

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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TUESDAY, AUGUST 19, 2008

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

PRESENT:

GERALD A. REYNOLDS, CHAIRMAN
ABIGAIL THERNSTROM, VICE CHAIRMAN (via telephone)
TODD F. GAZIANO, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER (via telephone)
ARLAN D. MELENDEZ, COMMISSIONER (via telephone)
ASHLEY L. TAYLOR, JR., COMMISSIONER

MARTIN DANNENFELSER, Staff Director

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STAFF PRESENT:

HYGINUS AGUZIE
DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Director, RPCU
DEBRA CARR, ESQ., Associate Deputy Staff Director
DEMITRIA DEAS
ROBERT LERNER, Assistant Deputy Staff Director, OCRE
TINALOUISE MARTIN, Director, Office of Management
EMMA MONROIG, Solicitor + Parliamentarian
LENORE OSTROWSKY, Attorney-Advisor, (OSD)
EILEEN RUDERT
KARA SILVERSTEIN, Attorney-Advisor (OSD)
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
JACK KAMMER
DOMINIQUE LUDVIGSON
RICHARD SCHMELCHEL
KIMBERLY SCHULD

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A-G-E-N-D-A

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P R O C E E D I N G S

(9:40:07 a.m.)

CHAIRMAN REYNOLDS: Okay. The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights taking place on August 19th, 2008. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C., with Commissioners Thernstrom and Kirsanow participating by phone. The remaining Commissioners present are Commissioners Heriot, Gaziano, Taylor and Reynolds.

The first item on the agenda is the approval of the agenda.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: I move that we approve the Agenda. Is there a second?

COMMISSIONER TAYLOR: Second.

COMMISSIONER GAZIANO: Can we amend the agenda?

CHAIRMAN REYNOLDS: Yes, we can.

COMMISSIONER GAZIANO: I move to amend the agenda wherever the -- to place wherever the Chairman would like a discussion of the 2008 Statutory Report.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion? All in

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1 favor, please say aye.

2 (Chorus of ayes.)

3 CHAIRMAN REYNOLDS: Abby, I didn't hear
4 you.

5 VICE CHAIR THERNSTROM: Yes, Gerry.
6 You're not going to be able to hear me very well. I
7 guess it's -- I didn't -- I'm sorry, I sort of blanked
8 out for a minute. I didn't really listen, but I'll go
9 along with whatever people are deciding on.

10 CHAIRMAN REYNOLDS: It's just a motion to
11 add a discussion of the Statutory Report.

12 VICE CHAIR THERNSTROM: Oh, that's fine.
13 Okay.

14 COMMISSIONER GAZIANO: The current
15 Statutory Report.

16 CHAIRMAN REYNOLDS: And we also voted that
17 you do all the work, and we're glad that you have
18 agreed to do this.

19 VICE CHAIR THERNSTROM: Okay. I go along
20 with that, too. You're going to be delighted with -

21 (Laughter.)

22 CHAIRMAN REYNOLDS: Okay. The motion
23 passes unanimously.

24 Okay. Next up, approval of the --

25 COMMISSIONER HERIOT: Do we want the Chair

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1 to decide where that's going to go?

2 CHAIRMAN REYNOLDS: Oh, it's going to go -
3 - it will be the first item under Program Planning.
4 So it will go 2008 Statutory Report and 2009 Briefing
5 Topics, 2009 Statutory Report.

6 Has someone joined us? Pete?

7 COMMISSIONER KIRSANOW: I'm here.

8 CHAIRMAN REYNOLDS: Abby?

9 VICE CHAIR THERNSTROM: I'm still here.

10 CHAIRMAN REYNOLDS: Okay. Yaki, Melendez.

11 All right. The second item is the
12 Approval of the Minutes of the July 11th, 2008 meeting,
13 along with the -- I'm sorry, the July 28th, 2008
14 meeting.

15 **II. APPROVAL OF MINUTES**

16 JULY 11, 2008 MEETING

17 CHAIRMAN REYNOLDS: I make this motion.
18 Is there a second?

19 COMMISSIONER HERIOT: Second.

20 CHAIRMAN REYNOLDS: Discussion?

21 COMMISSIONER GAZIANO: Yes. We're on the
22 first Minutes. Just clarification. Maybe the Minutes
23 are fine as submitted, but under Program Planning,
24 first paragraph --

25 CHAIRMAN REYNOLDS: I'm sorry. Which one

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1 are you looking at?

2 COMMISSIONER GAZIANO: I'm sorry. Can we
3 take them both separately. I have one comment for
4 each. You want to take July 11th first?

5 CHAIRMAN REYNOLDS: Just let me know where
6 you are.

7 COMMISSIONER GAZIANO: Okay. July 11th,
8 page 2, Program Planning, first paragraph second
9 sentence. The previous sentence says that
10 "Commissioners approved the motion to compel list for
11 the year of briefing topics, and then vote to select
12 items from that list on a quarterly basis with the
13 understanding that items can be added or subtracted
14 from the list." That makes sense to me.

15 The next sentence I think needs a
16 clarification. "In addition, the list will include
17 all previously approved and unscheduled topics from
18 2008, 2009." I would like it clarified that the list
19 will include them upon the request of a particular
20 Commissioner or two, and not because they are
21 automatically going to be continued from year to year
22 for infinity. I, again, just don't want the -- and I
23 think that reflects our discussion.

24 CHAIRMAN REYNOLDS: Okay. Is that --

25 COMMISSIONER MELENDEZ: Commissioner

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1 Melendez on the line.

2 CHAIRMAN REYNOLDS: Oh, very good.
3 Commissioner Melendez has joined us.

4 COMMISSIONER GAZIANO: So I don't know
5 that it needs to be corrected, but if you want me just
6 to clarify, I can change the way it would read.

7 CHAIRMAN REYNOLDS: Has anyone reviewed
8 the Minutes on this point to confirm that his
9 clarification conforms to what was discussed, what was
10 agreed to? I'll take that as a no.

11 COMMISSIONER HERIOT: There was definitely
12 some sort of motion. It was 5-2.

13 COMMISSIONER GAZIANO: Well, the 5-2 was
14 on the whole program, and then there was a back and
15 forth on whether these would automatically be put in.
16 And then, as I remember it, we just said well, since
17 you've requested it, they'll be on the list. But I
18 thought we did not take a vote, we did not have a
19 majority that they would --

20 CHAIRMAN REYNOLDS: Automatically.

21 COMMISSIONER GAZIANO: -- automatically
22 forever more be on these lists, that they were on the
23 list because any Commissioner wants them to be. That
24 might not make a difference, but given the way these
25 things have operated in the past --

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1 CHAIRMAN REYNOLDS: Staff Director?

2 STAFF DIRECTOR DANNENFELSER: I take that
3 to mean that they're on the original list, but that it
4 does say that items can be added or subtracted, so
5 that I would agree with you that that means that they
6 do not have to remain on the list forever.

7 COMMISSIONER GAZIANO: There was --

8 STAFF DIRECTOR DANNENFELSER: But it
9 seemed like the Commissioners would have to make a
10 decision to take certain items off the list.

