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

PRESENT:

ABIGAIL THERNSTROM, VICE CHAIRMAN
JENNIFER C. BRACERAS, COMMISSIONER (via telephone)
GAIL L. HERIOT, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER (via telephone)
MICHAEL YAKI, COMMISSIONER

STAFF PRESENT:

MANUEL ALBA
DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
MAHA JWEIED
MONICA KIBLER
SOCK FOON MacDOUGALL
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
KARA SILVERSTEIN
KIMBERLY TOLHURST
AUDREY WRIGHT
MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
RICHARD SCHMELCHEL
KIMBERLY SCHULD
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VICE-CHAIRMAN THERNSTROM: We have a quorum, evidently, with two Commissioners on the phone. The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights at 624 Ninth Street, Northwest, Room 540, Washington, D.C.

All of the Commissioners are -- well, that's not correct. We have present in the room Commissioners Heriot, myself, Thernstrom, and Commissioner Yaki. We have on the phone Commissioners Braceras and Melendez. So we do have a quorum.

First item on the agenda is the approval of the agenda.

I. Approval of the Agenda

VICE-CHAIRMAN THERNSTROM: Can I get a motion to approve the agenda?

COMMISSIONER HERIOT: So moved.

VICE-CHAIRMAN THERNSTROM: Commissioner Heriot has so moved. I need a second.

COMMISSIONER BRACERAS: Second.

VICE-CHAIRMAN THERNSTROM: Thanks. I can see we're all in slow motion this morning and that includes me.
Can I have a motion to amend the agenda to add the rechartering of the South Carolina Advisory Committee and Section 7 and omit the Staff Director's Report.

The Staff Director cannot be here due to an illness in his family. I understand that Commissioners have provided additional recommendations for the Rhode Island and New Jersey Committees. That question is being worked on, but there is no reason why we can't go forward with South Carolina.

So a motion on this South Carolina -- on rechartering the South Carolina SAC.

COMMISSIONER HERIOT: I don't have those documents with me. Do we have copies of them?

VICE-CHAIRMAN THERNSTROM: What happened to the documents on the South Carolina rechartering?

COMMISSIONER HERIOT: I'm happy to move to amend the agenda as long as I get a copy.

VICE-CHAIRMAN THERNSTROM: Can we get Commissioner Heriot a copy?

You've got one in your hand now?

COMMISSIONER HERIOT: I just have a list of names now, but I'm happy to move -- I move to amend the agenda as you've requested.

VICE-CHAIRMAN THERNSTROM: Second?
COMMISSIONER BRACERAS: Second.

VICE-CHAIRMAN THERNSTROM: Jennifer, I'm glad you're with us. I don't think there's anybody awake enough to say "second" here.

All in favor of amending the agenda say aye.

(Ayes.)

VICE-CHAIRMAN THERNSTROM: All opposed.

COMMISSIONER MELENDEZ: No.

COMMISSIONER YAKI: No.

VICE-CHAIRMAN THERNSTROM: So that's two nos and two ayes, three ayes, is that correct, I believe. The motion is amended or approved.

Okay, the second item is approval of the Minutes of August 16, 2007.

II. Approval of the Minutes of August 16, 2007

VICE-CHAIRMAN THERNSTROM: Did I miss something?

I'm sorry. All right, we have a motion to approve the agenda. I'm sorry. I do not see this.

COMMISSIONER BRACERAS: So moved.

VICE-CHAIRMAN THERNSTROM: I will second it myself.

All in favor of approving the agenda?

COMMISSIONER HERIOT: Aye.
COMMISSIONER BRACERAS: Aye.

COMMISSIONER MELENDIZ: Aye.

VICE-CHAIRMAN THERNSTROM: Commissioner Yaki, are you voting on this?

COMMISSIONER YAKI: Well, I am -- first we approve the agenda and then we amend the agenda, correct?

VICE-CHAIRMAN THERNSTROM: Yes, I mean I thought we had done that and I'm sorry. I am really tired this morning, but --

COMMISSIONER YAKI: I had a point of information.

VICE-CHAIRMAN THERNSTROM: Yes.

COMMISSIONER YAKI: On the briefing report.

VICE-CHAIRMAN THERNSTROM: I thought we did approve the agenda.

No? Okay, I apologize to people. Yes, go ahead.

COMMISSIONER YAKI: Point of information. On the two items under Program Planning for the briefing report, I have not seen in my materials, nor have I seen in my emails either of the updated versions of either report and last I heard the staff was still working on incorporating additions and
comments. Those reports are at a loss. I don't understand how we can consider them today in the absence of the documents.

VICE-CHAIRMAN THERNSTROM: They're being tabled, I believe. Isn't that correct? They are being tabled.

COMMISSIONER YAKI: Well, this is the first I've heard of it, so thank you.

VICE-CHAIRMAN THERNSTROM: Well, first I heard of it was last night. So we were equally in the dark here.

All right, I'm sorry, where are we. Have we approved the agenda? Have we had a vote to approve the agenda? We did have a vote to approve the agenda, didn't we?

COMMISSIONER YAKI: We just did.

VICE-CHAIRMAN THERNSTROM: Commissioner Yaki, you didn't vote?

