, but we should probably amend the motion.

13 COMMISSIONER HERIOT: Yes, and the motion
14 as it is just expands. We should just switch.

15 COMMISSIONER GAZIANO: Okay. Move to
16 amend the motion so that we choose a different focus
17 within the fair housing topic, whatever the procedure
18 is to do so, and we try to come up with an exciting,
19 relevant, and manageable topic --

20 COMMISSIONER HERIOT: Very manageable.

21 COMMISSIONER GAZIANO: -- within the fair
22 housing topic for our statutory report for FY 2009.

23 I don't know that that -- that's the end
24 of the motion.

25 CHAIRMAN REYNOLDS: Do we want to provide

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1 a little bit more guidance that this would --

2 COMMISSIONER GAZIANO: I was going to
3 discuss what some of my ideas are, but I don't want to
4 necessarily -- I don't necessarily think the motion
5 that we vote on needs to be definitive on what the
6 topic is.

7 CHAIRMAN REYNOLDS: Okay. If that's the
8 case.

9 COMMISSIONER MELENDEZ: Yes. How does it
10 mesh in? I know that it sounded to me like we were
11 still looking at what briefings and reports we were
12 going to be looking at for 2009 and if we were really
13 -- whether or not we were going to reopen that or
14 whether or not it's pretty well set, and doesn't that
15 discussion come into that or what are we saying here?

16 CHAIRMAN REYNOLDS: Let's see. Let me
17 check my notes.

18 COMMISSIONER GAZIANO: I moved earlier to
19 amend the agenda to talk about 2009 program planning.

20 CHAIRMAN REYNOLDS: Yes.

21 COMMISSIONER GAZIANO: It was my intention
22 at that time to talk about the briefing reports as
23 well.

24 CHAIRMAN REYNOLDS: That's right. Here it
25 is.

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1 COMMISSIONER MELENDEZ: Do you want to
2 defer to that time?

3 CHAIRMAN REYNOLDS: Well, okay. You make
4 a good point. Do you want to --

5 COMMISSIONER GAZIANO: Sure. It seems to
6 me the statutory report is a slightly different
7 priority, and you all -- to be quite honest, I'm not
8 thrilled about the fair housing area as well, but if I
9 were the czar of the Commission, I might choose a
10 different topic altogether, but the fair housing topic
11 is one the Commission selected, and I think there's
12 plenty of interesting topics within it.

13 But do you want to open it up to --

14 COMMISSIONER MELENDEZ: Well, no.

15 CHAIRMAN REYNOLDS: This is a good time.
16 This is a good time. Let's open it up. Let's take a
17 look at first what is on deck for the remainder of the
18 year in terms of briefings. I believe that we have
19 one briefing that's already teed up, and the remainder
20 of the year we have not selected specific topics.

21 VICE CHAIR THERNSTROM: Mr. Chairman,
22 isn't there a motion on the floor, however, that we
23 need to vote on?

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER GAZIANO: I'd be willing to

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1 defer to -- the proposal we had last time for the
2 briefing reports for 2010 and later was a proposal for
3 a process, and I wanted to propose today that we adopt
4 that process for 2009 and beyond, and that process is
5 that we don't choose briefing report topics -- that we
6 do choose briefing report topics a quarter ahead.

7 CHAIRMAN REYNOLDS: Okay. How about this?
8 Let's clean this up.

9 VICE CHAIR THERNSTROM: The motion on the
10 table.

11 CHAIRMAN REYNOLDS: Let's vote on the
12 motion, and then the next issue is the issue over
13 process.

14 COMMISSIONER GAZIANO: I'm just trying to
15 explain to Commissioner --

16 COMMISSIONER HERIOT: I'm lost.

17 CHAIRMAN REYNOLDS: I'm trying to clean
18 this up a little bit.

19 Commissioner Yaki.

20 COMMISSIONER YAKI: Well, in reference to
21 Commissioner Gaziano's remark, is the motion on the
22 floor that we're ditching the 2009 report and opening
23 it up for discussion?

24 CHAIRMAN REYNOLDS: No, and correct me if
25 I'm wrong.

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1 COMMISSIONER YAKI: I thought it was.

2 COMMISSIONER GAZIANO: My motion is that
3 we change the focus of the 2009 statutory report
4 within fair housing, and then we can discuss how to do
5 that.

6 COMMISSIONER YAKI: Okay. So he's
7 ditching it and we're going to figure out what it is
8 within that topic.

9 CHAIRMAN REYNOLDS: Okay. What do you
10 believe is being ditched?

11 COMMISSIONER YAKI: The whatever the topic
12 was and then Home Sweet Home within that.

13 CHAIRMAN REYNOLDS: The topic is fair
14 housing.

15 COMMISSIONER HERIOT: The topic
16 unfortunately was Home Sweet Home.

17 CHAIRMAN REYNOLDS: The topic, the overall
18 topic was fair housing. It's a Home Sweet Home focus.
19 That is being, to use your parlance, ditched.

20 COMMISSIONER YAKI: In reference to
21 Commissioner Heriot's remark about it being too broad,
22 I mean --

23 COMMISSIONER HERIOT: The broadness was
24 Gerry's motion was to take that narrow topic and open
25 it, and it just seems to me that we're putting two

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1 different topics together.

2 COMMISSIONER YAKI: Well, fair housing is
3 a rather broad area in which to try to --

4 VICE CHAIR THERNSTROM: We're not going to
5 vote on a fair housing topic. We're going to vote on
6 --

7 COMMISSIONER YAKI: So in other words, the
8 essence of the description was --

9 VICE CHAIR THERNSTROM: -- on applying --

10 COMMISSIONER YAKI: We're ditching --
11 we're ditching it, and we're going to create a new
12 one.

13 VICE CHAIR THERNSTROM: No. Modifying the
14 fair housing statement.

15 COMMISSIONER HERIOT: It ditched us.
16 There is no such program anymore.

17 COMMISSIONER GAZIANO: Yes, my motion is
18 that we should commit ourselves to coming up with a
19 manageable, relevant --

20 COMMISSIONER YAKI: Take your shoe and
21 pound it on the table.

22 (Laughter.)

23 COMMISSIONER GAZIANO: Excuse me for my
24 Italian mannerisms rather than my Soviet mannerisms.

25 -- to come up with a relevant, manageable,

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1 exciting topic that will excite us all and the staff
2 for 2009 statutory report.

3 VICE CHAIR THERNSTROM: Exciting is too
4 much to ask.

5 COMMISSIONER HERIOT: Yes, I'm not easily
6 excited.

7 COMMISSIONER GAZIANO: Scratch the
8 exciting.

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER HERIOT: But I think it's
11 important that we recognize that we're not ditching
12 Home Sweet Home. It ditched us.

13 CHAIRMAN REYNOLDS: Folks, unless you want
14 to have more discussion, I propose that we vote on
15 Todd's motion and then open the discussion up
16 regarding the process by which we select briefing
17 topics.

18 COMMISSIONER MELENDEZ: Question. As far
19 as looking at topics that are within the broader --
20 you know, talking about the subject, could we have
21 more time to determine what we would narrow it down
22 to?

23 I mean, if you ask me right now --

24 CHAIRMAN REYNOLDS: Yes.

25 COMMISSIONER MELENDEZ: Do you know what I

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1 mean?

2 CHAIRMAN REYNOLDS: Yes, we're not making
3 that decision right now. I know what I want to focus
4 on, this subprime issue and allegations of --

5 COMMISSIONER YAKI: The first redline.

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER MELENDEZ: That's fine.

8 CHAIRMAN REYNOLDS: But we're not making a
9 determination at this meeting on the specific focus.

10 COMMISSIONER MELENDEZ: Okay. That's
11 fine.

12 COMMISSIONER HERIOT: Really? What are we
13 deciding then?

14 CHAIRMAN REYNOLDS: That we're ditching
15 Home Sweet Home.

16 (Laughter.)

17 COMMISSIONER MELENDEZ: Thank you, thank
18 you.

19 COMMISSIONER GAZIANO: And we're going to
20 come up with a new focus.

21 COMMISSIONER HERIOT: Yes, but what's
22 (pause) --

23 VICE CHAIR THERNSTROM: I would not use
24 the word "ditching."

25 COMMISSIONER HERIOT: It ditched us.

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1 CHAIRMAN REYNOLDS: I'm telling you I'm
2 picking up bad habits.

3 COMMISSIONER GAZIANO: Would it help if
4 you discussed your idea of how and when we would
5 refocus?

6 CHAIRMAN REYNOLDS: Well, I would hope
7 that at the August meeting that would be a sufficient
8 amount of --

9 COMMISSIONER MELENDEZ: We bring up the
10 topics, and then we can decide.

11 CHAIRMAN REYNOLDS: By the August meeting,
12 I hope that we will all have given it some thought and
13 arrive at --

14 COMMISSIONER GAZIANO: Circulated some
15 ideas maybe amongst ourselves.

16 CHAIRMAN REYNOLDS: -- arrive at the
17 meeting ready to discuss whatever focus you want to
18 emphasize. I put my two down as examples. That does
19 not mean that you folks don't have --

20 COMMISSIONER HERIOT: The thing that I'm
21 adamant on is I don't want the potential for a report
22 that's on everything on fair housing.

23 CHAIRMAN REYNOLDS: Okay. We're not going
24 there.

25 VICE CHAIR THERNSTROM: We're not going to

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1 do that.

2 CHAIRMAN REYNOLDS: And if we do, you can
3 object.

4 COMMISSIONER HERIOT: I'll die.

5 CHAIRMAN REYNOLDS: No, you won't.

6 COMMISSIONER GAZIANO: Is it all right if
7 we submit some of our ideas to the Staff Director --

8 CHAIRMAN REYNOLDS: Yes, yes. Sure, of
9 course.

10 COMMISSIONER GAZIANO: -- and General
11 Counsel and others for refinement and assistance --

12 CHAIRMAN REYNOLDS: Yes.

13 COMMISSIONER GAZIANO: -- so that they can
14 then assist us in what are proposed? Okay.

15 CHAIRMAN REYNOLDS: Somebody help me.
16 Where are we? Did we vote?

17 STAFF DIRECTOR DANNENFELSER: No.

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

20 (Chorus of ayes.)

21 CHAIRMAN REYNOLDS: Objections?

22 (No response.)

23 CHAIRMAN REYNOLDS: Abstentions?

24 (No response.)

25 CHAIRMAN REYNOLDS: The motion passes

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1 unanimously.

2 STAFF DIRECTOR DANNENFELSER: Mr.
3 Chairman, I would just like to suggest that we have
4 permission from the Commissioners to modify the
5 narrative in the FY 2009 budget just to reflect that
6 "ditched" revision.

7 CHAIRMAN REYNOLDS: Yes.

8 STAFF DIRECTOR DANNENFELSER: We did have
9 language in there. We had some footnotes saying that
10 we might change the topic. So perhaps we will just
11 refine it a little bit to refer to it in a broader
12 fair housing sense as opposed to the focus on Home
13 Sweet Home that's in the narrative.

14 CHAIRMAN REYNOLDS: Okay. My notes, okay,
15 at this point, how about -- okay.

16 I move that we have a discussion regarding
17 the manner in which we select our briefing reports.
18 Is there a second?

19 VICE CHAIR THERNSTROM: Second.

20 CHAIRMAN REYNOLDS: Discussion.

21 COMMISSIONER GAZIANO: The motion was made
22 at the last meeting that we set to be more nimble and
23 use our resources more effectively, that we set our
24 briefing topics the quarter ahead, and I think that we
25 ought to adopt that policy for fiscal year 2009 and

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1 beyond, and we can certainly consider for whatever
2 persuasiveness they provide us whether the topics that
3 have previously been approved should make it on any
4 particular report.