11 CHAIRMAN REYNOLDS: But that's the issue.

12 COMMISSIONER GAZIANO: That's sort of the
13 issue. And there was a debate about whether these
14 should be privileged in some way, and they were
15 automatically on, and that others would have to go on.
16 And I think that we never, I think, took a formal vote
17 on that, but there was never a majority that they were
18 automatically on. It was just agreed that all those
19 that any Commissioner wanted, including these, would
20 be -- but if we need to clarify in the transcript, I'm
21 sorry, I just noticed this last night. Maybe we could
22 clarify it.

23 CHAIRMAN REYNOLDS: Well, Commissioner
24 Yaki, I believe, argued that they should automatically
25 go on the list.

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1 COMMISSIONER GAZIANO: I don't think we
2 had an agreement.

3 CHAIRMAN REYNOLDS: And I know that there
4 was push-back. How about this; why don't we,
5 essentially, table this, review the transcript. And
6 if that's how it unfolded, then we can take this up at
7 the next meeting.

8 COMMISSIONER GAZIANO: Sure.

9 CHAIRMAN REYNOLDS: And, also, it has the
10 benefit of having -- well, Commissioner Yaki will be
11 here to correct you, correct all of your mistakes.

12 COMMISSIONER GAZIANO: Sure. And one of
13 my concerns that I hope expressed then and now is, I
14 don't know that there's universal agreement on what
15 was previously approved and unscheduled. So it's sort
16 of dangerous to require that they automatically be put
17 on, when we're not certain what those really were.
18 And so it's incumbent upon Commissioners to take the
19 responsibility, if they think ones were important to
20 them, whether they're approved and unscheduled, or
21 otherwise, to let the Staff Director know. But that's
22 my reasoning.

23 CHAIRMAN REYNOLDS: Okay. So, Mr. Staff
24 Director, will you have someone just review the
25 transcripts and see what we said? I just want to get

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1 confirmation that Todd's understanding is reflected in
2 the transcript.

3 STAFF DIRECTOR DANNENFELSER: Yes, I'll do
4 that.

5 COMMISSIONER GAZIANO: And, if not, then
6 maybe we should --

7 COMMISSIONER HERIOT: Table the Minutes?

8 CHAIRMAN REYNOLDS: Yes, for the -- we're
9 going to table which one, the 11th, the July 11th. So
10 we'll vote on that next month. But moving to the July
11 28th Minutes.

12 II. APPROVAL OF MINUTES

13 JULY 28, 2008 MEETING

14 COMMISSIONER GAZIANO: Yes. I have
15 another amendment to that, just to, I think, more
16 accurately reflect the letter under page 1, Program
17 Planning, the DOT Guidance Letter. I think that our
18 letter - it is less accurate to say we just requested
19 the Department of Transportation to take the Uniform
20 Standard. I prefer it to read as follows:
21 "Commissioners agreed to send a letter to the
22 President requesting why the Department of
23 Transportation was departing from the United States'
24 official position which prevailed in the 9th Circuit in
25 the Western States Paving decision, requiring states

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1 implementing their DBE programs to make local findings
2 of discrimination before using race conscious goals to
3 achieve local DBE participation." So that someone
4 reading the letter will understand, reading our
5 Minutes, will better understand what our letter
6 actually said.

7 CHAIRMAN REYNOLDS: Is there an objection?

8 COMMISSIONER TAYLOR: A question. Did
9 that language come out of the letter, the language you
10 just read?

11 COMMISSIONER GAZIANO: Not necessarily --
12 I didn't compare it word-to-word. This is just a
13 description of the letter, but I think that's pretty
14 accurate. Is that pretty accurate, as you remember
15 it, everyone else?

16 COMMISSIONER HERIOT: It's accurate to my
17 recollection.

18 CHAIRMAN REYNOLDS: Objections? Okay. I
19 guess we vote.

20 COMMISSIONER MELENDEZ: Commissioner
21 Melendez here.

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER MELENDEZ: I think that we
24 need to either look at what we actually said in the
25 Minutes. I don't think we should try to align what was

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1 said in the Minutes to the letter. I think we have to
2 say the gist of these Minutes, what was actually said,
3 even if it doesn't line up with the letter. I would
4 think that if we're not sure to take it verbatim, that
5 that's what we need to do.

6 CHAIRMAN REYNOLDS: Well, I don't think
7 that it needs to be verbatim, but I do believe it
8 needs to be accurate.

9 COMMISSIONER GAZIANO: I'm even more
10 certain it's accurate as to why we sent the letter,
11 and what we were trying to do, since I led the
12 discussion. So I think it's both consistent with the
13 text of the letter and consistent with our discussion.

14 I think that you were -- you voted against sending
15 the letter, but I think that reflects what the
16 majority's position was.

17 CHAIRMAN REYNOLDS: Okay. Additional
18 discussion? All in favor please say aye.

19 COMMISSIONER HERIOT: And we're only
20 voting for the second set of Minutes.

21 CHAIRMAN REYNOLDS: That is correct, as
22 amended by -

23 COMMISSIONER GAZIANO: Are we voting on
24 the amendment first, or all.

25 STAFF DIRECTOR DANNENFELSER: Vote on this

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1 change of language.

2 CHAIRMAN REYNOLDS: Okay. I was just
3 going to wrap it all -

4 COMMISSIONER GAZIANO: That's fine.
5 That's fine.

6 CHAIRMAN REYNOLDS: Okay. We're voting on
7 the July 28th Minutes, as amended by Commissioner
8 Gaziano.

9 COMMISSIONER HERIOT: Friendly amendment.

10 CHAIRMAN REYNOLDS: Yes.

11 COMMISSIONER HERIOT: Which I believe
12 doesn't require any -

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

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: Objections?

17 COMMISSIONER MELENDEZ: Abstain.

18 CHAIRMAN REYNOLDS: I'm sorry?

19 COMMISSIONER MELENDEZ: I'm abstaining.

20 CHAIRMAN REYNOLDS: Okay. Commissioner
21 Melendez abstains. The remaining Commissioners voted
22 in favor of the motion.

23 Next up, the announcements for the month
24 of August.

25 **III. ANNOUNCEMENTS**

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1 CHAIRMAN REYNOLDS: This month marks the
2 43rd anniversary of the signing of the Voting Rights
3 Act. The Act was signed into law by President Lyndon
4 Johnson on August 6, 1965. The Voting Rights Act
5 suspended literacy, knowledge, and character tests
6 designed to keep blacks from voting in the south. It
7 also authorized the appointment of federal voting
8 examiners and barred discriminatory poll taxes. Today
9 we recognize the impact of this important law.

10 I also want to acknowledge that President
11 George W. Bush issues a Proclamation declaring July
12 26th as the day in celebration of the 18th anniversary
13 of the Americans With Disabilities Act, which ended
14 discrimination against the disabled in employment,
15 public services, accommodations, and
16 telecommunications. On July 26, 1990, President
17 George H.W. Bush signed this comprehensive Act into
18 law. The ADA better enables citizens with
19 disabilities to participate fully in all aspects of
20 life. On this anniversary, we celebrate the vital
21 contributions of individuals with disabilities, and
22 the role the ADA has played in ensuring their full and
23 equal participation in the workplace and elsewhere.

24 Next up we have the Staff Director's
25 Report.

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1 VICE CHAIR THERNSTROM: Wait a minute, Mr.
2 Chairman. The description of the Voting Rights Act is
3 incorrect. It does not include a ban on poll taxes.
4 That was both a constitutional amendment and a Supreme
5 Court case, but it is not the Voting Rights Act, which
6 simply has a mention of doing a study about poll
7 taxes.