COMMISSIONER YAKI: Aye.

VICE-CHAIRMAN THERNSTROM: Okay. I believe there is a unanimous vote to approve the agenda.

I do not have to go back to the amendment question I assume? No. Good. One of you said something about that a minute ago.
Announcements, for the month of August.

III. Announcements

VICE-CHAIRMAN THERNSTROM: The President has issued a proclamation commemorating August 26 as Women's Equality Day. This day commemorates the passage of the 19th Amendment, the Women's Suffrage Amendment to the U.S. Constitution which gave U.S. women full voting rights in 1920. A struggle for women's suffrage began modestly at the Seneca Falls Convention in 1848 when a small band of women drafted a declaration of sentiments proclaiming they had the same rights as men.

In 1916, Jeannette Rankin of Montana became the first American woman elected to the U.S. House of Representatives despite the fact that her fellow women would not be able to vote nationally for four more years. Today, American women are leaders in business, government, law, science, medicine, the arts, education and many other fields. Women-owned businesses account for nearly half of all privately-held firms and are opening at twice the rate at male-opened businesses.

Colleges, of course, and universities, of course, have a gender imbalance, more women than men.

Law schools now, I believe, on average, more women
than men. I could be wrong on that.

COMMISSIONER HERIOT: It's about 50-50.

VICE-CHAIRMAN THERNSTROM: Fifty-50.

That's a big change from my youth. Medical schools definitely more women than men.

So you've come a long way, baby, as it were.

Anniversary of the --

COMMISSIONER YAKI: Madam Chair?

VICE-CHAIRMAN THERNSTROM: Yes.

COMMISSIONER YAKI: I just wanted to add two comments. One, that you rightly noted that women are in government. I want to recognize my former boss, now Speaker of the House of Representatives Nancy Pelosi; and also to recognize Irene Morgan Kirkaldy who was the first African-American woman, at least in recorded history, who refused to give up her seat in the back of the bus and prompted one of the first bus boycotts in the South in the late 1940s who died within the last two weeks.

VICE-CHAIRMAN THERNSTROM: Very good. Good additions.

This month also marks the forty-second anniversary of the signing of the Voting Rights Act. The Act was signed into law by President Lyndon
Johnson on August 6, 1965. The Voting Rights Act suspended literacy, understanding, character tests designed to keep blacks from registering and voting in the South. It authorized the federal registrars, officially called examiners in the Act.

Unlike the resistance to *Brown v. Board*, there really was no significant resistance to black enfranchisement, which skyrocketed immediately following the passage of the Act and permanently altered the political status and therefore the status of blacks in the South and ended a regime of apartheid that was very, was really the final nail in the coffin of that regime and in some ways, the Voting Rights Act is more important than the 1964 Civil Rights Act.

So we celebrate the passage of that Act in August every year. But that's not the order here. Yes, well it was not. In the script I have, that is not -- it is. It is. I apologize. I am so tired it is not to be believed. I have been unpacking -- packing and then unpacking a house kind of non-stop for the last three weeks and I am just flattened by the process.

We did not approve the minutes and I need a motion to approve the minutes.

COMMISSIONER YAKI: Okay, I'll do it.
COMMISSIONER BRACERAS: Second.

COMMISSIONER HERIOT: I just had a question about the minutes. I was confused. I hadn't peeled it off my computer before I could look at the transcript. I thought the minutes said that Commissioner Melendez voted against the motion on what to do with Commissioner statements. But since he has made a motion to do that, I believe that he voted for it and I'm not just sure.

VICE-CHAIRMAN THERNSTROM: Can somebody enlighten us as to -- Commissioner Melendez, maybe you can start.

COMMISSIONER MELENDEZ: I'm trying to find my minutes here. Could somebody read what it pertains to?

VICE-CHAIRMAN THERNSTROM: We're just waiting to get the documentation here.

COMMISSIONER HERIOT: At the bottom of the page, the Commissioners approved a motion 4-2 that Commissioners wanted to provide fact-finding, finding by finding and recommendation by recommendation statements. Must include those statements within their dissent or concurrence. My recollection was that Commissioner Melendez had made a motion to reconsider that vote, which he could only have done if
he had voted for it and I pointed that out at the
time.

COMMISSIONER YAKI: No, I made that
motion.

COMMISSIONER HERIOT: Is that right?

COMMISSIONER YAKI: Yes.

COMMISSIONER HERIOT: Okay, okay. Then
that is fine.

VICE-CHAIRMAN THERNSTROM: Okay, can we
proceed with the approval of the minutes? Has anybody
else got any discussion of the minutes?

COMMISSIONER BRACERAS: Yes, I was unable
to be on the call, but I just happened to notice that
it says it was convened at 6 p.m., and at the bottom
it says it was adjourned at 5:50.

(Laughter.)

VICE-CHAIRMAN THERNSTROM: Jennifer,
what's wrong with that?

COMMISSIONER YAKI: Yes, we've always said
that we've been in the twilight zone for more than
once.

COMMISSIONER BRACERAS: Well, okay. Do
with it what you will. I was saying I wasn't on the
call so I don't know whether --

VICE-CHAIRMAN THERNSTROM: Whether that
happened.

