

## U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, JANUARY 16, 2009

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

## PRESENT:

GERALD A. REYNOLDS, Chairman  
ABIGAIL THERNSTROM, Vice Chairman  
TODD GAZIANO, Commissioner  
GAIL L. HERIOT, Commissioner  
PETER N. KIRSANOW, Commissioner (by  
teleconference)  
ARLAN D. MELENDEZ, Commissioner  
ASHLEY L. TAYLOR, JR., Commissioner  
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

## STAFF PRESENT:

DAVID BLACKWOOD, General Counsel  
CHRISTOPHER BYRNES, Chief, Programs Coordination  
Unit  
DEBRA CARR, Associate Director  
DEMITRIA DEAS  
PAMELA A. DUNSTON, Chief, ASCD  
LATRICE FOSHEE  
MAHA JWEIED  
ROBERT LERNER, Assistant Staff Director  
SOCK-FOON MacDOUGALL  
TINA LOUISE MARTIN, Director of Management  
EMMA MONROIG, Solicitor  
LENORE OSTROWSKY  
KIMBERLY TOLHURST  
VANESSA WILLIAMSON  
AUDREY WRIGHT  
MICHELE YORKMAN

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## COMMISSIONER ASSISTANTS PRESENT:

TIM FAY  
DOMINIQUE LUDVIGSON  
RICHARD SCHMECKEL  
KIMBERLY SCHULD

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## TABLE OF CONTENTS

AGENDA	PAGE
I. APPROVAL OF AGENDA .....	5
II. APPROVAL OF MINUTES OF DECEMBER 12, 2008 MEETING .....	9
III. ANNOUNCEMENTS .....	15
IV. STAFF DIRECTOR'S REPORT .....	16
V. PROGRAM PLANNING .....	48
- FUTURE BRIEFING TOPICS .....	48
- BRIEFING REPORT ON THE DEPARTMENT OF JUSTICE'S ENFORCEMENT OF VOTING RIGHTS IN THE 2008 PRESIDENTIAL ELECTIONS .....	70
VI. STATE ADVISORY COMMITTEES .....	105
- RECHARTERING ALABAMA SAC .....	105
- COMMISSIONER INVOLVEMENT IN SACS .....	111
 Adjourn	

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

(9:36 a.m.)

CHAIRMAN REYNOLDS: This meeting is of the U.S. Commission on Civil Rights. The time is 9:37 on January 16th, 2009. The meeting is being held at 624 Ninth Street, Northwest, room 540 in Washington, D.C.

All commissioners are present with the exception of Peter Kirsanow. Commissioner Kirsanow is on the line. Pete, please confirm that you are on the line.

COMMISSIONER KIRSANOW: Confirmed.

CHAIRMAN REYNOLDS: Thank you.

COMMISSIONER YAKI: Mr. Chairman, since Commissioner Kirsanow is not here, I move that we ask him to conduct his business outside in his front yard as penance for not being here today.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER HERIOT: I second it.

COMMISSIONER GAZIANO: Wait, wait. Pete, how do we know you're not in Hawaii? He could be in Hawaii, and that could be a blessing.

COMMISSIONER KIRSANOW: I am in Cleveland. I've got my swimsuit on. I've on my front yard. I'm making a snowman.

(Laughter.)

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1 COMMISSIONER YAKI: That is an image I can  
2 now live without.

3 **I. APPROVAL OF AGENDA**

4 CHAIRMAN REYNOLDS: I move to amend the  
5 agenda to add a discussion of the deputy staff  
6 director position. Under this motion, discussion of  
7 the deputy staff director position will take place  
8 immediately after the Staff Director's report. Is  
9 there a second?

10 COMMISSIONER HERIOT: Second.

11 CHAIRMAN REYNOLDS: Discussion?

12 (No response.)

13 CHAIRMAN REYNOLDS: All in favor, please  
14 say, "Aye."

15 (Whereupon, there was a chorus of "Ayes.")

16 CHAIRMAN REYNOLDS: Any in opposition?

17 COMMISSIONER YAKI: No.

18 CHAIRMAN REYNOLDS: Any abstentions?

19 (No response.)

20 CHAIRMAN REYNOLDS: Okay. Please let the  
21 record reflect that all commissioners with the  
22 exception of Commissioner Melendez voted in favor of  
23 the motion. Commissioner Melendez abstained.

24 COMMISSIONER MELENDEZ: What?

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1 CHAIRMAN REYNOLDS: Let me back up. How  
2 did you vote?

3 COMMISSIONER YAKI: Didn't you hear my big  
4 "No"?

5 CHAIRMAN REYNOLDS: Okay. Commissioner  
6 Melendez?

7 COMMISSIONER MELENDEZ: I will vote no  
8 also.

9 CHAIRMAN REYNOLDS: Okay. I'm curious.

10 COMMISSIONER GAZIANO: They did not want  
11 to have a discussion. So why ask them why they don't  
12 want to have --

13 CHAIRMAN REYNOLDS: I'm curious. I may  
14 regret this, but you don't want to discuss the topic?  
15 Is that --

16 COMMISSIONER HERIOT: If they don't, then  
17 I might change my vote to no.

18 VICE CHAIR THERNSTROM: I was going to say  
19 --

20 COMMISSIONER HERIOT: I thought this was  
21 for their benefit.

22 COMMISSIONER GAZIANO: Yes. I thought we  
23 put it on the agenda for them.

24 CHAIRMAN REYNOLDS: Well, that was the  
25 idea.

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1 COMMISSIONER HERIOT: Okay. Then I vote  
2 no.

3 COMMISSIONER YAKI: My question back is,  
4 what are we going to be discussing about the topic?  
5 Is this a continuing --

6 CHAIRMAN REYNOLDS: Well, I assume that  
7 folks will have questions.

8 COMMISSIONER YAKI: If it's a continuation  
9 of the discussion that we had last time, then I would  
10 vote yes. If it is, however, to take any action on  
11 it, then I would vote no. So the question is, is this  
12 an action item or a discussion item?

13 COMMISSIONER GAZIANO: Discussion  
14 sometimes leads to --

15 COMMISSIONER HERIOT: The motion speaks  
16 for itself.

17 COMMISSIONER YAKI: The motion does not  
18 speak for itself.

19 CHAIRMAN REYNOLDS: Okay. Let's try this  
20 again from the top. Who opposes the motion?

21 COMMISSIONER YAKI: Point of inquiry.  
22 Point of information.

23 CHAIRMAN REYNOLDS: Yes, Commissioner  
24 Yaki?

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1 COMMISSIONER YAKI: Is this a discussion  
2 item or an action item?

3 VICE CHAIR THERNSTROM: We don't know yet.

4 COMMISSIONER HERIOT: The motion speaks  
5 for itself, I mean.

6 COMMISSIONER YAKI: To the extent that  
7 it's a discussion item, I would vote yes.

8 COMMISSIONER TAYLOR: I vote no.

9 CHAIRMAN REYNOLDS: Okay. Todd, where are  
10 you?

11 COMMISSIONER GAZIANO: I am confused.

12 CHAIRMAN REYNOLDS: So am I. So am I.  
13 Okay.

14 COMMISSIONER GAZIANO: The motion is that  
15 we should discuss. What are other --

16 COMMISSIONER YAKI: If the motion is to  
17 discuss, I vote yes.

18 COMMISSIONER HERIOT: I vote no, then.

19 COMMISSIONER MELENDEZ: That is my reason  
20 for --

21 CHAIRMAN REYNOLDS: Life should be  
22 simpler.

23 VICE CHAIR THERNSTROM: We have got a no  
24 vote here.

25 CHAIRMAN REYNOLDS: Okay.

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1 COMMISSIONER GAZIANO: I vote yes for  
2 discussion.

3 CHAIRMAN REYNOLDS: Yes for discussion?  
4 Commissioner Taylor?

5 COMMISSIONER TAYLOR: No.

6 CHAIRMAN REYNOLDS: Okay. Vice Chair  
7 Thernstrom?

8 VICE CHAIR THERNSTROM: No.

9 CHAIRMAN REYNOLDS: I will join the nos.  
10 The motion does not carry. Strange world.

11 VICE CHAIR THERNSTROM: This is a whole  
12 new logical world, it seems to me.

13 CHAIRMAN REYNOLDS: Okay. Bear with me  
14 while I regain my bearings. This is Richard's fault.

15 (Laughter.)

16 **II. APPROVAL OF MINUTES OF**

17 **DECEMBER 12, 2008 MEETING**

18 CHAIRMAN REYNOLDS: The second item on the  
19 agenda is the approval of the minutes held on December  
20 12th, 2008. May I have a motion to approve the  
21 minutes?

22 VICE CHAIR THERNSTROM: Yes. So moved.

23 CHAIRMAN REYNOLDS: Okay. A second?

24 COMMISSIONER GAZIANO: Second.

25 CHAIRMAN REYNOLDS: Discussion?

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1 (No response.)

2 CHAIRMAN REYNOLDS: Okay. I just want to  
3 point out that, yes, I did participate by phone, but  
4 it was only for a portion of the meeting. So please  
5 revise the minutes that it reflects the fact that I  
6 didn't participate for the entire meeting.

7 Okay. With that amendment, all in favor?

8 COMMISSIONER YAKI: I think that the  
9 minutes should also reflect the fact that I was not  
10 present for a part of the end discussion on the  
11 business issues.

12 CHAIRMAN REYNOLDS: Okay. Marty?

13 STAFF DIRECTOR DANNENFELSER: We can do  
14 that. I'm just wondering about for future precedent  
15 if a commissioner is out for any portion of the  
16 meeting, like if there are ten topics and he's away  
17 for one topic, did we note that in the minutes?

18 CHAIRMAN REYNOLDS: Commissioner Yaki and  
19 I participated by phone and only for a portion. How  
20 long were you out of the meeting?

21 COMMISSIONER YAKI: I left after the  
22 briefing.

23 CHAIRMAN REYNOLDS: Oh. Okay.

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1 COMMISSIONER YAKI: Actually, my presence  
2 isn't reflected other than I would like the fact that  
3 my presence was here for the briefing.

4 CHAIRMAN REYNOLDS: Okay. So we don't we  
5 make a distinction between the meeting and the  
6 briefing. And we would have to make that distinction  
7 to reflect that.

8 VICE CHAIR THERNSTROM: I think that's --

9 COMMISSIONER GAZIANO: I would leave it to  
10 the discretion of the commissioners whether they  
11 missed a significant enough portion that that should  
12 be noted or not. And I think that's relevant. I  
13 think Commissioner Yaki's point --

14 COMMISSIONER YAKI: I'm so glad you do,  
15 Todd.

16 COMMISSIONER GAZIANO: It sounded like he  
17 was asking a question.

18 CHAIRMAN REYNOLDS: Let's make the  
19 amendments to reflect the facts that Commissioner Yaki  
20 just put on the table.

21 STAFF DIRECTOR DANNENFELSER: And we will  
22 note that Commissioner Yaki attended the briefing. It  
23 will note whoever. It will note all of the  
24 commissioners who attended the briefing.

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1                   COMMISSIONER YAKI: I also would like to  
2 amend the minutes. I think that the minutes should  
3 also reflect that before I left, I objected to the  
4 inclusion of the matter brought in at the last minute  
5 regarding the deputy staff director position that we  
6 had not been notified about it until basically as that  
7 meeting was about to begin.

8                   COMMISSIONER GAZIANO: I don't remember  
9 you objecting on that.

10                  COMMISSIONER YAKI: I most certainly did  
11 object.

12                  COMMISSIONER GAZIANO: Did you object on  
13 the record?

14                  CHAIRMAN REYNOLDS: Well, that would be  
15 reflected in the transcript.

16                  COMMISSIONER GAZIANO: Well, then we need  
17 to consult the transcript. I don't remember that.

18                  COMMISSIONER YAKI: Well, then go ahead  
19 and do that, Todd. I'm sure you would love to do that  
20 in your spare time.

21                  CHAIRMAN REYNOLDS: Okay. Are we going to  
22 start up? Maha, I think you are going to lose the  
23 bet. I could be wrong. In any event, we are going to  
24 review the transcript. But with the other undisputed

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1 amendments, I suggest that we vote. All in favor,  
2 please say, "Aye."

3 (Whereupon, there was a chorus of "Ayes.")

4 CHAIRMAN REYNOLDS: Any objections?

5 COMMISSIONER YAKI: I oppose.

6 COMMISSIONER GAZIANO: No.

7 CHAIRMAN REYNOLDS: Any abstentions?

8 COMMISSIONER HERIOT: I abstain.

9 CHAIRMAN REYNOLDS: Todd, how did you  
10 vote?

11 COMMISSIONER GAZIANO: No.

12 CHAIRMAN REYNOLDS: Okay.

13 VICE CHAIR THERNSTROM: I don't  
14 understand. What is controversial about this? I am  
15 sorry. I was not paying sufficient attention. What  
16 was the motion?

17 CHAIRMAN REYNOLDS: We are just trying to  
18 approve the December 12th minutes.

19 VICE CHAIR THERNSTROM: Yes. So why --

20 COMMISSIONER GAZIANO: We don't know what  
21 they are going to say yet. So I am voting no because  
22 I don't know what they are going to say yet.

23 CHAIRMAN REYNOLDS: Okay. I would like to  
24 amend the motion. Let's postpone voting on the  
25 December 12th meeting until after we have reviewed the

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1 transcript, made the suggested changes, circulated the  
2 document in the hopes that we can reach a consensus.  
3 That's my motion. May I have a second?

4 COMMISSIONER MELENDEZ: Second.

5 VICE CHAIR THERNSTROM: Second it.

6 CHAIRMAN REYNOLDS: Do we need to discuss  
7 the motion?

8 VICE CHAIR THERNSTROM: No.

9 CHAIRMAN REYNOLDS: All in favor, please  
10 say, "Aye."

11 (Whereupon, there was a chorus of "Ayes.")

12 CHAIRMAN REYNOLDS: Any objections?

13 COMMISSIONER YAKI: I will abstain.

14 CHAIRMAN REYNOLDS: Okay. All right.  
15 Commissioner Yaki abstained. The remaining  
16 commissioners voted to approve the motion. The motion  
17 passes. Okay.

### 18 **III. ANNOUNCEMENTS**

19 CHAIRMAN REYNOLDS: Next Tuesday marks the  
20 inauguration of the first black President of the  
21 United States: Barack Obama. This is of historic  
22 significance.

23 In the not too distant past, we had a  
24 racial caste system in this country. And in what is,  
25 comparably speaking, a short period of time, we have

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1 gone from an oppressive society, where the positions  
2 of blacks in society were decided for them to where we  
3 have our first black President. This is a fabulous  
4 cause to celebrate.

5 The inauguration significance is  
6 underscored by the fact that we have just celebrated  
7 Dr. Martin Luther King's birthday, which is a federal  
8 holiday, as everyone knows, that he was one of the  
9 main leaders of the civil rights movement.

10 He was a Baptist minister by training. He  
11 became a civil rights activist early in his career,  
12 leading the Montgomery bus boycott and helping to  
13 found the Southern Christian Leadership Conference.

14 Dr. King's "I Have a Dream" speech  
15 delivered at the 1963 march on Washington is one of  
16 the speeches. It's a speech for the ages. Dr. King  
17 was assassinated on April 4th, 1968 in Memphis,  
18 Tennessee.

19 Dr. Martin Luther King Day was established  
20 as a national holiday in 1986. Today we honor the  
21 principles of liberty, equality, and nonviolent social  
22 change espoused by Dr. King.

23 At this point, Mr. Staff Director, please  
24 discuss your report.

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1                   STAFF DIRECTOR DANNENFELSER: Thank you,  
2 Mr. Chairman.

3                   **IV. STAFF DIRECTORS' S REPORT**

4                   STAFF DIRECTOR DANNENFELSER: First, I  
5 would ask that commissioners welcome two interns from  
6 Michigan State University College of Law who started  
7 in the Office of General Counsel this week. Bear with  
8 me if I have trouble with pronunciation of the names.  
9 I did get some help on this. Andrzej Brzoznowski, a  
10 second year law student who is also a graduate of  
11 Northern Michigan University, and Corwin Eversley, a  
12 third year law student is also a graduate of the  
13 University of North Carolina, Chapel Hill. They will  
14 both be at the Commission through the end of April.  
15 And I believe they are both sitting in the audience  
16 here this morning.

17                   CHAIRMAN REYNOLDS: Welcome aboard.

18                   STAFF DIRECTOR DANNENFELSER: On the issue  
19 of briefing reports, the briefing report on the No  
20 Child Left Behind Act and supplemental education  
21 services will likely be sent to commissioners for  
22 review today. Comments will be requested by February  
23 22nd. This review period is a week longer than usual  
24 to accommodate participation in the upcoming inaugural  
25 festivities.

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1           We are also anticipating a modification  
2 today for the commissioners' statement that was  
3 submitted for the census briefing report. The report  
4 will then be prepared for submission to GPO.  
5 Editorial and legal sufficiency reviews have been  
6 completed for the covert wiretapping and illegal  
7 immigration briefing reports. Appropriate changes are  
8 being incorporated so that those two reports can soon  
9 be sent to commissioners.

10           The briefing report on the Multiethnic  
11 Placement Act was sent for editorial and legal  
12 sufficiency review on January 15th. The Title IX  
13 briefing report is being reviewed by the writer-editor  
14 for submission to the Office of the Staff Director.

15           OCRE staff is completing a draft of the  
16 briefing report on discrimination against Native  
17 Americans in border towns. And then that will  
18 subsequently be reviewed by the writer-editor and  
19 within the Office of the Staff Director.

20           A draft of the Blaine amendments briefing  
21 report is being finalized by OGC and will soon be sent  
22 to the Staff Director. The briefing report on  
23 encouraging minority students to pursue careers in  
24 science, engineering, technology, and mathematics, the  
25 STEM briefing, is being prepared by the Attorney

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1 Adviser in the Office of the Staff Director. A draft  
2 will likely be submitted to the Staff Director by next  
3 week.

4 The statutory report on enforcing  
5 prohibitions of religious discrimination in prisons.  
6 This was posted on the Commission's Web site. Compact  
7 discs with copies of the report were sent to Congress,  
8 and printed copies have now been received. And we can  
9 make those available to commissioners if they would  
10 like to have copies of those.

11 Regarding the 2009 statutory report, we  
12 will have some further discussion on this shortly.  
13 But, just in general, staff sent interrogatories to 11  
14 pertinent agencies. Staff has now met with  
15 representatives of the U.S. Department of Housing and  
16 Urban Development, the Federal Housing Finance Agency,  
17 the Federal Trade Commission, the Office of the  
18 Comptroller of the Currency, Freddie Mac, and the  
19 Federal Reserve System.