5 CHAIRMAN REYNOLDS: Okay. Commissioner
6 Yaki.

7 COMMISSIONER YAKI: I'd like to amend that
8 to simply state that previously approved topics shall
9 be considered for inclusion in review and
10 determination of each of those topics.

11 CHAIRMAN REYNOLDS: Can you accept a
12 friendly amendment?

13 COMMISSIONER YAKI: I want to move it
14 stronger because some of these topics are important
15 and have been around for a while and need to be
16 studied just as much as whatever the flavor of the
17 month happens to be.

18 COMMISSIONER GAZIANO: Explain to me how
19 that would work.

20 CHAIRMAN REYNOLDS: I believe what he's
21 saying is that each quarter, according to the proposed
22 plan, we would consider various topics. He's only
23 saying that the topics that are on deck be included
24 for consideration.

25 COMMISSIONER GAZIANO: Do they have to be

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1 included forever more?

2 COMMISSIONER YAKI: Yes.

3 COMMISSIONER GAZIANO: That's my question.

4 COMMISSIONER YAKI: Yes.

5 COMMISSIONER GAZIANO: They have to be
6 included forever more?

7 CHAIRMAN REYNOLDS: What does that mean?

8 COMMISSIONER HERIOT: Do you mean 20 years
9 from now, that we never have this --

10 COMMISSIONER YAKI: If 20 years from now
11 we are worried about whether or not --

12 CHAIRMAN REYNOLDS: Commissioner Yaki, you
13 can propose any topic that you like. That's the
14 bottom line.

15 COMMISSIONER GAZIANO: Why can't you just
16 propose those of the six each time you think or
17 whatever? You see, I'm confused as to what are on the
18 schedule and what's not. I've never gotten a straight
19 answer to that, but let's say you imagine there's a
20 certain number that are. So they're automatically
21 every single quarter put on that --

22 COMMISSIONER YAKI: I don't know that I
23 imagined them. I think we've actually approved them
24 and they exist.

25 COMMISSIONER GAZIANO: Assuming there are

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1 some that are so privileged that they automatically
2 will go on every single quarter from here to eternity
3 plus any others that we individually want to suggest?

4 CHAIRMAN REYNOLDS: Okay. I don't believe
5 that that's Commissioner Yaki's position.

6 COMMISSIONER HERIOT: I think it is.

7 COMMISSIONER YAKI: Actually Commissioner
8 Yaki's position is that these were items that previous
9 iterations of the Commission --

10 CHAIRMAN REYNOLDS: Does Commissioner Yaki
11 agree with me that it is within his rights under this
12 proposal to introduce any topic, any briefing topic
13 that he likes?

14 COMMISSIONER YAKI: No.

15 CHAIRMAN REYNOLDS: You believe that --

16 COMMISSIONER YAKI: Commissioner Yaki
17 believes that I can introduce any topic that I like.
18 However, Commissioner Yaki also believes that --

19 CHAIRMAN REYNOLDS: Hold it. What is the
20 "no" attached to then?

21 COMMISSIONER YAKI: Because I believe it
22 should be the policy of the Commission, having
23 previously approved certain items for approval before
24 to affirmatively include those in the review each time
25 you determine whether or not they are still relevant

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1 and whether or not they should --

2 CHAIRMAN REYNOLDS: Isn't this formal
3 substance since any Commissioner could introduce any
4 briefing topic --

5 COMMISSIONER YAKI: Mr. Chairman, if you
6 were to ask me to pull out of my binder what we have
7 approved over the last two years that we have -- that
8 are in the queue every time, it would be difficult for
9 me to do so. We have this. It's part of the
10 information packets that we always have.

11 In other words, it is unrealistic, given
12 the fact I have no special assistant --

13 (Laughter.)

14 COMMISSIONER YAKI: -- to --

15 CHAIRMAN REYNOLDS: Just had to slide that
16 one in. Slide that one in.

17 COMMISSIONER YAKI: -- for me to recall each and
18 every time we do this where they are, where I find
19 them, and how to put them in the mix.

20 COMMISSIONER GAZIANO: Could I speak to
21 this? It seems to me that under the Commission
22 discretion policy that any Commissioner's power would
23 be as broad as was necessary since to me if we get
24 into this it's unclear to me. We may have a
25 disagreement as to which ones are moot, which ones

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1 are --

2 CHAIRMAN REYNOLDS: Are we talking about
3 '09? Is this discussion limited to the briefing
4 reports that have been selected for '09?

5 COMMISSIONER YAKI: If I recall, we have a
6 backlog of '08, '07 and --

7 CHAIRMAN REYNOLDS: Well, '08 is almost
8 over.

9 COMMISSIONER YAKI: Well, we have a
10 backlog that goes into '09, including the '09 list,
11 and there were some -- I mean, there are a fair
12 number. I would certainly say those that have been
13 previously approved should continue to appear on the
14 list for consideration in each --

15 CHAIRMAN REYNOLDS: Now, are you talking
16 about items that you have a personal interest in?

17 COMMISSIONER YAKI: No. I'm talking about
18 items that have been previously approved.

19 CHAIRMAN REYNOLDS: So you're defending
20 positions --

21 COMMISSIONER YAKI: I'm defending the
22 position of prior Commission votes of things that were
23 worthy of studying and that we should at least review
24 them each time rather than have to try and figure out
25 where they were because they were the --

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1 CHAIRMAN REYNOLDS: I'm sure that Richard
2 can figure this out. I'm sure that Richard has
3 figured this out.

4 COMMISSIONER YAKI: He's not my special
5 assistant.

6 COMMISSIONER GAZIANO: The Staff Director
7 can possibly send you a list and you can agree or
8 disagree.

9 COMMISSIONER YAKI: If he can send that
10 list, he can include the list -- you know what? I
11 just don't understand, Commissioner Gaziano, what the
12 problem is with the fact that the Commission, this
13 Commission, by usually votes, outvoting me. So these
14 are mainly your topics --

15 CHAIRMAN REYNOLDS: And if we want to
16 ditch our own topic I'm not sure --

17 COMMISSIONER YAKI: You can ditch it.

18 CHAIRMAN REYNOLDS: -- that you have a dog
19 in the fight.

20 COMMISSIONER YAKI: I'm just saying
21 that --

22 (Laughter.)

23 COMMISSIONER YAKI: I'm just saying that
24 there --

25 COMMISSIONER GAZIANO: I just think your

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1 amendment is subject to more disagreement.

2 COMMISSIONER HERIOT: It's also subject to
3 error. If we forget to do it one time, does that mean
4 that somehow we've tainted a selection that was made?

5 COMMISSIONER YAKI: No, I don't think so.
6 I think that's getting a little silly. I mean, you
7 know, I'm just saying that there are a lot of things
8 that we have considered, voted on, and approved, and
9 it would be nice to ensure that those topics that we
10 did are still eligible for consideration, and they
11 should not be --

12 COMMISSIONER GAZIANO: They are eligible.

13 COMMISSIONER YAKI: -- and should not be
14 commented upon, also trying to go backwards in time to
15 try and find them when it's easily much more findable
16 by the fact that the staff has all of this in their
17 hands. That's all I'm saying.

18 CHAIRMAN REYNOLDS: I don't agree with
19 Commissioner Yaki. I am willing to vote with
20 Commissioner Yaki on this to move the damn -- to move
21 the conversation.

22 (Laughter.)

23 CHAIRMAN REYNOLDS: So I don't know how
24 others feel about it. Commissioner Melendez?

25 COMMISSIONER MELENDEZ: I remember that

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1 the idea was to make sure that all of us had a
2 specific topic so that nobody was left out, even on
3 the minority here. If it were left by a vote,
4 probably none of the topics that Michael and I have
5 will come up for a vote, but the issue is to try to
6 get everybody so that we were comfortable and in
7 agreement with what topics should we have for the
8 year.

9 Now, if we get to a point where all of a
10 sudden somebody comes up with something else to
11 replace something we already decided earlier, then
12 somebody is going to get bumped, but we don't have the
13 vote. So the problem is --

14 CHAIRMAN REYNOLDS: Yes, but we've been
15 doing that at least since I've been on the Commission.
16 We have changed our mind. We have though, with
17 respect to the old agreement that we had on having a
18 carve-out, I don't believe that we have bumped any
19 briefing topic that you folks had ownership of.

20 COMMISSIONER MELENDEZ: But I guess the
21 other thing in scheduling, you know, we have a problem
22 coming together so often. So you can do it two ways.

23 You either set a schedule, just like we have now for
24 2008, community reinvestment, racial profiling, racial
25 religious discrimination, racial corporate diversity,

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1 Title IX in college athletics, is cheerleading a
2 sport; now those are already set.

3 CHAIRMAN REYNOLDS: Please give that list
4 to Commissioner Yaki.

5 COMMISSIONER MELENDEZ: But the issue
6 would be -- now those are set.

7 COMMISSIONER YAKI: If I had an assistant
8 to keep track of all this stuff.

9 COMMISSIONER MELENDEZ: The option to bump
10 any one of those would be all of us taking a vote to
11 replace one of those that we have already set. That's
12 one way we could do it.

13 VICE CHAIR THERNSTROM: You have the list
14 that Commissioner Yaki says doesn't -- that nobody
15 has. You have it right there.

16 COMMISSIONER MELENDEZ: But here's the
17 issue.

18 VICE CHAIR THERNSTROM: Right there. I've
19 got it.

20 COMMISSIONER MELENDEZ: The issue is do we
21 come together to set that list with the idea that we
22 can actually change those along the line with three
23 months. Are you saying that we shouldn't even try to
24 set a list so that we end up with nothing really being
25 set three months prior. Do you know what I mean?

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1 CHAIRMAN REYNOLDS: The idea, as I
2 understand it, is essentially we would select briefing
3 topics on a quarterly basis. So we would just have a
4 list of briefing reports that only go out one quarter
5 and the remaining quarters in the year we would have
6 nothing teed up.

7 COMMISSIONER MELENDEZ: I'm a proponent of
8 seeing the future, even though I know that
9 circumstances will change that, the future if I can
10 set for the year. I have an idea when these are going
11 to come about and that we can change that if we desire
12 to replace one with another at the consensus of
13 everybody.

14 If we get to we don't have anything in
15 this place three month prior, I have a problem with
16 that because we, for one thing, never come together on
17 conference calls or anything else. You know, we have
18 a real problem coming together and everybody being
19 able to have input.

20 So I'm just saying I prefer setting the
21 list and then having the idea to interject something
22 else with consensus.

23 CHAIRMAN REYNOLDS: Well, how do you feel
24 about just compiling a list and from that list, with
25 the understanding that we could add and subtract from

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1 it, from that list select topics for first quarter,
2 and then go back to that list and select for the
3 second quarter? That way --

4 COMMISSIONER MELENDEZ: Well, the issue
5 was it took us a while because we had to prioritize.
6 You know, at one point we wanted to put down your
7 three topics or five and then at some point all of us
8 did that, and then all of a sudden --

9 CHAIRMAN REYNOLDS: We would do that on a
10 quarterly basis.

11 COMMISSIONER MELENDEZ: You know, I mean,
12 see how much more work that is. Quarters go by really
13 quick, and it was hard enough doing at one time for
14 the whole year, but having to do that every quarter,
15 to try to figure out, do you know what I mean?

16 CHAIRMAN REYNOLDS: No, but you can do it
17 once. You can do it once and just identify the topics
18 where you want them to fall, which quarter. I mean --

19 COMMISSIONER MELENDEZ: I just am not sure
20 how it's going to work. I prefer to the old method,
21 which seemed good to me.

22 COMMISSIONER YAKI: And just by way of
23 clarification ---

24 COMMISSIONER MELENDEZ: I don't have a
25 problem with changing it if we all agree to doing

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1 that.

