

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC COMMISSION MEETING

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THURSDAY, AUGUST 2, 2007

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The meeting convened at 6:15 p.m. via teleconference, Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, CHAIRMAN
ABIGAIL THERNSTROM, VICE CHAIRMAN
JENNIFER C. BRACERAS, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Attorney Advisor to the Office
of the Staff Director and Acting Deputy General
Counsel, OGC
PAMELA A. DUNSTON, Chief, Administrative Services
and Clearinghouse Division
MAHA JWEIED
EMMA MONROIG, Solicitor/Parliamentarian
EILEEN RUDERT
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD

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

2 CHAIRMAN REYNOLDS: On the record.

3 Okay. Hello folks. This is Chairman
4 Reynolds. It is 6:15 p.m. Eastern Standard
5 Time on August 2, 2007. We're having a
6 telephonic meeting with all the Commissioners
7 with the exception of Commissioner Melendez
8 participating from different locations.

9 I will call the name of each
10 Commissioner in order to confirm that there is
11 a quorum to hold the meeting. Vice Chair
12 Thernstrom.

13 VICE CHAIR THERNSTROM: Here.

14 CHAIRMAN REYNOLDS: Commissioner
15 Braceras.

16 COMMISSIONER BRACERAS: Here.

17 CHAIRMAN REYNOLDS: Commissioner
18 Kirsanow.

19 COMMISSIONER KIRSANOW: Here.

20 CHAIRMAN REYNOLDS: Commissioner
21 Heriot.

22 COMMISSIONER HERIOT: I am here.

23 CHAIRMAN REYNOLDS: Commissioner
24 Melendez.

25 (No response.)

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1 CHAIRMAN REYNOLDS: Commissioner
2 Yaki.

3 COMMISSIONER YAKI: Here.

4 CHAIRMAN REYNOLDS: Commissioner
5 Taylor.

6 COMMISSIONER TAYLOR: Here.

7 CHAIRMAN REYNOLDS: Is the staff
8 director present?

9 STAFF DIRECTOR MARCUS: I'm here.

10 CHAIRMAN REYNOLDS: Is the court
11 reporter on the line? Transcriber, are you on
12 the line?

13 COURT REPORTER: Yes.

14 CHAIRMAN REYNOLDS: Very good.

15 (Off the record discussion.)

16 CHAIRMAN REYNOLDS: All right.
17 Let's get started. The meeting will come to
18 order. If a Commissioner wants to make a
19 statement, please identify yourself first by
20 name so that transcriber can identify who is
21 talking.

22 If it is necessary to take a vote,
23 the following procedure will be used. I will
24 call out the name of each Commissioner. The
25 Commissioner should then answer yes, no or

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1 abstain. After the vote is concluded, I will
2 read out how each of you has voted in order to
3 ensure that the tally is correct.

4 **I. APPROVAL OF AGENDA**

5 CHAIRMAN REYNOLDS: The first item
6 on the agenda is approval of the agenda. May
7 I have a motion to approve the agenda?

8 VICE CHAIR THERNSTROM: Abigail
9 Thernstrom so moved. Commissioner Thernstrom
10 so moved.

11 CHAIRMAN REYNOLDS: Is there a
12 second?

13 COMMISSIONER KIRSANOW: Kirsanow
14 second.

15 CHAIRMAN REYNOLDS: Discussion.

16 (No response.)

17 CHAIRMAN REYNOLDS: All in favor?
18 Vice Chair Thernstrom, how do you vote?

19 VICE CHAIR THERNSTROM: Aye.

20 CHAIRMAN REYNOLDS: Commissioner
21 Braceras?

22 COMMISSIONER BRACERAS: Aye.

23 CHAIRMAN REYNOLDS: Commissioner
24 Kirsanow.

25 COMMISSIONER KIRSANOW: Aye.

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1 CHAIRMAN REYNOLDS: Commissioner
2 Heriot.

3 COMMISSIONER HERIOT: Yes.

4 CHAIRMAN REYNOLDS: Commissioner
5 Yaki.

6 COMMISSIONER YAKI: Aye.

7 CHAIRMAN REYNOLDS: Commissioner
8 Taylor.

9 COMMISSIONER TAYLOR: Yes.

10 CHAIRMAN REYNOLDS: And I, Chairman
11 Reynolds, vote in the affirmative also. Okay.
12 The vote passes unanimously.

13 **II. APPROVAL OF MINUTES OF**

14 **JULY 13, 2007 MEETING**

15 CHAIRMAN REYNOLDS: The second item
16 on the agenda is the approval of the minutes
17 of the July 13, 2007 meeting. May I have a
18 motion?

19 VICE CHAIR THERNSTROM: So moved,
20 Thernstrom.

21 CHAIRMAN REYNOLDS: Is there a
22 second? Thank you, Commissioner Thernstrom.
23 Is there a second?

24 COMMISSIONER KIRSANOW: Kirsanow
25 second.

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1 CHAIRMAN REYNOLDS: Discussion.