20 The staff members continue to engage in  
21 background research and are developing an annotated  
22 outline for a draft report, which will be available  
23 within about the next ten days and be sent to  
24 commissioners for their review.

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1 OGC met with the four commissioner  
2 assistants this week to provide a status report on the  
3 2009 statutory report and to receive recommendations  
4 from them.

5 In the area of complaints processing,  
6 during the monthly reporting report, OCRE received 94  
7 written complaints, 18 e-mail complaints, 3 facsimile  
8 complaints, and 80 telephone complaints, of which 33  
9 were repeat calls. In total, staff received and  
10 processed 195 complaints during this reporting period.

11 With respect to the Web site, there were  
12 40,579 visits to the Web site for 2008 from 844  
13 different domains. A detailed breakdown of 2,000  
14 domain names is available in the report that we  
15 received. And that is my report for now.

16 CHAIRMAN REYNOLDS: Okay.

17 VICE CHAIR THERNSTROM: I have a question.

18 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

19 VICE CHAIR THERNSTROM: Mr. Staff  
20 Director, could we get -- maybe we've got it and I'm  
21 just missing seeing it. I would like a list, actual  
22 list, with a timetable of these briefing reports. I  
23 am obviously very eager to get these things out the  
24 door. Too many that have been sitting around for too  
25 long. So just I would like something in writing, what

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1 our expectations are as to when we're getting what  
2 done.

3 STAFF DIRECTOR DANNENFELSER: Okay. We  
4 will prepare that for you.

5 CHAIRMAN REYNOLDS: Commissioner Yaki?

6 COMMISSIONER YAKI: Yes. I have a  
7 question. I would like to know an answer of the  
8 status report on the questions regarding the deputy  
9 staff director position from the Judiciary Committee  
10 and what the status of our responses is to that  
11 committee and whether since the time of our last  
12 response, if any, have we updated them with any new  
13 additional information regarding that position.

14 STAFF DIRECTOR DANNENFELSER: We sent a  
15 letter of response on January 13th to the two members  
16 of the Judiciary Committee who inquired about the  
17 deputy staff director position. And that was sent to  
18 all of the commissioners along with the attachments  
19 that were sent to the congressmen.

20 The letter was dated December 23rd. We  
21 received a copy on January 8th from OPM. And then  
22 several days later a written copy was delivered to my  
23 office. So we did note in the letter to them that we  
24 had just received it on January 8th. But we have not  
25 received any response from them at this point in

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1 response to that letter. We did share a copy of that  
2 letter with OPM as well.

3 COMMISSIONER YAKI: So just to follow up,  
4 looking at this letter dated January 13th, is there  
5 any additional information that we should be aware of  
6 with regard to the filling of this position? I read  
7 somewhere that part of this requires the convening of  
8 an SES QRB. Where are we with regard to that?

9 CHAIRMAN REYNOLDS: Commissioner Yaki, I  
10 just want to point out that you voted against the  
11 motion where this information would have been covered.

12 COMMISSIONER YAKI: No. Actually, I voted  
13 for it.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER YAKI: And, in fact, that was  
16 for a separate discussion.

17 COMMISSIONER GAZIANO: He voted against it  
18 before he voted for it.

19 COMMISSIONER YAKI: I would like to state  
20 that the fact is that under the Staff Director's  
21 report, as the Staff Director is the person running  
22 this, this is certainly within the ambit of that report.  
23 So that's why I'm asking.

24 CHAIRMAN REYNOLDS: Okay. I am not  
25 suggesting that we not continue with the conversation.

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1 I'm just pointing out what I see to be an  
2 inconsistency.

3 COMMISSIONER YAKI: The inconsistency is  
4 that I wanted clarification for this discussion or  
5 action item. When the word "discuss" was used, I  
6 voted for it. The majority did not. That being the  
7 case, as a simple discussion item, that did not carry.

8 However, as a discussion item under the  
9 purview of the Staff Director, who is running this  
10 particular part of the show and as part of his duties,  
11 I do not see any such restriction on what I can or  
12 cannot ask with regard to that position.

13 CHAIRMAN REYNOLDS: Commissioner Yaki, no  
14 one suggested that there be a restriction placed on  
15 the questions.

16 COMMISSIONER YAKI: Then I reiterate my  
17 question. What have we done? Have we convened a QRB?  
18 And where are we with regard to that process?

19 STAFF DIRECTOR DANNENFELSER: An SES panel  
20 met yesterday and reported seven finalists, if you  
21 will, the best qualified candidates. We had 95  
22 applications initially, of which 24 were considered  
23 qualified by our HR Department with respect to people  
24 who submitted complete applications and who were at  
25 least minimally qualified for the position.

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1           The QRB, the Qualifications Review Board,  
2 with respect to OPM is something that would be  
3 necessary if the person selected is someone who is not  
4 currently in the career SES. So that --

5           COMMISSIONER GAZIANO:     Can I have a  
6 clarification, then? So they found seven what? Seven  
7 of them --

8           STAFF DIRECTOR DANNENFELSER:     Seven that  
9 they --

10          COMMISSIONER GAZIANO:     -- could be  
11 possibly qualified? What is the significance of the  
12 seven?

13          STAFF DIRECTOR DANNENFELSER:     The panel  
14 said that the seven were those that they deemed to be  
15 the best qualified of the remaining 24 that they  
16 reviewed.

17          COMMISSIONER YAKI:     Are we obligated to  
18 pick only from that seven if we pick at all?

19          STAFF DIRECTOR DANNENFELSER:     That is my  
20 understanding, yes.

21          COMMISSIONER YAKI:     Okay. Of the seven,  
22 what, then, is the next step?

23          STAFF DIRECTOR DANNENFELSER:     To schedule  
24 interviews with the seven candidates, which I would  
25 anticipate beginning those interviews next week.

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1                   COMMISSIONER YAKI: My next question has  
2 to do with just within those seven, are there issues  
3 of budgetary impact in terms of some would come in at  
4 one level, some would come in at another level  
5 depending on who has picked?

6                   I'm not asking for any specifics,  
7 obviously, but the reason I ask is that I know that  
8 part of how this is being funded is consolidating  
9 several other extant unfulfilled positions, budgetary  
10 authority -- and correct me if I am wrong -- to fill  
11 this position, which, as you know, has been vacant for  
12 many years and, indeed, in 2000 was simply abolished.

13                   But, that being as it may, it continues to  
14 be a source of concern for me given the fact that we  
15 are cannibalizing two or three -- I don't know how  
16 many -- other positions to fund this. And where we  
17 are doing the cannibalization has some concern for me.

18                   STAFF DIRECTOR DANNENFELSER: Well, the  
19 range, the salary range, that was in the job posting  
20 was \$117,787 up to \$162,900. So that's about a  
21 \$45,000 range from high to low.

22                   COMMISSIONER YAKI: Do we know  
23 historically if that was the range for the previous  
24 deputy staff director? It has been obviously adjusted  
25 for inflation or step increases, what have you, but

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1 was that through a GS or SES range where the previous  
2 deputy staff director's salary was paid that or was it  
3 paid significantly lower?

4 STAFF DIRECTOR DANNENFELSER: Well, I  
5 believe it would have been significantly lower  
6 because, at least the high end of that range,  
7 increases, potentially increases with inflation on a  
8 year-to-year basis.

9 COMMISSIONER YAKI: Maybe I am not being  
10 clear. What I am asking is that when you look at the  
11 differential between staff director and deputy staff  
12 director, I assume that there has been a differential  
13 that has existed historically for budgetary or rank or  
14 whatever reasons beyond time.

15 I am just wondering if that delta is  
16 consistent in the way that you are budgeting for the  
17 new deputy staff director position between the staff  
18 director and here. I mean, is that delta consistent  
19 or is there not much of a delta at all?

20 STAFF DIRECTOR DANNENFELSER: Well, for  
21 purposes of budgeting, I think we anticipate the  
22 possibility of paying the maximum amount. And then if  
23 we wind up paying less than that, things related to  
24 salary history come into play.

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1           Several years ago, there used to be  
2 several different tiers within the SES, but those were  
3 abolished. And now they have just one wide range.  
4 And salary history could be a factor in determining  
5 what that salary would be for that person.

6           COMMISSIONER YAKI: So it's conceivable  
7 that the staff director and the deputy staff director  
8 can make the exact same amount of money?

9           STAFF DIRECTOR DANNENFELSER: That's  
10 conceivable. If the person who is chosen for the  
11 deputy staff director had a salary history at that  
12 level or higher, that is possible.

13           COMMISSIONER YAKI: And given that there  
14 is by my calculation a \$45,000 difference in the range  
15 that you just said between 117 and 162, are we  
16 factoring that at all into our considerations as to  
17 who or why or whether we should go through with this  
18 given the fact that 45,000 is an FTE? That delta  
19 alone could be one FTE in entry-level position in  
20 different departments in this agency.

21           CHAIRMAN REYNOLDS: Well, at this point, I  
22 just want to jump in just to point out the obvious  
23 that the ultimate impact to our budget will not be  
24 known until we get a little further down the process.

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1 Some of these questions are premature, and it requires  
2 the Staff Director to speculate.

3 COMMISSIONER YAKI: But shouldn't we at  
4 least be thinking about the fact that as an agency  
5 that has done what it can to cut its budget or keep  
6 the cost down or where we have continued a policy of  
7 not hiring special assistants for years, that a  
8 \$45,000 gap between the high and low is something that  
9 should be considered given that essentially that is an  
10 entry-level FTE for this agency in some areas where we  
11 may need it?

12 CHAIRMAN REYNOLDS: Well, again --

13 COMMISSIONER YAKI: I mean, do we just  
14 say, "Whatever," and if it consumes all of our  
15 resources, so be it? I mean, I don't think that we  
16 should be so cavalier.

17 CHAIRMAN REYNOLDS: It is not going to  
18 consume all of our resources, assuming --

19 COMMISSIONER YAKI: We don't have very  
20 many resources, Mr. Chair, if you recall, --

21 CHAIRMAN REYNOLDS: Kind sir --

22 COMMISSIONER YAKI: -- to the point where  
23 --

24 CHAIRMAN REYNOLDS: Kind sir, I did not  
25 interrupt you during your questioning, at least for

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1 the most part. In any event, let me finish the  
2 thought. If you are talking about \$45,000, that is  
3 not going to cause financial stress at this agency.  
4 And, quite frankly, we need some additional help at  
5 the agency in terms of management. I think that it is  
6 money well-spent.

7           Commissioners may disagree, and it's fine.  
8 And I suspect that you disagree.

9           COMMISSIONER YAKI: Fine. And I strongly  
10 disagree because of the fact that we would pay someone  
11 for a position that has not been in existence for now  
12 close to nine years. And in determining the salary  
13 scale for that position, we are willing essentially to  
14 eat one entry-level FTE in OCRE or Office of Legal  
15 Counsel simply because we want candidate X or Y and  
16 that's what their salary schedule would map out at is  
17 irresponsible. I mean, when I first came --

18           CHAIRMAN REYNOLDS: Commissioner?  
19 Commissioner?

20           COMMISSIONER YAKI: May I just speak about  
21 the history of since I came here? When I came here in  
22 --

23           CHAIRMAN REYNOLDS: Commissioner Yaki, you  
24 have sucked up quite a bit of time on this issue.

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1 COMMISSIONER YAKI: It is an important  
2 discussion because --

3 CHAIRMAN REYNOLDS: It is not a -- that's  
4 the problem.

5 COMMISSIONER YAKI: In 2005, when I first  
6 came here, we were under intense scrutiny by GAO, by  
7 others within the Executive and within the Legislative  
8 Branches. Numerous documents and budget documents  
9 were flowing to the House Judiciary Committee, which  
10 at that time, as you know, was controlled by the  
11 Republicans at the time. We were concerned about  
12 issues regarding the cost of auditors that varied in  
13 the tens of thousands between one and another in who  
14 we chose and how we selected them.

15 I know that Commissioner Kirsanow was part  
16 of how we selected those auditors. And cost factors  
17 and what that would do to our budget was very  
18 important.

19 Yes, you know, we realized we had to spend  
20 some of that to get our house in order. Now that we  
21 have gotten our house in order, for an agency that has  
22 stated and continues to state in its budget  
23 submissions that we are short personnel, that we need  
24 personnel and various others, the fact that we would  
25 create a position that essentially eats the equivalent

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1 sum total of three potential FTEs I think is  
2 completely irresponsible and why I objected to the  
3 fact that it was brought up at the last minute at the  
4 December meeting and why it is perfectly appropriate  
5 under the Staff Director's report to continue talking  
6 about this in a way because I don't think there is any  
7 particular --

8 CHAIRMAN REYNOLDS: Commissioner Yaki, the  
9 Staff Director has exercised his discretion in terms  
10 of filling positions, in terms of allocating limited  
11 resources within this agency.

12 Some commissioners may disagree. You may  
13 feel that we should hire secretaries. You may feel  
14 that we should hire attorneys. You may feel that we  
15 should hire fill in the blanks. If there is a  
16 majority of commissioners that support your views, if  
17 your arguments after you marshal your facts and make  
18 your arguments, if you persuade a majority of  
19 commissioners that your suggestion is the better  
20 choice, fine.

21 COMMISSIONER YAKI: The problem, Mr. Chair  
22 -- and I understand the logic of what you are saying,  
23 but let's take that logic to its conclusion, which is  
24 that the Staff Director is someone I believe who works  
25 for the agency, someone who works for us. We ratify

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1 his or her appointment. If I recall, this was not a  
2 discussion brought up in the initial 2009 budget  
3 submission that we had for the agency and, in fact,  
4 was, as I say, sprung up on us at the December  
5 meeting. So that is one of my concerns.

6 That apart, the unwillingness of people to  
7 discuss this is their choice. And I understand that  
8 --

9 COMMISSIONER GAZIANO: Mr. Chairman, I  
10 think we are discussing it. And I want to discuss it  
11 further.

12 CHAIRMAN REYNOLDS: Well, hold on.  
13 Commissioner Yaki, I would suggest you recheck the  
14 budget submission. This issue was discussed. I don't  
15 have a problem with conversation, never have. We're  
16 talking about it right now.

17 COMMISSIONER YAKI: Yes.

18 CHAIRMAN REYNOLDS: You have not had any  
19 limitations placed on your abilities to express your  
20 views.

21 COMMISSIONER GAZIANO: Mr. Chairman?

22 CHAIRMAN REYNOLDS: Okay. You had someone  
23 in front of you. Commissioner Melendez?

24 COMMISSIONER MELENDEZ: Yes. I guess I  
25 still have a concern on the timing of the whole

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1 proposed hiring process of a deputy director. My main  
2 concern is -- let me ask this question because it's  
3 kind of -- you know, as you know, the issue on making  
4 these changes, as I went up, Director Marcus was with  
5 us.

6 When he left, I know that he didn't really  
7 recommend this position, which I thought he had a good  
8 handle as to the capital plan, human resources,  
9 meaning that in that plan, which encompasses to a  
10 certain extent whether or not we think that we should  
11 restructure to a certain extent the agency.

12 You know, it's one thing to hire people  
13 who have left the organization and fill those spots,  
14 but when we start to talk about deputy directors, I  
15 think it kind of leads into to a certain extent a  
16 restructuring to those duties and who is going to do  
17 what. And so that has been my concern.

18 The other question is this. You know,  
19 because of the timing -- and I know that it's almost  
20 as if we are on a fast track to do this. And, as I  
21 mentioned, with the new President coming on board,  
22 it's just not a good timing to do this. I know that  
23 we could have -- advertising a position, we did that  
24 really hastily. I think we did two weeks. We could  
25 have basically done three, as described in the AI 236.

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1           Let me ask this question. Sometimes I  
2 always get the impression that somebody is lined up  
3 for the job, -- you know what I mean? -- somebody's  
4 friend. And I ma not saying that is true, but let me  
5 ask this question. To your knowledge, Mr. Staff  
6 Director, did any current agency employee discuss the  
7 hiring of a deputy staff director with anyone not a  
8 current Commission employee prior to the job posting  
9 being made public? If so, who would that be? If you  
10 can just answer it for the record?

11           CHAIRMAN REYNOLDS: Well, that is a  
12 question for the oversight hearing that will be coming  
13 up this spring. Unless you have some reason to  
14 believe that we have violated an agency rule, I think  
15 that it's inappropriate.

16           COMMISSIONER MELENDEZ: I don't think  
17 that's inappropriate. I think he can just answer  
18 "Yes" or --

19           COMMISSIONER GAZIANO: Can I ask for a  
20 clarification, Commissioner Melendez?

21           CHAIRMAN REYNOLDS: Well, hold on. Hold  
22 on. Hold on.

23           COMMISSIONER GAZIANO: No. I just want a  
24 clarification of the --

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1                   COMMISSIONER MELENDEZ: I asking the Staff  
2 Director. I'm not asking the commissioners to answer  
3 for the Staff Director. He's the Staff Director.

4                   COMMISSIONER GAZIANO: Yes, but I am a  
5 participant here. I just want to --

6                   CHAIRMAN REYNOLDS: Gentlemen, we need  
7 some order here. I want to finish up the discussion  
8 with Commissioner Melendez.

9                   Let's go back. First, there is no  
10 restructuring of the agency underway. That is how you  
11 characterized this hiring. We are filling a position  
12 that hasn't been filled in some years. That to my  
13 mind is not a restructuring of the agency, number one.

14                   Number two, you are suggesting that  
15 something untoward has occurred during the hiring  
16 process. That for me is serious. If you believe that  
17 something has been done in an inappropriate manner, I  
18 would appreciate it if we could have a discussion  
19 about it.

20                   If you believe that we have violated some  
21 type of rule, I mean, you have done so in the past.  
22 You have communicated with me, indicating when you  
23 felt that there was something inappropriate. And we  
24 had conversations about it.

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1                   So in this particular instance, why do you  
2 believe that someone has been preselected?

3                   COMMISSIONER MELENDEZ: I just asked the  
4 question to the Staff Director. If it hasn't  
5 happened, then just say "No."

6                   CHAIRMAN REYNOLDS: You are questioning  
7 folks' integrity and --

8                   COMMISSIONER MELENDEZ: I am not  
9 questioning anybody's integrity. I am just saying  
10 maybe people around here don't understand. If there  
11 is a rule, then just say there is a rule that you  
12 can't contact anybody prior to the job announcement  
13 going out. That is all you have to say. And that  
14 hasn't been done. It's very simple.

15                  CHAIRMAN REYNOLDS: Mr. Staff Director,  
16 please answer Commissioner Melendez's question.

17                  STAFF DIRECTOR DANNENFELSER: I am not  
18 aware of contact that was made to anybody of  
19 encouraging them to apply for a position that hadn't  
20 been announced or anything.

