

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC COMMISSION MEETING

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THURSDAY, AUGUST 16, 2007

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The Commission convened via teleconference at 5:00 p.m., Gerald a. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Attorney Advisor to the Office
of the Staff Director and Acting Deputy General
Counsel, OGC
PAMELA A. DUNSTON, Chief, Administrative Services
and Clearinghouse Division
MONICA KIBLER
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD

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

(5:00 p.m.)

CHAIRMAN REYNOLDS: This is Chairman Reynolds. It is 5:00 p.m. Eastern Standard Time on August 16th, 2007. We're having a telephonic meeting with commissioners participating from different locations. I will call the names of each commissioner in order to determine if there is a quorum to hold a meeting.

Vice Chair Thernstrom?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Braceras?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIRMAN REYNOLDS: Commissioner Taylor?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER YAKI: Oh, he was on mute.

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1 He was getting off an airplane. So he may be walking
2 through the thingamajig right now.

3 CHAIRMAN REYNOLDS: Okay. We have, let's
4 see -- Staff Director, Mr. Staff Director, how many
5 commissioners do we need for a quorum?

6 STAFF DIRECTOR MARCUS: I believe that
7 when Commissioner Taylor comes back online, we will
8 have a quorum. At this point we have four, and we
9 need one more.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER HERIOT: Is that right? We
12 need more than half?

13 STAFF DIRECTOR MARCUS: Five.

14 COMMISSIONER HERIOT: Five. Okay.

15 CHAIRMAN REYNOLDS: All right. Is the
16 operator still on the line?

17 TELEPHONE OPERATOR: Yes, I am.

18 CHAIRMAN REYNOLDS: Please take us off
19 until Commissioner Taylor is on the line.

20 TELEPHONE OPERATOR: Okay. I will
21 transfer you back.

22 CHAIRMAN REYNOLDS: Thank you.

23 TELEPHONE OPERATOR: You're welcome.

24 (Whereupon, the foregoing matter went off
25 the record at 5:01 p.m. and went back on the record at

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1 5:07 p.m.)

2 CHAIRMAN REYNOLDS: Okay. We are back. I
3 am going to go through the roll call once again to
4 confirm that we have a quorum. Vice Chair Thernstrom?

5 (No response.)

6 CHAIRMAN REYNOLDS: Commissioner Braceras?

7 (No response.)

8 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

9 COMMISSIONER KIRSANOW: Here.

10 CHAIRMAN REYNOLDS: Commissioner Heriot?

11 COMMISSIONER HERIOT: Here.

12 CHAIRMAN REYNOLDS: Commissioner Melendez?

13 COMMISSIONER MELENDEZ: Here.

14 CHAIRMAN REYNOLDS: Commissioner Yaki?

15 (No response.)

16 CHAIRMAN REYNOLDS: Commissioner Yaki?

17 COMMISSIONER HERIOT: Oh, boy.

18 TELEPHONE OPERATOR: He is online. He may
19 just have us on mute.

20 CHAIRMAN REYNOLDS: Oh, but --

21 PARTICIPANT: We need to verify.

22 CHAIRMAN REYNOLDS: Right.

23 (Pause.)

24 CHAIRMAN REYNOLDS: Okay. Everyone hit
25 your mute button. I'm going to try to reach

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1 Commissioner Yaki.

2 COMMISSIONER YAKI: Why?

3 CHAIRMAN REYNOLDS: Oh, Commissioner Yaki?
4 Commissioner Yaki?

5 COMMISSIONER YAKI: All right. I jumped
6 off. My other line rang. So I'm sorry. I thought
7 you guys were still on hold.

8 CHAIRMAN REYNOLDS: Okay. We have five
9 commissioners on the line. So we have a quorum. Is
10 the staff director present?

11 STAFF DIRECTOR MARCUS: I'm here, Mr.
12 Chairman.

13 CHAIRMAN REYNOLDS: Is the court reporter
14 on the line?

15 PARTICIPANT: Neal Gross?

16 THE COURT REPORTER: I am here, Mr.
17 Chairman. If I could ask that when people speak --

18 CHAIRMAN REYNOLDS: If a commissioner
19 wants to make a statement, please identify yourself
20 first.

21 Whenever it is necessary to take a vote,
22 the following procedure will be followed. I will call
23 out the name of each commissioner. The commissioner
24 should then answer "Yes," "No," or "Abstain." After
25 the voting has concluded, I will read aloud the votes

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1 to ensure that the tally is correct.

2 **I. Approval of Agenda**

3 The first item on the agenda is the
4 approval of the agenda. I move that we approve the
5 agenda.

6 COMMISSIONER HERIOT: I have a motion on
7 that.

8 CHAIRMAN REYNOLDS: Yes, Commissioner
9 Heriot?

10 COMMISSIONER HERIOT: I have a motion that
11 we table the consideration of the state advisory
12 committee issues. That is item 5 on the agenda.

13 CHAIRMAN REYNOLDS: Is there a second?

14 COMMISSIONER KIRSANOW: Kirsanow. Second.

15 CHAIRMAN REYNOLDS: Discussion?

16 COMMISSIONER HERIOT: I've got some
17 suggestions I would like to make. And there is not
18 enough time to make it in the meeting. And I think we
19 can handle this next week at our regular meeting.

