

UNITED STATES OF AMERICA  
U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, AUGUST 7, 2009

+ + + + +

OPEN SESSION

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The meeting convened at 9:30 a.m., in  
Room 540 at 624 Ninth Street, N.W., Washington, D.C.,  
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  
ARLAN D. MELENDEZ, Commissioner  
ASHLEY L. TAYLOR, JR., Commissioner  
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel  
MARGARET BUTLER, EEO Director  
CHRISTOPHER BYRNES, Chief, Programs  
    Coordination Unit  
DEBRA CARR, Associate Director  
DEMITRIA DEAS  
LILLIAN DUNLAP  
MAHA JWEIED  
ROBERT LERNER, Assistant Deputy Staff Director,  
    OCRE  
EMMA MONROIG, Solicitor

STAFF PRESENT: (cont'd)

LENORE OSTROWSKY  
EILEEN RUDERT (via telephone)  
KIMBERLY TOLHURST  
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL  
TIM FAY  
DOMINIQUE LUDVIGSON  
JOHN MARTIN  
KIMBERLY SCHULD  
ALISON SCHMAUCH

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

2 (9:34 a.m.)

3 CHAIRMAN REYNOLDS: Okay. We will get  
4 started now. Commissioner Kirsanow will join us  
5 shortly.

6 Folks, put your phones on vibrate.

7 Good morning, this is Chairman Reynolds.  
8 The meeting will come to order.

9 This is a meeting of the U.S. Commission  
10 on Civil Rights at 9:30 a.m. Eastern Standard Time on  
11 August 7, 2009. The meeting is being held at  
12 624 Ninth Street, N.W., in Room 4 -- 540, rather, in  
13 Washington, D.C.

14 With the exception of Commissioner  
15 Kirsanow, all Commissioners are present. Commissioner  
16 Kirsanow will be joining us shortly.

17 I. APPROVAL OF AGENDA

18 CHAIRMAN REYNOLDS: The first item on the  
19 agenda is the approval of the agenda. I move to  
20 approve the agenda. Is there a second?

21 COMMISSIONER GAZIANO: I have some  
22 amendments to it, but I -- can I second the motion,  
23 and then propose an amendment?

24 CHAIRMAN REYNOLDS: Sure.

25 COMMISSIONER GAZIANO: Okay. I second,

1 and I would like to propose the following adjustments.

2 Because of some of the letters that are on the  
3 agenda, their approval or disapproval might affect  
4 some of the decisions we are making on related  
5 proposals later in the agenda, I propose the following  
6 -- that we first -- under Program Planning, we first  
7 take up the letter on proposed health care  
8 legislation, we next take up the followup letter to  
9 the Department of Justice regarding the New Black  
10 Panther Party suit, we next take up approval of  
11 concept paper for 2010 statutory report topics, we  
12 then take up the approval of the 2009 statutory  
13 report, and then we conclude with three updates, the  
14 update on the national conference, the update on the  
15 status of document requests to government agencies  
16 regarding their civil rights enforcement activities,  
17 and an update -- finally, an update on the possible  
18 Commission public service announcement.

19 And -- I'm sorry -- before the updates,  
20 the last is a consideration of sending a letter  
21 regarding the pending Native Hawaiian government bill.

22 CHAIRMAN REYNOLDS: Okay. Hold on. Let  
23 me adjust this.

24 VICE CHAIR THERNSTROM: So number 1 would  
25 be?

1                   COMMISSIONER GAZIANO: The proposed health  
2 care letter.

3                   COMMISSIONER HERIOT: Yes. I think that  
4 makes it four, three, two, one on that list, with the  
5 Akaka bill put in, proposed Akaka bill letter, after  
6 that, and then the updates as they are -- they are  
7 listed last.

8                   If it needs a second, I second  
9 Commissioner Gaziano's motion to amend.

10                  CHAIRMAN REYNOLDS:           Okay.           And  
11 Commissioner Kirsanow has joined us.

12                  Okay. This is going to get messy. But in  
13 any event, let's vote.

14                  COMMISSIONER YAKI: Wait. Are you asking  
15 for any more input on the agenda?

16                  CHAIRMAN REYNOLDS: Sure.

17                  VICE CHAIR THERNSTROM: I'm sorry. I  
18 didn't hear the question.

19                  COMMISSIONER HERIOT: Shouldn't we vote on  
20 Todd's motion, then have a further motion?

21                  CHAIRMAN REYNOLDS: Well, we are going to  
22 have discussion on Todd's motion.

23                  COMMISSIONER HERIOT: Wait. But that  
24 motion should be taken care of, then we can make a  
25 further motion.

1                   COMMISSIONER YAKI: Not unless we have  
2 some discussion on it first.

3                   COMMISSIONER HERIOT: Well, we can discuss  
4 it, fine. But then, you know, some further motion to  
5 amend the agenda.

6                   COMMISSIONER YAKI: Unless, of course,  
7 there is a substitute motion, which takes precedence  
8 over that motion.

9                   CHAIRMAN REYNOLDS: Okay. Folks, the way  
10 it generally goes, it's my understanding that there is  
11 a motion, it is seconded, there is discussion, there  
12 is a vote. So let's have a discussion.

13                   VICE CHAIR THERNSTROM: I'm sorry. I  
14 missed Commissioner Yaki's question, so if it could be  
15 just restated, so I understand.

16                   COMMISSIONER YAKI: I would like to amend  
17 the proposed amendment and move the discussion of the  
18 national conference up to the top of Program Planning.  
19 It shouldn't take that long.

20                   CHAIRMAN REYNOLDS: Offered as a friendly  
21 amendment.

22                   COMMISSIONER GAZIANO: I would prefer to  
23 have the updates at the end.

24                   COMMISSIONER MELENDEZ: I would also like  
25 to add to the agenda, if Todd would include it in his

1 motion, to have the Staff Director's report, as we  
2 usually have. It is not on this agenda.

3 VICE CHAIR THERNSTROM: Yes. What  
4 happened to that?

5 COMMISSIONER MELENDEZ: I think we should  
6 have one every meeting.

7 VICE CHAIR THERNSTROM: Yes. I think that  
8 is supposed to be the updates here, but any other --

9 CHAIRMAN REYNOLDS: Are we prepared to  
10 provide --

11 STAFF DIRECTOR DANNENFELSER: We do have a  
12 couple of updates that I will be providing.

13 COMMISSIONER GAZIANO: Where would you  
14 propose to --

15 COMMISSIONER MELENDEZ: Where it usually  
16 comes in. Was it after Announcements or -- I'm not  
17 sure where it usually is scheduled on the agenda.

18 COMMISSIONER HERIOT: Since the updates  
19 are in that nature, why don't we just add it there at  
20 the end, anything that isn't included in those updates  
21 that Marty has, just put it there with the updates.

22 CHAIRMAN REYNOLDS: So that would be after  
23 the Akaka letter?

24 COMMISSIONER YAKI: I have a motion on the  
25 floor to amend the -- a suggested amendment to put the



1 national conference report up first on Program  
2 Planning.

3 COMMISSIONER GAZIANO: The reason I would  
4 prefer --

5 COMMISSIONER HERIOT: There is no second  
6 to that motion.

7 CHAIRMAN REYNOLDS: Right.

8 VICE CHAIR THERNSTROM: Oh, I'll second  
9 it, I mean, so that we -- you know, because I want to  
10 hear the -- Marty's -- I would like to do the regular  
11 thing.

12 CHAIRMAN REYNOLDS: Hold on. The motion  
13 that was on the table was Todd's motion. Commissioner  
14 Yaki wanted to discuss -- have a discussion about the  
15 proposed order that Todd put on the table. Are there  
16 any other comments regarding --

17 COMMISSIONER GAZIANO: He has made --

18 CHAIRMAN REYNOLDS: -- Todd's motion?

19 COMMISSIONER GAZIANO: He has made a  
20 substitute -- or amended my motion. I just wanted to  
21 speak to that. The reason I would prefer to put that  
22 off is we sometimes lose a quorum. I don't know what  
23 people's travel time are. We don't need, as far as I  
24 know, to vote on the conference.

25 As important as it is, we don't need a

1 quorum to discuss it, or get an update on it. We do  
2 need a quorum for the other items, so I would prefer  
3 to keep those first and make the discussion of the  
4 national conference the very first item on updates,  
5 and the Staff Director's Report that Commissioner  
6 Melendez has requested to follow that.

7 CHAIRMAN REYNOLDS: Any other comments?

8 (No response.)

9 Okay. What are we voting on, the  
10 substitute?

11 COMMISSIONER HERIOT: We are voting on  
12 Yaki's motion.

13 CHAIRMAN REYNOLDS: Okay.

14 COMMISSIONER GAZIANO: To amend my motion.

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

17 (Chorus of ayes.)

18 Abstentions?

19 (No response.)

20 All in opposition?

21 (Chorus of nays.)

22 Vice Chair Thernstrom?

23 VICE CHAIR THERNSTROM: No, I support it.  
24 I want to hear from the Staff Director.

25 STAFF DIRECTOR DANNENFELSER: This is on

1 the national conference.

2 VICE CHAIR THERNSTROM: Yes, I know, but  
3 it would be part of your -- I mean, we always have  
4 your Staff Director Report early.

5 CHAIRMAN REYNOLDS: Okay.

6 STAFF DIRECTOR DANNENFELSER: That is not  
7 his motion. His motion only relates to the national  
8 conference.

9 COMMISSIONER GAZIANO: The order of the  
10 discussion.

11 COMMISSIONER HERIOT: But the motion has  
12 failed anyway, so we need to discuss Todd's motion and  
13 go on.

14 CHAIRMAN REYNOLDS: Okay. Commissioner  
15 Taylor, how did you vote?

16 COMMISSIONER TAYLOR: Nay.

17 CHAIRMAN REYNOLDS: Okay. All right.  
18 Commissioner Melendez, how do you vote?

19 COMMISSIONER MELENDEZ: Can you restate  
20 the motion?

21 CHAIRMAN REYNOLDS: It is Commissioner  
22 Yaki's substitute motion where he asks that the  
23 discussion of the conference be moved to the top.

24 COMMISSIONER MELENDEZ: I agree. I will  
25 vote yes.

1 CHAIRMAN REYNOLDS: Okay. So three votes  
2 in favor, Commissioners Yaki, Melendez, Vice Chair  
3 Thernstrom. The remaining Commissioners voted against  
4 it. The motion fails.

5 Do we need additional discussion on Todd's  
6 motion?

7 (No response.)

8 COMMISSIONER HERIOT: Call the question.

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

11 (Chorus of ayes.)

12 Objections?

13 (Chorus of nays.)

14 Vice Chair Thernstrom?

15 VICE CHAIR THERNSTROM: Aye.

16 CHAIRMAN REYNOLDS: Okay. We have two  
17 votes against. The motion passes.

18 Next up?

19 II. APPROVAL OF MINUTES OF JULY 10,  
20 2009 MEETING

21 CHAIRMAN REYNOLDS: Okay. The second item  
22 is the approval of the minutes of the meeting held on  
23 July 10, 2009. I move that we approve those minutes.

24 Is there a second?

25 COMMISSIONER KIRSANOW: Second.

1 CHAIRMAN REYNOLDS: Discussion?

2 VICE CHAIR THERNSTROM: I have a motion to  
3 amend. Yes. I think everything prior on the draft  
4 letter to the Ohio legislature on page 3, everything  
5 prior to Commissioners Yaki and Melendez voted  
6 against, the rest of the Commission voted in favor,  
7 some words should be substituted for those prior  
8 sentences.

9 And the substitution should read, "The  
10 Commission voted to send a letter to the Ohio  
11 legislature cautioning them about the use of racial  
12 contracting set-asides as required by pending Ohio  
13 Senate Bill 146."

14 The letter pointed to relevant court cases  
15 in the Sixth Circuit and the District Court, which  
16 have previously overturned or otherwise limited race-  
17 based contracting set-aside programs in the state.  
18 The Commission voted six-two to send the letter.

19 COMMISSIONER GAZIANO: I second that  
20 amendment. I think it is -- glad someone clarified  
21 the nature of the letter.

22 CHAIRMAN REYNOLDS: Discussion?

23 (No response.)

24 All in favor please say aye.

25 (Chorus of ayes.)

1                   Objections?

2                   COMMISSIONER YAKI:   Abstain.

3                   CHAIRMAN REYNOLDS:   Commissioner Melendez?

4                   COMMISSIONER MELENDEZ:  Abstain also.

5                   CHAIRMAN REYNOLDS:   Commissioner Taylor?

6                   COMMISSIONER YAKI:   Aye.

7                   CHAIRMAN REYNOLDS:   Two abstentions.  The  
8                   remaining Commissioners vote in favor of the motion.  
9                   It carries the day.

10                  COMMISSIONER GAZIANO:  I have a question.

11                  I don't think it will require an amendment, but if I  
12                  could ask Commissioner Yaki.  The minutes -- I just  
13                  want to understand what the vote was, to see whether  
14                  these minutes correctly reflect that.  Just above the  
15                  Ohio legislature, the sentence reads, "The  
16                  Commissioners voted to amend the prior minutes of  
17                  June 12 to reflect that the vote on the motion to send  
18                  the letter to Department of Justice was four-zero-one,  
19                  with Commissioner Yaki abstaining."

20                  I may have misremembered and -- were you  
21                  present at -- I thought it was Commissioner Melendez  
22                  who abstained.  So were you saying that you abstained,  
23                  too, or that you were the abstainer?

24                  COMMISSIONER YAKI:  I was not present for  
25                  the vote.

1                   COMMISSIONER GAZIANO: Yes. Well, that  
2 doesn't mean you abstained. That means you weren't  
3 present. So it seems like we do need to correct  
4 the --

5                   COMMISSIONER YAKI: Whatever. Whatever.

6                   COMMISSIONER GAZIANO: Okay. I would like  
7 the minutes corrected to reflect that Commissioner  
8 Melendez abstained on June 12, and Commissioner Yaki  
9 wanted it reflected at the last meeting that he was  
10 not present at the time the vote was taken.

11                   CHAIRMAN REYNOLDS: Okay. Does anyone  
12 feel that that needs to be voted on, or can we just  
13 make the change?

14                   COMMISSIONER YAKI: Just make the change.

15                   CHAIRMAN REYNOLDS: All right. Next up,  
16 Announcements. Voting Rights Act of 1965.

17                   COMMISSIONER GAZIANO: Should we approve  
18 it as -- vote to approve it as amended?

19                   CHAIRMAN REYNOLDS: I thought we had.

20                   COMMISSIONER HERIOT: Didn't we just  
21 approve the amendment?

22                   VICE CHAIR THERNSTROM: Yes, and that  
23 we --

24                   COMMISSIONER HERIOT: We have to approve  
25 the minutes now.

1 CHAIRMAN REYNOLDS: Okay. All those in  
2 favor of the motion as amended please say aye.

3 (Chorus of ayes.)

4 Abstentions?

5 (No response.)

6 Objections?

7 (No response.)

8 COMMISSIONER YAKI: Is this for the -- I  
9 thought we had already approved the minutes. Now this  
10 is -- we are going back?

11 COMMISSIONER HERIOT: We approved the  
12 amendment. We approved the amendment.

13 CHAIRMAN REYNOLDS: So now we are voting  
14 on the motion as amended, the entire motion, including  
15 the amendment.

16 COMMISSIONER YAKI: I abstain.

17 COMMISSIONER MELENDEZ: I abstain also.

18 COMMISSIONER TAYLOR: Aye.

19 CHAIRMAN REYNOLDS: Okay. Two  
20 abstentions. Vice Chair Thernstrom, how did you vote?

21 VICE CHAIR THERNSTROM: Aye.

22 CHAIRMAN REYNOLDS: Two abstentions. The  
23 remaining Commissioners voted in favor of the motion.  
24 The motion passes.

25 III. ANNOUNCEMENTS



1                   CHAIRMAN REYNOLDS:       Next up is the  
2       Announcements.       The Voting Rights Act of 1965.  
3       August 6th marks the anniversary of the signing of the  
4       Voting Rights Act of 1965 into law by President Lyndon  
5       Johnson.   The Act was in part a result of hearings  
6       conducted by this Commission, which chronicled massive  
7       resistance by state officials to the enforcement of  
8       the 15th Amendment, marked by measures to interfere  
9       with blacks' right to vote, which existing federal  
10      anti-discrimination laws had been insufficient to  
11      overcome.

12                   Section 2 of the Act applied a nationwide  
13      prohibition on the denial or abridgement of the right  
14      to vote, for example by suspending literacy,  
15      knowledge, or character tests, which have been used to  
16      disenfranchise blacks in the south.   Under Section 5,  
17      covered jurisdictions were required to seek approval  
18      from the Attorney General or the U.S. District Court  
19      for the District of Columbia for any changes affecting  
20      voting.

21                   The Act also authorized the appointment of  
22      federal voting examiners and directed the Attorney  
23      General to challenge the use of poll taxes, which the  
24      Supreme Court ultimately ruled unconstitutional in  
25      1966.

1           Also, August 18th marks the anniversary of  
2           the ratification of the 19th Amendment to the  
3           Constitution, which prohibits states and Federal  
4           Government from denying citizens the right to vote  
5           because of their sex. Okay.

6           VICE CHAIR THERNSTROM: Mr. Chairman?

7           CHAIRMAN REYNOLDS: Yes.

8           VICE CHAIR THERNSTROM: Section 2 is not  
9           quite accurately described there. It doesn't really  
10          matter, but it isn't quite accurate.

11          CHAIRMAN REYNOLDS: Please clarify the  
12          record.

13          VICE CHAIR THERNSTROM: Well, Section 2 in  
14          the original 1965 legislation was just a preamble  
15          restating the 15th Amendment basically. And I think  
16          -- I would have to look at the exact prose -- but I  
17          think what you describe there is Section 4. But it --  
18          I would have to look at your exact prose.

19          CHAIRMAN REYNOLDS: Okay. Well --

20          COMMISSIONER HERIOT: We can just note  
21          that it's not correct.

22          CHAIRMAN REYNOLDS: One of the benefits of  
23          having an expert on the Voting Rights Act.

24          IV. MANAGEMENT AND OPERATIONS

25          CHAIRMAN REYNOLDS: Okay. The regional

1 program staff anticipates submitting a large number of  
2 State Advisory Committees for rechartering, many  
3 before the end of the fiscal year. In order to  
4 consider and recharter these State Advisory  
5 Committees, and also ensure that the Commission can  
6 conduct its other important business, it will be  
7 necessary to schedule teleconference meetings of the  
8 Commission between our normally-scheduled in-person  
9 Commission meetings.

10 I recommend that we calendar  
11 teleconference meetings two weeks following every  
12 scheduled business meeting or briefing. So our next  
13 teleconference, provided everyone -- provided that  
14 there is a consensus, would be held on Friday,  
15 August 21st. To accommodate our West Coast  
16 participants, I propose that meetings be held no  
17 earlier than 11:00 a.m. Eastern Standard Time.

18 Staff has distributed our current meeting  
19 schedule, along with proposed teleconference dates  
20 through the end of the calendar year. Please check  
21 your calendars and advise as to whether you would be  
22 available on the dates proposed for the  
23 teleconferences.

24 The Staff Director informs me that we will  
25 vote to schedule meetings for the calendar year 2010

1 in September or October, and will include  
2 teleconferences as a part of that schedule.

3 The first question: how does everyone's  
4 schedule look for August 21st?

5 VICE CHAIR THERNSTROM: Well, actually, I  
6 have a first question, if you don't mind, Mr.  
7 Chairman. I am just not -- from a number of angles,  
8 including the fact that, like the last time you didn't  
9 have a quorum, I am not wild about these  
10 teleconferences. I wonder if they are absolutely  
11 necessary.

12 CHAIRMAN REYNOLDS: I am not wild about  
13 them either. It is not absolutely necessary, but I  
14 also think that we need to -- I mean, staff has worked  
15 hard to get these rechartering packages done, and I  
16 think that at our current pace, looking at the  
17 workload that we have, that this is a reasonable way  
18 to get -- or to satisfy our obligation to recharter  
19 State Advisory Committees.

20 VICE CHAIR THERNSTROM: So this is mainly  
21 about rechartering?

22 CHAIRMAN REYNOLDS: Exclusively.

23 VICE CHAIR THERNSTROM: Exclusively.

24 COMMISSIONER HERIOT: No, I don't think  
25 you want to say that. I think, you know, other issues

1 may come up.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER GAZIANO: Letters on  
4 occasion.

5 CHAIRMAN REYNOLDS: You are right. You  
6 are right. But when I -- when I had discussions about  
7 these issues, the only thing I had in mind was  
8 rechartering. But I -- there is no blanket  
9 prohibition against introducing other issues.

10 VICE CHAIR THERNSTROM: They are just not  
11 a substitute for us sitting in the same room.

12 CHAIRMAN REYNOLDS: And I don't think that  
13 we should have substantive discussions about either  
14 controversial matters or --

15 COMMISSIONER HERIOT: I don't think you  
16 want to say that either.

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER HERIOT: Sometimes --

19 CHAIRMAN REYNOLDS: Yes, yes, yes.  
20 Agreeing on what's on the front page could be  
21 controversial.

22 Okay. Commissioner Heriot?

23 COMMISSIONER HERIOT: The standard isn't  
24 absolutely necessary in the sense that, you know, the  
25 universe will not explode. But if we want to actually

1       comply with the law -- and I would think of that as  
2       absolutely necessary -- yes, we have to do this. We  
3       are hopelessly behind on chartering SACs. And the  
4       notion that, you know, gee, this is inconvenient, you  
5       know, when you take the job, you agree that you are  
6       going to comply with the law.

7                So I think we definitely, definitely,  
8       definitely, need to have these telephone conferences,  
9       and the alternative would not be not to have telephone  
10      conferences, but for us to have meetings twice a month  
11      here in Washington, which I think probably won't fit  
12      in with our budget, or have two-day meetings.

13               I think this is the best way to go. I  
14      think it is absolutely necessary that we catch up on  
15      our SAC approval. I think that it is a serious  
16      problem that we have not been keeping up with our SAC  
17      approval, and I would strongly, strongly urge that we  
18      do this, and I don't think we should limit what we  
19      cover in the telephone conferences.

20               Obviously, I would prefer to deal with the  
21      less controversial issues on the telephone  
22      conferences, but sometimes, you know, the universe  
23      doesn't cooperate, and you have to deal with  
24      controversial issues at an off meeting rather than an  
25      on meeting. And by "off meeting" I mean a telephone

1 meeting rather than an in-person meeting.

2 So I would strongly urge that we do this  
3 expeditiously. I would also say that now and then  
4 there may be a month where we don't have anything for  
5 the agenda, and in those situations we just cancel the  
6 meeting.

7 VICE CHAIR THERNSTROM: You mean cancel  
8 the telephone conference.

9 COMMISSIONER HERIOT: Cancel the telephone  
10 conference. And that may happen often, if we start  
11 getting really good at dealing with our in-person  
12 meetings.

13 CHAIRMAN REYNOLDS: Okay. Commissioner  
14 Gaziano is next, then Vice Chair Thernstrom.

15 COMMISSIONER GAZIANO: I would certainly  
16 like to support the proposal that we have these.  
17 Since the chair has in mind mostly dealing with SAC  
18 rechartering, I think it would -- he is going to set  
19 the agenda. That is mostly what is going to be on.  
20 It should be open to amendments, particularly as I  
21 think there may be congressional actions that we may  
22 want to send a letter on, so there are some things  
23 that we might want to add to them from time to time.

24 But there are these other -- if we have  
25 these already scheduled and noticed, then we can -- we

1 do have the possibility of taking up an emergency  
2 issue, voting on something that we postponed at one of  
3 our in-person meetings. There was a question. That  
4 has occurred before, too, rather than waiting an  
5 entire month.

6 So I think there are several advantages in  
7 doing this, and we may more likely keep a quorum for  
8 each of these once these are on our schedule than  
9 sometimes lose a quorum at one of our in-person  
10 meetings.

11 COMMISSIONER HERIOT: Yes. When they are  
12 scheduled way ahead of time, then people know not to  
13 put something in that time slot. And staff should be  
14 instructed to routinely notice these meetings. And  
15 sometimes those meetings may be canceled, if we don't  
16 have an agenda.

17 CHAIRMAN REYNOLDS: Okay. Vice Chair  
18 Thernstrom?

19 VICE CHAIR THERNSTROM: Well, I mean, the  
20 only thing that is bothering me here is that the SACs,  
21 as an issue, shouldn't -- rechartering shouldn't take  
22 that long at our regularly-scheduled meetings. And I  
23 am a little puzzled why it would take --

24 COMMISSIONER HERIOT: But it does.

25 COMMISSIONER GAZIANO: We sometimes lose



1 -- even if it -- even if you are right, we sometimes  
2 lose a quorum before we get to them.

3 VICE CHAIR THERNSTROM: I would like to  
4 try to get them on the -- you know, on regular  
5 meetings.

6 COMMISSIONER HERIOT: And when we can,  
7 then we can cancel the telephone conference.

8 VICE CHAIR THERNSTROM: I mean, I would  
9 like that to be the expectation, that we are going to  
10 manage to have SAC votes at the regular meeting.

11 CHAIRMAN REYNOLDS: Okay. Well, that is a  
12 goal, but I do believe that, judging by our past  
13 history, this is -- this is a method to get caught up,  
14 because the method that we have used in the past has  
15 not allowed us to hit our goal.