2 (No response.)

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

5 VICE CHAIR THERNSTROM: Do we have
6 to do a roll call on each one of these because
7 some of them are going to be unanimous. If
8 they're not unanimous, can do a roll call?

9 COMMISSIONER YAKI: Without
10 objection.

11 CHAIRMAN REYNOLDS: Okay. Are
12 there any Commissioners who either object to
13 or want to abstain from this vote?

14 (No response.)

15 CHAIRMAN REYNOLDS: Okay. Let the
16 record reflect that this motion passed
17 unanimously.

18 **III. FY 2007 STATUTORY REPORT**

19 CHAIRMAN REYNOLDS: We're up to the
20 Statutory Report. Approval of the Statutory
21 Report for 2007 was on the agenda for the July
22 13th meeting. At that meeting, the Commission
23 did not vote on the report since additional
24 information provided by the Department of
25 Justice had to be included in the document.

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1 This additional information consists of 26
2 cases to be reflected in the charts and tables
3 and other changes that have been made to
4 polish the prior draft as shown in slide
5 group.

6 May I have a motion that the
7 Commission approve for publication chapters
8 one through five and all appendices of the
9 2007 Statutory Enforcement Report entitled
10 "Becoming Less Separate School Desegregation,
11 Justice Department Enforcement and A Pursuit
12 of Unitary Status" as reflected in the staff's
13 final draft distributed to the Commissioners
14 on July 24, 2007?

15 VICE CHAIR THERNSTROM: Thernstrom
16 so moved.

17 COMMISSIONER HERIOT: Gail Heriot,
18 a little motion. I wanted to make a few
19 changes to that document, but I sent my email
20 to everyone. Did you receive that?

21 CHAIRMAN REYNOLDS: Yes.

22 VICE CHAIR THERNSTROM: I did not.

23 COMMISSIONER BRACERAS: I did.
24 Braceras received it.

25 COMMISSIONER KIRSANOW: I received

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1 it and second it.

2 CHAIRMAN REYNOLDS: Okay. How
3 about this? Let's walk through those proposed
4 changes.

5 VICE CHAIR THERNSTROM: I will
6 accept them. I don't need to hear them. I'm
7 sure they're fine.

8 CHAIRMAN REYNOLDS: All right. Does
9 anyone object to the changes proposed
10 Commissioner Heriot?

11 (No response.)

12 CHAIRMAN REYNOLDS: Any
13 abstentions?

14 COMMISSIONER YAKI: Abstain, Yaki.

15 CHAIRMAN REYNOLDS: Okay. Please
16 let the record reflect that all the
17 participating Commissioners with the exception
18 of Commissioner Yaki supports the motion
19 submitted by Commissioner Heriot.

20 COMMISSIONER YAKI: Yaki wants to
21 clarify that the motion had many multiple
22 subparts. So I was uncomfortable voting for
23 them as a whole, but I will not vote against
24 it either.

25 CHAIRMAN REYNOLDS: Okay. Also

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1 under this motion, concurring and dissenting
2 statements from Commissioners would be due
3 August 22, 2007. Commissioners previously
4 agreed to an August 15th deadline for these
5 statements, but I've been asked whether an
6 additional week would be feasible. Mr. Staff
7 Director, would a one-week extension pose any
8 problems for the staff?

9 STAFF DIRECTOR MARCUS: No, Mr.
10 Chairman, and I've checked with the Program
11 Office. Considering that we are now going to
12 be distributing this to Congress in electronic
13 form, we will be able to do it even if an
14 additional week is given to Commissioners.

15 CHAIRMAN REYNOLDS: Okay. On that
16 note, may I have a motion?

17 COMMISSIONER YAKI: Yaki moves.

18 CHAIRMAN REYNOLDS: Is there a
19 second?

20 VICE CHAIR THERNSTROM: Second it.

21 COMMISSIONER KIRSANOW: Kirsanow
22 second.

23 VICE CHAIR THERNSTROM: All right.
24 Kirsanow seconded it.

25 CHAIRMAN REYNOLDS: Discussion?

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1 (No response.)

2 CHAIRMAN REYNOLDS: Okay. Vice
3 Chair Thernstrom, how do you vote?

4 VICE CHAIR THERNSTROM: Let's just
5 -- Let's not have a roll call.

6 COMMISSIONER YAKI: Objection/no
7 objection.

8 CHAIRMAN REYNOLDS: Okay. All
9 those who object to the amended motion, please
10 indicate so.

11 (No response.)

12 CHAIRMAN REYNOLDS: Commissioner
13 Yaki, are you objecting to the motion?

14 COMMISSIONER YAKI: No.

15 CHAIRMAN REYNOLDS: Okay. All
16 those who abstain?

17 (No response.)