20 CHAIRMAN REYNOLDS: Okay. Commissioner
21 Kirsanow, how do you vote?

22 COMMISSIONER KIRSANOW: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Heriot,
24 it's your vote. I assume you --

25 COMMISSIONER HERIOT: Yes. I vote yes.

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1 CHAIRMAN REYNOLDS: Commissioner Melendez?

2 COMMISSIONER MELENDEZ: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: Yes.

5 CHAIRMAN REYNOLDS: And I support it also.

6 The vote passes unanimously.

7 **II. Approval of Minutes of August 2 Meeting**

8 CHAIRMAN REYNOLDS: Okay. Next up is the
9 approval of the minutes of the August 2nd, 2007
10 meeting. May I have a motion?

11 COMMISSIONER HERIOT: I did notice the
12 first line said it was the monthly meeting, and it was
13 actually the second meeting of that month, wasn't it,
14 or -- I don't have it in front of me now since I
15 managed to drop it.

16 CHAIRMAN REYNOLDS: Okay. Ken, what we're
17 talking about is the minutes of the August 2nd
18 meeting. Is that correct or no?

19 STAFF DIRECTOR MARCUS: Yes, that's right.
20 It was the first meeting of the month, but
21 Commissioner Heriot does have a point in that it was
22 not the official monthly meeting.

23 COMMISSIONER HERIOT: Why don't we just
24 strike that word?

25 STAFF DIRECTOR MARCUS: Yes.

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1 CHAIRMAN REYNOLDS: Okay. So the motion
2 is for the approval of the minutes of the August 2nd
3 meeting.

4 COMMISSIONER HERIOT: With the word
5 stricken.

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

8 COMMISSIONER HERIOT: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 (No response.)

11 CHAIRMAN REYNOLDS: Okay. Commissioner
12 Kirsanow, how do you vote?

13 COMMISSIONER KIRSANOW: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Heriot?

15 COMMISSIONER HERIOT: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Melendez?

17 COMMISSIONER MELENDEZ: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Yaki?

19 COMMISSIONER YAKI: Aye.

20 CHAIRMAN REYNOLDS: The motion passes
21 unanimously.

22 Next up is --

23 COMMISSIONER YAKI: I didn't hear your
24 vote.

25 CHAIRMAN REYNOLDS: I'm sorry?

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1 COMMISSIONER YAKI: I didn't hear your
2 vote.

3 CHAIRMAN REYNOLDS: Oh, I vote in favor of
4 it. It passed unanimously.

5 **III. Management and Operations, 2009 Budget**

6 CHAIRMAN REYNOLDS: Next up is the 2009
7 budget. A few weeks ago you were provided with a
8 summary of the Commission's fiscal year 2009 budget
9 estimate.

10 As you know, the Commission is asking for
11 a little over 11 million bucks, which is a \$2 million
12 increase over what the Appropriations Committee
13 approved in 2008. Mr. Staff Director, would you
14 please explain this recommended increase?

15 STAFF DIRECTOR MARCUS: Certainly, Mr.
16 Chairman. The increase is attributable to a couple of
17 important items on the draft five-year strategic plan,
18 the most important of which for budgetary purposes are
19 the proposed national civil rights conference, which
20 is part of the strategic objective dealing with
21 developing the national dialogue on civil rights. And
22 the second relates to the strategic objective of
23 reinvigorating the state advisory committees.

24 We have included in this budget both a
25 little over \$100,000 for a fairly ambitious national

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1 conference on civil rights as well as various
2 increases dealing with regional travel to accommodate
3 state advisory committee meetings and a number of new
4 hires, most of which would relate to regional work in
5 the state advisory committees. They would include,
6 for instance, a handful of civil rights analysts as
7 well as administrative assistants and others to deal
8 with that work.

9 Some of the other important items deal
10 with new software and technology for the agency,
11 accommodating the expanded services that we are now
12 receiving from GSA for accounting, replacements for
13 computers and printers. Those are the main areas of
14 increase.

15 And I would be happy to discuss any of
16 them in greater detail. And, of course, we have
17 anticipated cost-of-living increases and other
18 inflation that is also measured in.

19 CHAIRMAN REYNOLDS: Okay. At this point
20 is there a motion to approve submission of an \$11
21 million fiscal year 2009 budget estimate to the Office
22 of Management and Budget?

23 COMMISSIONER KIRSANOW: Kirsanow. So
24 moved.

25 CHAIRMAN REYNOLDS: Is there a second?

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1 COMMISSIONER HERIOT: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 (No response.)

4 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
5 how do you vote?

6 COMMISSIONER KIRSANOW: I have one
7 question on the discussion period, if you don't mind.

8 CHAIRMAN REYNOLDS: Oh, not at all.

9 COMMISSIONER KIRSANOW: Mr. Staff
10 Director, did the budget include salaries? I don't
11 have it in front of me right now, and I am having
12 difficulty calling it up on my computer. Did it
13 include salaries or how many special assistants did it
14 include salaries for?