16 Commissioner Yaki?

17 COMMISSIONER YAKI: Yes. As one of the  
18 two Commissioners, along with Commissioner Melendez,  
19 who have repeatedly raised the issue of SAC  
20 rechartering, I just wanted to make two points. One,  
21 I had said many -- like probably two months ago that I  
22 was going to be pretty much out of pocket for the  
23 latter part of August, starting on the 14th, and the  
24 21st I can definitely tell you I will be in a place  
25 where I will not get -- have access to cell reception.

1       So that will not work for me.

2                   Number 2, I would just like to say that,  
3       along with Commissioner Thernstrom, that I believe  
4       that we can take care of this in the regular course of  
5       events at a meeting. But, again, recognizing and  
6       understanding the fact that Commissioner Melendez and  
7       I have been the ones who have been pushing this for  
8       quite some time, obviously there may be some need for  
9       some of these teleconferences.

10                   I think that we should make all our best  
11       efforts to accommodate them during meetings, as much  
12       as possible, rather than through teleconference. And,  
13       again, August 21 is just off the book for me.

14                   CHAIRMAN REYNOLDS: Do you have a date in  
15       August that works for you?

16                   COMMISSIONER YAKI: Well, unless you can  
17       do something before the 14th, which you can't under  
18       the federal notice.

19                   CHAIRMAN REYNOLDS: Okay. Well --

20                   COMMISSIONER HERIOT: How about very early  
21       September? I mean, there is no reason we can't have a  
22       telephone conference like two days before a meeting.  
23       It is only an hour, a couple of hours.

24                   CHAIRMAN REYNOLDS: Commissioner Yaki,  
25       does that work for you?

1 COMMISSIONER YAKI: I have no objection.

2 CHAIRMAN REYNOLDS: Okay. Commissioner  
3 Heriot, since this is your idea, you get to select the  
4 -- or propose the date.

5 COMMISSIONER MELENDEZ: I have a question.

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER MELENDEZ: I think that we  
8 should always work from trying to get these face-to-  
9 face meetings, and then, secondarily, maybe do the  
10 teleconference. So, but we have kind of headed  
11 towards -- when we talk about business meetings, I  
12 know that we are starting to limit business meetings  
13 to -- I'm not sure how many per year, you know, are  
14 left in the rest of this year, as far as what we call  
15 just a business meeting and not a briefing.

16 Is there a business meeting scheduled  
17 between now and the end of the year, or --

18 CHAIRMAN REYNOLDS: Who knows the  
19 schedule?

20 STAFF DIRECTOR DANNENFELSER: The next --  
21 the remaining business meetings for the year are  
22 September 11th, October 16th, November 6th, and  
23 December 4th.

24 COMMISSIONER MELENDEZ: So there will be  
25 no briefings.

1 COMMISSIONER HERIOT: So there are all --

2 STAFF DIRECTOR DANNENFELSER: Oh, I'm  
3 sorry. Briefings?

4 COMMISSIONER GAZIANO: There might be a  
5 briefing in addition to a business meeting.

6 CHAIRMAN REYNOLDS: Well, those are the  
7 dates -- right.

8 STAFF DIRECTOR DANNENFELSER: That's the  
9 dates of meetings. There could be briefings at that  
10 time, but --

11 COMMISSIONER HERIOT: I think everybody  
12 agrees that we would rather do the SACs in -- live  
13 when we can, and that we are going to make every  
14 effort to do so. These telephone conferences are  
15 being scheduled for the overflow. You know, when we  
16 aren't able to finish it in our live meeting, we will  
17 do it on the telephone --

18 COMMISSIONER GAZIANO: When we lose the  
19 quorum --

20 COMMISSIONER HERIOT: -- conversation.

21 COMMISSIONER GAZIANO: -- or something  
22 like that.

23 COMMISSIONER HERIOT: Like on a couple of  
24 occasions we have lost a quorum, because, you know,  
25 some members leave early. We have had occasions where

1 members have walked out to defeat a quorum. So this  
2 is simply our way to deal with the overflow, and these  
3 meetings will be canceled if we dealt with them at the  
4 business meeting, if we have already done the  
5 business. And I hope that happens often.

6 But just in case it doesn't happen, rather  
7 than trying to schedule a telephone conference on an  
8 ad hoc basis, when it is much more difficult for  
9 people to schedule under those circumstances, if you  
10 know four months ahead of time that the -- you know,  
11 the telephone conference in December is going to be  
12 December 18th, you know, we all know not to schedule  
13 things for that time period.

14 But I hope we are going to be able to  
15 cancel a lot of these, because we will already have  
16 dealt with the business in the live meeting. That is  
17 -- you know, we are just trying to schedule  
18 these things ahead of time in case there is overflow.

19 And if history is any guide, there is going to be  
20 overflow.

21 COMMISSIONER MELENDEZ: Okay. Well, what  
22 I want to see is that, for example, August 21st and  
23 September 11th, we know that we are going to be here  
24 face to face September 11th. I would rather have the  
25 first face-to-face meeting, tell me how many of these

1 SACs are pending, because it really has to do with,  
2 are you ready to -- are we ready to vote on these, or  
3 are these still being worked on, that type of thing.  
4 Otherwise, you would say on September 11th we've got  
5 25 that are ready to go, then we try to take care of  
6 many in the day's meeting, and then we hand the rest  
7 to the second teleconference.

8 So I have no idea how many are ready to  
9 go, as to what you would actually put on September  
10 11th. If you said there were 10 ready to go, we'll  
11 take care of how many we can do in the September 11th,  
12 we will throw the other two to teleconference the  
13 following teleconference meeting. So I just don't  
14 have any idea what we are -- what the workflow and how  
15 many would be pending, unless you are telling me that  
16 there is 25 all set to go and that's the problem. Or  
17 you're saying he is still working on some, and we  
18 don't know that.

19 CHAIRMAN REYNOLDS: Well, Marty can tell  
20 you where we are in terms of what is ready to be voted  
21 on.

22 STAFF DIRECTOR DANNENFELSER: Well, we had  
23 four scheduled last week when we were not able to get  
24 a quorum on the teleconference, so those four are  
25 ready to go.

1 COMMISSIONER MELENDEZ: Today.

2 STAFF DIRECTOR DANNENFELSER: Yes. So we  
3 expect -- well, they are not on the agenda for today,  
4 but they would be ready to go the next time the  
5 Commission meets.

6 VICE CHAIR THERNSTROM: But why aren't  
7 they on the agenda today?

8 COMMISSIONER GAZIANO: We have a very long  
9 meeting, I suspect, already.

10 VICE CHAIR THERNSTROM: Yes. If we go  
11 through those --

12 COMMISSIONER GAZIANO: And I don't know  
13 when your flight is, Commissioner Melendez, but  
14 that --

15 COMMISSIONER MELENDEZ: My flight is at  
16 5:00-something. I was -- you know, could at least  
17 have been here until 3:30.

18 COMMISSIONER HERIOT: Yes, there is no  
19 chance of us getting through this agenda and doing the  
20 SACs. That's the problem. We'll be lucky to get  
21 through the agenda the way it is.

22 CHAIRMAN REYNOLDS: I think that there is  
23 a consensus that we strive to get as much of that  
24 work, the rechartering work, done during our face-to-  
25 face meetings, and I think that there is a consensus

1 that to the extent that we are unable to do that we  
2 will take care of it during teleconferences.

3 COMMISSIONER MELENDEZ: I guess what I'm  
4 asking is you had four scheduled that we could have  
5 put on today. Are you saying that there could have  
6 been -- as much as five or six could have been put on  
7 today? Or are you saying that there was only four  
8 ready to go? That's what I'm trying to get at.

9 STAFF DIRECTOR DANNENFELSER: Well, there  
10 are four that are ready to go now. The Acting Chief  
11 of the Regional Programs Coordination Unit anticipates  
12 that another 14 might be available by the end of  
13 September, so a total of 18 between now and the end of  
14 September could be available.

15 COMMISSIONER HERIOT: But we'll have had  
16 by that point two telephone conferences and a face-to-  
17 face meeting, so it's not like we are going to be  
18 dealing with all of those at the same time.

19 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

20 VICE CHAIR THERNSTROM: Mr. Chairman, the  
21 only thing that is continuing to bother me here -- I  
22 understand your argument about rechartering the SACs.  
23 But if Commissioner Gaziano's -- and I think to some  
24 extent Commissioner Heriot's -- description is -- or  
25 vision of these teleconferences is what we've got in



1 mind, you know, because there is -- I think  
2 Commissioner Gaziano said if there is kind of a, you  
3 know, business that is worth talking about between  
4 these and things, then we have, it seems to me, quite  
5 a -- then we've got a really kind of questionable  
6 process of moving important stuff into the  
7 teleconferences, and I just hope that that will not  
8 happen.

9 The SACs I understand perfectly, but I  
10 just don't want this to get -- you know, these  
11 teleconferences to be in any way equivalent to face-  
12 to-face meetings.

13 CHAIRMAN REYNOLDS: Okay. At this point,  
14 let's talk about the dates. Commissioner Yaki, if I  
15 understand you right, there is nothing -- no date in  
16 August after the 14th where you are available.

17 COMMISSIONER YAKI: Right.

18 CHAIRMAN REYNOLDS: Okay. Are you  
19 available on September 4th? That's a Friday.

20 VICE CHAIR THERNSTROM: That's the Friday  
21 of Labor day, yes.

22 COMMISSIONER YAKI: That is Labor Day  
23 Friday. No.

24 COMMISSIONER HERIOT: Labor Day is not  
25 Friday.

1                   COMMISSIONER YAKI:     It's the Friday  
2 before.

3                   CHAIRMAN REYNOLDS:   It's the following  
4 Monday.

5                   COMMISSIONER YAKI:   Is that too difficult?

6                   COMMISSIONER GAZIANO:   How about the 3rd?

7                   CHAIRMAN REYNOLDS:   Okay.  Someone threw  
8 out the 3rd, the 2nd.

9                   COMMISSIONER HERIOT:   I object to the  
10 notion that Friday is a holiday.

11                   COMMISSIONER GAZIANO:   What about the 3rd?  
12 Let's just inquire about the 3rd.

13                   VICE CHAIR THERNSTROM:   Well, I am not in  
14 town, but I will hope that I could -- where I am I can  
15 call in, but it's possible I won't be able to.

16                   CHAIRMAN REYNOLDS:   Okay.  Is the 3rd  
17 problematic for anyone else?

18                   COMMISSIONER YAKI:   Oh, hey, hang on.  
19 Hang on.  I can do the 3rd.

20                   CHAIRMAN REYNOLDS:   Commissioner Melendez?

21                   VICE CHAIR THERNSTROM:   Wait a minute.  
22 Labor Day is the 1st?

23                   CHAIRMAN REYNOLDS:   7th.

24                   VICE CHAIR THERNSTROM:   It is the first  
25 Monday.

1                   COMMISSIONER GAZIANO: The 31st is a  
2 Monday, of August.

3                   CHAIRMAN REYNOLDS: It's the first Monday  
4 --

5                   VICE CHAIR THERNSTROM: Oh, I'm looking at  
6 the --

7                   CHAIRMAN REYNOLDS: -- following --

8                   VICE CHAIR THERNSTROM: I'm sorry. I'm  
9 not reading my calendar correctly. Sorry.

10                  CHAIRMAN REYNOLDS: Okay. So the 3rd  
11 works for the first teleconference. Okay.

12                  COMMISSIONER GAZIANO: Should we set a  
13 general time? Should we say 1:00 Eastern, 1:30  
14 Eastern?

15                  CHAIRMAN REYNOLDS: That's fine.

16                  COMMISSIONER GAZIANO: Does that work for  
17 West Coast people?

18                  CHAIRMAN REYNOLDS: 1:00 is fine.

19                  COMMISSIONER YAKI: No.

20                  COMMISSIONER GAZIANO: What would be a  
21 preferable general time?

22                  COMMISSIONER YAKI: 8:30 is fine.

23                  VICE CHAIR THERNSTROM: 8:30 Pacific?

24                  COMMISSIONER GAZIANO: 8:30 Pacific Time?  
25 So 11:30 Eastern?

1 COMMISSIONER YAKI: Yes.

2 CHAIRMAN REYNOLDS: That's fine.

3 VICE CHAIR THERNSTROM: Is that a general  
4 -- is that a time we should just put down for all of  
5 them?

6 COMMISSIONER HERIOT: Yes, I think we  
7 should have a time that we regard as the basic time,  
8 unless we vary it. We should assume it will always be  
9 at 11:30 Eastern, because what we need is something  
10 that the staff can just routinely notice. And if  
11 turns out we cancel, then we cancel.

12 COMMISSIONER YAKI: We've gone through  
13 this list. Keep on going.

14 CHAIRMAN REYNOLDS: Okay. On August 5th,  
15 the Staff Director circulated a letter addressed to --

16 COMMISSIONER GAZIANO: I'm sorry. Are we  
17 going to do other dates? Should we do October 16?  
18 Does October 16 work?

19 CHAIRMAN REYNOLDS: You want to do all the  
20 dates now for the rest of the year?

21 COMMISSIONER GAZIANO: Yes, let's --

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER HERIOT: Can we just move to  
24 adopt this?

25 COMMISSIONER GAZIANO: I'm sorry.

1 October 16 is the regular -- or September --

2 VICE CHAIR THERNSTROM: No, it's  
3 September 25.

4 CHAIRMAN REYNOLDS: Right. September 25?

5 STAFF DIRECTOR DANNENFELSER: That would  
6 be the next proposed teleconference, the 25th.

7 COMMISSIONER GAZIANO: At 11:30. Does  
8 anyone have a conflict?

9 (No response.)

10 COMMISSIONER YAKI: Hold on. If I did,  
11 would I tell you? Let's see.

12 COMMISSIONER GAZIANO: Should we try to go  
13 to Thursdays as a --

14 COMMISSIONER HERIOT: Fridays are --

15 COMMISSIONER GAZIANO: Fridays? Okay,  
16 Fridays. That's fine.

17 COMMISSIONER YAKI: Okay. The 25th works  
18 for me.

19 VICE CHAIR THERNSTROM: Oh, yes. I don't  
20 know if the 25th works for me.

21 COMMISSIONER MELENDEZ: Thursdays are  
22 better for me.

23 CHAIRMAN REYNOLDS: Thursdays are better  
24 for me, too.

25 COMMISSIONER MELENDEZ: Because I'm

1 burning some annual leave on Fridays at my job, other  
2 job.

3 CHAIRMAN REYNOLDS: All right, folks. So  
4 we are going to back it up a day.

5 VICE CHAIR THERNSTROM: 24th. And with  
6 the understanding I may or may not be able to make it.

7 If there is a conference, I hope I am going to. I  
8 hope I am going to be able to find the time to go.

9 CHAIRMAN REYNOLDS: 24th? Going once,  
10 going twice. Okay.

11 COMMISSIONER YAKI: You just --

12 COMMISSIONER GAZIANO: Since we -- by the  
13 way, we have yielded on time --

14 COMMISSIONER HERIOT: Fridays are much  
15 better for me.

16 COMMISSIONER GAZIANO: -- if Commissioner  
17 Heriot's teaching schedule, which she doesn't know  
18 yet, conflicts, I would propose that we adjust the  
19 times.

20 COMMISSIONER HERIOT: I think we should go  
21 back to the Fridays that were originally proposed.

22 CHAIRMAN REYNOLDS: Okay. That  
23 proposal --

24 COMMISSIONER YAKI: I am just going to say  
25 this. I have a business that requires a lot of

1 travel, and the safest day that I know I will not be  
2 in the air is a morning on -- is a morning on either a  
3 Thursday or a Friday. Beyond that, I can't -- I am  
4 not going to commit to any other time.

5 COMMISSIONER GAZIANO: Okay. Well, let's  
6 go with Friday, then, since Commissioner -- most of  
7 the time, since Commissioner Heriot, not on the day  
8 before Labor Day, but since Commissioner Heriot thinks  
9 that is less likely to conflict, students don't like  
10 to go to class on Friday --

11 COMMISSIONER HERIOT: Actually, if we are  
12 going to do it at 8:30, we are okay. I can do it any  
13 day, any time.

14 CHAIRMAN REYNOLDS: Okay. So -- that's  
15 good. So Thursdays it is.

16 VICE CHAIR THERNSTROM: No, wait a minute.  
17 Is that the --

18 COMMISSIONER GAZIANO: The 24th of  
19 September.

20 VICE CHAIR THERNSTROM: That's fine.

21 CHAIRMAN REYNOLDS: Okay. So for each  
22 date that is listed, we are just going to back it up a  
23 day and have the teleconferences -- have the  
24 teleconferences scheduled for Thursday.

25 STAFF DIRECTOR DANNENFELSER: 11:30.

1                   COMMISSIONER GAZIANO: I might have to  
2                   leave after half an hour on the 24th, but I am not  
3                   going to interpose that as an objection.

4                   CHAIRMAN REYNOLDS: Okay.

5                   COMMISSIONER GAZIANO: If it works for  
6                   everyone else.

7                   CHAIRMAN REYNOLDS: October 15th, is that  
8                   fine?

9                   STAFF DIRECTOR DANNENFELSER: No, no,  
10                  that's a regular business meeting.

11                  VICE CHAIR THERNSTROM: That's a regular  
12                  meeting.

13                  STAFF DIRECTOR DANNENFELSER: So you mean  
14                  October 29th.

15                  CHAIRMAN REYNOLDS: Yes. Does that work  
16                  for everyone? October 29th?

17                  COMMISSIONER GAZIANO: That -- I have a  
18                  monthly civil rights meeting I conduct, and it seems  
19                  like it is conflicting with every --

20                  CHAIRMAN REYNOLDS: What time does it  
21                  start?

22                  COMMISSIONER GAZIANO: It starts at noon,  
23                  and so the 11:30 would mean I sort of have to leave --

24                  VICE CHAIR THERNSTROM: Wait a minute.  
25                  And I go to that, too, obviously.



1 COMMISSIONER GAZIANO: Can you try to --

2 VICE CHAIR THERNSTROM: Sometimes.

3 COMMISSIONER GAZIANO: When you can, yes.

4 VICE CHAIR THERNSTROM: Yes.

5 COMMISSIONER GAZIANO: So on that period  
6 of the month, if we want to do a week earlier, then  
7 that --

8 CHAIRMAN REYNOLDS: So then --

9 COMMISSIONER YAKI: I can do the 22nd.

10 CHAIRMAN REYNOLDS: Okay. Let's spread  
11 the pain.

12 COMMISSIONER GAZIANO: But you said  
13 Thursday or Friday. Let me just go back, because I  
14 think Commissioner Heriot corrected -- you said  
15 Thursday or Friday is about as good for you?

16 COMMISSIONER YAKI: Yes.

17 COMMISSIONER GAZIANO: Then, could we go  
18 to Fridays sometimes?

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER GAZIANO: At that time?

21 CHAIRMAN REYNOLDS: We made an  
22 accommodation --

23 COMMISSIONER GAZIANO: At 8:30 Pacific,  
24 Commissioner Heriot says she can do it.

25 CHAIRMAN REYNOLDS: We made an

1 accommodation for Commissioner Melendez on one date.  
2 Now let's make an accommodation for someone else on  
3 the 30th.

4 COMMISSIONER GAZIANO: Could we go the  
5 30th?

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER GAZIANO: Keep it on the  
8 30th.

9 CHAIRMAN REYNOLDS: Okay. November 19th?

10 COMMISSIONER GAZIANO: I'm sorry. Which  
11 day?

12 VICE CHAIR THERNSTROM: November 19th.

13 STAFF DIRECTOR DANNENFELSER: Thursday,  
14 November 19th.

15 VICE CHAIR THERNSTROM: Oh. Does that  
16 conflict again with your --

17 COMMISSIONER GAZIANO: Yes, that is the  
18 same -- again, are Fridays okay with everyone? Could  
19 we stick to the 20th?

20 CHAIRMAN REYNOLDS: Well, Commissioner  
21 Melendez --

22 COMMISSIONER MELENDEZ: That's fine.

23 COMMISSIONER HERIOT: Okay. Friday, the  
24 20th.

25 COMMISSIONER GAZIANO: 30th?

1                   STAFF DIRECTOR DANNENFELSER:  November  
2                   20th.

3                   COMMISSIONER YAKI:  We are still -- I am  
4                   still putting --

5                   COMMISSIONER MELENDEZ:  November 20th, is  
6                   that what you said?

7                   CHAIRMAN REYNOLDS:  Right.

8                   COMMISSIONER GAZIANO:  We did October 30  
9                   and November 20.

10                  CHAIRMAN REYNOLDS:  Okay.  Moving on,  
11                  December 18th.

12                  COMMISSIONER YAKI:  Fine.

13                  CHAIRMAN REYNOLDS:  Good.

14                  COMMISSIONER HERIOT:  Are we doing  
15                  Thursday or Friday?

16                  VICE CHAIR THERNSTROM:  It should be a  
17                  Friday.

18                  COMMISSIONER YAKI:  I would prefer it be a  
19                  Thursday, the 17th.  The 18th is a big travel day.

20                  COMMISSIONER GAZIANO:  If we are going to  
21                  do it on a -- that Thursday, could we do it at 1:30 on  
22                  that day?

23                  VICE CHAIR THERNSTROM:  Is there a -- 1:30  
24                  doesn't work either.

25                  COMMISSIONER GAZIANO:  Could we do it at

1 1:30 on the 17th?

2 COMMISSIONER YAKI: That's what, 10:30 my  
3 time?

4 COMMISSIONER GAZIANO: Yes.

5 VICE CHAIR THERNSTROM: Or put it the  
6 previous day, the 16th.

7 COMMISSIONER YAKI: The 16th would be  
8 better.

9 COMMISSIONER GAZIANO: 16th is fine with  
10 me.

11 CHAIRMAN REYNOLDS: Any objection to the  
12 16th?

13 (No response.)

14 The 16th it is. Okay.

15 STAFF DIRECTOR DANNENFELSER: 11:30 that  
16 day, right?

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER HERIOT: Everything is 11:30.

19 CHAIRMAN REYNOLDS: Okay. Unless there is  
20 additional discussion, we can move on.

21 On August 5th, the Staff Director  
22 circulated a letter addressed to the President and to  
23 members of Congress expressing the Commission's  
24 concern over racial preferences contained in  
25 H.R. 3200, the Health Care Bill, currently before the

1 House of Representatives.

2 Three House committees -- Ways and Means,  
3 Education and Labor, and Energy and Commerce -- have  
4 contributed to the current proposal. In the proposed  
5 letter, questions are raised about the  
6 constitutionality of some of the provisions creating  
7 racial preferences. The letter also questions, in  
8 light of our recent briefing on health care  
9 disparities, whether these provisions are the best way  
10 to medicate -- mitigate health care disparities along  
11 different racial groups.

12 I move that the Commission approve sending  
13 this letter to the President and members of Congress.

14 Is there a second?

15 COMMISSIONER KIRSANOW: Second.

16 CHAIRMAN REYNOLDS: Discussion?

17 COMMISSIONER HERIOT: Actually, can I move  
18 to amend your motion?

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER HERIOT: What was your motion  
21 exactly?

22 CHAIRMAN REYNOLDS: To approve the letter.

23 COMMISSIONER HERIOT: Can I like give a  
24 friendly amendment to that?

25 CHAIRMAN REYNOLDS: Yes.

1                   COMMISSIONER HERIOT: And that is that we  
2 adopt the letter, but that it be subject to a few  
3 tinkering changes if we can get the unanimous consent  
4 in the next few days of the people who vote in favor  
5 of signing the letter, or the people who signed the  
6 letter.

7                   CHAIRMAN REYNOLDS: Yes, that's --

8                   COMMISSIONER HERIOT: Because I would want  
9 to be able to tinker with a couple of the footnotes  
10 and maybe something in the text.

11                  CHAIRMAN REYNOLDS: That's fine.  
12 Discussion? Commissioner Yaki?

13                  COMMISSIONER YAKI: Do we have copies of  
14 the sections of the legislation that apparently offend  
15 to some people on this Commission?

16                  CHAIRMAN REYNOLDS: I'm sorry?

17                  COMMISSIONER YAKI: Do we have copies of  
18 the sections of the legislation that apparently offend  
19 some members of this Commission? It's a very simple  
20 question.

21                  CHAIRMAN REYNOLDS: The question is not  
22 complex, but I didn't hear you.

23                  COMMISSIONER YAKI: About how long would  
24 it take?

25                  COMMISSIONER GAZIANO: Ten or 15 minutes,

1 it could probably be --

2 CHAIRMAN REYNOLDS: Okay. So let's  
3 continue the discussion while we try to get --

4 VICE CHAIR THERNSTROM: Or let's postpone  
5 it until --

6 COMMISSIONER YAKI: Let's table it. I am  
7 not prepared to have a discussion until I see the damn  
8 language. So let's move on to the next --

9 COMMISSIONER HERIOT: It's on the  
10 internet. It would have been available to you.

11 COMMISSIONER YAKI: Well --

12 COMMISSIONER HERIOT: You easily could  
13 have gotten it.

14 COMMISSIONER YAKI: Just like I could have  
15 easily gotten all of that research that you did on the  
16 Native Hawaiian Act, too, Commissioner Heriot. So  
17 let's have it in front of us I believe would be  
18 appropriate.

19 CHAIRMAN REYNOLDS: Let's see if there is  
20 a consensus. I don't believe that -- well, I am not  
21 -- I think it is important to get the letter out as  
22 soon as possible. The fact that we don't have the  
23 language in front of us right now, the fact that we  
24 will have to wait 10 or 15 minutes, that is not a  
25 problem. And let's move --

1                   COMMISSIONER GAZIANO: I have seen the  
2 legislation. I think the letter -- or the provisions.  
3 I think the letter accurately reflects it.