(Laughter.)

COMMISSIONER YAKI: We actually had a private plane, Jennifer, flying backwards across the time zone so that's what basically happened.

COMMISSIONER BRACERAS: Right. I hope you had a good time.

VICE-CHAIRMAN THERNSTROM: I don't believe that's correct. I believe that is correct that it convened at 6.

All right, this needs to be amended so that it reads that it convened at five. So without objection to that amendment, can we have a vote on approving the minutes? All in favor.

COMMISSIONER YAKI: Aye.

COMMISSIONER MELENDEZ: Aye.

VICE-CHAIRMAN THERNSTROM: Aye. They are approved unanimously with that amendment.

COMMISSIONER BRACERAS: Well, I am abstaining because I didn't take part in it.

COMMISSIONER YAKI: You weren't on the plane.

COMMISSIONER BRACERAS: I wasn't on that plane.

VICE-CHAIRMAN THERNSTROM: You want to a
separate motion changing the time? I thought we did not need that. Okay, staff director's report, obviously we are not getting today so we move on to the question of Management and Operations.

V. Management and Operations

VICE-CHAIRMAN THERNSTROM: The next item being consideration of a Commission Quality Information Guidelines.

COMMISSIONER YAKI: I move to table this item until the next meeting, until the staff director is present because I have a lot of questions. The staff director was involved in the preparation of it. I would rather do it at that time.

VICE-CHAIRMAN THERNSTROM: And David Blackwood is not an adequate substitute for you in terms of addressing questions? No.

COMMISSIONER MELENDEZ: I second the motion.

COMMISSIONER YAKI: The name is from the staff director, so I would prefer to do it with the staff director.

VICE-CHAIRMAN THERNSTROM: Obviously, substantial questions on your part. So we need a motion to table it.

COMMISSIONER YAKI: I made the motion and
it is seconded by Commissioner Melendez.

VICE-CHAIRMAN THERNSTROM: Okay. All in favor?

COMMISSIONER YAKI: Aye.

COMMISSIONER HERIOT: Aye.

VICE-CHAIRMAN THERNSTROM: I am abstaining.

COMMISSIONER YAKI: Commissioner Melendez?

COMMISSIONER MELENDEZ: Aye.

VICE-CHAIRMAN THERNSTROM: All right. That item is tabled. Program Planning, briefing report on racial categorization in the census.

VI. Program Planning

VICE-CHAIRMAN THERNSTROM: At the July 13, 2007 meeting, consideration of the briefing report on racial categorization in the census was tabled until this meeting to give the opportunity for Commissioners to comment on the final draft. However, the final draft has not been finalized or the draft report, I should say, has not been finalized.

Can I have a motion to table approval of this report?

COMMISSIONER YAKI: So moved.

COMMISSIONER MELENDEZ: Second.

VICE-CHAIRMAN THERNSTROM: All in favor.
(Chorus of ayes.)

VICE-CHAIRMAN THERNSTROM: Passes unanimously. Briefing report on educational effectiveness of Historically Black Colleges and Universities. This briefing report was scheduled for a vote at the July 13, 2007 meeting. However, the Commissioners voted to table the vote on the same until today in order to examine a study suggested by Commissioner Heriot and to submit comments.

This study was incorporated as Appendix A, and when appropriate it is cited in the report itself. However, the staff have still not received significant Commissioner comments. We have all been quite delinquent on this. Can I have a motion to table this report until the Commissioners have the opportunity to finalize their comments?

COMMISSIONER YAKI: So moved.

COMMISSIONER MELENDEZ: Second.

COMMISSIONER MELENDEZ: Second.

VICE-CHAIRMAN THERNSTROM: All in favor.

(Chorus of ayes.)

VICE-CHAIRMAN THERNSTROM: All opposed? Motion is unanimously approved.

Okay, Discovery plan and outline for FY 2008. As required by the Commission's administration
of instructions, the Office of the General Counsel, the OGC, and the Office of Civil Rights Evaluation, OCRE, submitted to you a discovery plan and a project outline for the Commission's project entitled 2008 Statutory Report Enforcing Prohibitions of Religious Discrimination in Prisons. This project will examine the extent and severity of religious discrimination in federal and state prisons throughout the United States, federal and state laws and regulations relating to the religious freedom of prisoners and the ability of faith-based organizations to participate in traditional programs for prisoners.

Can I have a motion to approve this project proposal as well as the discovery plan?

COMMISSIONER BRACERAS: So moved.

COMMISSIONER HERIOT: Second.

VICE-CHAIRMAN THERNSTROM: All in favor?

VICE-CHAIRMAN THERNSTROM: Discussion.

Sorry. Sorry, discussion.

COMMISSIONER YAKI: I have a question for staff on this. Our definition of prisons. What are we basing that on? In other words, are we also -- there are sort of different types of levels in terms of prisons in the United States. I am wondering to what extent, for example, Guantanamo would be
considered a prison, whether military prisons would be included, whether detention centers for immigrants are included. I would just like some explanation on that.

VICE-CHAIRMAN THERNSTROM: Is a detention center a prison?