15 STAFF DIRECTOR MARCUS: I believe it
16 included salaries for the same number of special
17 assistants that are currently on board.

18 COMMISSIONER KIRSANOW: And how many
19 commissioner salaries did it anticipate?

20 STAFF DIRECTOR MARCUS: Eight. Oh, is it
21 seven or eight?

22 PARTICIPANT: Eight commissioners.

23 STAFF DIRECTOR MARCUS: Eight. Eight
24 commissioner salaries. So that if we had to pay fewer
25 than eight commissioner salaries, of course, we would

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1 have a savings.

2 COMMISSIONER KIRSANOW: Okay. Thank you.
3 That's all I want to know.

4 COMMISSIONER YAKI: I have a question that
5 --

6 CHAIRMAN REYNOLDS: Commissioner Melendez?

7 COMMISSIONER YAKI: This is Commissioner
8 Yaki.

9 CHAIRMAN REYNOLDS: Oh, I'm sorry.
10 Commissioner Yaki?

11 COMMISSIONER YAKI: Why don't we put in
12 the budget for special assistants for all the
13 commissioners?

14 CHAIRMAN REYNOLDS: Commissioner Heriot?

15 COMMISSIONER HERIOT: Yes. I would think
16 that should be a priority.

17 CHAIRMAN REYNOLDS: I think it's a good
18 idea. Does anyone have any reservations or concerns?

19 COMMISSIONER KIRSANOW: It can't hurt to
20 ask.

21 CHAIRMAN REYNOLDS: Ken --

22 PARTICIPANT: I'll tell you we're more
23 likely to get that than a lot of other things we would
24 be asking for.

25 STAFF DIRECTOR MARCUS: I don't see any

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1 reason why not. The increases that we put on were
2 primarily driven by the strategic plan, which is why
3 we didn't put that in in the first place, but I don't
4 see why it would hurt to ask.

5 CHAIRMAN REYNOLDS: How much time would it
6 take? I'm assuming that turning the document around
7 wouldn't take long.

8 STAFF DIRECTOR MARCUS: No. I think if
9 the Commission were to approve the budget with
10 additional funds for hiring of eight special
11 assistants, we could fairly easily add that. It would
12 not create any additional time problems.

13 CHAIRMAN REYNOLDS: Additional questions?
14 Concerns?

15 COMMISSIONER MELENDEZ: Yes. This is
16 Commissioner Melendez.

17 As far as the regional offices, as far as
18 the funding, is the rent for all of those regional
19 offices included in the two million or so that is set
20 aside for the regional office line item?

21 STAFF DIRECTOR MARCUS: I believe it is in
22 that line item. And I see a head being nodded. So
23 unless the Director of Management wants to say
24 something to the contrary, let me take just a look.

25 (Pause.)

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1 CHAIRMAN REYNOLDS: Ken?

2 STAFF DIRECTOR MARCUS: Yes? I'm sorry.
3 Office of Management has just indicated to me that
4 it's in the \$1.305 million line item under ASCD for
5 rent, communications, and utilities.

6 CHAIRMAN REYNOLDS: Mr. Melendez, do you
7 have any other questions or comments?

8 COMMISSIONER MELENDEZ: Yes. The other
9 thing was, as far as staffing, he says, I believe, new
10 hires for the regional offices. But I'm not sure
11 exactly what new hires we're talking about. I believe
12 on page 2 under the new hire salary, most of those
13 positions are around 45,000, which would indicate that
14 we're basically hiring probably secretarial or
15 administrative staff. Is that the case?

16 STAFF DIRECTOR MARCUS: The positions
17 would include a civil rights analyst for the Western
18 regional office, a civil rights analyst for the Rocky
19 Mountain regional office, a civil rights analyst for
20 the central regional office, a civil rights analyst
21 for the Midwestern regional office, administrative
22 assistant for the Southern regional office, a
23 writer/editor for the regional program coordination
24 unit.

25 And now this is another hire that's not

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1 related to the regions is a staff assistant in Budget
2 and Finance Division. These are new hires relative to
3 2008.

4 COMMISSIONER HERIOT: Do we need to move
5 to include a budget item for the staff, the special
6 assistants that Michael was talking about?

7 CHAIRMAN REYNOLDS: Yes. I think that
8 that would be --

9 COMMISSIONER HERIOT: Should we do that
10 formally?

11 CHAIRMAN REYNOLDS: Yes.

12 COMMISSIONER HERIOT: Michael, did you
13 want to make that motion?

14 COMMISSIONER YAKI: So moved.

15 COMMISSIONER HERIOT: Second.

16 CHAIRMAN REYNOLDS: Discussion?

17 (No response.)

18 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
19 how do you vote?

20 COMMISSIONER KIRSANOW: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Heriot?

22 COMMISSIONER HERIOT: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Melendez?

24 COMMISSIONER MELENDEZ: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

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1 COMMISSIONER YAKI: Yes.

2 CHAIRMAN REYNOLDS: And I support it also.

3 The motion passes unanimously. Okay. So that was
4 just the addition of funds for assistance. Are there
5 any other comments about the budget?

6 COMMISSIONER MELENDEZ: Yes. Commissioner
7 Melendez here. As far as the travel compared for the
8 regions, we only had for 2008 about 15,000. So has it
9 been increased for the 2009?