4                   CHAIRMAN REYNOLDS: Let's rearrange the  
5 agenda, and we will deal with something else while we  
6 seek copies of the language.

7                   VICE CHAIR THERNSTROM: I wouldn't mind  
8 seeing the language again.

9                   COMMISSIONER GAZIANO: That's fine. I am  
10 just saying that if anyone had a doubt about it, they  
11 should have obtained it. But I don't think that we  
12 should delay significantly the consideration of the  
13 letter.

14                   Is the Commissioner -- do you suspect that  
15 there aren't racial preferences in the health care  
16 bill, Commissioner Yaki?

17                   COMMISSIONER YAKI: I'm not going to  
18 answer that. I'm not going to answer that,  
19 Commissioner Gaziano, until I have the language in  
20 front of me.

21                   COMMISSIONER KIRSANOW: Probably makes  
22 sense to wait 15 minutes.

23                   COMMISSIONER GAZIANO: Okay. Should we go  
24 on to the next item and come back?

25



## 1 V. PROGRAM PLANNING

2 CHAIRMAN REYNOLDS: Next up, on June 16th,  
3 Commissioners Kirsanow, Heriot, Gaziano, and myself  
4 sent a letter to the Department of Justice regarding  
5 dismissal of voter intimidation charges from an  
6 incident in Philadelphia during the 2008 election.

7 On June 22nd, Vice Chair Thernstrom and  
8 Commissioner Taylor sent their own letter lending  
9 support to our letter. The Department of Justice sent  
10 an undated letter that was largely unresponsive to our  
11 request, which the Commission logged in on July 24th.

12 The draft of a followup letter to the  
13 Department of Justice was sent to you on Wednesday,  
14 August 5th. I move to approve the followup letter to  
15 the Department of Justice. Is there a second?

16 COMMISSIONER KIRSANOW: Second.

17 CHAIRMAN REYNOLDS: Discussion?  
18 Commissioner Gaziano?

19 COMMISSIONER GAZIANO: As Commissioners  
20 know, I took the lead in trying to draft the followup.

21 And I would move to allow minor tinkering, if you all  
22 see typos.

23 COMMISSIONER HERIOT: Friendly amendments.

24 COMMISSIONER GAZIANO: Yes, a friendly  
25 amendment to the Chairman's. For example, I would

1 like to, with the explanation Commissioner Yaki gave  
2 this morning, add to footnote 1 that Commissioner  
3 Melendez abstained from the original vote, and  
4 Commissioner Yaki was not present, since he seems to  
5 want that to be noted. But I want to speak --

6 COMMISSIONER YAKI: I was just stating a  
7 fact. What do you mean by "wanted it to be noted"?

8 COMMISSIONER GAZIANO: In the -- if you  
9 don't want it to be noted, that's fine. I'm just  
10 saying --

11 COMMISSIONER YAKI: I don't care if it is  
12 noted or not, but don't characterize it as I didn't  
13 want it to be noted.

14 CHAIRMAN REYNOLDS: Okay, folks.

15 COMMISSIONER YAKI: I was simply  
16 correcting --

17 CHAIRMAN REYNOLDS: Folks? Folks?

18 COMMISSIONER YAKI: When you asked a  
19 question, I corrected what the minutes were going to  
20 say.

21 COMMISSIONER GAZIANO: Yes, at the last --

22 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
23 let's just move on.

24 COMMISSIONER GAZIANO: At the last  
25 meeting, you wanted that noted.

1           Anyway, just by way of explaining to  
2 fellow Commissioners and people in the audience, the  
3 response we received from the Department of Justice to  
4 our original letter was largely non-responsive. While  
5 they stated they did not think that the facts of the  
6 case merited continuing the suit, they did not provide  
7 answers to our questions about what the facts were, so  
8 that we could form our independent judgment, which is  
9 our responsibility.

10           They also did not provide information on  
11 similar cases, and what the standard -- the legal  
12 standard was that they applied to this case. I think  
13 that we are entitled to a complete and satisfactory  
14 response in this matter, but, further, I certainly  
15 believe, as do I think some others who have been  
16 commenting on this case, that the replies from the  
17 Department are more damaging and put the Department in  
18 a worse light than no response at all.

19           There are factual errors, I believe, in  
20 questionable legal claims, in the original letter, and  
21 I believe that those responses undermine respect for  
22 the rule of law. I think the rest of the letter  
23 speaks for itself in explaining calmly and carefully  
24 what kind of material we expect the Department of  
25 Justice to provide to us, so that we can complete our

1 special responsibility to study and report on voting  
2 rights issues for the nation.

3 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

4 COMMISSIONER KIRSANOW: I am just curious  
5 if the Staff Director has received any other responses  
6 from the ALJ related to this matter since we last  
7 addressed this in a public gathering?

8 STAFF DIRECTOR DANNENFELSER: No. Just  
9 the letter that is noted in this letter.

10 COMMISSIONER KIRSANOW: Okay. Thank you.

11 CHAIRMAN REYNOLDS: Okay. Additional  
12 comments, questions? Please note that Commissioner  
13 Taylor has stepped out of the hearing room.

14 At this point, we will take a vote. All  
15 those in favor please say aye.

16 (Chorus of ayes.)

17 All in opposition?

18 (No response.)

19 Abstentions?

20 COMMISSIONER YAKI: Abstain.

21 COMMISSIONER MELENDEZ: Abstain.

22 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

23 VICE CHAIR THERNSTROM: No, no. I'm  
24 sorry. I was thinking about something. Aye.

25 CHAIRMAN REYNOLDS: Okay. Two

1 abstentions.

2 COMMISSIONER GAZIANO: Could we allow the  
3 vote to stay open until Commissioner Taylor --

4 CHAIRMAN REYNOLDS: Sure. Okay.

5 VICE CHAIR THERNSTROM: I'm sorry, I'm not  
6 thinking. I want to -- Mr. Chairman, I'm sorry, I'm  
7 distracted here. Which letter are we voting on now,  
8 the health care?

9 CHAIRMAN REYNOLDS: The DOJ letter.

10 VICE CHAIR THERNSTROM: The DOJ, right.  
11 Okay. I'm sorry. I'm doing two things at once here.  
12 Yes, I'm voting aye, as I said.

13 CHAIRMAN REYNOLDS: Okay. Okay. A memo  
14 was sent to Commissioners on June 29, 2009, with  
15 various suggestions for a 2010 statutory report topic  
16 with followup -- with a followup e-mail July 2, 2009,  
17 with suggestions by Commissioners Thernstrom and  
18 Melendez.

19 At the June 12th meeting, we agreed that  
20 project proposals would be developed on the concept  
21 papers we favored. Some Commissioners have prepared  
22 project concepts. Others have submitted broad ideas.

23 I will describe these project ideas briefly, and then  
24 ask that each of their sponsors describe them more  
25 fully.

1           On July 30th, a project proposal was  
2 prepared by Vice Chair Thernstrom. It was sent to  
3 Commissioners in the meeting binders. The Staff  
4 Director circulated the proposal again by e-mail on  
5 August 3rd. The proposal would examine enforcement of  
6 Title VII, and police, fire, and municipal employment,  
7 in light of the Supreme Court's June 29, 2009 decision  
8 in the Ricci case.

9           Under this project, the Commission would  
10 analyze how enforcement actions in other cities  
11 differed from those that gave rise to the Ricci case.

12          It would also consider how the EEOC's uniform  
13 guidelines on employee selection procedures are being  
14 interpreted regarding disparate impact with regard to  
15 employment tests.

16           Vice Chair Thernstrom, would you like to  
17 elaborate on your contact?

18           VICE CHAIR THERNSTROM: Yes. I think  
19 that's an absolutely -- it's a nice, succinct  
20 description, and I don't think we need to linger  
21 further on what I am proposing here.

22           CHAIRMAN REYNOLDS: Okay. Discussion?

23           COMMISSIONER HERIOT: Should we get  
24 everything on the table?

25           VICE CHAIR THERNSTROM: I think we should

1 get everything on the table --

2 CHAIRMAN REYNOLDS: Okay.

3 VICE CHAIR THERNSTROM: -- Mr. Chairman.

4 CHAIRMAN REYNOLDS: All right. Yesterday  
5 the Staff Director circulated a concept paper by  
6 Commissioner Heriot regarding Title IX enforcement  
7 that asked the Commission to investigate whether  
8 certain public and private moderately-selective co-ed  
9 liberate arts schools discriminate against women in  
10 their admissions policy, in order to ensure a balanced  
11 gender ratio, so as not to discourage women from  
12 attending.

13 As a part of this project, the Commission  
14 would investigate whether and to what extent, if any,  
15 Department of Education enforcement policies  
16 contribute to the problem.

17 Commissioner Heriot, would you care to  
18 elaborate?

19 COMMISSIONER HERIOT: No. Again, that is,  
20 you know, a useful summary. There is reason to  
21 believe that some universities -- the University of  
22 Richmond, in particular -- I have been told by many  
23 academics that this is quite common now in moderately-  
24 selective universities, to discriminate against women.

25 I should point out that for some of these

1 schools this is not a violation of Title IX, that the  
2 way the statute is set up public schools can't  
3 discriminate in admissions on the basis of sex.  
4 Graduate schools cannot -- public or private.  
5 Professional schools cannot -- public or private. But  
6 that private schools, undergraduate schools, legally  
7 can do this.

8 But I think it is, nevertheless, something  
9 that --

10 PARTICIPANT: And continue to receive  
11 federal funds?

12 COMMISSIONER HERIOT: Yes. Because,  
13 remember, there are schools that are all women or all  
14 men. And this also applies to co-ed schools  
15 apparently, based on what I am told.

16 But legal or not, it is certainly worth  
17 determining whether or not it is happening, and that  
18 would include whether it is happening in public  
19 schools, where it would be illegal. So I would  
20 propose that we look at a variety of schools, a  
21 private school, like the University of Richmond, a  
22 public school -- I was thinking of schools that were  
23 fairly close by, like George Mason, where it would  
24 definitely be illegal, a Catholic school or a  
25 sectarian school of some sort. I proposed Catholic



1 University because it is nearby. An HBCU -- I  
2 proposed Howard. You know, we could propose other  
3 schools. That is not crucial to the proposal, but to  
4 find out whether or not this is happening and report  
5 back.

6 My proposal would also involve having a  
7 briefing where we ask schools of that sort to tell us  
8 about their non-discriminatory methods for trying to  
9 attract more male students if they think that is  
10 important, but I think otherwise the proposal speaks  
11 for itself.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER KIRSANOW: Chair, I note that  
14 Commissioner Taylor has reentered the room, and  
15 perhaps you would like to close off the vote on the  
16 DOJ letter.

17 CHAIRMAN REYNOLDS: On the DOJ letter.

18 COMMISSIONER TAYLOR: Yes, I vote in  
19 favor.

20 CHAIRMAN REYNOLDS: Okay. Please let the  
21 record reflect that we had two abstentions,  
22 Commissioners Melendez and Yaki. The remaining  
23 Commissioners voted in favor of the motion to send a  
24 followup letter to DOJ.

25 COMMISSIONER GAZIANO: And pursuant to the

1 I think friendly amendment that was accepted, that  
2 that is open to correct typos or any other minor  
3 changes. If Commissioners would communicate those to  
4 me, I would work with the staff to get the letter out  
5 as soon as possible.

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER YAKI: Point of information.

8 CHAIRMAN REYNOLDS: Yes.

9 COMMISSIONER YAKI: It would be I think  
10 useful and courteous if, on the day that such letters  
11 were sent, that Commissioners Melendez and I receive  
12 copies of that letter on the day that it was sent.  
13 There seems to be a rather interesting time lag  
14 between the time letters are actually sent and the day  
15 that we actually receive it.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER GAZIANO: Which letter are we  
18 talking about?

19 COMMISSIONER YAKI: All letters.

20 CHAIRMAN REYNOLDS: When you send the  
21 letters, when you distribute letters, do you send them  
22 to all Commissioners at the same time?

23 STAFF DIRECTOR DANNENFELSER: Yes. I know  
24 with respect to the last letter that went to the  
25 Department of Justice, I believe they might have gone

1 out late in the day and were distributed the next day,  
2 but there was no lag time beyond one day that I am  
3 aware of.

4 COMMISSIONER YAKI: Well, I think one day  
5 is -- I'm sorry, I think one day is a lifetime. If it  
6 goes out on Friday at 5:00, I want a copy Friday at  
7 5:00. I don't want a copy of Friday -- on Tuesday or  
8 Monday at 9:00, whenever the next business day is. I  
9 think that's unacceptable. If it goes out, it goes  
10 out to everyone, including us, at the time that it  
11 goes to the agency.

12 STAFF DIRECTOR DANNENFELSER: We can  
13 endeavor to do that. I will try to make -- we will  
14 make sure --

15 COMMISSIONER YAKI: Why is it "endeavor"?  
16 Why is it difficult? We are all members of the  
17 Commission. We are entitled to documents that go out  
18 bearing the Commission signature, Commission label.  
19 So I do not understand why, on that particular letter,  
20 it goes out one day and there is essentially a 12- to  
21 14-hour cycle before it shows up in our in box. I  
22 think it's inexcusable.

23 CHAIRMAN REYNOLDS: Well, to make sure I  
24 understand, you are saying that certain Commissioners  
25 -- it is sent to certain Commissioners --

1                   COMMISSIONER YAKI: I don't know if it is  
2 sent to certain Commissioners. I just think for all  
3 Commissioners -- first of all, you have all seen the  
4 letter. We don't see the -- Commissioner Melendez and  
5 I don't see the draft, so we don't know what is in  
6 that letter before. And you presumably have seen it  
7 and done final signoff on it. I am, quite frankly,  
8 less concerned about you than I am concerned about  
9 Commissioner Melendez and myself.

10                   So when the letter goes out on -- at 4:00  
11 in the afternoon, but we don't get it until the next  
12 day --

13                   CHAIRMAN REYNOLDS: Sure, let's do it.

14                   COMMISSIONER YAKI: -- I think that's  
15 unacceptable.

16                   CHAIRMAN REYNOLDS: So you just want him  
17 to hit the "Send" button and everyone gets it at the  
18 same time.

19                   COMMISSIONER YAKI: Yes.

20                   CHAIRMAN REYNOLDS: I agree.

21                   COMMISSIONER GAZIANO: Yes, that's fine.  
22 Or at least within an hour. You might be transmitting  
23 to members of Congress or the Attorney General, and  
24 some slight -- have to do it in some different way.

25                   CHAIRMAN REYNOLDS: Normally, when we sent

1 out these letters, my assumption has been that when it  
2 comes out of the Staff Director's office that it goes  
3 to everyone at the same time. That was my assumption.

4 Apparently, that is not the case.

5 And I agree with Commissioner Yaki that  
6 when it comes out of the Staff Director's office, hit  
7 the "Send" button, and each Commissioner should  
8 receive the document.

9 COMMISSIONER YAKI: Thank you.

10 CHAIRMAN REYNOLDS: Okay. Where am I? On  
11 July 2, 2009, Commissioners received an e-mail from  
12 the Staff Director circulating a statutory  
13 report/recommendation by Commissioner Melendez. His  
14 project would focus on funding, staffing, and workload  
15 levels of federal agencies' civil rights enforcement  
16 in 2010 to assess the executive branch's institutional  
17 capacity and goals to address civil rights violations.

18 To the extent possible, staff analysis in  
19 the report would describe trends in civil rights  
20 enforcement, as well as evaluate the effectiveness of  
21 the agencies based on their own goals.

22 The project would capture and analyze data  
23 on annual changes since the Commission's 2005 report  
24 on a similar subject, spanning both the Bush and Obama  
25 administrations. The statutory report would provide

1 useful data on agencies' changes in capacity and  
2 mission accomplishments over time.

3 Commissioner Melendez, would you care to  
4 elaborate?

5 COMMISSIONER MELENDEZ: Well, one of the  
6 reasons it would be relatively easy, because it is  
7 something we have done before and we actually could  
8 follow the 2005 I believe statutory report, I think I  
9 funded federal civil rights enforcement, the  
10 President's 2006 request.

11 So I am concerned about, you know, based  
12 on the timeframes that we do something that would be  
13 attainable. And I think that that is kind of our  
14 mandate also, to see how these federal agencies -- I  
15 know they evaluated HUD and the Justice Department as  
16 to how much money they were receiving, whether or not  
17 it was adequate in increases. And it kind of would  
18 give us a good idea of even what the current  
19 administration is doing as far as funding levels and  
20 seeing if these agencies are capable of doing what  
21 they are supposed to do.

22 So I just think that it would be a -- I  
23 think our staff would be able to pick up and use some  
24 of the data maybe that we have had before and be able  
25 to probably be successful in a timely manner to get

1 this done, as we are always behind. So I think it is  
2 a pretty good project, falls in line with what our  
3 mandates are as far as our relationship with the other  
4 federal agencies, and see if they are capable of doing  
5 what we think they ought to be doing.

6 CHAIRMAN REYNOLDS: Okay. This past  
7 Wednesday Commissioners received an e-mail from  
8 Commissioner Gaziano regarding -- I'm sorry,  
9 recommending that our investigation of the National  
10 Black -- National -- actually, the New National Black  
11 Panther Party case form the basis of the 2010  
12 statutory report focusing on voter intimidation.

13 He sent a preliminary concept paper to  
14 Commissioners via e-mail yesterday evening, a copy of  
15 which you should have in front of you.

16 Commissioner Gaziano, do you want to --

17 COMMISSIONER GAZIANO: Sure, I'll make a  
18 few points. I think that there -- I will list a few  
19 reasons why I think that this could work as our --  
20 designated as our statutory report, but at the same  
21 time I want to emphasize that because of the type of  
22 investigation we still could adopt another -- some of  
23 these other -- or at least one of these other ideas  
24 that wouldn't necessarily need to be our statutory  
25 report, and I actually would recommend that we do so.

1           But with that said, the reasons why I  
2 think this would be a good statutory report is we just  
3 committed ourselves, in the letter that we approved,  
4 to a thorough and careful investigation of the New  
5 Black Panther Party decisionmaking. That  
6 investigation that we are already committed to could  
7 easily be adapted to satisfy our statutory report  
8 duty.

9           The Office of General Counsel hopefully  
10 shouldn't be distracted by too many other types of  
11 investigations, if they are -- if we are going to take  
12 the New Black Panther Party investigation seriously.  
13 And I think, of course, as I said just a few minutes  
14 ago when we were debating the letter, I think voting  
15 rights studies and reports are a special  
16 responsibility.

17           And the kinds of responses we have gotten  
18 from DOJ thus far I think do have serious implications  
19 for how the Department of Justice would enforce voter  
20 intimidation statute in the future. So I think events  
21 outside the Commission commend this as our statutory  
22 report topic.

23           I think that, as I say in the pre-concept  
24 paper, that a concept paper should be prepared if  
25 Commissioners are interested in pursuing this. I have



1 laid out the kind of things that probably should be in  
2 the concept paper. I want to make one minor  
3 correction to what I sent you last night, so if you  
4 could -- we are not, you know, actually voting on  
5 this, so I don't think it matters.

6 But in question 5, research question 5, it  
7 is with regard to each defendant in the New Black  
8 Panther Party litigation. Do the facts as established  
9 in (i) through (iii) in question 1 -- and this is the  
10 addition -- and the actions taken by DOJ constitute a  
11 continuance or departure from prior DOJ enforcement  
12 policy?

13 I think that question is an important one  
14 for us to answer, and, most importantly, the  
15 concluding question, what are the implications of  
16 DOJ's action with regard to the New Black Panther  
17 Party suit, with regard to encouraging or diminishing  
18 arguably intimidating conduct?

19 CHAIRMAN REYNOLDS: Okay. That is the  
20 list. Commissioner Heriot?

21 COMMISSIONER HERIOT: I'm sorry. I'm  
22 assuming that you are opening it up for sort of  
23 general --

24 CHAIRMAN REYNOLDS: Yes.

25 COMMISSIONER HERIOT: -- discussion now?

1 Just generally on statutory report topics, I want to  
2 point out that we have a -- we call it a statutory  
3 report because our statute requires that we have at  
4 least one report on an enforcement matter per year.  
5 It doesn't require that it be our biggest report of  
6 the year. It doesn't require anything other than we  
7 have a report on an enforcement matter.

8 And I would strongly urge the Commission  
9 to avoid our -- the paradigm we have been working from  
10 for the last couple of years, and that is having a big  
11 battleship report that we take all year long, and it  
12 is, you know, the largest and most significant thing  
13 that we produce that year. That is not required by  
14 the statute. What is required is that it have some  
15 bearing on enforcement.

16 And it seems to me that Todd's proposal  
17 has the virtue of being, you know, very strongly  
18 related to enforcement. It doesn't have to be a  
19 battleship report. It can be something that, you  
20 know, it may turn out to be quite small.

21 COMMISSIONER GAZIANO: If DOJ confesses  
22 error, we still have some things to investigate, but  
23 maybe we could get it done by January or February.

24 COMMISSIONER HERIOT: Yes, possibly.

25 COMMISSIONER GAZIANO: We could have a

1 hearing.

2 COMMISSIONER HERIOT: Yes.

3 COMMISSIONER GAZIANO: And otherwise we  
4 still could possibly get it out in April, if this is  
5 the topic we choose.

6 COMMISSIONER HERIOT: There are -- we  
7 could in fact, at this -- you know, we are able to do  
8 this as a small project, do -- have the Office of  
9 Civil Rights Enforcement do the research, for example,  
10 on my sex discrimination proposal, not as a statutory  
11 report, but just as a project of OCRE, because I think  
12 that is something that falls directly into their  
13 jurisdiction.

14 It is the sort of thing that, you know,  
15 Dr. Lerner is very familiar with, and that might be a  
16 report that we don't call our statutory report. We  
17 might call it something else, but that could -- that  
18 research can be conducted.

19 And parallel to that, I also have another  
20 proposal that I think that would fit very well into  
21 what OCRE does, and that is a report on legacy  
22 preferences, how much weight is given to the fact that  
23 someone is the son or daughter of an alumnus or alumna  
24 in admissions.

25 Frequently, when I debate affirmative

1       action policies, those who favor race-based admissions  
2       argue that race-based admissions are necessary to  
3       counter legacy preferences. And I am against legacy  
4       preferences, the way I am against race-based  
5       admissions.

6                I think it would be very useful for the  
7       Commission to find out and nail down with some  
8       certainty just how serious these legacy preferences  
9       are, so that people know.

10               CHAIRMAN REYNOLDS: Okay. Vice Chair  
11       Thernstrom, then Commissioner Yaki.

12               VICE CHAIR THERNSTROM: Well, two things.  
13       One, the reason I got mine in very early is because I  
14       really believe Commissioners need time, and I thought  
15       we had a kind of general seven-day rule. But, you  
16       know, we did have a deadline I think.

17               I just think Commissioners need time to  
18       kind of contemplate this. I mean, I did not have the  
19       time, Commissioner Heriot, to read yours.

20               COMMISSIONER HERIOT: Mine is the same  
21       proposal I made last year.

22               VICE CHAIR THERNSTROM: Okay. But, in  
23       general, I do think these discussions are extremely  
24       difficult when the Commissioners have not had --  
25       gotten the proposals in time to think about them

1 carefully. But I also have a question for the General  
2 Counsel -- resources, scheduling, when we need to get  
3 started. I mean, partly my reaction to these  
4 proposals depends upon the answers to those questions.

5 CHAIRMAN REYNOLDS: Those are legitimate  
6 criticisms, and today we are just going to have  
7 discussions. There is not going to be a vote today.

8 VICE CHAIR THERNSTROM: Okay. Okay, good.

9 COMMISSIONER GAZIANO: Oh. We don't want  
10 to --

11 CHAIRMAN REYNOLDS: No. I mean, I --

12 COMMISSIONER GAZIANO: I would just  
13 slightly prefer, for example, if there would, you  
14 know, be some -- if there is a majority to pursue the  
15 New Black Panther Party, we have already begun that  
16 investigation. We are already a little further.

17 But I would rather not -- I would be  
18 happier drafting up the detailed concept paper,  
19 helping staff with Commissioner input, do so, if that  
20 is where the majority of the Commissioners really want  
21 to go.

22 CHAIRMAN REYNOLDS: Well, due to the fact  
23 that some of this was recently distributed, I can tell  
24 you now I am -- I am in favor of the -- of your  
25 concept paper, but I think that we should have an

1 official vote on it at the next business meeting. We  
2 should continue our discussions, get a sense of where  
3 people are with the recommendations that have been  
4 placed on the table.

5 COMMISSIONER HERIOT: The letter commits  
6 us to do something, but it doesn't require us to do it  
7 -- make this a statutory report.

8 COMMISSIONER GAZIANO: That's correct.  
9 That's correct. I just -- I --

10 CHAIRMAN REYNOLDS: And I'm thinking about  
11 it separately. The letter is done.

12 COMMISSIONER GAZIANO: That's fine. Yes,  
13 I understand that. And I can live with not voting  
14 today. I just think that -- and I understand from  
15 some of the staff -- the staff would feel comfortable  
16 knowing, for example, if they are not going to accept  
17 my proposal, which we have already begun some of the  
18 investigation, then that might create concerns that we  
19 are further behind a schedule.