21                  COMMISSIONER MELENDEZ: Okay. That is all  
22 I asked.

23                  COMMISSIONER HERIOT: Was that the  
24 question?

25                  CHAIRMAN REYNOLDS: Okay. My --

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1 COMMISSIONER HERIOT: Wait, wait, wait,  
2 wait. I am not sure what the question was. I thought  
3 it was contacting anybody.

4 COMMISSIONER GAZIANO: I thought it was  
5 preselected, has anyone been preselected. I thought  
6 that was the revised question. But that is why I want  
7 to ask my question of clarification.

8 We discussed this in December, in a public  
9 meeting. We then received a transcript. I might have  
10 mentioned the possibility that this position was open.  
11 I have no idea whether anyone -- would that have been  
12 wrong, Commissioner Melendez, in your view if I  
13 discussed the possibility that we may be listing a  
14 job? I am sincerely asking.

15 COMMISSIONER MELENDEZ: I am asking the  
16 same question. I am asking if there is any rule or  
17 law that says that a commissioner can't. Before we  
18 posted it, if I had a friend and I said, "You know, we  
19 have got a position that is going to be coming up as a  
20 deputy director," what I'm asking at the same time is,  
21 would it be wrong for me to do that?

22 STAFF DIRECTOR DANNENFELSER: As  
23 Commissioner Gaziano mentioned, in a December 12th  
24 meeting, we had a very public discussion about the

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1 likelihood of a deputy staff director position being  
2 announced.

3 I don't think it would be inappropriate  
4 for someone to report on that public discussion, that  
5 the Commission had had a public discussion of hiring a  
6 deputy staff director. That is a topic that is in the  
7 public domain.

8 And there were certainly Commission staff.  
9 There were Commission staff sitting in the room who  
10 would know that. And perhaps if that gave them any  
11 advance notice over somebody else in the public who  
12 wasn't sitting in the room, they knew that as well.

13 COMMISSIONER MELENDEZ: All right. That  
14 is all I asked. Thank you.

15 CHAIRMAN REYNOLDS: Commissioner Gaziano?

16 COMMISSIONER GAZIANO: Yes. Since I think  
17 I am the only commissioner who consistently wanted to  
18 discuss this topic, I want to ask a few questions but  
19 first a few minor other housekeeping matters.

20 I think that several of us would also  
21 appreciate the same kind of list that Vice Chair  
22 Thernstrom asked for on the briefing reports. I  
23 assume you would probably send it to all of us as  
24 well, but I am just suggesting that at least I would  
25 like that and others.

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1           With regard to the Web site, I continue to  
2 be pleased with the kind of reporting. One thing that  
3 I would probably like in the future that we have done  
4 with other sorts of written requests, if it is  
5 possible to list the three or five -- I don't know if  
6 it is, but I assume it is -- most visited Web pages or  
7 if you have download kind of capabilities and a  
8 number. If there are 40,579 visits, you know, whether  
9 it's this report, that report, or my bio, I think that  
10 might be helpful.

11           Now, with regard to the deputy staff  
12 director, I think once this process has begun -- and I  
13 continue to think it sounds like a sound position to  
14 fill. I just want a little bit more clarification on  
15 what the steps are ahead.

16           The QRB board may have included some who  
17 are already career SES. They may have included some  
18 that aren't. So that might affect your --

19           STAFF DIRECTOR DANNENFELSER: Well, I  
20 think you might be mixing the QRB board with the SES  
21 panel.

22           COMMISSIONER GAZIANO: Okay. I probably  
23 am. Please help me clarify.

24           STAFF DIRECTOR DANNENFELSER: The group  
25 that met yesterday was three SES people who reviewed

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1 the applications. And then the QRB is something that  
2 is organized by OPM in the event that the person who  
3 is ultimately selected for the position is not a  
4 member of the career SES. Anybody who is not a member  
5 of the career SES has to go before this Qualifications  
6 Review Board and have their credentials analyzed and  
7 to make the case to that board as to why they are a  
8 suitable candidate to join the SES for that particular  
9 position.

10 COMMISSIONER GAZIANO: Okay. Well, with  
11 that in mind because there are different classes of  
12 people who may be in the group that you're proposing  
13 to interview, what timing might you have in making  
14 your recommendation?

15 As I read RAIs -- and I just want to state  
16 my understanding of it -- we then have 30 days after  
17 your recommendation to take action to reject someone  
18 for that position, but certainly we can ratify your  
19 decision and cut the 30 days short.

20 So I would hope that we would have a  
21 meeting, whether we are going to have any telephonic  
22 meeting -- we have a meeting on February 20, March 20,  
23 where if you were able to make a recommendation to us  
24 before then, we would have the ability under the AI to

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1 ratify that. And the person could begin sooner than  
2 the expiration of the 30 days.

3 What do you think your time frame is going  
4 to be in making that recommendation to us?

5 STAFF DIRECTOR DANNENFELSER: I anticipate  
6 to begin scheduling meetings next week. Next week is  
7 a short week with the Martin Luther King holiday and  
8 the inauguration. And there is some discouragement, I  
9 believe, from OPM and others about having people come  
10 into the city even on Wednesday, the 21st.

11 COMMISSIONER GAZIANO: Okay. That's fine.

12 STAFF DIRECTOR DANNENFELSER: So,  
13 realistically, probably the Thursday, the 22nd would  
14 probably be the first day of scheduling interviews.

15 COMMISSIONER GAZIANO: Okay. But just  
16 sketching out, I mean, maybe you decide someone who is  
17 already SES is the one you want to recommend, maybe  
18 not. I mean, this is maybe too speculative. If it  
19 is, please let me know.

20 What do you think the contingency would be  
21 for you completing the process or the timing for  
22 completing the process under those different  
23 contingencies and making a recommendation to us?

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1           And I am not going to try to hold you to  
2 this, but I certainly think it is worthy of filling  
3 sooner, rather than later.

4           STAFF DIRECTOR DANNENFELSER:     Well, I  
5 guess it would depend on what comes out of the  
6 interviews or there are some additional questions  
7 about a person's background that would require further  
8 checking with references and others just to verify  
9 someone's application says they did this and so on,  
10 did we want to get some verification that that is  
11 accurate but some other independent people would agree  
12 with the way someone described their background and  
13 the degree of their responsibilities and so on. So  
14 that would at least go into the next week, I assume,  
15 so perhaps towards the middle or the end of the next  
16 week, the 29th, 30th, somewhere in that area.

17           COMMISSIONER GAZIANO:   Okay. Well, that's  
18 not --

19           STAFF DIRECTOR DANNENFELSER:   Again, I  
20 think it's relative to the degree of further checking  
21 that would seem appropriate.

22           COMMISSIONER GAZIANO:   Okay. Well, let me  
23 just clarify my remarks earlier. After the December  
24 12th meeting, I don't remember that I certainly asked  
25 anyone to even stand ready to apply for the position,

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1 but I certainly mentioned that we might be listing the  
2 position at some point in the future.

3 I have no idea also whether that led to  
4 anything, but I certainly don't think there was  
5 anything wrong with me discussing the fact that we  
6 might be listing a position. And I would like any  
7 commissioner who disagrees with that to let me know  
8 right now.

9 I would also like any commissioner who  
10 disagrees with my reading of the AI so that we have  
11 some clarity on that --

12 CHAIRMAN REYNOLDS: Folks, let's take a  
13 15-minute recess. Let's make that 20 minutes.

14 (Whereupon, the foregoing matter went off  
15 the record at 10:22 a.m. and resumed at 11:53 a.m.)

16 CHAIRMAN REYNOLDS: We are back on the  
17 record. Mr. Staff Director, are you finished with  
18 your report?

19 STAFF DIRECTOR DANNENFELSER: Yes, Mr.  
20 Chairman.

21 CHAIRMAN REYNOLDS: Are there any  
22 additional questions or concerns?

23 STAFF DIRECTOR DANNENFELSER: Yes.  
24 Commissioner Melendez had some.

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1                   COMMISSIONER MELENDEZ: I have a question  
2 about just in general, I had read the complaints, that  
3 section that has complaints, and you list the number  
4 of how many complaints.

5                   What is the current procedure if the  
6 agency receives a letter or a phone call that alleges  
7 someone's right to vote was violated because of  
8 discrimination? You give us a report as to how many  
9 of those are there, but is there some report as to  
10 what actually gets investigated?

11                  STAFF DIRECTOR DANNENFELSER: Well, since  
12 we don't have enforcement powers at the Commission, we  
13 refer that complaint to the appropriate agency for  
14 their investigation.

15                  COMMISSIONER MELENDEZ: So we don't  
16 actually do it ourselves? It's all farmed out, right?

17                  STAFF DIRECTOR DANNENFELSER: Yes.

18                  COMMISSIONER MELENDEZ: Okay. The other  
19 thing was I know that we had communicated back and  
20 forth about some -- there were 24 interrogatories that  
21 I received that I had asked for. But just to point  
22 out for the record, those weren't actually something  
23 where it all came up at once.

24                  What I sent on a number of questions was  
25 actually an accumulation of questions I asked over the

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1 course of a year. So when those 24 supposed  
2 interrogatories were referred to in a memo I received  
3 from General Counsel, just for the record, it was  
4 actually my question asking for a response that was  
5 accumulated, you know, that number 24.

6 So, just for the record, it wasn't really  
7 intimidation or anything like that as maybe some  
8 people think that I want --

9 CHAIRMAN REYNOLDS: Commissioner Melendez,  
10 I am shocked. I am shocked that you would think that  
11 anyone would accuse you of trying to intimidate us.

12 COMMISSIONER MELENDEZ: For the record, I  
13 did receive some responses to some of those. And the  
14 real question was, I know the General Counsel's  
15 response to me at one point was there are some things  
16 that the real question from my point of view is, what  
17 things can we ask for? You know, are there  
18 limitations as to what information is more  
19 confidential that we can't really get an answer to.

20 My only point would be that if, for some  
21 reason, it's too confidential, you feel that, "Just  
22 answer me back so that at least I get a response and  
23 say that it's confidential and we can't answer it for  
24 a citing." One of the AIs, I believe -- was it 2-9 or  
25 something? Is that section 2-9?

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1                   STAFF DIRECTOR DANNENFELSER: Well, there  
2 are some things that are not necessarily that you  
3 absolutely can't get, but it's a matter of for the  
4 Commission to decide whether that's something they  
5 want to release. And if so, do they want to release  
6 it in an open setting or in perhaps an executive  
7 session?

8                   COMMISSIONER MELENDEZ: Okay. And the  
9 other question I had, another question, what is the  
10 status of the General Counsel's appointment? Now, the  
11 last time that we had the meeting, you said that, I  
12 believe, it has to do with whether or not we're -- if  
13 that's a position that we have to fill also because I  
14 thought that the General Counsel's last day was  
15 January 2nd. But has that been extended or something  
16 for a period of time?

17                   STAFF DIRECTOR DANNENFELSER: No. A job  
18 offer was extended, but the agency reconsidered that  
19 appointment, at least for the time being.

20                   COMMISSIONER MELENDEZ: Oh, so he's not  
21 leaving, then?

22                   STAFF DIRECTOR DANNENFELSER: No.

23                   COMMISSIONER MELENDEZ: Okay. Yes. I  
24 didn't know where we stood with that. What public  
25 service announcements or advertising campaigns is the

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1 Commission now doing? And how much money is planned  
2 for that in 2009?

3 STAFF DIRECTOR DANNENFELSER: We don't  
4 have any underway at the moment, but we are going to  
5 consider some.

6 COMMISSIONER MELENDEZ: I think one of the  
7 questions I had asked was, because we're in the first  
8 quarter already, which started October 1st, that there  
9 was going to be an update as to the budget  
10 expenditures during the first quarter to us at some  
11 point?

12 STAFF DIRECTOR DANNENFELSER: Yes. We'll  
13 get an update together. I did have a conversation  
14 with the Director of the Office of Management. And we  
15 get reports periodically from GSA. But at times they  
16 overstate or understate where we actually are.

17 In this most recent one, it didn't count  
18 an entire payroll period that did involve, I believe,  
19 about \$190,000. So it skewed the number very  
20 significantly.

21 So we're wanting to go back to them to try  
22 to get clarification on some of those numbers when  
23 they factor in at least the really big ticket items  
24 that need to be considered.

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1                   COMMISSIONER MELENDEZ: Okay. That's all  
2 I have, Mr. Chairman.

3                   CHAIRMAN REYNOLDS: Commissioner Gaziano?

4                   COMMISSIONER GAZIANO: Yes. I had the  
5 floor when the recess was called. So I just want to  
6 finish up the two, I think, final questions. I didn't  
7 hear any other commissioner disagree with my  
8 interpretation of the AI. That gives us the option,  
9 of course, to ratify any deputy staff director nominee  
10 and cut the 30 days short. Is that your understanding  
11 or maybe I should ask that of the General Counsel?

12                   STAFF DIRECTOR DANNENFELSER: I can answer  
13 it. And the General Counsel if he believes I am  
14 stating it inaccurately or would like to expand upon  
15 it, I think we would invite him to do so. The  
16 Commission, both with the General Counsel position and  
17 with the deputy staff director position, should be  
18 given an opportunity to act on the Staff Director's  
19 decision to select the particular person for that  
20 position. If the Commission does not act within 30  
21 days, then the Staff Director can proceed to fill the  
22 position, to go through the administrative processes  
23 to fill the position.

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1           It is my view that if the Commission does  
2 act, the Commission can act to veto it, which would  
3 stop --

4           COMMISSIONER GAZIANO:       But if we  
5 affirmatively ratify --

6           STAFF DIRECTOR DANNENFELSER:   But if the  
7 Commission acted within that 30-day period by  
8 affirmatively ratifying the Staff Director's decision  
9 that the Staff Director at that point could then move  
10 forward.

11          COMMISSIONER GAZIANO:   Yes, certainly. I  
12 think that is the only correct interpretation. I was  
13 just glad you were proceeding on that. If there were  
14 some question, then maybe we would pursue some sort of  
15 decision.

16          And also no commissioner has told me in  
17 response to my question that it was improper if I in  
18 discussing with a few folks said that the agency might  
19 be listing the deputy staff director position. I  
20 would still appreciate hearing from any other  
21 commissioner if they think that was improper just from  
22 my own personal standpoint.

23                                   Thank you.

24           STAFF DIRECTOR DANNENFELSER:   Thank you.

25                                   **V. PROGRAM PLANNING**

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1 CHAIRMAN REYNOLDS: Next up is a  
2 discussion of program planning, which will include  
3 future briefing topics and update of the staff  
4 progress on our 2009 statutory report and a briefing  
5 report of the Department of Justice's enforcement of  
6 voting rights in 2008, the 2008 presidential election.

7 Mr. Staff Director?

8 STAFF DIRECTOR DANNENFELSER: Thank you,  
9 Mr. Chairman.

10 **- FUTURE BRIEFING TOPICS**

11 STAFF DIRECTOR DANNENFELSER: As I advised  
12 in my memorandum of January 8th, 2009, I believe we  
13 should decide soon on the briefings we will take up in  
14 the third quarter of this fiscal year and beyond. I  
15 attach a list of the proposed F.Y. 2009 briefing  
16 report topics that received votes during the  
17 commissioners' rankings of the topics in September  
18 2008.

19 We had a good discussion at the September  
20 meeting and subsequently approved the concept paper  
21 for the December briefing. This list may serve as a  
22 reference point for discussion at this business  
23 meeting as commissioners consider topics for the third  
24 quarter and later in the fiscal year.

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1 I recommend that the Commission have a  
2 briefing in March that will help inform our  
3 preparation of the 2009 statutory report. We can also  
4 consider a new topic for a briefing to be held in  
5 April, May, or June and that the consensus can be  
6 reached on the third quarter briefing topic during  
7 this meeting. The Commission could then be in a  
8 position to consider a concept paper on that topic in  
9 February.

10 CHAIRMAN REYNOLDS: Okay. Questions?

11 COMMISSIONER GAZIANO: I move that we do  
12 have a hearing in March in support of the statutory  
13 report.

14 COMMISSIONER HERIOT: Hearing or briefing?

15 COMMISSIONER GAZIANO: I am sorry.  
16 Briefing in support of the statutory report and that  
17 our discussion of the next item on the agenda will  
18 help inform us and staff on the focus of that  
19 briefing.

20 CHAIRMAN REYNOLDS: Okay. I second the  
21 motion. Discussion?

22 COMMISSIONER MELENDEZ: Discussion. I  
23 know that one of the issues was to narrow down the  
24 report further. Are you saying that we would discuss  
25 narrowing it down at the February meeting?

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1                   COMMISSIONER GAZIANO: I hope that we  
2 narrow it down as the next item on our agenda today  
3 and that based on that discussion, it will help one or  
4 more of us draft a concept paper for the briefing.

5                   And if there is a reason to have a  
6 telephone meeting to adopt a concept paper before our  
7 February 20 meeting --

8                   CHAIRMAN REYNOLDS: Pete, are you on the  
9 line? Pete? Frank?

10                  COMMISSIONER KIRSANOW: I'm sorry. I had  
11 it on mute. I'm sorry.

12                  CHAIRMAN REYNOLDS: Okay. Well, it sounds  
13 like you are tussling in your office.

14                  COMMISSIONER KIRSANOW: Not quite.

15                  COMMISSIONER GAZIANO: If staff tells us  
16 that a month -- our next meeting is February 20.  
17 After that is March 20. If a month is difficult to  
18 pull off, then maybe we could try to get the concept  
19 paper drafted and approved prior to February 20.

20                  But I do think the next order of business  
21 will be to see whether people want to focus on the  
22 statutory report. Based on that, we can then turn to  
23 trying to narrow the topic down.

24                  CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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1 VICE CHAIR THERNSTROM: I am confused.  
2 Don't we already have a concept paper for the  
3 statutory report?

4 STAFF DIRECTOR DANNENFELSER: Yes, we do.  
5 So we don't need another concept paper to hold the  
6 briefing for the statutory report. The question would  
7 be for a future briefing topic beyond the briefing on  
8 the statutory report. If there can be some consensus  
9 that might develop today, if there is a discussion  
10 among commissioners, and as there was in September,  
11 that perhaps that could help guide the staff in the  
12 development working with commissioners in the  
13 development of a concept paper that could be  
14 considered in February so that we could plan for  
15 another briefing in April, May, or June?

16 COMMISSIONER GAZIANO: Okay. Well, that  
17 is a good clarification, Madam Vice Chair. Do we need  
18 another concept paper for a briefing if the briefing  
19 is in aid of the statutory report?