10 STAFF DIRECTOR MARCUS: I'm sorry.
11 Commissioner Melendez, are you asking whether the
12 travel for the region has been increased?

13 COMMISSIONER MELENDEZ: Yes.

14 STAFF DIRECTOR MARCUS: Yes. And our
15 request is we are requesting a substantial increase in
16 regional travel to approximately the amount of
17 \$266,000.

18 And the reason that it's so large is
19 twofold: first, because there was virtually no money
20 in the budget for 2008. So we have really had to fund
21 virtually all regional travel out of attrition this
22 year, which is not something we would want to plan
23 for.

24 The second reason is that we would
25 anticipate that we will have a much larger number of

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1 chartered state advisory committees by 2009.
2 Certainly we have a lot more now than we had a year
3 ago, and we certainly hope to continue at this pace.
4 So this is an ambitious travel number which is based
5 on the hope and expectation that we will have a large
6 number of active state advisory committees.

7 COMMISSIONER MELENDEZ: Okay. As far as
8 the Office of General Counsel, we have a decrease in
9 that position over 2008?

10 STAFF DIRECTOR MARCUS: Yes, it is a
11 decrease in that there is one attorney who has left
12 the office. And as between an attorney and a senior
13 secretary, the Office of General Counsel has
14 identified an experienced secretary as being their
15 greatest single need. And so it reflects having a
16 secretary, rather than an attorney, which is
17 significant savings, which we can use for other
18 purposes that are in the budget.

19 COMMISSIONER MELENDEZ: Okay. Based on
20 the fact that the General Counsel is in charge of the
21 statutory reports, by not rehiring an attorney in this
22 position, does that make it more difficult for us to
23 fulfill our obligations?

24 STAFF DIRECTOR MARCUS: Well, I guess
25 there are a couple of things to be said to that.

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1 First, the General Counsel is not typically
2 responsible for the statutory reports. That
3 responsibility is usually that of the Office of Civil
4 Rights Evaluation.

5 This year was an exception in that the
6 Office of General Counsel was primarily responsible
7 with only some support from OCRE. Next year is also
8 something of an exception in the sense that the
9 prisons project will be shared between those two
10 offices.

11 Part of the reason for this, of course, is
12 that it is taking a little more time than initially
13 anticipated to fill the directorship of the Office of
14 Civil Rights Evaluation.

15 I would anticipate that by 2009, the
16 primary responsibility for the statutory report would
17 return to the Office of Civil Rights Evaluation. As
18 you might recall, the statutory report for that year
19 deals with fair housing, which is a kind of report
20 which is a little closer to the statutory reports
21 traditionally conducted by OCRE.

22 Now, having said that, there's no question
23 that it would be more difficult for OGC to conduct its
24 work in 2009 relative to a period, say, a couple or a
25 few years ago because it involves a dwindling staff.

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1 On the other hand, as compared to today,
2 this would, this budget would, reflect an increase in
3 that there will be more staffing as compared to today.

4 COMMISSIONER MELENDEZ: Okay. Another
5 question from Commissioner Melendez. What does the
6 \$109,300 budgeted for contract labor in the ASCD
7 Division cover?

8 STAFF DIRECTOR MARCUS: I'm sorry. Let me
9 just take a moment to look at that item, Commissioner
10 Melendez.

11 (Pause.)

12 STAFF DIRECTOR MARCUS: I believe,
13 Commissioner Melendez, that that line item -- and I'm
14 having OM look at that as we're speaking. I believe
15 that that is a line item in which we would include the
16 event planner, which we would envision having for our
17 national conference.

18 Now, I should add that this budget
19 projects a relatively ambitious conference for 2009.
20 We are realistic about the prospect that we might get
21 less than what we are asking for.

22 And so we are trying to project different
23 levels of conference depending upon the amount of
24 money that we get. But in terms of what we are asking
25 for, we're asking for a budget that is significant

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1 enough that would enable us to hire a professional
2 planner to assist us with some of the aspects of the
3 conference.

4 COMMISSIONER MELENDEZ: One more question.
5 How much money does this budget set aside for the
6 briefings and the hearings that we are supposed to be
7 having in 2009?

8 COMMISSIONER YAKI: This is Commissioner
9 Yaki. I want to add to that because I thought the
10 budget report said only three briefings, report and
11 the conference. I just didn't know where that fit in
12 with the projected backlog of briefing desires for
13 2009.

14 STAFF DIRECTOR MARCUS: As I recall -- and
15 others can help me -- the Commission vote during the
16 Planning Committee meeting was to conduct at least
17 three briefings during that fiscal year.

18 Now the commissioners identified a greater
19 number than three of briefings that they would like to
20 hold. I think numbers of five and six came up
21 together with various caveats that were expressed
22 during the course of the meeting that we might only be
23 able to do three.

24 At the time of the planning meeting, it
25 was my suggestion that if we were to have not only a

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1 statutory report but also a national conference and a
2 report that's based both on the national conference
3 and also on all state advisory committees, that we
4 would need to have a smaller number of briefings than
5 we have had in the past, with three being a number
6 that seemed realistic in light of current national
7 staffing.

