

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

+ + + + +

FRIDAY

SEPTEMBER 21, 2007

+ + + + +

WASHINGTON, D.C.

+ + + + +

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
 PETER N. KIRSANOW, COMMISSIONER (via telephone)
 ARLAN D. MELENDEZ, COMMISSIONER
 ASHLEY L. TAYLOR, JR., COMMISSIONER

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

MANUEL ALBA
 DAVID BLACKWOOD, General Counsel
 MARGARET BUTLER
 TERESA BROOKS
 CHRISTOPHER BYRNES, Attorney Advisor to the OSD and
 Acting Deputy General Counsel, OGC
 PAMELA A. DUNSTON, Chief, ASCD
 LATRICE FOSHEE
 MONICA KIBLER
 EMMA MONROIG, Solicitor/Parliamentarian
 KARA SILVERSTEIN
 AUDREY WRIGHT
 MICHELE YORKMAN

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COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER

RICHARD SCHMELCHEL

KIMBERLY SCHULD

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

9:42 a.m.

VICE CHAIR THERNSTROM: We are proceeding hope that Commissioner Yaki will be able to join us on the phone. Evidently the technological problem is at his end, not ours.

Good morning. I am Vice Chair Abigail Thernstrom. Meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights. 9:30, though it's not really 9:30. It's a little later. On September 21, 2007. The meeting is held at 624 9th Street, Northwest, Room 540, Washington, D.C.

The Commissioners are present with the exception of Commissioners Braceras, Kirsanow and Yaki, who will in theory participate on the phone. Although at the moment we only have Commissioner Kirsanow on the phone.

This morning we will have a briefing on the Multi-Ethnic Placement Act of 1994, minorities who are in foster care and adoption only.

This relates to the briefing itself, is that still correct?

STAFF DIRECTOR MARCUS: The only business on the agenda relates to the briefing itself. If

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1 there were a motion to amend the agenda --

2 VICE CHAIR THERNSTROM: Okay.

3 STAFF DIRECTOR MARCUS: -- other business
4 could be added.

5 VICE CHAIR THERNSTROM: All right. I
6 thought -- thank you.

7 COMMISSIONER BRACERAS: Good morning.
8 This is Jennifer Braceras.

9 VICE CHAIR THERNSTROM: Welcome, Jennifer.
10 And really have just started this minute. So we're
11 at the first item of the agenda, which is the approval
12 of the agenda.

13 **1. Approval of Agenda**

14 VICE CHAIR THERNSTROM: Is there a motion
15 to approve the agenda?

16 COMMISSIONER MELENDEZ: I'd like to make a
17 motion to amend the agenda for addition of a couple of
18 items. One of the items would be to clarify our
19 scheduling date that we didn't get an answer on the
20 email.

21 And then the other one would just be a
22 brief announcement on a declaration by the United
23 Nations General Assembly having to do with a
24 declaration on rights of indigenous people.

25 VICE CHAIR THERNSTROM: That's not an

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1 announcement you want to make today?

2 COMMISSIONER MELENDEZ: Yes, it is. Yes.

3 VICE CHAIR THERNSTROM: But that doesn't
4 require --

5 COMMISSIONER MELENDEZ: Okay. It doesn't
6 require an amended agenda. That's fine.

7 But the only amended agenda item would be
8 the schedule so that we're clear on what we can
9 resolve over the email.

10 VICE CHAIR THERNSTROM: All right. That
11 would require -- I'm sorry. We usually have, and I do
12 apologize. I'm looking at this cold because the
13 information about the transcript for this meeting
14 didn't get to me until five minutes ago instead of
15 last night. But we do need then to add an item called
16 Announcements. I assumed that there was such an item
17 in the agenda.

18 COMMISSIONER MELENDEZ: Yes. Yes.

19 VICE CHAIR THERNSTROM: Because we usually
20 have an item labeled Announcements.

21 So, okay. With those amendments. Okay.
22 All in favor indicate by saying aye?

23 ALL: Aye.

24 VICE CHAIR THERNSTROM: This is the
25 amended motion. Any opposed? Motion is approved

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1 unanimously.