20 STAFF DIRECTOR DANNENFELSER: No.

21 COMMISSIONER GAZIANO: We still do need to  
22 narrow it down.

23 CHAIRMAN REYNOLDS: Right. Okay. So do  
24 you want to have that conversation now?

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1 COMMISSIONER GAZIANO: Should we vote  
2 first on whether that should be our March --

3 COMMISSIONER HERIOT: In my view, it  
4 should be our March program only if we narrow it down.

5 COMMISSIONER GAZIANO: Okay. That is  
6 fine. I will postpone vote on the motion.

7 CHAIRMAN REYNOLDS: Okay. All right. How  
8 would we narrow the topic down?

9 COMMISSIONER GAZIANO: Could we have a  
10 discussion with Dr. Lerner and Mr. Blackwood?

11 CHAIRMAN REYNOLDS: Sure.

12 COMMISSIONER GAZIANO: I would like to  
13 hear from them on what their thoughts are, what their  
14 meetings at the agency --

15 MR. BLACKWOOD: Let me give you an  
16 overview first. Then we can talk about that specific  
17 issue about narrowing. One, what we have been doing  
18 and the staff had already mentioned, we have been  
19 collecting a great deal of information.

20 We have been meeting with a variety of  
21 federal agencies that he outlined. And, frankly, we  
22 are getting a great deal of cooperation from those  
23 agencies. The only entity that we are having a little  
24 bit of difficulty with at this stage, although it  
25 appears that they are beginning to realize we are not

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1 going away, is Fannie Mae. Freddie Mac we already met  
2 with, but Fannie Mae has due to the press of business  
3 not had an opportunity to meet with us yet. That is  
4 being corrected.

5 Up to this stage, we have spent the bulk  
6 of our time collecting the information. We have  
7 obviously talked among ourselves, "What are we  
8 finding?"; et cetera. But it is a recognition I think  
9 that is pretty uniform among staff that we do need to  
10 narrow the scope of the project and focus it to a  
11 greater degree.

12 Now, I wish I could tell you today exactly  
13 how I think that should be done. Unfortunately, aside  
14 from the recommendation that it needs to be sharpened  
15 and focused, I can't tell you where I would cut.

16 Part of that is we are waiting to see --  
17 by way of example, we are meeting with the Fed three  
18 different times because we have a variety of different  
19 topics. The Fed has been very, very cooperative.

20 But, for example, our next meeting I  
21 believe Bob is focusing on credit-scoring issues,  
22 although we did talk about credit scoring the first  
23 time, our first meeting.

24 Yes? Go ahead.

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1 DR. LERNER: Actually, we did indeed focus  
2 on credit scoring at the first meeting. It was most  
3 illuminating and instructive. I will be glad to go  
4 into detail about exactly what that means.

5 But to get to David's point, the next  
6 meeting is going to focus on what is called HMDA data,  
7 which is the data that is used for compliance,  
8 mortgage lending compliance, investigations by a wide  
9 variety of public agencies as well as federal agencies  
10 as part of their enforcement tasks.

11 It's a complicated, not so easy to use  
12 data set. The Fed has used it and is very familiar  
13 with it, and we are going to get a briefing, in part,  
14 on that. That's what the second briefing is going to  
15 be about in some considerable part, but we have  
16 already had the credit-scoring briefing. Except for a  
17 few questions that are follow-ups from the report  
18 itself, some things that are not clear from either the  
19 presentation or the report, I think we are pretty much  
20 all set with what we're going to --

21 MR. BLACKWOOD: I would say that most of  
22 the data is publicly available. That's one of the  
23 things that we found out in this process. This is not  
24 a question of we have too little. It is going to be a  
25 question of synthesizing what we have. The

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1 interrogatories are going to be outstanding, but we  
2 don't need the interrogatories. They are not going to  
3 delay us is my point of view.

4 We have talked with several of the  
5 agencies about the scope of our interrogatories,  
6 narrowing them, having the conversation about how to  
7 get the information that we require, what information  
8 they do have. At this stage, we have not had any  
9 difficulty that I would highlight as far as any of  
10 those agencies being uncooperative. If anything, I  
11 would highlight that the Fed has been incredibly  
12 cooperative, even producing some materials for us on a  
13 special basis to address some of the topics we have  
14 had.

15 Now, in ten days or so, our outline is due  
16 to you. And we are using that process, which began a  
17 few days ago, to narrow the topic. Where we think the  
18 topic can be narrowed I am going to highlight that to  
19 you, but I am not in a position right today to say  
20 that.

21 I do think it has to be narrowed for us to  
22 hit the time constraints, to hit our deadlines, but to  
23 still address the topics you have all outlined for us,  
24 I need to spend more time.

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1           The staff is very conscious of the fact  
2 that at some point we have to pinch it. It is too  
3 sprawling as it is. But what I anticipate is, one,  
4 giving you the outline; two, perhaps on a separate  
5 memorandum, some form, saying, we think this might  
6 need to be a topic. You know, this is going to be an  
7 issue, especially with regard to time constraints, and  
8 maybe give some indication where the process itself is  
9 going.

10           That was the purpose of meeting with the  
11 special assistants this week. And I would say we gave  
12 them a variety of links to the articles and types of  
13 materials that we are looking at.

14           I made a promise that I would point out  
15 that, Commissioner Yaki, because you did not have a  
16 special assistant there, if you want us to send that  
17 to you separately, we can do that.

18           Aside from narrowing the topic, that is  
19 our biggest issue. The outline process should have  
20 that result. And, unfortunately, I wish I could have  
21 told you that, where I was going, today. I just can't  
22 do that.

23           CHAIRMAN REYNOLDS:   Okay.   Commissioner  
24 Gaziano?

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1                   COMMISSIONER GAZIANO: Thank you for the  
2 update. And we can discuss about commissioner input  
3 once you have the narrowing to us, but I wanted to ask  
4 Dr. Lerner a few more questions.

5                   As I recall from the last business  
6 meeting, you were also uncertain whether the data set  
7 -- and I hope it is the same one that I am trying to  
8 remember, whether you could run, whether you could get  
9 them and trust them to run certain data inquiries, or  
10 whether we needed to take the data in the Commission's  
11 computer and have you --

12                   DR. LERNER: Yes.

13                   COMMISSIONER GAZIANO: What is your  
14 thought on that?

15                   DR. LERNER: In point of fact, we will not  
16 have to get the data from them to run it. In fact,  
17 much of what we need, perhaps all of it, but certainly  
18 a good deal of it, we can repackage from the reports  
19 that they have either given us or they submitted  
20 publicly. So it is not necessary for there to be a --

21                   COMMISSIONER GAZIANO: Explain repackage  
22 to me. I don't know what that means. I hope we're  
23 doing something original --

24                   DR. LERNER: It's original as --

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1 COMMISSIONER GAZIANO: -- or is analysis  
2 at least.

3 DR. LERNER: Not necessarily. This is an  
4 important study. This is a study that is not  
5 well-known. We would highlight some things  
6 differently perhaps than the Fed has done. We might  
7 if we have time analyze things in a somewhat different  
8 way, maybe use some somewhat unconventional and not so  
9 well-known statistical techniques to report their  
10 data. And it's possible that it might be feasible to  
11 do otherwise or have them do otherwise.

12 By "repackaging," I mean just that. This  
13 is such an important study. And it is simply  
14 something that the Commission can do well, to  
15 highlight it. To replicate the kind of work that they  
16 did is impossible give our time/logistical  
17 constraints. To replicate even a portion of it would  
18 be extraordinarily time-consuming, again given our  
19 time constraints. However, if a mention has been  
20 provided in a report and with perhaps some small  
21 additions, it will be extraordinarily valuable. And  
22 they have agreed that they will --

23 COMMISSIONER GAZIANO: So the small  
24 additions are willing to --

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1 COMMISSIONER HERIOT: This is not original  
2 research, then. Is that --

3 DR. LERNER: That is right.

4 COMMISSIONER HERIOT: It is not original  
5 research?

6 DR. LERNER: That is correct.

7 COMMISSIONER HERIOT: Okay.

8 COMMISSIONER GAZIANO: And we may want to  
9 pursue whether there is something else we can do  
10 originally, but these additional -- well, you call  
11 them additions. They would run them?

12 DR. LERNER: Yes.

13 COMMISSIONER GAZIANO: Can you describe  
14 what they might be for someone who --

15 DR. LERNER: Oh, yes.

16 COMMISSIONER GAZIANO: -- for the social  
17 scientists here who do know what that might mean and  
18 to the dabbler like me?

19 DR. LERNER: Okay. Well, the thing that I  
20 had in mind -- and we haven't had a chance to discuss  
21 it yet -- would be the way the data is presented in  
22 the report itself, it is a publicly available link.  
23 Anybody can download it.

24 It uses a statistical test that is not  
25 particularly well-known to most people. It is a

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1 statistical test that is not particularly powerful,  
2 although it is commonly used in the industry; that is,  
3 in the credit-scoring industry.

4 The repackaging that I had, running that I  
5 had in mind would be to use a more standard multiple  
6 regression, general linear model, statistical  
7 techniques for estimating this stuff. It is  
8 comparable to studying --

9 COMMISSIONER GAZIANO: That seems original  
10 to me. Maybe you don't --

11 DR. LERNER: Okay. Well, then,  
12 Commissioner Gaziano, I am glad to accept your  
13 recommendation. I'm not sure what --

14 COMMISSIONER GAZIANO: Well, I'm asking  
15 for comment. I'm not the serious social scientist  
16 some of the other commissioners are.

17 DR. LERNER: It would be original. In the  
18 sense that it is not exactly copying it, yes, it's  
19 original. Original in the sense that I would expect  
20 to find things radically different or in another way  
21 vary the procedures except for the point that I'm  
22 making, no.

23 COMMISSIONER GAZIANO: A study that is not  
24 accepted as statistically significant to serious  
25 scholars is a different kind of study. whether it's

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1 the same result or not, it is statistically  
2 significant and done in a very robust and valid way.

3 DR. LERNER: Well, their findings are  
4 indeed statistically significant. And I would be  
5 really startled if using a somewhat different  
6 technique, that we would find things that are not  
7 statistically significant. In fact, if anything, it  
8 would be the other way around. So I don't expect any  
9 change on that at all.

10 COMMISSIONER GAZIANO: Okay. What other  
11 data sets have you been considering looking at since  
12 --

13 DR. LERNER: Well, there are a variety of  
14 data sets that we have looked at for descriptive  
15 purposes. Some of the background material that we  
16 hope to include is in things like trends in minority  
17 home ownership over time, trends in minority credit,  
18 obtaining of mortgages and credit, especially when we  
19 have some information perhaps on subprime mortgages.  
20 We're looking at more general information on things  
21 like interest rates and things like that. We're also  
22 looking at information on things like default and  
23 foreclosures for different minority groups over time  
24 where they exist.

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1           We have actually got sources for all of  
2 those things. Many of them; in fact, they are all,  
3 publicly available in some form or another. It is a  
4 matter of bringing them in. We are, in fact, doing  
5 some of that now.

6           COMMISSIONER GAZIANO: Okay. And then I  
7 think this is the last. I hope that when we get the  
8 report in ten days we have a hypothesis or two that  
9 you all are going to try to be testing.

10           One of the hypotheses is the one that I  
11 think Commissioner Yaki asked. And that is whether  
12 there was sort of intentional racial animus in the  
13 lending industry that led to a certain type of  
14 predatory lending.

15           So I would like you to try to figure out  
16 what kind of hypothesis you are going to form and how  
17 you are going to test that. The other hypothesis is  
18 something about whether government action that may  
19 have led to relaxed credit standards caused certain  
20 aspects of the financial crisis.

21           So those are the two hypotheses that come  
22 to my mind. And the more we can focus on stating  
23 those crisply and understanding what the data sets  
24 will be, the better in my mind.

25           DR. LERNER: May I respond?

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1 COMMISSIONER GAZIANO: Sure.

2 DR. LERNER: Yes. These are, in fact, the  
3 two primary things that David and my staff and I,  
4 David and I have been putting together in terms of a  
5 coherent outline. We have been wrestling with the  
6 things you have pointed out for quite some time.  
7 Those are precisely the subjects.

8 I can tell you right now on predatory  
9 lending, it is going to have to take a somewhat  
10 different approach than some of the others because  
11 there is no federally accepted definition of what  
12 predatory lending is and a statutory definition of  
13 what predatory lending is. And from the data  
14 perspective, worse yet, therefore, because there is no  
15 federally accepted definition, there are no statistics  
16 as such.

17 Having said that, there are various  
18 research studies done by various groups of people.  
19 And those are some of the kinds of things we are going  
20 to look at.

21 I have got a bunch of them. I have read  
22 through some of them. We are still in the process of  
23 digesting them.

24 COMMISSIONER GAZIANO: That's a good  
25 qualification that maybe "predatory" is more

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1 pejorative than meaningful but whether we still can  
2 form a hypothesis whether there is racial animus in  
3 the lending that caused a certain type of lending or  
4 certain type of financial loss, foreclosures, and  
5 such, correct?

6 DR. LERNER: Absolutely, yes, and the  
7 other one as well. We have a good deal of data. That  
8 concept paper, as you will recall, that you folks  
9 approved discusses that at some length.

10 We have a lot of data and a lot of sources  
11 of a lot of different sorts that bear on that as well.  
12 And yes, both of those are very much part of the  
13 outline; in fact, all versions of the outlines that we  
14 have been wrestling with.

15 COMMISSIONER GAZIANO: My final question  
16 is -- this is more to you, Mr. Blackwood -- can we  
17 know at this point what kind of witnesses are going to  
18 be the best kind? What kind of schedule can you  
19 suggest for us to give input on the witnesses for a  
20 March hearing?

21 You may not know today what the best  
22 witnesses are, but we want to be able to look at the  
23 narrowing, hopefully approve that, and then say, hey,  
24 if that is what we are examining, we want the head of  
25 the Fannie Mae or Fed or --

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1 MR. BLACKWOOD: I can tell you we have  
2 talked generally in terms. I mean, I would see,  
3 although the topic would narrow, I could actually see  
4 the panels being fairly large because we have a large  
5 number of government entities that would testify on  
6 their own panel.

7 I mean, the big three are HUD and the Fed  
8 and I would say probably the FTC. You also have  
9 Fannie and Freddie, which depending on how the study  
10 is targeted, may take on their own panel because there  
11 would also be witnesses who would testify what they  
12 think about Fannie and Freddie and their practices.

13 There are the advocacy groups that we have  
14 contacted on the fair housing issue and the predatory  
15 lending focus, such as the NCRC, National Community  
16 Reinvestment Corporation, and also the fair housing.  
17 I forget the name of it but the one that became  
18 national, which is a coalition, a fair housing  
19 coalition, I believe. I read a report on the state of  
20 fair housing, which had a section on predatory  
21 lending. And then you would tie in also for that  
22 panel perhaps DOJ and HUD in its enforcement role in  
23 the fair housing section.

24 COMMISSIONER GAZIANO: But if our focus is  
25 going to be some small subset, then I think that -- I

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1 will just speak for myself. I would prefer to have  
2 more time on just the officials that might illuminate  
3 our oral inquiry, rather than all of the --

4 MR. BLACKWOOD: What I have done before  
5 and I would propose to do again is to send around a  
6 proposed list of the types of witnesses that we're  
7 thinking. And I didn't even touch the credit-scoring  
8 issue. So it would be a variety of witnesses on that  
9 topic as well. So we would send that around. The  
10 idea is also to solicit suggestions from you all as  
11 well about who you would like to hear and see.

12 COMMISSIONER GAZIANO: Assuming you sent  
13 it to us before February 20, is February 20 enough  
14 time if we then comment and discuss and refine the  
15 witness list or do you think we need to refine and  
16 discuss and whatever the witness list before February  
17 20?

18 MR. BLACKWOOD: It may be that a telephone  
19 conference will be necessary at some point. I think  
20 the outline will spur hopefully comments. And I will  
21 make my suggestions with Dr. Lerner about where we  
22 think it could be narrowed.

23 But obviously we don't decide that. And  
24 we'll continue to follow the project outline until you  
25 tell us we can narrow it. So we would like to get

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1 that to you as soon as we can because, yes, it will  
2 save us time, too, going forward and the same thing  
3 with the witness-proposed project outline, not outline  
4 but the types of witnesses we would anticipate having.

5 CHAIRMAN REYNOLDS: Commissioner Taylor?

6 COMMISSIONER TAYLOR: So it is your  
7 expectation that we will receive an outline and then  
8 you would like to hear from us or it's more of a  
9 question to you?

10 MR. BLACKWOOD: Absolutely. Under RAI,  
11 you are supposed to. In the past, it has been  
12 somewhat frustrating we don't hear comments much back  
13 from commissioners. We would welcome.

14 COMMISSIONER TAYLOR: Okay.

15 MR. BLACKWOOD: Tell us where you want to  
16 go. Of course, if Commissioner A says, "Do this" and  
17 Commissioner C says, "Do the exact opposite," you all  
18 have to decide, acting as a body, where we would go.

19 And that may be why we would need a  
20 telephone conference. But we could certainly gather  
21 the comments, distribute them, and then say, "We need  
22 a telephone conference. You have to decide, which of  
23 these do you want us to pursue?"

24 COMMISSIONER TAYLOR: I guess then my only  
25 recommendation would be, Mr. Chair, that when the

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1 staff receives the comments, they should indicate  
2 whether they feel comfortable proceeding because they  
3 feel like they can work through the comments or if  
4 they need a teleconference to make a decision.

5 I just don't want the comments to come  
6 back and you all to feel frozen. So tell us if you  
7 feel frozen. If you don't, frankly, you know,  
8 incorporate the comments and proceed.

9 COMMISSIONER GAZIANO: I would rather in  
10 an affirmative Commission approve because I don't know  
11 -- I might disagree with their view that they should  
12 proceed with all the comments.

13 So my question was -- and I am glad to  
14 defer to whether we need to do it in a telephone  
15 conference before February 20 or on February 20. But  
16 I would rather us come back and collectively refine.

17 CHAIRMAN REYNOLDS: Dr. Lerner?

18 DR. LERNER: Mr. Chairman, may I make a  
19 comment? Only that from the point of view of the  
20 staff perspective in planning the briefing, the sooner  
21 the better that we have a decision because it is so  
22 easy to line up speakers. Now, it's true insofar as  
23 we have federal agency folks who are in D.C. It's not  
24 necessarily a problem, but it's also possible you  
25 might want to avoid a divergent set of views.

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1           For example, the second hypothesis that  
2 Commissioner Gaziano refers to, this business about  
3 relaxed lending standards, that has been widely  
4 debated among economists.

5           Many of them are outside D.C. For  
6 example, there is an economist at the University of  
7 Texas at Dallas named Stan Leibowitz, whose work was  
8 mentioned in the concept paper, one. There is a whole  
9 bunch of others with quite divergent perspectives who  
10 can bring in, in fact, an economist's perspective on  
11 some of that, too, which is not strictly an  
12 enforcement perspective but might be very  
13 illuminating, especially if we were to narrow our own  
14 approach.