8 So the budget assumes approximately three
9 briefings as well as the national conference and the
10 multi-state SAC report and, of course, the statutory
11 report.

12 CHAIRMAN REYNOLDS: Additional questions?

13 COMMISSIONER MELENDEZ: I have just one
14 more question. Why are the Commission's projects a
15 separate column with its own salary and benefit
16 numbers? And does that money cover additional staff?

17 STAFF DIRECTOR MARCUS: Yes.
18 Commissioners, because of the way that question goes
19 to the nature of the Excel spreadsheet and why it was
20 developed, I think I am going to have to turn to the
21 Director of Management, Tina Martin. Tina, you are
22 online?

23 (No response.)

24 CHAIRMAN REYNOLDS: Mr. Staff Director,
25 this is Commissioner Reynolds. Is Ms. Martin on the

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1 line?

2 STAFF DIRECTOR MARCUS: I'm sorry. We're
3 having difficulty with that. I'm just informed that
4 while it seems that she is on the line, her line
5 appears to be muted by the operator. She appears not
6 to be on the speaking line right now.

7 And I don't know whether that's something
8 that we can correct at this point. A staff member has
9 just gone to another line to see if they could work on
10 that.

11 COMMISSIONER MELENDEZ: Okay. Well, also
12 --

13 STAFF DIRECTOR MARCUS: I'm sorry. But
14 aside from the question of the way that the Excel
15 spreadsheet was set up, Commissioner Melendez, is
16 there some policy aspect to that question? Is there
17 somewhere that the question was leading to that I
18 might be able to address or was it just about why it
19 was set up in the way that it was?

20 COMMISSIONER MELENDEZ: Well, I think we
21 need to know who the employees will be in each
22 division of the agency in 2009 and, you know, just so
23 it's a little clearer.

24 STAFF DIRECTOR MARCUS: Okay. Well,
25 perhaps I can help with that. You are trying to find

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1 who the employees will be in the agency?

2 COMMISSIONER MELENDEZ: Well, yes. That's
3 part of it.

4 STAFF DIRECTOR MARCUS: If you're trying
5 to figure out what the differences are in positions,
6 the only new position upon which this budget is
7 predicated would be the ones that I listed a little
8 while ago.

9 Now, those new hires that I listed would
10 amount to approximately \$324,000. And, of course,
11 there are some people who would come on board between
12 now and 2009.

13 For instance, we've spoken earlier about
14 the RPCU chief. And you are aware that there are
15 vacancies that we are filling, for instance, for the
16 directorship of OCRE. And there is an administrative
17 assistant opening that recently developed in ASCD that
18 we will want to fill. And we also have a fairly
19 recent vacancy for a secretary in -- it's somewhere in
20 OM. I want to say it's somewhere in OM that we're
21 going to need to fill.

22 Beyond that, we do not envision in this
23 budget that we would be eliminating positions, only
24 adding them. And they're the sorts of positions I
25 just mentioned.

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1 Does that answer your question?

2 COMMISSIONER MELENDEZ: Yes. Thank you.

3 CHAIRMAN REYNOLDS: Okay. Are there
4 additional questions?

5 (No response.)

6 CHAIRMAN REYNOLDS: Okay. Since there are
7 no questions, Commissioner Kirsanow, how do you vote?

8 COMMISSIONER KIRSANOW: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Heriot?

10 COMMISSIONER HERIOT: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Melendez?

12 COMMISSIONER MELENDEZ: No.

13 CHAIRMAN REYNOLDS: Commissioner Yaki?

14 COMMISSIONER YAKI: Yes.

15 CHAIRMAN REYNOLDS: I'm sorry?
16 Commissioner Yaki?

17 (No response.)

18 CHAIRMAN REYNOLDS: Commissioner Yaki?

19 (No response.)

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER HERIOT: It's funny. I
22 thought he said, "Yes," but it was so faint that --

23 COMMISSIONER KIRSANOW: Yes. That's what
24 it sounded like to me, but --

25 COMMISSIONER HERIOT: Yes but not clear

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1 enough.

2 CHAIRMAN REYNOLDS: Right. Okay. And --

3 COMMISSIONER YAKI: Yes.

4 CHAIRMAN REYNOLDS: Commissioner Yaki,
5 you're back.

6 COMMISSIONER YAKI: That was a yes.

7 CHAIRMAN REYNOLDS: Okay. And I support
8 it also. So with the exception of Commissioner
9 Melendez, who voted against the motion the motion
10 passes unanimously.

11 COMMISSIONER YAKI: How did it pass
12 unanimously if Commissioner Melendez voted no?

13 CHAIRMAN REYNOLDS: I said with the --

14 COMMISSIONER HERIOT: Other than.

15 CHAIRMAN REYNOLDS: Okay. You're going to
16 bust my chops now.

17 COMMISSIONER YAKI: Except for the five
18 runs scored in the bottom of the ninth inning, he had
19 a shut-out.

20 CHAIRMAN REYNOLDS: Your point is a good
21 one.

22 COMMISSIONER HERIOT: Did Commissioner
23 Taylor ever join us?

24 CHAIRMAN REYNOLDS: No, he did not.

25 **IV. Program Planning**

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Commissioner Responses to Briefing Reports

CHAIRMAN REYNOLDS: Okay. Next up. The staff director recently circulated the commissioner statements for approving the briefing report on affirmative action in law schools. Those statements included Commissioner Melendez's and Yak's alternative summaries of the explanations of their opposition votes to each of the approved findings and recommendations. They wish to include these summaries following each finding and recommendation set forth in the briefing report, which was prepared by the staff for publication.