20 COMMISSIONER HERIOT: But given the  
21 letter, we have already committed to doing something,  
22 so I think that makes -- you know, that authorizes  
23 Commissioner Gaziano to prepare a more elaborate  
24 proposal.

25 COMMISSIONER GAZIANO: Yes, I don't -- I

1 can propose a more elaborate proposal. I just wonder,  
2 are other -- do other Commissioners -- there are  
3 advantages and disadvantages to waiting for a final  
4 vote. I do think there are some things we can flesh  
5 out a little bit more, but I think this is as much as  
6 we have had in some years before we have begun a  
7 statutory report.

8 CHAIRMAN REYNOLDS: Well, Vice Chair  
9 Thernstrom has expressed an interest in having  
10 information in terms of, well, logistics. So I think  
11 that before we vote at the next meeting we should be  
12 prepared to answer those types of questions with  
13 respect to each of the proposals that we will discuss  
14 today.

15 I think that we should, to the extent  
16 possible, discuss the recommendations that have been  
17 read into the record, see what the issues are that  
18 need to be addressed for the next meeting, and then at  
19 the next meeting we vote.

20 COMMISSIONER GAZIANO: I am prepared to  
21 address any logistics questions on my proposal. I am  
22 certainly not familiar with the other proposals, but I  
23 have certainly given some thought in preparing the  
24 pre-concept paper to what I think would be the Vice  
25 Chair's questions. So I hope that -- if I don't

1 satisfy you and you want to move it to the next month,  
2 fine.

3 VICE CHAIR THERNSTROM: I do think we need  
4 to hear from the staff rather than you on this.

5 COMMISSIONER GAZIANO: What question would  
6 you like to hear from the staff on?

7 VICE CHAIR THERNSTROM: Well, I would  
8 prefer to go on to what the Chairman is suggesting, a  
9 general discussion here, and with the understanding we  
10 are going to vote not this meeting but the next  
11 meeting. I do think it is really important not to  
12 rush this kind of thing.

13 COMMISSIONER GAZIANO: If we are going to  
14 write a concept paper, we need to know what questions  
15 you think are left open.

16 VICE CHAIR THERNSTROM: Well, I don't -- I  
17 need to know -- I mean, that's why I addressed it to  
18 the General Counsel. I need to know exactly -- I  
19 mean, we are way down in staff on this Commission. I  
20 need to know the relative ease with which these  
21 various topics can be addressed by the staff as a  
22 statutory report.

23 Now, one way of looking at it of course is  
24 how Commissioner Heriot just said. We don't need to  
25 make such a distinction between a statutory report and



1 a regular briefing report, but traditionally a  
2 statutory report.

3 COMMISSIONER GAZIANO: I wouldn't mind if  
4 the General Counsel answers this quick question, but  
5 it certainly seems to me from the Commissioners'  
6 standpoint that it would be a much heavier load on the  
7 General Counsel's office to conduct the investigation  
8 we are committed to conducting, and doing something  
9 else that would take the full attention of his office,  
10 or the near full attention of his office, than to just  
11 concentrate on the New Black Panther Party  
12 investigation.

13 So if that is your question -- and I am  
14 happy for the General Counsel to correct me or agree  
15 with that sentiment right here.

16 CHAIRMAN REYNOLDS: Is the General Counsel  
17 ready to entertain these questions? Or do you need  
18 more time?

19 MR. BLACKWOOD: I got the proposal this  
20 morning. I am really not in a position to say what  
21 would be required overall. I would point out to you  
22 all that the statutory reports are generally assigned  
23 or worked together -- the last couple of years has  
24 been a joint project between OGC and OCRE, and also  
25 takes into consideration existing briefing reports

1 that are scheduled, which we have none of right now.

2 So it is difficult for me, at this point  
3 in time, to say. That said, I read it this morning,  
4 could we do it? Sure we can do it, but it is in  
5 conjunction with other work.

6 COMMISSIONER GAZIANO: Yes. But to my  
7 specific question, is it easier for your office, do  
8 you think, resource-wise, to make the New Black  
9 Panther Party investigation that we are already doing,  
10 and we are already committed to, the statutory report  
11 than to do the investigation we are already committed  
12 to and to do a major statutory report of the type we  
13 have done in the past?

14 MR. BLACKWOOD: I am not going to walk  
15 through that door.

16 CHAIRMAN REYNOLDS: Okay. It sounds like  
17 that we will have --

18 (Laughter.)

19 -- we will continue the discussion at the  
20 next meeting. Commissioner Yaki?

21 COMMISSIONER YAKI: Well, I am just going  
22 to say this, which is that when I missed the deadline  
23 I figured, okay, I had missed the deadline, and then  
24 these other things began trolling in at the last  
25 minute. I was originally going to be very supportive

1 of Commissioner Melendez's and still am, but I will  
2 now, given the fact that the door has been opened by  
3 late submission of papers, will be submitting a  
4 concept paper on what could be termed a battleship  
5 project, which I care deeply about, and that is the  
6 rise of racism on college campuses.

7 So I am definitely not prepared to make a  
8 decision today. I will give it to people in more than  
9 adequate time before the next meeting, more than a  
10 day, certainly more than two weeks hopefully --

11 CHAIRMAN REYNOLDS: Okay.

12 COMMISSIONER YAKI: -- for people to  
13 review.

14 CHAIRMAN REYNOLDS: Kirsanow.

15 COMMISSIONER KIRSANOW: I just have a  
16 question for Commissioner Gaziano with respect to his  
17 concept paper. I am wondering -- we have not, in my  
18 estimation, received an adequate response from DOJ  
19 related to our inquiries in the New Black Panther  
20 Party case. But we have just --

21 COMMISSIONER GAZIANO: Do you want to pick  
22 up the mic? Are you picking that up? Oh, you've got  
23 -- I'm sorry, you've got two. You've got another one  
24 there. Okay.

25 COMMISSIONER KIRSANOW: This one should be

1 working.

2 COMMISSIONER GAZIANO: I didn't hear you,  
3 your booming voice. Go ahead.

4 COMMISSIONER KIRSANOW: But we have just  
5 approved another letter. And let's suppose that the  
6 response we receive from DOJ in fact is satisfactory.  
7 Do you think that somehow vitiates the purpose or the  
8 impact of your concept?

9 COMMISSIONER GAZIANO: No, I think not for  
10 two reasons. First of all, the letter, again, that we  
11 approved I think speaks to the need for us to make our  
12 own independent judgments. So nothing the Department  
13 could give us in the next response could satisfy our  
14 responsibility to then compare the prior cases that  
15 they may turn over to us. This is assuming they give  
16 an absolutely complete, you know, response to us in  
17 the next two weeks or something like that.

18 It does not -- given the position they  
19 have taken, I think the most significant contribution  
20 the Commission needs to make is our own finding of the  
21 facts, our own analysis of the law, and our own  
22 statement of how we think the DOJ's current policy  
23 implicates their enforcement, or will it lead to  
24 increased intimidation, and so on.

25 So even if they change their position on

1 this case -- by the way, I think there is plenty for  
2 us to investigate. Are you going to refile? If you  
3 admit error, are you going to refile against some of  
4 these defendants? Or if they give us all of the  
5 documents we want, I think there is still a lot for us  
6 to do. For example, I think we potentially should  
7 call the fact witnesses on -- at the poll on Election  
8 Day in Philadelphia.

9 We should call perhaps the political  
10 appointees from DOJ who believe that the facts in the  
11 complaint justified suit, and give our recommendations  
12 to the Department and to Congress.

13 COMMISSIONER KIRSANOW: So I guess the  
14 thrust of my question is two-fold. One is, could it  
15 in fact make the concept moot? But, secondarily, even  
16 if it does make it moot -- and I think you have maybe  
17 answered this -- does it still go to the manner in  
18 which DOJ pursued this particular case? And whether  
19 or not this is emblematic of how we should be  
20 proceeding on voter intimidation cases in the future.

21 COMMISSIONER GAZIANO: Absolutely.  
22 Regardless of what the Department's next response is,  
23 I think there is plenty for us to investigate,  
24 analyze, come to some factual conclusions on, come to  
25 some legal recommendations on.

1                   CHAIRMAN REYNOLDS: Okay. Commissioner  
2 Taylor, then Vice Chair Thernstrom.

3                   COMMISSIONER TAYLOR: I wanted to share my  
4 thoughts about this concept paper and to see if we  
5 could try to focus really on question 7. I don't know  
6 where that leads us, but I -- from my perspective,  
7 question 7 -- that is the implication of the policy or  
8 position taken by DOG -- DOJ, rather, is most  
9 important.

10                   You know, at this point I am less  
11 concerned about making, you know, factual findings  
12 ourselves. I am more concerned with looking at their  
13 record, looking at the approach they took in this  
14 case, and then looking forward and discussing the  
15 implications on voting rights, both from a legal  
16 perspective and the practical implications of what is  
17 going to happen over the next few years in terms of  
18 the boots on the ground on voting day.

19                   And, I mean, to me that is the most  
20 important part of this discussion. I mean, what --  
21 and I think it is what is being -- it has gotten lost  
22 in the media, because they have been so focused on the  
23 New Black Panthers that they have sort of lost sight  
24 of the importance of the policy and the approach, and  
25 the argument it may or may not create in future cases

1 in terms of the precedent it sets.

2 And so I think question 7 to me is the  
3 critical question for this body to consider, and it is  
4 the reason I think we need to get more information.  
5 But we should be looking forward, in my view, rather  
6 than backwards.

7 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
8 then Commissioner Heriot.

9 VICE CHAIR THERNSTROM: I just -- this is  
10 really a question and a recommendation I am hoping,  
11 Mr. Chairman, you will agree with. The question -- we  
12 have had a seven-day rule with respect to briefing  
13 report topics, that they come in seven days ahead of  
14 the discussion at the meeting.

15 I don't think -- we would need to go back  
16 to the record here to check on this. I don't believe  
17 we had that same rule, although we should have honored  
18 it, has been stated explicitly with respect to  
19 statutory reports. But if not --

20 COMMISSIONER GAZIANO: If I could correct  
21 what our rules provide, because --

22 VICE CHAIR THERNSTROM: Well --

23 COMMISSIONER GAZIANO: -- my able new  
24 assistant looked up the rule.

25 VICE CHAIR THERNSTROM: Okay.

1                   COMMISSIONER GAZIANO: The rule is -- that  
2 applies to the staff, the staff shall -- and I think  
3 applying it strictly to Commissioners would impede our  
4 work rather than -- that staff must make material  
5 available seven days before, if it is available. So  
6 it doesn't even apply to staff, and it is just part of  
7 -- it is just part of the AIs.

8                   We have a practice amongst ourselves,  
9 which I think is a sound one, of trying to make  
10 material available to each other at least that amount  
11 of time, and it is a good one. But, for example, the  
12 New Black Panther Party matter was unfolding as we  
13 speak. But regardless of that, it is something that  
14 Commissioners can always take into account in urging  
15 other Commissioners to delay, as we have today, in  
16 urging Commissioners not to vote against a particular  
17 proposal.

18                   If one of the Commissioners has not gotten  
19 something to you 33 days before, and you want it to be  
20 33 days before, specifically at the last meeting I  
21 committed to trying to get something seven days  
22 before, but on the particular topic I abandoned the  
23 particular topic. So I don't think that there is --  
24 there is not a rule that applies to Commissioners that  
25 for something that is on the agenda, if we have a



1 motion that relates to something on the agenda, that  
2 we have to get it to fellow Commissioners seven days.

3 I think that would be a bad -- that would  
4 be a bad practice.

5 CHAIRMAN REYNOLDS: Okay. Commissioner  
6 Gaziano, would you agree, though, that it is a better  
7 practice that we provide adequate -- well, provide  
8 Commissioners with adequate time to digest the  
9 materials? And that probably a flexible approach  
10 would be -- would be a better rule in that if it is a  
11 complicated issue, if it involves a document  
12 consisting of hundreds of pages, then, yes, more --

13 COMMISSIONER GAZIANO: Of course.

14 CHAIRMAN REYNOLDS: -- time is -- would be  
15 needed.

16 COMMISSIONER HERIOT: Yes. We have  
17 decided to put off the vote, so this is a moot issue.

18 VICE CHAIR THERNSTROM: No, it is not a  
19 moot issue for the future. It really isn't.

20 CHAIRMAN REYNOLDS: She is bringing up a  
21 -- this is a conversation that is related but separate  
22 from the issue that we dealt with already.

23 VICE CHAIR THERNSTROM: Right.

24 COMMISSIONER GAZIANO: But if we have a  
25 proposal on the agenda and someone proposes something,

1 if someone has got an amendment they want to send  
2 three days before, and someone wants to send another  
3 amendment a day before --

4 VICE CHAIR THERNSTROM: Commissioner  
5 Gaziano, I do think, really, I had understood -- which  
6 is the reason I got my proposal in as early as I did  
7 -- that other Commissioners needed time and that we  
8 did have -- I believe we had a vote at one point on  
9 the seven-day rule with respect to briefing reports,  
10 but -- and that did not cover the statutory reports.

11 I feel very strongly we should not be in  
12 the position we are today of looking at the last  
13 minute.

14 COMMISSIONER HERIOT: Well, we are not.  
15 We have another meeting we are going to vote on this.

16 So we are actually getting the extra benefit of  
17 having the opportunity to discuss it --

18 VICE CHAIR THERNSTROM: I know. But it is  
19 often difficult for the staff when we postpone things.  
20 I am sure the staff would have preferred a statutory  
21 vote today. I am just saying as a general policy --  
22 and I think the Chairman has just backed me up on this  
23 -- it is really preferable.

24 COMMISSIONER GAZIANO: And you have made  
25 it more difficult for the staff.

1                   CHAIRMAN REYNOLDS: Here is -- I think  
2                   that we have to be flexible, we have to be reasonable,  
3                   we have to be rational. If someone throws a document  
4                   across the table that has 100 pages, and the  
5                   expectation is that the vote -- that a vote will take  
6                   place with little opportunity to review it, I think  
7                   that that is a simple -- it is not a complex  
8                   situation. I think the obvious --

9                   COMMISSIONER HERIOT: Everybody agrees  
10                  with you.

11                  CHAIRMAN REYNOLDS: Right. So at the end  
12                  of the day, it depends. It depends on what the issue  
13                  is, it depends on what -- the complexity, it depends  
14                  on whether the document is voluminous.

15                  COMMISSIONER HERIOT: And that is why the  
16                  rule is written the way it is. The staff is supposed  
17                  to get us stuff --

18                  VICE CHAIR THERNSTROM: You know what? I  
19                  often --

20                  COMMISSIONER HERIOT: -- a week ahead of  
21                  time when it is available.

22                  VICE CHAIR THERNSTROM: I often have not  
23                  thought out the complexity of an issue, which could be  
24                  just two pages. I can't think of --

25                  COMMISSIONER GAZIANO: That is an argument

1 for you to persuade fellow Commissioners, as they see  
2 fit, that they should vote against it or postpone it.

3 But we should not have inflexible rules.

4 CHAIRMAN REYNOLDS: Commissioner Yaki?

5 COMMISSIONER YAKI: Well, I have a serious  
6 problem with this, because, as you know, Mr. Chair, I  
7 have very strong feelings about the fact that the  
8 Commission has been operating under a premise of  
9 decision by ambush with regard to the Democratic  
10 minority on this Commission.

11 The whole -- I would say that one of the  
12 hallmarks of government is transparency, is the  
13 ability for the public to understand what is going on,  
14 why it is going on, and how decisions were being made.

15 When material is submitted only to  
16 Commissioners, and, therefore, not available to anyone  
17 else to review, because the agenda packet is not out  
18 there, two, three days before, one day before, the  
19 morning before, we are not really advancing the cause  
20 of democracy.

21 It may be convenient for some. It may be  
22 for some in the way that they see -- they see things  
23 that it makes perfect sense from a logical or business  
24 kind of perspective, but it certainly doesn't advance  
25 principles of democracy and transparency in the way

1 that we conduct our business.

2 So, you know, I am with Commissioner  
3 Thernstrom on this. I don't care if it is two pages.

4 I don't care if it is a hundred pages. I really do  
5 believe that there is a -- there is a substantive  
6 principle involved in being able to have information  
7 out and available for digesting at -- for a reasonable  
8 amount of time, and not just sort of whenever someone  
9 decides, "Well, I am going to toss that topic, put in  
10 this one. We've got a couple of days to do it, and  
11 the staff can certainly figure out a way to make this  
12 thing work." That is not how we should be doing our  
13 business.

14 CHAIRMAN REYNOLDS: Okay. Where are we?

15 COMMISSIONER HERIOT: I think what would  
16 be helpful is for people to talk about which of these  
17 proposals they think -- they think they could possibly  
18 support, so that we have a sense --

19 COMMISSIONER GAZIANO: We don't need to  
20 take a vote.

21 COMMISSIONER HERIOT: Right, what is  
22 likely to happen.

23 CHAIRMAN REYNOLDS: Where I stand right  
24 now, I am likely to vote for the concept paper  
25 submitted by Commissioner Gaziano. I like

1 Commissioner Heriot's topic also, and, if I understand  
2 you right, you suggested that if it is not selected as  
3 the statutory report it could be --

4 COMMISSIONER HERIOT: It could be handled  
5 by OCRE anyway. You know, that would give -- you  
6 know, that is a topic that they could deal with, since  
7 I think Commissioner Gaziano's topic would not involve  
8 that much input from OCRE.

9 VICE CHAIR THERNSTROM: And, Mr. Chairman,  
10 I think that Title VII probably will not get support,  
11 and I would -- I would hope that we might move it to a  
12 meeting report or whatever, that we would --

13 COMMISSIONER HERIOT: I think that's  
14 possible, yes.

15 VICE CHAIR THERNSTROM: Yes, that we would  
16 take it up, but not as a statutory -- but I just don't  
17 think there is going to be the support for it.

18 COMMISSIONER HERIOT: I would have to say  
19 that my objection to your proposal is I thought it was  
20 too complex.

21 VICE CHAIR THERNSTROM: Yes.

22 COMMISSIONER HERIOT: It can be narrowed  
23 down in some way that would make a good briefing  
24 report I think.

25 CHAIRMAN REYNOLDS: Commissioner Taylor?

1                   COMMISSIONER TAYLOR: I wanted to ask  
2 Commissioner Yaki to expand on his thought. I wanted  
3 to hear where it was coming from, what he is saying  
4 out there, if we are going to discuss these proposals.

5                   COMMISSIONER YAKI: Well, about two years  
6 ago we spent a fair amount of time and money, which as  
7 of right now I still have no idea how much time and  
8 money was spent, on the issue of anti-semitism on  
9 campuses. And while that is important, and certainly  
10 a worthy pursuit of our Commission, you continue to  
11 read in the papers -- I continue to read in the papers  
12 about racial incidents on campuses north and south in  
13 this country, that the commentators have talked about  
14 the fact that there is a degree of racial animosity  
15 blossoming on our college campuses.

16                   And it just -- you know, to go backwards  
17 at a time when we should be going forward on racial  
18 issues is, to me, quite disturbing. It is something  
19 that I had thought about for quite some time. I have  
20 talked about it I think at this Commission more than  
21 once. I talked about it I know with the chair and  
22 with certain other members of this body, but I am not  
23 going to say that because of that, therefore, we  
24 should be moving forward.

25                   I will say that -- allow me the privilege

1 of putting together something more substantive. I  
2 will get it to you in -- as quickly as I can, and  
3 certainly with more than adequate time for you to  
4 review.

5 Do I expect it to be adopted? Probably  
6 not. But it has been important enough for me that I  
7 at least wish to put it on the table for consideration  
8 by members of the Commission.

9 But thank you for the question,  
10 Commissioner Taylor.

11 CHAIRMAN REYNOLDS: Gaziano, Kirsanow.

12 COMMISSIONER GAZIANO: You can go first.

13 COMMISSIONER KIRSANOW: I just wanted to  
14 follow up, to ask Commissioner Yaki, because I am not  
15 familiar with burgeoning instances, but I am  
16 wondering, is this something that you have seen -- or  
17 this racism, is it something directed at specific  
18 races or ethnicities? Or is this something that is  
19 broad? How would you characterize it?

20 COMMISSIONER YAKI: Well, I would say that  
21 I am always obscured by the fact that every Martin  
22 Luther King, Jr. Day holiday there seems to be some  
23 kind of activity, offensive activity taking place, on  
24 one college campus or another, or that I have read  
25 about, mocking the idea of what that holiday is about.



1 I do know that, from speaking with some  
2 professors who I have worked with in the UC system,  
3 they have talked about how animosity regarding Latino  
4 or Asian students has been pumped up a bit. I mean,  
5 it may -- like I said, let me take a crack at it. It  
6 may be that when I come to it, the conclusion, it may  
7 not rise to the level of a huge report, and I may  
8 decide not to.

9 But at least given the fact that other  
10 people submitted their stuff late, I at least wanted  
11 to have the opportunity to take a try at this. If it  
12 doesn't work, I will be the first one to admit that  
13 there isn't enough to sustain a full report, but  
14 perhaps there may be some locus of activity in certain  
15 areas of the country, certain systems, that we should  
16 be -- that we should take a look at.

17 CHAIRMAN REYNOLDS: Actually, I said you,  
18 then -- okay.

19 COMMISSIONER GAZIANO: First of all, I  
20 wanted to express my level of interest to some of the  
21 other topics. I still I think will advocate for my  
22 own to be the statutory report next month, but I  
23 certainly have an interest, a long-standing interest  
24 in the Title VII issue.

25 I tried to make a go of something similar

1 to Vice Chair Thernstrom's or -- so at the point in  
2 which it is narrowed for a potential briefing, I would  
3 probably be very interested in it if it is.

4 I think that Commissioner Heriot's sex  
5 discrimination topic is already fairly narrow, and I  
6 would support, unless I am convinced by one of the  
7 others, that we can move forward with that one at the  
8 same time, if we choose the statutory report that I am  
9 proposing.

10 And I would be very interested in seeing  
11 Commissioner Yaki's proposal, whether it is for a  
12 statutory report or not. But I do appreciate  
13 Commissioner Taylor's sort of confirmation that the  
14 seventh question is the most important, and I hope you  
15 see that that is reflected in the title of the  
16 whole --

17 COMMISSIONER TAYLOR: Oh, yes.

18 COMMISSIONER GAZIANO: -- of the whole.  
19 So I agree with you, and that kind of input is helpful  
20 to me if I am going to try to refine the idea. So I  
21 would appreciate hearing from anyone else who is  
22 interested in that topic on the record today or soon,  
23 very soon, hereafter, so that I can try to come up  
24 with a description that satisfies most people in the  
25 most ways.

1 CHAIRMAN REYNOLDS: Commissioner Heriot.

2 COMMISSIONER HERIOT: I wanted to say that  
3 I hope Commissioner Yaki does write this proposal, and  
4 there is a good chance that I would be supporting it  
5 if he does. It is important that we remember that --  
6 to emphasize there has to be an enforcement hook in  
7 all of these proposals, but I think it sounds like a  
8 good topic, and I might well support it.

9 CHAIRMAN REYNOLDS: Chairman Melendez.

10 COMMISSIONER MELENDEZ: The only other one  
11 that, you know, I didn't submit, but it was floating  
12 around before, was the issue on -- it was kind of  
13 neutral. It was employment discrimination on the  
14 basis of age in economic crisis. Older Americans, as  
15 you know, with the loss of pensions and few jobs  
16 available, make age discrimination more likely today.

17 And it is just something -- as we had  
18 talked about some of the components that we thought,  
19 even in our conference that we were looking at, we  
20 thought to broaden out more from just race, that, you  
21 know, one of those was age discrimination.

22 And so I have always felt we kind of  
23 needed to kind of broaden out and kind of look at some  
24 of those issues, because I think discrimination  
25 against age with people trying to stay in the

1 workforce because of the economic downturn is going to  
2 be a real issue that is going to come up.

3 So I just wanted to just -- I think that  
4 is a real neutral topic, that if we could support  
5 something like that I think -- you know, I just want  
6 to see a little more unity, that we all come in to  
7 supporting whatever topic is there rather than having  
8 a five -- you know, kind of like a split vote on this  
9 whole issue.

10 So I just wanted to throw it out there as  
11 something that is kind of neutral and of interest to  
12 maybe all of us.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

14 COMMISSIONER KIRSANOW: I appreciate what  
15 Commissioner Melendez said. I do think that is an  
16 important topic, and if it is not a statutory report,  
17 and if we look at it in some other context. I know in  
18 my own practice we are seeing more and more age  
19 discrimination cases. And with the advent of the  
20 babyboomer generation getting up there, I think we are  
21 going to see more and more of those kinds of cases.

22 But I also want to make just an  
23 observation with respect to Commissioner Melendez's  
24 proposal. It dovetails, frankly, very nicely into one  
25 of the things we are going to be talking about a

1 little bit later, and that is our document requests to  
2 the various agencies as to civil rights enforcement  
3 activities.

4 In the past -- and Commissioner Melendez  
5 is correct -- the Commission has regularly, if not  
6 every year, sought to assess the civil rights  
7 enforcement activities of the various agencies. And  
8 we have -- in 2005 we did one -- Commissioner  
9 Thernstrom may remember -- I think we did something  
10 similar in 2003, maybe 2004.

11 But we did it without any kind of -- it  
12 was done in a vacuum. We just looked at funding, and  
13 then made an assessment without looking at what the  
14 activity really was. And here we would have at least  
15 some marginal empirical data by which we could compare  
16 funding versus how much activity is going on, and  
17 maybe come to an assessment as to whether, first of  
18 all, funding is necessarily the sine qua non for  
19 effective enforcement, or whether we need more funding  
20 or whether the funding is being used in an efficient  
21 manner. Just an observation.