18 COMMISSIONER YAKI: No.

19 CHAIRMAN REYNOLDS: All those
20 voting in favor? Well, actually let the
21 record reflect that the motion passed
22 unanimously.

23 COMMISSIONER YAKI: Chair Reynolds.

24 CHAIRMAN REYNOLDS: Yes.

25 COMMISSIONER YAKI: Commissioner

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1 Yaki here. Just for ease of speeding up, I
2 would suggest you use the language "Are there
3 any objections? Hearing none, it passes
4 unanimately."

5 CHAIRMAN REYNOLDS: Thank you, kind
6 sir. I see you've been studying your Roberts'
7 Rules.

8 (Laughter.)

9 CHAIRMAN REYNOLDS: Okay. Next.

10 (Off the record comment.)

11 CHAIRMAN REYNOLDS: May I have a
12 motion that the Commission approve for
13 publication Chapter 6 of the 2007 Statutory
14 Enforcement Report as reflected in the staff's
15 final draft distributed to Commissioners on
16 July 24, 2007? This chapter contains the
17 report's findings and recommendations.

18 VICE CHAIR THERNSTROM: Thernstrom
19 so moved.

20 COMMISSIONER KIRSANOW: Kirsanow
21 second.

22 CHAIRMAN REYNOLDS: Any objections?

23 COMMISSIONER YAKI: Question? A
24 point of information. Commissioner Yaki. I
25 thought under the process we will be voting

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1 separately on the findings and
2 recommendations.

3 CHAIRMAN REYNOLDS: It's --
4 Separating on the findings and
5 recommendations.

6 COMMISSIONER YAKI: That was part
7 of the Braceras rule.

8 CHAIRMAN REYNOLDS: Mr. Staff
9 Director, correct me, if I'm wrong, but wasn't
10 that for briefing reports?

11 STAFF DIRECTOR MARCUS: That's
12 correct, Mr. Chairman. That procedure was
13 adopted for briefing reports, but that
14 procedure has not been adopted formally the
15 statutory report.

16 CHAIRMAN REYNOLDS: Okay.
17 Commissioner Yaki, is there something specific
18 you would like to discuss?

19 COMMISSIONER YAKI: No. If it's an
20 all-or-nothing, up-or-down vote, then that
21 will determine how I vote. If we are able to
22 discuss individual findings, I really only
23 have a few clarifications on some of the
24 findings, but if other than that, I don't know
25 how you folks choose to deal with it.

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1 CHAIRMAN REYNOLDS: Okay. What
2 would you like to discuss under the findings?

3 COMMISSIONER YAKI: On finding 10,
4 I just wanted a question of clarification to
5 the staff. Are these percentages based on our
6 survey or the DOJ information?

7 STAFF DIRECTOR MARCUS:
8 Commissioner Yaki, I'll turn to OJC on that.

9 MR. BLACKWOOD: Commissioner Yaki,
10 this is David Blackwood. Commission Yaki, we
11 reconciled our figures with those from DOJ.

12 COMMISSIONER YAKI: Okay. So in --
13 Let's me take a look. Okay. Great. Next on
14 same for finding number 16. It talks about --
15 Are we talking again about the Commission-
16 surveyed districts or DOJ or did you reconcile
17 the two on that one?

18 MR. BLACKWOOD: This is again David
19 Blackwood. On 16, that is strictly our
20 information based on the information we
21 collected from the districts.

22 COMMISSIONER YAKI: Could I amend
23 16 to state that "less than one-quarter of the
24 districts" insert "surveyed by the
25 Commission,"? I just wanted to make that

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1 clear.

2 VICE CHAIR THERNSTROM: Let me just
3 interrupt a second. I'm getting off. I'll be
4 back on on my cell in a few minutes.

5 CHAIRMAN REYNOLDS: Okay. I'm
6 sorry. Commissioner Yaki, could you give me
7 the language again and let me know where it
8 should be inserted?

9 COMMISSIONER YAKI: "Less than a
10 quarter of the districts" then insert
11 "surveyed by the Commission remaining under
12 court order" blah, blah, blah. So between
13 "districts" and "remaining" insert the phrase
14 "surveyed by the Commission." I just want to
15 make sure we have our data versus the
16 reconciled data versus DOJ data.

17 CHAIRMAN REYNOLDS: Okay.
18 Comments?

19 COMMISSIONER MELENDEZ: Mr.
20 Chairman, I just wanted to let you know
21 Commissioner Melendez is on the line now. I
22 just got on.

23 CHAIRMAN REYNOLDS: Very good.

24 COMMISSIONER MELENDEZ: Okay.

25 CHAIRMAN REYNOLDS: Does anyone

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1 have any comments regarding the proposed
2 amendment to finding 16?

3 (No response.)