COMMISSIONER YAKI: It depends on how you -- the definition of prison is sometimes unique within each state.

MR. BLACKWOOD: If I may, this is David Blackwood. In response to your question, Commissioner, no, we were not looking at anything beyond civilian prisons. No detention centers, not Guantanamo.

COMMISSIONER YAKI: And when we define prisons, are we also including, for example, jails like county jails?

MR. BLACKWOOD: No, this would be federal and state prisons, not jails.

COMMISSIONER YAKI: Even though jails are a frequent source of the overflow under most consent decrees and allow the states that have prison overcrowding conditions?

MR. BLACKWOOD: That's correct.

VICE-CHAIRMAN THERNSTROM: Aren't there limitations on the gathering of data if we start to
include county jails?

COMMISSIONER YAKI: Well, some of these county jails are pretty big operations. I mean, what you see is a lot of counties are under -- I know, because we ran a bond in San Francisco for our county jail precisely because of overcrowding issues. Some of these folks couldn't be held in prisons pending trial and they are ending up in county jail for anywhere from six months to more than a year.

So the question, I would just simply say that if I would like staff to take a look at any county jails of any significant size where as you are going to find some prisons of some size, but county jails of other size. I would also like to make a motion that -- well, I will start with that motion first.

VICE-CHAIRMAN THERNSTROM: Let me ask you a question, Commissioner Yaki, on that. Would it not be the case that a state would have a uniform policy? I mean, you know something about the subject and I don't. A state would have a uniform policy with respect to respecting religious rights of prisoners in whatever context and that we are not likely, given the additional difficulties with gathering those data, we are not likely to find a pattern different in the
county jails than we would find in the state prison?

COMMISSIONER YAKI: I would say that given the way in which resources in most of these institutions are stretched, you actually might find the difference in the way in the administration of justice between a state correctional institution and a county jail, number one. Number two, and I forgot to mention this, there's a -- are we also including in this the so-called civilian private prisons that are operated by contract with state correctional authorities? of which there are actually a substantial number with substantial populations and actually in many of those institutions you will actually find some of the more interesting and difficult issues of accommodation because unlike a state institution which might be drawn from the state population, some of the more private, contracted-for institutions actually contract with many different states to fill their beds, and therefore the population that is drawn from there is much different and accommodation issues are much -- how should I say, trickier.

So are we including --

VICE-CHAIRMAN THERNSTROM: Aren't they subject as well to whatever guidelines the state issues?
COMMISSIONER YAKI: It's an interesting question because sometimes they are to a certain extent, but to the extent you have -- there are -- for example, private correctional institutions that have prisoners from multi-states by contract. And then the question is what state does a state get to dictate how its inmates are treated when the warden, for example, may feel that in order to accommodate for safety or whatever, move people around, so you can't actually have here's the Indiana part of the population, here's the Colorado part of the population, here's Oklahoma part of the population. I think that's actually an area that is very tricky and worth looking into.

I didn't know if we were looking into the private prison context as well.

MR. BLACKWOOD: At this stage, I can't tell you we were including or excluding. It's an interesting definitional issue that you have raised. Whether it's someone who is out of state is still defined though as say an Arizona prisoner even though he's housed in Nebraska. I don't know the answer to that.

VICE-CHAIRMAN THERNSTROM: I don't have any substantive objectives to what you're saying. Indeed, I find it very, very interesting and obviously
would enrich the study, if we could address the
questions you're raising.

I'm very reluctant and this is a question
only the staff can answer, I am very reluctant to
define and expand, redefine and thus expand the
project in a way that we can see overall quality
simply because we can't that relevant --

COMMISSIONER YAKI: I understand, but let
me add one point which I think would clarify this a
little bit.

There are smaller states and smaller
territories of the United States that do not have the
means to construct a prison and staff it adequately,
much less fund it adequately. These places and I will
name the State of Hawaii for one. Hawaii has a fair
number of its prisoners exported to, for lack of a
better word, to private institutions housed in other
parts of the country.

You can't really get a meaningful check
about how any religious practices or beliefs or
cultural beliefs for that matter, but that's not quite
the subject of this report, are accommodated, unless
you go to some of these other places to see whether or
not -- because certainly one could argue, in Hawaii,
for Hawaii prisoners, there probably would be pretty
good accommodation. But what happens to a native Hawaiian prisoner with their own beliefs who is sent to an institution in Oklahoma which actually I know is where some of them go and where there actually have been some fairly substantial problems because of racial and religious and other kinds of conflicts.

So I think if we overlook that section of the prison population, we are overlooking actually a very good place where perhaps the intervention of our guidance may be needed the most.

VICE-CHAIRMAN THERNSTROM: David Blackwood, what do you think?

MR. BLACKWOOD: Well, let me give you some background as far as what we're finding, number one. There is no centralized database which is what we were hoping for and therefore could slice and dice the information. Okay, what about this? What about that? And do some sort of analysis. That simply doesn't exist.

As I say, you raise an interesting definitional issue about whether a private prison for purposes of legal analysis is a private prison or is it viewed as an agent of the state, of the prisoners that are located --

VICE-CHAIRMAN THERNSTROM: Yes, I would
think the latter, by the way.