22 VICE CHAIR THERNSTROM: Well, I am all in  
23 favor of anything having to do with age  
24 discrimination.

25 (Laughter.)

1                   CHAIRMAN REYNOLDS: Okay. Questions?  
2 Other comments?

3                   (No response.)

4                   All right. Let's chew on this discussion,  
5 and arrive at the next meeting ready to cast our  
6 votes.

7                   Next up is the approval of the 2009  
8 statutory report entitled "An Examination of Civil  
9 Rights Issues with Respect to the Mortgage Crisis." I  
10 move that the Commission approve Part A of the report  
11 for publication, which was produced by staff,  
12 reflecting Commissioner and panelist input, and then  
13 distribute it on August 23, 2009.

14                  Under this motion, any concurring and  
15 dissenting statements submitted by any Commissioner  
16 would be due by August 23rd. Rebuttals to  
17 concurrences and dissents would be due by  
18 September 7th. Under this motion, if a majority of  
19 votes -- if the majority of the Commission votes to  
20 adopt Part A of the statutory report, the Commission  
21 would then open the discussion on Part B. If Part A  
22 fails to obtain a majority of votes, then Part B  
23 becomes moot.

24                  Is there a second?

25                  VICE CHAIR THERNSTROM: Second.

1 CHAIRMAN REYNOLDS: Discussion?

2 COMMISSIONER MELENDEZ: Yes, I have a  
3 question. Have we -- basically following the AI 1-6  
4 -- adequately inquired from the SACs as far as their  
5 input into this? That would be a question for the  
6 Staff Director.

7 STAFF DIRECTOR DANNENFELSER: I'm sorry.  
8 I was --

9 COMMISSIONER MELENDEZ: I asked based on  
10 following AI -- Administrative Instruction 1-6, have  
11 we adequately inquired and gained input from the SACs?

12 STAFF DIRECTOR DANNENFELSER: On this  
13 particular --

14 COMMISSIONER MELENDEZ: On this report,  
15 the statutory 2009.

16 STAFF DIRECTOR DANNENFELSER: We inquired  
17 on the -- we did inquire of the SACs on the original  
18 topic that was planned for the statutory report. When  
19 the topic was changed, there was not as much  
20 opportunity for the SACs to do hearings and the like  
21 on that. There were some hearings that were done at  
22 the state level through the SACs when they thought  
23 that it was going to be the fair housing topic that  
24 was earlier contemplated.

25 COMMISSIONER MELENDEZ: Okay.

1 COMMISSIONER GAZIANO: Could I --

2 CHAIRMAN REYNOLDS: Yes. Commissioner  
3 Gaziano.

4 COMMISSIONER GAZIANO: -- ask -- I didn't  
5 write down the time for comments, and I am -- I would  
6 like to inquire whether there is any room in our  
7 schedule for slightly longer comment and reply  
8 periods, whether it is possible that we could send --  
9 I know there is some extra time needed to get it in  
10 the -- get it all, but perhaps if the comment periods  
11 were a little bit later, we could send a, you know,  
12 Word version on September -- at the end of September,  
13 and then the prettied-up copy later. I just wondered  
14 if there is any flexibility, then, for a slightly  
15 longer comment and reply period.

16 CHAIRMAN REYNOLDS: I guess before I  
17 respond, do you foresee a need for additional time? I  
18 mean, do you have something specific in mind today?

19 COMMISSIONER GAZIANO: I began some  
20 drafting of comments. I just think this is a huge  
21 topic, and particularly the reply time is what I would  
22 like. So would you repeat -- would you mind repeating  
23 the --

24 CHAIRMAN REYNOLDS: Not at all.

25 COMMISSIONER GAZIANO: -- comment periods?



1 CHAIRMAN REYNOLDS: Okay. Bear with me.  
2 Concurring and dissenting statements would -- should  
3 be submitted by August 23rd. Rebuttals to  
4 concurrences and dissents should be submitted by  
5 September 7th.

6 COMMISSIONER HERIOT: Is that regardless  
7 of whether we adopt findings and recommendations now  
8 or later?

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER HERIOT: I would think that  
11 only works if we decide, you know, today or decide not  
12 to have.

13 CHAIRMAN REYNOLDS: Well, let me rephrase  
14 that. I assume that we are going to have an up and  
15 down vote on Part A and Part B today.

16 COMMISSIONER HERIOT: Okay.

17 COMMISSIONER GAZIANO: Assuming that, that  
18 is your time. Okay. Because we can -- if those fail,  
19 then we have to adjust the other times. Even assuming  
20 that the Staff Director -- and I hope he certainly is  
21 able on the day that they are received to send us the  
22 other comments -- that is, you know, roughly a two-  
23 week period for replies. I would like a little longer  
24 if that is possible.

25 CHAIRMAN REYNOLDS: Okay. How do you

1 define "a little"?

2 COMMISSIONER GAZIANO: I generally like  
3 our 30-30 normal rule. That doesn't quite fit.

4 COMMISSIONER HERIOT: That is if we don't  
5 -- if we don't adopt findings and recommendations  
6 today, they are due in the future, is that what you  
7 are saying?

8 COMMISSIONER GAZIANO: No, no, no. I'm  
9 saying even if we adopt Part A and Part B today, I  
10 would like as much time as possible for comments and  
11 replies. And so what I'm wondering is, if we could  
12 have the last replies closer to the end of September,  
13 and then we would transmit the -- everything else  
14 would be scrubbed at that point.

15 The staff could send on September -- is  
16 September a month with 30 or 31 days?

17 CHAIRMAN REYNOLDS: Thirty.

18 COMMISSIONER GAZIANO: Thirty. On  
19 September 10, the Word version --

20 CHAIRMAN REYNOLDS: Of everything?

21 COMMISSIONER GAZIANO: -- of everything.

22 CHAIRMAN REYNOLDS: Including the replies.

23 COMMISSIONER GAZIANO: Yes. With gussied-  
24 up copy to follow. So we have met our September --

25 CHAIRMAN REYNOLDS: I understand what you

1 want. Comments? Ashley?

2 COMMISSIONER TAYLOR: I think that's fine.

3 CHAIRMAN REYNOLDS: Arlan?

4 COMMISSIONER HERIOT: I think that's good.

5 That's fine.

6 CHAIRMAN REYNOLDS: Any concerns from --

7 MR. BLACKWOOD: Yes. The deadline that --  
8 moving that people are talking about don't fly, or  
9 it's a tradeoff, because if we are to print and have  
10 it distributed on September 30th --

11 CHAIRMAN REYNOLDS: Well, no, that's not  
12 -- that's not what he is proposing.

13 MR. BLACKWOOD: Okay.

14 CHAIRMAN REYNOLDS: He is proposing that  
15 the finished product be delivered in the next fiscal  
16 year. That what goes out in I believe Word format --

17 COMMISSIONER HERIOT: Send it  
18 electronically.

19 COMMISSIONER GAZIANO: Whatever electronic  
20 transmission, we send the electronic version on the  
21 30th with a very nice cover letter.

22 MR. BLACKWOOD: Even the electronic  
23 version has to be subjected through the editing  
24 process of the editor that we are going to hire to --

25 COMMISSIONER GAZIANO: Everything would be

1 edited according to your previous schedule, except  
2 Commissioner replies, which should not be edited  
3 anyway.

4 MR. BLACKWOOD: Edited, no. But it has to  
5 be put in the format. The copy editors that we have  
6 hired --

7 COMMISSIONER GAZIANO: Could you have --  
8 could you do that in three days?

9 MR. BLACKWOOD: I can't commit to that.

10 COMMISSIONER GAZIANO: Well, I think we  
11 should. I think we should commit to --

12 STAFF DIRECTOR DANNENFELSER: We can't  
13 even commit to 10 days.

14 COMMISSIONER GAZIANO: No, I think we  
15 should commit to making them do it in three days. I  
16 think we should commit to them doing it in -- he can't  
17 say one way or the other that this is --

18 STAFF DIRECTOR DANNENFELSER: We can't  
19 send a bifurcated report to Congress.

20 COMMISSIONER GAZIANO: No, you don't need  
21 to. You don't need to ask for -- I'm saying send them  
22 -- send them -- attach the electrons that include the  
23 Commissioner statements.

24 (Laughter.)

25 CHAIRMAN REYNOLDS: Hold on. Do we have

1 -- do you have additional --

2 MR. BLACKWOOD: Number one, Ms. Jweied  
3 just pointed out to me, we don't send it  
4 electronically to Congress. It would crash. All  
5 right?

6 COMMISSIONER GAZIANO: No. We can figure  
7 that out. Send it to them on a disk.

8 MR. BLACKWOOD: Well, you say that, but  
9 that's --

10 COMMISSIONER GAZIANO: Send it to them on  
11 a disk. I don't care.

12 MR. BLACKWOOD: We will not have it in the  
13 form of a disk by the end of the fiscal year.

14 COMMISSIONER GAZIANO: We can if we get  
15 you our comments three days before the end of the  
16 fiscal year.

17 MR. BLACKWOOD: That's not accurate.

18 COMMISSIONER GAZIANO: I think the staff  
19 should be made to do that. I think it is  
20 unreasonable --

21 CHAIRMAN REYNOLDS: Well, hold on, hold  
22 on. Whoa, whoa, whoa, whoa, whoa, whoa. Now, the  
23 balancing act here is, I mean, I understand the need  
24 for more time. However, we have a procedure in place.  
25 I don't have a problem implementing the rules in a

1 flexible manner. But it shouldn't be arbitrary, and  
2 we should take into account --

3 COMMISSIONER GAZIANO: Yes. September 7  
4 is arbitrary and unreasonable.

5 CHAIRMAN REYNOLDS: But this is the scheme  
6 we adopted. If staff has legitimate concerns in terms  
7 of the logistics, we need to pay attention.

8 MR. BLACKWOOD: What I am saying is --

9 CHAIRMAN REYNOLDS: Legitimate concerns as  
10 opposed to a reflexive no.

11 MR. BLACKWOOD: It is not a reflexive no.  
12 We have looked at the issues, I mean, as far as the  
13 deadlines. The tradeoff is, if we further delay, we  
14 will not hit this fiscal year. Now, we did that last  
15 year, but it is a tradeoff.

16 COMMISSIONER GAZIANO: No. You are not  
17 addressing the precise issue. The precise issue is,  
18 how long does it take to add electrons to an  
19 electron --

20 STAFF DIRECTOR DANNENFELSER: We can't  
21 submit the report electronically.

22 COMMISSIONER GAZIANO: That is false. I  
23 have submitted huge copies to Congress all the time.  
24 That is false. And there is no reason why you can't  
25 deliver a disk.

1 MR. BLACKWOOD: Since there is no  
2 argument, all I can say is that we will do our best.  
3 But I do not believe we will hit this fiscal year.

4 CHAIRMAN REYNOLDS: What did we do last  
5 year? Last year, did we send the document in  
6 electronic form to GPO?

7 STAFF DIRECTOR DANNENFELSER: Last year,  
8 we sent it on a compact disc, and then we made printed  
9 copies available later on. But we did not -- we were  
10 not able to distribute it by sending an e-mail to  
11 Congress with an attachment, if that's what is --

12 COMMISSIONER GAZIANO: Let's send the  
13 compact disc via messenger.

14 STAFF DIRECTOR DANNENFELSER: Well, you  
15 have to get everything formatted, and then you have to  
16 get the compact disc --

17 COMMISSIONER GAZIANO: Everything else  
18 will be formatted but Commissioner replies.

19 CHAIRMAN REYNOLDS: The work we are  
20 talking about --

21 STAFF DIRECTOR DANNENFELSER: Well, then,  
22 it's not a complete report, if it doesn't have  
23 Commissioner replies.

24 COMMISSIONER GAZIANO: Well, everything  
25 will be formatted before the Commissioner replies.

1 Then, you tack them on.

2 CHAIRMAN REYNOLDS: Hold on. Todd, hold  
3 on. Here is my concern. Right now, the Staff  
4 Director and the General Counsel have on several  
5 occasions misstated what Todd has proposed. Todd is  
6 not suggesting that we send the document in piecemeal  
7 fashion. What we are talking about, the work we are  
8 talking about is the reply.

9 The assumption is that everything else  
10 will be done, will be complete, and will be formatted,  
11 and that the only piece of work that is hanging out  
12 there left to be done is the reply. And my question  
13 is -- and since it is unlikely that these replies will  
14 be edited, the reformatting process, how long would it  
15 take? And would we be able to deliver this via e-mail  
16 or compact disc or by mule, would we be able to get it  
17 there by the 30th?

18 MR. BLACKWOOD: I cannot guarantee it.

19 CHAIRMAN REYNOLDS: Okay. What are the  
20 challenges?

21 STAFF DIRECTOR DANNENFELSER: It was  
22 contemplated that it would take a day or two to format  
23 the replies, that everything else would be formatted.

24 But then, once it is all formatted, then it has to go  
25 to the printer, and then you have --



1                   COMMISSIONER HERIOT: We are not asking  
2 for it to be printed.

3                   COMMISSIONER GAZIANO: I am proposing that  
4 we submit the printed version after.

5                   CHAIRMAN REYNOLDS: Could we put it on a  
6 disk and hand-deliver the disk to GPO like we did last  
7 year?

8                   STAFF DIRECTOR DANNENFELSER: But the GPO  
9 is not Congress. GPO is GPO.

10                  COMMISSIONER GAZIANO: And can we give  
11 another copy of that same disk to the members of  
12 Congress that we normally distribute this to?

13                  MR. BLACKWOOD: All I can say, since other  
14 people also have their own sources of knowledge, is  
15 that we work backward with GPO about what is -- here  
16 is our deadline. How fast can you do this?

17                               The short of it is we were told  
18 September 9th.

19                  COMMISSIONER HERIOT: That is for  
20 printing, right?

21                  COMMISSIONER GAZIANO: That is for printed  
22 copy.

23                  MR. BLACKWOOD: All I can is that is  
24 inaccurate. It is not what -- you may be accurate  
25 about they could do a better job, but that is not what

1 they told us.

2 COMMISSIONER GAZIANO: No, no. Well, I'm  
3 not asking --

4 CHAIRMAN REYNOLDS: We have a problem  
5 here. We need to check our tone.

6 COMMISSIONER GAZIANO: Let me communicate:  
7 I am not asking for GPO to deliver this. Maybe that  
8 is the disconnect. I am asking, whatever we deliver  
9 to GPO, we deliver simultaneously to the members of  
10 Congress with a pretty transmittal letter.

11 COMMISSIONER YAKI: Is this necessary to  
12 hash out right now? Can we just take this offline and  
13 move on?

14 COMMISSIONER GAZIANO: No.

15 COMMISSIONER HERIOT: We have got to  
16 establish -- I would oppose anything that regards  
17 Commissioner statements or replies as somehow, you  
18 know, the caboose here. I think these are very  
19 important, and we need to give Commissioners the usual  
20 amount of time to do this, in terms of --

21 CHAIRMAN REYNOLDS: Well, Todd is asking  
22 for more than the usual amount of time.

23 COMMISSIONER GAZIANO: Yes. The usual is  
24 30 and 30.

25 COMMISSIONER HERIOT: Yes, he is asking

1 for less I think.

2 COMMISSIONER GAZIANO: Okay. I would say  
3 Commissioners' statements are due August 30th, and  
4 Commissioner replies are due September -- wait, let me  
5 look at the days of the week. September 25.

6 CHAIRMAN REYNOLDS: Todd, that is too  
7 much. I mean --

8 COMMISSIONER GAZIANO: September 24?

9 CHAIRMAN REYNOLDS: I mean, we have a  
10 schedule here, and it is not --

11 COMMISSIONER HERIOT: Our usual is 30 and  
12 30, is it not?

13 CHAIRMAN REYNOLDS: Okay. Question:  
14 Marty, this particular --

15 COMMISSIONER GAZIANO: I assumed comments  
16 were going to go beyond the schedule when we adopted  
17 the schedule.

18 CHAIRMAN REYNOLDS: -- this particular  
19 schedule, how -- is this in conformance with what we  
20 usually do?

21 MR. BLACKWOOD: No.

22 CHAIRMAN REYNOLDS: No.

23 MR. BLACKWOOD: No, if I may walk you  
24 through it. The 30 and 30 rule -- well, number one,  
25 it was never adopted in -- for this report. The 30

1 and 30 rule for briefing reports was adopted after the  
2 timeline was accepted and adopted by the Commission.  
3 So this is a change.

4 STAFF DIRECTOR DANNENFELSER: We did say  
5 at the time when there was discussion about adding the  
6 additional rebuttal -- 30-day rebuttal period that  
7 that was not in the timeline that was approved by  
8 Commissioners.

9 COMMISSIONER GAZIANO: I assumed they were  
10 going to extend it.

11 STAFF DIRECTOR DANNENFELSER: They would  
12 have to be shortened in order to meet the deadline.

13 CHAIRMAN REYNOLDS: So, Todd, it is your  
14 position that you will need this amount of time, or is  
15 this -- would this be a theoretical --

16 COMMISSIONER GAZIANO: No, I tend to need  
17 more than this amount of time. I think we all should  
18 have this amount of time to review each other.

19 I agree with Commissioner Heriot that our  
20 comments are perhaps the most important part of this  
21 report and should not be sloughed off because we can't  
22 deliver disks simultaneously to two different  
23 government offices.

24 STAFF DIRECTOR DANNENFELSER: The idea  
25 that what we submit to a printer is in a form to

1 submit to Congress is a questionable concept. The  
2 reason you submit it to the printer is that you want  
3 to get it into a form that is presentable to Congress,  
4 not that it is in a lesser form.

5 COMMISSIONER GAZIANO: And our pretty  
6 transmittal letter will tell them that the pretty copy  
7 will come in due time.

8 CHAIRMAN REYNOLDS: Okay. Folks, let's  
9 hear from other folks. We know Todd and Gail's  
10 position, and the position of staff. Pete?

11 COMMISSIONER KIRSANOW: I have an  
12 informational vacuum. I'm not sure how I reconcile  
13 the two positions.

14 CHAIRMAN REYNOLDS: Okay. Any other  
15 comments? Okay. Vice Chair Thernstrom?

16 VICE CHAIR THERNSTROM: Somehow the  
17 response to the General Counsel saying, "Look, this is  
18 not possible for us to do the response," "Do it  
19 anyway," is to me -- it doesn't sit well with me. I  
20 mean, this -- we do have a professional staff here.  
21 They are trying to tell us what is possible.

22 I don't know. I am bothered by this  
23 discussion.

24 CHAIRMAN REYNOLDS: Do you have any  
25 opinions or comments on the substance of the dispute?

1                   VICE CHAIR THERNSTROM: I don't. I have  
2 got -- I'm in the same position as Commissioner  
3 Kirsanow.

4                   COMMISSIONER GAZIANO: I think we have  
5 clarified maybe where the disconnect was. It was that  
6 staff prefers not to deliver an unformatted electronic  
7 version, and I think that can be a policy decision  
8 that we Commissioners make to accommodate our -- I now  
9 understand their position. I just think that there  
10 are greater disadvantages in jamming us on what we  
11 actually put in the report.

12                  CHAIRMAN REYNOLDS: So on day 30, if I  
13 were to walk a CD over with a complete document, with  
14 a nice little cover letter explaining that the  
15 prettied-up version would follow --

16                  STAFF DIRECTOR DANNENFELSER: You wouldn't  
17 get through the security at the House of  
18 Representatives or the White House to deliver it.

19                  CHAIRMAN REYNOLDS: You can't take CDs in  
20 there?

21                  STAFF DIRECTOR DANNENFELSER: You can't  
22 walk in with documents and just walk into somebody's  
23 office and start handing them out.

24                  CHAIRMAN REYNOLDS: If I made an  
25 appointment, would I be --

1                   STAFF DIRECTOR DANNENFELSER: Well, you  
2 would have to make 535 appointments for that day to  
3 deliver it to everybody.

4                   COMMISSIONER HERIOT: We are not required  
5 to deliver it to everybody.

6                   CHAIRMAN REYNOLDS: Who delivers the mail  
7 in the House and in the Senate? GPO.

8                   STAFF DIRECTOR DANNENFELSER: Well, GPO  
9 sends -- GPO has got a higher level security clearance  
10 than the average person who walks in off the street.

11                   COMMISSIONER HERIOT: The idea I think  
12 would be to deliver it to congressional leadership.

13                   CHAIRMAN REYNOLDS: We've got information  
14 coming.

15                   COMMISSIONER GAZIANO: I deliver materials  
16 to congressional offices, particularly leadership  
17 offices, just about every week. I walk in those  
18 buildings. I go through the metal detectors. I hand  
19 them off. I don't understand why that can't be done.

20                   CHAIRMAN REYNOLDS: Okay. How about this  
21 -- why don't we -- Todd, how do you feel about this?  
22 Let's leave the schedule as is. Let's continue a  
23 discussion about the mechanics of how we can get this  
24 done, what constitutes delivery of a statutory report  
25 to Congress.

1                   It is not clear to me that going through  
2 the conventional process using GPO is the only way to  
3 satisfy that requirement. I could be wrong. What do  
4 you think?

5                   COMMISSIONER GAZIANO: I'm sorry. You  
6 want to keep -- did you want to keep the comment  
7 periods the same?

8                   CHAIRMAN REYNOLDS: Keep the comment  
9 periods the same while we have further discussions on  
10 what constitutes delivery to Congress. If their  
11 argument is that the only -- that the only way to  
12 satisfy our obligation under the statute is to use the  
13 conventional approach where we would submit a  
14 formatted document to GPO by a certain length of time,  
15 if they can convince me of that, then I would back  
16 staff's position.

17                   MR. BLACKWOOD: I can answer your question  
18 right now. That is not the only way. All right? It  
19 is the way that we have reviewed, that the agency has  
20 followed in the past. What I am saying is that I  
21 cannot guarantee, in whatever way that the Commission  
22 ends up adopting to deliver to Congress, that we are  
23 going to do it by the end of the fiscal year if we  
24 change what we have already researched in length, what  
25 we have planned to do.



1                   CHAIRMAN REYNOLDS:     So there are  
2 alternatives.

3                   MR. BLACKWOOD:   Not that we are aware of.  
4     Only what I have heard today.

5                   CHAIRMAN REYNOLDS:   So you're saying,  
6 then, that the --

7                   MR. BLACKWOOD:   The alternatives that we  
8 looked through where going through GPO. We also  
9 looked last year, for example, about running our own  
10 disk, going down to Kinko's and doing it. The better  
11 way, the way that was consistent, was to go to GPO,  
12 have them deliver it to Congress and the White House.

13                  CHAIRMAN REYNOLDS:   What I'm trying to get  
14 at --

15                  MR. BLACKWOOD:   Is that saying that is the  
16 only way? No.

17                  CHAIRMAN REYNOLDS:   Yes. I'm trying to  
18 get at the other options. They may not be optimal,  
19 but I want to know what the other options are.

20                  MR. BLACKWOOD:   I can't tell you. We  
21 would have to, as a result of this meeting, look at  
22 every single possible option, what we were told --

23                  CHAIRMAN REYNOLDS:   No, we don't. We  
24 don't have to look at every single option.

25                  MR. BLACKWOOD:   Jerry, all I can tell you

1 is I can't guarantee it is going to get there by  
2 fiscal year --

3 CHAIRMAN REYNOLDS: I'm not asking --

4 MR. BLACKWOOD: -- the end of the fiscal  
5 year, especially when something doesn't come until the  
6 25th.

7 CHAIRMAN REYNOLDS: I am not asking you  
8 that question. I am asking you what the alternatives  
9 are. I am not asking for you to examine every  
10 possibility under the sun. I mean, is there something  
11 that is different from what we have done in the past,  
12 but will still accomplish what we are trying to do? I  
13 am looking for some flexibility. I am looking for  
14 some creativity. That is what I am looking for.

15 MR. BLACKWOOD: I hear you. I can just  
16 tell you, we looked at that at length last year  
17 because of the -- going over the deadlines. This is  
18 as truncated a process as we have gotten it to. The  
19 whole idea -- and we spent a lot of time last year  
20 with shrinking it. This is much later than we have  
21 done it in the past.

22 COMMISSIONER GAZIANO: I thought we set a  
23 precedent last year we didn't have to get it in.

24 MR. BLACKWOOD: That was not a great  
25 precedent. That was doing the best we could.

1                   COMMISSIONER HERIOT:  It's not, and we  
2                   don't -- you know, that is all beside the point.  The  
3                   question is whether or not we can make it by the  
4                   deadline that we would like to make, and that is the  
5                   end of the month.  And, you know, is three days enough  
6                   to get that into a disk and deliver it to  
7                   congressional leadership?  And I strongly suspect it  
8                   is enough time.  And I am very much against what I  
9                   perceive to be a tendency of the staff to believe that  
10                  Commissioner statements and concurrences are somehow  
11                  not very important.

12                  CHAIRMAN REYNOLDS:  Well, no, I don't  
13                  think anyone said that.

14                  COMMISSIONER HERIOT:  Well, I think it is  
15                  treated that way.  We have had a very long discussion  
16                  on this, and it seems to me something that we  
17                  shouldn't have had to have a long discussion on -- the  
18                  notion that somehow Commissioners can be expected to  
19                  turn their stuff out like that, where things don't  
20                  exactly get turned out quickly by the staff.