4 CHAIRMAN REYNOLDS: Okay. Does
5 anyone object?

6 (No response.)

7 CHAIRMAN REYNOLDS: All right.
8 Well, hearing no objection, then this proposed
9 change passes unanimously.

10 COMMISSIONER HERIOT: Mr. Chairman?

11 CHAIRMAN REYNOLDS: Yes.

12 COMMISSIONER HERIOT: This is Gail
13 Heriot. Finding number three we need to
14 change President Johnson to President
15 Eisenhower. That's simply error.

16 CHAIRMAN REYNOLDS: And I trust
17 that we won't have any discussion over this
18 issue.

19 (Laughter.)

20 VICE CHAIR THERNSTROM: All right.
21 I'm back, everybody.

22 CHAIRMAN REYNOLDS: Okay.
23 Commissioner Yaki, anything else?

24 COMMISSIONER YAKI: We just changed
25 President Johnson to President Thernstrom,

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1 Abby, while you were away.

2 (Laughter.)

3 COMMISSIONER YAKI: Mr. Chair,
4 Commissioner Yaki again. Same question just
5 for accuracy sake, both findings 19, 20 and 21
6 refer to -- use the word "district." I just
7 want to have the same clarification whether
8 those are Commission-surveyed district, DOJ
9 information or reconciled info.

10 CHAIRMAN REYNOLDS: Mr. Blackwood?

11 MR. BLACKWOOD: I'm sorry. Which
12 number was that?

13 COMMISSIONER YAKI: Nineteen, 20
14 and 21 all use the word "district." But I
15 just want to clarify whether in the data that
16 was analyzed for these districts, was it
17 Commission-surveyed, was it DOJ or was it a
18 reconciliation?

19 MR. BLACKWOOD: Both 20 and 21,
20 this is Blackwood again, are reconciled
21 information.

22 COMMISSIONER YAKI: Okay. And 19?

23 MR. BLACKWOOD: Nineteen as well,
24 yes.

25 COMMISSIONER YAKI: Okay. That's

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1 all I wanted to know. On finding 22, I wanted
2 to make -- I had a question for the -- on
3 "nonlegal factors" and whether to insert
4 something along the lines of "when factors
5 such as a size of a district student
6 population are considered." I'm just not too
7 sure what we mean by "nonlegal factors" and
8 whether we're giving undue importance or non-
9 importance to whether legal factors versus
10 nonlegal and I don't know exactly what we
11 meant by that.

12 CHAIRMAN REYNOLDS: Well,
13 Commission Yaki -- First, does anyone have a
14 comment?

15 STAFF DIRECTOR MARCUS: Mr.
16 Chairman, this is the Staff Director. I think
17 if the word "nonlegal" were replaced with the
18 word "other" which I think is essentially
19 Commissioner Yaki's proposal, the meaning
20 really wouldn't change because the notion is
21 that factors other than unitary status are
22 what's involved.

23 COMMISSIONER YAKI: That would be
24 fine with me.

25 CHAIRMAN REYNOLDS: Any concerns

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1 from other Commissioners?

2 VICE CHAIR THERNSTROM: Yes. Hold
3 on a second. I'm just -- I don't have the
4 page open anymore in front of me. But it was
5 one of the findings referred to the fact that
6 judges have no particular expertise in the
7 area of education, whatever finding that was.

8 COMMISSIONER YAKI: Is this Abby?

9 VICE CHAIR THERNSTROM: Yes. I'm
10 sorry. This is Abigail Thernstrom.

11 COMMISSIONER YAKI: The last
12 phrase, I was going to get to that. The last
13 phrase of number nine says "Judicial
14 supervision, however, subordinated local
15 educators to unelected authority without any
16 expertise..."

17 VICE CHAIR THERNSTROM: Yes, I
18 thought that was kind of a gratuitous
19 political comment there, you know, there are
20 many areas in which judges don't have
21 particular expertise. I don't think it was
22 relevant to -- I didn't think it was necessary
23 to the findings.

24 COMMISSIONER YAKI: Moreover, I was
25 going to point out that many of those judges

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1 in a lot of situations appointed special
2 masters who did.

3 VICE CHAIR THERNSTROM: Well,
4 that's correct. But instead of modifying it
5 saying "many judges" why not leave the whole
6 thing out? What does that sentence add?

7 CHAIRMAN REYNOLDS: This is
8 Chairman Reynolds. I'm with you up to a
9 point. I think the allocation of power and
10 the distribution of responsibilities shifted
11 and I think that the first piece of the
12 sentence, that's the point for discussing the
13 fact that judicial supervision subordinated
14 local educators.

15 COMMISSIONER YAKI: I mean, if you
16 just want to say that, this is Commissioner
17 Yaki, I would be okay with that. But I would
18 be the first to jump in to say that many of
19 our elected, local school board officials who
20 have very little expertise in education.