15           This would cast light on those more  
16 general, broad subjects that perhaps they are in a  
17 better position to investigate than we are, as opposed  
18 to the things that we can investigate better than  
19 they. I just look for that as an addition.

20           COMMISSIONER GAZIANO: All else being  
21 equal -- and I know it's all else being equal -- it's  
22 better if we not wait until February 20. Are other  
23 commissioners open to a teleconference?

24           CHAIRMAN REYNOLDS: Sure. I'm speaking  
25 for myself. Commissioner Melendez?

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1 COMMISSIONER MELENDEZ: That's fine.

2 CHAIRMAN REYNOLDS: Okay. So I think that  
3 we have a framework for proceeding. So unless there  
4 are additional questions, we will move on. Gentlemen,  
5 thank you.

6 - **BRIEFING REPORT ON THE DEPARTMENT OF JUSTICE'S**  
7 **ENFORCEMENT OF VOTING RIGHTS IN THE**  
8 **2008 PRESIDENTIAL ELECTIONS**

9 CHAIRMAN REYNOLDS: Next step, I move that  
10 the Commission approve for publication along with any  
11 concurring and dissenting statements submitted by any  
12 commissioner by January 30th, 2009 part A of the  
13 report produced by staff and reflecting commissioner  
14 and panelist input on the briefing the Commission held  
15 on June 6th, 2008 on the Department of Justice's  
16 enforcement of voting rights in the 2008 U.S.  
17 presidential election.

18 Part A as distributed in draft form to  
19 commissioners on January 8th, 2009 contains the  
20 following: a brief overview and summary of the issue  
21 and why the Commission chose to conduct this briefing;  
22 a summery of the proceedings, consisting of synopses  
23 of the panelists' oral statements during the briefing  
24 and a synopsis of the question and answer session and  
25 copies of the panelists' written statements.

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1 Under this motion, if a majority of the  
2 Commission votes to adopt part A of the briefing  
3 report, the Commission will then open discussion on  
4 part B. If part A fails to obtain a majority of  
5 votes, discussion of part B becomes moot. This  
6 bifurcated vote is taken pursuant to the policy  
7 adopted by the commissioners at the April 13th, 2007  
8 business meeting.

9 Is there a second?

10 COMMISSIONER HERIOT: Mr. Chairman, I just  
11 have a problem with that. And that is if we don't get  
12 to make the motion in that form, I would want to amend  
13 it to include the right to respond to commissioner  
14 statements.

15 And if we end up not getting the findings  
16 and recommendations done today, then the schedule in  
17 the motion will work because people can't do their  
18 statements until they know what the findings and  
19 recommendations are going to be.

20 CHAIRMAN REYNOLDS: Well, how about this?  
21 Let's get a second and discuss this.

22 COMMISSIONER HERIOT: Well, I would move  
23 to amend to include because I won't vote for it unless  
24 there is also the right to respond. So I would move  
25 to amend your motion to include and then a two-week

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1 period during which commissioners can respond to each  
2 other's statements.

3 CHAIRMAN REYNOLDS: Okay. Well, wouldn't  
4 we be able to accomplish that during the discussion  
5 period working out the schedule, having a discussion?

6 COMMISSIONER HERIOT: But you built the  
7 schedule into your motion.

8 CHAIRMAN REYNOLDS: Okay. We will have  
9 the amendment sooner, rather than later, under your  
10 approach. We would have it on the front end.

11 COMMISSIONER HERIOT: Well, the  
12 alternative is to move to --

13 CHAIRMAN REYNOLDS: Discuss it.

14 COMMISSIONER HERIOT: -- amend your motion  
15 but not to include the schedule for when the responses  
16 will be due.

17 CHAIRMAN REYNOLDS: Okay. Your approach  
18 works. That's fine.

19 COMMISSIONER HERIOT: We can do a motion  
20 like that after we know where we are.

21 CHAIRMAN REYNOLDS: Okay.

22 COMMISSIONER HERIOT: Why don't you just,  
23 a friendly amendment to your motion, back out the part  
24 about the schedule for responses?

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1 CHAIRMAN REYNOLDS: And that's the only  
2 change?

3 COMMISSIONER HERIOT: Because otherwise  
4 there's not much to it. There is really nothing to  
5 agree or not agree on at that point.

6 COMMISSIONER GAZIANO: Eventually we are  
7 moving to adopt part A.

8 COMMISSIONER HERIOT: Yes, move to adopt  
9 part A.

10 CHAIRMAN REYNOLDS: Okay. With that  
11 amendment, is there a second?

12 COMMISSIONER HERIOT: Second.

13 CHAIRMAN REYNOLDS: Discussion?

14 COMMISSIONER HERIOT: I think I did have a  
15 few glitches in it, though.

16 COMMISSIONER GAZIANO: I think your motion  
17 did allow glitches to be corrected, did it not?

18 CHAIRMAN REYNOLDS: Yes.

19 COMMISSIONER GAZIANO: Are the glitches  
20 significant enough you need to mention them here or --

21 COMMISSIONER HERIOT: I am not sure.  
22 Well, some are very minor. And some would require  
23 that somebody actually sit down.

24 CHAIRMAN REYNOLDS: Okay. Are we talking  
25 about typos?

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1 COMMISSIONER HERIOT: Yes, some are typos.

2 CHAIRMAN REYNOLDS: Okay. Assuming they  
3 don't change the meaning -- do you want to run through  
4 the list?

5 COMMISSIONER HERIOT: Let me just run  
6 through the list.

7 CHAIRMAN REYNOLDS: Okay.

8 COMMISSIONER HERIOT: On page 7, in the  
9 description of Daniel Tokaji as Associate Director of  
10 Election Law at Moritz, it makes it sound like he is  
11 the Associate Director of Election Law. He is  
12 Associate Director of this thing called Election Law @  
13 Moritz, with an @ sign, instead of the word "at," and  
14 it should be italicized because otherwise it sounds  
15 like he directs the law.

16 CHAIRMAN REYNOLDS: Okay. Any concerns  
17 about the proposed change?

18 (No response.)

19 CHAIRMAN REYNOLDS: Next?

20 COMMISSIONER HERIOT: Second one, you  
21 know, we've got the summary of proceedings that is  
22 supposed to be readable. But we don't actually say  
23 what these sections --

24 CHAIRMAN REYNOLDS: Which page are you on?

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1 COMMISSIONER HERIOT: Page 11. You know,  
2 if you've got somebody who is not knowledgeable about  
3 election law, they don't know what these sections  
4 mean. We should draw up a footnote that just makes it  
5 clear which sections we are talking about and what is  
6 in those sections.

7 CHAIRMAN REYNOLDS: Okay. I am sorry. I  
8 was being rude by being distracted by my gizmo.

9 COMMISSIONER HERIOT: That's all right.  
10 Page 13.

11 STAFF DIRECTOR DANNENFELSER: Well, is  
12 there something on page 11?

13 COMMISSIONER HERIOT: Yes. We need  
14 footnotes that state what those sections are.

15 STAFF DIRECTOR DANNENFELSER: Which  
16 sections are you referring to?

17 COMMISSIONER HERIOT: Section 5, section  
18 2, section 2.08.

19 STAFF DIRECTOR DANNENFELSER: Okay.

20 COMMISSIONER HERIOT: Page 13 we need a  
21 space between the two paragraphs at the bottom.

22 Page 41, middle of the page, should say,  
23 "African American," not "Africa American."

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1 Page 45, line 5, similar, "HAVA litigation  
2 was has." We don't need both of those words there.  
3 That's the end of my typo list.

4 CHAIRMAN REYNOLDS: Okay. Do you have any  
5 substantive issues?

6 COMMISSIONER HERIOT: The footnotes.

7 CHAIRMAN REYNOLDS: Okay. So are we done?  
8 Additional questions, comments?

9 (No response.)

10 CHAIRMAN REYNOLDS: Are we ready to vote?  
11 Okay. All in favor of part A, please say, "Aye."

12 COMMISSIONER HERIOT: With those changes.

13 CHAIRMAN REYNOLDS: Yes, as amended by  
14 Gail.

15 (Whereupon, there was a chorus of "Ayes.")

16 CHAIRMAN REYNOLDS: Any objections?

17 (No response.)

18 CHAIRMAN REYNOLDS: Abstentions?

19 (No response.)

20 CHAIRMAN REYNOLDS: The motion passes.

21 Okay. This was a bifurcated vote. Next up we will  
22 have a discussion of the findings and recommendations.

23 Under this motion, the Commission will vote  
24 individually on each finding and recommendation.

25 Those findings and recommendations receiving a

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1 majority vote will be included in the report with a  
2 vote tally and a sentence explaining each opposition  
3 vote for that item.

4 I move that the Commission approve finding  
5 one, which reads as follows, "Two sections of the  
6 Department of Justice play an important role in  
7 enforcing the voting rights of U.S. citizens. The  
8 voting section of the Civil Rights Division enforces  
9 such statutes as the Voting Rights Act, the Help  
10 America Vote Act, the Uniform Overseas Citizens  
11 Absentee Voting Act, and the National Voting  
12 Registration Act. The voting section plays a  
13 proactive role to prevent violations of voting rights  
14 and is responsible for election day programs run by  
15 DOJ."

16 Is there a second? Is that a yes or --

17 COMMISSIONER GAZIANO: I will second so  
18 that I can make another motion that we discuss whether  
19 refinements to all the findings and recommendations  
20 can be made in a short period of time prior to our  
21 maybe teleconference in two weeks.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER GAZIANO: And I can explain  
24 that.

1 CHAIRMAN REYNOLDS: Okay. So we have a  
2 second. Discussion?

3 COMMISSIONER GAZIANO: I would like to  
4 offer an amendment or just to propose another motion  
5 if someone wants to clarify the motion that some of  
6 these look quite good, but I think that the first two  
7 don't seem like they're necessary for us to make as  
8 sort of findings of fact. But there are some others,  
9 particularly the --

10 VICE CHAIR THERNSTROM: Wait a minute. I  
11 thought we were just discussing at the moment one on  
12 the table.

13 COMMISSIONER GAZIANO: I would like to  
14 offer a motion that would allow us all to offer  
15 modifications. I will explain a few that I have in  
16 mind for another couple of week period or whatever  
17 time frame commissioners are comfortable with. And  
18 then we can perhaps adopt revised findings and  
19 recommendations at that teleconference that we are  
20 going to schedule.

21 COMMISSIONER HERIOT: Todd, there is a  
22 pending motion now because you seconded it. So now  
23 you have to move to amend that motion to do what you  
24 want to do. You should --

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1 VICE CHAIR THERNSTROM: And I don't  
2 understand why we're not just going through these. I  
3 mean, you can propose amendments.

4 COMMISSIONER HERIOT: It is a little hard  
5 to do like off the top of one's head.

6 COMMISSIONER YAKI: I will second  
7 Commissioner Gaziano's reworded motion of his amended  
8 motion.

9 VICE CHAIR THERNSTROM: Well, the reworded  
10 motion runs how? I'm sorry.

11 CHAIRMAN REYNOLDS: That we essentially  
12 refrain from voting on part B, the commissioners be  
13 given additional time to --

14 COMMISSIONER HERIOT: Well, let's at least  
15 discuss it.

16 COMMISSIONER GAZIANO: Yes. And then we  
17 could discuss why.

18 COMMISSIONER HERIOT: You shouldn't have  
19 seconded the motion if you didn't want that.

20 COMMISSIONER GAZIANO: Sorry.

21 CHAIRMAN REYNOLDS: Okay. So there is a  
22 second. All of those in favor, say, "Aye."

23 COMMISSIONER HERIOT: Motion to what now?

24 CHAIRMAN REYNOLDS: Okay. Commissioner  
25 Yaki, Todd, explain your motion so that Gail --

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1 COMMISSIONER HERIOT: Can you withdraw  
2 your motion so that we don't have to do a --

3 CHAIRMAN REYNOLDS: Yes. Withdrawn.

4 COMMISSIONER HERIOT: Okay. The motion is  
5 withdrawn. Now make a motion.

6 COMMISSIONER GAZIANO: I move that we  
7 postpone final consideration of the findings and  
8 recommendations at today's meeting, that we discuss  
9 whether there are some ideas to tighten them a little  
10 bit and that we then be given a short period of time,  
11 say two weeks, to send in our revisions and that we  
12 then schedule that to be adopted at the teleconference  
13 in the next few weeks.

14 CHAIRMAN REYNOLDS: Second. Okay.  
15 Discussion? Yes?

16 COMMISSIONER GAZIANO: Particularly in  
17 findings 5 through 8, for example, I think we did have  
18 testimony that would support these findings. They  
19 raise questions about state compliance with federal  
20 laws.

21 I think the evidence that we received was  
22 substantial, but we didn't have state witnesses to  
23 defend them. And I would be more comfortable, as an  
24 example, maybe tightening them, saying that the  
25 Commission received substantial evidence that the DOJ

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1 was not requiring states to do X or the Commission  
2 received substantial evidence that the states were not  
3 doing Y.

4 And then when we get to the  
5 recommendations, we could, you know, just urge the DOJ  
6 to do so.

7 COMMISSIONER HERIOT: Yes. The  
8 recommendations are nice in the sense that they are  
9 all focused on DOJ. This is what DOJ should do. But  
10 some of the findings suggest that we're suggesting  
11 that the states didn't do a good job when, really,  
12 what we heard was people either from DOJ or who had  
13 been associated with DOJ. We didn't hear anybody from  
14 the states saying, "Know what we're doing is just  
15 right."

16 So I hate to come down hard on states here  
17 without having given them an opportunity to say,  
18 "We're doing it just fine."

19 CHAIRMAN REYNOLDS: Commissioner Melendez?

20 COMMISSIONER MELENDEZ: Yes. Would it be  
21 in the best interest of all of us to actually vote on  
22 these recommendations at the next business meeting,  
23 then?

24 CHAIRMAN REYNOLDS: I believe that the --

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1 COMMISSIONER MELENDEZ: Is that what we're  
2 saying here?

3 CHAIRMAN REYNOLDS: I believe what was on  
4 the table was voting at the --

5 COMMISSIONER MELENDEZ: Because I don't  
6 know how much time we actually need, whether it will  
7 run right up to the next meeting.

8 COMMISSIONER HERIOT: Yes. That is why it  
9 is a good idea to talk about them one by one now and  
10 then do them on the telephone conference.

11 VICE CHAIR THERNSTROM: Has a telephone  
12 conference been scheduled?

13 CHAIRMAN REYNOLDS: No, I don't believe we  
14 have selected a date yet.

15 COMMISSIONER HERIOT: We should. We  
16 should do it.

17 COMMISSIONER GAZIANO: We should before  
18 the end of the meeting, maybe the next order of  
19 business.

20 COMMISSIONER HERIOT: Yes. Should we go  
21 once --

22 CHAIRMAN REYNOLDS: Let's continue.

23 COMMISSIONER HERIOT: And then what I  
24 thought about one and two is that they are  
25 unnecessary. I mean, nobody disputes these facts.

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1 VICE CHAIR THERNSTROM: Yes. They are  
2 still worth restating for --

3 COMMISSIONER HERIOT: I don't think so.

4 VICE CHAIR THERNSTROM: -- people who are  
5 just going to read the beginning and end of a  
6 document.

7 COMMISSIONER HERIOT: I don't have any  
8 objection to doing it, but I don't think they are  
9 necessary. I am not going to fight you on that one.

10 VICE CHAIR THERNSTROM: Yes.

11 COMMISSIONER HERIOT: I mean, my vote is  
12 with you, Abby.

13 VICE CHAIR THERNSTROM: Okay. I mean,  
14 most people look at the beginning and end of a report.  
15 That is information they should have.

16 CHAIRMAN REYNOLDS: Finding 3, any  
17 comments?

18 COMMISSIONER HERIOT: I thought 3 was  
19 fine.

20 CHAIRMAN REYNOLDS: Four?

21 PARTICIPANT: If there were numbers in the  
22 testimony -- and right now I don't remember, I would  
23 probably prefer that, but otherwise I don't have any  
24 -- did this substantially increase?

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1 VICE CHAIR THERNSTROM: Yes. I second  
2 that. I want real numbers.

3 CHAIRMAN REYNOLDS: Five?

4 COMMISSIONER KIRSANOW: Mr. Chair, I have  
5 got to sign off. Take care, everybody.

6 CHAIRMAN REYNOLDS: Okay.

7 VICE CHAIR THERNSTROM: Take care, Pete.

8 COMMISSIONER GAZIANO: I might, you know,  
9 prefer saying that we receive substantial evidence or  
10 testimony to this effect or maybe the other  
11 commissioners can convince me it's fine to make  
12 findings. This seemed to concern me a little bit less  
13 than some of the others.

14 COMMISSIONER HERIOT: I think it has the  
15 problem; for example, you know, the failure of certain  
16 states to main up-to-date computerized statewide voter  
17 registration. You know, it could be that each state  
18 has their story about why what they're doing is  
19 exactly right. So I would like the "We have received  
20 substantial evidence."

21 Also, when we use terms like "certain  
22 states," it sounds like we know which states it is,  
23 but we're not telling. It should be "some states."

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1 VICE CHAIR THERNSTROM: I agree. And the  
2 "for instance" should be very concrete, "For instance,  
3 Ohio did" X or --

4 COMMISSIONER HERIOT: If we've got that.

5 VICE CHAIR THERNSTROM: If you've got  
6 that.

7 COMMISSIONER HERIOT: Or at least "We have  
8 received substantial evidence."

9 VICE CHAIR THERNSTROM: Yes.

10 COMMISSIONER HERIOT: Ohio should be a  
11 different sentence.

12 VICE CHAIR THERNSTROM: I hate sentences  
13 like that, "Certain states."

14 CHAIRMAN REYNOLDS: Finding 6?

15 COMMISSIONER HERIOT: Can I say one more  
16 thing about finding 5, though? Another problem that I  
17 worry about generally is that we fail to use statutory  
18 language. So it sounds like the failure to maintain  
19 up-to-date computerized statewide, you know, blah blah  
20 blah, you know, are they required to do that by law or  
21 not? And if they are, we should be tracking the  
22 language of the statute.

23 If they are not required, we need to make  
24 sure that we don't suggest that there is some  
25 requirement that is being violated here.

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1                   COMMISSIONER GAZIANO: The one word I care  
2 about is "computerized." They are, states are,  
3 required to maintain up-to-date statewide voter  
4 registration rules. I am not sure whether they are  
5 required --

6                   COMMISSIONER HERIOT: You know, I want to  
7 see the statutory language that says that so that  
8 we're not using --

9                   VICE CHAIR THERNSTROM: Right. And the  
10 statutes in these various findings should be  
11 specifically named.