MR. BLACKWOOD: What we are looking at --

VICE-CHAIRMAN THERNSTROM: Not an agent of the state?

COMMISSIONER YAKI: It's an agent of the state for purposes of incarcerating their prisoners.

But it is not always an agent of the state --

VICE-CHAIRMAN THERNSTROM: I understand, an agent of the --

COMMISSIONER YAKI: For regulatory --

VICE-CHAIRMAN THERNSTROM: For individual --

COMMISSIONER YAKI: -- oversight and that kind of thing.

VICE-CHAIRMAN THERNSTROM: Yes, I understand.

MR. BLACKWOOD: That's simply a question I haven't looked at. So I will tell you -- here's what we're planning to do at this stage. After we have spent a lot of time trying to determine if anybody had a centralized database is to identify a sample size, a direct discovery to those to find out what additional information exists and perhaps we may be put in the position of only having anecdotal evidence and if we need to do that, the idea is to do it geographically
dispersed and size dispersed. We were trying to
describe state, federal, big prison, small prison, because they
can have different resources available and therefore
can treat different prison populations differently.

Your issue, I simply don't know whether to
say --

COMMISSIONER YAKI: And again, the reason
why is in terms of scale, in some states in the Union,
a high percentage of prisoners are actually put in
these private institutions. Texas has a fair number
of them, Arizona does as well. And I just think that
it's a snapshot in terms of representativeness and how
a private contractor arguably under the aegis of -- or
acting under the color of state law or whether or not
it feels bound to accommodate the religious needs of
these folks.

And again, because it's an expanding area
of incarceration, a growth industry, for lack of a
better word, I think that it would be useful. And I
actually know the names of several of these
institutions. I could refer you to a website that has
them all that would make it easier to track and
perhaps if you were to select one or two for the
purposes of doing your surveys, that would help out a
bit.
VICE-CHAIRMAN THERNSTROM: I do have to say one of my reactions to this whole line of questioning of yours is to wonder whether we're going to be reduced to a lot of anecdotal stuff that I'm going to be uncomfortable with as the basis of a solid statutory report. And if that is the case, you know, I don't -- then it will not be a report that the Commission really can stand by.

COMMISSIONER YAKI: There already is no centralized data base according to David.

VICE-CHAIRMAN THERNSTROM: Well, this is the first I've heard of that. I didn't know that. I'm bothered now by the project.

COMMISSIONER HERIOT: By the way, the California SAC was not told that jails were not included, so when we did our briefing, we did include a witness from the L.A. County Jail. And I thought it was valuable information.

MR. BLACKWOOD: I can tell you this. We have done a survey of virtually all appellate opinions dealing with RLUIPA. And it would cover virtually every RLUIPA case since it got passed. So if there were any cases involving private prisons, that should come up as well. Now that's the legal section and analysis.
My bigger question and I just can't answer it today as far as doing a survey or the more social science and trying to gather data about how actual applications for modifications or accommodation have been addressed, including a private prison, one way or the other.

COMMISSIONER HERIOT: David, is there a definition of prison in the Religious Land Use and Institutionalized Persons Act? And are we using any definition of prison that's any different from what's in the Act?

MR. BLACKWOOD: I'm sure there's a definition and I haven't focused on it at all. I was using more of a common sense view of -- that had not come up on our radar screen as far as let's look at that as opposed to the state and the federal prisons and their normal operations.

COMMISSIONER HERIOT: If they include the private prisons, then it doesn't make any sense for us not to include them.

MR. BLACKWOOD: Certainly, they're covered under RLUIPA.

COMMISSIONER YAKI: You should double check that. I mean I know -- I used to do prison litigation and I do know that in at least a couple
instances in Federal Courts 1983 claims were turned
down because of the status of the prison as private.

    So I just think if you do your RLUIPA
search or database, do one more cut to see if the word
"private" comes up to see whether or not they are
covered or not. Because if they're exempted from it,
again, it goes to the question of are prisoners in
certain types of institutions which are becoming
prevalent in the United States, outside the aegis of
federal protection? And what can we do about that?

    MR. BLACKWOOD: What I can say is we will
look at that and report back by the next meeting. I
will also say understand that given from what we are
finding that there is, as I say, no centralized
database where we can look at the universe as a whole
and then slice and dice. Everything at this stage
looks like it will be anecdotal, so what it would be
is we're not going to look at -- we wouldn't be able
to look at all private prisons is my point. We might
be able to send discovery to one private prison.

    COMMISSIONER YAKI: But there are BOP
guidelines I know that for sure.

    MR. BLACKWOOD: Correct, correct,
absolutely. And we have talked with BOP and we have
talked to Justice and we have talked to private
interest groups. We're just not finding anything that
creates a larger data base that we'd be able to use.

VICE-CHAIRMAN THERNSTROM: And I assume, Commissioner Yaki, that you are not prepared to approve this project as it currently stands. You want further information about the scope of it, is that correct?

COMMISSIONER YAKI: I mean --

VICE-CHAIRMAN THERNSTROM: What are we going to do?

COMMISSIONER YAKI: To the extent that there are things that -- there's nothing in here inherently objectionable to going forward on those grounds.