8 CHAIRMAN REYNOLDS: Well, this is the
9 benefits of having an expert on the Voting Rights Act
10 as a member of the Commission. Thank you for the
11 correction, Vice Chair Thernstrom.

12 VICE CHAIR THERNSTROM: You're most
13 welcome, Mr. Chairman.

14 CHAIRMAN REYNOLDS: Next up we have the
15 Staff Director's Report. Mr. Staff Director.

16 **IV. STAFF DIRECTOR'S REPORT**

17 STAFF DIRECTOR DANNENFELSER: Thank you,
18 Mr. Chairman. I want to update the Commissioners on
19 some of the projects Staff has been working on since
20 the last Commission meeting.

21 In the area of appropriations, Staff has
22 begun working on the FY 2010 budget process. Offices
23 and divisions have submitted their completed budget
24 call work sheets. These work sheets have been
25 forwarded to GSA, who will help the Agency draft a

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1 budget and operating plan.

2 After a temporary delay due to
3 negotiations with OMB, we are preparing to send our FY
4 2009 budget proposal to Congress. All of the budget
5 proposals approved by Commissioners at the July 11th
6 meeting remain intact, although some language, and a
7 couple of charts that were previously in there
8 received an objection from OMB.

9 In the Office of General Counsel, the
10 Commission received notice that the Agency was
11 successful in its defense of a contract appeal action,
12 and OGC has also continued to work on a Merit System
13 Protection Board claim, including preparation of
14 several motions and pleadings.

15 In the area of complaints processing,
16 between June 23rd and July 18th, the Office of Civil
17 Rights Evaluation received and processed 178
18 complaints. And in the area of technology, last month
19 the Agency's email server crashed due to building
20 power outages, and the Agency's limited backup
21 capability. Therefore, I have authorized the purchase
22 of a new backup system with surplus funds from the FY
23 2008 budget.

24 Regarding performance management, on
25 August 8th managers and supervisors submitted

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1 performance appraisals in order to close out the
2 performance period for the fiscal year.

3 In the area of the Statutory Report, some
4 of this will be subject, potentially, to change during
5 the discussion I imagine that comes up shortly, but
6 Commissioners received a revised draft of the FY 2008
7 Statutory Enforcement Report enforcing prohibitions of
8 religious discrimination in prisons on August 8th.
9 There was a request for comments on the draft to be
10 submitted by August 22nd, and that it would then be
11 sent back out to Commissioners on August 29th. The
12 draft has undergone the required reviews. And I've
13 also, due to the concerns about some legal and policy
14 issues in the report, I have asked Ken Marcus, our
15 former Staff Director, who's also an expert on
16 religious liberty to provide us with some assistance
17 on the legal and policy review of the document,
18 provide some feedback to us on how -- to make sure
19 we're saying things that are accurate. And, perhaps,
20 how that can be improved.

21 In the area of regional activities, our
22 regions have organized SAC meetings for the month of
23 August. The District of Columbia had a SAC meeting on
24 August 6th, Georgia has one scheduled for August 28th,
25 Kansas also August 28th, Kentucky held one on August

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1 8th, Missouri has one scheduled for August 20th, and
2 Utah also has one scheduled for August 20th.

3 There will be ten student interns working
4 with the Southern Regional Office during the Fall 2008
5 semester, and the student interns will assist the
6 regional office in research supporting SAC project
7 activities.

8 And that's my report, Mr. Chairman.

9 CHAIRMAN REYNOLDS: Okay. Questions?

10 COMMISSIONER MELENDEZ: Yes. Commissioner
11 Melendez. I have a question on two reports, the Voter
12 Fraud and Intimidation and Racial Categorization in
13 2008. Have these been issued, or what's the status?

14 STAFF DIRECTOR DANNENFELSER: The Voter
15 Fraud is about to be sent to the printer, and the
16 Census Report has been finalized but not printed yet.

17 COMMISSIONER MELENDEZ: Okay. The other
18 question I had, did you say Ken Marcus was hired as a
19 consultant, or what did you say?

20 STAFF DIRECTOR DANNENFELSER: Yes. I've
21 asked him on a very short-term consultant-basis to
22 provide analysis of the report, and some feedback on
23 making sure that it's accurate in terms of the legal
24 section, in particular. But, also, general policy
25 feedback in terms of how we're characterizing issues

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1 relating to religious liberty, given his expertise in
2 that area.

3 COMMISSIONER MELENDEZ: And the other
4 question I had, did we submit the 2008 budget
5 justification to Congress a month ago?

6 STAFF DIRECTOR DANNENFELSER: The 2009 I
7 think you mean. We're about to do that. We had a
8 delay with OMB objecting to some language, and
9 objecting to a couple of the charts that were in
10 there. And we went back and forth with them over that
11 for a while, and are now ready to submit it.

12 COMMISSIONER MELENDEZ: Are there any
13 changes to the budget since the last time we met on
14 it?

15 STAFF DIRECTOR DANNENFELSER: There's no
16 changes to the substantive part, in terms of the
17 dollars and the hires and that sort of thing. There
18 is some change to some language characterizing our
19 budget history and that sort of thing.

20 COMMISSIONER MELENDEZ: The \$500,000
21 surplus that we currently have, what's the status on
22 that?

23 STAFF DIRECTOR DANNENFELSER: Well, from
24 the items that I described at the meeting in July, we
25 had been going through the procurement process on

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1 moving forward on those. They're in varied stages of
2 approval going through the procurement process. And
3 the new thing that I mentioned a few minutes ago was
4 this backup system, so there'll be -- I believe the
5 marginal difference is about another \$26,000 on having
6 this backup system for our email. So we still
7 probably have a little bit of a surplus, but we have
8 made commitments on a large part of it at this point.

9 COMMISSIONER MELENDEZ: Okay. Thank you.

10 COMMISSIONER TAYLOR: May I?

11 CHAIRMAN REYNOLDS: Oh, sure.

12 COMMISSIONER TAYLOR: Mr. Staff Director,
13 what is the status of the briefing report on the
14 educational effectiveness of HBCUs?

15 STAFF DIRECTOR DANNENFELSER: That has
16 been sent out to Commissioners, the final draft has
17 been sent out to Commissioners, and it's a matter of
18 scheduling it for consideration at a meeting.

19 COMMISSIONER TAYLOR: Okay. Do we have a
20 particular deadline? I don't have one in my mind
21 today, but do we have a -

22 STAFF DIRECTOR DANNENFELSER: Well, I
23 think we would -

24 COMMISSIONER HERIOT: It has a natural
25 affinity for the subject of the next briefing.

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1 COMMISSIONER TAYLOR: Okay.

2 COMMISSIONER HERIOT: So I thought it
3 would be nice to -

4 COMMISSIONER MELENDEZ: I have a question.

5 CHAIRMAN REYNOLDS: Okay. Commissioner
6 Melendez, hold on. Commissioner Heriot, are you
7 finished?

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN REYNOLDS: Okay. Commissioner
10 Melendez?