12                   COMMISSIONER HERIOT: Yes.

13                   VICE CHAIR THERNSTROM: That is, this is  
14 not a Voting Rights Act violation.

15                   COMMISSIONER GAZIANO: It is a HAVA.

16                   COMMISSIONER HERIOT: Yes.

17                   VICE CHAIR THERNSTROM: It is HAVA. And  
18 that should be specifically said so readers know what  
19 the hell we're talking about.

20                   COMMISSIONER GAZIANO: Exactly.

21                   VICE CHAIR THERNSTROM: But, for example,  
22 federal observers and monitors, that is Voting Rights  
23 Act. So, I mean, you know, let us mention a specific  
24 statute we are talking about.

25                   CHAIRMAN REYNOLDS: Commissioner Yaki?

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1                   COMMISSIONER YAKI: Yes. Before we go to  
2 it further down the list, as the person who asked for  
3 this hearing to be held, I have a pretty good  
4 recollection of exactly the direction and manner in  
5 which it was done.

6                   This was primarily a hearing for the  
7 purposes of looking at DOJ preparation for the  
8 November '08 election. It was meant to be broad to  
9 the extent that -- you recall I asked a lot of  
10 questions about how monitors were supposed to work and  
11 how they interacted with election officials. And a  
12 lot of comments were made about that, none of which,  
13 by the way, find their way in the findings and  
14 recommendations.

15                   That aside, it was a briefing rooted with  
16 a specific purpose. And that purpose was to provide  
17 information to the public, to interested parties, and  
18 to the Commission about what DOJ was doing for the '08  
19 election. We did not really touch at all upon HAVA.  
20 We did not really touch at all about which states were  
21 doing this or that.

22                   If we start going into that realm, we are  
23 going way outside what the record was. And if we are  
24 doing that, then we might as well say that if we are  
25 going to have any findings and recommendations

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1 regarding preparations for the November '08 election,  
2 then we need to measure what the impacts of some of  
3 the statements made by DOJ, in particular, or by some  
4 of the witnesses, what realities occurred on the  
5 ground.

6 I mean, we can all add anecdotal evidence  
7 from those interesting months prior to November '08  
8 with regard to the Ohio situation and the lawsuit in  
9 Ohio, with regard to the Colorado issues, with regard  
10 to Montana. I myself was in a lot of those states  
11 during the last part of the election and have my own  
12 fair knowledge, but that is not really what the point  
13 of this hearing was.

14 That is a long way of saying in many ways,  
15 I see no reason for findings and recommendations for  
16 this particular report as it was essentially an  
17 informational briefing frozen in time for the purposes  
18 of an election occurring a few months later. If we  
19 want to do a postmortem on how these issues or how  
20 these preparations really play out with regard to the  
21 election and then whether or not anything that they  
22 talked about did or did not succeed and what  
23 proscriptions or prescriptions should result from  
24 that, I would be glad to do that.

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1           But I just don't know if this is a very  
2 productive exercise and use of our time given that, by  
3 its very nature, it was general, it was specific, very  
4 general, not very specific, there are specifics that I  
5 cared about, quite frankly, and which I talked about a  
6 lot with regard to what the powers and rights of  
7 monitors versus the other category, which,  
8 unfortunately, my fluid brain can't get into right  
9 now, what their abilities to interact with election  
10 officials were, what the powers were, how they were  
11 going to select people to go out, et cetera, I just  
12 don't see that it's -- I think it would be a good  
13 utility for historical records and for anyone who  
14 wants to do 20/20 hindsight to have the report out as  
15 section 8. But I don't know how much utility is going  
16 to be with B, especially when we talk about a lot of  
17 recommendations, for which there is very, very little  
18 testimony and even fewer specifics.

19           CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

20           VICE CHAIR THERNSTROM: Well, I certainly  
21 don't want to go outside the record. And I personally  
22 would have to go back to the record to refresh my  
23 understanding of what was in it.

24           And I don't care whether you eliminate  
25 things, but what I don't want is vague statements

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1 suggesting wrongdoing without a factual basis for  
2 making such assertions.

3 And so that's why I was saying, "Okay.  
4 This is the statute. And we heard testimony on these  
5 problems in the following states" or whatever, but I  
6 just don't want --

7 COMMISSIONER YAKI: I don't disagree with  
8 you, Commissioner Thernstrom. In fact, it plays into  
9 my same old sad little song I sing about this, which  
10 is that you have in the two hours that we had very  
11 little in terms of hard data with which to make more  
12 general conclusions to come from this.

13 If you make a statement about Maryland,  
14 for example, how does that relate to Virginia? How  
15 does that relate to Ohio? Pennsylvania? And I don't  
16 even believe that any of the testimony on Maryland had  
17 anything very specific in it other than a general  
18 statement about Maryland HAVA, et cetera.

19 I mean, I agree that we should not be in  
20 the position of casting aspersions on anyone or  
21 conclusions without a very adequate record. And I  
22 think part of the problem is that that wasn't the  
23 intent of this briefing at all. It is more about what  
24 are you guys doing, how are you preparing. If we want

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1 to go into that kind of analysis, that is a different  
2 issue with a different record.

3 VICE CHAIR THERNSTROM: Right. And if we  
4 were to talk about, say, like Maryland, for instance,  
5 we would have to say we have no evidence. You know,  
6 this is what we heard about Maryland. We have no  
7 evidence about whether it took place in Virginia,  
8 North Carolina, whatever.

9 COMMISSIONER HERIOT: But we are not  
10 making statements about Maryland here.

11 VICE CHAIR THERNSTROM: I understand that,  
12 but --

13 COMMISSIONER HERIOT: I think this could  
14 be worth --

15 VICE CHAIR THERNSTROM: -- I this is too  
16 vague.

17 COMMISSIONER HERIOT: Yes. I agree. I  
18 think that Todd's suggested fix, to say, you know, "We  
19 received substantial evidence on some of these  
20 things," would work just fine.

21 VICE CHAIR THERNSTROM: And if we did  
22 receive substantial evidence, you know, I would have  
23 to go back to the record.

24 COMMISSIONER YAKI: I don't think we did.

25 COMMISSIONER GAZIANO: Mr. Chairman?

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1 VICE CHAIR THERNSTROM: Pardon me?

2 COMMISSIONER YAKI: I don't think we did.

3 VICE CHAIR THERNSTROM: Well, I would want  
4 to go back. I don't know. I would have to go back to  
5 the record. But I am not willing to go with  
6 statements. We received substantial evidence if, in  
7 fact, actually, we didn't receive --

8 COMMISSIONER YAKI: Okay. Well, I think  
9 --

10 CHAIRMAN REYNOLDS: Commissioner Gaziano?

11 COMMISSIONER GAZIANO: We might not get  
12 the majority, but that's why we should continue to  
13 work on it. First of all, I think that findings 3 and  
14 4 are very important because there it was very  
15 important for this Commission to help educate the  
16 public that the DOJ, for example, has been increasing  
17 each year.

18 These are based on the facts we knew last  
19 summer, the number of observers. There were some  
20 false stories, false stories we can refute with that  
21 finding. If we put in the number of Voting Rights Act  
22 claims, I think that is helpful.

23 With regard to the 5 through 8, I think  
24 they help support the recommendations, which is,  
25 regardless of exactly how we phrase it, whether it was

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1 substantial evidence or significant evidence, we had  
2 certain experts, certain scholars who testified, for  
3 example, about illegal noncitizen voting that crossed  
4 many state lines.

5 And that testimony, if I remember  
6 correctly, said it's hard to know exactly how much is  
7 out there. But based on what we know, we think that  
8 the witness said he thought it was a significant  
9 problem. So it is important for us --

10 COMMISSIONER YAKI: That was one witness.  
11 I mean, how do we --

12 COMMISSIONER GAZIANO: Please don't  
13 interrupt me. I didn't interrupt you. I didn't  
14 interrupt you.

15 COMMISSIONER YAKI: I mean, how do we draw  
16 a broad conclusion from one witness?

17 COMMISSIONER GAZIANO: Sir, I didn't  
18 interrupt.

19 CHAIRMAN REYNOLDS: Michael, let him  
20 finish.

21 COMMISSIONER GAZIANO: We received  
22 significant, important, whatever of what one scholar  
23 believed was evidence of a widespread problem.  
24 Admittedly, he said -- and we had some back and forth  
25 between the commissioners and the DOJ witnesses, where

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1 we said, "Do you expect this is under-reported? Well,  
2 is this the tip of the iceberg, the kind of  
3 prosecutions you bring? Is that just the tip of the  
4 iceberg?"

5 So I think that all does support a finding  
6 that there was substantial evidence. And then that --

7 COMMISSIONER YAKI: What?

8 COMMISSIONER GAZIANO: Then that supports  
9 the recommendation --

10 COMMISSIONER YAKI: One person?

11 CHAIRMAN REYNOLDS: Commissioner.

12 COMMISSIONER YAKI: Sorry.

13 COMMISSIONER GAZIANO: There were several  
14 witnesses that said that the kind of evidence that is  
15 known strongly suggests that there are a lot more  
16 problems out there and that that would then support  
17 the recommendation, for example, in number 4 that the  
18 DOJ should be careful to enforce the requirements that  
19 noncitizens were allowed to register to vote in the  
20 general election.

21 CHAIRMAN REYNOLDS: At this point  
22 Commissioner Yaki I suspect has something to say.

23 COMMISSIONER YAKI: No. I mean, I think  
24 the statements speak for themselves. The fact that  
25 you can try and extrapolate from one witness --

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1 CHAIRMAN REYNOLDS: So that was a yes.

2 COMMISSIONER YAKI: -- extrapolate from  
3 one witness to a broad general statement given the  
4 fact that if we were to look at what happened in  
5 November in 2008, I mean, it's ridiculous. It's just  
6 completely, totally ridiculous. If people want to try  
7 and justify who they were and what they did, they can  
8 use some other forum than the Civil Rights Commission.

9 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

10 VICE CHAIR THERNSTROM: Let us agree to go  
11 back to the record here because I do not want  
12 statements in the findings and recommendations that  
13 are very dicey extrapolations from one witness. So  
14 let us go back to see whether we have got the evidence  
15 because no going out on limbs here.

16 COMMISSIONER HERIOT: Remember, the  
17 proposal isn't that we draw conclusion from the  
18 evidence, simply that we state that we have such  
19 evidence.

20 VICE CHAIR THERNSTROM: Well, but if the  
21 --

22 COMMISSIONER HERIOT: You know, we can  
23 negotiate on whether or not we should say this is --

24 VICE CHAIR THERNSTROM: The question is  
25 whether we do have it. And let us look carefully at

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1 exactly what we have here because I am not going to be  
2 satisfied with -- I mean, you can find witnesses to  
3 say anything.

4 So if we have one witness that says  
5 something and we don't have anything more than that,  
6 then if we want to say something about what that  
7 witness testified to, we have to make it clear one  
8 witness and we don't know, you know --

9 COMMISSIONER HERIOT: I am confused. I  
10 had been told that you drafted these. Is that not so?

11 VICE CHAIR THERNSTROM: You know, by this  
12 time, Gail, there's so much water under the bridge I  
13 have no idea.

14 CHAIRMAN REYNOLDS: Okay, folks. Next up.  
15 We have agreed that we are going to review the record  
16 to make sure that the record supports the findings and  
17 recommendations.

18 COMMISSIONER HERIOT: I have other  
19 comments to make about the recommendations.

20 CHAIRMAN REYNOLDS: Are you sure?

21 COMMISSIONER HERIOT: Yes.

22 (Laughter.)

23 CHAIRMAN REYNOLDS: All right. We are up  
24 to 6.

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1                   COMMISSIONER HERIOT: We don't have to go  
2 through. Those are findings. I think we have got the  
3 basic point with the findings. And that is we don't  
4 want to be accusing people of wrongdoing unless we  
5 have got it in the record. And we don't want to draw  
6 conclusions from the facts, but we want to simply say  
7 we have such evidence. Whether it's persuasive or not  
8 is for another day.

9                   The recommendations themselves need to  
10 focus on what the statute requires and what it doesn't  
11 require, like we say with citations, "DOJ should take  
12 steps to ensure that states maintain up-to-date  
13 computerized state voter registration rules." Well,  
14 only if federal law requires that. And so we need to  
15 have that nailed down. What does the statute say?  
16 And what's what DOJ should do, not something else,  
17 using statutory language and citing to the statute  
18 because DOJ should not be making up requirements on  
19 their own. And we certainly should not be making up  
20 requirements for them.

21                   The last one, number 4, "DOJ should  
22 enforce the requirement that noncitizens not be  
23 allowed to register to vote," I doubt that there is a  
24 statute that says states must not allow noncitizens to

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1 vote in federal elections. It probably says something  
2 a little different from that.

3 I want to see what the statute says and  
4 quote from that statute and cite the statute. That's  
5 what DOJ should be doing, enforcing the law, not  
6 something other than the law.

7 CHAIRMAN REYNOLDS: Anything else? Any  
8 specific provision you want to discuss?

9 COMMISSIONER HERIOT: No.

10 CHAIRMAN REYNOLDS: Any other?  
11 Commissioner Melendez?

12 COMMISSIONER MELENDEZ: My concern is that  
13 I don't mind having conference calls or over the  
14 telephone if we're kind of close to agreement. Where  
15 I don't like conference calls is if we're in different  
16 points of view and it's almost as if we're not in  
17 agreement. Then we're trying to do it over the phone.  
18 I would rather have us face to face at the next  
19 meeting, going through all of these things --

20 CHAIRMAN REYNOLDS: That's a good point.

21 COMMISSIONER MELENDEZ: -- and hashing it  
22 out, because if we try to do this over the phone, some  
23 people are going to be there. It's inaugural week.  
24 We're not going to have enough time.

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1           So I'm suggesting we just bring this back  
2 on the agenda, work everything out up to that point,  
3 and let's just either have recommendations or not.  
4 And that will give us adequate time. I just don't  
5 feel comfortable on the --

6           VICE CHAIR THERNSTROM: Yes. I second  
7 that. I hate these phone conversations. I need to  
8 see people face to face and go back and forth.

9           CHAIRMAN REYNOLDS: I also agree. If  
10 we're close, fine. But if there is going to be debate  
11 --

12           COMMISSIONER YAKI: Considering that we  
13 still have to look at the record, I would say we're  
14 not close.

15           CHAIRMAN REYNOLDS: There is no  
16 disagreement on that point. Todd?

17           COMMISSIONER GAZIANO: I accept that  
18 friendly amendment that we vote on these February 20,  
19 which means that it's incumbent upon us to get some  
20 language to each other so that we can consider it  
21 ahead of time and then only make tweaks February 20.

22           CHAIRMAN REYNOLDS: Okay. We sound like  
23 we have an agreement. Next step is the State Advisory  
24 Committee issues.

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1 COMMISSIONER GAZIANO: Are we still going  
2 to have some sort of conference call to have a general  
3 discussion on the narrowing the statutory --

4 CHAIRMAN REYNOLDS: Yes. That was not --

5 COMMISSIONER GAZIANO: Okay. Are we going  
6 to try to set that right now before we move on to SAC?

7 CHAIRMAN REYNOLDS: Okay. So that would  
8 be --

9 VICE CHAIR THERNSTROM: Is that something  
10 that can be done really promptly, Mr. Chairman, over  
11 the phone.

12 COMMISSIONER GAZIANO: I don't know that  
13 we will need to vote on it. If the staff hears what  
14 seems to be emerging from our collective discussion,  
15 then that probably would be enough.

16 CHAIRMAN REYNOLDS: Yes. It risks turning  
17 into one of our food fights, but I don't think that  
18 that is going to happen. We are trying to narrow the  
19 scope. I didn't hear too much disagreement on the  
20 point.

21 COMMISSIONER YAKI: That is because I am  
22 sick.

23 CHAIRMAN REYNOLDS: Okay.

24 COMMISSIONER GAZIANO: So, as I  
25 understand, the General Counsel will get us some

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1 thoughts and recommendations. Do you know an exact  
2 date?

3 MR. BLACKWOOD: No.

4 COMMISSIONER GAZIANO: It's ten days?

5 MR. BLACKWOOD: Ten days to get the  
6 outline together.

7 COMMISSIONER GAZIANO: Can't that include  
8 some recommendations on narrowing?

9 MR. BLACKWOOD: Hopefully.

10 CHAIRMAN REYNOLDS: Okay. Give us a date  
11 you are comfortable with. Let's start from there. In  
12 terms of getting the paperwork in order and --

13 MR. BLACKWOOD: I would certainly hope  
14 within two weeks. I believe that the process of  
15 producing the outline will also bring about some kind  
16 of agreement from staff about where we need to focus  
17 and where we need to limit. So I would say shortly  
18 after that. I don't have a calendar in front of me.

19 COMMISSIONER GAZIANO: Today is the 16th.  
20 Two weeks is the 30th.

21 MR. BLACKWOOD: The 30th.

22 COMMISSIONER GAZIANO: So you will get us  
23 something in writing on the 30th?

24 MR. BLACKWOOD: Correct.

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1 CHAIRMAN REYNOLDS: Someone throw out a  
2 date for the --

3 COMMISSIONER MELENDEZ: Question. When we  
4 receive those, do we have a week or so to review  
5 those?

6 VICE CHAIR THERNSTROM: You have to have  
7 time to review them.

8 COMMISSIONER MELENDEZ: Okay.

9 CHAIRMAN REYNOLDS: So someone throw out a  
10 date. Does the 6th work?

11 COMMISSIONER YAKI: No.

12 CHAIRMAN REYNOLDS: Ninth?

13 COMMISSIONER YAKI: No.

14 CHAIRMAN REYNOLDS: Okay. The 5th?

15 COMMISSIONER HERIOT: Yes, depends on the  
16 time.

17 CHAIRMAN REYNOLDS: Okay. Let's see if  
18 the date works first.

19 COMMISSIONER YAKI: I may be traveling  
20 across country, either the 5th or the 6th. So I  
21 really can't commit to either day because that puts me  
22 out of pocket on one end or the other.

23 COMMISSIONER GAZIANO: Is the 4th  
24 workable? That gives us the weekend and a few days.

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1                   COMMISSIONER YAKI: Mr. Chair, that week  
2 is difficult for me because I will be in meetings.  
3 And getting away to do a phone call during that -- I  
4 will be in meetings starting Tuesday through either  
5 Thursday or Friday and then on a plane. And trying to  
6 put the signal in -- some of these meetings are rather  
7 fluid -- is going to be rather difficult for me. The  
8 following week is a little better.