21 VICE CHAIR THERNSTROM: Exactly.

22 CHAIRMAN REYNOLDS: That's a very
23 good point.

24 VICE CHAIR THERNSTROM: Exactly. I
25 was one of them when I was on the state board.

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: Okay. Well,
3 how about this? How about deleting the phrase
4 "without any expertise in education" and just
5 placing a period after "authority"?

6 VICE CHAIR THERNSTROM: How does it
7 then read? I'm sorry. It's not right in
8 front of me.

9 CHAIRMAN REYNOLDS: It would read
10 "Judicial supervision, however, subordinated
11 local educators to an unelected authority."

12 COMMISSIONER HERIOT: I like that.

13 COMMISSIONER BRACERAS: Fine.

14 COMMISSIONER YAKI: Commissioner
15 Yaki here. Ms. Thernstrom, I'm wondering if
16 you might object to the same thing I'm having
17 here which is are we subordinating local
18 educators or are we subordinating local school
19 boards. I mean --

20 VICE CHAIR THERNSTROM: School
21 authorities.

22 COMMISSIONER BRACERAS: Right.

23 VICE CHAIR THERNSTROM: I don't
24 know. They wrap themselves in the mantle of
25 educators.

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1 COMMISSIONER BRACERAS: They may be
2 educators, but they may not be experts. But
3 they are educators.

4 VICE CHAIR THERNSTROM: They are
5 part of the educational system.

6 CHAIRMAN REYNOLDS: Okay. So do we
7 more or less have a consensus here?

8 COMMISSIONER YAKI: No. I'll just
9 object.

10 VICE CHAIR THERNSTROM: Wait a
11 minute. Commissioner Yaki, this is
12 Thernstrom. Commissioner Yaki, how would you
13 like it worded? I think you had a perfectly
14 good wording before.

15 COMMISSIONER YAKI: "Subordinated
16 local school authorities to an unelected
17 authority." That's fine. But I think the
18 word "educators" is way too broad.

19 VICE CHAIR THERNSTROM: I am fine
20 with Commissioner Yaki's change.

21 CHAIRMAN REYNOLDS: Okay.
22 Commissioner Yaki, please state your revised
23 language again.

24 COMMISSIONER YAKI: Commissioner
25 Yaki here. Strike the word "educators" and

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1 replace it with "local school authority."

2 CHAIRMAN REYNOLDS: Okay. That
3 works for me. This is Chairman Reynolds. Any
4 other comments?

5 (No response.)

6 CHAIRMAN REYNOLDS: Commissioner
7 Yaki?

8 COMMISSIONER YAKI: In the whole
9 blah, blah. On finding 27, I just wanted to
10 specify the decade time frame in finding 27.
11 I believe you're talking from the `90s to like
12 2004 or 2005. But can we specify what that
13 decade time frame is?

14 MR. BLACKWOOD: This is David
15 Blackwood. Yes. We could take the reference
16 used in the report itself and just replace it
17 for decade time frame or specify it. I'm just
18 trying to think how I would do that.

19 CHAIRMAN REYNOLDS: Commissioner
20 Yaki, are you comfortable with just allowing
21 the staff director and -- well, the Office of
22 the Staff Director to come up some language.

23 COMMISSIONER YAKI: Sure, as long
24 as it's not the same decade as President
25 Johnson. Excuse me.

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1 (Laughter.)

2 VICE CHAIR THERNSTROM: I thought
3 it was President Thernstrom.

4 COMMISSIONER YAKI: That's right.
5 I'm sorry, Madame President. I went into the
6 wrong time zone.

7 VICE CHAIR THERNSTROM: Okay.

8 CHAIRMAN REYNOLDS: What about
9 other recommendations? Commissioner Yaki, do
10 you have any concerns?

11 COMMISSIONER YAKI: Well, yes, I
12 have concerns, but I have a feeling that they
13 are philosophical rather than grammatical.

14 VICE CHAIR THERNSTROM: So I assume
15 those -- This is Commissioner Thernstrom, I
16 assume those concerns will be fully explored
17 in your consenting statement.

18 COMMISSIONER YAKI: Yes, and that's
19 why I would not waste time on grammatical
20 versus philosophical issue. So as for the
21 clarifications, I have brought them all up and
22 I appreciate the indulgence of the Commission.

23 CHAIRMAN REYNOLDS: Okay. Any
24 other comments?

25 COMMISSIONER YAKI: By the way,

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1 Commissioner Yaki here. Commissioner
2 Melendez, I asked the question early on and
3 was told that unlike briefing reports for the
4 statutory report we do not take separate votes
5 on the findings and recommendations and it is
6 up and down on the report as a whole.