11 COMMISSIONER MELENDEZ: Yes. Were there
12 any other consultants that we hired before Ken Marcus?

13 STAFF DIRECTOR DANNENFELSER: Well, we've
14 hired so far three of the consultants that we
15 discussed in terms of providing assistance to the
16 Commissioners. But those are separate type of
17 consultants. But all of them -

18 COMMISSIONER MELENDEZ: Is that at an
19 extreme cost to us or is that coming out of the
20 surplus? How are we paying for those?

21 STAFF DIRECTOR DANNENFELSER: The
22 consultants to help the Commissioners?

23 COMMISSIONER MELENDEZ: Yes.

24 STAFF DIRECTOR DANNENFELSER: That's money
25 from our surplus.

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1 COMMISSIONER MELENDEZ: Okay. Any idea
2 how much that is?

3 STAFF DIRECTOR DANNENFELSER: Well, the
4 cap that we agreed to for those four consultants,
5 potentially four consultants was \$50,000 total.

6 COMMISSIONER MELENDEZ: Okay.

7 CHAIRMAN REYNOLDS: Any other questions?

8 Okay. Next up, 2008 Statutory Report.

9 **V. PROGRAM PLANNING**

10 **2008 STATUTORY REPORT**

11 CHAIRMAN REYNOLDS: The deadline for
12 distributing this report is looming. I open up the
13 floor for questions or comments.

14 COMMISSIONER GAZIANO: I maybe just begin
15 that discussion. I thought the most recent draft was
16 improvement on the earlier one, but I still thought it
17 had some substantial problems, which I've communicated
18 in part to the Staff Director. And I make mention a
19 couple of them, but I'd be interested in hearing
20 whether other Commissioners agree.

21 I think the legal section was much longer
22 than necessary, and contains some errors, and
23 controversial passages that still are not worth us
24 trying to sort out. I made my thoughts on those
25 known. And I think that several of the other sections

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1 still need a fair amount of work, so I was just
2 wondering whether other Commissioners are interested
3 in commenting at this time.

4 CHAIRMAN REYNOLDS: Commissioner Heriot.

5 COMMISSIONER HERIOT: I agree with
6 Commissioner Gaziano that the legal background section
7 needs quite a bit of work. And I think the direction
8 we ought to go in is to make it very, very short,
9 simply state what statutes, like RIFRA and RLUIPA,
10 require. I also would put in a very brief
11 description, mainly a quote from the Prison Litigation
12 Reform Act, because I think that that bears a lot, in
13 my opinion, on why RIFRA and RLUIPA are working
14 reasonably well, why we don't see the floodgates of
15 litigation opening thus far. So that's what I would
16 do, I would leave out the constitutional treatment
17 entirely, very controversial from what I know of this
18 area of law.

19 I would say it's pretty much as subtle and
20 difficult as any area of constitutional law you are
21 ever going to run across. If you were to take the top
22 ten experts in this area, they wouldn't agree with
23 each other, and we don't have to weigh in on issues
24 like that. There's no particular reason, nothing from
25 our standpoint turns on this, so I would very much

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1 like to see the section on the law tamped down to a
2 minimum.

3 As for the rest of it, I think that there
4 is information in here that would be useful to
5 Congress, useful to policy makers. I wish there were
6 more such information. There's still a fair amount of
7 sloppiness in these sections. For example, let me
8 see, one of the tables in here that was identified as
9 "Comparison of Religious Affiliations of United States
10 Adult Population to Inmates in Federal Prisons."

11 If you look down further on the page, you
12 find that it's not inmates in federal prisons, but
13 rather federal inmates engaged in faith-based
14 activities in prison, which is a subset of the federal
15 prisoners. And there's a big difference there. The
16 federal prisoners themselves, collectively, may have a
17 very different religious demography here. So I think
18 that we need a lot of work here.

19 I think that the current findings and
20 recommendations don't comport with what I would find
21 and recommend. And I did send in my comments, and so
22 I was actually, frankly, surprised to find
23 recommendations that didn't seem to comport with any
24 of the Commissioners I had spoken to.

25 CHAIRMAN REYNOLDS: Okay. Any other

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1 comments?

2 All right. Next, 2009 Statutory Report
3 Topics.

4 **V. PROGRAM PLANNING**

5 **2009 STATUTORY REPORT TOPICS**

6 CHAIRMAN REYNOLDS: During the July 11th
7 meeting, we approved a process for selecting briefing
8 topics. Starting with fiscal year 2009, we'll compile
9 a list of topics, including a description of the
10 subject matter, and then vote on a quarterly basis to
11 select topics from the list that will be the subject
12 of public briefings.

13 Topics can be added and subtracted
14 throughout the year, and all previously approved and
15 unscheduled topics from 2008 and 2009 will be included
16 on the list, provided a Commissioner makes that
17 request.

18 For fiscal year 2008, we approved, but did
19 not schedule five briefing topics. They are the
20 Patriot Act and Anti-Arab/Anti-Muslim Discrimination,
21 Religious Discrimination in the Workplace, Racial
22 Profiling, the U.S. Department of Justice Remedies,
23 review of the Community Reinvestment Act, the Faith-
24 based and Community Initiative.

25 For fiscal year 2009, we were scheduled to

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1 take up the issue of Voting Rights in the U.S.
2 territories as our first -- in November of 2008 as our
3 first topic for the new fiscal year, but agreed at our
4 last meeting to reconsider the subject for this
5 briefing under the new process.

6 We had also previously agreed to consider
7 six additional briefing topics for 2009, including
8 School Choice as a Civil Right, Racial Disparities in
9 Health Care Access and Outcomes, Misuse of the
10 Disparate Impact Theory, Disparate Treatment of Native
11 American Victims in Criminal Investigations and
12 Prosecutions, Application of State and Local Marriage
13 and Family Law to Gay and Lesbian Americans, and
14 Single Sex Education.

15 On August 7th, the Staff Director sent an
16 email to Commissioners seeking ideas for additional
17 briefing topics. This is the last call for
18 Commissioners to submit new topic ideas for the list
19 under consideration. Please submit the briefing topic
20 with a brief description of what the briefing proposes
21 to study. A final list of topics will be circulated
22 by the Staff Director in advance of our next business
23 meeting, so Commissioners can write their preferred
24 topics to pare down the list. We will select from the
25 pared down list of topics at our next business

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1 meeting.

2 At this time, I'd like to open the floor
3 for discussion and suggestions from Commissioners.

4 COMMISSIONER MELENDEZ: This is
5 Commissioner Melendez here.

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER MELENDEZ: Since the first
8 quarter of 2009, in trying to determine three months
9 in advance, which will be sometime in I believe either
10 October or November, and it sounds like we were
11 scheduled to have a business meeting in October
12 therefore it follows that in November, the 7th of
13 November, we were looking at both the Voting Rights
14 and U.S. Territories. Is that where we kind of stand
15 now?

16 CHAIRMAN REYNOLDS: Is that our current
17 posture?

18 COMMISSIONER GAZIANO: I thought we
19 eliminated all previous commitments, that those topics
20 are up for a vote, are up for reconsideration, but
21 that officially we have nothing approved for the
22 November hearing. That's my understanding -

23 COMMISSIONER MELENDEZ: My point is that I
24 thought we had scheduled this though already.

25 COMMISSIONER GAZIANO: My understanding is

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1 our vote -

2 COMMISSIONER MELENDEZ: For November 7th on
3 Voting Rights and the U.S. territories. I recommend
4 that we keep that there since we don't have a lot of
5 time.