2 COMMISSIONER YAKI: And by way of
3 clarification, Mr. Chair, the violin is shrinking
4 again. Just because there is a list of topics does
5 not mean that any of us has access to what descriptors
6 of each of those topics were. If you recall, most of
7 the topics all had a little paragraph underneath them.

8 I have no access to where those would be, again, and
9 that's why I'm saying --

10 CHAIRMAN REYNOLDS: I'm not following you.

11 COMMISSIONER YAKI: The Vice Chair said it
12 seemed to imply that I could drag up this list any
13 time I wanted to. The problem is maybe I could drag
14 up the list, but I would not have in sufficient detail
15 the descriptors of the paragraphs that we have
16 previously approved.

17 CHAIRMAN REYNOLDS: But what about the
18 compromise that I offered where we would compile a
19 list that would include a description, and we would
20 select items from that list for a particular quarter,
21 with the understanding that we could add to that list
22 and subtract from it.

23 COMMISSIONER YAKI: That was my proposal.

24 CHAIRMAN REYNOLDS: Okay. We're in
25 agreement.

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1 COMMISSIONER GAZIANO: I'm sorry. I
2 missed something. Before I want to privilege certain
3 ones, I want to know what ones are supposedly on, have
4 been approved or not, and I think that Michael's
5 proposal complicates things and leads to further
6 argument.

7 COMMISSIONER YAKI: Why would I want that?
8 (Laughter.)

9 VICE CHAIR THERNSTROM: That would be
10 shocking.

11 COMMISSIONER GAZIANO: I missed something.
12 What did I miss? Michael said --

13 COMMISSIONER YAKI: Why would I want to
14 create further problems?

15 COMMISSIONER HERIOT: Let the record
16 reflect that he laughed after he said that, too.

17 COMMISSIONER YAKI: When I find --

18 COMMISSIONER GAZIANO: I suggested that
19 that approach would create further problems.

20 (Pause in proceedings.)

21 VICE CHAIR THERNSTROM: Do you think we
22 could spend this amount of time on everything that
23 comes up?

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER MELENDEZ: A question. We're

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1 talking about putting this into place in 2009 because
2 we already have in September Gail's topic on minority
3 students and scientists. Then we also have November
4 2008 voting rights in U.S. territories, which is
5 already on the Website from my understanding. So it
6 sounds like we are already scheduled for 2008, and so
7 we're really looking at applying this to 2009.

8 COMMISSIONER GAZIANO: I could amend it
9 since we're sort of already set for the first quarter
10 of September that this apply to hearings after
11 September.

12 Is September -- oh, no, September is this
13 -- that's right. September is 2008. So it would
14 apply to any hearing October and beyond.

15 CHAIRMAN REYNOLDS: So do we have a
16 framework here where the actual selection would occur
17 on a quarterly basis? We will compile a list though
18 for four quarters, compile the list, have a
19 description of each topic, and then on a quarterly
20 basis vote, select items off the list on a quarterly
21 basis with the understanding --

22 COMMISSIONER HERIOT: Not necessarily
23 on --

24 COMMISSIONER GAZIANO: Can we add? I
25 would hope we could add things quarterly.

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1 CHAIRMAN REYNOLDS: -- with the
2 understanding that we can add and subtract from the
3 list.

4 COMMISSIONER YAKI: But does that include
5 the previously approved topics?

6 CHAIRMAN REYNOLDS: Okay. Give me a year.
7 Are we talking about -- let's talk about '09.

8 COMMISSIONER YAKI: We have previously
9 approved but not schedule topics for 2008, and we've
10 approved but not scheduled topics for 2009.

11 CHAIRMAN REYNOLDS: If I understand Todd's
12 previous statement, this would apply to 2009.

13 COMMISSIONER YAKI: Why is he starting
14 October '08 then?

15 COMMISSIONER MELENDEZ: Well, it's the
16 fiscal year, October 1.

17 CHAIRMAN REYNOLDS: So do we have the
18 makings of a plan here, folks?

19 COMMISSIONER MELENDEZ: But I'm saying
20 that since we already have November, voting rights in
21 U.S. territories right on the Website, we should keep
22 that in there and start --

23 CHAIRMAN REYNOLDS: Is that for '08?

24 COMMISSIONER YAKI: No, that's for '09.

25 COMMISSIONER MELENDEZ: October 1 is

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1 actually November.

2 CHAIRMAN REYNOLDS: Okay. Then it's '09.

3 COMMISSIONER MELENDEZ: Yes. I'm just
4 saying we kind of committed to that one.

5 CHAIRMAN REYNOLDS: We don't commit to --
6 I mean our commitments aren't that --

7 COMMISSIONER MELENDEZ: Yes, I know.

8 (Laughter.)

9 CHAIRMAN REYNOLDS: They don't run that
10 deep.

11 COMMISSIONER YAKI: Let's just close it up
12 because I'm going to vote no on this piece of crud
13 anyway.

14 CHAIRMAN REYNOLDS: Now, with respect
15 to --

16 COMMISSIONER YAKI: Just take the vote.
17 We're going to vote no. Just take the vote.

18 CHAIRMAN REYNOLDS: Okay. Now, let's
19 articulate the motion. The motion is that we compile
20 a list for the year of briefing topics, but that we
21 vote on a quarterly basis to select items from that
22 list, on a quarterly basis, and that this would be
23 done with the understanding --

24 COMMISSIONER YAKI: For which quarter?

25 CHAIRMAN REYNOLDS: For four quarters.

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1 COMMISSIONER YAKI: You vote on a
2 quarterly basis for what?

3 COMMISSIONER GAZIANO: For the next --

4 COMMISSIONER YAKI: For the following
5 quarter.

6 CHAIRMAN REYNOLDS: Right.

7 COMMISSIONER YAKI: So when are we going
8 to vote on the topics for first quarter '09?

9 CHAIRMAN REYNOLDS: It would have to be
10 soon.

11 (Laughter.)

12 COMMISSIONER GAZIANO: August perhaps?

13 COMMISSIONER HERIOT: Let's put it on the
14 August list.

15 VICE CHAIR THERNSTROM: Put it on the
16 August agenda.

17 CHAIRMAN REYNOLDS: August?

18 COMMISSIONER HERIOT: Yes.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER HERIOT: Let's go.

21 CHAIRMAN REYNOLDS: Getting back --

22 COMMISSIONER YAKI: I just wanted
23 clarification.

24 CHAIRMAN REYNOLDS: Okay. That's fine.

25 Okay. So --

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1 COMMISSIONER GAZIANO: And we can add and
2 subtract each quarter to that.

3 COMMISSIONER YAKI: I'm going to ask the
4 Staff Director to include in there the list of all
5 previously approved and unscheduled topics from 2008
6 and 2009.

7 CHAIRMAN REYNOLDS: I consider that a
8 friendly amendment. I hope that there is not
9 objection to it.

10 COMMISSIONER MELENDEZ: One question.

11 CHAIRMAN REYNOLDS: Do you object?

12 COMMISSIONER MELENDEZ: No, I just have
13 one question. As far as notifying the people that
14 appear before us on panels, is that an adequate time
15 to do that? I mean, let's say we have one six months
16 down the road and would you notify them today, giving
17 them time so that they should schedule to come here,
18 or is three months enough time for them to, you know,
19 come here? Was that helpful in the old way, but did
20 we ever notify them way ahead of time or --

21 CHAIRMAN REYNOLDS: I don't believe that
22 we -- we may have had a list that went out a year, but
23 I don't believe that --

24 COMMISSIONER MELENDEZ: We notified people
25 that far in advance?

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1 CHAIRMAN REYNOLDS: No.

2 COMMISSIONER MELENDEZ: Okay.

3 VICE CHAIR THERNSTROM: Question. How
4 many briefings -- I mean, we settled on very few
5 briefing topics in the course of a whole year, and
6 we're making this into a big fuss about the list.

7 CHAIRMAN REYNOLDS: That is true.

8 COMMISSIONER GAZIANO: That is true.

9 COMMISSIONER HERIOT: Well, let's just
10 vote then.

11 CHAIRMAN REYNOLDS: Okay. Let's vote all
12 in favor. Please say aye.

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Pete, you still there?

15 COMMISSIONER KIRSANOW: Aye.

16 CHAIRMAN REYNOLDS: Objections?

17 COMMISSIONER YAKI: Zip, no, no.

18 COMMISSIONER MELENDEZ: No.

19 CHAIRMAN REYNOLDS: Abstentions?

20 (No response.)

21 CHAIRMAN REYNOLDS: Okay. Please look --

22 STAFF DIRECTOR DANNENFELSER: Mr.
23 Chairman, if I could again maybe adjust the narrative
24 again for the 2009 budget if necessary to reflect --

25 CHAIRMAN REYNOLDS: Yes.

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1 STAFF DIRECTOR DANNENFELSER: -- the
2 change in the --

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

7 Okay. I also move that we amend our AIs
8 to reflect the new process that we just voted on. Is
9 there a second?

10 COMMISSIONER GAZIANO: Second.

11 CHAIRMAN REYNOLDS: Discussion?

12 (No response.)

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

15 (Chorus of ayes.)

16 COMMISSIONER YAKI: No.

17 COMMISSIONER MELENDEZ: No.

18 CHAIRMAN REYNOLDS: Abstentions?

19 (No response.)

20 CHAIRMAN REYNOLDS: Okay. Commissioners
21 Yaki and Melendez voted against. The remaining
22 Commissioners voted for, and the motion passes.

23 Next up, okay.

24 VI. PROGRAM PLANNING: BRIEFING REPORT ON RACIAL
25 CATEGORIZATION IN THE CENSUS

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1 CHAIRMAN REYNOLDS: I move that in lieu of
2 the Census report findings and recommendations that
3 were circulated by the Staff Director with our meeting
4 materials last week the Commission instead consider
5 the revised findings and recommendations circulated to
6 Commissioners on July 8th. If this motion is adopted
7 pursuant to our practices, we will vote up or down on
8 each finding and recommendation. There will be a
9 discussion on each finding and recommendations, and
10 the Commissioners, of course, are free to amend,
11 delete, replace the revised findings and
12 recommendation.

13 Is there a second?

14 COMMISSIONER GAZAINO: Second.

15 CHAIRMAN REYNOLDS: Discussion.

16 COMMISSIONER MELENDEZ: Yes, I have a
17 question. How much input have we received as far as
18 from the Census Department with those committees that
19 they have that look into each one of the different
20 categories? For example, the Native Hawaiians have a
21 committee that gives recommendations back to the
22 census. The Hispanic people, I think they have one
23 also.

24 So have we considered what they've said?
25 I mean, some of those could say, well, we wanted to

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1 keep it the same as last year. Are we saying that
2 we're just kind of disregarding what these minority
3 categories the people there are actually saying?

4 I'm not sure. We can give
5 recommendations, but I just want to make sure that we
6 are taking into account what some of these groups are
7 saying to us.

8 CHAIRMAN REYNOLDS: Any discussion?

9 (No response.)

10 CHAIRMAN REYNOLDS: Okay. I will march
11 down the findings.

12 COMMISSIONER GAZIANO: Can we vote on the
13 motion to substitute first?

14 VICE CHAIR THERNSTROM: Yes, we have to.

15 COMMISSIONER GAZIANO: I don't think so.
16 I think --

17 COMMISSIONER YAKI: There's a motion to
18 substitute these. The motion said then we will go down
19 one at a time.

20 CHAIRMAN REYNOLDS: And vote one at a
21 time.

22 COMMISSIONER GAZIANO: So we have a motion
23 that we're going to be discussing these rather than
24 the other ones.

25 VICE CHAIR THERNSTROM: That's all. It's

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1 a procedural motion.

