

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, OCTOBER 17, 2008

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

PRESENT:

GERALD A. REYNOLDS, Chairman
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner (via telephone)
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
ROBERT LERNER, Assistant Staff Director for OCRE
TINA LOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor
AUDREY WRIGHT
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
KIMBERLY SCHULD

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

(9:35 a.m.)

CHAIRMAN REYNOLDS: Good morning. This is Chairman Gerald Reynolds. The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights.

It is 9:35 on October 17, 2008.

The meeting is being held at 624 Ninth Street, N.W., Room 540, in Washington, D.C.

Commissioner Melendez is participating by phone. Vice Chair Thernstrom will not be participating in today's meeting. Commissioner Taylor is en route. The remaining Commissioners are present.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: The first item on the agenda is the approval of the agenda. Is there a motion to approve the agenda?

COMMISSIONER YAKI: So moved.

COMMISSIONER HERIOT: There is a motion to amend the agenda.

CHAIRMAN REYNOLDS: Okay. Is there a second to --

COMMISSIONER HERIOT: I haven't made it yet.

COMMISSIONER KIRSANOW: Yes, I have

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1 another as well when she's done.

2 COMMISSIONER HERIOT: Motion to amend the
3 agenda to include a report from the Commission counsel
4 on the investigation that we had asked for. Put that
5 right after the Staff Director's Report.

6 COMMISSIONER KIRSANOW: Second.

7 CHAIRMAN REYNOLDS: Whoa, whoa. Since
8 we're going to -- we have a second. That will require
9 us to go into closed session. I would recommend that
10 we just put it at the end of the --

11 COMMISSIONER HERIOT: That's fine.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER YAKI: After Item 7?

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER YAKI: Okay. I'll second
16 that.

17 CHAIRMAN REYNOLDS: Okay. All in favor,
18 please say aye.

19 (Chorus of ayes.)

20 Any objections?

21 (No response.)

22 Any abstentions?

23 (No response.)

24 The motion passes unanimously.

25 Any other changes?

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1 COMMISSIONER GAZIANO: I move to add a
2 discussion and possible motion on the -- at the
3 appropriate time on the time period Commissioners have
4 to review each other's dissents and concurrences to
5 the FY2008 statutory report and file possible replies
6 to them.

7 CHAIRMAN REYNOLDS: Is there a second?

8 COMMISSIONER GAZIANO: And I'll --

9 COMMISSIONER HERIOT: Where are you
10 putting that?

11 COMMISSIONER GAZIANO: I would suggest
12 Program Planning, but I would welcome a friendly
13 amendment if the chair would rather have it somewhere
14 else.

15 CHAIRMAN REYNOLDS: Okay. Hold on a
16 moment. Okay. Is there a second?

17 COMMISSIONER HERIOT: Second.

18 CHAIRMAN REYNOLDS: Okay. Program
19 Planning. Additional discussion?

20 (No response.)

21 All in favor please say aye.

22 (Chorus of ayes.)

23 Any objections?

24 COMMISSIONER YAKI: Me.

25 CHAIRMAN REYNOLDS: Any abstentions?

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1 COMMISSIONER MELENDEZ: Abstain.

2 CHAIRMAN REYNOLDS: Okay. Let the record
3 reflect that Commissioner Yaki objected, Commissioner
4 Melendez abstained. The remaining Commissioners voted
5 in favor. The motion passes.

6 Any other changes to the agenda?

7 (No response.)

8 COMMISSIONER YAKI: Move as amended.

9 COMMISSIONER KIRSANOW: Second.

10 CHAIRMAN REYNOLDS: Any discussion?

11 (No response.)

12 All in favor please say aye.

13 (Chorus of ayes.)

14 Oh, oh, hold on. We have some more.

15 I'd like to move that we table the
16 discussion of the Missouri SAC -- I'm sorry, Minnesota
17 SAC, and adopt a 2009 schedule of meetings, and,
18 finally, to set a date for the English in the
19 Workplace briefing -- policy briefing under Item V.
20 Is there a second?

21 COMMISSIONER GAZIANO: Second.

22 CHAIRMAN REYNOLDS: Discussion?

23 COMMISSIONER MELENDEZ: Commissioner
24 Melendez here.

25 CHAIRMAN REYNOLDS: Yes.

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1 COMMISSIONER MELENDEZ: I received a
2 packet, but I didn't see Arkansas SAC in there. Is
3 that still on for approval?

4 CHAIRMAN REYNOLDS: David help me out.

5 COMMISSIONER KIRSANOW: We just received
6 these, I think.

7 STAFF DIRECTOR DANNENFELSER: Commissioner
8 Melendez. This is the Staff Director. The Arkansas
9 SAC deals with a new chairman and a new member. The
10 chairman, who was approved when the Commission
11 approved the Arkansas SAC package in July,
12 subsequently got an appointment from Education
13 Secretary Margaret Spellings to serve on a federal
14 commission, and he felt that the obligations and the
15 time obligations, and so on, that went with that
16 require that he step down from the Arkansas SAC.

17 So we lost a chairman, and we also lost a
18 member of the SAC, so we proposed -- I did send by
19 e-mail information relating to a gentleman named Gary
20 McHenry, who we are proposing as the new chairman, and
21 a Ms. Oliver, who we're proposing as the new member.

22 COMMISSIONER MELENDEZ: Okay. I didn't
23 see that. I haven't received that e-mail.

24 STAFF DIRECTOR DANNENFELSER: That was --
25 it was sent out to all Commissioners. It was sent

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1 separately, had the McHenry -- the McHenry information
2 went out, I believe on Monday, and then the Oliver
3 information went out on Wednesday of this week.

4 CHAIRMAN REYNOLDS: Commissioner Melendez,
5 do you feel -- are you willing --

6 COMMISSIONER MELENDEZ: Could you send
7 that to me right now, or is it too difficult?

8 STAFF DIRECTOR DANNENFELSER: Okay. We
9 could send that again.

10 COMMISSIONER MELENDEZ: Okay. Thank you.

11 CHAIRMAN REYNOLDS: Okay. So as the --
12 all in favor --

13 COMMISSIONER YAKI: Are we voting on the
14 meeting dates or no? Was that a part of the motion?

15 CHAIRMAN REYNOLDS: That is being added to
16 the agenda under Program Planning.

17 COMMISSIONER YAKI: Okay.

18 CHAIRMAN REYNOLDS: Okay. So the agenda
19 as revised, all in favor please say aye.

20 (Chorus of ayes.)

21 Any objections?

22 (No response.)

23 Any abstentions?

24 (No response.)

25 The motion passes unanimously.

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II. APPROVAL OF MINUTES

CHAIRMAN REYNOLDS: Second item for approval is of the minutes of the meetings held on September 12, 2008, and September 30, 2008. Is there a second?

COMMISSIONER GAZIANO: I move a minor clarification in the second paragraph statement by Commissioner Gaziano. As it currently reads, the Commissioners voted to authorize the Staff Director and General Counsel conduct an investigation into allegations by Commissioner Gaziano that information regarding Hans von Spakovsky was leaked.

I don't care about most information, but I'd like it clarified that it was confidential personnel information. So if you could add "confidential personnel" right before "information."

CHAIRMAN REYNOLDS: Any objections? concerns? discussion?

(No response.)

Okay. With that -- with that amendment, all in favor please say aye.

(Chorus of ayes.)

Any objections?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Commissioner Melendez?

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1 COMMISSIONER MELENDEZ: Yes.