21                  CHAIRMAN REYNOLDS:  We are talking about  
22                  trying to meet our statutory deadline.  I don't think  
23                  that there have been any comments regarding the  
24                  importance of Commissioner contribution, at least not  
25                  during this conversation.

1                   In any event, I suggest that we have some  
2 additional conversation --

3                   COMMISSIONER GAZIANO:       And that will  
4 affect how I vote on Part A and Part B, unless we have  
5 -- the timing is different, unless we agree as a  
6 Commission to expand the times. I don't want to start  
7 the clock on what may be a very short comment period.

8                   CHAIRMAN REYNOLDS:       Okay.       Folks,  
9 interesting. Okay. If that is the case, then the  
10 suggestion that I made is that we essentially stick  
11 with the dates, have some more conversation with staff  
12 as to alternatives, with the hope of providing  
13 Commissioners additional time for --

14                   COMMISSIONER GAZIANO:   When we are going  
15 to be able to vote on this extended time? Someone may  
16 object to longer times. If we don't decide that at  
17 this meeting --

18                   CHAIRMAN REYNOLDS:   Okay.

19                   COMMISSIONER GAZIANO:   -- Mr. Chairman, I  
20 am worried how we can do --

21                   CHAIRMAN REYNOLDS:   So you want to have a  
22 vote, an up or down vote, on the dates.

23                   COMMISSIONER GAZIANO:   Well, I am just  
24 talking about the alternative is I don't think we can  
25 ever get to my dates. We can never do that if we

1 don't do it today. It is a decision not to do it.

2 COMMISSIONER HERIOT: Why don't we just  
3 set the dates later.

4 VICE CHAIR THERNSTROM: Some of us are not  
5 prepared to vote on that.

6 COMMISSIONER HERIOT: Yes. Why don't we  
7 set the dates for later, subject to further input from  
8 the staff.

9 VICE CHAIR THERNSTROM: Yes. We really  
10 need further input from the staff. I cannot --

11 COMMISSIONER GAZIANO: I know. But why  
12 don't we vote the dates later, and then say --

13 COMMISSIONER HERIOT: What would be the  
14 later dates?

15 COMMISSIONER GAZIANO: -- say that we can  
16 vote to make them shorter or something?

17 VICE CHAIR THERNSTROM: No. I --

18 COMMISSIONER GAZIANO: Or vote to --

19 COMMISSIONER HERIOT: Just make the  
20 default rule that Todd states. And if the staff can  
21 show us that this is impossible, then we can reset it  
22 at the telephone conference.

23 VICE CHAIR THERNSTROM: I would prefer the  
24 default date be exactly as the Chairman just said, let  
25 us go with what has --

1 CHAIRMAN REYNOLDS: Okay. Folks, let's --

2 COMMISSIONER HERIOT: Well, then you are  
3 going to get a negative vote from Todd, and that may  
4 make --

5 VICE CHAIR THERNSTROM: Well, you know --

6 CHAIRMAN REYNOLDS: Let's just vote on it.  
7 Todd, would you like to make a motion?

8 COMMISSIONER GAZIANO: I move that the  
9 Commissioner initial comments, concurrences, dissents,  
10 be August -- due August 30, and distributed to all  
11 Commissioners on the day they are received by the  
12 Staff Director, and that any replies to Commissioner  
13 statements be due on September 24th, Pacific Time,  
14 midnight.

15 CHAIRMAN REYNOLDS: Okay.

16 COMMISSIONER YAKI: What about the west  
17 coast?

18 CHAIRMAN REYNOLDS: Midnight.

19 COMMISSIONER HERIOT: Pacific Time the  
20 east coast and west coast or --

21 CHAIRMAN REYNOLDS: Okay. I second. We  
22 have had discussion. Unless --

23 COMMISSIONER TAYLOR: Hold up. So I  
24 understand, the result of this new timeframe would be  
25 -- the result of this new timeframe would be, as I

1 understand it, we would be submitting an unformatted  
2 rough draft to Congress that would be supplemented at  
3 some later date by a submission that has been properly  
4 formatted. Is that -- that's the net effect --

5 CHAIRMAN REYNOLDS: That is the risk.

6 COMMISSIONER TAYLOR: Right.

7 CHAIRMAN REYNOLDS: Well, actually, that  
8 would be the goal.

9 COMMISSIONER TAYLOR: Right. That's -- so  
10 we would, from our perspective, what we are voting on  
11 is whether as a Commission we want our public face and  
12 interaction with Congress to be framed that way for  
13 our reports or not. Or do we want to go through the  
14 more traditional agency process of GPO? I mean, that  
15 is the real question, isn't it? What phase do we --

16 COMMISSIONER GAZIANO: My second-best  
17 alternative is that we don't deliver anything until  
18 some time in October.

19 COMMISSIONER TAYLOR: We just miss our  
20 deadline?

21 CHAIRMAN REYNOLDS: You stated that was a  
22 -- your second best?

23 COMMISSIONER GAZIANO: Yes. My third is  
24 the timeframe that was --

25 COMMISSIONER TAYLORE: I mean, let me tell

1 you, my preference is -- my preference would not be to  
2 adopt an approach that -- I want to choose my words  
3 carefully here -- that gives the appearance that our  
4 Commission is not run in an orderly, normal fashion,  
5 as other agencies. I mean, I wouldn't want to  
6 adopt --

7 CHAIRMAN REYNOLDS: Just clearing my  
8 throat.

9 (Laughter.)

10 COMMISSIONER TAYLOR: I wouldn't want to  
11 adopt a standing policy which gives, you know, someone  
12 that wrong impression.

13 VICE CHAIR THERNSTROM: A misleading  
14 impression.

15 COMMISSIONER TAYLOR: That's right. I  
16 mean, I thought -- that is my concern.

17 COMMISSIONER GAZIANO: And of the three,  
18 would you feel more comfortable with delivering a  
19 polished report that actually includes thoughtful  
20 Commissioner statements in October?

21 COMMISSIONER TAYLOR: That would be my  
22 preference. But, frankly, this isn't a surprise for  
23 any of us in terms of the timing. And I am -- I think  
24 we have done a great job, certainly since I have been  
25 on the Commission I think, of demonstrating that we



1 can run an organization, an agency, in an orderly  
2 manner. I think we have done a pretty good job of  
3 that, frankly, of improving our operations.

4 And I would hate to put a policy in place  
5 which, again, could be misperceived by some as -- as  
6 being less than orderly and thought through. And that  
7 is my concern, because that is the message I fear some  
8 could get.

9 COMMISSIONER HERIOT: I agree that we have  
10 gone a long way to improving our procedures. But to  
11 me one of the most important things that has been  
12 improved is that we have been -- tried to be fair and  
13 allow Commissioners the requisite amount of time to do  
14 a good job in statements, and not run over the rights  
15 of individual Commissioners in doing that. And I  
16 would hate to see us regress on that.

17 COMMISSIONER TAYLOR: I agree with that,  
18 and so we have a tension between that goal, to allow  
19 as much time as possible, and our goal to present  
20 Congress and the public with an impression of our  
21 agency as one that is efficient and run in an orderly  
22 manner. And, I mean, that is where we are. We've got  
23 to make a choice. That is how I see this vote shaping  
24 up.

25 COMMISSIONER HERIOT: Actually, I don't

1 think we are going to end up with a choice in the  
2 sense that, you know, we can -- we can reamend this  
3 later if it turns out that it is really, really,  
4 really impossible to turn this around in three days.  
5 But law firms do it all the time.

6 CHAIRMAN REYNOLDS: This is not -- this is  
7 not Weil Gotshal.

8 COMMISSIONER HERIOT: I'm sorry?

9 CHAIRMAN REYNOLDS: Weil Gotshal. This is  
10 not a law firm, and that standard --

11 COMMISSIONER HERIOT: So, fortunately, we  
12 only have to do this once a year.

13 CHAIRMAN REYNOLDS: Yes. In any event --

14 COMMISSIONER HERIOT: I think we can do  
15 it.

16 CHAIRMAN REYNOLDS: In any event, Todd,  
17 would you have too much heartburn if we vote -- if the  
18 vote -- if the motion on the table is that we vote to  
19 confirm the original dates?

20 VICE CHAIR THERNSTROM: And then, if that  
21 goes down, let us move to your motion.

22 COMMISSIONER GAZIANO: I just -- you know,  
23 I am not sure I understand. I just -- if -- and I  
24 think Commissioners have heard that if that passes,  
25 that may affect how I vote on Part A and Part B. But

1 I don't know that I understand that there is much  
2 difference in the order.

3 But, again, there is this third option,  
4 and I -- if I could hear from other Commissioners,  
5 maybe none has a majority. It sounded like I heard  
6 Commissioner Taylor say that he might prefer to go  
7 into October.

8 CHAIRMAN REYNOLDS: Did you say that?

9 COMMISSIONER GAZIANO: As opposed to --  
10 (Laughter.)

11 -- as opposed to another option. As I  
12 said, that is my second best. I am there.

13 VICE CHAIR THERNSTROM: We could take  
14 these one at a time. If it goes down --

15 CHAIRMAN REYNOLDS: Well, folks, I have  
16 this -- just curious. Commissioner Yaki has his hand  
17 raised.

18 COMMISSIONER YAKI: I just want to second  
19 the chair's motion and call the question.

20 CHAIRMAN REYNOLDS: Okay. All right.

21 COMMISSIONER GAZIANO: What is the motion  
22 on the table?

23 CHAIRMAN REYNOLDS: Okay. Yours was the  
24 motion on the table. Let's just vote.

25 VICE CHAIR THERNSTROM: No, it's the

1 chair's motion.

2 COMMISSIONER GAZIANO: The chair's motion.

3 CHAIRMAN REYNOLDS: Oh.

4 COMMISSIONER GAZIANO: Your motion to vote  
5 on the schedule as it is.

6 CHAIRMAN REYNOLDS: Okay. Fine, fine.  
7 You didn't have a problem with that. All in favor  
8 please say aye.

9 COMMISSIONER HERIOT: Wait. What --

10 VICE CHAIR THERNSTROM: It is a motion to  
11 vote on the schedule that was distributed.

12 CHAIRMAN REYNOLDS: The ones that --

13 COMMISSIONER HERIOT: And that differs  
14 from Todd's suggestion only --

15 CHAIRMAN REYNOLDS: Yes.

16 COMMISSIONER HERIOT: -- in the reply or  
17 on --

18 COMMISSIONER GAZIANO: And by the way, the  
19 schedule, as distributed, I don't think it was  
20 distributed. I heard it orally. It was never  
21 distributed.

22 COMMISSIONER HERIOT: I have not seen it.

23 COMMISSIONER GAZIANO: And that is part of  
24 my problem. I assume --

25 CHAIRMAN REYNOLDS: You want seven days'

1 notice.

2 COMMISSIONER GAZIANO: What? No, not  
3 seven. Not seven.

4 (Laughter.)

5 I assumed all along, before I heard the  
6 words out of your mouth --

7 VICE CHAIR THERNSTROM: This was e-mailed  
8 to all of us.

9 COMMISSIONER GAZIANO: With Commissioner  
10 comments?

11 VICE CHAIR THERNSTROM: No, this schedule  
12 was e-mailed to all of us.

13 CHAIRMAN REYNOLDS: It was distributed via  
14 e-mail.

15 COMMISSIONER GAZIANO: Okay. Maybe I  
16 missed it, but I thought -- I never thought the  
17 schedule that I saw -- maybe I didn't open the e-mail  
18 -- included that. So I stand corrected if that was  
19 the case.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER HERIOT: I've still got the  
22 question. Is your -- your first date is the same as  
23 Todd's, or it's different?

24 COMMISSIONER GAZIANO: No, no, it's -- he  
25 wants to say August 23 and September 7th.

1 CHAIRMAN REYNOLDS: Right.

2 COMMISSIONER GAZIANO: Which I objected  
3 to.

4 CHAIRMAN REYNOLDS: Right. So let's just  
5 -- let's vote.

6 VICE CHAIR THERNSTROM: Commissioner Yaki  
7 has called the question. Right. And that's all we  
8 are voting on, just the schedule.

9 CHAIRMAN REYNOLDS: That's it.

10 VICE CHAIR THERNSTROM: The schedule.

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

13 (Chorus of ayes.)

14 Objections?

15 COMMISSIONER GAZIANO: No.

16 COMMISSIONER HERIOT: No.

17 VICE CHAIR THERNSTROM: Commissioner  
18 Taylor?

19 COMMISSIONER TAYLOR: I voted. Aye.

20 CHAIRMAN REYNOLDS: Okay. Commissioner  
21 Kirsanow?

22 COMMISSIONER KIRSANOW: I voted aye.

23 CHAIRMAN REYNOLDS: Okay. All right. We  
24 have two votes against. The remaining Commissioners  
25 voted in favor. The motion passes.

1 Now, let's discuss the --

2 COMMISSIONER GAZIANO: Part A.

3 COMMISSIONER HERIOT: Don't we want to  
4 have a backup? We haven't established that Todd's  
5 schedule is not possible. We have only established  
6 that it can't --

7 VICE CHAIR THERNSTROM: We have just taken  
8 a vote. Let us move on.

9 COMMISSIONER TAYLOR: Can I ask a -- you  
10 know, again, my concern is in the face we present to  
11 Congress. I would like the staff to tell us --

12 CHAIRMAN REYNOLDS: To look at  
13 alternatives to see if --

14 COMMISSIONER TAYLOR: Yes. Look at  
15 alternatives.

16 CHAIRMAN REYNOLDS: -- we can get some  
17 additional time for Commissioner comments.

18 COMMISSIONER TAYLOR: And if there is some  
19 precedent that other agencies use. I mean, I just --  
20 I would like to know that. It could be an outlier.

21 CHAIRMAN REYNOLDS: Flexibility,  
22 creativity.

23 COMMISSIONER TAYLOR: Yes. I would like  
24 to know that.

25 COMMISSIONER GAZIANO: I hope that

1 Commissioners never adopt a statutory report schedule  
2 again that doesn't allow 30 minutes for comments and  
3 30 minutes --

4 COMMISSIONER HERIOT: Thirty minutes?

5 (Laughter.)

6 COMMISSIONER GAZIANO: -- 30 days for  
7 comments, 30 days for replies. It was never my  
8 understanding when we adopted the schedule last time  
9 that that would -- once we amended our general rule,  
10 that that wouldn't be applied.

11 CHAIRMAN REYNOLDS: Okay. We should have  
12 raised this, highlighted this. That schedule was  
13 distributed. Maybe we should have --

14 COMMISSIONER GAZIANO: No. The schedule  
15 we adopted didn't have a reply period. The e-mail --  
16 I don't know when the e-mail was sent out.

17 STAFF DIRECTOR DANNENFELSER: There were  
18 some e-mails out about a month ago where there was --  
19 there was considerable dialogue about these dates, and  
20 they were adjusted then -- yesterday what was sent out  
21 was just repeating what was sent out earlier, only  
22 taking it from the dates of assuming today that the  
23 report is passed, what are the dates going forward.

24 But there was a larger schedule that was  
25 distributed earlier, and this whole idea of the



1 response -- the Commissioners' comments and responses  
2 was discussed, and there were e-mails back and forth  
3 about that, and then it was amended and resent out to  
4 Commissioners with those dates.

5 COMMISSIONER GAZIANO: Let's never do it  
6 again.

7 CHAIRMAN REYNOLDS: Okay. All right. Let  
8 us discuss Part A. Very good.

9 COMMISSIONER MELENDEZ: Yes, I have a  
10 question, just briefly. It has to do with the  
11 statistics. On page 192, when I looked through this,  
12 it had the credit scores for different races, and it  
13 had American Indians/Alaska Natives at the highest  
14 credit score, so I had -- when I saw that I thought,  
15 well, you know, it may have to do with the sample size  
16 that they took in relation.

17 So I just am asking that we put a footnote  
18 in that section that basically says that due to the  
19 small sample size and method of determining ethnicity  
20 from Social Security records, the fed study statistics  
21 for Native Americans should be viewed with caution,  
22 because I think it really -- I don't think that's the  
23 truth that I know of as far as Native Americans having  
24 the highest credit score. I just don't see that as an  
25 accurate statistic.

1 MR. BLACKWOOD: This is David Blackwood.  
2 I agree that would be an accurate statement. I think  
3 we put a footnote in a different part about the  
4 American Indian, just because -- because of the small  
5 sample size some of the figures are skewed.

6 COMMISSIONER MELENDEZ: Okay.

7 MR. BLACKWOOD: But we can certainly put  
8 the type of footnote you just mentioned.

9 COMMISSIONER MELENDEZ: Yes, that's all I  
10 ask.

11 CHAIRMAN REYNOLDS: And do we know if -- I  
12 mean, there is a difference in -- I suspect that you  
13 would have a difference in outcome if you looked at  
14 Indians who reside on a reservation, on the  
15 reservation versus Indians who do not.

16 MR. BLACKWOOD: Commissioner Melendez's  
17 special assistant brought some of these matters to our  
18 attention, and we worked up a footnote that I believe  
19 is somewhere else in the report.

20 CHAIRMAN REYNOLDS: Okay.

21 MR. BLACKWOOD: That points out about the  
22 sample size and why some of the figures might be  
23 different. But we can certainly repeat that  
24 information, as you said.

25 CHAIRMAN REYNOLDS: Okay. Great. All in

1 favor please say aye.

2 (Chorus of ayes.)

3 COMMISSIONER GAZIANO: I'm sorry. What  
4 are we -- the final vote, on the whole Part A?

5 CHAIRMAN REYNOLDS: Part A.

6 COMMISSIONER GAZIANO: We are not going to  
7 have any other --

8 COMMISSIONER HERIOT: Wait. We didn't  
9 have any more --

10 COMMISSIONER GAZIANO: -- discussion?

11 COMMISSIONER HERIOT: -- more comments or  
12 questions?

13 COMMISSIONER GAZIANO: Yes, I think a few  
14 of us have a few more --

15 CHAIRMAN REYNOLDS: Comments on Part A?

16 COMMISSIONER HERIOT: I have no comments  
17 on Part A in particular. My comment is simply that I  
18 am going to be abstaining on this report. I am  
19 disappointed in it, but I did not have the time to do  
20 the work that I thought would be necessary to work  
21 this in. We have only been given 600 hours to work  
22 per year, and I did not think this would be the best  
23 use of my time. So I am going to abstain from this  
24 vote.

25 CHAIRMAN REYNOLDS: Okay. Todd, how do

1       you vote?

2                   COMMISSIONER GAZIANO: I am going to  
3       abstain. Although I do appreciate staff's final  
4       efforts to include some of the -- of my comments, I  
5       did have concerns as to -- that it should have been  
6       narrowed, but my -- my real concern right now is that  
7       I don't think the timing is adequate for Commissioner  
8       comments. So I don't think we should go forward with  
9       Part A.

10                   VICE CHAIR THERNSTROM: I call the  
11       question.

12                   CHAIRMAN REYNOLDS: Well, we voted.

13                   STAFF DIRECTOR DANNENFELSER: Well, did  
14       you get everybody else voting?

15                   VICE CHAIR THERNSTROM: Did we vote on  
16       Part A?

17                   STAFF DIRECTOR DANNENFELSER: Oh, you  
18       haven't voted.

19                   COMMISSIONER HERIOT: We haven't voted.

20                   VICE CHAIR THERNSTROM: We have not voted  
21       on Part A.

22                   CHAIRMAN REYNOLDS: Okay. Okay.

23                   VICE CHAIR THERNSTROM: And I am calling  
24       the question.

25                   CHAIRMAN REYNOLDS: Okay. The question

1 has been called. All in favor please say aye.

2 (Chorus of ayes.)

3 Abstentions?

4 COMMISSIONER HERIOT: Heriot. Melendez.

5 COMMISSIONER GAZIANO: And Yaki?

6 CHAIRMAN REYNOLDS: He is not here.

7 COMMISSIONER HERIOT: Well, you want to  
8 hold the vote open for him, I would think. I assume  
9 he wants to vote on this.

10 CHAIRMAN REYNOLDS: Okay.

11 VICE CHAIR THERNSTROM: Well, we can add  
12 his vote when he comes back.

13 COMMISSIONER HERIOT: Yes.

14 CHAIRMAN REYNOLDS: Okay. I'm not sure I  
15 like this as a precedent.

16 COMMISSIONER HERIOT: When the person has  
17 just walked out for a second, that doesn't affect --

18 CHAIRMAN REYNOLDS: Yes. But sometimes it  
19 will in Jerry's interest to make use of the fact that  
20 --

21 (Laughter.)

22 VICE CHAIR THERNSTROM: Well, you're the  
23 chair. You get to decide what to do.

24 CHAIRMAN REYNOLDS: Anyway, I am just  
25 thinking out loud. Okay. We will hold it open until

1 Commissioner Yaki -- until he returns. Okay.

2 VICE CHAIR THERNSTROM: That is a very  
3 good point. People can strategically walk out of the  
4 room, and we cannot keep holding votes open when --

5 COMMISSIONER TAYLOR: Let me say, that may  
6 happen in other agencies, but that would never happen  
7 here.

8 (Laughter.)

9 I want the record to reflect that.

10 COMMISSIONER HERIOT: I want the record to  
11 reflect that people are laughing.

12 (Laughter.)

13 CHAIRMAN REYNOLDS: Okay. We are on to  
14 Part B. I am going to read the -- start reading the  
15 findings. I move that the Commission approve the  
16 following finding -- finding number 1, the effort to  
17 increase home ownership generally, and minority  
18 ownership -- home ownership in particular has been  
19 bipartisan in nature. Is there a second?

20 VICE CHAIR THERNSTROM: Second.

21 CHAIRMAN REYNOLDS: Discussion?

22 COMMISSIONER HERIOT: I'm sorry. That was  
23 the first finding?

24 VICE CHAIR THERNSTROM: Yes.

25 COMMISSIONER HERIOT: I have a substitute

1 motion. I was not real pleased with the findings and  
2 recommendations here. I have some findings and  
3 recommendations that I might be willing to put forth  
4 on this. But in general, I think that this -- we  
5 would be better off just not having findings and  
6 recommendations on this report.

7 So I move that we not have findings and  
8 recommendations at all.

9 CHAIRMAN REYNOLDS: Okay. I second it.  
10 Discussion?

11 (No response.)

12 I'm sure that this is an opportunity for  
13 Commissioner Yaki to express a certain displeasure.

14 COMMISSIONER GAZIANO: No, he's not here.  
15 Let's not invite displeasure.

16 VICE CHAIR THERNSTROM: He is not here.  
17 We need to move on. It is almost noon.

18 COMMISSIONER HERIOT: We can let him vote  
19 on it when he comes back, assuming that he just went  
20 to the men's room.

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

23 (Chorus of ayes.)

24 Any objections?

25 COMMISSIONER MELENDEZ: Abstain. One.

1                   CHAIRMAN REYNOLDS: Okay. We have one  
2                   abstention from Commissioner Melendez. Commissioner  
3                   Yaki did not participate in the vote. The remaining  
4                   Commissioners voted in favor of the motion.

5                   Okay. All right. Next up --

6                   COMMISSIONER HERIOT: Can we go back to  
7                   the health care letter now?

8                   COMMISSIONER GAZIANO: Why don't we go  
9                   back to the health care letter.

10                  CHAIRMAN REYNOLDS: It would be nice to  
11                  wait for Yaki, since he is the one who requested the  
12                  statute.

13                  COMMISSIONER GAZIANO: Alec, would you  
14                  mind telling us where Mr. -- Commissioner Yaki is? Is  
15                  he coming back shortly? That is the only question we  
16                  need.

17                  MR. DEULL: I think so.

18                  CHAIRMAN REYNOLDS: Okay. This is what I  
19                  will do. I will start -- I will just provide an  
20                  update on the conference.

21                  COMMISSIONER HERIOT: Aren't we doing the  
22                  health care letter now?

23                  CHAIRMAN REYNOLDS: We are trying to wait  
24                  for Yaki. He is the one who requested the additional  
25                  information that we now have in front of us. He is



1 wandering the hallways of the Commission.

2 COMMISSIONER GAZIANO: Just give an update  
3 on the conference. Go ahead.

4 CHAIRMAN REYNOLDS: Yes. I will just give  
5 an update on the conference.

6 Okay. On July 10, 2009, at the -- I'm  
7 sorry. At the July 10, 2009, meeting, we discussed a  
8 proposal for the national civil rights conference  
9 titled "A New Era: Defining Civil Rights in the 21st  
10 Century," which had been circulated to Commissioners a  
11 week and a half before the business meeting.

12 The concept paper consisted of an overview  
13 of the conference, its relationship to the  
14 Commission's statutory mission and strategic plan,  
15 proposed subject matter of the panels, recommended  
16 panelists and moderators, a discussion of two leading  
17 venues for the conference, discussion of budget  
18 options, a proposed conference schedule and suggested  
19 conference attendees or invitees. It was designed to  
20 be a jumping-off point for our discussions, and not  
21 the end of the matter.

22 At that meeting, I told everyone that  
23 everything was subject to revision. In any event, I  
24 was authorized at that meeting to proceed under the  
25 plan as modified by our conversations that day, and I

1 was also authorized to speak out -- authorized to  
2 reach out to speakers to assess their availability for  
3 the event for the recommended dates.

4 I also proposed that every two weeks or so  
5 that we receive a progress report on where the  
6 planning process stands. The first such report was  
7 supposed to have occurred last Friday, but the  
8 conference call had to be canceled. We did not have a  
9 quorum. Nevertheless, we did have a conversation for  
10 those Commissioners who participated in the call, and  
11 an update was indeed provided.