2 **II. Approval of Minutes of August 24 Meeting**

3 VICE CHAIR THERNSTROM:

4 Second item, approval of the minutes of
5 August 24th, 2007 Meeting. Is there a motion to
6 approve those minutes?

7 COMMISSIONER TAYLOR: So moved.

8 COMMISSIONER MELENDEZ: Second.

9 VICE CHAIR THERNSTROM: Any changes,
10 discussions, questions?

11 All in favor please indicate by saying
12 aye.

13 ALL: Aye.

14 VICE CHAIR THERNSTROM: Opposed? motion
15 is approved unanimously.

16 Okay. So we need to insert at this point
17 maybe Announcements,

18 STAFF DIRECTOR MARCUS: Yes.

19 VICE CHAIR THERNSTROM: Announcements.

20 **III. Announcements**

21 COMMISSIONER MELENDEZ: Announcements?
22 I'm not sure, Madam Chair, if we announce that the
23 month of September was the anniversary of the U.S.
24 Civil Rights Commission. I believe it was September
25 7th. I don't know if we announced that the last time.

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1 But in addition to that, I would like to
2 note for the record that on Thursday, September 13th,
3 2007 the United Nations General Assembly overwhelming
4 approved the first Declaration on the Rights of
5 Indigenous Peoples. Among the many rights described
6 in the document the Declaration affirms the rights of
7 all indigenous peoples to self-determination and to
8 preservation of their integrity as a distinct peoples.

9 I'm sad that the United States was one of
10 just four countries to vote against the Declaration.
11 But pleased that over 140 countries voted for the
12 measure.

13 The adoption of the Declaration is a
14 historic event that has been decades in the making. I
15 am proud to see the world community take a stand to
16 ensure minimum standards for the survival, dignity and
17 well-being of all indigenous peoples.

18 Thank you.

19 VICE CHAIR THERNSTROM: I would like to
20 note for the record that there's some debate over
21 whether the anniversary is the date you gave or
22 January 3rd when the first Commissioners were sworn in
23 and the first meeting took place. And we are planning
24 to have in January an event commemorating that
25 anniversary.

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1 COMMISSIONER MELENDEZ: Okay.

2 STAFF DIRECTOR MARCUS:

3 VICE CHAIR THERNSTROM: So in effect
4 January 3rd has been chosen as the correct date. But
5 I thank you --

6 COMMISSIONER HERIOT: Abby?

7 VICE CHAIR THERNSTROM: Yes.

8 COMMISSIONER HERIOT: And the Commission
9 was represented at the Senate Judiciary Committee
10 hearing. I testified on the anniversary of the Civil
11 Rights Act of 1957, which establishes the Commission.

12 But we'd like to draw out our anniversary a little
13 bit longer, so I think that's why we're hoping for a
14 celebration in January.

15 COMMISSIONER MELENDEZ: Sounds good.

16 VICE CHAIR THERNSTROM: And I should add
17 that Commissioner Heriot is putting together an
18 impressive or what should be an impressive program.
19 And it is, indeed, something to celebrate. This has
20 been a Commission with a long and illustrious history
21 and has done a lot of extremely important work,
22 obviously. And I'd like to think we continue to do
23 extremely important work.

24 **IV. PROGRAM PLANNING**

25 There is also the question of changing the

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1 order of the -- Mr. Melendez, you wanted to change our
2 calendar?

3 COMMISSIONER MELENDEZ: Yes. I was
4 proposing an email to change the Border Town briefing
5 and move that to November. And basically have the
6 business meeting on October. Just switching those two.

7 Because I was just afraid that there was going to be
8 business on this meeting and it would be basically put
9 off until the Border Town briefing next month, and I
10 didn't want that to happen. Otherwise, you know, we
11 can kind of whatever arrangement we can make that
12 there's no business. I suggested just November for the
13 Border Towns.

14 The other thing is I think we're still
15 formulating the speakers that. And That's coming up
16 on us really quickly. And so maybe more time would
17 allow us -- I'm getting some calls on some people who
18 want to be part of that panel. And I'm trying to
19 forward them to the Staff Director, but I think we're
20 still in the middle of that process.

21 VICE CHAIR THERNSTROM: That way we would
22 have a business meeting on October and then the next
23 business meeting would be --

24 COMMISSIONER MELENDEZ: That would be the
25 last one, is my understanding, for the year.

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1 VICE CHAIR THERNSTROM: In December.

2 STAFF DIRECTOR MARCUS: So December would
3 be a briefing?

4 VICE CHAIR THERNSTROM: December's a
5 briefing? You know, we're back to the same problem
6 needing business meetings, have briefings back-to-
7 back. Staff Director, what do you think?