2 CHAIRMAN REYNOLDS: I'm sorry. I didn't
3 hear how you voted.

4 COMMISSIONER MELENDEZ: Yes. Aye.

5 CHAIRMAN REYNOLDS: Okay. Great.

6 Let the record reflect that Commissioner
7 Yaki abstained. The remaining Commissioners voted in
8 favor. The motion passes.

9 Okay. I'm sorry. Okay. Next up are the
10 announcements for the month of October.

11 COMMISSIONER GAZIANO: Are we going to --
12 we're going to amend the September 30 -- are we going
13 to approve the September 30 minutes, too? I had a
14 slight amendment to that.

15 CHAIRMAN REYNOLDS: Okay. I thought we
16 just did.

17 COMMISSIONER GAZIANO: Oh, I'm sorry. I
18 thought we just did -- we did the first -- the
19 first --

20 CHAIRMAN REYNOLDS: Okay. All right. If
21 that's the case, then --

22 COMMISSIONER GAZIANO: We did
23 September 12. If we could vote separately on
24 September 30, I just have a clarification that will
25 relate to my other motion.

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1 CHAIRMAN REYNOLDS: Okay. What's your --

2 COMMISSIONER GAZIANO: On page 4, the
3 first sentence at the top of that page, I'd just like
4 a clarification that -- instead of "failing to vote
5 for no reason," I'd like it reflected "the
6 Commissioners postponed a vote" instead of "failed
7 to." "Postponed a vote on a motion by Commissioners
8 Gaziano and Heriot to allow Commissioners to review
9 dissents and concurrences to reports and be given an
10 opportunity to respond." And I would add the words
11 "pending the resolution of that issue at the
12 October 17 meeting."

13 And my -- my explanation to Commissioner
14 Yaki, who may not have reviewed the -- and
15 Commissioner Melendez, who I don't believe was on the
16 call, is that part of the reason we agreed to defer
17 that is because they were not on the call at that --
18 that particular time.

19 CHAIRMAN REYNOLDS: Discussion?

20 (No response.)

21 All in favor please say aye.

22 (Chorus of ayes.)

23 Any objections?

24 COMMISSIONER YAKI: I object.

25 CHAIRMAN REYNOLDS: Abstentions?

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1 COMMISSIONER MELENDEZ: I abstain.

2 CHAIRMAN REYNOLDS: Okay. Commissioner
3 Yaki objects, Commissioner Melendez abstains. The
4 remaining Commissioners voted in favor of the motion.
5 The motion passes. The motion, as amended, passes.

6 **III. ANNOUNCEMENTS**

7 CHAIRMAN REYNOLDS: Next up we have the
8 Announcements. President Bush and Congress have
9 proclaimed the month of October National Disability
10 Employment Awareness Month. This is an opportunity to
11 recognize the contributions and accomplishments of
12 Americans with disabilities and underscore our
13 nation's commitment to advancing employment
14 opportunities for our citizens.

15 Americans with disabilities strengthen our
16 country's workforce. Landmark reforms such as the
17 Americans with Disabilities Act of 1990 have helped to
18 ensure that individuals with disabilities are better
19 able to engage in productive work and participate
20 fully in the life of our nation.

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

22 CHAIRMAN REYNOLDS: Next up is the Staff
23 Director's Report. Mr. Staff Director?

24 STAFF DIRECTOR DANNENFELSER: Thank you,
25 Mr. Chairman. You all received a more comprehensive

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1 Staff Director's report in the binders that went out,
2 but I wanted just to highlight a few points.

3 In the area of employment law, the
4 grievance against the Commission that had been filed
5 previously with the Merit Systems Protection Board was
6 dismissed on September 19, 2008. And the Commission
7 has also received notice of a separate complaint from
8 the EEOC that a former employee has requested a
9 hearing on a compensation complaint, and the Office of
10 General Counsel is responding to that complaint, to
11 that complaint by the former employee.

12 Regarding more broader complaints
13 processing, during the reporting period of August 26th
14 through September 26th, Office of Civil Rights
15 Evaluation received 132 written complaints, three
16 congressional complaints, one walk-in complaint, 19
17 e-mail complaints, seven facsimile complaints, and 100
18 telephone complaints, of which 41 were repeat calls.
19 In total, staff received and processed 262 complaints
20 during the reporting period.

21 The Office of Management has continued to
22 process FY2008 invoices for payment, and work -- is
23 working with GSA to rectify any outstanding payment
24 issues. And Commissioners submitted billable hours
25 and travel invoices, and so on. We still have a few

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1 travel invoices I believe that are being processed as
2 part of settling the FY2008 budget.

3 Staff also attended a meeting relating to
4 building space with prospective new building owners
5 for the headquarters building. And, again, there were
6 completed acquisitions for items such as laptops for
7 regional offices, new copiers, several new software
8 packages, some books for the library, Microsoft
9 Project, an upgrade for our Exchange 2007 for remote
10 access and backup software system that comply with
11 COOP- and FISMA-related programs.

12 We had purchases related to IT offsite
13 storage and setup and design for the agency FirstGov
14 website, the FirstGov website and setup of equipment
15 dealing with the Smart Card technology that is
16 required for new government identification cards.

17 The library staff received 118 telephone
18 inquiries, and they completed 37 simple reference
19 requests and performed 15 research projects of various
20 sizes. An additional 69 research requests were
21 completed utilizing automated research services.

22 There were 209 written requests and 157
23 e-mail requests for publications that were received
24 during the period. Five hundred fifty-six
25 publications were mailed, and 49 different

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1 publications were requested. There were no
2 congressional requests for publications received
3 during this period.

4 Getting Uncle Sam to Enforce Your Civil
5 Rights, and Compilation of Civil Rights Laws, and the
6 Catalog of Publications were our most requested
7 publications this reporting period, and there are
8 currently 58 requests for publications in process.

9 Commissioners received a copy of the
10 executive summary that has been prepared for the 2008
11 statutory report. That was part of a discussion that
12 we had during the meeting when the Commission approved
13 this statutory report. We noted that the executive
14 summary would have to reflect the final action of the
15 Commission, and there were some changes that were
16 done, both to the body of the report and to the
17 findings and recommendations. So that executive
18 summary that was sent to Commissioners reflects those
19 changes.

20 The Commission hosted a meeting here
21 yesterday of the D.C. SAC, which was a very
22 prestigious group of people, including the Education
23 Chancellor Michele Rhee, former Mayor Anthony
24 Williams, and Chancellor Rhee opened her remarks by
25 stating that she doesn't have an official view on

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1 vouchers, because she had been the subject of some
2 debate the night before in the Presidential debate
3 about the issue of vouchers and reform of D.C. So it
4 was very timely to have her here as a witness after
5 she had been a subject of discussion in front of many
6 millions of people the night before.

7 But the SACs in general are involved with
8 a number of different meetings, and you have been
9 receiving reports weekly on meetings that have taken
10 place and that are being planned.

11 And that's my report for now, Mr.
12 Chairman.

13 CHAIRMAN REYNOLDS: Okay. Questions?

14 (No response.)

15 All right.

16 **V. PROGRAM PLANNING**

17 CHAIRMAN REYNOLDS: Next up -- the next
18 item is the 2009 statutory report concept paper. May
19 I have a motion to approve the 2009 statutory report
20 topic and concept paper, "The Possible Effect of
21 Lending Status for Minority Mortgages on the Mortgage
22 Crisis"? Oooh, I don't like that name. Bad title.
23 Anyway, is there a second?

24 COMMISSIONER TAYLOR: Second.

25 CHAIRMAN REYNOLDS: Thank you.

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1 Discussion? Commissioner Heriot.