VICE-CHAIRMAN THERNSTROM: Right.

COMMISSIONER YAKI: I'm just concerned that the scope is going to be missing this growing segment of the prison population over here that may by virtue of its private nature escape the kind of scrutiny that we would want in terms of what our report would cover.

VICE-CHAIRMAN THERNSTROM: I understand. I think, if I understand correctly, we need to vote on approving this project at this meeting?

MR. BLACKWOOD: Yes, we do.
COMMISSIONER HERIOT: I am very sympathetic to what you're talking about, but can we approve this report so the staff can get started and then amend it.

COMMISSIONER YAKI: I wasn't objecting to that. I was simply stating --

VICE-CHAIRMAN THERNSTROM: Then we can do that.

COMMISSIONER YAKI: I would like to move to approve it, but include a request that staff come back at the next meeting or before the next meeting with a written or oral report. I mean written report would be fine, too, because I think next meeting is a briefing which means it's going to take up a lot of time and we've already tabled a lot of stuff for the September meeting. So I mean if we can get back something written that addresses the point about jails and private prisons, that would help out a lot.

VICE-CHAIRMAN THERNSTROM: So --

MR. BLACKWOOD: We could do that. I can tell jails, my initial reaction would be that's probably spanning this beyond our capabilities. The private prisons I think we can definitely look at relatively quickly and say yes, we can do that or not.

COMMISSIONER YAKI: But we should also
take a look at whether or not, I mean, jails of a certain size. I'm not talking about, you know, Mayberry, RFD county jail with Barney Fife at the desk. I'm talking about LA County, SF County, which built a $150 million county jail. LA which has jail overcrowding such that people with DUIs who are celebrities check-in in the morning and check-out 82 minutes later. I won't mention the name so we go through a defame/degrade report.

(Laughter.)

But it is fact. You know -- and Maricopa.

VICE-CHAIRMAN THERNSTROM: All right, but at some point there is a quality, a scope and quality tradeoff.

COMMISSIONER YAKI: Sure.

COMMISSIONER HERIOT: But there may be ways to include jails in certain parts of the report with SACs taking testimony.

VICE-CHAIRMAN THERNSTROM: There may be. There may be. I'm going to be very bothered if we are entirely, again, I said this before, dependent on anecdotal information.

Let us approve it as stated by Commissioner Yaki that the motion includes an expectation, an understanding that you will come back
to us with a further discussion of the Commission's ability to look into where obviously important questions that Commissioner Yaki has raised.

MR. BLACKWOOD: We can do that. I suggest that we will probably do it in writing.

COMMISSIONER YAKI: Okay.

VICE-CHAIRMAN THERNSTROM: I would prefer it in writing actually. I have a preference for staring at exactly what our plans are on a written piece of paper.

MR. BLACKWOOD: Okay.

COMMISSIONER HERIOT: So is that a motion to approve with that?

COMMISSIONER YAKI: Yes, I move to approve with the amendment that staff report back for the next meeting on jail and private prison coverage.

COMMISSIONER HERIOT: Second.

VICE-CHAIRMAN THERNSTROM: All in favor.

COMMISSIONER BRACERAS: Yes, aye.

VICE-CHAIRMAN THERNSTROM: Jennifer, what you got you?

COMMISSIONER BRACERAS: Yes, aye.

VICE-CHAIRMAN THERNSTROM: Okay, anybody opposed? It has passed. Okay, update on the briefing on minorities and foster care and adoption. On
September 21, 2007, the Commission will have a briefing on minority children and state foster care and adoption. Briefing will examine how effectively the US Department of Health and Human Services is enforcing the Multi-ethnic Placement Act of 1994 and its prohibition that public child welfare agencies delay or deny a child foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin.

At this point, the following speakers are at least tentatively lined up to present at the briefing: Commission Joan Ohl; Thomas Atwood, National Council for Adoption; Dr. Rita Simon, American University; Professor Elizabeth Bartholet, Harvard Law School; J. Toni Oliver, National Association of Black Social Workers; Joe Kroll, North American Council on Adoptable Children; the Children Welfare League of America; and Ruth McRoy, who is not identified as who is Ruth McRoy? Somebody got her identification? Currently research professor and Ruby Lee Piester Centellian Professor Emerita at the University of Texas at Austin School of Social Work.

So, any discussion of those speakers? Any discussion of the whole plans, the briefings? Any comments? Okay, well there is no vote here. It was
just a question of reporting this.

State Advisory Committee issues.

VII. State Advisory Committee Issues

VICE-CHAIRMAN THERNSTROM: Excuse me?

COMMISSIONER YAKI: Nothing.

VICE-CHAIRMAN THERNSTROM: Can I motion that the Commission recharter the South Carolina SAC? Under this motion, the Commissioner appoints the following individuals to that committee based on the recommendations of the staff director: Mignon Clyburn recommended as chair; Daniel J. Cassidy, Wilfredo DeLeon, James Gaillman, Wanda George-Warren, Roberta J. King, Karyl H. Long, Joanne Metrick, Samuel J. Tennebaum, Jesse Washington, Jr., and Caroline Whitson.