These commissioner-proposed embedded dissents have raised several concerns of other commissioners. The concerns included whether it is proper to provide a summary of the views of the dissenters without also providing a summary of the views of all of the other commissioners, whether it was appropriate to publish statements of the grounds of dissent after each finding and recommendation as well as at the end of the report, and whether we should provide the dissenting commissioners' own formulation of the reasons for their dissent, as opposed to a staff summary of these reasons.

In other to address these issues, I would

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1 like to move that to the extent that commissioners
2 want to provide a finding-by-finding and
3 recommendation-by-recommendation statement for the
4 basis of their dissent or an explanation of their
5 concurrence, they may do so, but it would be included
6 in their dissent or concurrence.

7 Under this motion, this finding-by-finding
8 and recommendation-by-recommendation explanation of
9 concurrences and dissents would take the place of the
10 explanations included after each finding and
11 recommendation in the main body of the report.

12 Is there a second?

13 COMMISSIONER HERIOT: I will second that.

14 You know, I think there are a lot of ways to do this.

15 It's just what I object to right now is these are
16 supposed to be non-argumentative findings and
17 recommendations. And then the only argument is the
18 argument against them.

19 You know, we have either got to let people
20 have both, you know, the arguments in favor and the
21 arguments against, together or we've got to take them
22 and put them somewhere else. I mean, I am open to
23 other ideas on how to do this.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER YAKI: This is Commissioner

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1 Yaki. I mean, I thought we were just following the
2 procedure that we had voted on earlier. I didn't
3 realize it would cause such a fuss.

4 CHAIRMAN REYNOLDS: Well, I believe that
5 the expectation -- and, you know, the expectation was
6 that the staff would make a good faith effort to
7 summarize, briefly summarize, the objection.

8 COMMISSIONER HERIOT: That's asking them
9 to do a lot, you know, to crawl into all of our minds
10 here. You know, we all can do it better ourselves.
11 And it's just a question of where it should be placed.

12 CHAIRMAN REYNOLDS: So as a basis for
13 discussion, though, what do you think of the idea of
14 allowing this but as putting it with the dissent or
15 concurrence?

16 COMMISSIONER HERIOT: I think that's fine
17 just to let people write it themselves and put it in
18 their dissent and concurrence. And it might even
19 encourage, you know, more concurrences, which I think
20 we could, you know, use more of.

21 CHAIRMAN REYNOLDS: Any other comments?

22 (No response.)

23 CHAIRMAN REYNOLDS: Okay. Commissioner
24 Kirsanow, how do you vote?

25 COMMISSIONER YAKI: Point of information.

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1 CHAIRMAN REYNOLDS: Yes, Commissioner
2 Yaki?

3 COMMISSIONER YAKI: When you have a
4 quorum, is it simply a majority of those voting to
5 approve it?

6 COMMISSIONER HERIOT: You mean how does an
7 abstention count?

8 COMMISSIONER YAKI: No. Is it majority of
9 those voting or majority of the body? That's all I'm
10 asking.

11 COMMISSIONER HERIOT: Oh. It's the
12 majority of those voting. But don't take my word for
13 it because I could make a mistake.

14 CHAIRMAN REYNOLDS: Mr. Staff Director?

15 STAFF DIRECTOR MARCUS: Commissioner
16 Heriot is correct. It's the majority of those who are
17 voting.

18 COMMISSIONER YAKI: Well, in that case,
19 bye.

20 CHAIRMAN REYNOLDS: Okay. We were just
21 denied a quorum.

22 COMMISSIONER HERIOT: Well, let's keep on
23 until we can get Ashley back, then.

24 CHAIRMAN REYNOLDS: Okay. Let's hit our
25 mute buttons and track down Mr. Taylor.

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1 COMMISSIONER HERIOT: You might want to
2 work on Abby and Jennifer, too. Actually, once you
3 have a quorum, I think you still have a quorum unless
4 somebody notes its absence.

5 CHAIRMAN REYNOLDS: Well, I believe I just
6 did.

7 COMMISSIONER HERIOT: I think it may be
8 that you have to officially.

9 CHAIRMAN REYNOLDS: Mr. Staff Director?

10 STAFF DIRECTOR MARCUS: It's my
11 understanding -- and we could go to the
12 parliamentary -- that if a member of the quorum
13 notes his departure and that departure leads to a loss
14 of a quorum, then there is no quorum anymore. Madam
15 Parliamentarian?

16 THE PARLIAMENTARIAN: That's correct.

17 COMMISSIONER HERIOT: Okay. So just his
18 act of saying, "I'm leaving." But that wasn't my
19 understanding of how these things work, but fine. Can
20 we find Jennifer or Abby or Ashley?