2 COMMISSIONER HERIOT: I just wanted to say
3 that I think it's important that at some point very
4 soon we have a research agenda that is quite detailed,
5 that this document really, you know, is -- it doesn't
6 bother me, it's just that it doesn't really help
7 direct how the research is going to be conducted --

8 CHAIRMAN REYNOLDS: Are you taking
9 about --

10 COMMISSIONER HERIOT: -- over the next
11 year.

12 CHAIRMAN REYNOLDS: -- a work plan?

13 COMMISSIONER HERIOT: Whatever you want to
14 call it -- research agenda, work plan. But just
15 something that isn't just a very vague description of
16 the topic here.

17 CHAIRMAN REYNOLDS: Well, this is just
18 high concept discussion of a topic --

19 COMMISSIONER HERIOT: Yes, I want low
20 concept.

21 CHAIRMAN REYNOLDS: -- and you are looking
22 for something --

23 COMMISSIONER HERIOT: So I'm looking --

24 CHAIRMAN REYNOLDS: Yes.

25 COMMISSIONER HERIOT: -- forward to low

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1 concept.

2 CHAIRMAN REYNOLDS: Yes.

3 COMMISSIONER HERIOT: And I just want to
4 state for the record right now that I think, you know,
5 a research agenda that is very specific is what I'm
6 looking for. I think there were a lot of problems in
7 our last statutory report, things that could have been
8 caught earlier, and I'd like to be able to try to
9 catch them early this time.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER HERIOT: Rather than later.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER GAZIANO: Could I ask Staff
14 Director if he has an idea of when we might get that
15 -- whatever we were going to call it, work report,
16 research --

17 STAFF DIRECTOR DANNENFELSER: Discovery
18 plan I guess. That is being worked on right now. The
19 expectation that that would be ready for consideration
20 at the November 7th meeting, for the Commission to
21 consider at the November 7th meeting. So that you
22 would receive it, you know, a week in advance at
23 least.

24 COMMISSIONER GAZIANO: I think I would
25 definitely like it to be done by then, and preferably

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1 circulated before then, so that we can provide input
2 and perhaps make additional direction, especially if
3 we -- again, because you all know the work involved at
4 least as much as we do, to schedule the briefing, to
5 get the interrogatories out, to get the agency's data
6 that we may want to request, if we -- partly our
7 fault, I know, as Commissioners. They are not
8 approving the topic, but let's all try to move that
9 along.

10 STAFF DIRECTOR DANNENFELSER: Okay. Well,
11 hopefully, we will be able to get it out, you know, at
12 least a week in advance, hopefully earlier than that,
13 you know, prior to the November 7th meeting.

14 COMMISSIONER GAZIANO: And I am
15 interested, if the Chairman doesn't mind a brief
16 conversation from hearing from other Commissioners,
17 what specific focus other Commissioners want the staff
18 to pursue in preparing that. People who know more
19 about this than I do, which is probably everyone.

20 I help -- you know, I confess that I
21 helped staff with some of this, but --

22 CHAIRMAN REYNOLDS: Well, I think that,
23 just off the top of my head, in terms of who we
24 invite, I think it's important that we invite someone
25 who has expert knowledge on the Community Reinvestment

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1 Act, someone who can provide us with, you know, a
2 nuanced discussion on how Fannie Mae and Freddie Mac's
3 view towards lending standards evolved over time.
4 Those are just two thoughts that come to mind.

5 COMMISSIONER KIRSANOW: In 2003, when we
6 had a briefing or a hearing on the Community
7 Reinvestment Act, we had one member of the Fed who
8 testified, and also the person who headed up for the
9 Fed the -- I think it -- I can't recall the exact
10 title, but something to the effect Small Business
11 Credit Administration, or something of that nature,
12 who had particular expertise in matters of this
13 nature. So we may want to look at inviting someone
14 like that.

15 COMMISSIONER GAZIANO: And I would like --
16 staff has given me some -- and it's contained in the
17 report -- some possible agency databases that would be
18 valuable if there is further development of, you know,
19 what data analysis the staff would be able to do,
20 further investigation of those databases -- in other
21 words, what -- whether some of them are publicly
22 available.

23 I think there was a question whether some
24 of them were publicly available and would be easy to
25 obtain, whether some of them would -- we would have to

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1 request via document requests and interrogatories, how
2 many, that kind of details would make me more at ease.

3 STAFF DIRECTOR DANNENFELSER: Yes. We
4 will conclude that in there.

5 COMMISSIONER GAZIANO: Okay.

6 CHAIRMAN REYNOLDS: Commissioner Heriot?

7 COMMISSIONER HERIOT: I just have general
8 advice. Go narrow on this. This is a very big topic,
9 and we need to carve out something that we actually
10 can do properly and make a contribution to a debate
11 that is much larger than simply what goes on here.
12 But if we go narrow, we can actually have an effect
13 upon the world. If we go broad, we will never -- we
14 will never be able to climb out of it.

15 CHAIRMAN REYNOLDS: Commissioner Taylor.

16 COMMISSIONER TAYLOR: A question. The
17 bill that the President recently signed that would
18 allow \$250 billion to be invested, as part of that
19 bill, is there any adjustment to these policies that
20 we're talking about analyzing? From my perspective at
21 least, if -- if we're asking the question what impact
22 it may have had in terms of helping to create possibly
23 the crisis or our current situation, part of the
24 answer would be, in resolving it, are folks on the
25 Hill doing anything about these issues. If they are

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1 not addressed in the bill, and no one is addressing
2 them, it suggests to me that someone believes they had
3 little impact, one would think.

4 COMMISSIONER GAZIANO: Or they didn't want
5 to admit their fault. My understanding is that the
6 bill did not address the issues that are proposed for
7 us to study -- the pressure to weaken the loan
8 standards. There was nothing in the bill that
9 directed the --

10 COMMISSIONER TAYLOR: And that was a
11 conscious decision?

12 COMMISSIONER GAZIANO: -- that directed --
13 I don't know whether it was conscious or not. But
14 there was nothing in the bill that directed the Fed or
15 other agencies to change the guidelines of the
16 standards.

17 CHAIRMAN REYNOLDS: Commissioner Yaki, any
18 comments? Commissioner Melendez?

19 COMMISSIONER MELENDEZ: When will we be
20 receiving something on this?

21 CHAIRMAN REYNOLDS: I believe the goal is
22 to present and discuss it at our next business
23 meeting, November.

24 COMMISSIONER MELENDEZ: Okay. All right.
25 Thanks.

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1 COMMISSIONER YAKI: Oh, there is one
2 thing.

3 CHAIRMAN REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: Yes. I just wanted to
5 note that when we -- if we're doing research
6 specifically on some of the predatory lending to
7 minority homeowners, let's not conflate that with CRA,
8 because the fact of the matter is that many of the
9 subprime loans, for example, that were the subject of
10 the mortgage securities collapse were in fact not made
11 by institutions under the jurisdiction of CRA.

12 CHAIRMAN REYNOLDS: That's right.
13 Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: Just some more
15 food for thought in terms of possible resources or
16 witnesses. The Green Lining Institute, which I
17 believe had advocated on behalf of -- I don't mean to
18 put words in their mouth, but I think they may have
19 had some involvement -- I know they testified in front
20 of us at some point. I can't recall when it was.
21 Maybe someone wants to research that.

22 But they were I think advocating on behalf
23 of subprime loans to minority homeowners, maybe not
24 subprime loans but a relaxation of standards. And I
25 don't want to put words in their mouth. I'm not sure

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1 if that's in fact the case.

2 But I recall that they were critical of
3 the allegation that there was redlining in minority
4 communities that were -- was independent of actual
5 credit standards that are applied more broadly. And
6 you may want to also talk to the folks at ACORN, who
7 are also involved in the same discussion.