6 COMMISSIONER GAZIANO: My understanding of
7 our vote at the last meeting was that we took it off
8 the schedule. What goes back there is subject to the
9 process that the Chairman described.

10 CHAIRMAN REYNOLDS: And so that's why it's
11 important for all of us to give this a fair amount of
12 thought, so that we can come up with our list, and
13 eventually settle on a topic for at a minimum, the
14 November -

15 COMMISSIONER GAZIANO: Sure. May I ask a
16 question just about how -- if they're going to be
17 circulated beforehand, maybe -- I don't know if you
18 have an idea of the best way to proceed. Maybe we
19 should vote, and narrow it down to the top two or
20 three, and then just vote at the next meeting. So
21 instead of just necessarily our individual choices
22 without conversation resulting in the topic prior to
23 the next meeting, that we use that process to narrow
24 it down to the top two or three, or something like
25 that.

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1 COMMISSIONER MELENDEZ: This is
2 Commissioner Melendez. My understanding that when we
3 clean the slate of all of the topics that the
4 Commissioners had agreed to the November 7th 2009
5 Voting Rights and U.S. Territories. I think we need
6 to clarify if we said that or not.

7 VICE CHAIR THERNSTROM: No, there's no
8 question that we didn't say that - I'm sorry, Mr.
9 Chairman, to bust in like this. There was quite a low
10 level of interest in that topic, and the last--if
11 somebody can go back to the transcript, but we left
12 that November slot open as a "to be decided". But
13 that was the one topic on which we were clear that it
14 was not a real decision to support for, in order to
15 keep it.

16 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
17 just to add to the complication, if we're going to
18 vote on the briefing topic in September, the question
19 has been raised whether we should push it back, the
20 actual briefing, push it back to December to allow the
21 staff adequate time to prepare.

22 VICE CHAIR THERNSTROM: Well, I think that
23 that's a good idea. And I also think it would be an
24 excellent idea to tie the topic in some way to the
25 November vote, because there are bound to be issues

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1 involving-- and there are bound to be allegations of
2 disfranchisement, and so forth, that would fall under
3 the rubric of our authority to investigate. So I
4 think we -- I think both, we should push it to
5 November, and we should try to think of formulating
6 the topics that comes out of the November results.

7 CHAIRMAN REYNOLDS: Well, I think that we
8 will add that topic to the pot.

9 VICE CHAIR THERNSTROM: Yes, we can add it
10 to the pot. That's fine. I'm just throwing it out
11 for consideration.

12 COMMISSIONER HERIOT: I'm just wondering
13 if we should -- I'm disinclined to want to push back
14 the time for it at this meeting. In September when we
15 select a topic, then we can decide whether or not it
16 needs to be pushed back to December, or whether
17 November would be better. If we select a topic that
18 the Staff can put together easily, then we might want
19 to go forward in November. If we select a voting
20 issue, we might want to do it in December, or if we
21 aren't sure, we might want to do it in December, or we
22 pick something that needs more preparation. But why
23 decide to push it back at this meeting?

24 CHAIRMAN REYNOLDS: Okay. Mr. Staff
25 Director, what are your concerns about Commissioner

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1 Heriot's proposal? What are the logistical
2 challenges?

3 STAFF DIRECTOR DANNENFELSER: I think one
4 of the main logistical challenges is lining up the
5 panelists, scheduling the panelists. And if we have
6 only less than two months to schedule the panelists,
7 that will be one of the problems.

8 COMMISSIONER HERIOT: My point is, we
9 don't know the topic yet, so we don't know how hard
10 it's going to be to schedule the panelists. They may
11 be very obvious ones that can be done very quickly.

12 CHAIRMAN REYNOLDS: So your proposal,
13 essentially, is that we remain flexible, and make that
14 decision once we have more information.

15 COMMISSIONER HERIOT: Yes, just in case,
16 there may be a topic, like there may be something hot
17 before Congress to where we want to get it in more
18 quickly.

19 COMMISSIONER GAZIANO: There may be a lame
20 duck session that we want to have some -

21 COMMISSIONER HERIOT: Yes, don't commit
22 ourselves to pushing something back at this point.

23 CHAIRMAN REYNOLDS: Other comments?

24 COMMISSIONER MELENDEZ: Commissioner
25 Melendez. The reason for the two topics is that we

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1 should stay with the Voting Rights and U.S.
2 Territories is that it is right after the Presidential
3 election, so I still think we should do something on
4 Voting Rights so it's a small enough size topic that I
5 think our staff should have ahead of time, and still
6 be interested in the election rather than focusing on
7 something else. So that's my reason on focusing on
8 this election, it would be important I think that the
9 Commission should be looking at something along those
10 lines as far the Voting Rights.

11 CHAIRMAN REYNOLDS: Okay. Well, we will
12 circulate all the topics, and I trust that you would
13 re-circulate that particular briefing topic. And then
14 in September, we would have a discussion and make our
15 selection.

16 COMMISSIONER GAZIANO: Yes. I don't know
17 that it needs to be decided today, but is my
18 suggestion on how the process would work reasonable,
19 or do you want any discussion of that right now from
20 other Commissioners?

21 CHAIRMAN REYNOLDS: Well, if anyone has
22 any additional comments -

23 COMMISSIONER GAZIANO: We should vote and
24 narrow down the range, and then have a discussion
25 among the range, whatever that -

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1 CHAIRMAN REYNOLDS: Now, describe the
2 mechanics. Do you envision -

3 COMMISSIONER GAZIANO: I imagine the first
4 step, obviously, is we're all going to get our topics
5 to the Staff Director. The Staff Director is going to
6 circulate the list to us, and then instead of just -
7 we voted in the past, I understand, rank order, do you
8 want us to send votes back to the Staff Director? If
9 we do that, he can tell us what the review, what the
10 top three are, the top two are.

11 CHAIRMAN REYNOLDS: Right.

12 COMMISSIONER GAZIANO: Or we could just
13 discuss them all, and decide. But I think it's best
14 that whatever that vote is not be an automatic vote,
15 because I might vote -- my second best might be
16 something -- anyway, you understand that.

17 CHAIRMAN REYNOLDS: Mr. Staff Director?

18 STAFF DIRECTOR DANNENFELSER: I think what
19 we could do is once all of the recommendations come
20 in, I could then, with some explanation, a brief
21 explanation of the topic, that I could then turn
22 around and send that list back out to the
23 Commissioners and ask them to rank their top five
24 choices in order, and then give a point system to
25 those top choices, that the top choice would be worth

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1 five points, the second choice four points, and so on.

2 COMMISSIONER GAZIANO: Right. And maybe
3 we could then still have them all, and anyone can
4 still advocate, but we'll know something about other
5 people's preferences at the time we have that
6 discussion. Does that make sense?

7 CHAIRMAN REYNOLDS: Yes. In fact, we did
8 something similar in the past in terms of the scoring
9 system.

10 COMMISSIONER GAZIANO: Yes. I may have
11 misunderstood -

12 COMMISSIONER HERIOT: Yes. It's important
13 to make sure that the top voters have automatic -

14 COMMISSIONER GAZIANO: Yes. I just
15 misunderstood maybe the way it happened in the past,
16 but I understood it was more automatic in the past.