9                   CHAIRMAN REYNOLDS: Okay. The 7th?

10                  COMMISSIONER MELENDEZ: The 7th is a  
11 Saturday, right?

12                  CHAIRMAN REYNOLDS: Yes.

13                  COMMISSIONER HERIOT: The 7th I can do.

14                                 It's a Saturday.

15                  COMMISSIONER GAZIANO: The 7<sup>th</sup> is a weekend.  
16 I would prefer non-weekend and we have to have staff  
17 on the phone.

18                  CHAIRMAN REYNOLDS: The 9th doesn't work  
19 for me.

20                                 Michael?

21                  COMMISSIONER TAYLOR: The 10th doesn't  
22 work for me.

23                  CHAIRMAN REYNOLDS: We should have allowed  
24 Michael to put the kibosh on that date.

25                                 Any time in February?

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1 COMMISSIONER HERIOT: I think all we need  
2 is a quorum. This is not official. It's not  
3 controversial.

4 CHAIRMAN REYNOLDS: Any time in February  
5 or March that work for you?

6 COMMISSIONER MELENDEZ: The 20th.  
7 (Laughter.)

8 CHAIRMAN REYNOLDS: Arlan, that was pretty  
9 good.

10 COMMISSIONER HERIOT: All we need is a  
11 quorum.

12 COMMISSIONER GAZIANO: What happened to  
13 the 11th?

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER GAZIANO: What happened to  
16 the 11th?

17 CHAIRMAN REYNOLDS: Okay. Any objections?  
18 Commissioner Melendez?

19 COMMISSIONER MELENDEZ: Eleven is fine  
20 with me.

21 CHAIRMAN REYNOLDS: Okay. The 11th it is.

22 COMMISSIONER MELENDEZ: Not too early on  
23 the West Coast. 11:00 o'clock Eastern?

24 CHAIRMAN REYNOLDS: That works for me.

25 VICE CHAIR THERNSTROM: 11:00 a.m.?

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1 CHAIRMAN REYNOLDS: Yes. Is that too  
2 early for you, Gail?

3 COMMISSIONER HERIOT: No. That is fine.  
4 11:00 works fine.

5 CHAIRMAN REYNOLDS: 2:00 o'clock Eastern?

6 VICE CHAIR THERNSTROM: I thought you were  
7 going to ask whether it was too early for me.

8 It might be.

9 COMMISSIONER HERIOT: Okay. If I'm not on  
10 the call, just call and wake me up.

11 CHAIRMAN REYNOLDS: Okay. Good. February  
12 11th, 11:00 Eastern Standard. Okay.

13 **VI. STATE ADVISORY COMMITTEES**

14 **- RECHARTERING ALABAMA SAC**

15 CHAIRMAN REYNOLDS: At this point, unless  
16 we want to continue this particular discussion, I  
17 would like to move on to the SACs. I move that we  
18 recharter the Alabama State Advisory Committee. Under  
19 this motion, the Commission appoints the following  
20 individuals to that committee based on the  
21 recommendations of the Staff Director: David Beito,  
22 Valerie Askew, Lulu Bridges, Margaret Brown, Richard  
23 Finley, Ed Haden, Randy Kelly, Shana Kluck, Raphael  
24 Maharaj, Harriet Means, Byron Perkins, Mary Peters,  
25 Maurice Shevin, and L'Tryce Slade. I also move that

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1 the Commission reappoint David Beito as the Chair of  
2 the rechartered State Advisory Committee. These  
3 members will serve as uncompensated government  
4 employees.

5 Under this motion, the Commission  
6 authorizes the Staff Director to execute the  
7 appropriate paperwork for the appointment. Is there a  
8 second?

9 COMMISSIONER TAYLOR: Second.

10 CHAIRMAN REYNOLDS: Discussion?

11 COMMISSIONER MELENDEZ: Yes, a discussion.  
12 Commissioner Melendez. There was I think a notion  
13 that we had reached out to the congressional district  
14 of this state, but we had received some information  
15 that Congressman Arthur Davis' office was not  
16 contacted as far as congressional people if we stated  
17 they were all contacted.

18 CHAIRMAN REYNOLDS: Marty? Who is the  
19 appropriate person to respond?

20 STAFF DIRECTOR DANNENFELSER: We were told  
21 by the regional office that they had reached out to  
22 the entire congressional delegation.

23 COMMISSIONER MELENDEZ: Okay. You might  
24 let them know that at least his office, Mr. Davis,  
25 apparently they didn't receive any notification.

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1 CHAIRMAN REYNOLDS: We will look into it.  
2 Any other comments?

3 COMMISSIONER MELENDEZ: Would that mean  
4 also that the opportunity for his office to submit a  
5 name is not going to happen, then?

6 COMMISSIONER TAYLOR: Can he still submit  
7 a name?

8 COMMISSIONER HERIOT: You can charter a  
9 SAC and then add somebody later.

10 COMMISSIONER GAZIANO: Unless it is full,  
11 unless it is full. Is this a full slate, Chris?

12 CHAIRMAN REYNOLDS: We can do that, but  
13 you just make a recommendation, right, that there is  
14 no guarantee that the individual will be selected.

15 COMMISSIONER GAZIANO: What is the number?  
16 I should count.

17 PARTICIPANT: Fourteen.

18 COMMISSIONER GAZIANO: Okay. Then we can  
19 add. Then we can add. What's the max?

20 COMMISSIONER MELENDEZ: Nineteen.

21 COMMISSIONER HERIOT: Yes. Let him submit  
22 and see. If the selection goes up to 15, it goes up  
23 to 15. But we can approve this now, have a chartered  
24 SAC.

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1 COMMISSIONER GAZIANO: We can add three  
2 more at least.

3 COMMISSIONER HERIOT: If we don't do two  
4 SACs a meeting, then we will never get through the --

5 STAFF DIRECTOR DANNENFELSER: We added  
6 some numbers to another SAC at a previous meeting.

7 CHAIRMAN REYNOLDS: Commissioner Melendez,  
8 you had --

9 COMMISSIONER MELENDEZ: The question is,  
10 have we adequately reached out? That has been one of  
11 our issues all along as far as chartering of these  
12 SACs. Have we totally reached out to everybody that  
13 --

14 CHAIRMAN REYNOLDS: I think that the  
15 overall effort is a good one. You have identified a  
16 potential problem. If, in fact, we did not contact  
17 that office, that is a problem. We were informed that  
18 we did. But I don't believe that that taints the  
19 process unless you have additional examples where we  
20 have gotten faulty information from staff.

21 STAFF DIRECTOR DANNENFELSER: I think also  
22 if you consider having worked in a congressional  
23 office the volume of correspondence and phone calls  
24 and so on, that sometimes contact is made that is not  
25 captured in that particular office, but we will

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1 certainly go back and try to make sure that that  
2 contact is made.

3 If you have a particular name of a person  
4 that you believe we should reach out to in that  
5 office, please let us know. We would be happy to do  
6 that.

7 COMMISSIONER MELENDEZ: All right.

8 CHAIRMAN REYNOLDS: Okay.

9 VICE CHAIR THERNSTROM: I have a question  
10 not on the SACs. Can I --

11 COMMISSIONER TAYLOR: Can we call the  
12 question, then?

13 COMMISSIONER HERIOT: Yes. Let's call the  
14 question.

15 VICE CHAIR THERNSTROM: Okay.

16 CHAIRMAN REYNOLDS: All in favor, please  
17 say, "Aye."

18 (Whereupon, there was a chorus of "Ayes.")

19 CHAIRMAN REYNOLDS: Objections?

20 (No response.)

21 CHAIRMAN REYNOLDS: Abstentions?

22 COMMISSIONER MELENDEZ: Abstain, one.

23 CHAIRMAN REYNOLDS: Commissioner Melendez  
24 abstains.

25 COMMISSIONER YAKI: I abstain.

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1 CHAIRMAN REYNOLDS: Commissioners Melendez  
2 and Yaki abstain. The motion passes.

3 VICE CHAIR THERNSTROM: Sorry. I forgot  
4 there was a motion on the table.

5 CHAIRMAN REYNOLDS: Okay. Do you have  
6 something?

7 VICE CHAIR THERNSTROM: I mean, actually,  
8 Commissioner Yaki would be the most likely person to  
9 know. And I'm not sure how to pronounce the last  
10 name, S-a-e-n-z. Saenz is it, Thomas Saenz?

11 COMMISSIONER YAKI: Where?

12 VICE CHAIR THERNSTROM: Pardon me? This  
13 is the Legal Times say she's going to head the Civil  
14 Rights Division, counsel to Los Angeles Mayor.

15 COMMISSIONER YAKI: Interesting.

16 VICE CHAIR THERNSTROM: You don't know who  
17 he is?

18 COMMISSIONER YAKI: No.

19 VICE CHAIR THERNSTROM: Okay.

20 CHAIRMAN REYNOLDS: Okay.

21 **- COMMISSIONER INVOLVEMENT IN SACS**

22 CHAIRMAN REYNOLDS: Next up Commissioner  
23 Melendez has expressed some concerns about  
24 commissioners serving on state advisory committees.

1 So I open up the floor to Commissioner Melendez to  
2 discuss his concerns.

3 COMMISSIONER MELENDEZ: Yes. I had, I  
4 believe. I think there have to be some just  
5 recommendations as to how the Commission gets involved  
6 with the SACs. As you know, we have had a question as  
7 "Does it become a conflict of interest being a  
8 commissioner and also chairing the SAC or even being  
9 on the SAC?"

10 I e-mailed. I think you e-mailed me that  
11 you had some recommendations yourself as you thought  
12 about it, maybe limiting that issue.

13 CHAIRMAN REYNOLDS: Yes, but I just wanted  
14 you to articulate your concerns. I have had an  
15 opportunity to think about it, but the other  
16 commissioners have not. So I just wanted to make sure  
17 that they have a full flavor of your concern.

18 COMMISSIONER MELENDEZ: My concern has  
19 always been and even though there were some things  
20 that -- when I came on the Commission a few years ago,  
21 I wasn't real sure what the rules on our interaction  
22 with the SACs were in even influencing appointments to  
23 the SAC.

24 I mean, people sometimes will contact you  
25 and ask. Because I am a commissioner and I'm from the

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1 State of Nevada, they will actually ask me what is  
2 happening with the state advisory committee. And I  
3 will say, "Well, you know, you can send your name into  
4 the regional director, Western Region, you know, and  
5 see how he can put you in the pool to be elected."

6 But, then, those were questions I had when  
7 I first came on. But then after we started having  
8 commissioners that were actually chairing the SAC,  
9 then I wondered what the rules were doing that.

10 Otherwise if I knew that you could do  
11 that, then maybe at some point to just jump-start the  
12 SAC in Nevada, I would basically become the chair  
13 myself and then basically if that's the intention.  
14 But I didn't know at that time whether or not we were  
15 prohibited from doing that or whether that becomes a  
16 conflict of how the whole issue works of we're the  
17 Commission and we're in some way kind of over the  
18 SACs, you know, or some way appointing them, does that  
19 become kind of like you're doing both things, which  
20 may not be best for the Commission?

21 I'm not saying it's wrong or right. Maybe  
22 it's kind of maybe there just aren't any rules as to  
23 what we are supposed to be doing here. Maybe it is  
24 reason for us to discuss it openly as commissioners as  
25 to where should we go with this or does everybody that

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1 comes in really not know what the ground rules are, so  
2 you have some people doing it and some people not? So  
3 I just wanted us to at some point maybe talk about  
4 that so we know what we could recommend for the  
5 future.

6 CHAIRMAN REYNOLDS: Okay. The SACs are  
7 independent from the Commission. We have two  
8 commissioners who are currently serving on SACs. They  
9 were on the SACs before they were appointed to the  
10 Commission. Speaking for myself, I would not support  
11 a sitting commissioner being appointed to a SAC.

12 In our e-mail exchange, you raised an  
13 issue that I thought warranted further discussion or  
14 at least special consideration. And that is if a  
15 commissioner is on a state advisory -- well, my  
16 initial position was that the individuals who serve on  
17 SACs are independent and that it was unlikely that  
18 they would be cowed by a commissioner serving on a  
19 SAC. And to date I received no evidence that anyone  
20 has a concern with it.

21 But there was one hypothetical that I  
22 toyed around with. And that is if there were a  
23 disagreement between a SAC member and a SAC member who  
24 was also a sitting commissioner, that individual might  
25 moderate their view if they were worried that that

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1 commissioner would not support that person being  
2 reappointed the next time the SAC was rechartered.  
3 And that's why I asked you about my proposal, which is  
4 to prevent sitting commissioners from voting on the  
5 SACs where they are members of the SAC.

6 COMMISSIONER MELENDEZ: Because the issue  
7 also had to do with presenting -- you know, for  
8 example, out of my state or any of the states,  
9 California or wherever, the real question would be how  
10 much influence should the Commission have as far as  
11 putting forth names? I think in the State of Nevada,  
12 in my state, I could pick up 12 people that I want to  
13 be on the Nevada SAC because, really, through the --

14 COMMISSIONER HERIOT: I think you should  
15 submit those names.

16 COMMISSIONER MELENDEZ: But, see, the  
17 problem is I don't even have -- and that's why  
18 fulfilling the Western Region with a director -- we  
19 had Tom Pilla at one time. Now we've got a secretary  
20 who is out there. That's why I have always been  
21 adamant about making sure that these regional offices  
22 are adequately staffed by somebody other than a  
23 secretary that would really take the brunt of me  
24 submitting my name to him, I mean.

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1           But then I kind of feel funny about, well,  
2 how much influence is he going to have because I am a  
3 commissioner, he is a regional director?

4           CHAIRMAN REYNOLDS: Commissioner Melendez,  
5 we have encouraged all commissioners to submit  
6 recommendations. We have been consistent on this  
7 point. And I would encourage you. If you know of  
8 good people to serve on SACs, I would encourage you to  
9 submit those names.

10           COMMISSIONER MELENDEZ: But, see, that is  
11 really the question. Sometimes, whereas, the  
12 influence as to who actually gets -- let's say I  
13 submit 12 of them and they all get submitted because  
14 of my influence as a commissioner. Is that okay or  
15 should it be Tom Pilla, the Regional Director, and I  
16 kind of stay out of that picture completely?

17           It's just discussion, and I just need more  
18 commissioners to weigh into this because I never  
19 really knew what we were actually doing.

20           CHAIRMAN REYNOLDS: Okay. A quick  
21 comment. Then Commissioner Heriot. Are you saying  
22 that you believe that the process has been influenced?

23           COMMISSIONER MELENDEZ: I mean, you could  
24 if there are really no set ground rules. And I am not  
25 saying it is right or wrong. I'm just saying that --

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1 CHAIRMAN REYNOLDS: Is this an  
2 intellectual exercise? Then we have a problem.

3 COMMISSIONER HERIOT: There is actually a  
4 legal answer to this question.

5 CHAIRMAN REYNOLDS: Commissioner Heriot?

6 COMMISSIONER HERIOT: Okay. We have got  
7 two different issues here. One is submission of names  
8 for SACs. And the other --

9 COMMISSIONER MELENDEZ: Right.

10 COMMISSIONER HERIOT: -- is Commission  
11 members serving on SACs. Let's deal with the first  
12 one.

13 COMMISSIONER MELENDEZ: Okay.

14 COMMISSIONER HERIOT: The notion that you  
15 could have an inappropriate influence on the staff  
16 member, we are the appointing body for the SACs, not  
17 the staff. I believe that each one of us is not only  
18 justified in making proposals, but it is your duty to  
19 make those proposals. We are the ones who are  
20 supposed to come up with these people.

21 So I think you should, by all means. If  
22 you have anyone in any state that you think should  
23 serve on a SAC, submit it to the Staff Director. If  
24 you are worried about making a member of the lower  
25 staff feel put out, submit it to the Staff Director.

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1           But my impression is that we are not  
2 turning out SACs fast enough. If we are going to  
3 charter 50 states, we have got to average about 2 per  
4 meeting. And we are not doing that. We need more  
5 names, not fewer. So give any name that you possibly  
6 have. And let the staff try to put together a  
7 balanced SAC.

8           But ultimately we are the decision-makers  
9 on who sits on the SACs, not the staff. So you should  
10 not feel the least bit reticent about making as many  
11 suggestions as you would like. In fact, it would make  
12 me very happy if you would turn out more suggestions  
13 so that we could charter these SACs more quickly.

14           On the second issue, we have again the  
15 problem of not chartering the SACs quickly enough.  
16 What we had here is two members who were appointed  
17 after they were already SACs. You don't want to just  
18 explode the California SAC on a day that a new  
19 commissioner is appointed so that we have to go back  
20 and recharter.

21           So I think the best way to deal with it is  
22 simply when you have got somebody who is on a SAC and  
23 they have been appointed to the Commission, let them  
24 stay there until the expiration of that SAC, which  
25 will be no more than two years and probably less

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1 because usually the SAC will already have been going  
2 along for a while before they get appointed.

3 I don't have any objection to a rule that  
4 after one is on the Commission, one no longer serves  
5 on the SAC after the expiration of that SAC.

6 On the other hand, if our concern is undue  
7 influence, this is not going to solve that problem at  
8 all because we have already got a rule that  
9 commissioners can attend any SAC meeting they want to  
10 anywhere across the country. And whether they are a  
11 voting member of that SAC or not, if you are worried  
12 that SAC members are going to feel like, "Uh-oh. I  
13 had better do the right thing because the commissioner  
14 is here," they're going to think that whether you are  
15 a voting member of the SAC or not.

16 CHAIRMAN REYNOLDS: Commissioner Gaziano?

17 COMMISSIONER GAZIANO: Yes. I was a  
18 member of the Virginia SAC 11 months ago, when I was  
19 appointed. The Virginia SAC hasn't met since I have  
20 been on the Commission unless I missed some notice. I  
21 have received a few e-mails.

22 But I really do want to follow up on what  
23 Commissioner Heriot said. I don't understand the  
24 possibility of undue influence. I wanted to attend a  
25 SAC meeting of the D.C. when Michele Rhee was here. I

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1 understand it was a fascinating hearing. I was unable  
2 to attend.

3 But whether I am on the Virginia SAC or  
4 not, I might also be very interested to attend,  
5 particularly interested in my home state, the Virginia  
6 SAC meetings. If I can do it, I will attend other  
7 meetings.

8 If there is any question, I will abstain  
9 from voting while I remain on the SAC. If you can  
10 convince me there is any impropriety whatsoever in me  
11 remaining on the Virginia SAC, I will resign right  
12 now.

13 No one has made any kind of argument that  
14 is at all rational to me that it is proper for us to  
15 attend SAC meetings when we are not a member but it is  
16 improper for us to attend SAC meetings when we were a  
17 member before our appointment.