8 CHAIRMAN REYNOLDS: Any other comments?

9 (No response.)

10 Okay. We can vote. All in favor please
11 say aye.

12 (Chorus of ayes.)

13 Any objections?

14 (No response.)

15 Any abstentions?

16 (No response.)

17 The motion passes unanimously.

18 Next up is the approval of a letter
19 requesting that Jeff Bleash, Chair of the Board of
20 Governors of the State Bar of California, release to
21 the Commission for further study and review records
22 concerning law graduates' performance on the
23 California bar exam.

24 A draft letter, together with the May 29,
25 2008, letter from Richard Sander and Joe Hicks to the

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1 California bar referenced in the draft as Exhibit 1,
2 was forwarded to Commissioners for their review last
3 week. May I have a second?

4 COMMISSIONER KIRSANOW: Second.

5 CHAIRMAN REYNOLDS: Discussion?

6 (No response.)

7 All in favor please say aye.

8 (Chorus of ayes.)

9 Objections?

10 COMMISSIONER YAKI: Me.

11 COMMISSIONER MELENDEZ: Opposed.

12 CHAIRMAN REYNOLDS: Commissioners Yaki and
13 Melendez objected to the motion. The remaining
14 Commissioners voted in favor.

15 COMMISSIONER YAKI: I also want to note
16 for the record that Commissioner Melendez and I will
17 be sending a letter to the State Bar in direct
18 opposition to the letter just approved today.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER GAZIANO: May I ask on what
21 grounds you will be opposing this letter? I'm just
22 curious, if you don't mind.

23 COMMISSIONER YAKI: You may, but you'll
24 see in my letter.

25 COMMISSIONER HERIOT: But you do plan to

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1 distribute the letter.

2 COMMISSIONER YAKI: Of course. After it's
3 sent.

4 CHAIRMAN REYNOLDS: You don't want to
5 allow us to take a look?

6 COMMISSIONER YAKI: Why?

7 CHAIRMAN REYNOLDS: Maybe we can offer
8 some suggestions.

9 COMMISSIONER YAKI: Why?

10 CHAIRMAN REYNOLDS: We provided you with
11 an --

12 COMMISSIONER YAKI: You've already voted
13 to do this, so I'm going to do -- exercise my --

14 CHAIRMAN REYNOLDS: We provided you an
15 opportunity --

16 COMMISSIONER YAKI: -- rights.

17 CHAIRMAN REYNOLDS: -- to review our
18 document before it was sent out, giving you an
19 opportunity to make comments and suggestions.

20 COMMISSIONER YAKI: Well, amidst the
21 laughter after I read that, I decided better to just
22 move on.

23 CHAIRMAN REYNOLDS: Okay. Next up, on
24 October 14, 2008, the Staff Director sent
25 Commissioners a proposed 2009 Commission meeting

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1 calendar. I move that we approve the proposed 2009
2 Commission meeting calendar. Is there a second?

3 COMMISSIONER HERIOT: Second.

4 CHAIRMAN REYNOLDS: Discussion?
5 Commissioner Yaki?

6 COMMISSIONER YAKI: Yes. I just wanted to
7 inform you that the January 16th meeting has already
8 run head-on into inaugural hotel and flight problems.

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER YAKI: I mean, head-on.

11 CHAIRMAN REYNOLDS: All right.

12 COMMISSIONER MELENDEZ: What was the
13 January date again?

14 CHAIRMAN REYNOLDS: 16th.

15 COMMISSIONER YAKI: Inaugural is on the
16 20th.

17 CHAIRMAN REYNOLDS: Okay, folks. Do we --

18 COMMISSIONER YAKI: Government flights are
19 all -- government rate flights are already pretty much
20 sold out for that -- those two weeks prior.

21 CHAIRMAN REYNOLDS: Have you confirmed
22 this? Have we looked into this yet?

23 STAFF DIRECTOR DANNENFELSER: We have not.
24 I was working with the expectation that it would be
25 early enough before the main crush that we wouldn't

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1 hit that.

2 CHAIRMAN REYNOLDS: Well, how about this.
3 Let us look into it. If we confirm this, then we're
4 going to have to pick another date.

5 COMMISSIONER YAKI: Okay. I just wanted
6 to let you know.

7 COMMISSIONER HERIOT: Let me just say this
8 government rate isn't much of a bargain anyway, so it
9 will be wonderful if we couldn't get any government
10 rate flights, because the regular flights are half
11 that.

12 COMMISSIONER YAKI: No, not -- I mean,
13 anyway --

14 COMMISSIONER HERIOT: A third. I mean,
15 they're a third of that.

16 COMMISSIONER YAKI: But it also offers you
17 the flexibility of changing without a lot of hassle.

18 COMMISSIONER GAZIANO: Why do we pay
19 government -- if it's --

20 COMMISSIONER HERIOT: We're insane. We're
21 insane.

22 CHAIRMAN REYNOLDS: We can have a briefing
23 report on --

24 (Laughter.)

25 -- this later --

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1 COMMISSIONER YAKI: But, Commissioner
2 Heriot, where it doesn't -- where it doesn't make a
3 huge difference is in hotel booking, and the hotels
4 are completely -- are completely sold out.

5 COMMISSIONER HERIOT: Actually, I have a
6 cheaper hotel under non-government rate for tomorrow.
7 Of course, that's a Saturday.

8 COMMISSIONER GAZIANO: Are people really
9 going to -- really booked hotels for the 16th for
10 the --

11 COMMISSIONER YAKI: I tried -- I tried
12 this week, just --

13 CHAIRMAN REYNOLDS: That's going to be a
14 big deal.

15 COMMISSIONER YAKI: And it's minimum stays
16 and it's --

17 CHAIRMAN REYNOLDS: If Obama wins, it's
18 going to be --

19 COMMISSIONER YAKI: Whoever wins, this is
20 called the gravy train for D.C. for the month of
21 January. It happens every four years. It's like
22 four-night minimums, and no one -- two government rate
23 rooms per hotel. Everything else is market rate.

24 CHAIRMAN REYNOLDS: Okay. Sounds like --
25 looks like --

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1 STAFF DIRECTOR DANNENFELSER: More likely
2 back it up earlier as opposed to later, because later
3 we would have people still here probably.

4 COMMISSIONER TAYLOR: I would agree with
5 that, a week earlier.

6 COMMISSIONER HERIOT: I can't do a week
7 earlier. I can't do the week after either, or two
8 weeks earlier. I can do the 30th.

9 CHAIRMAN REYNOLDS: When is the February
10 meeting? When is that scheduled?

11 STAFF DIRECTOR DANNENFELSER: 20th,
12 February 20th.

13 CHAIRMAN REYNOLDS: Okay. That wouldn't
14 be too bad.

15 STAFF DIRECTOR DANNENFELSER: That would
16 be good.

17 CHAIRMAN REYNOLDS: Okay. Well, how about
18 this. Let's confirm it at the November meeting.

19 Okay. Next up --

20 COMMISSIONER GAZIANO: Are we going to
21 approve all of the other days or --

22 CHAIRMAN REYNOLDS: Oh.

23 COMMISSIONER GAZIANO: -- we're just going
24 to --

25 CHAIRMAN REYNOLDS: Any concern about the

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1 other dates?

2 (No response.)

3 Okay. All in favor of the schedule, with
4 the understanding that we may have to revisit the
5 January date, please say aye.

6 (Chorus of ayes.)

7 Any objections?

8 (No response.)

9 Any abstentions?

10 (No response.)