21 COMMISSIONER MELENDEZ: I also have
22 another meeting at 3:00 o'clock our time, which is
23 about 20 minutes. So either hopefully somebody comes
24 on the line or we can put this on next Friday's.

25 CHAIRMAN REYNOLDS: Folks, I have Ashley

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1 on the other line. Will somebody provide me with the
2 call-in information?

3 COMMISSIONER HERIOT: We have got it?

4 CHAIRMAN REYNOLDS: Ken, do you have the
5 call-in information handy?

6 TELEPHONE OPERATOR: 1-(800) 597-76 --

7 CHAIRMAN REYNOLDS: I'm sorry? Seven six?

8 STAFF DIRECTOR MARCUS: Let me say it.
9 1-(800) 597-7623. This is the staff director.

10 CHAIRMAN REYNOLDS: Okay. And the code?
11 Is there a code? Mr. Staff Director, is there a code?

12 STAFF DIRECTOR MARCUS: I'm sorry. We may
13 have just given you the wrong number. And the person
14 who definitely has the right number has run out of the
15 room a few minutes ago to try and reach Commissioner
16 Taylor. We have got another person going to reach
17 that person and get a new number for you.

18 CHAIRMAN REYNOLDS: Okay.

19 STAFF DIRECTOR MARCUS: The number that I
20 just gave you might have been the public listen-only
21 number, as opposed to the speak number.

22 CHAIRMAN REYNOLDS: Well, when you get the
23 information, please have someone call Commissioner
24 Taylor on his cell phone and provide him with both the
25 number and the code.

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1 STAFF DIRECTOR MARCUS: We will do that,
2 certainly.

3 TELEPHONE OPERATOR: Commissioner
4 Reynolds?

5 TELEPHONE OPERATOR: Mr. Reynolds?

6 CHAIRMAN REYNOLDS: Yes?

7 TELEPHONE OPERATOR: That is actually the
8 correct dial-in number. All she has to do is state
9 that she will be a speaker, and we will open her line.

10 CHAIRMAN REYNOLDS: Okay.

11 STAFF DIRECTOR MARCUS: Operator, of
12 course, you will expect that he will identify himself
13 as Ashley Taylor in order for you to do that.

14 TELEPHONE OPERATOR: Okay. That's fine.
15 That's fine. That is fine. I will go ahead and step
16 away so I can pick that line up for you.

17 (Pause.)

18 COMMISSIONER MELENDEZ: I have to get
19 going also. So, unfortunately, I have to leave the
20 quorum at this point. Commissioner Melendez.

21 CHAIRMAN REYNOLDS: Okay. You can't hang
22 on for ten minutes?

23 COMMISSIONER MELENDEZ: I've got to be
24 across town, and it's --

25 COMMISSIONER HERIOT: You're making a

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1 mistake, Arlan.

2 COMMISSIONER MELENDEZ: I am?

3 COMMISSIONER HERIOT: Yes. You're not
4 doing what's in your interest.

5 TELEPHONE OPERATOR: Commissioner Taylor
6 is on.

7 COMMISSIONER TAYLOR: I'm on.

8 CHAIRMAN REYNOLDS: Okay. We have a
9 quorum.

10 COMMISSIONER HERIOT: Let's vote.

11 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
12 how do you vote?

13 COMMISSIONER KIRSANOW: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Heriot?

15 COMMISSIONER HERIOT: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Melendez?

17 COMMISSIONER MELENDEZ: Against.

18 CHAIRMAN REYNOLDS: Commissioner Taylor?

19 COMMISSIONER TAYLOR: Help me out on the
20 motion.

21 CHAIRMAN REYNOLDS: Okay. It's a motion.

22 This is the issue regarding dissents, --

23 COMMISSIONER TAYLOR: Okay.

24 CHAIRMAN REYNOLDS: -- whether they should
25 be included in the body of the document or in the back

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1 along with the dissents and concurrences. The motion
2 is for that type of commentary to be placed in the
3 dissent and concurrence.

4 COMMISSIONER TAYLOR: Are you all there?

5 COMMISSIONER HERIOT: Yes.

6 COMMISSIONER TAYLOR: Okay. I hate to do
7 this, but is there a two-sentence summary of the
8 argument?

9 COMMISSIONER HERIOT: Yes. Right now we
10 have only the reason to be against as the findings and
11 recommendations written with the findings and
12 recommendations. So if we want to be fair, we have to
13 put in also the reasons to be for it.

14 COMMISSIONER TAYLOR: Right.

15 COMMISSIONER HERIOT: And, therefore, the
16 easiest thing to do at this point is to put them in
17 the concurrences and dissent because otherwise --

18 COMMISSIONER YAKI: This is Commissioner
19 Yaki. The whole point of why we did this in the first
20 place is because it was to give the minority a chance
21 to disagree with the findings on a point-by-point
22 basis, which is a basis for our votes in briefings to
23 allow vote by vote.

24 COMMISSIONER HERIOT: Which is fine. The
25 only problem is the findings and recommendations are

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1 not argumentative.