8 STAFF DIRECTOR MARCUS: It is true we need
9 a business meeting. We've got a lot of business piled
10 up. And it's also true, as Commissioner Melendez
11 indicates, that we don't yet have the panels firmed up
12 for the Border Town briefing. So I don't see a
13 problem from that point of view of having a briefing
14 next month and moving the Border Town briefing until
15 the month after.

16 VICE CHAIR THERNSTROM: It's not possible,
17 it seems to me, to do without any business in
18 December.

19 STAFF DIRECTOR MARCUS: Well, it's hard to
20 say this far in advance, but --

21 VICE CHAIR THERNSTROM: Well, it's
22 unlikely that it's possible.

23 STAFF DIRECTOR MARCUS: It's very
24 unlikely, yes. The greatest likelihood is that there
25 will be more business by then. I would hope that

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1 there will be SAC charter packages for that meeting,
2 and other business as well.

3 COMMISSIONER HERIOT: Can I make a
4 suggestion? It seems to me that SAC chartering is
5 something that can easily be done by telephone
6 conference and we ought to have more of those.

7 VICE CHAIR THERNSTROM: I don't have a
8 problem with that. I really don't. We don't need to
9 hold an audience to go through names and SAC one-by-
10 one.

11 Anybody else got any input on that
12 question?

13 Well, in the meantime, Commissioner
14 Melendez, it seems to me that we can go ahead with
15 what you're requesting. We haven't accepted a vote on
16 it. Go ahead with what you're requesting and just
17 take this kind of one month at a time, as it were, in
18 a sense that we don't have to make a decision about
19 what business needs to be done after the November
20 meeting.

21 So, I need a motion to reverse the October
22 and November.

23 COMMISSIONER MELENDEZ: I'll make that
24 motion.

25 VICE CHAIR THERNSTROM: Somebody second

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1 it.

2 COMMISSIONER HERIOT: Second.

3 VICE CHAIR THERNSTROM: All in favor?

4 ALL: Aye.

5 VICE CHAIR THERNSTROM: Okay. That is
6 approved unanimously. And so we will go ahead with
7 that.

8 Then there is one other matter of
9 business. I need a motion that the Commission include
10 the briefing book which has been distributed to
11 Commissioners in the record for today's briefing on
12 Minority Children in State Foster Care and Adoption.

13 It's my belief, and I think that of
14 others, that these briefing books represent an
15 enormous amount of work by the staff. They're
16 invaluable and they should be part of the public
17 record. Because they are part of the --

18 COMMISSIONER HERIOT: And we can't have
19 move to have that routinely the case from now until
20 kingdom come?

21 COMMISSIONER TAYLOR: Standing rule.

22 VICE CHAIR THERNSTROM: Standing rule. I
23 would prefer that. Want to make a motion to that
24 effect?

25 COMMISSIONER HERIOT: Can I make a motion

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1 that we amend the standing rules to include briefing
2 books routinely?

3 VICE CHAIR THERNSTROM: Is there any
4 problem with that?

5 STAFF DIRECTOR MARCUS: No. That's fine.
6 That would make things easier.

7 VICE CHAIR THERNSTROM: Okay. All right.
8 I need a second on that.

9 COMMISSIONER TAYLOR: Second.

10 COMMISSIONER KIRSANOW: Vice Chair, I'll
11 second.

12 VICE CHAIR THERNSTROM: All approve? Can
13 I hear all in favor?

14 ALL: Aye.

15 VICE CHAIR THERNSTROM: Anybody opposed?
16 That has passed unanimously.

17 Good. I think that that's a very
18 important change and will enrich the record. And, in
19 fact, I would like to see it retrospective. I mean,
20 we've done wonderful briefing books that are not in
21 the public record. But, whatever.

22 Are there any future agenda items that
23 people would like to discuss?

24 COMMISSIONER KIRSANOW: Commissioner
25 Kirsanow here. Can you hear me?

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1 VICE CHAIR THERNSTROM: Yes, we can.

2 COMMISSIONER KIRSANOW: Okay. I don't
3 know if it's appropriate at this time, but I'd like to
4 suggest that we put as potential future agenda items
5 depending upon any effect that may be educed matters
6 related to what's currently transpiring in Jena,
7 Louisiana. And while media reports are sometimes
8 unreliable, there at least appears to be at first
9 flush enough there that we'd be within our purview to
10 at least monitor.