11 The motion passes unanimously.

12 Next up is the date for the English in the
13 Workplace briefing. At the September 30, 2008
14 meeting, Commissioners approved a concept paper titled
15 "Specifying English as the Common Language of the
16 Workplace: Every Employer is Right or a Violation of
17 Federal Law."

18 On the Equal Employment Opportunity
19 Commission's Language Policy in the Workplace, the
20 Staff Director has recommended that this briefing be
21 held on December 12, 2008, so that there will be
22 sufficient time to receive the EEOC's answers to
23 interrogatories.

24 May I have a motion that the briefing on
25 the EEOC's Language Policy in the Workplace be held on

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1 December 12, 2008?

2 COMMISSIONER HERIOT: So moved.

3 CHAIRMAN REYNOLDS: Second?

4 COMMISSIONER KIRSANOW: Second.

5 CHAIRMAN REYNOLDS: Discussion?

6 (No response.)

7 All in favor please say aye.

8 (Chorus of ayes.)

9 Any objections?

10 COMMISSIONER YAKI: I object.

11 CHAIRMAN REYNOLDS: Any abstentions?

12 (No response.)

13 Now, you object to the date? That doesn't
14 work for you? I'm just trying --

15 COMMISSIONER YAKI: It's a general
16 objection, just a general objection.

17 CHAIRMAN REYNOLDS: Okay. Just -- okay,
18 that's fine. That's fine.

19 Okay. Commissioner Melendez?

20 COMMISSIONER MELENDEZ: Yes. Yes?

21 CHAIRMAN REYNOLDS: Do you object to the
22 date, or do you abstain?

23 COMMISSIONER MELENDEZ: What was the date
24 again?

25 CHAIRMAN REYNOLDS: December 12th.

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1 COMMISSIONER MELENDEZ: Seems to work.

2 CHAIRMAN REYNOLDS: Okay. I'll take that
3 as an affirmative vote. Commissioner Yaki voted
4 against the motion. The remaining Commissioners voted
5 in favor. The motion passes.

6 Next up is the State Advisory Committee
7 Issues.

8 COMMISSIONER GAZIANO: I thought we
9 added --

10 CHAIRMAN REYNOLDS: Oh, that's right.

11 COMMISSIONER GAZIANO: -- my motion to add
12 a discussion --

13 CHAIRMAN REYNOLDS: Yes, you're right.
14 You're right. You're right.

15 COMMISSIONER GAZIANO: Can I speak to the
16 issue and then make --

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER GAZIANO: -- a motion?

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER GAZIANO: Some of this
21 predates my membership on the Commission, but I
22 understand that our AI is not -- does not prohibit
23 Commissioner review of each other's comments and
24 possible replies. The practice has been rather
25 ad hoc. Sometimes there has been such an opportunity.

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1 Sometimes there has not.

2 I certainly think that it is good practice
3 for a variety of reasons that all Commissioners be
4 able to review. Sometimes if we -- we may need to
5 push up statutory report deadlines accordingly, but
6 sometimes we take a year or two to get out some other
7 report, and it certainly would improve the reports if
8 they are extended by seven or 14 days or something
9 like that, to make sure that there is a true exchange.

10 At the discussion on the 30th for the
11 statutory report, we wanted to leave that -- at least
12 several of us wanted to leave that issue open, whether
13 that should be the practice for the statutory report,
14 and -- but we wanted to allow all Commissioners to
15 participate in that discussion. Some had to leave the
16 phone.

17 So I move at this time that we be given,
18 say, 14 days or seven days, or how about 10 days -- 10
19 days to review each other's comments and provide any
20 replies that are directed not at new issues but at
21 issues raised by each other's dissents and
22 concurrences, and that the Commission clarify a
23 written rule going forward.

24 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

25 COMMISSIONER KIRSANOW: A point of

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1 clarification, Commissioner Gaziano. When you say "10
2 days," first, calendar days, I presume? And, second,
3 is there a limitation on the number of back and
4 forths?

5 COMMISSIONER GAZIANO: I think
6 for disbursed time let's just make it one -- one
7 response. We should consider how we want to write --
8 clarify our rule for the future, but then we just have
9 -- particularly because the deadlines in the statutory
10 report are already extended --

11 COMMISSIONER KIRSANOW: Right.

12 COMMISSIONER GAZIANO: -- beyond what we
13 all would have liked, and it should be 10 calendar
14 days from the time the Staff Director gets us the
15 comments. But I presume that might be later today.

16 CHAIRMAN REYNOLDS: Commissioner Yaki?

17 COMMISSIONER YAKI: If I may offer a
18 somewhat practical objection to the proposal. We are
19 now in a new fiscal year. The temporary contract
20 assistants that we had are -- or could have had are
21 gone. We are back to the status quo.

22 We are now talking about, for the two
23 Democrat Commissioners, having to possibly respond to
24 six statements by our colleagues, whereas in perhaps a
25 cynical viewpoint of mine, my six colleagues might

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1 only have to respond to two of their colleagues'
2 statements. And frequently Commissioner Melendez and
3 I, because of the shear workload involved, often just
4 use a single joint statement.

5 I think that it is, as a practical matter,
6 extremely burdensome and unfair on the two Democratic
7 Commissioners to have to possibly wade through three,
8 four, five, or six statements within 10 days, and
9 respond to them by ourselves or the help of one single
10 special assistant.

11 And when this first came up, by the way,
12 in a report, it was unusual. The way this has
13 previously worked is that everyone submitted their
14 comments by a date certain, and that was that and we
15 moved on. We did not, then, proceed to bog ourselves
16 down in a merry-go-round of rebuttal and surrebuttal
17 that I think serves little more than simply to drag on
18 and prevent closure on a subject that we need to --
19 and to move on to other priorities that we have.

20 So I would strongly object to this type of
21 procedure. Perhaps if the scales were more balanced,
22 perhaps if there were more special assistants
23 available to deal with this, I might think
24 differently. But the fact of the matter is, from a
25 practical standpoint, having one special assistant to

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1 deal with potentially six statements, whereas, like I
2 said --

3 COMMISSIONER GAZIANO: Would the
4 Commissioner yield?

5 COMMISSIONER YAKI: -- generally -- I am
6 still speaking. Generally, Commissioner Melendez and
7 I do a single joint dissent, or I may do a very short
8 one in addition to his.

9 I think, you know, it increases the burden
10 on the Commission, increases the paperwork that we
11 generate, and I don't know if it really contributes
12 overall to the report, other than to satisfy each
13 other's desire to sort of take a whack at someone
14 else's statement.

15 CHAIRMAN REYNOLDS: Would you feel better
16 -- would you be comfortable with this if we increased
17 the amount of time from 10 days to 14? And also with
18 the understanding that the configuration of the
19 Commission will shift over time?

20 COMMISSIONER YAKI: No, because I think
21 that then -- one, I think 14 is insufficient. You
22 have to -- first, you have to analyze, and then you
23 have to decide how to write. We have -- as it stands
24 right now, we have a fair amount of time in which to
25 analyze the report as a whole, and then to -- and

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1 then, for all practical purposes, from my point of
2 view, gather material to write a dissent.

3 Now we are talking about the potential of
4 -- and this has been a practice that I have been
5 seeing with recurring frequency, that people are
6 attempting to put into the record whole reports or
7 studies as part of what they are trying to do that
8 would require a little more attention being paid than
9 simply 14 days, because many -- much of it is new
10 material.

11 When you add to that -- when you multiply
12 that by a potential of two, three, four, or six, for
13 Commissioners Melendez and myself, it is -- it is
14 essentially, you know, an unfair fight, and maybe
15 that's the way the Commission simply wants to have it
16 done. And I can't -- I can't do anything about it,
17 because I'm outvoted six to two.