Under this motion, Mignon Clyburn is appointed as chair and these members serve as uncompensated government employees and the Commission appreciates the hard work that they will no doubt contribute to this SAC.

Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointment.

COMMISSIONER YAKI: Madam Chair?

VICE-CHAIRMAN THERNSTROM: Yes.
COMMISSIONER YAKI: I would like to again move to table this to the next meeting. There is a question that I have about a nominee that comes from the staff director and I prefer that the staff director be present for my questioning?

VICE-CHAIRMAN THERNSTROM: Did you put that in a formal motion? I'm sorry.

COMMISSIONER YAKI: Yes, I just did.

VICE-CHAIRMAN THERNSTROM: Yes. Anybody seconded that motion?

COMMISSIONER MELENDEZ: I'll second it. Commissioner Melendez. I agree. Usually the staff director answers a lot of these questions that I usually have.

VICE-CHAIRMAN THERNSTROM: Any other discussion of this?

COMMISSIONER BRACERAS: Yes, it just seems to me that people, you know, have come a long ways to meet in August when we don't typically meet and everything is being tabled. I wasn't able to come because I have another commitment later on, but I'm sure glad I didn't get on that plane.

COMMISSIONER YAKI: Well, I am regretting that myself now, Jennifer.

COMMISSIONER HERIOT: Which member is it
that you are concerned about, Commissioner Yaki?

VICE-CHAIRMAN THERNSTROM: What are you regretting yourself now?

COMMISSIONER YAKI: No, flying all the way out here for everything being knocked off. Usually, Jennifer, when we fly out we get all this stuff on Thursday. I presume that the briefing reports would be sent Thursday or Wednesday as is normally. But when they didn't show up, as of last night I knew that I had a sinking feeling that I had flown a long way for naught. If my motion is denied, I will talk about the person, but I would rather not bring the person up now.

COMMISSIONER HERIOT: Well, we can't vote on it until we know what the issue is.

COMMISSIONER YAKI: Well, I think it is unfair to the person involved --

COMMISSIONER HERIOT: You might get somebody to vote with you.

VICE-CHAIRMAN THERNSTROM: But you're going to bring that person's name up next time?

COMMISSIONER YAKI: Yes, but that is with the staff director. I would rather not have that person linger for a month wondering what I'm going to be asking about that person.
COMMISSIONER HERIOT: It is a lot harder to persuade somebody to vote with you if you don't have --

COMMISSIONER YAKI: Well, I am just simply saying as a matter of principle, the staff director has been involved in these proceedings. I have a question about one of the members, at least one of the members, I should say, of the proposed SAC. He has always been responsive. Even if I don't always agree with him, he has been responsive in terms of his answers.

COMMISSIONER HERIOT: But you won't disclose who it is even though --

COMMISSIONER YAKI: First of all, there are a couple of people, but unfortunately -- do you have the list over there?

COMMISSIONER HERIOT: I've got the resumes here.

COMMISSIONER YAKI: Well, then I will need to take a look at the resumes because there is more than a couple, which is why I move to table in the first place because --

COMMISSIONER HERIOT: Here is the list of the names. The thing is you might not win your motion unless you have something that you could persuade
people with.

COMMISSIONER YAKI: Well, I mean if you want me to go ahead and do it, then I'll do it.

COMMISSIONER HERIOT: Because you then have to bring it up anyway.

VICE-CHAIRMAN THERNSTROM: Yes, I do think that you are -- I mean, eventually it is going to become no mystery as to whom you object.

COMMISSIONER YAKI: I need to see the resumes. The names don't mean anything to me except for one.

COMMISSIONER HERIOT: I need to check. We need sets for everybody.

VICE-CHAIRMAN THERNSTROM: Can we have resumes here? I just looked through my pile because I do not have the resumes.

COMMISSIONER BRACERAS: Just so you know, I need to step out of the room for one minute. I will let you know when I am back.

VICE-CHAIRMAN THERNSTROM: Thanks, Jennifer. The chaos of my recent life has meant, because of having moved from one state to another, I have not looked at resumes. Were these resumes sent to us?

COMMISSIONER HERIOT: These are from a
long time ago.

COMMISSIONER YAKI: Yes, these are from a long time ago.

VICE-CHAIRMAN THERNSTROM: Yes, that's what I thought.

COMMISSIONER BRACERAS: I have returned. Sorry. Is everyone there?

VICE-CHAIRMAN THERNSTROM: Everybody is here. We're waiting for -- I need a copy of the resumes.

COMMISSIONER YAKI: Here, you can take these. My questions go mainly to the nomination of a Ms. Karyl Long. I would urge you to read Ms. Long's statement before I begin speaking.

COMMISSIONER HERIOT: I think you have got the only copy.

COMMISSIONER YAKI: She is toward the back of the pile.

VICE-CHAIRMAN THERNSTROM: There is a little consultation going on.

COMMISSIONER YAKI: How is the weather up in Boston, Jennifer?

COMMISSIONER BRACERAS: It is beautiful today.

(Whereupon, the above-entitled matter went off the
VICE-CHAIRMAN THERNSTROM: Commissioner Yaki, the last time where you had made a motion to table this -- I'm sorry.

MR. BLACKWOOD: In your purse.