17 CHAIRMAN REYNOLDS: It was. It was.

18 STAFF DIRECTOR DANNENFELSER: We would
19 just have to make -- we could make a decision on the
20 top three, or four, or five to consider among those.
21 That might be one way of doing it.

22 COMMISSIONER HERIOT: Yes. The point is
23 just to make sure that it's not the top vote getter is
24 automatically the winner.

25 COMMISSIONER GAZIANO: I actually think it

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1 may be informative to see that certain ones don't get
2 any votes time and time again, so I think it's fine
3 just to give us a list of all of them, and we can just
4 consider it.

5 COMMISSIONER TAYLOR: Mr. Chair, is there
6 a date certain by which suggestions should be in?

7 CHAIRMAN REYNOLDS: Mr. Staff Director?

8 COMMISSIONER TAYLOR: So you could have
9 time to turn it around, we can make sure the process
10 is orderly.

11 STAFF DIRECTOR DANNENFELSER: I would say
12 by Friday of next week.

13 CHAIRMAN REYNOLDS: Does that work for
14 everyone?

15 STAFF DIRECTOR DANNENFELSER: The 29th.

16 COMMISSIONER HERIOT: Yes. Although I've
17 given proposals before that just seem to get lost.

18 COMMISSIONER GAZIANO: They won't this
19 time.

20 COMMISSIONER HERIOT: I'll have it
21 delivered by an eagle or something.

22 CHAIRMAN REYNOLDS: Okay. Additional
23 conversation, additional discussion?

24 COMMISSIONER HERIOT: Could you just
25 repeat the day this is due, Friday?

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1 STAFF DIRECTOR DANNENFELSER: Friday,
2 August 29th.

3 CHAIRMAN REYNOLDS: All right. Next up is
4 a discussion of the 2010 Budget Submission.

5 **V. PROGRAM PLANNING**

6 **DISCUSSION OF FY 2010 BUDGET SUBMISSION**

7 CHAIRMAN REYNOLDS: Mr. Staff Director,
8 please provide an update.

9 STAFF DIRECTOR DANNENFELSER: The 2010
10 budget, again, as I said, Staff has gotten what's
11 called a budget call, and they've submitted their
12 proposals. And we are then going to roll that up and
13 get that to the -- the plan is to get the detailed
14 information to the Commissioners by Friday, August
15 29th. And what I would like to propose, what has
16 happened in this regard is that OMB normally requires
17 that this budget be submitted by September 15th. This
18 year they've moved the deadline up a few days to
19 September 10th because of the impending change in
20 administration. So what I would like to propose is
21 that we have a telephone vote on or about September 5th
22 so that we can consider the 2010 budget.

23 CHAIRMAN REYNOLDS: Is that enough time
24 for everyone?

25 COMMISSIONER MELENDEZ: Commissioner

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1 Melendez here. We haven't received anything having to
2 do with the 2010 budget, as far as I know, and it's
3 already August. And if you're talking about doing
4 something before the September briefing, I don't think
5 that's going to be enough time, unless you try to do a
6 business meeting along the list of briefing. And I
7 don't really like to do budgets over the phone. I
8 hope that we can do it face to face, have the
9 documents in front of us.

10 CHAIRMAN REYNOLDS: That's a good point.
11 Commissioner Melendez makes a good point. If we're
12 going to receive this by the 29th, and have a vote by
13 the 5th, that assumes that this group of Commissioners,
14 that there's a high probability that this group of
15 Commissioners will come together, reach a consensus,
16 not have many questions, and looking at our past track
17 record, I suspect that that's not likely to happen.

18 STAFF DIRECTOR DANNENFELSER: I think
19 historically, though, this particular budget proposal
20 has been less contentious, the one to go to OMB has
21 been less contentious than the idea of going to
22 Congress, because, for instance, I would anticipate
23 that we would request eight Commissioner's assistants

24 -

25 CHAIRMAN REYNOLDS: Right.

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1 STAFF DIRECTOR DANNENFELSER: -- in the
2 budget we would submit to OMB. And that has been a
3 big topic of concern for Commissioners in terms of the
4 budget.

5 Now, if we come back with getting less
6 than we asked for, then we get into some tougher
7 decisions in that regard. And, of course, the
8 Commissioner's Assistants were pared down to four, as
9 an example. We could get some summary information
10 earlier than August 29th. August 29th is in terms of
11 what GSA is helping us prepare, the kind of documents
12 that they are preparing, we can put together perhaps a
13 two-page background, and that would describe the
14 highlights of the proposed budget that could be sent
15 to Commissioners prior to that date.

16 CHAIRMAN REYNOLDS: That would be helpful.
17 It's nice to have the draft document, I guess the
18 final draft we'll call it. But that works for me.

19 Commissioner Melendez, is that
20 satisfactory, that approach?

21 COMMISSIONER MELENDEZ: What was that
22 again?

23 CHAIRMAN REYNOLDS: That prior to the
24 29th, the Staff Director will provide some information.
25 And he also made a good point, that this is just our

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1 submission to OMB. This is not our final submission.
2 And in this particular submission, for example, some
3 of the contentious issues, like special assistants for
4 each of the Commissioners - well, this budget
5 submission would request funds for special assistants
6 so that we can all have a special assistant.

7 COMMISSIONER MELENDEZ: Okay. I still
8 need to see some material at some point, then I'll
9 kind of weigh in after that.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER MELENDEZ: I don't know or
12 have any idea where we're going to have an obligation
13 as far as meeting our statutory duties of the
14 Commission that have to do with money going to the
15 back to the different regions so that's why it's
16 important to me to see the big picture, when we're
17 going to be appropriating money for the 2010 budget.
18 So if you can give me that stuff, I'll look at it at
19 that point and see what my comments will be, whether
20 we can meet face to face, or try to do it by phone.

21 CHAIRMAN REYNOLDS: Okay. Next up is the
22 Evaluation of the AI on Order of Precedence.

23 **VI. MANAGEMENT AND OPERATIONS**

24 **EVALUATION OF AI ON ORDER OF PRECEDENT**

25 CHAIRMAN REYNOLDS: During the July 11th

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1 business meeting, Commissioner Melendez raised a
2 question about the current chain of command at the
3 Commission, AI 1-18B states that, "When the Staff
4 Director and Deputy Staff Director are both absent,
5 the Assistant Staff Director for the Office of Civil
6 Rights Evaluation shall assume the duties and
7 authority of the Acting Deputy Staff Director."

8 At this point, I open up the floor - well,
9 actually, Mr. Staff Director, would you like to speak
10 to this issue?

11 STAFF DIRECTOR DANNENFELSER: Thank you,
12 Mr. Chairman. This is an AI that was developed in
13 February 2002, and it has been in place under
14 Commissions that have been majority Democratic
15 appointees and majority Republic appointees, so I
16 believe that it is clear how it works. It is
17 something that we can operate, if need be. There is a
18 mechanism in place for the Assistant Staff Director
19 for the Office of Civil Rights Evaluation to assume
20 the duties.