12 In terms of content and structure of the  
13 conference, on July 13th, at my urging the Staff  
14 Director sent a followup e-mail giving Commissioners  
15 another opportunity to suggest revisions to the  
16 concept paper and to make panelist recommendations.

17 Now, he noted I was especially interested  
18 in receiving comments from Commissioners Melendez and  
19 Yaki, particularly regarding ways to broaden its scope  
20 to include a discussion of issues related to other  
21 protected classes.

22 Vice Chair Thernstrom, as well as  
23 Commissioners Melendez and Yaki, submitted their  
24 comments via e-mail, and the Staff Director  
25 distributed them to Commissioners on July 23rd. Other

1 Commissioners have provided me with additional  
2 comments and suggestions offline.

3 I appreciate the feedback from  
4 Commissioners and have attempted to incorporate many  
5 of the substantive concerns as to content and  
6 structure into the -- well, into the planning.

7 For example, as Commissioners Thernstrom  
8 and Gaziano, and also Commissioner Melendez, during  
9 our last meeting expressed some concern at the length  
10 of the panels vis-a-vis the proposed number of invited  
11 speakers, based on those concerns, and to ensure an  
12 opportunity for a full discussion of the important  
13 issues proposed, and adequate moderator participation,  
14 most panels have been limited to four speakers.

15 To increase the likelihood of a serious  
16 engagement on each panel, we will provide confirmed  
17 speakers with an outline and organize a pre-conference  
18 call for them with the moderator for the panel to go  
19 over the main points that they will cover. Included  
20 in one of the recommendations was a suggestion that we  
21 commission papers from our participants.

22 The original proposal contained a similar  
23 recommendation and differs only as to the timing when  
24 we will receive the papers. Under the original  
25 proposal, speakers would provide their summary

1        comments at the conference, and then would be given  
2        adequate time to develop these comments into a fully  
3        fleshed out paper or article that would be published  
4        with our conference proceedings if they choose to.

5                Their products would benefit from the back  
6        and forth discussion and diverse perspectives offered  
7        by their fellow panelists and others at the  
8        conference. In their final submissions they could  
9        respond to other participants' positions or additional  
10       questions posed by the Commission, and engage in a  
11       rich debate.

12               I have asked the Staff Director to look  
13       into what the budget may allow in terms of a stipend  
14       for the papers. Apparently, in the past we have  
15       offered \$500.

16               Other recommendations were taken -- were  
17       well taken, but have not been incorporated. For  
18       example, Vice Chair Thernstrom expressed a desire to  
19       limit invited panelists to academic scholars.

20               VICE CHAIR THERNSTROM: No, no, that is a  
21       misunderstanding.

22               CHAIRMAN REYNOLDS: Okay.

23               VICE CHAIR THERNSTROM: No, I never said  
24       that.

25               CHAIRMAN REYNOLDS: Okay. What did you

1 say?

2 VICE CHAIR THERNSTROM: Well, I'd have to  
3 look at the -- my original thing, but I don't think  
4 that, and I didn't say that.

5 CHAIRMAN REYNOLDS: Okay. Well --

6 VICE CHAIR THERNSTROM: That is a  
7 misunderstanding.

8 CHAIRMAN REYNOLDS: Okay. All right.  
9 Moving right along, we also have a suggestion from  
10 Commissioners Yaki and Melendez that the conference be  
11 extended to two days to cover every possible -- well,  
12 to cover additional civil rights issues that we might  
13 address. I think that that is a very good point.

14 Everything won't and can't be covered in a  
15 single day, or even two days for that matter. That,  
16 coupled with the budgetary impacts, cause me to not  
17 embrace that suggestion.

18 In terms of a date and logistics for the  
19 event, the -- as stated during the last unofficial  
20 conversation, the 21st -- the 24th, as a date, turned  
21 out to be problematic. The new date that we have on  
22 the table is October 7th. I have reached out to a  
23 number of speakers, and the 7th appears to be a good  
24 date for most, at least most that I have actually been  
25 able to discuss the conference with.

1                   What else? Overall, the people who I have  
2 contacted have been enthusiastic about the Commission.

3       Most of the people who I have contacted to date have  
4 accepted, with one exception. I have communicated,  
5 though not directly, with other folks, and I am  
6 waiting to set up one-on-one conversations with these  
7 folks. But to date, we have Paul Snyderman who would  
8 be on Panel 1, Kay Heimawitz and Carol Swayne on  
9 Panel 2, Bill Steffney and Roland Warren on Panel 3,  
10 and Ken Marcus on Panel 4.

11                   I hope to reach out and speak to other  
12 folks who have received a brief description of the  
13 conference early next week. I hope -- oh, also, the  
14 deadline for handing over a check to the National  
15 Press Club, that has been extended to the 12th,  
16 Wednesday, whatever that date is.

17                   So, basically, on Monday or Tuesday,  
18 either at the close of business Tuesday or sometime  
19 Wednesday, I will let folks know where we are in terms  
20 of folks who have committed. At that point, I just  
21 want to get input from everyone to see if -- what the  
22 consensus is in terms of is -- you know, do we feel  
23 that we have a sufficient number of people to move  
24 forward?

25                   Commissioner Yaki?

1                   COMMISSIONER YAKI: Chair Reynolds, do we  
2 have a revised paper or concept paper?

3                   CHAIRMAN REYNOLDS: No, not yet.

4                   COMMISSIONER YAKI: Chair Reynolds, I  
5 appreciate certainly the enthusiasm with which you are  
6 pursuing this, and certainly the energy with which you  
7 have done so. I think it comes as no surprise that I  
8 continue to have serious substantive problems with  
9 both the procedural manner in which this conference  
10 has been put together and with the overall tenor and  
11 scope of this conference.

12                   I believe that had we, at the beginning,  
13 started in a much more bipartisan manner we would not  
14 be at the point which I believe we are at today. But  
15 because we did not do so, because this conference is  
16 going forward in a manner where, again, we have no  
17 paper to tell us exactly what is going on, how  
18 anything has changed, who the people we have contacted  
19 are -- have been, who is confirmed.

20                   But most importantly -- and this is with  
21 all due respect to you, Mr. Chair -- the fact that  
22 this, as it was originally conceived as a national  
23 conference on civil rights, the fact that I do not  
24 believe it is reaching out, I do not believe that the  
25 process embraces that, I am just going to say right

1 now and for the record that unless and until we  
2 restart this process in a bipartisan way, form a  
3 subcommittee or task force or whatever it is that you  
4 do -- so choose, to pull together and create a  
5 bipartisan consensus for how this should move forward,  
6 I cannot/will not support or attend this conference.

7 To me, it is -- it is a sorely missed  
8 opportunity for this Commission to work together. And  
9 I believe that it is a sorely missed opportunity in  
10 terms of the dialogue on civil rights that is  
11 desperately needed in this country.

12 But the exclusion of the Democrats from  
13 this from the beginning -- and I don't want to go into  
14 how many times this was agendized and pulled off. I  
15 don't want to go into how many conversations we have  
16 had when and where. The facts simply are that, even  
17 as of today, you know, like I said, kudos to you for  
18 moving forward and with your enthusiasm, but you are  
19 doing so without the participation or input of the  
20 Democrats on this one. And I cannot/will not attend,  
21 cannot/will not support it, and I wish you the best of  
22 luck.

23 But as for me, this conference -- I take  
24 no responsibility, no ownership, and no participation  
25 in this conference as of this point.



1                   CHAIRMAN REYNOLDS: Okay. Commissioner  
2 Yaki, you have expressed these sentiments on at least  
3 two occasions, and it is unfortunate, as I said in the  
4 past, but it is what it is.

5                   COMMISSIONER MELENDEZ: I have a comment.

6           Commissioner Melendez here. You know, this -- some  
7 of the questions we had asked earlier I don't think  
8 are still answered. And as you know, a lot has to do  
9 with the budget. And many of our reporting  
10 requirements -- as you know, we just ended or we are  
11 getting close to ending 2009 at September 30th, and I  
12 have always wanted these reports on surplus, wanted to  
13 know exactly how much accumulation do we have to spend  
14 for the end of the year, and I never received those.

15                   So to me, it also -- if funding was  
16 supposed to come out of surplus of 2009, never really  
17 understood where we were or what the surplus was or  
18 what priorities out of the surplus would be held off  
19 as opposed to if we put more money out of 2009 surplus  
20 into this. I never really understood that.

21                   And then, the last I heard we were talking  
22 about using 2010 money for this, because it sounded to  
23 me like we were crossing the line into the next year,  
24 and it then seemed that we needed a legal opinion from  
25 our General Counsel as to what -- you know, can we do

1 that? Are there any problems with using 2010, you  
2 know, money, kind of using money from 2009 and 2010  
3 for this?

4 So we needed a legal opinion as to whether  
5 or not we could actually do that. And so I never  
6 heard whether or not that is -- any problems there.  
7 But I think the whole thing -- because you said we  
8 don't have enough money to do two days, well, it just  
9 tells me if we don't have enough money to do two days  
10 there may be a question of whether or not we have  
11 enough money to do this whole thing adequately in the  
12 first place, because if you say we can't do two days,  
13 well, it just tells me we must be really on the border  
14 edge of funding here.

15 So, again, with not budget in front of me,  
16 and no -- it is just really not really adequately --  
17 because if we would have operated from a committee, as  
18 we first entailed, we could have been talking about  
19 everything that has led up to now, including the  
20 budget, where is the money going to come from?

21 And then, we would have reported back to  
22 the full Commission as to, okay, it is going to -- our  
23 plan is to take it from here and still -- we are kind  
24 of still up in the air, so -- and then, Commissioner  
25 Yaki was asking about going back to start over again.

1           The only way you could really accomplish  
2           that in my opinion is to move the whole conference to  
3           2010 and do it next year, because I know that to try  
4           to satisfy what he is talking about, to try to do it  
5           as we move forward now, I don't think he is going to  
6           be satisfied of trying to say, "Okay. Michael, throw  
7           in your two cents," now that the ship has left the  
8           dock about three months ago, not stirred by him in any  
9           manner but stirred by the Chairman.

10           So I am just saying, you know, I would  
11           have to agree with Mr. Yaki's position that, you know,  
12           the only way we could go back to start in a bipartisan  
13           manner would be to push this off to next year. So I  
14           am in concurrence that I don't see myself  
15           participating also just based on -- just based on what  
16           Mr. Yaki's concerns are and what mine are, and just  
17           the unanswered questions that I have had on budget and  
18           everything else.

19           So if we want to put this off until next  
20           year, I would again be part of a committee to work on  
21           this, and budget-wise and planning-wise, but I think  
22           trying to do it in this hasty manner is going to give  
23           us a halfway product that I think that is just a waste  
24           of money in my opinion. So that is just my input into  
25           this. I'll just leave it at that.

1 CHAIRMAN REYNOLDS: Other comments?

2 (No response.)

3 Okay.

4 COMMISSIONER HERIOT: We've got a few  
5 things on our agenda that we need to go back to. I  
6 think we said that --

7 CHAIRMAN REYNOLDS: What was the last vote  
8 that we took?

9 COMMISSIONER HERIOT: Well, I think there  
10 are a couple. Commissioner Yaki didn't get a chance  
11 to vote on whether or not to not have findings and  
12 recommendations on the statutory report.

13 CHAIRMAN REYNOLDS: Did you vote on  
14 Part A?

15 STAFF DIRECTOR DANNENFELSER: He didn't  
16 vote on Part A either.

17 CHAIRMAN REYNOLDS: Okay. What is your  
18 vote on Part A?

19 COMMISSIONER YAKI: Can I ask the Court  
20 Reporter to read me what the vote is right now?

21 COMMISSIONER HERIOT: I remember the vote.  
22 It is -- there are a number of abstentions.

23 COMMISSIONER GAZIANO: There are two  
24 abstentions.

25 COMMISSIONER HERIOT: Three. Three

1 abstentions and the rest are yes votes.

2 COMMISSIONER YAKI: I abstain.

3 CHAIRMAN REYNOLDS: What is the vote?

4 COMMISSIONER HERIOT: Four-zero-four.

5 CHAIRMAN REYNOLDS: And so it --

6 COMMISSIONER HERIOT: It passes.

7 COMMISSIONER GAZIANO: The majority of  
8 those voting.

9 CHAIRMAN REYNOLDS: Okay. Next issue,  
10 what else did we have --

11 COMMISSIONER HERIOT: Then we had whether  
12 or not --

13 COMMISSIONER GAZIANO: No findings and  
14 recs on Part B.

15 COMMISSIONER HERIOT: On Part B.

16 COMMISSIONER YAKI: I will abstain on that  
17 also.

18 VICE CHAIR THERNSTROM: Mr. Chairman, I  
19 was going to say, I want to change my vote on that to  
20 an abstention.

21 CHAIRMAN REYNOLDS: Okay. What is the  
22 tally?

23 COMMISSIONER HERIOT: It is still going to  
24 be -- the final tally will still be just yes votes and  
25 a bunch of abstentions.

1 VICE CHAIR THERNSTROM: Yes, that's right.

2 So it is not going to --

3 STAFF DIRECTOR DANNENFELSER: On the  
4 findings or on the report itself?

5 VICE CHAIR THERNSTROM: No, no, just the  
6 findings.

7 STAFF DIRECTOR DANNENFELSER: Oh, okay.

8 COMMISSIONER YAKI: I will vote no on the  
9 findings.

10 COMMISSIONER HERIOT: It still passes.

11 VICE CHAIR THERNSTROM: It is just -- I am  
12 changing my vote only on --

13 COMMISSIONER GAZIANO: The only vote was  
14 not to have any, so that's the only thing you can vote  
15 on.

16 CHAIRMAN REYNOLDS: What was your original  
17 vote?

18 VICE CHAIR THERNSTROM: I believe I voted  
19 to omit the findings and recommendations.

20 COMMISSIONER TAYLOR: Right. Then you  
21 would vote yes.

22 CHAIRMAN REYNOLDS: Folks, going  
23 forward --

24 COMMISSIONER HERIOT: I think we've got it  
25 here. Commissioner Yaki votes yes. That is, to not

1 have findings and recommendations.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER HERIOT: Commissioner  
4 Thernstrom has now abstained rather than voting yes.  
5 Nobody has ever voted no, as far as I know.

6 VICE CHAIR THERNSTROM: That's correct.

7 COMMISSIONER HERIOT: Okay. It passed.

8 VICE CHAIR THERNSTROM: Yes. No, that's  
9 correct. I just -- I just have a problem with these  
10 reports without findings and recommendations, because  
11 nobody ever reads anything else.

12 COMMISSIONER HERIOT: Okay. Health care  
13 letter.

14 CHAIRMAN REYNOLDS: Okay. Yes. We have  
15 the offending language as -- that is how it was  
16 characterized -- in front of us. Commissioner Yaki?

17 COMMISSIONER YAKI: I have read the so-  
18 called offending language, and I find that I am going  
19 to be outvoted, but I am going to put it out there  
20 anyway, which is that I think it is quite a stretch to  
21 try and cast Adarand on programs that go toward  
22 institutions.

23 This is not about set-asides for minority-  
24 owned businesses. This is not about a certain number  
25 of dollars being set-aside for minority-owned

1 businesses. This is about ensuring that full -- that  
2 non-profit organizations, which could be of any nature  
3 whatsoever -- they could be faith-based, they could be  
4 completely majority-owned, they could be two people  
5 working on a reservation in Oklahoma, that they would  
6 be eligible for federal dollars, so long as the people  
7 to whom they brought services to were members of  
8 underrepresented or disadvantaged classes.

9 I, quite frankly, find it a great strain  
10 to make Adarand reach one step beyond to the component  
11 of the people who are being given government services,  
12 rather than to the ownership or nature of the  
13 ethnicity of ownership of the organization itself.

14 So go ahead, send this letter. I will be  
15 sending my own counter letter, because I just find it  
16 quite a stretch to push Adarand one step -- to a level  
17 one step beyond that which the Supreme Court analyzed.

18 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

19 COMMISSIONER KIRSANOW: My reading is a  
20 little bit different than Commissioner Yaki's. I do  
21 see Adarand implications, Croson -- potential Croson  
22 implications, and possibly even Grutter implications  
23 -- strike that, maybe Gratz implications, but with --

24 COMMISSIONER HERIOT: Grutter, too.

25 COMMISSIONER KIRSANOW: -- a Grutter



1 analysis. First of all, there would be grants given  
2 to entities here. This would be something similar to  
3 a set-aside, which implicates Adarand and possibly  
4 downstream Croson.

5 I don't know if there has been -- at least  
6 according to this legislation there hasn't been any  
7 indication that -- as to an articulation of a  
8 compelling governmental interest to engage in this,  
9 and whether or not there has been effort -- an effort  
10 to narrowly tailor this particular program or seek  
11 racing to an alternative. It simply makes reference  
12 to an undefined class of individuals called  
13 "underrepresented minority groups."

14 So from that perspective I think clearly  
15 it falls within Adarand and possibly Grutter, maybe  
16 Gratz down the -- I'm sorry, Grutter and Gratz, and I  
17 think that the letter for that reason is appropriate.

18 I presume there will be regs that will be promulgated  
19 pursuant to this, but absent findings consistent with  
20 a Croson finding, I am not sure how the Congress can  
21 simply summarily make these kinds of dictates that  
22 seem to me to fall directly in the face of Adarand.

23 CHAIRMAN REYNOLDS: Commissioner Taylor?

24 COMMISSIONER TAYLOR: I am going to  
25 abstain, but I don't want my position to be viewed

1       inappropriately. I intend to write my own letter,  
2       because my view of this is that -- and, again, I  
3       recognize this is a personal concern I have -- is that  
4       the issue of greatest concern to me, that we have real  
5       empirical evidence demonstrating that the health  
6       disparities are caused by limited access to high  
7       quality physicians gets lost in this letter, and that  
8       is something I want to focus on in a separate letter.

9       I mean, I --

10                COMMISSIONER HERIOT: I agree.

11                COMMISSIONER TAYLOR: And not because --  
12       you know, not because I agree with Yaki's view of the  
13       law or -- but I just -- this is a personal --

14                COMMISSIONER YAKI: Well, you should.

15                (Laughter.)

16                COMMISSIONER TAYLOR: I just -- so I am  
17       going to abstain for that reason. I want to write a  
18       separate letter on that issue, because I think this,  
19       unfortunately, has -- is a reflection of, again, in my  
20       view the health care issue being used more for  
21       political advantage than to actually improve the  
22       condition of citizens. And so I want to write a  
23       separate letter because of that.

24                COMMISSIONER HERIOT: I just wanted to say  
25       that --

1                   COMMISSIONER KIRSANOW:     If you could  
2 circulate that letter, I would like --

3                   COMMISSIONER TAYLOR:     Okay.

4                   VICE CHAIR THERNSTROM:    Would you be  
5 willing to circulate that letter?

6                   COMMISSIONER TAYLOR:     Oh, absolutely.  
7 Yes, yes.

8                   COMMISSIONER HERIOT:    Commissioner Taylor,  
9 I just wanted to say that one of the reasons I phrased  
10 the motion I did, so that we can tinker with this,  
11 with unanimous consent of those who decide to sign it,  
12 is so we could beef up that just a little bit.

13                  COMMISSIONER TAYLOR:     Okay.

14                  COMMISSIONER GAZIANO:   And is there -- you  
15 know, I may want to join your letter, too, if you  
16 decide you need a second letter. But do you have a  
17 concern with joining -- potentially joining this one  
18 or thinking about this one more? And possibly  
19 sending --

20                  COMMISSIONER HERIOT:    I would like you to  
21 reserve the right to participate in this one, if in  
22 the final product you want to -

23                  COMMISSIONER TAYLOR:    Yes, I will reserve  
24 that. I just -- I don't want my voice to be diluted  
25 in the sense that I want it to be understood what I

1 individually am most concerned with, and it is -- this  
2 is -- again, there are -- I recognize the need to make  
3 political points when you draft things like this.

4 But this is one of those areas where we  
5 can -- again, we just had a panel on this. We now  
6 have empirical evidence demonstrating you can make a  
7 real difference if you just focus on certain things,  
8 and for some reason --

9 COMMISSIONER GAZIANO: I'm not sure what  
10 you mean by -- I don't think that the letter as is  
11 necessarily makes political points. It does make --

12 COMMISSIONER TAYLOR: No, no, no, not the  
13 letter. No.

14 COMMISSIONER GAZIANO: Okay.

15 COMMISSIONER TAYLOR: The legislation.

16 COMMISSIONER HERIOT: Congress.

17 COMMISSIONER TAYLOR: Congress has refused  
18 to actually do what we did and hold a hearing and ask  
19 people practical questions.

20 COMMISSIONER GAZIANO: I'm sorry. I  
21 misunderstood. Thank you.

22 COMMISSIONER TAYLOR: And so I --

23 COMMISSIONER GAZIANO: Thank you.

24 COMMISSIONER TAYLOR: That's what I  
25 want --

1                   COMMISSIONER GAZIANO: But I hope that you  
2 might find it possible to say, "I joined the other  
3 letter, but my emphasis is" --

4                   COMMISSIONER TAYLOR: I definitely want to  
5 keep that option open, but I --

6                   COMMISSIONER HERIOT: It's just like Vice  
7 Chair Thernstrom did -- abstained on one of the  
8 letters but ultimately signed.

9                   COMMISSIONER TAYLOR: Right. Right.

10                  COMMISSIONER HERIOT: Commissioner Taylor  
11 can --

12                  COMMISSIONER TAYLOR: I may do the same  
13 thing. I --

14                  COMMISSIONER HERIOT: It's fine.

15                  COMMISSIONER TAYLOR: I just didn't want  
16 my abstention to be misunderstood. That's all.

17                  CHAIRMAN REYNOLDS: Commissioner Yaki.

18                  COMMISSIONER YAKI: I would just say in  
19 the -- it is dangerous for us to presume that, with  
20 these particular programs, Congress has not held  
21 hearings. I would just note that there are probably  
22 hundreds of federal programs in -- throughout the  
23 Federal Government, and at the Department of  
24 Education, Labor, Health and Human Services, where  
25 these types of grants are routine, that have continued

1 on for years, that have had numerous hearings, whether  
2 you are talking about the Job Corps, whether you are  
3 talking about any number of different types of  
4 programs.

5 So I would not be so quick to presume that  
6 there is no -- there are no statutory hearings and  
7 findings that have been made about these programs in  
8 the past. I think it would be a mistake to make that  
9 assumption.

10 CHAIRMAN REYNOLDS: Commissioner Melendez?

11 COMMISSIONER MELENDEZ: Well, as you know,  
12 this letter is -- you know, my concern is similar to  
13 Ashley's, having to do with health care in general.  
14 And, as you know, Native American health comes by way  
15 of Indian Health Service, and many times they receive  
16 a lot of grants through the Indian Health Service.

17 So it is kind of a complex issue, and so I  
18 would probably not support being signed onto a letter  
19 at this point, mainly because of the trust  
20 responsibility of the Native American tribes, and  
21 sometimes that is viewed as special interest, and  
22 sometimes it is kind of put under a microscope and a  
23 task overturned, giving the trust responsibility to  
24 Native Americans and tribes in this country. So I  
25 would rather just not head in that direction myself.

1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER HERIOT: Ready to vote?

3 CHAIRMAN REYNOLDS: Sure. All in favor of  
4 sending the letter with the qualifications offered by  
5 Commissioner Heriot please say aye.

6 (Chorus of ayes.)

7 Objections?

8 (Chorus of nays.)

9 Abstentions?

10 VICE CHAIR THERNSTROM: I am abstaining.

11 CHAIRMAN REYNOLDS: Okay. One, two,  
12 three, four. Okay. We have two abstentions,  
13 Commissioners Taylor and --

14 COMMISSIONER HERIOT: Two abstentions, two  
15 nos, four yeses.

16 CHAIRMAN REYNOLDS: Commissioners Taylor  
17 and Thernstrom. Two nos, Commissioners Yaki and  
18 Melendez, the remaining Commissioners voted in favor  
19 of the motion. The motion passes.

20 VICE CHAIR THERNSTROM: I am likely to  
21 sign on to whatever Commissioner --

22 COMMISSIONER TAYLOR: I will circulate my  
23 letter as soon as Kim writes it.

24 VICE CHAIR THERNSTROM: I am likely to  
25 sign on to whatever Commissioner Taylor writes.

1                   CHAIRMAN REYNOLDS:   Okay.   Next up, Mr.  
2   Staff Director, please provide us with an update on  
3   the document request to government agencies regarding  
4   their civil rights enforcement activities.

5                   STAFF DIRECTOR DANNENFELSER:   Thank you,  
6   Mr. Chairman.   We have received a letter from Loretta  
7   King at the Justice Department indicating that they  
8   will provide us with electronic copies of items 1, 2,  
9   3, 5, and 6, in our letter of request.   They say that  
10   they are unable to provide us with item 4, which is  
11   "all letters of potential violations sent out during  
12   that month," because the routine public release of  
13   these letters could compromise their enforcement  
14   efforts.

15                   The contact person who will work with us  
16   on the logistics of the document transmission is on  
17   vacation until August 11th.   We have left a message  
18   for him and expect to speak with him next week.   We  
19   have also spoken with the Branch Chief for Policy  
20   Development and Procedures at the Department of Labor  
21   to discuss our request.