COMMISSIONER YAKI: Are you trying to make off with a microphone again? Isn't there some D-felony for walking off with the microphone from federal property?

VICE-CHAIRMAN THERNSTROM: Probably. I've been dying to be --

COMMISSIONER YAKI: Unless of course, you've moved her to become -- assume some training at Langley we didn't know about.

VICE-CHAIRMAN THERNSTROM: You just added me?

(Laughter.)

VICE-CHAIRMAN THERNSTROM: I believe that you have made a motion to table consideration of a South Carolina SAC. Is that correct?

COMMISSIONER YAKI: Yes.

VICE-CHAIRMAN THERNSTROM: Can I have a second on that?

It was seconded. All in favor?
COMMISSIONER BRACERAS:  Abstain.

VICE-CHAIRMAN THERNSTROM:  All right, the motion carries.

Future agenda items.

VII. Future Agenda Items

VICE-CHAIRMAN THERNSTROM:  There doesn't seem to be anything under future agenda items here.

COMMISSIONER YAKI:  Everything was on this list.

VICE-CHAIRMAN THERNSTROM:  Further agenda items. We have a long list of future agenda items. Everything at this point.

COMMISSIONER YAKI:  I would ask that the chair look to make sure that we don't overload the September meeting, given that we have a briefing with a fair number of people.

VICE-CHAIRMAN THERNSTROM:  I think we should --

COMMISSIONER BRACERAS:  That was the whole reason for me to be --

COMMISSIONER HERIOT:  Yes, we probably need a telephone conference to do some of these SACs.

VICE-CHAIRMAN THERNSTROM:  Either a telephone conference or we need to meet the day
before.

COMMISSIONER YAKI: I know that I cannot do. I'm taking the red eye on Thursday to get here for the meeting on Friday.

VICE-CHAIRMAN THERNSTROM: All right.

COMMISSIONER HERIOT: Do it as a telephone conference.

VICE-CHAIRMAN THERNSTROM: We need to do this.

David, what do you think?

MR. BLACKWOOD: I think it makes sense to do it and I think we need to perhaps segregate the SACs and do that as a telephone meeting.

VICE-CHAIRMAN THERNSTROM: A separate telephone meeting.

MR. BLACKWOOD: Correct.

VICE-CHAIRMAN THERNSTROM: That's fine with me.

Does this need to be in the form of a motion?

COMMISSIONER YAKI: No, it's at the discretion of the chair, I think.

VICE-CHAIRMAN THERNSTROM: Yes.

All right, let us do that. We can't pile all this stuff into the next meeting when we've got a briefing
as well. So we're going to have to go over some of this business beforehand and to the extent to which it's possible, Commissioner Yaki, it seems to me to make sense for you to talk directly to the staff director about -- you've had multiple concerns here that where there are questions addressed specifically to him. And then we can maybe expedite the process of the meeting, the telephone conference meeting itself.

So the first -- obviously, there has to be proper notification, so what are we talking about potentially?

COMMISSIONER YAKI: We're not doing it the first week of September.

VICE-CHAIRMAN THERNSTROM: I am away, but I'm not away from a phone call, from a telephone. My palm pilot is out of juice, so I don't have a calendar.

Can we deal with this in terms of scheduling with an email to Commissioners?

MR. BLACKWOOD: I would think so.

COMMISSIONER BRACERAS: What week in September are we looking at?

COMMISSIONER YAKI: We don't know yet, Jennifer. We're going to do an email blast for people --
VICE-CHAIRMAN THERNSTROM: But not the first week of September. It's been suggested the second week of September.

COMMISSIONER BRACERAS: We're all busy I know, but the second, the third and fourth week of September I'm extremely tied up with meetings related to the chancellor search at UMass.

VICE-CHAIRMAN THERNSTROM: When is our September meeting? I don't have my calendar with me?

COMMISSIONER YAKI: Friday, the 21st.

(Pause.)

VICE-CHAIRMAN THERNSTROM: Except for the South Carolina. The reason that the other SACs, the SACs, well, South Carolina is the exception, but the other SACs, they had to be tabled because we do not have the paperwork on the nominees and it's no use discussing the other SACs until indeed -- is that correct?

MR. BLACKWOOD: I believe so. What I would suggest, right now we have two briefing reports that are at issue and three SACs. Two of them as you just pointed out don't have sufficient information. That would leave it broad enough that the staff director should explore the opportunity to set up a telephonic conference, without directing him.
definitely to schedule one, but explore and communicate with you all by email or however, about whether it's practical to have one. Because right now, I can't speak to the report. Definitely, we have this SAC, the South Carolina SAC that should be voted on beforehand.

VICE-CHAIRMAN THERNSTROM: All right, let us leave it up to the good auspices of you and the staff director to work this out.

And we will proceed from there, but can I have a motion to adjourn the meeting?

COMMISSIONER BRACERAS: So moved.

VICE-CHAIRMAN THERNSTROM: I second it. All in favor?

(Chorus of ayes.)

VICE-CHAIRMAN THERNSTROM: It's approved unanimously. We are adjourned.

(Whereupon, at 10:39 a.m., the Commission meeting was concluded.)