7 STAFF DIRECTOR MARCUS:
8 Commissioner Yaki, if I may try to restate
9 what I gave earlier. What I said is that the
10 policy adopted a couple of months ago
11 requiring us to vote separately for each
12 finding and recommendation has not been
13 adopted by the Commission with respect to
14 statutory reports. So the Commission could,
15 of course, if it chose go separately for each
16 finding or recommendation. That's up to the
17 Commission. But that has not been its custom
18 and practice and it is not a policy that's
19 been adopted.

20 COMMISSIONER BRACERAS: If I could
21 interrupt, maybe I'm in error here, but it was
22 my recollection that for statutory reports
23 there was to be at least two votes, one on the
24 document, the supporting documentation and the
25 literature view and all that stuff and a

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1 second vote on the chapter of findings and
2 recommendations.

3 STAFF DIRECTOR MARCUS: I think
4 that's how the motions were structured for
5 this one, yes.

6 VICE CHAIR THERNSTROM: That is how
7 they were structured.

8 STAFF DIRECTOR MARCUS: That's
9 right.

10 COMMISSIONER BRACERAS: But does
11 that mean although we're in the future if I
12 would love to see individual votes and
13 discussion on each one, my understanding is
14 that the motion that's currently structured is
15 consistent with the policy adopted for
16 statutory reports.

17 COMMISSIONER YAKI: This is
18 Commissioner Yaki here. I will do this even
19 though it sounds like it will be futile. But
20 I will make a motion that we vote separately
21 on each finding and recommendation and I can
22 preface that by saying that there are the
23 number of actual findings and recommendations
24 that I will take out for an individual vote
25 are probably maybe four or five but that

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1 should be --

2 VICE CHAIR THERNSTROM: Four or
3 five in both? Commissioner Thernstrom here.
4 Four or five in both categories altogether?

5 COMMISSIONER YAKI: Four or five.
6 Maybe less. I just have to go over my notes
7 one more time because the clarifications that
8 I was seeking were pretty much taken care of
9 beyond there was just some findings and
10 recommendations that I had an issue with. But
11 I think they're confined to less than five.

12 COMMISSIONER HERIOT: All together
13 or in each category?

14 COMMISSIONER YAKI: I said
15 together.

16 COMMISSIONER HERIOT: Together.

17 VICE CHAIR THERNSTROM:
18 Commissioner Thernstrom here. I'm a little
19 confused in that I thought we took care of, in
20 terms of the findings, your concerns.

21 COMMISSIONER YAKI: No. There was
22 -- Well, there was one finding that I doubt my
23 changes will be met with universal acclaim.
24 So I'd rather serve the "why-bother" approach
25 which I don't want to get into a messy debate

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1 and start parsing out words. So on one
2 finding, I just simply skipped over my
3 proposed changes and as for recommendations, I
4 think there's really only maybe one or two at
5 the most that I have that I have issue with.

6 CHAIRMAN REYNOLDS: Okay. This is
7 Chairman Reynolds. Commissioner Yaki, please
8 identify the findings that you would object
9 to.

10 COMMISSIONER YAKI: I have a
11 finding -- I object to the finding 25 and I
12 have an objection to finding 25.

13 VICE CHAIR THERNSTROM:
14 Commissioner Thernstrom here. And is that
15 because you are looking at the data
16 differently or you have different definitions
17 of racial concentration such that you draw
18 different conclusions?

19 COMMISSIONER YAKI: No, it's more
20 along the lines that -- Again, I draw a
21 different conclusion based upon the absence of
22 additional data. In other words, my problem
23 with 25 deals with time period for the look-
24 back and that looking at this time period,
25 then we conclude that the results suggest and

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1 I think that it's a little bit stronger than I
2 would want to say about the data that we're
3 looking at. I would say that the results
4 merit further exploration into the possibility
5 or something, but I'm not sure if I would go
6 as far to say the implication is or the
7 results suggest that blah, blah, blah. That's
8 my --

9 VICE CHAIR THERNSTROM: Thernstrom
10 here. What if we were to add a sentence,
11 "However, there are different ways of looking
12 at these data and a question merits further
13 exploration." There's something to register
14 your sense that this shouldn't be regarded the
15 last word. I would be fine with that.

16 CHAIRMAN REYNOLDS: Commissioner
17 Yaki, would you be -- This is Chairman
18 Reynolds. Would you be satisfied with that
19 amendment?

20 COMMISSIONER YAKI: I'm trying to
21 think of how -- of a way that I would put it.
22 I would start off by qualifying by saying "For
23 looking at the difference of integration from
24 the data" -- Now again, a question to Mr.
25 Blackwood. Is this reconciled data, is this

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1 Commission data, or is this DOJ data that
2 we're talking about?

3 MR. BLACKWOOD: This is reconciled
4 data.

5 COMMISSIONER YAKI: Okay.

6 MR. BLACKWOOD: And Commissioner, I
7 would just address one of the matters that you
8 raised about additional decade. The problem
9 was the way the focus of the report was to
10 address Dow and Freeman and its effects and
11 that's why we're looking at it from the `90s.