2 COMMISSIONER YAKI: I would be to differ.

3 I think if you are moving to substitute these
4 findings for other findings, even if you are going to
5 then subsequently discuss those findings, you are
6 impliedly violating our AI in which we have to go
7 through it one by one.

8 COMMISSIONER GAZIANO: No, the motion
9 included that we would go through one by one.

10 COMMISSIONER YAKI: I don't know. I think
11 that's a technical issue. That's wrong. You have to
12 substitute them one at a time.

13 COMMISSIONER GAZIANO: That's not what the
14 motion said.

15 COMMISSIONER YAKI: I know that's not what
16 the motion says. I think technically it's incorrect.
17 I think there's a substantive component to it.

18 COMMISSIONER GAZIANO: Call the question.

19 COMMISSIONER YAKI: Okay. Let's vote.
20 Calling the question.

21 CHAIRMAN REYNOLDS: Hold on. Put your
22 rule books back in your pockets. Mr. Melendez.

23 COMMISSIONER MELENDEZ: We asked the
24 question whether or not -- the broader questions would
25 be after we start going through the recommendations on

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1 the specific recommendation or should we ask those
2 before?

3 CHAIRMAN REYNOLDS: Well, I opened the
4 floor for discussion before marching through --

5 COMMISSIONER MELENDEZ: Okay. Well, I'm
6 still in that mode.

7 CHAIRMAN REYNOLDS: Okay.

8 COMMISSIONER MELENDEZ: The question I
9 asked was did our staff get any input from the Census
10 Advisory Committees on race and ethnicity into this
11 product that we're --

12 COMMISSIONER GAZIANO: Well, we had the
13 Director and the former Director of the Census Bureau
14 testify at the briefing that we held that informed
15 this report, and then we also had a period after the
16 briefing for people to submit information.

17 COMMISSIONER YAKI: And have they gone
18 over the substitute motion? Were they allowed to look
19 at and comment on the substitute motion?

20 COMMISSIONER GAZIANO: Was who allowed to
21 comment?

22 VICE CHAIR THERNSTROM: That's not part of
23 our process.

24 COMMISSIONER YAKI: I'm just wondering.

25 COMMISSIONER GAZIANO: No, I'm wondering

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1 who you're asking was who allowed to look at the
2 substitute motion.

3 COMMISSIONER YAKI: Anyone in the Census
4 Bureau. They are allowed to look at our findings or
5 recommendations. Of course they are. So just --

6 COMMISSIONER HERIOT: Before we adopt
7 them?

8 COMMISSIONER YAKI: Yes.

9 CHAIRMAN REYNOLDS: Well, I was just
10 pointing out that as a practice, that's not what we
11 do. We don't circulate draft findings and
12 recommendations to agencies.

13 COMMISSIONER YAKI: Okay.

14 COMMISSIONER GAZIANO: Call the question.

15 CHAIRMAN REYNOLDS: Hold on.

16 COMMISSIONER MELENDEZ: The real question
17 is also do we actually need recommendations on this
18 issue? It seems to be a real issue that needs a lot
19 more expertise, comments. I know that even when
20 Commissioner Braceras was on board and we started to
21 discuss the Hispanic situation, she was adamant about
22 changing, you know, what was in the previous year.

23 So I know that it gets to be a real
24 contentious issue, and we don't even have a Hispanic
25 person on the Commission anymore as far as their

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1 input, but I know at the time we had talked about
2 that, she was real adamant on her position which may
3 not coincide with what we're recommending here. But
4 that's all I'm saying.

5 So I guess we can go through the points as
6 we get down into the specifics.

7 CHAIRMAN REYNOLDS: Okay. Well, we've had
8 input from the Census Bureau, and I suggest that we
9 march through the findings, and to the extent any
10 Commissioner feels strong enough to write something,
11 there's always dissenting and concurring opinions to
12 deal with perceived shortcomings in the document.

13 Okay. The first finding reads, "The
14 Census Bureau develops" --

15 COMMISSIONER GAZIANO: We have to vote on
16 the motion.

17 VICE CHAIR THERNSTROM: We have to vote on
18 the motion.

19 COMMISSIONER YAKI: There's a call of the
20 question. I'd like it --

21 CHAIRMAN REYNOLDS: I'm sorry. I'm sorry.

22 COMMISSIONER YAKI: -- to be a roll call
23 on the call of the question.

24 CHAIRMAN REYNOLDS: I'm sorry.
25 Commissioner Yaki, I am not an expert on the rules.

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1 Please explain your request.

2 COMMISSIONER YAKI: Call the question
3 requires two-thirds to close debate. I had some
4 questions, but apparently Commissioner Gaziano or
5 Commissioner Gaziano --

6 COMMISSIONER GAZIANO: I remove my motion
7 to call the question.

8 CHAIRMAN REYNOLDS: Yes. Let's put the
9 rule books back in your pocket, folks. It will just
10 tie us up and keep us here longer than we should be.
11 If you have a question, Commissioner Yaki, please ask
12 it.

13 COMMISSIONER YAKI: Yes. I want to know
14 what kind of legal review was done of the substitute
15 motion package by staff.

16 CHAIRMAN REYNOLDS: Legal of the
17 substituted findings and recommendations?

18 COMMISSIONER YAKI: Yes, by the staff.

19 COMMISSIONER GAZIANO: What legal review
20 is normally done?

21 COMMISSIONER MELENDEZ: I think he's
22 referring to the defame and degrade legal sufficiency,
23 affected agency and external reviews that are supposed
24 to be done.

25 COMMISSIONER YAKI: Well, no, that's for

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1 the whole report. I'm just talking about whether or
2 not these findings, given as extensive as they are
3 were reviewed for their legal integrity by the staff.

4 CHAIRMAN REYNOLDS: Okay. Where is Mr.
5 Blackwood?

6 Well, first of all, Staff Director, is
7 that an appropriate -- is that something that we would
8 do under these circumstances, run it back through OGC?

9 STAFF DIRECTOR DANNENFELSER: I don't
10 believe it's normal when the Commissioners are
11 offering substitute motions at a meeting that they go
12 through legal review before the Commissioners offer --
13 not necessarily as a matter of course.

14 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
15 are you sneezing?

16 (Laughter.)

17 COMMISSIONER KIRSANOW: No. Forget it.

18 (Laughter.)

19 COMMISSIONER GAZIANO: Mr. Chairman, that
20 seems entirely right. We've made motions all the time
21 to substitute recommendations and findings, and we
22 don't halt them for subsequent legal review.

23 CHAIRMAN REYNOLDS: We are responding to
24 the question.

25 STAFF DIRECTOR DANNENFELSER: Some of

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1 these are very spontaneous motions that are offered in
2 the course of the meeting.

3 CHAIRMAN REYNOLDS: Mr. Blackwood.

4 MR. BLACKWOOD: This is Mr. Blackwood.
5 No, we don't conduct legal sufficiency review of the
6 findings and recommendations or any amendments
7 thereto.

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

10 CHAIRMAN REYNOLDS: Any other questions?

11 (No response.)

12 CHAIRMAN REYNOLDS: All right. The first
13 finding: "The Census Bureau" --

14 COMMISSIONER HERIOT: We have to vote on
15 the motion.

16 (Laughter.)

17 CHAIRMAN REYNOLDS: Okay. All in favor
18 say aye.

19 (Chorus of ayes.)

20 COMMISSIONER YAKI: No.

21 COMMISSIONER MELENDEZ: Opposed.

22 CHAIRMAN REYNOLDS: I'm sorry?

23 COMMISSIONER MELENDEZ: No.

24 CHAIRMAN REYNOLDS: Okay. Pete?

25 VICE CHAIR THERNSTROM: Pete, it's just

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1 voting on calling the question.

2 COMMISSIONER YAKI: No, no.

3 COMMISSIONER HERIOT: It's voting on the
4 motion.

5 COMMISSIONER GAZIANO: Voting on
6 substituting these.

7 VICE CHAIR THERNSTROM: Oh, substituting.
8 Okay.

9 COMMISSIONER KIRSANOW: Aye.

10 CHAIRMAN REYNOLDS: All right. Let the
11 record reflect that Commissioners Melendez and Yaki
12 voted against the motion. The remaining Commissioners
13 voted for it and the motion passes.

14 Next up is voting on Part A of the
15 document. I move that the Commission approve Part A,
16 the body of the document.

17 Is there a second?

18 VICE CHAIR THERNSTROM: Second.

19 CHAIRMAN REYNOLDS: Discussion?

20 (No response.)

21 CHAIRMAN REYNOLDS: Okay. Commissioner
22 Melendez?

23 COMMISSIONER MELENDEZ: No, I'm just going
24 forward. Did you call for the question?

25 CHAIRMAN REYNOLDS: Okay. Let's vote.

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1 All in favor please say aye.

2 (Chorus of ayes.)

3 CHAIRMAN REYNOLDS: Objections?

4 (No response.)

5 CHAIRMAN REYNOLDS: Abstentions?

6 (No response.)

7 CHAIRMAN REYNOLDS: Commissioner Yaki,
8 what's your position?

9 COMMISSIONER YAKI: On all the findings?

10 CHAIRMAN REYNOLDS: Part A.

11 COMMISSIONER YAKI: I'm abstaining.

12 CHAIRMAN REYNOLDS: Okay. Commissioner
13 Kirsanow?

14 COMMISSIONER KIRSANOW: I'm sorry. I had
15 to jump off for a moment. I missed the last
16 discussion.

17 CHAIRMAN REYNOLDS: Okay. We're voting on
18 Part A, the body of the document. How do you vote?

19 COMMISSIONER KIRSANOW: Give me one
20 second.

21 I'm going to have to jump off for a
22 second. I'm going to have to come back.

23 VICE CHAIR THERNSTROM: All right. So he

24 --

25 COMMISSIONER YAKI: He's not voting on

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1 this.

2 COMMISSIONER YAKI: He's absent.

3 COMMISSIONER GAZIANO: He's not voting.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER GAZIANO: Or maybe we can

6 hold it open in order to record his vote.

7 VICE CHAIR THERNSTROM: No, no. He's just

8 absent.

9 COMMISSIONER GAZIANO: Okay.

10 VICE CHAIR THERNSTROM: Let's move on.

11 CHAIRMAN REYNOLDS: Okay. Let the record

12 reflect that Commissioner Yaki voted against.

13 Commissioner --

14 COMMISSIONER YAKI: I abstained.

15 COMMISSIONER HERIOT: He abstained.

16 CHAIRMAN REYNOLDS: Oh, I'm sorry. That

17 he abstained --

18 COMMISSIONER YAKI: I will be voting

19 against later.

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow

21 did not participate in this particular vote, and the

22 remaining Commissioners voted in favor.

23 Did I get that right?

24 VICE CHAIR THERNSTROM: Yes, you got it

25 right.

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1 CHAIRMAN REYNOLDS: Okay. Where am I?
2 Findings?

3 The first finding reads as follows: "The
4 Census Bureau develops its questions on race,
5 ethnicity and ancestry in compliance with Office of
6 Management and Budget standards for maintaining,
7 collecting, presenting federal data on race and
8 ethnicity. Those standards provide a minimum standard
9 for maintaining, collecting, and presenting data for
10 all federal reporting purposes. Among other things,
11 the standards provide the minimum categories for data
12 on race and ethnicity for federal statistics. Program
13 administrative reporting and civil rights compliance
14 are defined as follows. American or Alaska Native,
15 Asian, black or African American, Hispanic or Latino,
16 Native Hawaiian or other Pacific Islander, and white."

17 COMMISSIONER YAKI: I think you misstated
18 the first one. American Indian or Alaskan Native. I
19 think you left out the word "Indian."