18 But I think as a -- but I think in terms
19 of the greater mission of the Commission, and that is
20 that you move on and continue to address new topics,
21 we are simply extending out -- if you would want --
22 what I would say -- well, if you were to offer me a
23 chance to compromise on this, I would say that I would
24 need a minimum of one month to review -- to review
25 that, and decide from within that how to respond,

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1 because this could involve --

2 CHAIRMAN REYNOLDS: With 30 days, you
3 would vote for this?

4 COMMISSIONER YAKI: I'm not saying I
5 would. I'm saying this is -- let's play this out.
6 Even in 30 days, I would still have to read six
7 potential statements, some have supporting --

8 COMMISSIONER GAZIANO: The motion on the
9 table --

10 COMMISSIONER YAKI: Some have --

11 CHAIRMAN REYNOLDS: Hold on.

12 COMMISSIONER GAZIANO: The motion on the
13 table is just for this one.

14 CHAIRMAN REYNOLDS: Hold it, hold it, hold
15 it, hold it, hold it.

16 COMMISSIONER YAKI: Point of order.

17 CHAIRMAN REYNOLDS: Easy, easy, easy,
18 easy, easy.

19 COMMISSIONER YAKI: Point of order. I
20 believe -- point of order. I believe I have the floor.

21 I'm just offering -- I'm offering a hypothetical, and
22 that is you could have four, you could have fix, you
23 could have six statements, each with independent
24 supporting materials. And then, to have to write --

25 COMMISSIONER HERIOT: The motion is for

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1 this report.

2 COMMISSIONER YAKI: And then, to have to
3 write to address each one of those --

4 CHAIRMAN REYNOLDS: Okay. Let's --
5 Commissioner Heriot is up next, and then Commissioner
6 Gaziano.

7 COMMISSIONER HERIOT: Okay. One, I just
8 wanted to -- as usual, I agree with Commissioner Yaki
9 about the need for special assistants, and that each
10 member of the Commission should have a special
11 assistant. I believe that because these Commissioner
12 concurring and dissenting statements I think are in
13 fact the most important part of the report, and that
14 more work should be done on them.

15 So on that point I'm with him. On
16 everything else, number one, there are not six
17 concurring reports at this point.

18 CHAIRMAN REYNOLDS: There has never been.

19 COMMISSIONER HERIOT: Commissioner
20 Thernstrom has done one, and I have done one. They
21 are both mercifully short, and are quite easy to
22 respond to, if Commissioner Yaki is interested in
23 doing so. I think it is a terrible mistake not to
24 allow responses, because frequently I have seen that
25 these concurring and dissenting reports contain

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1 arguments that are sometimes even scurrilous
2 accusations.

3 We can't have that and not have -- allow
4 people to respond. It is, in my view, fundamental
5 fairness. We have to allow responses. And so I very
6 much favor doing this on this occasion, and I am not
7 concerned about the amount of time. If it's 10 days,
8 it's fine. If it's 14 days, it's fine. If it's 30
9 days, it's fine. But these are not unimportant parts
10 of the report.

11 CHAIRMAN REYNOLDS: Commissioner Heriot,
12 would you feel comfortable if we tried to address
13 everyone's concern by increasing the amount of time
14 people have to respond, also placing a cap on the
15 number of pages?

16 COMMISSIONER HERIOT: I think a page
17 limitation would be okay, as long as it's within
18 reason.

19 CHAIRMAN REYNOLDS: Sure.

20 COMMISSIONER HERIOT: I think we have to
21 understand that these issues are important.

22 CHAIRMAN REYNOLDS: What's -- give me a
23 number. What's a reasonable --

24 COMMISSIONER HERIOT: This is just ad hoc
25 here.

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1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER HERIOT: This is just for
3 this report. The -- for this particular report, the
4 concurring and dissenting statements that have been
5 submitted are like five and six pages. To say that a
6 reply --

7 CHAIRMAN REYNOLDS: Ten page limit?

8 COMMISSIONER YAKI: Why is that?

9 COMMISSIONER HERIOT: Perfectly fine for
10 this.

11 CHAIRMAN REYNOLDS: Do you have an
12 alternative?

13 COMMISSIONER GAZIANO: Five.

14 CHAIRMAN REYNOLDS: Five?

15 COMMISSIONER GAZIANO: Five for a
16 response.

17 COMMISSIONER HERIOT: Five for responses.

18 Given this -- we can develop a rule --

19 COMMISSIONER GAZIANO: How long was the
20 dissent?

21 COMMISSIONER HERIOT: Todd? Todd, can I
22 finish? When we develop our rule, the page limit
23 should be proportionate to the number of pages of the
24 initial statements.

25 CHAIRMAN REYNOLDS: We are going to have

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1 another conversation about what the ultimate written
2 rule is going to be. As you two have pointed out --

3 COMMISSIONER HERIOT: For the ad hoc for
4 this report, five pages is fine with me.

5 COMMISSIONER GAZIANO: Five pages is fine
6 with me.

7 COMMISSIONER TAYLOR: That is, five pages
8 per response.

9 COMMISSIONER GAZIANO: What is the length
10 of the -- and for the record, Commissioner Yaki, I was
11 asking if you would yield just to ask you a few
12 questions, which, if you didn't want to answer, then
13 fine.

14 CHAIRMAN REYNOLDS: All right. Come on,
15 come on, come on.

16 COMMISSIONER GAZIANO: How long --

17 COMMISSIONER YAKI: Don't get so --

18 COMMISSIONER GAZIANO: How long are the
19 three dissents and concurrences? How many pages?

20 STAFF DIRECTOR DANNENFELSER: They vary
21 from, I believe, four to 10 pages.

22 COMMISSIONER GAZIANO: Okay. Then five
23 sounds fine to me.

24 I want to be on the record of supporting
25 Commissioner Yaki's call -- my call for special

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1 assistants. I actually took advantage of the
2 authority, although it was abused, and I was, you
3 know, slapped around improperly.

4 CHAIRMAN REYNOLDS: Okay. All right,
5 folks. That's another topic, right?

6 COMMISSIONER GAZIANO: Okay. But that
7 experience convinced me of the wisdom of our prior
8 position on special assistants. I also just want to
9 correct the record. There is not six to two. There
10 are two Democrat Commissioners. There are two
11 independent Commissioners. There are currently four
12 Republican Commissioners, which may change, and we
13 don't all think monolithic, even within the same
14 party. But two Independents certainly don't think
15 monolithically.

16 But more to the point, I don't care what
17 the time period is, except I know there were some
18 concerns about getting this to Congress. I do think
19 we met our statutory obligation by adopting the
20 primary report. I don't think the statute is specific
21 of when we have to deliver it by, but I think we
22 should -- if someone will vote for it by extending it
23 beyond the end of this month, that seems fine. And I
24 don't really care about the time period.

25 CHAIRMAN REYNOLDS: Commissioner Heriot?

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1 COMMISSIONER HERIOT: I just wanted to
2 echo something Todd was saying, and that is it's not a
3 question of six to two. There are things that I
4 disagree with that Republican or Independent
5 Commissioners have said. So it's not -- it's not a
6 question of --

7 CHAIRMAN REYNOLDS: I can vouch for that.

8 COMMISSIONER HERIOT: Yes, it's not a six-
9 two thing at all.

10 CHAIRMAN REYNOLDS: Commissioner Ashley,
11 would you like to jump in?

12 COMMISSIONER TAYLOR: Commissioner Ashley.
13 (Laughter.)

14 CHAIRMAN REYNOLDS: I'm sorry. Taylor.

15 COMMISSIONER TAYLOR: No. I'm going to go
16 ahead and pitch the question to Commissioner Yaki and
17 see where we are.