22                   She indicates that the Federal Contract  
23   Compliance Manual is undergoing a major review and is  
24   concerned that there could be some confusion in  
25   referring back to it.   She is still in the midst of



1 new activities relating to the stimulus money, such as  
2 hiring new staff, formulating procedures to oversee  
3 contractors, and intends to contact us within a week  
4 or two to start discussions about transmitting  
5 documents responsive to the Commission requests.

6 The Department of Education initiated  
7 treated our correspondence as a FOIA request, but  
8 pursuant to a communication with a senior Office of  
9 Civil Rights official at the Department, they are now  
10 treating our correspondence as a request for  
11 interagency cooperation pursuant to the Commission's  
12 independent statutory authority.

13 We expect to receive the name of the  
14 appropriate contact person by today or early next  
15 week, and we are also expecting an update very soon on  
16 the status of our request from the Department of  
17 Education. The Acting Chairman of the Equal  
18 Employment Opportunity Commission is reviewing a draft  
19 response that the Commission staff has prepared to  
20 this Commission's request, and which they expect to  
21 send to USCCR within the next week. And that is my  
22 update at the moment.

23 COMMISSIONER GAZIANO: Do you mind if -- I  
24 have a question about, first, the DOJ one. How was  
25 the concern about giving us the documents responsive

1 to number 4 communicated to us? Was that in a letter  
2 or on the phone?

3 STAFF DIRECTOR DANNENFELSER: That was in  
4 the letter that we received from Loretta King. That  
5 was articulated in that letter.

6 COMMISSIONER GAZIANO: Would you circulate  
7 that to all of us?

8 STAFF DIRECTOR DANNENFELSER: Sure. I  
9 would be happy to do that.

10 COMMISSIONER GAZIANO: Do you remember if  
11 there was much of a discussion, an explanation of  
12 that? I might accept some of it, or I might ask for  
13 an accommodation. There may be a way that she can  
14 satisfy our request and satisfy her own concern, so I  
15 want to make sure I understand her concerns. And I do  
16 not want to automatically accede to her view on that.

17 So do you remember if it had much of an  
18 explanation?

19 STAFF DIRECTOR DANNENFELSER: I don't  
20 recall the degree of collaboration, but I will send a  
21 copy of the letter to all Commissioners.

22 COMMISSIONER GAZIANO: If it doesn't --  
23 I'm just telling you, if it doesn't have much of an  
24 explanation, if it is just -- then I would like you to  
25 follow up with a request for a more detailed

1 explanation of how this compromises, how we could  
2 possibly accommodate her concerns and still get  
3 relevant information that we need with possible  
4 redactions. I mean, that is the next step on that.

5 Is that --

6 STAFF DIRECTOR DANNENFELSER: Well, I will  
7 send that out to Commissioners, and I will communicate  
8 -- after you and others have received it, I would like  
9 to communicate with you as to how you believe that  
10 followup communication should be articulated.

11 COMMISSIONER GAZIANO: Yes, but it sounds  
12 -- my guess is from what it sounds like is that she  
13 hasn't really given any -- any explanation or defense  
14 of this concern, and so I would like to -- that at  
15 least at a minimum is the next step. And what are  
16 your thoughts about following up with these other  
17 agencies that are still dragging their feet?

18 STAFF DIRECTOR DANNENFELSER: Well, we are  
19 following up with them. Like I say, with the  
20 Department of Labor we do expect to hear from them  
21 about how they can transmit these. And hopefully in  
22 less than two weeks, hopefully, you know, without  
23 about a week from them, and we have not gotten the  
24 name yet from the Department of Education, but we do  
25 expect to hear that.

1           The EEOC has been a longer process in  
2 terms of now we have just heard that they are in the  
3 process of drafting a response, so that is the one  
4 that is furthest behind if you will in providing a  
5 response to us. But we will take a look at their  
6 response and see what kind of followup is appropriate  
7 there.

8           COMMISSIONER GAZIANO: And so at Education  
9 they are going to give us a name of a person, and then  
10 what is the next -- what have they said would follow  
11 from that? Did they indicate that they are then going  
12 to comply? Or did they say that, "Well, we are just  
13 going to name the person who is going to fight with  
14 you?"

15           STAFF DIRECTOR DANNENFELSER: No. I mean,  
16 the initial -- the initial misunderstanding, if you  
17 will, was that they treated it as a FOIA request.

18           COMMISSIONER GAZIANO: Right.

19           STAFF DIRECTOR DANNENFELSER: And we went  
20 back to them and pointed out that we are another  
21 federal agency and would view this as a cooperative --

22           COMMISSIONER GAZIANO: Right.

23           STAFF DIRECTOR DANNENFELSER: -- effort on  
24 the part of two federal agencies. So they have since  
25 acknowledged that point. And we have the name, we did

1 make contact with one person there, but apparently  
2 there is another person. We have subsequently gotten  
3 another name that we have been told will identify the  
4 contact for us, so I can't --

5 COMMISSIONER GAZIANO: But did they say  
6 anything more than they will -- okay. Obviously, it  
7 seems like there is going to have to be some more --  
8 you know, our position has to be, okay, you know, you  
9 name the person who is going to do the work, but we  
10 need to know when it is going to start coming.

11 STAFF DIRECTOR DANNENFELSER: Right. We  
12 will follow up with them and try to get --

13 COMMISSIONER GAZIANO: Okay. Thank you.

14 STAFF DIRECTOR DANNENFELSER: -- that  
15 moving.

16 CHAIRMAN REYNOLDS: Commissioner Heriot?  
17 Did I miss --

18 COMMISSIONER HERIOT: No, it's just --  
19 what month did we originally vote on this?

20 STAFF DIRECTOR DANNENFELSER: I don't  
21 remember the exact --

22 COMMISSIONER HERIOT: Was it February or  
23 March? I mean, it just seems like it was quite a  
24 while ago. Why has this taken so long?

25 STAFF DIRECTOR DANNENFELSER: We have not

1 heard back. We have gotten responses, and,  
2 unfortunately --

3 COMMISSIONER HERIOT: When did we send the  
4 letters? I mean, I am -- are we dealing with lack of  
5 cooperation here, or is it -- you know, what is going  
6 on? How should I interpret the EEOC -- when did they  
7 get their letter requesting this?

8 STAFF DIRECTOR DANNENFELSER: Well, they  
9 got the letter at the same time as the other agencies.  
10 They all went out together. I have to check the  
11 dates. I don't remember the exact dates off hand, but  
12 we --

13 COMMISSIONER HERIOT: Can the General  
14 Counsel help out here?

15 MR. BLACKWOOD: I don't know the dates.  
16 We can find out for you.

17 COMMISSIONER HERIOT: Can we find out? I  
18 am concerned about whether we are dealing with lack of  
19 cooperation or whether we just haven't pursued this  
20 diligently.

21 CHAIRMAN REYNOLDS: So what you are  
22 looking at is a timeline?

23 COMMISSIONER HERIOT: Yes, a timeline.  
24 When did we vote on this? When was the letter sent  
25 out? When did we first follow up with a phone call?

1 Because this is taking really a remarkably long period  
2 of time.

3 CHAIRMAN REYNOLDS: Would it be acceptable  
4 to you if he just distributed an e-mail containing  
5 this type of information?

6 COMMISSIONER HERIOT: Sure, as long as we  
7 do so promptly.

8 CHAIRMAN REYNOLDS: Okay. Okay. Next up,  
9 at the June 12th meeting, Commissioners approved a  
10 motion brought by Commissioner Melendez that the Staff  
11 Director be directed to prepare possible topics and  
12 cost estimates for a new public education project and  
13 a new public service announcement that would be  
14 presented to Commissioners within two months.

15 The Staff Director sent Commissioners a  
16 document with possible public service announcement  
17 ideas, along with cost estimates, on August 3rd.  
18 Questions? Comments? Commissioner Melendez?

19 COMMISSIONER MELENDEZ: Okay. Could he go  
20 over those, as to what he is recommending?

21 STAFF DIRECTOR DANNENFELSER: Well, the --  
22 what was distributed to Commissioners was a memo I  
23 received from the Associate Deputy Staff Director, who  
24 had explored different options and looked into the  
25 costs and logistics of how this would be done.

1           And there were some examples, really just  
2           some examples of what -- the kind of things that we  
3           might pursue, mentioning an agency publication about  
4           knowing your rights, that we might develop a PSA that  
5           would build upon that particular publication, or  
6           looking into the complaint system that we have at the  
7           Department, trying to help people know how they might  
8           file a complaint if they have a civil rights  
9           complaint.

10           I think largely this was an example of how  
11           this whole process would develop, but we would want to  
12           really receive Commissioner input on the particular  
13           topic that we would like to pursue. Those were just a  
14           couple of examples of topics, and, again, there were  
15           some proposals put forward in terms of budget options  
16           that are available, that potentially would be  
17           available, but we did want to receive more important  
18           from Commissioners on a particular topic, since this  
19           would be something that we believe would be of  
20           particular interest to the Commissioners.

21           COMMISSIONER MELENDEZ: Just a question.  
22           How much money do we have available to do anything as  
23           far as the 2009 budget?

24           STAFF DIRECTOR DANNENFELSER: We had  
25           tentatively set aside \$40,000 from the surplus for



1 this particular project that could potentially be  
2 devoted to that. So I think that we would be able to  
3 -- now, these -- some of the options here -- both of  
4 the options here are less than that amount, but we  
5 just, for budgeting purposes with respect to the  
6 surplus, we have identified \$40,000 that could  
7 potentially be available.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano?

9 COMMISSIONER GAZIANO: I appreciate the  
10 research and advice of the Associate Deputy Staff  
11 Director Carr. And if our budget were what it should  
12 be, we probably should do all of this with the  
13 assistance of, you know, multiple media experts.

14 I just want to suggest that while I think  
15 some of the guidelines or her recommendations seem to  
16 suggest we need to do it in a particular way, aren't  
17 necessarily what we -- we could truncate and skip some  
18 of these. I think, for example, we can identify the  
19 purpose, concept, and message of the PSAs without  
20 necessarily employing a professional.

21 So I am glad to get the budget estimate of  
22 what it would cost. And by the way, I am -- maybe I  
23 didn't read it clearly enough. What I am also a  
24 little confused about is this per PSA message costs or  
25 -- I was a little unclear on that. So, but I think

1 that this is sort of the upper range of what we might  
2 need to spend, and I think some of it we could  
3 economize on.

4 CHAIRMAN REYNOLDS: Commissioner Heriot?

5 COMMISSIONER HERIOT: I think that the  
6 memo correctly identifies steps that we have to take.

7 You know, we have got to decide what the purpose,  
8 concept, and the message is going to be, who is our  
9 target audience, you know, all of this makes good  
10 sense. And that at this point, you know, we just have  
11 to start coming up with some ideas.

12 And I think that, you know, when we are  
13 talking about the purpose of the message, and, you  
14 know, who our target audience is, where we have to  
15 start first is these are policy questions for us. A  
16 media consultant can't tell us what our message is.  
17 So if we need a media consultant, we need them, you  
18 know, a little bit further down. And we have to start  
19 coming up with the ideas here, you know, some nice  
20 ideas for quick bullet points that can be made that  
21 would be useful to a radio audience.

22 And I think we ought to ask all members of  
23 the staff, all Commissioners, all special assistants,  
24 to come up with what -- the basic ideas that they  
25 think might be a good idea, and we will see what

1 floats. You know, we now have a document that will  
2 help us go through the steps. Now we have to come up  
3 with a good message, and that is a policy matter for  
4 policymakers.

5 And I think we should accept input from  
6 all staff members, all Commissioners, all special  
7 assistants, and see if we come up with something. But  
8 I don't think it is time to hire a media consultant.  
9 I think that if we do that, it should be way down the  
10 line. First we have to come up with an idea of what  
11 our message is, and, you know, maybe it will have to  
12 be honed by a media consultant, maybe it won't be.

13 As I have said, I have done an awful lot  
14 of public service announcements, not on civil rights  
15 issues, but on issues of constitutional law. And I  
16 got pretty good at coming up with these. You know,  
17 you can't load a lot of the 60 seconds, but you can,  
18 you know, go for one little tiny message. And it's  
19 fun to do, and I think we can come up with some  
20 messages that we can get behind.

21 CHAIRMAN REYNOLDS: Okay.

22 COMMISSIONER MELENDEZ: Just a comment. I  
23 think the last one we did was anti-semitism of public  
24 relations.

25 STAFF DIRECTOR DANNENFELSER: I believe

1 that's correct.

2 COMMISSIONER MELENDEZ: But I would like  
3 to see it narrow into what is happening today, you  
4 know, the idea of aging, the issue that we talked  
5 about, if there is something we could along those  
6 lines as far as a public -- you know, formulating  
7 something. I am kind of looking at some timeframes,  
8 because if we pick a statutory report for 2010, and we  
9 don't pick some of the other ones, then I would like  
10 to see us be able to quickly try to throw in some  
11 ideas to you.

12 But I would like to open within -- by the  
13 next business meeting to kind of in some way start  
14 throwing ideas to -- you know, from the Commissioners  
15 to, you know, include the Staff Director, so that he  
16 can kind of formulate, in some way pick those at some  
17 point.

18 COMMISSIONER HERIOT: I just wanted to add  
19 one little point, and that is college newspapers are  
20 also a good spot for quick little statements. You  
21 know, sometimes a public service announcement can be  
22 trolling for input from college students on an issue  
23 as well.

24 CHAIRMAN REYNOLDS: Well, I think we've  
25 had a lot of good suggestions, but in terms of

1 organizing these ideas and putting them in a shape  
2 that we can actually, you know, get ready to consider,  
3 Marty, I guess this will fall on your shoulders to  
4 take over the comments and recommendations and to  
5 fashion them into something that we can consider.

6 COMMISSIONER MELENDEZ: So I guess it  
7 depends on what you want to do. If you think you have  
8 the time and the staff to do it, or otherwise you want  
9 to hire some consultant at low cost or something like  
10 this and come back to us.

11 COMMISSIONER HERIOT: I don't favor that.

12 COMMISSIONER MELENDEZ: Because somebody  
13 has to --

14 COMMISSIONER HERIOT: Yes.

15 STAFF DIRECTOR DANNENFELSER: Well, I  
16 think what --

17 COMMISSIONER HERIOT: This is policy at  
18 this point. Before we hire a media consultant, we  
19 need to be thinking about what our message is. A  
20 media consultant can't tell you what your message is.

21 COMMISSIONER GAZIANO: Also, are we going  
22 to do three? Are we going to do six different  
23 messages? Are we going to concentrate on three this  
24 year, three next year? Is Jerry going to be the  
25 voice? Is Ashley? Are you? No, that we don't need

1 to do. But those sort of basic questions as far as  
2 whether we really want to just focus on one issue,  
3 whether we want to do every four months have a  
4 different one, whatever.

5 STAFF DIRECTOR DANNENFELSER: Well, I  
6 think we other thing, we need to find some topics  
7 that, as Commissioner Heriot pointed out, I think the  
8 key is to come to an agreement on what would be the  
9 topic that the Commission would want to, you know, use  
10 the announcement for.

11 And I think that is something where I  
12 would like to send an e-mail out to the staff and to  
13 the Commissioners and assistants and invite  
14 suggestions on this.

15 COMMISSIONER MELENDEZ: Okay. Let's just  
16 start working on that, then.

17 CHAIRMAN REYNOLDS: Okay.

18 STAFF DIRECTOR DANNENFELSER: And then,  
19 try to get those before the next meeting, and perhaps  
20 we can have some follow up --

21 CHAIRMAN REYNOLDS: Okay.

22 STAFF DIRECTOR DANNENFELSER: -- at the  
23 next meeting.

24 CHAIRMAN REYNOLDS: Okay. Two issues  
25 left. The Akaka letter, who owns that issue?

1                   COMMISSIONER HERIOT:     Oh, the Akaka  
2     letter. I move --

3                   CHAIRMAN REYNOLDS:    Is there a draft?  
4                   (Laughter.)

5                   COMMISSIONER HERIOT:   Okay. Noted and  
6     logged.

7                   (Laughter.)

8                   COMMISSIONER YAKI:     I'm opposed.

9                   COMMISSIONER HERIOT:   Okay. The Native  
10    Hawaiian Government Reorganization Act is receiving a  
11    lot of attention now in both Houses of Congress. In  
12    June, there was a hearing before the House Natural  
13    Resource Committee, which both Commissioner Yaki and I  
14    attended and testified for. There was a hearing  
15    yesterday on the Senate side.

16                   This may be fast-tracked, so I move that  
17    we send a letter to Congress, to Congressional  
18    leadership, in fact to all members of Congress, both  
19    Houses, that states that the Commission is on the  
20    record in opposition to this bill, and briefly states  
21    the reasons for our opposition.

22                   And I move that that letter be drafted as  
23    soon as possible after this meeting. But if we adopt  
24    in principle that letter now, that those members who  
25    voted yes, or who would want to change their vote to

1       yes after this vote, be able to sign that letter and  
2       get it out in the next few weeks.

3               COMMISSIONER GAZIANO: Can I rephrase just  
4       part of that?

5               COMMISSIONER HERIOT: Sure.

6               COMMISSIONER GAZIANO: That we vote to  
7       send an official Commission letter, if the letter you  
8       draft receives a majority of the Commissioners signing  
9       on.

10              COMMISSIONER HERIOT: Yes, that works. We  
11       send it if we can get a majority of members to sign on  
12       to it.

13              COMMISSIONER GAZIANO: So no one needs to  
14       commit to --

15              COMMISSIONER HERIOT: Yes. You don't need  
16       to commit to signing it.

17              COMMISSIONER GAZIANO: We are committing  
18       to a process.

19              COMMISSIONER HERIOT: Yes. That makes  
20       sense.

21              COMMISSIONER YAKI: I am committing to  
22       opposing it, just, you know, so you know that.

23              COMMISSIONER HERIOT: That's okay.

24              COMMISSIONER TAYLOR: Second.

25              COMMISSIONER MELENDEZ: Second.



1 COMMISSIONER KIRSANOW: Question.

2 CHAIRMAN REYNOLDS: Yes.

3 COMMISSIONER KIRSANOW: Commissioner  
4 Heriot, do you know if -- I am not sure exactly what  
5 the current status is after the June hearing. What is  
6 the status of the bill right now? Has there been any  
7 further movement, any markups, any conferences with --

8 COMMISSIONER HERIOT: All I know is the  
9 Senate has held a hearing and -- yesterday, and my  
10 fear is we won't get our act together in time if we  
11 wait for the September meeting. And so it is better  
12 to send a letter now.

13 And, again, by voting yes you are not  
14 committing to sign the letter. And if we don't get a  
15 majority of members to sign the letter, there won't be  
16 a letter.

17 CHAIRMAN REYNOLDS: Okay. So --

18 COMMISSIONER HERIOT: There won't be an  
19 official Commission letter. Individual Commissioners  
20 could still -- could still send a letter if they  
21 wanted to.

22 CHAIRMAN REYNOLDS: Commissioner Yaki, do  
23 you want to take the lead in drafting the letter?

24 COMMISSIONER YAKI: Sure.

25 (Laughter.)

1                   COMMISSIONER GAZIANO: You can propose  
2 one, and Commissioner Heriot will propose one.

3                   COMMISSIONER HERIOT: Actually, under the  
4 motion, I think you would be within your rights to  
5 propose a letter, which if you then got a majority on,  
6 that would be the official letter.

7                   CHAIRMAN REYNOLDS: That is all  
8 theoretically true and --

9                   COMMISSIONER HERIOT: All of us see that.

10                  COMMISSIONER YAKI: And particle physics  
11 is readily understandable by all of us. Yes, sure.

12                  CHAIRMAN REYNOLDS: The testimony -- I  
13 assume that you folks have written remarks that you  
14 presented at that hearing.

15                  COMMISSIONER YAKI: Mine basically started  
16 off with I don't like Jerry Reynolds, and I don't  
17 trust anything that -- no.

18                  CHAIRMAN REYNOLDS: Well, I think that we  
19 need to -- how do you feel about putting your written  
20 comments --

21                  COMMISSIONER YAKI: I can submit them,  
22 yes.

23                  COMMISSIONER HERIOT: I think I did, but  
24 maybe I didn't. I don't know.

25                  VICE CHAIR THERNSTROM: No, I have not

1       seen yours. I would like to see them.

2                   COMMISSIONER HERIOT: Okay. Then, let's  
3 put them up. Hate crimes testimony, too.

4                   CHAIRMAN REYNOLDS: Okay. Okay. We are  
5 voting for --

6                   COMMISSIONER YAKI: I didn't mean to say I  
7 would put them up. I have written remarks that I can  
8 give to you. That's all I meant to say.

9                   VICE CHAIR THERNSTROM: Well, I would like  
10 to see them.

11                   COMMISSIONER YAKI: Sure.

12                   STAFF DIRECTOR DANNENFELSER: Do we need a  
13 vote to do that, or --

14                   COMMISSIONER YAKI: I think, actually, we  
15 do. Under the old AIs, if we put up -- to put on the  
16 website, I think we should.

17                   CHAIRMAN REYNOLDS: Okay.

18                   COMMISSIONER TAYLOR: Let's vote on the  
19 first motion first, though.

20                   CHAIRMAN REYNOLDS: Okay. Yes.

21                   COMMISSIONER HERIOT: Whether to send the  
22 letter as the motion --

23                   CHAIRMAN REYNOLDS: The Akaka letter,  
24 the --

25                   COMMISSIONER YAKI: Can I vote no first --

1 PARTICIPANT: I'm sure you will.

2 COMMISSIONER YAKI: -- just to get it out  
3 of the way?

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

6 (Chorus of ayes.)

7 COMMISSIONER HERIOT: Did you get a  
8 second?

9 CHAIRMAN REYNOLDS: Don't we have a second  
10 already?

11 COMMISSIONER GAZIANO: We do. I seconded  
12 it with my rephrasing.

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

15 (Chorus of ayes.)

16 Commissioner Melendez, how do you vote?

17 COMMISSIONER MELENDEZ: No.

18 COMMISSIONER TAYLOR: Aye.

19 COMMISSIONER YAKI: No.

20 (Laughter.)

21 CHAIRMAN REYNOLDS: Okay. We have three  
22 nos. Commissioners Melendez and Yaki voted against  
23 the motion. The remaining Commissioners voted for it.  
24 The vote -- the motion, rather, passes.

25 Next up, I move that the testimony, the

1 written testimonies -- the written remarks provided by  
2 Commissioners Heriot and Yaki be posted to the  
3 website. Is there a second?

4 STAFF DIRECTOR DANNENFELSER: This is on  
5 the Akaka.

6 CHAIRMAN REYNOLDS: Right.

7 COMMISSIONER KIRSANOW: Second.

8 STAFF DIRECTOR DANNENFELSER: Was there  
9 also a hate crime --

10 COMMISSIONER HERIOT: And the hate crimes.  
11 Why not hate crimes, too?

12 COMMISSIONER KIRSANOW: Let's do them all.

13 VICE CHAIR THERNSTROM: Sure. I second  
14 that.

15 CHAIRMAN REYNOLDS: Okay.

16 COMMISSIONER KIRSANOW: A friendly  
17 amendment that we also include Commissioner Heriot's  
18 testimony with respect to hate crimes in that motion.

19 CHAIRMAN REYNOLDS: That's okay?

20 COMMISSIONER HERIOT: Yes, that's fine  
21 with me.

22 CHAIRMAN REYNOLDS: Okay. Discussion?

23 (No response.)

24 All in favor please say aye.

25 (Chorus of ayes.)

1                   Objections?

2                   (No response.)

3                   Abstentions?

4                   (No response.)

5                   The motion passes.

6                                   VI. ADJOURN

7                   CHAIRMAN REYNOLDS:     Last issue is a  
8                   personnel matter. We have to go into closed session.

9                                   Okay. Here is the magic language. The  
10                   item that we are about to discuss -- well, okay. I  
11                   move to amend the agenda to add a personnel matter.  
12                   Is there a second?

13                                   COMMISSIONER HERIOT:   Second.

14                   CHAIRMAN REYNOLDS:   Discussion?

15                   (No response.)

16                   Thank you.

17                   All in favor please say aye.

18                   (Chorus of ayes.)

19                   Any objections?

20                   (No response.)

21                   Any abstentions?

22                   (No response.)

23                   Very good.

24                   The following item on the agenda is a  
25                   closed portion of the meeting pursuant to the

1 Commission's regulations implementing the Sunshine  
2 Act. General Counsel and Solicitor, please certify  
3 that the meeting can be closed pursuant to the --  
4 pursuant to Commission regulations.

5 MR. BLACKWOOD: We both so certify.

6 MS. MONROIG: We certify, yes.

7 CHAIRMAN REYNOLDS: Okay. So I move that  
8 the --

9 COMMISSIONER GAZIANO: Who can stay, and  
10 who cannot?

11 CHAIRMAN REYNOLDS: I move to close the  
12 meeting pursuant to exemptions 2, 6, and 10, of the  
13 closed meeting procedures for Commission meetings,  
14 and, furthermore, to authorize the Staff Director to  
15 place any location accessible to the public within one  
16 working day the public -- one business day, the public  
17 vote to close the meeting, an explanation of the  
18 decision to close the meeting, and a list of all  
19 persons attending the meeting. Is there a second?

20 VICE CHAIR THERNSTROM: Second.

21 CHAIRMAN REYNOLDS: All in favor please  
22 say aye.

23 (Chorus of ayes.)

24 Any abstentions?

25 (No response.)

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Any objections?

(No response.)

Okay.

(Whereupon, at 12:50 p.m., the open session portion of  
the meeting was concluded.)



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