21 And beyond that, I am still able, barring
22 some more serious situation, I'm still able, even when
23 I'm away, to be in communication with the staff
24 through email, and telephone, and so on. I was away,
25 actually out of the office all last week, but staff is

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1 well aware, I was in frequent contact with them. And
2 there was one situation where we needed to have a
3 signature for moving forward on these consultants, and
4 I was able to delegate the authority for signing of
5 the paperwork that was needed. So we do have a
6 mechanism for doing that, so I think this is
7 ultimately a judgment call for the Commissioners. But
8 I do believe that this is a mechanism that is in
9 place, and it has existed on a bipartisan basis for
10 about six years now.

11 COMMISSIONER MELENDEZ: This is
12 Commissioner Melendez. It's my understanding that the
13 2002 AI is kind of outdated, based on the fact that
14 the order of precedence one of the positions has
15 entirely been eliminated, and that was the position of
16 Deputy Staff Director who has been in that kind of
17 chain of command, and that the position of Assistant
18 Staff Director for the Office of Civil Rights
19 Evaluation and has basically been changed or
20 downgraded, I'm not sure from an SES or a GS position,
21 which doesn't change the position and you're referring
22 to the 2002 chain of command to do things like--it
23 kind of creates a problem, whether or not that AI has
24 to be changed, or what are you actually saying here.

25 CHAIRMAN REYNOLDS: Well, Commissioner

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1 Melendez, has anything happened that has caused you to
2 be concerned? I guess I'm suggesting an approach of
3 if it ain't broke, don't fix it.

4 The system that -- the AI that's been in
5 place for I guess six years, it appears to me that
6 it's worked. And, in fact, I -- I'm just trying to
7 get a better understanding of what's driving you on
8 this issue.

9 COMMISSIONER MELENDEZ: Well, I -

10 COMMISSIONER GAZIANO: May I ask a
11 question, too?

12 COMMISSIONER MELENDEZ: Well I know that
13 in the past, I believe that Marty has done a great job
14 by having the cell phone and all of those different
15 things so that he can be reached, but I still think
16 that somebody has to be in charge, and I also believe
17 they have to have the authority based on the AI's that
18 should be in charge, should he be gone for vacation,
19 or whatever it may be. I just think that we should
20 follow the regulations, whatever they are. People
21 have, for example, Debra Carr's different position I
22 wonder why she isn't being put into the order of
23 precedence on this whole issue. I'm not talking about
24 individual personalities or you know partisanship or
25 anything like this, I'm just saying following the AI,

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1 as who should be in the chain of command, whatever the
2 regulations say.

3 CHAIRMAN REYNOLDS: Well, it appears as if
4 you're objecting to the current chain of command.

5 COMMISSIONER MELENDEZ: Well, who is that?

6 COMMISSIONER GAZIANO: If I can take minor
7 exception with one thing that you said, Commissioner
8 Melendez, we -- as I understand it, we certainly
9 didn't eliminate the position as Deputy Staff
10 Director. Since we're going to request funds, and
11 we're going to get millions and millions of extra
12 dollars, at some point, hopefully, the Commission will
13 be able to fill that position. But I think that we
14 ought not to change an AI succession that makes
15 perfect sense for the positions just because you think
16 in any given moment the person who sits in it isn't --
17 who you would prefer to take over under some
18 hypothetical situation. So I think it makes logical
19 sense to have the people in the chain of succession
20 that we have right now.

21 COMMISSIONER MELENDEZ: And the other
22 concern I have is that it also has to do with who can
23 supervise who as far as the SES person is being able
24 to supervise a GS-8 person, does that create a problem
25 whether they're SES or General Administration.

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1 CHAIRMAN REYNOLDS: Well, it could.

2 COMMISSIONER MELENDEZ: or General
3 Schedule.

4 CHAIRMAN REYNOLDS: It could create a
5 problem, depending on the length of time. It's my
6 understanding that a GS-15 can supervise an SES for a
7 limited period of time. I believe that period is 240
8 days.

9 Now, I suspect that if Marty were to find
10 a better opportunity, although I don't believe that
11 one exists. But, in any event, if Marty gets hit by a
12 bus, or if Marty leaves, we have 240 days to locate -
13 the President would have to locate and recommend a
14 replacement. And I believe that we can get that done
15 in 240 days. And, if necessary, we can do what we've
16 done in the past, which is to get a temporary SES
17 slot. So these concerns that you bring up, some of
18 them are hypothetical, but some of them are not, some
19 of them have actually happened, and the system has
20 worked as planned.

21 COMMISSIONER MELENDEZ: Okay. I've
22 skirted away from the issue, so--

23 CHAIRMAN REYNOLDS: Okay. Next up is a
24 discussion of the SAC re-chartering process.

25 **VII. STATE ADVISORY COMMITTEE ISSUES**

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DISCUSSION OF SAC RE-CHARTER PROCESS

1
2 CHAIRMAN REYNOLDS: At the July 28th --
3 during the July 28th teleconference, some concerns were
4 raised about staff implementation of the Lean Six
5 Sigma re-chartering process that the Commission voted
6 to adopt, that the Commission adopted, rather, in
7 January of 2008.

8 On August 14th, the Staff Director sent a
9 memorandum to Commissioners detailing how the Lean Six
10 Sigma process has been applied to the re-chartering of
11 State Advisory Committees. Mr. Staff Director, do you
12 have any additional information for us?

13 STAFF DIRECTOR DANNENFELSER: Thank you
14 again, Mr. Chairman.

15 Yes, as you noted in the memorandum that I
16 did send to the Commissioners, many of the SACs that
17 were re-chartered were well in process by the point
18 that we adopted the Lean Six Sigma process. And the
19 other cases, the regional offices have kept to the
20 critical to quality parameters that Booz Allen
21 identified. And we are sending out directives to the
22 regional directors; in fact, I mentioned in there that
23 I sent a memorandum to them on August 8th to formalize
24 this process, so to make sure that they are following
25 the various checklists that were developed. And we

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1 are going to institute with myself and the regional
2 programs coordinating unit chief, we're going to
3 institute monthly meetings with each one of the
4 regional directors to go through where they are with
5 every state, and also to reinforce the point of Lean
6 Six Sigma. So I don't suggest that the process has
7 been followed perfectly in the past, but I think in
8 most cases, that regional directors have applied the
9 process, and we are going to, based on these concerns
10 of the Commissioners, to more vigorously oversee this
11 process with the regional directors to make sure that
12 it's applied in the future.

13 CHAIRMAN REYNOLDS: Does this involve the
14 use of checklists? And do we have checklists they're
15 to use to make sure that we have jumped through the
16 proper hoops? And is that submitted to the Office of
17 the Staff Director by regions? I mean, how do we --
18 what's our quality control like? How do we ensure
19 that since we're rolling out this process, and since
20 with any new process there are going to be bumps along
21 the way, how are we checking up to make sure that
22 people are implementing Lean Six Sigma properly?

23 STAFF DIRECTOR DANNENFELSER: Well, we're
24 going to require that whenever any new package comes
25 in to us, that it will contain the three checklists

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1 that were developed. And we are going to, again, meet
2 with them, well, by telephone on a monthly basis to go
3 through each one of their situations, and using the
4 checklists at that time, ask them where they are in
5 the process of developing their packages for re-
6 chartering.