12 COMMISSIONER YAKI: I understand.
13 But then we sort of go to talk about the
14 conclusion that "fears of substantial
15 increase in levels of racial concentration are
16 unfounded" I'm not as sanguine about how
17 unfounded those concerns are and I think that
18 at least in some research that I have done
19 independently suggest that depending on (a)
20 what datasets you're looking at and (b) some
21 of the time frames that you're talking about
22 in terms of impacts when it comes to the
23 racial concentration issue that may not be as
24 -- it may not suggest quite the level of
25 passivity of impact that this would suggest

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1 and I appreciate what Commissioner Thernstrom
2 has offered and I'm just trying to think that
3 if there was a statement along her lines that
4 said "However, depending" -- I can't quite
5 think of it right now but "Depending on" --
6 Well, why don't we skip over that for a minute
7 while I think about it.

8 VICE CHAIR THERNSTROM: All right.
9 This is Commissioner Thernstrom back. Let me
10 just say one thing about that. Part of the
11 problem here it seems to me is that the degree
12 to which -- You can talk about -- You can try
13 to achieve the impact of achieving unitary
14 status out of the data, but part of what's
15 going on is demographic change and so when you
16 say "I'm not so sanguine" it seems to me one
17 of the things you're saying or part of the
18 picture you have in your head is of urban
19 districts there are increasingly
20 majority/minority and in fact in which there
21 are very few whites with continuing Latino
22 immigration and so forth. And so --

23 COMMISSIONER YAKI: Commissioner, I
24 think you're partially correct. I think that
25 -- I mean I'm not saying you're partially

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1 incorrect either. But in terms of what you're
2 pointing out in terms of my difficulty, it's
3 not even the expansion of the time frame back.
4 It's also the projection of the time frame
5 forward where I'm not sure we can make those
6 kinds of suggestions based upon some of the
7 changes that are occurring now. Post Seattle
8 and Louisville, I have concerns about that.

9 So, therefore, my concerns about
10 backsliding and isolation in some ways project
11 forward and I'm not too sure of the data
12 frozen in time that can adequately predict
13 what may happen in the next four or five or
14 ten years down the road.

15 VICE CHAIR THERNSTROM: Right.

16 COMMISSIONER YAKI: So to sort of
17 say looking at the data that the fears of this
18 or that may be unfounded might be true for the
19 current time period maybe not be true a few
20 years down the road.

21 VICE CHAIR THERNSTROM: Well, will
22 not be true if you have the demographic change
23 I'm suggesting, but that won't be backsliding.
24 That will be a reflection of the racial and
25 ethnic mix in the districts.

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1 COMMISSIONER YAKI: Right. True.
2 But you're assuming that will all be based on
3 immigration or demographic changes and I'm not
4 --

5 VICE CHAIR THERNSTROM: No.

6 COMMISSIONER YAKI: Well, maybe --
7 I'm sorry if I mischaracterized. But
8 regardless of that point, I am still not
9 entirely convinced that it won't happen on its
10 own accord regardless of the other impact
11 factors.

12 VICE CHAIR THERNSTROM: Okay.

13 CHAIRMAN REYNOLDS: Commissioner
14 Yaki, this is Chairman Reynolds. This is not a
15 very strong statement. It's couched as a
16 suggestion and I guess I would have a clearer
17 understanding of the intensity of your concern
18 if it were a stronger statement and, in fact,
19 we could make it even -- I mean to address
20 your concern we can even change the phrase
21 "are unfounded" to "may be unfounded."

22 COMMISSIONER HERIOT: Or "at this
23 point in time unfounded."

24 CHAIRMAN REYNOLDS: So does the
25 proposed additional sentence along with the

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1 changes to, the other changes, the ones
2 offered by Commissioner Heriot and myself,
3 does that provide you with a higher comfort
4 level?

5 VICE CHAIR THERNSTROM:
6 Commissioner Yaki, let me, Thernstrom here,
7 pose the question slightly differently.

8 COMMISSIONER YAKI: Yes.

9 VICE CHAIR THERNSTROM: Is there
10 any wording of this particular finding that
11 doesn't completely tear it up that you would
12 be comfortable with? Is there any tweaking of
13 this finding or --

14 COMMISSIONER YAKI: Well --

15 COMMISSIONER BRACERAS: Let me put
16 it another way. Is there any particular
17 tweaking of this finding that Commissioner
18 Yaki will be comfortable with and which will
19 enable him to vote in favor of the report?

20 VICE CHAIR THERNSTROM: Or in favor
21 of the findings at least, not the
22 recommendations?

23 COMMISSIONER YAKI: We're not
24 voting on the findings. So --

25 VICE CHAIR THERNSTROM: Wait a

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1 minute. Aren't we voting on the findings?
2 No. I'm sorry. I thought we were.