18 CHAIRMAN REYNOLDS: Okay. With these
19 compromises, are you willing to vote in favor of this?

20 COMMISSIONER YAKI: No. I mean --

21 CHAIRMAN REYNOLDS: Are there additional
22 things that you want to put on the table that --

23 COMMISSIONER YAKI: For all intents and
24 purposes, if we want to start going down the voting
25 list, it's six to two. That's how it works out. But

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1 that --

2 CHAIRMAN REYNOLDS: I am working to see --

3 COMMISSIONER YAKI: That being -- that

4 being --

5 CHAIRMAN REYNOLDS: -- get your vote --

6 COMMISSIONER YAKI: That being the case,
7 you know, on this particular report, which to me was a
8 lot of sound and fury that signified ultimately
9 nothing in the end, I don't care. I'd like an
10 appropriate time in which to review it. It is a very
11 busy time for me. The chances for me looking at these
12 reports in the next two weeks is probably slim to
13 none, in terms of -- in terms of the -- my colleagues.

14 I would -- if you are going to do it, I would like 30
15 days.

16 Maybe I -- you know what? I think I will
17 adopt the language from Bush versus Gore. My vote on
18 this is limited to the particular facts of this case.

19 So I would support a 30-day --

20 CHAIRMAN REYNOLDS: You would vote for
21 this?

22 COMMISSIONER YAKI: Limited to the facts
23 of this case.

24 CHAIRMAN REYNOLDS: You would vote for
25 this?

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1 COMMISSIONER YAKI: Limited to the facts
2 of this case, yes.

3 CHAIRMAN REYNOLDS: Okay. Commissioner
4 Melendez?

5 COMMISSIONER MELENDEZ: I agree.

6 CHAIRMAN REYNOLDS: I'm sorry?

7 COMMISSIONER MELENDEZ: I would agree with
8 Michael.

9 CHAIRMAN REYNOLDS: Okay. How does --
10 okay. If I got this down right, this is limited to
11 this particular report, five-page limit, 30 days to
12 review. Is everyone comfortable with that? All in
13 favor please --

14 STAFF DIRECTOR DANNENFELSER: Can I just
15 clarify? I'm sorry.

16 CHAIRMAN REYNOLDS: Okay.

17 STAFF DIRECTOR DANNENFELSER: So people
18 have -- can respond to each -- there are three --
19 there are three sets of comments out there. There is
20 a Yaki-Melendez statement, there is a Heriot
21 statement, and there's a Thernstrom statement. So
22 each Commissioner can respond to each one of those.
23 Well, is that the understanding? And it's a five-page
24 limit?

25 CHAIRMAN REYNOLDS: Yes, that's my

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1 understanding. But --

2 COMMISSIONER HERIOT: Yes. I was thinking
3 five total pages.

4 STAFF DIRECTOR DANNENFELSER: Or was it
5 five total for --

6 COMMISSIONER HERIOT: Yes.

7 STAFF DIRECTOR DANNENFELSER: --
8 responding to everything.

9 COMMISSIONER HERIOT: If people want
10 five --

11 COMMISSIONER YAKI: No, that's not what I
12 thought. I thought you were talking about five pages
13 for each response.

14 CHAIRMAN REYNOLDS: Actually, that's what
15 I thought.

16 COMMISSIONER HERIOT: That's fine. I
17 don't care either way. I mean, that's --

18 CHAIRMAN REYNOLDS: Okay. So we have an
19 agreement. All in favor please say aye.

20 COMMISSIONER GAZIANO: And my -- just to
21 clarify, my motion is that we are going to write a
22 rule --

23 COMMISSIONER YAKI: You just lost my vote.

24 COMMISSIONER HERIOT: We don't need
25 that --

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1 (Whereupon, several participants were speaking
2 simultaneously.)

3 CHAIRMAN REYNOLDS: Okay. This vote has
4 to do -- this is a --

5 PARTICIPANT: Let's do that one first.

6 CHAIRMAN REYNOLDS: All in favor of the
7 revised motion please say aye.

8 (Chorus of ayes.)

9 Any objections?

10 (No response.)

11 Any abstentions?

12 COMMISSIONER KIRSANOW: Abstain.

13 (Laughter.)

14 CHAIRMAN REYNOLDS: Let the record reflect
15 that --

16 COMMISSIONER YAKI: It's the beard. It's
17 the beard thing. It has got him a little ornery
18 today.

19 CHAIRMAN REYNOLDS: -- Commissioner
20 Kirsanow abstained.

21 **VI. STATE ADVISORY COMMITTEE ISSUES**

22 CHAIRMAN REYNOLDS: Moving on, Bob
23 Costrell, who we appointed, as Chairman of the
24 Arkansas SAC in July, has been appointed to an
25 advisory committee by Education Secretary Margaret

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1 Spellings. Because of the demands of that position,
2 he has resigned from the Arkansas SAC.

3 Based on feedback from our Regional
4 Director and the Regional Programs Coordination Unit
5 Chief, as well as independent research, the Staff
6 Director recommends that the Commission appoint SAC
7 member Gary McHenry to assume the chairmanship during
8 the Commission meeting -- well, during this Commission
9 meeting.

10 May I have -- hold on. May I have a
11 second to adopt the Staff Director's recommendation?

12 COMMISSIONER KIRSANOW: Second.

13 CHAIRMAN REYNOLDS: Thank you.

14 Discussion?

15 (No response.)

16 All in favor please say aye.

17 (Chorus of ayes.)

18 Any objections?

19 COMMISSIONER YAKI: I abstain.

20 COMMISSIONER MELENDEZ: Abstain.

21 Melendez.

22 CHAIRMAN REYNOLDS: Okay. Commissioners
23 Yaki and Melendez abstain. The remaining
24 Commissioners voted in favor.

25 Okay. Next up, the Staff Director has

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1 also proposed that Ranko Shiraki Oliver, Associate
2 Professor of Law at the University of Arkansas --
3 Arkansas' William H. Bowen School of Law has -- will
4 be approved as a new member of the Arkansas SAC to
5 bring the membership of the Arkansas SAC to its
6 previous rechartering level. Is there a second?

7 COMMISSIONER YAKI: I'll second.

8 CHAIRMAN REYNOLDS: Discussion?

9 (No response.)

10 All in favor please say aye.

11 (Chorus of ayes.)

12 No general objection?

13 COMMISSIONER YAKI: I said aye.

14 CHAIRMAN REYNOLDS: Just, you know,
15 sometimes I can't believe my ears. I'm just making
16 sure.

17 The rest of you folks?

18 COMMISSIONER KIRSANOW: Aye.

19 CHAIRMAN REYNOLDS: Any objections?

20 COMMISSIONER YAKI: I like to change
21 things up on you, Mr. Chair, every once in a while.

22 CHAIRMAN REYNOLDS: You confuse me when
23 you do that.

24 Any abstentions?

25 COMMISSIONER HERIOT: Abstain.

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1 CHAIRMAN REYNOLDS: Okay. Commissioner
2 Heriot abstains. The remaining Commissioners voted in
3 favor of the motion. The motion passes.

4 Next up, Commissioners were sent a package
5 for the appointment of 11 members of a North Carolina
6 Advisory Committee.