20 CHAIRMAN REYNOLDS: Okay. Thank you for
21 the correction.

22 "Respondents shall be offered the option
23 of selecting one or more racial categories."

24 The next standard is whenever feasible a
25 two-question format for reporting race and ethnicity

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1 shall be used. When this is done, the question on
2 ethnicity should come first and must contain at a
3 minimum the following categories: Hispanic or Latino,
4 and not Hispanic or Latino. Under these circumstances
5 the race question should include at a minimum American
6 Indian or Alaskan Native, Asian, black or African
7 American, Native Hawaiian or other Pacific Islander
8 and white.

9 Number two, in the 2000 --

10 COMMISSIONER HERIOT: We need to vote on
11 that one.

12 COMMISSIONER GAZIANO: We need to vote on
13 that one.

14 CHAIRMAN REYNOLDS: Oh, I'm sorry. Is
15 there a second?

16 COMMISSIONER HERIOT: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 (No response.)

19 CHAIRMAN REYNOLDS: All in favor say aye.

20 (Chorus of ayes.)

21 COMMISSIONER KIRSANOW: Aye.

22 Mr. Chairman, I'm going to have to jump
23 off permanently now.

24 CHAIRMAN REYNOLDS: Okay.

25 VICE CHAIR THERNSTROM: Okay.

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1 CHAIRMAN REYNOLDS: Thank you.

2 VICE CHAIR THERNSTROM: Thanks.

3 CHAIRMAN REYNOLDS: Abstentions?

4 COMMISSIONER MELENDEZ: Abstain.

5 CHAIRMAN REYNOLDS: Objections?

6 (No response.)

7 CHAIRMAN REYNOLDS: Okay. Let the record
8 reflect that -- I'm sorry. Commissioner Yaki?

9 COMMISSIONER YAKI: I abstain.

10 CHAIRMAN REYNOLDS: Okay. We have two
11 abstentions with Commissioners Yaki and Melendez. The
12 remaining Commissioners, including Commissioner
13 Kirsanow, voted in favor. The motion carries.

14 Please note that Commissioner Kirsanow is
15 no longer on the line.

16 The second finding reads as follows: "In
17 the 2000 census the Commission bureau included the
18 five categories mandated by OMB and, in addition,
19 provided a check box for some other race. The some
20 other race category has been controversial, and the
21 Census Bureau considered discontinuing its use in the
22 2010 census. The question on Hispanic origin was
23 separate. Respondents were permitted to check as many
24 categories as they thought applied to them."

25 May I have a second?

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1 VICE CHAIR THERNSTROM: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 (No response.)

4 CHAIRMAN REYNOLDS: All in favor please
5 say aye.

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: Objections?

8 COMMISSIONER MELENDEZ: Opposed.

9 COMMISSIONER YAKI: Abstain.

10 COMMISSIONER GAZIANO: Point of order. Is
11 it possible -- I think Pete has -- Pete, do you have a
12 copy -- oh, he's off. I'm sorry.

13 Since we all have a copy of this before
14 us, if I move that you don't need to read these --

15 VICE CHAIR THERNSTROM: No.

16 COMMISSIONER GAZIANO: -- and that we
17 consider them --

18 VICE CHAIR THERNSTROM: They need to be
19 read into the record.

20 COMMISSIONER GAZIANO: By motion could we
21 dispense with the requirement that we read them into
22 the record?

23 CHAIRMAN REYNOLDS: I think that we would
24 have to have a vote.

25 COMMISSIONER GAZIANO: I understand, but

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1 if I made a motion and it received a majority, could
2 we?

3 CHAIRMAN REYNOLDS: I don't see anything
4 in the reg.

5 VICE CHAIR THERNSTROM: In the past we
6 decided these have to be read into the record.

7 CHAIRMAN REYNOLDS: We have. We have that
8 rule.

9 COMMISSIONER GAZIANO: Can't you dispense
10 with any rule if it's not an AI?

11 CHAIRMAN REYNOLDS: Are we taking a break?

12 COMMISSIONER YAKI: No, we'll just be
13 right back.

14 COMMISSIONER GAZIANO: I move that the --

15 CHAIRMAN REYNOLDS: Do you want to stay
16 and vote on this?

17 COMMISSIONER YAKI: No.

18 CHAIRMAN REYNOLDS: Okay. Make your
19 motion.

20 COMMISSIONER GAZIANO: Well, has anyone
21 noted the absence of a quorum? I don't think anyone
22 -- maybe they're coming back.

23 VICE CHAIR THERNSTROM: Well, we don't
24 have a quorum at this minute though.

25 COMMISSIONER GAZIANO: Did they state on

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1 the record they're not coming back?

2 VICE CHAIR THERNSTROM: No, but still --

3 COMMISSIONER GAZIANO: Then we don't know
4 they're not coming back.

5 CHAIRMAN REYNOLDS: Whoa, whoa.

6 VICE CHAIR THERNSTROM: We can't take a
7 vote.

8 COMMISSIONER GAZIANO: We may have some
9 people not voting.

10 CHAIRMAN REYNOLDS: Does Mr. Schmechel's
11 presence indicate they're returning?

12 (Laughter.)

13 CHAIRMAN REYNOLDS: He left his phone. I
14 think that's a strong indication.

15 COMMISSIONER GAZIANO: Yes, we have people
16 going in and out, and if someone wants -- unless we
17 know they're not returning, then I think we can
18 proceed.

19 CHAIRMAN REYNOLDS: Mr. Blackwood, would
20 you care to --

21 MR. BLACKWOOD: There is no quorum.

22 VICE CHAIR THERNSTROM: Yes, there's no
23 quorum. We can't take a vote.

24 CHAIRMAN REYNOLDS: Okay.

25 MS. MONROIG: Now we have a quorum.

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1 CHAIRMAN REYNOLDS: Please make your
2 motion.

3 COMMISSIONER GAZIANO: I move that the
4 substitute recommendations and findings we've adopted
5 be put into the record in written form and that we
6 then vote of them as they appear before us one by one.

7 COMMISSIONER YAKI: Mr. Chair.

8 CHAIRMAN REYNOLDS: Does it relate to this
9 motion?

10 COMMISSIONER YAKI: Yes.

11 CHAIRMAN REYNOLDS: Okay. I provide the
12 second.

13 Yes.

14 COMMISSIONER YAKI: I'd like 30 seconds
15 to talk to you.

16 CHAIRMAN REYNOLDS: All right.

17 (Whereupon, the foregoing matter went off the record
18 at 12:42 p.m. and went back on the record
19 at 12:45 p.m.)

20 COMMISSIONER GAZIANO: Are we back on the
21 record?

22 CHAIRMAN REYNOLDS: Where is the Vice
23 Chair? Oh, yes, we are.

24 COMMISSIONER GAZIANO: I withdraw my
25 motion that the reading be substituted and instead I

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1 just ask unanimous consent that all the little sub Is
2 and 2s be put in their proper place so that the
3 official record reflects what's before us on paper,
4 but that we have --

5 CHAIRMAN REYNOLDS: So, for example, 1(a),
6 1(b).

7 COMMISSIONER GAZIANO: And the footnotes
8 showing the record excerpts and all of that.

9 CHAIRMAN REYNOLDS: Yes. Any objection?
10 I second. Any objection to that?

11 COMMISSIONER HERIOT: Do we have to vote
12 on that?

13 CHAIRMAN REYNOLDS: Well, we'll see. Are
14 you comfortable with it?

15 COMMISSIONER YAKI: Go ahead.

16 CHAIRMAN REYNOLDS: I take that as a yes.

17 COMMISSIONER GAZIANO: Unanimous consent.
18 Unanimous consent.

19 CHAIRMAN REYNOLDS: All right.

20 COMMISSIONER GAZIANO: We voted on two.
21 We're on three; is that right?

22 COMMISSIONER MELENDEZ: I don't think we
23 voted on two.

24 CHAIRMAN REYNOLDS: We did vote on two.
25 Yaki abstained. Melendez objected.

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1 Okay.

2 COMMISSIONER YAKI: On number two I want
3 to change my vote to object.

4 CHAIRMAN REYNOLDS: Okay. Please let the
5 record reflect that Commissioner's Yaki and Melendez
6 objected to the motion. The remaining Commissioners
7 voted for it. Once again, Commissioner Kirsanow is no
8 longer participating.

9 "Finding number three for the 2010 census,
10 the Census Bureau has developed questions on race and
11 ethnicity which will be used in the 2008 dress
12 rehearsal. The questions on race, ethnicity, and
13 ancestry from the 2008 American Community Survey which
14 replaces the long form census questionnaire is also
15 administered by the Census Bureau. Because a massive
16 undertaking like the census takes years of
17 preparation, it would probably not be feasible to
18 alter these questions at this point except for
19 extraordinary cause."

20 Is there a second?

21 VICE CHAIR THERNSTROM: Second.

22 CHAIRMAN REYNOLDS: Discussion?

23 (No response.)

24 CHAIRMAN REYNOLDS: All in favor please
25 say aye.

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1 (Chorus of ayes.)

2 CHAIRMAN REYNOLDS: Objections?

3 COMMISSIONER MELENDEZ: Abstain.

4 COMMISSIONER YAKI: Abstain.

5 CHAIRMAN REYNOLDS: Okay. The two
6 abstentions are Commissioners Melendez and Yaki. The
7 remaining Commissioners voted in favor. The motion
8 carries.

9 Number four, the separate question four,
10 "Hispanic origin has been a part of the census since
11 1970 when it was added to the long form. In 1980 it
12 became a part of the short form as well."

13 Is there a second?

14 COMMISSIONER YAKI: Second.

15 CHAIRMAN REYNOLDS: Discussion?

16 (No response.)

17 CHAIRMAN REYNOLDS: All in favor please
18 say aye.

19 (Chorus of ayes.)

20 CHAIRMAN REYNOLDS: Any objections?

21 COMMISSIONER MELENDEZ: Abstain.

22 CHAIRMAN REYNOLDS: Okay. Commissioner
23 Melendez abstains. The remaining Commissioners voted
24 in favor of the motion. The motion carries.

25 Finally, number five, "even though Title

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1 VII of the Civil Rights Act of 1964 prohibits
2 discrimination on the basis of religion and
3 employment, neither the census nor the American
4 Community Survey collects data on religious
5 identification or practice under 13 USC Section
6 221(c). Even if the Census Bureau were to include
7 such questions, respondents could not be penalized for
8 failure to answer."

9 Is there a second?

10 VICE CHAIR THERNSTROM: Second.

11 CHAIRMAN REYNOLDS: Discussion?

12 (No response.)

13 CHAIRMAN REYNOLDS: All -- okay. Does he
14 want to vote on this? Good enough for me. Thank you.

15 All in favor please say aye.

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Objections?

18 COMMISSIONER MELENDEZ: Abstain.

19 CHAIRMAN REYNOLDS: Okay. He abstains.

20 We have two abstentions, Commissioners Yaki and
21 Melendez. The remaining Commissioners vote in favor
22 of the motion. The motion carries.

23 The sixth and final finding, "some
24 Americans regard their race, ethnicity and ancestry to
25 be a private matter. Nevertheless, under current law

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1 they are required to respond to a census questionnaire
2 and to do so truthfully."

3 Is there a second?

4 COMMISSIONER GAZIANO: Second.

5 CHAIRMAN REYNOLDS: Discussion?

6 (No response.)

7 CHAIRMAN REYNOLDS: All in favor please
8 say aye.

9 (Chorus of ayes.)