3 COMMISSIONER YAKI: And that's why
4 I didn't want to -- And partly this discussion
5 is why out of courtesy to everyone's time I
6 didn't want to get into too much of this
7 because I think that --

8 COMMISSIONER BRACERAS: Hello?

9 COMMISSIONER YAKI: --
10 understanding. "The results may suggest that
11 fears" da-da-da-da-duh "could be" -- I mean I
12 don't know. If you want to know what I would
13 like and then we'll just sort of -- Let's just
14 take it from there and then move on because
15 again I don't want to waste a lot of people's
16 time here.

17 COMMISSIONER BRACERAS: Yes, I
18 actually need to hang up in about 60 seconds.

19 VICE CHAIR THERNSTROM: And I think
20 Commissioner Braceras asked the right question
21 actually. Even if we tweak it, you are still
22 going to vote against the findings and
23 recommendations.

24 COMMISSIONER BRACERAS: In which
25 case, if the majority is satisfied with it, I

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1 proposed we leave it as is.

2 COMMISSIONER YAKI: Which is
3 exactly why I didn't want to bring it up.

4 COMMISSIONER BRACERAS: In which
5 case, can I call the question?

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN REYNOLDS: Okay. It's
8 time to vote. Those Commissioners who object
9 please indicate so.

10 COMMISSIONER YAKI: This is to the
11 report as a whole. Correct? This is
12 Commissioner Yaki. Objecting to the report as
13 a whole as amended?

14 STAFF DIRECTOR MARCUS: This is to
15 Chapter 6 as a whole.

16 CHAIRMAN REYNOLDS: Any objections?

17 COMMISSIONER YAKI: I object.

18 COMMISSIONER MELENDEZ: I do, too.
19 Mr. Melendez.

20 CHAIRMAN REYNOLDS: Any
21 abstentions?

22 (No response.)

23 CHAIRMAN REYNOLDS: Okay. Let the
24 record reflect that the motion passes and that
25 Commissioners Melendez and Yaki voted against

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1 the motion, but the remaining Commissioners
2 voted in favor. So it passes.

3 STAFF DIRECTOR MARCUS: I'm sorry,
4 Mr. Chairman. Just because of Commissioner
5 Braceras' prior comment can we confirm that
6 Commissioner Braceras was still on the line.

7 CHAIRMAN REYNOLDS: Yes.

8 COMMISSIONER BRACERAS: I am on the
9 phone and I vote in favor of Chapter 6.

10 CHAIRMAN REYNOLDS: Thank you.

11 VICE CHAIR THERNSTROM: And can we
12 quickly have a vote before she gets off on the
13 findings and recommendations?

14 CHAIRMAN REYNOLDS: Yes. Okay.
15 Next up, I move that --

16 COMMISSIONER BRACERAS: Didn't we
17 just vote on Chapter 6?

18 CHAIRMAN REYNOLDS: Yes.

19 COMMISSIONER HERIOT: Yes, I
20 thought Chapter 6 includes the findings and
21 recommendations.

22 VICE CHAIR THERNSTROM: Yes. I'm
23 sorry.

24 COMMISSIONER BRACERAS: So now we
25 just need to vote on the rest. Right?

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1 COMMISSIONER HERIOT: We did that.

2 COMMISSIONER BRACERAS: We did
3 that. So are we done then?

4 COMMISSIONER YAKI: We did the
5 rest.

6 **IV. FUTURE AGENDA ITEMS**

7 CHAIRMAN REYNOLDS: One last thing.
8 According to the vote taken on the, well, at
9 the July 13th meeting, the Commission will hold
10 a telephonic meeting at 5:00 p.m. on August
11 16, 2007. At that meeting, we will discuss
12 the 2009 budget and, if sufficient time
13 remains, we will also discuss the tabled
14 recharTERS for New Jersey, South Carolina and
15 Vermont.

16 COMMISSIONER YAKI: What time?

17 CHAIRMAN REYNOLDS: 5:00 p.m., I
18 assume that's Eastern Standard Time. Ken, is
19 that right?

20 STAFF DIRECTOR MARCUS: Yes, Mr.
21 Chairman. Eastern.

22 COMMISSIONER YAKI: Daylight time.
23 (Laughter.)

24 VICE CHAIR THERNSTROM: Mr.
25 Chairman, I cannot. That's the day I move. I

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1 can't do it.

2 CHAIRMAN REYNOLDS: Vice Chairman
3 Thernstrom, I am surprised that you did not
4 take this opportunity to get out of your
5 responsibilities vis à vis the move.

6 (Laughter.)

7 **V. ADJOURN**

8 CHAIRMAN REYNOLDS: But in any
9 event, folks, the meeting is adjourned. Off
10 the record.

11 (Whereupon, at 6:59 p.m., the
12 above-entitled matter was concluded.)

13

14

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