7 CHAIRMAN REYNOLDS: Any other questions?
8 Commissioner Melendez?

9 COMMISSIONER MELENDEZ: Yes. On this, are
10 you doing that -- for example, the Arkansas SAC, do
11 you think that that would adequately reapply to the
12 Lean Six Sigma, or do you think that our effort was
13 pretty lean on -

14 (Laughter.)

15 COMMISSIONER MELENDEZ: -- all the
16 different people we were trying to broaden? As I
17 mentioned before, I thought we just went to the
18 Governor, and the Federalist Society and there was
19 only about four or five. And I think my concern was
20 if you look back at at least Arkansas do you think
21 that can improve that quite a bit and the other thing
22 is that does the Commission get to see the checklist
23 and some of the things that we look at, so that we can
24 kind of compare each line item in the checklist to see
25 if - that enough people have contacted?

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1 STAFF DIRECTOR DANNENFELSER: We can
2 supply the information that the checklists call for to
3 the Commissioners when we send those packages out to
4 them for consideration. And I believe Arkansas did
5 abide by the critical to quality parameters of Lean
6 Six Sigma. I believe they could have done better in
7 terms of more systematically following the checklists,
8 and I think that's something that we are going to be
9 more meticulous about in future efforts with the
10 various regional offices.

11 VICE CHAIR THERNSTROM: Mr. Chairman?

12 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

13 VICE CHAIR THERNSTROM: Didn't we just
14 talk about this, or did we agree that we were going to
15 have a uniform checklist with the list of
16 organizations that may or may not be relevant in a
17 particular state; that is, a particular state may not
18 have a chapter of a national organization of one sort
19 or another, but that we were going to create
20 uniformity here.

21 CHAIRMAN REYNOLDS: Well, my recollection
22 differs. I believe what we agreed to was that the
23 Staff Director, whenever we voted on a SAC package,
24 one of the things that would be provided to the
25 Commissioners is a list of the organizations that were

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1 reached out to, as opposed to saying that -- and, in
2 fact, it was Commissioner Yaki who wanted certain
3 groups to be consulted, or that we would ask certain
4 groups automatically. And I believe that there was no
5 consensus to do that.

6 COMMISSIONER TAYLOR: Mr. Chair, if I may?

7 CHAIRMAN REYNOLDS: Yes.

8 COMMISSIONER TAYLOR: That is my
9 recommendation, as well, Commissioner Thernstrom, that
10 we did not agree that there should be uniformity for
11 the nation, given the diversity among the states.
12 That would be more appropriate, and more informative,
13 I think, for individual Commissioners to receive in
14 our re-chartering package for that particular state
15 simply a list of organizations that the Staff has
16 contacted as part of the process. Commissioner
17 Melendez, I think that would go a long way toward
18 asking or answering your very appropriate question
19 which you asked with respect to every re-chartering
20 package; that is, what organizations have been
21 contacted.

22 It would then, however, shift the burden
23 to the Commissioners once that re-chartering package
24 is received before the meeting to, hopefully, raise
25 questions once they review that list, if they have

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1 questions before the meeting so the Staff Director can
2 be in a position to address whatever particular
3 questions about that specific state may arise.

4 I would urge each individual Commissioner,
5 if they have a state of particular interest, to
6 contact groups in that state, and to send a copy of
7 that letter, or written correspondence to the Staff
8 Director, if it's - I won't name a group, whatever
9 group you want to contact. But we certainly have that
10 right as individual Commissioners. I don't think we
11 should shift that right to the Staff. I think the
12 Staff's job should be to provide us with a list of
13 contacts for each state, as part of the regular
14 package. And I think it's information they have
15 already, and it's just a matter of adding it to the
16 re-chartering package as a matter of routine.

17 VICE CHAIR THERNSTROM: That's fine with
18 me. I just wanted clarification on what we had already
19 decided, so that we were sticking to whatever the
20 record shows.

21 COMMISSIONER TAYLOR: Commissioner
22 Melendez, hope that addresses your question and
23 concern, which, frankly you raised, and I had the same
24 ones.

25 COMMISSIONER MELENDEZ: Yes. The other

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1 concern is, I am a strong believer that the regions
2 should be submitting the names, not the Commissioners.
3 I think that we're kind of overdoing it and the
4 Commissioners submitting the names from our respective
5 regions, and I hope that we can kind of make sure
6 that those names are coming up to us. Unless they
7 have the final say in terms of the vote, I just kind
8 of am a little wary that the Commissioners are the
9 ones that are pushing certain people forward on these
10 SACs.

11 VICE CHAIR THERNSTROM: Wait a minute. I
12 don't understand why we can't make suggestions, if we
13 have contacts in states. I mean, it's hard enough to
14 find people to do this with no compensation at all.
15 What is your objection?

16 COMMISSIONER MELENDEZ: I'm just saying
17 that our goal, we could move in that direction and
18 delegate down to the SACs, and also rather than us
19 trying to hand-pick people ourselves.

20 VICE CHAIR THERNSTROM: I don't think it's
21 Hand-picking, just a question of making suggestions if
22 we have contacts in particular states.

23 CHAIRMAN REYNOLDS: I think that members
24 of SACs, folks in the regions should all be a part of
25 the process, and that would include Commissioners in

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1 that group.

2 Commissioner Heriot?

3 COMMISSIONER HERIOT: For that matter,
4 there's nothing to prevent anybody in the United
5 States of America from making a suggestion.

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER HERIOT: So there certainly
8 is no reason why Commissioners, in particular, should
9 be discouraged from making suggestions. In fact,
10 anybody in the country can do it.

11 COMMISSIONER GAZIANO: We have a special
12 responsibility to help, so -

13 COMMISSIONER HERIOT: Not help. All the
14 power of the Commission is held by the actual
15 Commission, the eight members of the Commission
16 collectively, so there's certainly no reason that we
17 shouldn't be making proposals like this.

18 CHAIRMAN REYNOLDS: Any other comments? I
19 understand that Commissioner Heriot was going to raise
20 two environmental justices -

21 COMMISSIONER HERIOT: Oh, this is for the
22 next agenda item.

23 CHAIRMAN REYNOLDS: Yes.

24 COMMISSIONER HERIOT: Future agenda items?

25 CHAIRMAN REYNOLDS: Yes.

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1 COMMISSIONER HERIOT: Are we there?

2 CHAIRMAN REYNOLDS: Yes.

3 **VIII. FUTURE AGENDA ITEMS**

4 COMMISSIONER HERIOT: Okay. I just
5 recently became aware of a couple of environmental
6 justice bills that are pending in Congress right now.
7 I have not had a chance to look closely at them yet,
8 but given that the Commission issued a report on this
9 issue a few years ago, and the Commission's views may
10 have changed somewhat during the period between then
11 and now, I think this may be an area where the
12 Commission would want to weigh in with a letter.

13 I don't have any proposal at this time. I
14 just wanted to flag this as an issue that might come
15 up.

16 CHAIRMAN REYNOLDS: Okay. Mr. Staff
17 Director, would you get a hold of these two bills and
18 distribute them to all the Commissioners, and we'll
19 take a look at them, and move from there?

20 STAFF DIRECTOR DANNENFELSER: Sure. Yes,
21 I'll do that.

22 CHAIRMAN REYNOLDS: Unless there are
23 additional items, this meeting is adjourned.

24 **IX. ADJOURN**

25 (Whereupon, the proceedings went off the

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1 record at 10:43 a.m.)

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