2 COMMISSIONER YAKI: I'm sorry,
3 Commissioner Heriot. I believe I was talking, and you
4 weren't here during the debate. So if you would just
5 give me the pleasure of --

6 COMMISSIONER HERIOT: You were the person
7 who already left the quorum, Mr. Yaki.

8 CHAIRMAN REYNOLDS: Hold on. Commissioner
9 Yaki, first, I'm surprised that you are on the line.

10 COMMISSIONER YAKI: I came back in because
11 Commissioner Melendez asked me to come back on. But I
12 don't know if Commissioner Melendez is still here or
13 not.

14 COMMISSIONER HERIOT: He's already voted.

15 CHAIRMAN REYNOLDS: The discussion portion
16 is closed. We are in the process of voting.

17 COMMISSIONER TAYLOR: Well, let me just by
18 way of --

19 COMMISSIONER YAKI: Commissioner Heriot
20 was doing the discussion portion. So she reopened it.
21 So I felt a need to come in.

22 CHAIRMAN REYNOLDS: The discussion portion
23 you elected --

24 COMMISSIONER YAKI: I mean, this is --

25 CHAIRMAN REYNOLDS: -- to get off the line

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1 during that --

2 COMMISSIONER YAKI: -- unanimously. This
3 was put forth by Commissioner Braceras as a way of
4 ensuring that all viewpoints are expressed in these
5 briefing reports. And now because some people don't
6 like it or because they don't like the fact that it
7 muddies the reports that people actually disagree with
8 it within the body of the report itself, now we're
9 going to repeal it? This is This is ridiculous.

10 COMMISSIONER HERIOT: We're just trying to
11 let --

12 COMMISSIONER YAKI: Guys --

13 CHAIRMAN REYNOLDS: But, Commissioner
14 Yaki, your ability to include language --

15 COMMISSIONER YAKI: Then why bother with
16 voting on the findings point by point when you can
17 just disagree with the individual ones that you don't
18 like in the dissent? That doesn't track. That's not
19 why we did it.

20 COMMISSIONER HERIOT: You're still going
21 to have the fact that you dissented some particular
22 finding or recommendation. That's noted.

23 COMMISSIONER YAKI: That's not the point.
24 The point is that we allowed -- the reason why we did
25 it was to distinguish why we would vote yes on some,

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1 no on others because we --

2 COMMISSIONER HERIOT: Are you arguing that
3 only those who dissent should have the right to do
4 this --

5 COMMISSIONER YAKI: -- vote of these
6 particular issues. Now, I'm sorry. I guess you don't
7 like the way it looks. You don't like the fact that
8 someone is going to put in a statement below there
9 "Commissioners Yaki and Melendez disagree with this
10 idiotic finding." Well, tough luck. That's what we
11 voted on. And now, you know, you're going to --

12 CHAIRMAN REYNOLDS: No one is denying you
13 --

14 COMMISSIONER YAKI: -- about it. And
15 don't say, "Well, we have to do it this way" or "this
16 way." Just say you don't like the way it looks. It
17 doesn't look as pretty to your friends who are trying
18 to wave it around to their friends.

19 CHAIRMAN REYNOLDS: No one is taking away
20 your ability to express your support or your
21 disagreement.

22 COMMISSIONER YAKI: Bit by bit, Mr. Chair,
23 over the past three months, that has not been the
24 case.

25 CHAIRMAN REYNOLDS: Would you like to give

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1 me an example of what has occurred over these last --

2 COMMISSIONER YAKI: I will put it to you
3 in a nice little polite letter, Mr. Chairman. But for
4 right now, this is just ridiculous. I vote no. Make
5 sure that Ashley votes yes because that's what you
6 want him to do. And let's move on with this.

7 CHAIRMAN REYNOLDS: Okay. Well, thank you
8 for rejoining us.

9 Mr. Taylor, how do you vote?

10 COMMISSIONER TAYLOR: Aye.

11 CHAIRMAN REYNOLDS: And I also vote in
12 favor. Please let the record reflect that
13 Commissioners Melendez and Yaki voted against it and
14 that the remaining commissioners, Commissioners
15 Taylor, Heriot, Kirsanow, and Reynolds, voted in favor
16 of it. The motion passes.

17 **V. State Advisory Committee Issues**

18 We have tabled the vote on the state
19 advisory committees, the ones that were scheduled, New
20 Jersey --

21 COMMISSIONER YAKI: Reconsider that vote?

22 CHAIRMAN REYNOLDS: I'm sorry?

23 COMMISSIONER YAKI: I move to reconsider
24 that vote.

25 CHAIRMAN REYNOLDS: Is there a second?

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1 COMMISSIONER HERIOT: Can a person who
2 voted no move to reconsider?

3 COMMISSIONER YAKI: I voted yes.

4 CHAIRMAN REYNOLDS: He voted in favor of
5 it. Is there a second?

6 COMMISSIONER YAKI: Check your log better
7 next time.

8 CHAIRMAN REYNOLDS: Is there a second?

9 (No response.)

10 CHAIRMAN REYNOLDS: Since there is no
11 second, we will not reconsider it. That is all that
12 we have on the agenda today. This teleconference is
13 adjourned.

14 (Whereupon, the foregoing matter was
15 concluded at 5:47 p.m.)

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