10 CHAIRMAN REYNOLDS: Objections?

11 COMMISSIONER MELENDEZ: Abstain.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: Yes.

14 VICE CHAIR THERNSTROM: The vote on number
15 six.

16 CHAIRMAN REYNOLDS: Number six.

17 COMMISSIONER YAKI: Oh, no.

18 CHAIRMAN REYNOLDS: Okay. Commissioner
19 Yaki --

20 COMMISSIONER YAKI: I'm curious. Which
21 one? Wait a minute. Go.

22 CHAIRMAN REYNOLDS: Commissioner Yaki
23 voted against the motion. Commissioner Melendez
24 abstains. The remaining Commissioners voted in favor
25 of the motion. The motion carries.

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1 Now we are up to the recommendations. The
2 first recommendation reads, "Given the term race,
3 ethnicity, and ancestry have no fixed or agreed upon
4 meaning in the public mind, we recommend that the
5 Census Bureau avoid using them as separate terms in
6 the next census. For example, some people regard
7 Hispanic as a race; some do not. Some may refer to a
8 particular individual's Hispanic background as his
9 ethnicity, and others may reject the term on the
10 ground that it implies something untrue about the
11 individual's cultural traits as opposed to his
12 ancestor's cultural traits. Such person may prefer
13 the term ancestry. We urge that questions about race,
14 ethnicity, ancestry be phrased in such a way as to
15 include all three concepts, such as what is your race,
16 ethnicity or ancestry."

17 Is there a second?

18 VICE CHAIR THERNSTROM: Second.

19 CHAIRMAN REYNOLDS: Discussion? Yes.

20 COMMISSIONER YAKI: I'm going to give just
21 a brief comment based on items one through seven,
22 which may be supplemented further, but I have real
23 deep objections to these new recommendations on a
24 number of different levels.

25 I think the first level is that whether we

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1 like filling out the census or not, the fact of the
2 matter is that it is an enterprise that is rigorously
3 tested using focus groups, using a lot of advisory
4 committees, using social scientists, using
5 statisticians, and most importantly, and a lot of
6 testing to determine accuracy in the census.

7 We are treading on ground that we are
8 absolutely unqualified to do from the bare bones of a
9 briefing that had as among its so-called experts Ward
10 Connolly.

11 It just does not make any sense that we
12 would, based on the record that was produced at that
13 meeting, without having access to all of the reports,
14 all of the study groups, all the focus groups, all the
15 different testing scenarios that have gone on year
16 after year after year in the Census; for us to
17 substitute our judgment based upon our notions about
18 what race, ethnicity or ancestry should be in terms of
19 what the Census focus and purpose are, and that is to
20 get an accurate count of people who live and reside in
21 this country.

22 I would just strongly object to the idea
23 that we can, based on this record, based on our own
24 experience, be able to substitute our judgment for
25 that of the Census Bureau's many, many, many testing

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1 procedures over the years, especially with regard to
2 the issue of race.

3 I know that somewhere in the back of my
4 mind I hear former Commissioner Braceras screaming at
5 me to say that she would completely object to the
6 moving of Hispanic into some other undefined,
7 unqualified, and untested category, and as much as
8 former Commissioner Braceras and I disagree about a
9 lot of things, we did agree very carefully on this.

10 So I would just simply again state for the
11 record I'm going to voting no on each and every one of
12 these, and the principal purpose is that there is
13 fundamentally no good science behind what we are doing
14 today that has anything to do with what the purpose of
15 the census is supposed to do.

16 CHAIRMAN REYNOLDS: Vice Chair.

17 VICE CHAIR THERNSTROM: Well, Commissioner
18 Yaki, it seems to me that what you're basically saying
19 is that because the Census Bureau has spoken after
20 doing focus groups and et cetera, that we never should
21 have held a briefing to begin with because the issues
22 before the Census have been settled, and that
23 furthermore, that the huge scholarly literature that
24 does exist on the census, a literature in which the
25 authors come to judgments of a variety of sorts that

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1 are, you know -- that address exactly the issues these
2 recommendations address, that that scholarly
3 literature is also somehow illegitimate because if it
4 disagrees with what the Census has done after all its
5 work, then you know, kind of what right do these
6 scholars have to speak up?

7 I mean --

8 COMMISSIONER YAKI: That's not what I'm
9 saying at all, Commissioner Thernstrom.

10 VICE CHAIR THERNSTROM: Okay.

11 COMMISSIONER YAKI: What I am saying is
12 precisely the first point that you made in your
13 remarks, and that is we could have had the opportunity
14 to have that kind of a hearing, not a briefing, a
15 hearing.

16 I mean, let me just put it as bluntly as I
17 can. I thought that the testimony of Mr. Connolly was
18 simply a waste of air because all he simply said was
19 we're all one country and we ought to do away with the
20 whole thing.

21 That has nothing whatsoever to do with the
22 kind of hard research and conclusions that you're
23 talking about. I agree that there can be a place and
24 a position for us to make statements about the
25 census. What I am simply saying is that this document

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1 is not that place.

2 We did not have those kinds of scholars.
3 We did not have that kind of research available to us.
4 We had two or three people, one from the Census
5 Bureau, Ward Connolly, a couple other folks. We
6 didn't have access to that kind of literature.

7 I do not believe the census infallible. I
8 was one of the folks, along with some people who are
9 here in this room today, in the '80s who was arguing
10 for how to more accurately measure the Asian American
11 community, the Asian Pacific community and how many
12 checkoffs needed to be there and what the format
13 should be for that.

14 And in that process we worked with the
15 Census Bureau to develop what we believed was a more
16 accurate means of gauging the true diversity and
17 numbers within the Asian Pacific community of each
18 individual subgroup within there. I'm not saying
19 they're perfect. What I am saying is that to boldly
20 go where no study has gone before based on nothing in
21 the record that would enable us to reach those
22 conclusions other than whatever, I think is wrong.

23 There is a time and a place, and there is
24 a way to do it. This is not the way to do it.

25 CHAIRMAN REYNOLDS: Okay. Unless there

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1 needs to be further discussion, we're ready to vote.

2 All in favor please say aye.

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: Commissioner Melendez?

5 COMMISSIONER MELENDEZ: No.

6 CHAIRMAN REYNOLDS: Okay. Commissioners
7 Yaki and Melendez voted against the motion. The
8 remaining Commissioners voted in favor. The motion
9 passes.

10 Number two, "The opportunity to select
11 multiple responses to race, ethnicity and ancestry
12 questions will tend to inflate the number of responses
13 in each category relative to what would have been if
14 respondents had been permitted to select only one. We
15 nevertheless believe that the opportunity for multiple
16 responses is necessary for an accurate portrait of our
17 nation's complex racial, ethnic and ancestral
18 heritage. We, therefore, recommend that the Office of
19 Management and Budget standards on this issue be
20 retained."

21 Is there a second?

22 VICE CHAIR THERNSTROM: I second it.

23 CHAIRMAN REYNOLDS: Discussion?

24 (No response.)

25 CHAIRMAN REYNOLDS: All in favor say aye.

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1 (Chorus of ayes.)

2 CHAIRMAN REYNOLDS: Objections?

3 COMMISSIONER MELENDEZ: Opposed.

4 CHAIRMAN REYNOLDS: Why don't you just
5 tape --

6 COMMISSIONER HERIOT: For the record you
7 should say he lifted up a piece of paper that says
8 "no" written on it.

9 CHAIRMAN REYNOLDS: Okay. Commissioners
10 Melendez and Yaki voted against the measure, against
11 the motion. The remaining Commissioners voted for.
12 The motion carries.

13 Recommendation number three, "The current
14 separate question on Hispanic or Latino ethnicity of
15 the census and ACS no longer serves the purposes it
16 once did. Moreover, it may cause harm by suggesting
17 that the Hispanic/Latino ethnicity is somehow uniquely
18 significant and by distorting the number of
19 respondents who report they are Hispanic or Latino
20 relative to the number who would have responded that
21 way if Hispanic/Latino had simply been one among many
22 racial, ethnic, or ancestral choices before them. In
23 1970 when respondents were required to choose only one
24 box, some argue that Hispanics and Latinos could be of
25 any race and that a single question would force

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1 Hispanics and Latinos to choose between their race and
2 their Hispanic or Latino ancestry or ethnicity. Since
3 respondents may now select as many respondents as they
4 wish, this is no longer a problem. We, therefore,
5 recommend that the Office of Management and budget
6 standards be amended to discontinue the two question
7 format, and that instead Hispanic/Latino be added to
8 the responses to the general question on race, and
9 that the question on race be renamed a question on
10 race, ethnicity or ancestry."

11 Is there a second?

12 VICE CHAIR THERNSTROM: Second.

13 CHAIRMAN REYNOLDS: Discussion?

14 (No response.)

15 CHAIRMAN REYNOLDS: All in favor say aye.

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Objections?

18 COMMISSIONER MELENDEZ: Opposed.

19 CHAIRMAN REYNOLDS: Commissioners Yaki and
20 Melendez oppose the measure, the motion. The
21 remaining Commissioners voting for it. The motion
22 passes.

23 We're up to recommendation number four.
24 "Although attempts have been made to abolish the
25 'other race category,' the 'other race' category

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1 sometimes by those who have a stake in making one or
2 more of the specific racial categories seem larger
3 than they would otherwise be, we recommend that it be
4 retained by the Census Bureau as another race,
5 ethnicity or ancestry category, given that respondents
6 are currently required by law to answer all questions
7 accurately and to the best of their knowledge, and
8 that even without that law, most respondents strive
9 for accuracy. We believe that it would place an
10 unfair burden on them to require that they give an
11 answer they believe to be inaccurate."

12 Is there a second?

13 VICE CHAIR THERNSTROM: Second.

14 CHAIRMAN REYNOLDS: Discussion?

15 I would like to offer a friendly
16 amendment. Bear with me. What is basically a
17 parenthetical that begins "sometimes by those who have
18 a stake in making one or more of the specific racial
19 categories seem larger than they would otherwise be,"
20 I would ask that we just delete that language.

21 VICE CHAIR THERNSTROM: That's fine with
22 me.

23 CHAIRMAN REYNOLDS: Any other comments?

24 (No response.)

25 CHAIRMAN REYNOLDS: Okay. The friendly

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1 amendment was accepted. Do we need to vote on this,
2 the deletion?

3 COMMISSIONER GAZIANO: Is there any
4 objection to your friendly amendment?

5 VICE CHAIR THERNSTROM: Yes. No, we don't
6 need to, a friendly amendment. We just need to simply
7 vote on it.

8 CHAIRMAN REYNOLDS: Do you object to it?

9 COMMISSIONER YAKI: I'm going to vote
10 against it, but I'll let you make it.

11 CHAIRMAN REYNOLDS: Okay. Thank you.

12 COMMISSIONER MELENDEZ: Opposed.

13 CHAIRMAN REYNOLDS: You're opposed to the
14 friendly amendment?

15 COMMISSIONER MELENDEZ: Opposed to the
16 whole thing.

17 (Laughter.)

18 VICE CHAIR THERNSTROM: That's different.
19 We're going to vote on the whole thing.

20 CHAIRMAN REYNOLDS: We're going to vote on
21 it.

22 VICE CHAIR THERNSTROM: This is just a
23 question of deleting that rather --

24 COMMISSIONER MELENDEZ: Fine.

25 CHAIRMAN REYNOLDS: Okay, all right. Yes.

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1 All in favor of the motion as amended, please say
2 aye.

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: All those --

5 COMMISSIONER MELENDEZ: Oppose.

6 CHAIRMAN REYNOLDS: Thank you.

7 Commissioners Yaki and Melendez oppose the
8 motion. The remaining Commissioners vote in the
9 affirmative of the amended motion. The motion as
10 amended passes.