7 COMMISSIONER YAKI: You betcha.

8 CHAIRMAN REYNOLDS: All 11 members of the
9 previously-chartered committee were asked about their
10 interest in reappointment. Two of these did not
11 respond. Two requests for consideration to be
12 reappointed. Another member declined reappointment.
13 Remaining eight previously-appointed members are being
14 recommended for reappointment.

15 The staff has recommended -- is also
16 recommending a new advisory -- well, new Advisory
17 Committee members who were selected after giving
18 consideration to the views of a cross-section of those
19 directly affected by the proposal of the Advisory
20 Committee.

21 Following the Lean Six Sigma process
22 approved by the Commission in January of '08,
23 Commission staff reached out to Commissioners, the
24 current SAC members, the entire North Carolina
25 congressional delegation, various mayors, various

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1 universities, as well as various religious
2 organizations, labor unions, civil rights
3 organizations, and newspapers and journals.

4 May I have a motion that the Commission
5 recharter the North Carolina State Advisory Committee?
6 Under this motion, the Commission appoints the
7 following individuals to that committee, based on the
8 recommendation of the Staff Director: Marian
9 Ackerman, Steven Greene, Valerie Green, Reggie Holley,
10 Matty Lazo-Chadderton, George Leef, Kevin Leonard,
11 Rick Martinez, Thealetta Monet, Willie Ratchford, and
12 Sarah Cecilia Taylor.

13 I also move that the Commission appoint
14 Marian Ackerman as the chair of the rechartered North
15 Carolina State Advisory Committee. These members will
16 serve as uncompensated government employees, and the
17 Commission appreciates the hard work that they will no
18 doubt contribute to this state.

19 Under this motion, the Commission
20 authorizes the Staff Director to execute the
21 appropriate paperwork for the appointment.

22 Is there a second?

23 COMMISSIONER YAKI: Second.

24 CHAIRMAN REYNOLDS: Discussion?

25 (No response.)

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1 All in favor please say aye.

2 (Chorus of ayes.)

3 Objections?

4 (No response.)

5 Abstentions?

6 COMMISSIONER MELENDEZ: I abstain.

7 Melendez.

8 CHAIRMAN REYNOLDS: Commissioner Melendez
9 abstains. The remaining Commissioners voted in favor.
10 The motion passes.

11 **VII. FUTURE AGENDA ITEMS**

12 CHAIRMAN REYNOLDS: Okay. We added an
13 agenda item that deals with the investigation that
14 took place at our request. This deals with --

15 COMMISSIONER YAKI: We have no -- nothing
16 on Item VII?

17 CHAIRMAN REYNOLDS: Ah. Future Agenda
18 Items. Is there anything you would like to discuss
19 on --

20 COMMISSIONER GAZIANO: Well, I'd like to
21 place back on the agenda the severed part of the
22 motion to rewrite a rule on commenting generally.

23 CHAIRMAN REYNOLDS: Okay. Let's have a
24 discussion.

25 COMMISSIONER GAZIANO: On whether we're

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1 going to discuss it in the future?

2 CHAIRMAN REYNOLDS: Well --

3 COMMISSIONER GAZIANO: Okay. Okay.

4 CHAIRMAN REYNOLDS: -- flesh this out for
5 me.

6 COMMISSIONER GAZIANO: Okay.

7 CHAIRMAN REYNOLDS: What are you asking
8 for?

9 COMMISSIONER GAZIANO: I just think we
10 should come up with a general rule, since we have been
11 responding in an ad hoc way, as I understand the
12 Commission, since before -- I think besides preventing
13 ad hominem -- discouraging ad hominem comments there
14 is even stronger reasons that every other deliberative
15 body that I am aware of that has concurrences and
16 dissents allows the other members of that collegial
17 body to review them and perhaps correct their own
18 comments. So I just think it's a very important
19 practice, and so that we ought to -- to actually
20 clarify what our procedure will be.

21 CHAIRMAN REYNOLDS: So If I understand you
22 right, you are making a motion to have the Staff
23 Director prepare draft language --

24 COMMISSIONER HERIOT: No, no.

25 COMMISSIONER GAZIANO: Or individual

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1 Commissioners can draft, too. I just want it on our
2 agenda that we are going to consider the adoption of
3 such clarification, whether it be -- the Staff
4 Director certainly can propose something to us, and we
5 can propose something to each other as well.

6 COMMISSIONER HERIOT: I may have my own
7 proposal on that.

8 CHAIRMAN REYNOLDS: Okay. So this will be
9 on the next agenda. Anything else?

10 COMMISSIONER YAKI: Nope. Move we go into
11 executive session.

12 CHAIRMAN REYNOLDS: Yes. The following
13 item on the agenda is a closed portion of the meeting
14 pursuant to the Commission's regulations implementing
15 the Sunshine Act.

16 The General Counsel and Solicitor, please
17 certify that the meeting can be closed pursuant to the
18 Commission's regulations.

19 MR. BLACKWOOD: Certified.

20 MS. MONROIG: We certify that this meeting
21 can be closed, and the information pertaining to the
22 same can be withheld, pursuant to the following
23 exemptions provided for under Commission regulations
24 at 45 CFR Section 702.54, exemption 2, as it relates
25 to the internal personnel rules and practices of the

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1 Commission; and exception 6 that might involve
2 disclosing information of a personal nature or
3 disclosure might constitute a clearly unwarranted
4 invasion of personal privacy.

5 CHAIRMAN REYNOLDS: Okay. May I have a
6 motion to close this meeting pursuant to exemptions 2
7 and 6 of the closed meeting procedures for Commission
8 meetings, and, furthermore, to authorize the Staff
9 Director to place in a location accessible to the
10 public within one working day the public vote to close
11 the meeting, an explanation of the decision to close
12 the meeting, and a list of all persons attending the
13 meeting.

14 COMMISSIONER GAZIANO: So moved.

15 CHAIRMAN REYNOLDS: Is there a second?

16 COMMISSIONER KIRSANOW: Second.

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

19 (Chorus of ayes.)

20 Any objections?

21 (No response.)

22 Any abstentions?

23 (No response.)

24 The motion passes unanimously. Let the
25 record reflect that Commissioner Kirsanow voted in the

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1 affirmative, Commissioner Heriot voted in the
2 affirmative, Commissioner Melendez voted in the
3 affirmative, Commissioner Yaki voted in the
4 affirmative, Commissioner Taylor voted in the
5 affirmative, as did the Chairman.

6 Okay. So the vote was unanimous. So
7 pursuant to the vote, the Commissioners -- well, at
8 this point, all folks need to leave the room, with the
9 exception of Commissioners, the General Counsel, the
10 Solicitor, and the Staff Director. And the Court
11 Reporter.

12 (Whereupon, at 10:31 a.m., the proceedings in the
13 foregoing matter went into Closed Session,
14 and went back into Open Session at 10:41
15 a.m.)

16 **VIII. ADJOURN**

17 CHAIRMAN REYNOLDS: All right. We are
18 going to open the door, give people an opportunity to
19 come in, so we can adjourn.

20 Okays. Folks, I guess you can turn around
21 now, because we have adjourned.

22 COMMISSIONER HERIOT: Do we have to move
23 to adjourn in broad session?

24 CHAIRMAN REYNOLDS: Okay. I move to
25 adjourn. Is there a second?

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1 COMMISSIONER HERIOT: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 (No response.)

4 All in favor please say aye.

5 (Chorus of ayes.)

6 Any objections?

7 (No response.)

8 Any abstentions?

9 (No response.)

10 COMMISSIONER TAYLOR: Thank you. I feel
11 better now.

12 CHAIRMAN REYNOLDS: All right.

13 (Whereupon, at 10:42 a.m., the proceedings in the
14 foregoing matter were adjourned.)

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