11 And I understand the Justice Department is
12 currently monitoring the situation. The facts are
13 developing and are somewhat disjointing and sparse.
14 It is nonetheless it just strikes me as something that
15 is clearly within our purview and I would request that
16 Staff Director instruct appropriate staff to at least
17 monitor the situation, apprise us of developments and
18 maybe it will be placed on a future agenda item as
19 events may warrant.

20 VICE CHAIR THERNSTROM: I don't have any
21 problem with that. As you say, the factual record
22 here needs a great deal of flushing out. There are in
23 my view some very basic questions, factual questions,
24 still unanswered. And given the amount of commentary
25 floating around the blogs, floating around the

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1 websites, you know, it's kind of overwhelming at this
2 point. And the picture has yet to be absolutely clear.

3 I do think that it would be helpful if the
4 staff did monitor this.

5 There's no way of giving us all the clips.
6 I mean, you know, you do a Google and you hit a higher
7 number than I can count already. But, you know, at a
8 kind of basic level it would be nice to have
9 information. A kind of running information from the
10 staff. And at some point we basically have to decide
11 what further we would like to do, if anything.

12 COMMISSIONER KIRSANOW: The staff probably
13 knows how to do this based on previous requests to
14 monitor situations. But it might be a very simple
15 matter to maintain a liaison with Civil Rights
16 Division in Department of Justice, which probably has
17 feet on the ground there and could feed us the
18 relevant objective facts without, you know, the
19 adjoining commentary that we would see in the media so
20 that we could make an appropriate dispassionate of the
21 substance of the situation.

22 STAFF DIRECTOR MARCUS: Well, we can
23 certainly reach out to the Department of Justice to
24 see if they're amenable for that.

25 VICE CHAIR THERNSTROM: It's a good

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1 suggestion, and if they are would be very helpful.

2 So, Commissioner Kirsanow, it seems to me
3 we've put one foot in front of another here. And see
4 what we can come up with that's useful and consists of
5 solid information upon which we can draw some
6 conclusions about the Commission's role. Is that
7 square with -- and in the meantime, of course, there
8 will be an effort to reach out to the Department of
9 Justice. Does that square with what you have in mind?

10 COMMISSIONER KIRSANOW: Absolutely,
11 Commissioner Thernstrom. Thank you.

12 VICE CHAIR THERNSTROM: Okay. And do we
13 need any kind of formal anything on this?

14 STAFF DIRECTOR MARCUS: I don't think so.
15 We would be happy to do it.

16 VICE CHAIR THERNSTROM: Yes. Okay.

17 STAFF DIRECTOR MARCUS: I don't think it
18 requires this formality of a vote.

19 VICE CHAIR THERNSTROM: All right. But
20 our understanding here is that in one form or another
21 the staff is going to go forward to try to provide to
22 the best of its ability a solid factual picture for
23 us. When and if that emerges --

24 COMMISSIONER HERIOT: Well, if that
25 doesn't, then report on the possible Commission's role

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1 in developing that record.

2 VICE CHAIR THERNSTROM: Well, absolutely.
3 But it just may take a while.

4 STAFF DIRECTOR MARCUS: I want to make
5 sure we're clear on what's being requested. I think
6 that I've heard a request that staff reach out to the
7 Department of Justice to see if they can provide us on
8 a regular basis objective facts concerning the
9 situation, and that staff review the available
10 literature and try to disseminate that so that we can
11 see what's out there as opposed to conducting any sort
12 of formal investigation.

13 VICE CHAIR THERNSTROM: That's correct.

14 COMMISSIONER HERIOT: And I think with an
15 eye towards determining whether or not the Commission
16 may have a role in developing the record further.

17 STAFF DIRECTOR MARCUS: Okay. Very good.

18 VICE CHAIR THERNSTROM: Yes. Precisely.
19 And if the Justice Department, if that's not a
20 possible avenue of information for us, then obviously
21 we have to try to put our own factual record together.

22 Okay. Any other future agenda items?

23 Well, if not, we adjourn the business
24 meeting at this point so that we can have a briefing.

25 Without objection? Okay.

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(Whereupon, at 10:00 a.m. the business meeting was adjourned.)

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