11 We're up to number five. "The current
12 questions on the census give respondents who identify
13 themselves as American Indian or Alaska Native, Asian
14 Native Hawaiian or other Pacific Islander or Hispanic
15 or Latino the opportunity to specify any specific
16 subgroup to which they belong. By denying this
17 opportunity to those who identify themselves as black,
18 African American, or negro or those who identify
19 themselves as white, some may be left with the
20 impression that subgroups' ethnicities and ancestries
21 within these categories are less important, less
22 worthy of attention or are unlikely to suffer from
23 discrimination on account of national origin. These
24 are not impressions that the Census Bureau should wish
25 to leave. We, therefore, recommend that the Census

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1 Bureau give those who check the box with black,
2 African American, or negro or white analogous
3 opportunities to register a subgroup, ethnicity or
4 ancestry within those categories. Possible subgroups
5 for the former might include Ethiopian, Haitian,
6 Dominican, or other Caribbean possible subgroups for
7 the latter might include Irish, Swedish or Arab. All
8 groups should be given an open ended other subgroup
9 category in which respondents can write in their
10 subgroup ethnicity or ancestry."

11 Is there a second?

12 VICE CHAIR THERNSTROM: Second.

13 CHAIRMAN REYNOLDS: Discussion.
14 Commissioner Yaki.

15 COMMISSIONER YAKI: Just to supplement my
16 earlier remarks, if there is one recommendation that
17 exemplifies what I believe to be the tragedy of these
18 recommendations it's number five because I cannot
19 possibly see how this could be implemented in any
20 coherent, statistically accurate form, and it seems
21 its only purpose is to attempt to really destroy the
22 categorization by essentially parroting it by going in
23 this direction.

24 I think that we have a lot of important
25 information that these kinds of categories provide to

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1 the federal government, not the least of which are
2 programs that are based upon accurate counts within
3 these communities for health care, for refuge aid, for
4 many other forms of federal assistance, and this
5 would just create, I think, utter chaos within these
6 categories, and perhaps that is the intention. I
7 don't know. I would assume good motives by the
8 drafters, but I would simply say the actual result
9 will be quite, I think, alarming.

10 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

11 VICE CHAIR THERNSTROM: Okay. As somebody
12 who has worked with census data a lot, one of the
13 frustration in, let's say, writing high school
14 completion rates for various groups or unemployment
15 rates or household wealth or you name it is that the
16 categories are so crude so that you really do, it
17 seems to me, or those of us who are scholars do really
18 want to know whether the Ethiopian, the Haitian, the
19 Dominican, other caribbean data look different than
20 those data that are associated with the descendants of
21 American slaves.

22 And so what's being asked here is a
23 refinement of the demographic picture in America that
24 it seems to me can only enhance. That's very much in
25 keeping with the purpose of the census and can only

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1 enhance our knowledge.

2 CHAIRMAN REYNOLDS: Commissioner Gaziano.

3 COMMISSIONER GAZIANO: I'm glad that
4 Commissioner Yaki withdrew his suggestion that the
5 most likely reason is to do mischief, and I just want
6 to be clear that I think the recommendation should be
7 adopted for the very reason that he thinks it's
8 valuable in other categories, and that it would
9 certainly improve the accuracy of medical research as
10 well as the other topics that the Vice chairman
11 mentioned.

12 VICE CHAIR THERNSTROM: The point that I
13 made holds, of course, with white subgroups as well.
14 There are huge differences in social mobility in
15 America between southern Europeans and northern
16 Europeans. I mean, this is potentially invaluable
17 information about the fabric of America over time,
18 changing the fabric of America over time.

19 CHAIRMAN REYNOLDS: Additional questions,
20 comments?

21 COMMISSIONER MELENDEZ: yes, the question
22 I have is and I think one of the main issues here is
23 the use of the census data itself. I mean, it's one
24 thing to say that all we're doing is taking a snapshot
25 of how many people there are in these different

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1 categories, but the other question, I think the worry
2 is that by juggling the options for people checking
3 different boxes, does it have anything to do with
4 funding that people receive by agencies that use
5 census data to distribute funding and things like
6 that, which then you'll hear a real outcry from
7 Americans in any of these groups that for some reason
8 census data is used in that manner?

9 So I think the only thing, I don't think
10 that we -- you know, people put things in place, but I
11 don't think they adequately look at the impact to all
12 of those different questions like that, that it will
13 impact people out there. I don't know if that has
14 been thoroughly looked at or at least in this
15 discussion or in these recommendations.

16 Just for the record I just wanted to say
17 that.

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

20 (Chorus of ayes.)

21 CHAIRMAN REYNOLDS: Objections?

22 COMMISSIONER MELENDEZ: Opposed.

23 COMMISSIONER YAKI: Nope.

24 CHAIRMAN REYNOLDS: Commissioners Yaki
25 and Melendez oppose the motion. The remaining

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1 Commissioners vote in favor. The motion passes.

2 Recommendation six, "Because many people
3 regard their race, ethnicity or ancestry as a private
4 matter, we believe that those who do not wish to
5 disclose such personal information to the Census
6 Bureau should be treated with dignity and respect.
7 Current law states that 'no person shall be compelled
8 to disclose information relative to his religious
9 beliefs or to membership, any religious body.' We'd
10 recommend that Congress amend Subsection 221(c) to add
11 the same protection against compelled disclosure of
12 information on race, ethnicity or ancestry. Currently
13 the Census Bureau has opted not to ask a question on
14 religion, but there is nothing in 13 USC Section
15 221(c) that prevents it from doing so, and under the
16 amendment we recommend nothing would prevent it from
17 asking a question on race, ethnicity or ancestry,
18 providing that no penalty would attach to the failure
19 to respond. No person should be penalized for acting
20 on his belief that race, religion, ethnicity and
21 ancestry are private matters and should be of no
22 consequence to the federal government."

23 Is there a second?

24 COMMISSIONER GAZIANO: Second.

25 CHAIRMAN REYNOLDS: Discussion?

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1 Commissioner Yaki.

2 COMMISSIONER YAKI: One of the hallmarks
3 of the census and why researchers often, as
4 Commissioner Thernstrom well knows, have to wait quite
5 a while to get certain kinds of census information is
6 because it is regarded as extremely confidential, and
7 there are a rigorous set of laws protecting the
8 privacy of those who are answering it.

9 I believe that, again, what this does is
10 simply undermine the accuracy of the count. It
11 undermines federal programs designed to assist many
12 individuals who would be identifying themselves in
13 certain manners, and again, it doesn't seem to me to
14 be based on any hard data or realization of what the
15 census is used for and what its purpose is with
16 regard to the information that it contains.

17 CHAIRMAN REYNOLDS: Commissioner Gaziano.

18 COMMISSIONER GAZIANO: There was certainly
19 sufficient information filed in, for example, the
20 census sampling case before the Supreme Court that a
21 very high response rate can be statistically corrected
22 for statisticians.

23 The main reason, I think to support this
24 recommendation is stated on its face, but I do want to
25 point out that it may actually improve the accuracy of

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1 the data that's collected. There is anecdotal
2 evidence of people who are offended enough by the
3 question that don't want to risk penalties to give a
4 false answer if they are compelled to do so. Civil
5 disobedience, and under this, if this recommendation
6 were adopted, I don't see a strong argument that there
7 would be a statistically less reliable, but it might,
8 in fact, be statistically more reliable because you've
9 got an extremely high sample that you know is
10 voluntarily given.

11 CHAIRMAN REYNOLDS: Commissioner Yaki.

12 COMMISSIONER YAKI: Well, this is actually
13 one area that I actually know a little bit about.
14 There have been a number of studies done by the Census
15 Bureau looking at the question that Commissioner
16 Gaziano says about the accuracy of the response and
17 the willingness of people to self-identify on the
18 form, and there have been studies done and conducted
19 that show that your accuracy rate is infinitely higher
20 through compulsory identification than not, and that
21 the error rates are significantly different, and
22 again, it goes to why on some of these things it's a
23 question of if it's not broke don't fix it.

24 But I realize that there are ideological
25 reasons that some people have for pursuing the agenda,

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1 but in terms of, again, the purpose of the census, the
2 use of the census, these recommendations do nothing
3 but undermine and work to the disadvantage of many
4 minority and ethnic communities in this country.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER GAZIANO: Just one final
7 point. I don't know whether other Commissioners share
8 my hope that the census would actually ask a religion
9 question, but again, with the understanding that it's
10 voluntary, and so I think it's sort of evident in this
11 recommendation that we in the Commission want to
12 improve the accuracy of the census, but also to
13 respect the dignity of those who don't want to respond
14 to such personal information.

15 CHAIRMAN REYNOLDS: Okay. All in favor
16 please say aye.

17 (Chorus of ayes.)

18 CHAIRMAN REYNOLDS: Objections?

19 COMMISSIONER MELENDEZ: Opposed.

20 COMMISSIONER YAKI: Nope.

21 CHAIRMAN REYNOLDS: Commissioners Melendez
22 and Yaki voted against the motion. The remaining
23 Commissioners voted for the motion. The motion
24 passes.

25 The final recommendation, recommendation

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1 seven, reads as follows: "Two cautions are necessary.

2 First, census data are not always the only source of
3 reliable information. Census Bureau estimates of high
4 school dropouts, for example, have been questioned by
5 investigators using 'alternative data.'

6 "Second, there are common methodological
7 errors in employing the census data, errors in which
8 social scientists are well aware, but attorneys,
9 judges, and journalists far less predictably so, and
10 thus, we recommend caution in, for instance, drawing
11 conclusions about voter discrimination, specifically
12 the under representation of groups in elected office
13 without taking into account the age structure,
14 citizenship rates, educational and income levels of
15 the ethnic or racial group in question. Likewise
16 conclusions about employment discrimination often rest
17 on causal assumptions that are in reality simply
18 correlations reflecting a host of factors that make
19 for group differences in the labor pool for particular
20 occupations.

21 "Moreover, social scientists understand
22 that comparing census data with other data sets that
23 have employed different data collection methodologies
24 is itself problematic. For example, a data set in
25 which respondents are permitted to select only one

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1 racial or ethnic group will not be easily comparable
2 to census or other data in which multiple responses
3 are explicitly permitted."

4 Is there a second?

5 COMMISSIONER HERIOT: Second.

6 CHAIRMAN REYNOLDS: Discussion?

7 (No response.)

8 CHAIRMAN REYNOLDS: All in favor please
9 say aye.

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Objections.

12 COMMISSIONER MELENDEZ: Opposed.

13 CHAIRMAN REYNOLDS: I'm not going to hold
14 the sign. Commissioners Yaki and Melendez voted
15 against the motion. The remaining Commissioners voted
16 in favor. The motion carries.

17 Okay. Next up, the Omaha briefing.

18 VI. PROGRAM PLANNING: BRIEFING REPORT ON THE
19 DELIBERATE CREATION OF RACIALLY IDENTIFIABLE
20 SCHOOL DISTRICTS IN OMAHA, NEBRASKA

21 CHAIRMAN REYNOLDS: Okay. With respect to
22 the Omaha briefing, I'm going to make a motion that we
23 -- well, first, I move to vote on the Omaha briefing.

24 Is there a second?

25 VICE CHAIR THERNSTROM: Second.

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1 CHAIRMAN REYNOLDS: Discussion? I'm
2 sorry.

3 COMMISSIONER HERIOT: A motion to address
4 something on the agenda?

5 VICE CHAIR THERNSTROM: Not to vote on.
6 He made a motion to vote on the Omaha briefing, and
7 we're going to have a discussion.

8 CHAIRMAN REYNOLDS: Right.

9 COMMISSIONER HERIOT: That's what the
10 agenda already says.

11 CHAIRMAN REYNOLDS: Okay. Assuming it's a
12 redundancy --

13 COMMISSIONER HERIOT: Okay. Then I'm for
14 it.

15 COMMISSIONER GAZIANO: The motion is to
16 discuss the Omaha report.

17 CHAIRMAN REYNOLDS: Yes. The floor is
18 open.

19 COMMISSIONER HERIOT: Okay.

20 CHAIRMAN REYNOLDS: Since we have --

21 COMMISSIONER HERIOT: I can discuss.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER HERIOT: This is the
24 appropriate time to talk about the substance of the
25 report?

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1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER HERIOT: I was not a big fan
3 of the report. I think that I wouldn't be willing to
4 sign onto most of the conclusions of the report, and I
5 think it might be better and I suspect that we're not
6 going to reach consensus in favor of that report; it
7 may be better if we were simply to acknowledge the
8 fact that this statute has been repealed and publish
9 the transcript of the briefing rather than the
10 proposed report.

11 CHAIRMAN REYNOLDS: Would you include
12 statements, the statements that were --

13 COMMISSIONER HERIOT: As long as we're not
14 endorsing anything that anybody is saying. If they
15 have written statements, then I think it makes sense
16 to include those. That's what the witnesses wanted to
17 be remembered with, I suspect. It includes that and
18 the transcript.

19 We should draw no conclusions, certainly
20 not the conclusions that are in this report.

21 COMMISSIONER MELENDEZ: Is that a motion?

22 VICE CHAIR THERNSTROM: If it's a motion,
23 I second it.

24 COMMISSIONER HERIOT: Yes, that's a
25 motion.

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1 VICE CHAIR THERNSTROM: I second it.

2 COMMISSIONER MELENDEZ: Just a comment. I
3 support also not having any recommendations.

4 VICE CHAIR THERNSTROM: Yes, that's
5 included in that.

6 COMMISSIONER MELENDEZ: What about the
7 finding?

8 VICE CHAIR THERNSTROM: No.

9 COMMISSIONER HERIOT: No.

10 VICE CHAIR THERNSTROM: They're gone.

11 COMMISSIONER HERIOT: Everything is gone.

12 VICE CHAIR THERNSTROM: Gone.

13 COMMISSIONER MELENDEZ: Okay. I don't
14 have a problem with the findings. I don't know how
15 everybody else feels.

16 COMMISSIONER HERIOT: Including the
17 executive summary and the general -- under my motion
18 what we would publish would be the witnesses'
19 statements as they submitted them, the transcript of
20 the briefing, but with nothing from us suggesting that
21 we believe anything. These are the facts. This is
22 what happened.

23 COMMISSIONER GAZIANO: Is it worthy of
24 actually publishing in paper form?

25 COMMISSIONER HERIOT: I think it should be

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1 done electronically and not in paper form because
2 there's no sense wasting money on paper.

3 CHAIRMAN REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: Well, I would just
5 like to point out the delicious irony here over the
6 fact that I have said for years that what we should be
7 doing with briefings is exactly what Commissioner
8 Heriot is suggesting we do with Omaha, and that is to
9 produce the documents, the statements, the
10 transcripts.

11 It's interesting that when there's an
12 indication that the majority may not like the findings
13 or conclusions of a report that actually a minority
14 may like, they then decide, well, why don't we do it
15 that way. Why don't we just strip it all out and just
16 put it all up there for people to draw their own
17 conclusion.

18 I would just like to point that out as a
19 very nice and delicious irony because that is exactly
20 what I have been talking about for years. Because you
21 do not have enough information in these briefings, in
22 these records to do the kinds of findings and
23 recommendations that you would choose to do.

24 The one time we did was because we were
25 embarrassed by the Native Hawaiian report findings and

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1 recommendations. Actually we still did a
2 recommendation on that because the majority wanted to,
3 but even they couldn't stomach the findings which came
4 out of some fifth grade notebook.

5 I mean, this to me is a situation where
6 you had a legislature that had as its intent, intent,
7 drawing school districts based on race for no purpose
8 other than to draw it based on race. There were only,
9 I'm sad to say, there were only three Commissioners at
10 that hearing. That was Commissioner Taylor,
11 Commissioner Melendez, and myself.

12 But I wanted to give credit to the Chair
13 who with me wanted to do this hearing in the first
14 place because of how outrageous the act was of the
15 legislature of Nebraska in divvying up Omaha along
16 these lines.

17 But I just want to say that I am just --
18 I've now gone beyond irony to just being appalled by
19 the fact that when we have an opportunity, albeit many
20 years later, you know, to make a statement about how
21 we saw something that was happening that we believe
22 was not right and that when we acted and we made a
23 positive contribution to that dialogue, now we run
24 away as fast as we can.

25 CHAIRMAN REYNOLDS: Okay. First off, this

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1 is one of the few issues where I believe that we had a
2 very strong consensus across the ideological spectrum.

3 Now, you have in the past recommended that we issue
4 no findings of fact and recommendation. There are
5 times when we do, but I think as a general proposition
6 we should issue findings and recommendations. There
7 will be particular reports where there is a majority
8 of Commissioners that believe that it's appropriate
9 not to do so. This is one of those briefings. I
10 don't believe that this decision is in any way an
11 indication that a majority of Commissioners believe
12 that issuing findings and recommendations is a bad
13 idea.

14 Commissioner Gaziano.

15 COMMISSIONER GAZIANO: Yes, let the record
16 reflect if the actual record of the event as
17 reflected in this report or otherwise were as
18 Commissioner Yaki says they are, I would be or
19 improving the findings and recommendations and issuing
20 them.

21 But my review of this report suggested
22 that the record was not so clear, and I just don't
23 have confidence based on this report to say that the
24 legislature, for example, did intend to carve out
25 racial districts. There seems to be some dispute

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1 about that.

2 I have no confidence in this report that
3 that is so. So I don't feel comfortable, but if that
4 was the situation, I would certainly be with
5 Commissioner Yaki in saying let's fix the reports.

6 But given that this legislation has been
7 repealed, given that it's moot, given that the
8 Commission may have had some positive influence in
9 that, I think it's not worth the extra resources of
10 the Commission to try to rewrite this report and sift
11 through what is an historical muddle.

12 CHAIRMAN REYNOLDS: Commissioner Heriot.

13 COMMISSIONER HERIOT: One, maybe I'm just
14 echoing what Commissioner Gaziano was saying here,
15 that you know, first off, I just want to make sure
16 that the record reflects that I do not agree with the
17 characterization of what the Nebraska legislature did,
18 Commissioner Yaki's characterization.

19 But, second, Commissioner Yaki is railing
20 against majority vote. Yes, of course it's true that
21 when you can get a majority of the Commission's
22 members to decide to publish in truncated form, that's
23 what should be done, and when only a couple of members
24 of the Commission believe that, then they're outvoted,
25 and that's just the way the world is.

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1 COMMISSIONER YAKI: Oh, yes, we'll
2 remember that.

3 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

4 VICE CHAIR THERNSTROM: Look. It seems to
5 me, Commissioner Yaki, that this was a unique story,
6 this briefing. At the time, yes, I did not go. I
7 boycotted it. I regarded the Commission running out
8 there as ambulance chasing, reacting to a news story.

9 It was a one-day story. The legislative proposal
10 couldn't, wouldn't survive for more than two seconds,
11 didn't survive, and you know, it was a non-issue
12 before we went out. It remained a non-issue. It was
13 completely killed, and so there isn't any other
14 briefing situation that's analogous.

15 And I stand -- it seems to me my original
16 decision that I'm not going to participate in this has
17 been shown to be a good one over time.

18 CHAIRMAN REYNOLDS: Commissioner Yaki.

19 COMMISSIONER YAKI: This is a report
20 produced by this Commission, by this Commission's
21 staff with findings and recommendations. Aside from
22 the fiasco with Hawaii, this Commission has approved
23 every single report over the vote -- over my vote,
24 usually with the vote of Commissioner Melendez when he
25 came on. So there is a difference here, and that is

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1 because of ideological reasons, we have decided to
2 reject the staff report of very safe findings and
3 recommendations on what happened in Omaha.

4 And maybe you thought it was ambulance
5 chasing. I don't know, but you weren't there. I was
6 there. There was a packed room in there. There was
7 tremendous visibility --

8 VICE CHAIR THERNSTROM: It was a non-
9 issue.

10 COMMISSIONER YAKI: -- and interest in
11 this. This was something that the Chair and I thought
12 would be a good thing. The Commission voted
13 unanimously, I believe, to have this kind of hearing.

14 It was in some respects to me one of the
15 better things that we have done in that it showed that
16 the United States Commission on Civil Rights still
17 cared about civil rights. And I don't care what you
18 want to say, but when a legislature draws a district
19 very carefully based on racial lines, I don't care
20 what they say their intent is, the clear result is one
21 that is based on purely racial lines.

22 I mean, the thing is, you know, do with it
23 whatever you want to do. I don't care. I think that
24 I wish this report had come out earlier to be more
25 relevant because I can tell you that we were getting

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1 phone calls. I was getting phone calls from people in
2 the Nebraska legislature, from the press wanting to
3 know when our report was going to come out, how soon
4 it would come out because they thought of its
5 importance influencing the actual debates.

6 We missed an opportunity there. Is this
7 moot by now? Of course it is, but it doesn't detract
8 from what we did there, and what the Nebraska
9 legislature tried to do there and how we responded.

10 So let's just get on with it and white
11 wash the whole thing as the majority want to do.

12 VICE CHAIR THERNSTROM: I want to say one
13 sentence.

14 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

15 VICE CHAIR THERNSTROM: Just for the
16 record, I resent the characterization that for
17 ideological reasons I am opposed to the publication of
18 this report. That is not correct.

19 COMMISSIONER YAKI: I apologize.

20 COMMISSIONER HERIOT: One clarification
21 here, just a statement. The Nebraska legislature did
22 not, in fact, draw any lines here, and part of the
23 problem with the report is that it misunderstands the
24 amendment that was offered to that bill, and so just
25 let the record reflect that the legislature did no

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1 such thing.

2 CHAIRMAN REYNOLDS: All those in favor
3 please vote aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Objections.

6 COMMISSIONER MELENDEZ: No.

7 CHAIRMAN REYNOLDS: Abstentions.

8 (No response.)

9 CHAIRMAN REYNOLDS: Okay. Commissioners
10 Yaki and Melendez voted against the motion. The
11 remaining Commissioners voted in favor of it.

12 Next up we have a vote on the State
13 Advisory Committees.

14 VII. STATE ADVISORY COMMITTEE ISSUES: ARKANSAS SAC

15 CHAIRMAN REYNOLDS: I move that the
16 Commission re-charter the Arkansas State Advisory
17 Committee. Under this motion the Commission appoints
18 all of the individuals of the committee based on the
19 -- to that committee based on the recommendations of
20 the Staff Director, Robert Castrell.

21 VICE CHAIR THERNSTROM: We're about to
22 lose a quorum.

23 CHAIRMAN REYNOLDS: Okay. Commissioner
24 Melendez, are you coming back?

25 COMMISSIONER HERIOT: You might want to

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1 try to raise Pete to get a quorum.

2 VICE CHAIR THERNSTROM: You're not going
3 to get a quorum anyway unless Melendez is coming back.

4 COMMISSIONER GAZIANO: Pete could come
5 back.

6 CHAIRMAN REYNOLDS: Well, yes, we could
7 call someone. I believe Melendez is coming back.

8 (Pause in proceedings.)

9 COMMISSIONER GAZIANO: For brief moments,
10 five minutes at a time.

11 (Pause in proceedings.)

12 CHAIRMAN REYNOLDS: Just checking,
13 Richard, to see if you're gathering your belongings.

14 MR. SCHMECHEL: I'm not entirely sure.
15 They're having conversation. It could be a while.

16 (Pause in proceedings.)

17 (Whereupon, at 1:35 p.m., the meeting in
18 the above-entitled matter was adjourned.)

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