18 So please let me know. I will resign  
19 right now if you can tell me what possible difference  
20 does it make.

21 CHAIRMAN REYNOLDS: Commissioner Yaki?

22 COMMISSIONER YAKI: In theory, I think  
23 that there is much, much merit to I think both sides.  
24 The one thing I think that we need to do, though, for  
25 the purposes of the appearance of impropriety -- and I

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1 think that is just as important as whether there is  
2 impropriety there itself -- is to have stronger -- I  
3 won't say "stronger" because we don't have any --  
4 conflict of interest guidelines. And by this I mean  
5 the following. I do not believe that any person who  
6 sits on a SAC should be allowed to make  
7 recommendations to that SAC while he or she is a  
8 member, number one, because --

9 COMMISSIONER GAZIANO: Can you explain  
10 why?

11 VICE CHAIR THERNSTROM: Why?

12 COMMISSIONER GAZIANO: Can you explain  
13 why? Because I can do that if I am attending the  
14 Virginia SAC after I quit.

15 COMMISSIONER YAKI: That is fine. Then  
16 you have quit.

17 COMMISSIONER GAZIANO: How is the  
18 appearance issue at all different? Give me a logical  
19 argument.

20 COMMISSIONER YAKI: I believe that if you  
21 are a member of that committee and you are a member of  
22 the appointing body of that committee, I think that to  
23 me creates an irreconcilable appearance of a conflict  
24 of interest.

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1 COMMISSIONER HERIOT: That is what  
2 subcommittees always are. That happens routinely.

3 COMMISSIONER YAKI: It is not a  
4 subcommittee.

5 COMMISSIONER GAZIANO: Explain the logic.

6 COMMISSIONER YAKI: It is not a  
7 subcommittee.

8 CHAIRMAN REYNOLDS: Lower your voices.

9 COMMISSIONER YAKI: You just called it a  
10 separate entity. It's not a subcommittee.

11 COMMISSIONER HERIOT: Yes. But why should  
12 it be treated any differently?

13 COMMISSIONER GAZIANO: You just restated  
14 your argument. I want to know if there is any logic.  
15 Give me a logical argument, rather than restating the  
16 ridiculous point.

17 CHAIRMAN REYNOLDS: Commissioners.

18 COMMISSIONER YAKI: Let's see. You want a  
19 logical argument, Commissioner Gaziano? Okay. Here  
20 we go. You are on the Virginia SAC. You are just  
21 regular Todd Gaziano on the SAC. I am Commissioner  
22 Yaki on the Virginia SAC. No. Let's put it this way.

23 You are not even on the SAC. I do not  
24 know why. I do not know why. I don't think it is  
25 proper for me to be in a position as a member of that

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1 SAC to decide who I am going to recommend to that SAC  
2 and then also vote on it at the same time. I think  
3 that creates an --

4 COMMISSIONER GAZIANO: It is our duty to  
5 recommend people for all SACs.

6 COMMISSIONER YAKI: I don't think you --

7 COMMISSIONER GAZIANO: It is our duty to  
8 attend SAC meetings when we can.

9 COMMISSIONER YAKI: First of all, first of  
10 all, let me say -- look, let me just say this. First  
11 off, let me say this.

12 COMMISSIONER HERIOT: There is a --

13 CHAIRMAN REYNOLDS: Folks, enough. Lower  
14 your voices.

15 CHAIRMAN REYNOLDS: You know what? That  
16 is a good thing.

17 (Laughter.)

18 CHAIRMAN REYNOLDS: One at time, folks. I  
19 mean, we have loose rules here, but lower your voices.  
20 Let the other person finish. Extend the common  
21 courtesies that you would expect.

22 COMMISSIONER YAKI: I agree. Let me speak  
23 in a calm and clear voice. I think we have a problem  
24 if we are the -- and, in fact, there are GSA rules  
25 that talk about this, that talk about the fact that

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1 you have problems of appearances of impropriety under  
2 undue influence if you are someone who has power,  
3 influence over that person with whom you sit. So I  
4 think that if you also serve on the Commission and are  
5 recommending people for the state SAC upon which you  
6 sit, I think that creates the impropriety.

7 CHAIRMAN REYNOLDS: Commissioner Yaki, did  
8 you read the motion that I circulated, --

9 COMMISSIONER YAKI: Yes.

10 CHAIRMAN REYNOLDS: -- the draft motion?  
11 Does that fix the problem?

12 COMMISSIONER YAKI: Not quite. Let me  
13 just say this. It may be I do not know if it is our  
14 duty to recommend people to the SAC. I think it is  
15 something that we can and should do if we want to.

16 However, when we adopted the lean six  
17 sigma process, we also adopted a body of criteria by  
18 which SACs were supposed to be balanced. I do not  
19 know, and I can speak for myself. I think that is the  
20 issue that Commissioner Melendez raised.

21 CHAIRMAN REYNOLDS: Well, let Mr. --

22 COMMISSIONER YAKI: No, no, no. But I  
23 think this is what he was trying to say, that we are  
24 not in a position to engage in that balancing act the

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1 entire time when we are recommending who or what we  
2 want to say. So when we are recommending --

3 CHAIRMAN REYNOLDS: He is right here.

4 COMMISSIONER YAKI: -- a large amount of  
5 people --

6 CHAIRMAN REYNOLDS: He never brought that  
7 particular issue up. Now, he's --

8 COMMISSIONER YAKI: No. He did. He did.

9 CHAIRMAN REYNOLDS: Balance?

10 COMMISSIONER YAKI: When you talk about  
11 the different -- not about balance, the criteria.

12 CHAIRMAN REYNOLDS: The Commission balance  
13 --

14 COMMISSIONER YAKI: There is different  
15 criteria that we look for in whom we recommend and  
16 appoint. And the staff in the process that we adopted  
17 is responsible for making sure those different  
18 criteria are met.

19 CHAIRMAN REYNOLDS: And how does this link  
20 up to Commissioner --

21 COMMISSIONER YAKI: This goes to the  
22 separate question of an issue.

23 CHAIRMAN REYNOLDS: Well, I want to finish  
24 this. I want to finish this. I mean, okay. Now  
25 balance has been brought into, I mean, put on the

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1 table. So if I understand I don't know who now. Who  
2 owns this balance issue?

3 COMMISSIONER MELENDEZ: The balance issue  
4 has always been discussed by us about how many. You  
5 know, we have done a good job. And it was the gender  
6 at one point. It was whether or not there were  
7 independents, Republicans, or Democrats.

8 CHAIRMAN REYNOLDS: And how does that  
9 relate to --

10 COMMISSIONER MELENDEZ: Well, I mean, the  
11 issue would be if you are having me from the -- let's  
12 say I have a whole bunch of friends and they're all  
13 Democrats. Somebody on the Commission is going to go  
14 "What did Chairman Melendez recommend to Tom Pilla?"  
15 Well, he sent 4 or 12 Democrats unless you're saying  
16 that I should -- I mean, there is certain influence I  
17 am going to have because the most --

18 CHAIRMAN REYNOLDS: I suspect that with  
19 each SAC package, --

20 COMMISSIONER MELENDEZ: And that's --

21 CHAIRMAN REYNOLDS: -- we will review them  
22 and we look for balance.

23 COMMISSIONER MELENDEZ: But that's the  
24 reason why I kind of look more towards having the  
25 regional people kind of do most of these submittals.

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1 CHAIRMAN REYNOLDS: Are you asking  
2 commissioners to withdraw from --

3 COMMISSIONER MELENDEZ: No, I'm not saying  
4 that.

5 CHAIRMAN REYNOLDS: -- the process? If  
6 you're asking the commissioners no longer make  
7 recommendations, let's just put it on the table. We  
8 can have a vote on it.

9 COMMISSIONER GAZIANO: Mr. Chairman, I  
10 hereby resign from the Virginia SAC. I now possess  
11 the exact same responsibility and power over the  
12 Virginia SAC that I did five minutes ago --

13 COMMISSIONER YAKI: No, you don't.

14 COMMISSIONER GAZIANO: -- with regard to  
15 rechartering. And I hope that I will continue to  
16 attend meetings of the Virginia SAC in particular. I  
17 hope that I can attend meetings of the D.C. SAC since  
18 it's convenient to me. And I will have the exact same  
19 power with regard to D.C. and Virginia with regard to  
20 rechartering.

21 I think it was ridiculous to raise this  
22 issue. And I think that the aspersions are both  
23 illogical and unsupported.

24 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
25 I believe it was ridiculous for you to resign based on

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1 what was placed on the table. I understand the game,  
2 but to take up time with this, I mean, this is petty.

3 If you have some examples of some  
4 wrongdoings, put them on the table. This is truly a  
5 waste of time.

6 COMMISSIONER HERIOT: Just to clarify --

7 COMMISSIONER GAZIANO: And I will oppose  
8 your motion because I don't think that it is  
9 necessary.

10 CHAIRMAN REYNOLDS: Commissioner Heriot?

11 COMMISSIONER HERIOT: I am going to make a  
12 separate motion. Is there a pending motion?

13 CHAIRMAN REYNOLDS: Who knows?

14 COMMISSIONER HERIOT: Well, let me --

15 CHAIRMAN REYNOLDS: Does anybody remember?  
16 Does anybody remember?

17 COMMISSIONER HERIOT: -- make just a  
18 motion, a clarification of commissioner duties. I  
19 move that commissioners be urged to make as many  
20 recommendations for the SAC as possible so that we can  
21 charter these SACs as efficiently as possible, that in  
22 making a recommendation, commissioners should not be  
23 required to consider balance because that has to be  
24 considered all at the same time.

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1           If I make extra recommendations, I  
2 recommend too many lawyers, it's because I know  
3 lawyers. I figure that the staff under the direction  
4 of the Staff Director is going to cast out some of  
5 those lawyers and is going to come up with a balanced  
6 SAC for each state.

7           But I think that as individual  
8 commissioners, we should be urged to make as many  
9 proposals as possible. And that is my motion.

10           CHAIRMAN REYNOLDS: Is there a second?

11           COMMISSIONER GAZIANO: Second.

12           CHAIRMAN REYNOLDS: Discussion?  
13 Commissioner Yaki?

14           COMMISSIONER YAKI: During the discussion  
15 in the lean six sigma process, -- and I need to go  
16 back into the record to pull it out for certain --  
17 there was actually some concern expressed over the  
18 fact that if commissioners made too many  
19 recommendations and without regard to the criteria for  
20 qualifications, distribution of qualifications, et  
21 cetera, that are part of it, that staff would feel  
22 that there would be some pressure to do that anyway.

23           COMMISSIONER HERIOT: But this actually  
24 clarifies that by making it --

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1 CHAIRMAN REYNOLDS: Does that concern come  
2 to fruition?

3 COMMISSIONER YAKI: If you would like me  
4 to go back into the SACs and start pulling out what my  
5 concerns are, sure.

6 COMMISSIONER HERIOT: We're making it --

7 COMMISSIONER YAKI: I mainly have --

8 CHAIRMAN REYNOLDS: Well, no. You can go  
9 back --

10 COMMISSIONER YAKI: I mainly have  
11 abstained from the votes on these SACs, precisely  
12 because I have had these concerns about how these  
13 recommendations have --

14 CHAIRMAN REYNOLDS: So why are we doing  
15 this? If you have withdrawn yourself from the process  
16 on this particular issue and we have discussed --

17 COMMISSIONER YAKI: Because Commissioner  
18 Melendez has brought it up.

19 CHAIRMAN REYNOLDS: Yes. Again, this is  
20 not the first time that this has been discussed. We  
21 have discussed it in the past. We have discussed it  
22 today. We have discussed it offline. You have  
23 elected not to participate when we vote for SACs.  
24 What is the point? I mean, what are we trying to  
25 accomplish here?

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1 COMMISSIONER YAKI: I deliberately elect  
2 not to ratify a process that I believe is not truly  
3 representative and diverse.

4 CHAIRMAN REYNOLDS: No. I understand  
5 that.

6 COMMISSIONER YAKI: That is a totally  
7 different situation.

8 CHAIRMAN REYNOLDS: I understand that, but  
9 this conversation --

10 COMMISSIONER YAKI: To say that I have  
11 withdrawn from the process is I think a  
12 mischaracterization, Mr. Chair.

13 CHAIRMAN REYNOLDS: Okay. The  
14 communication that we are having now, this discussion,  
15 we have had it before. We are having it today.

16 COMMISSIONER YAKI: And we will probably  
17 have it again.

18 CHAIRMAN REYNOLDS: Why? I mean, what is  
19 the point?

20 COMMISSIONER YAKI: The point is that  
21 Commissioner Melendez and myself --

22 COMMISSIONER MELENDEZ: Well, the point --

23 COMMISSIONER YAKI: -- continue to believe  
24 that the makeup of the SACs is not truly  
25 representative and diverse enough, period.

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1 CHAIRMAN REYNOLDS: Why didn't you say  
2 that?

3 COMMISSIONER YAKI: I have been saying it  
4 for three years.

5 CHAIRMAN REYNOLDS: No, no, no. No, no,  
6 no. That's been put on the table now.

7 COMMISSIONER YAKI: I was the first -- Mr.  
8 Chair, remember --

9 CHAIRMAN REYNOLDS: What has been placed  
10 on the table --

11 COMMISSIONER YAKI: Remember who brought  
12 --

13 CHAIRMAN REYNOLDS: -- is the  
14 participation of commissioners on SACs. That was the  
15 issue. That is how we opened up this conversation.

16 COMMISSIONER YAKI: Mr. Chair?

17 CHAIRMAN REYNOLDS: We have gone from that  
18 to balance and --

19 VICE CHAIR THERNSTROM: And I want lunch.

20 COMMISSIONER MELENDEZ: Well, we're  
21 dealing with two issues.

22 VICE CHAIR THERNSTROM: Lunch.

23 COMMISSIONER MELENDEZ: Well, just to move  
24 on and close this, you know, the --

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1 COMMISSIONER HERIOT: We have a pending  
2 motion.

3 COMMISSIONER MELENDEZ: Well, do you want  
4 to take care of the motion first? Because I want to  
5 go to the other issue of whether or not we can, a  
6 commissioner can, sit on the SAC. Your motion right  
7 now has to do with the other part of it.

8 CHAIRMAN REYNOLDS: Okay.

9 COMMISSIONER HERIOT: The motion was my  
10 motion. The motion is that commissioners be urged to  
11 submit as many names as --

12 CHAIRMAN REYNOLDS: All in favor, please  
13 say, "Aye."

14 (Whereupon, there was a chorus of "Ayes.")

15 COMMISSIONER MELENDEZ: Objections?

16 COMMISSIONER MELENDEZ: Objection.

17 VICE CHAIR THERNSTROM: No. Wait a  
18 minute. You are objecting to commissioners being  
19 urged to submit names?

20 Is that possible?

21 COMMISSIONER GAZIANO: Yes.

22 COMMISSIONER MELENDEZ: No. The question  
23 could be even presented further as to what is the  
24 limit. You know what I mean? I mean, at some point  
25 --

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1 COMMISSIONER HERIOT: There is no limit.

2 COMMISSIONER MELENDEZ: Maybe there should  
3 be.

4 CHAIRMAN REYNOLDS: The discussion is  
5 over. We are voting now.

6 COMMISSIONER MELENDEZ: Okay.

7 COMMISSIONER HERIOT: We did vote.

8 CHAIRMAN REYNOLDS: You objected.  
9 Commissioner Yaki, I didn't catch your vote.

10 COMMISSIONER YAKI: I abstain.

11 CHAIRMAN REYNOLDS: Okay.

12 COMMISSIONER HERIOT: Did we get Pete's?  
13 Is Pete still on?

14 CHAIRMAN REYNOLDS: No.

15 Okay. One abstention, one objection, and  
16 the remaining commissioners voted in favor. It  
17 passes.

18 COMMISSIONER HERIOT: Okay. We now have  
19 clarified the --

20 VICE CHAIR THERNSTROM: And, as I  
21 understand, what we have passed is simply that we urge  
22 commissioners to submit names.

23 COMMISSIONER HERIOT: And we have also put  
24 it on the record that we are grownups and we  
25 understand that not all of our proposals will get

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1 through because of the need for balance. And we  
2 ultimately vote on a SAC package.

3 COMMISSIONER MELENDEZ: Even though it is  
4 after the fact and we have already voted, my concern  
5 was of a limitation on how many we should be able to  
6 submit. You know what I mean? I don't have a problem  
7 with being able to submit a few, but I think if you go  
8 overboard and I send 20 -- maybe there should be --

9 COMMISSIONER HERIOT: Then send 20.

10 COMMISSIONER MELENDEZ: Maybe there should  
11 be a limit.

12 COMMISSIONER HERIOT: Send 20.

13 COMMISSIONER MELENDEZ: You have already  
14 voted it.

15 COMMISSIONER HERIOT: Send 40.

16 CHAIRMAN REYNOLDS: Is this --

17 COMMISSIONER MELENDEZ: I think some  
18 people submit a lot more than what I think is --

19 COMMISSIONER HERIOT: At the end of the --

20 CHAIRMAN REYNOLDS: What is a lot more?  
21 Some people vote --

22 COMMISSIONER MELENDEZ: Ask the Staff  
23 Director how many we --

24 CHAIRMAN REYNOLDS: Well, no. No. I am  
25 trying to see. I mean, if you believe that there is a

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1 problem and, I mean, if you have examples of  
2 commissioners submitting the overwhelming majority of  
3 the recommendations and those recommendations being  
4 adopted, then I think that your argument is on firm  
5 ground. Now, if this is --

6 COMMISSIONER HERIOT: I don't think so.

7 CHAIRMAN REYNOLDS: Okay. Fine. We  
8 disagree. But if this is a theoretical problem and  
9 you can't point to any --

10 COMMISSIONER MELENDEZ: I am saying  
11 Commissioner Heriot submitted a whole bunch of names  
12 for the California SAC. Ask her how many. Ask the  
13 Staff Director. And I think it's just --

14 CHAIRMAN REYNOLDS: What is a whole bunch?

15 VICE CHAIR THERNSTROM: Wait a minute.  
16 It's up to us what we accept.

17 COMMISSIONER MELENDEZ: Well, that is what  
18 I am saying. I just think in the general discussion,  
19 there should be a limitation as to how many.

20 COMMISSIONER HERIOT: I think you should  
21 ask the Staff Director how many names I submitted for  
22 the California SAC.

23 CHAIRMAN REYNOLDS: Okay. Do we have an  
24 answer? Do we have an answer?

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1 COMMISSIONER HERIOT: Are we talking about  
2 the SAC that we haven't chartered yet, upcoming  
3 California SAC?

4 CHAIRMAN REYNOLDS: I don't know. Let's  
5 ask --

6 STAFF DIRECTOR DANNENFELSER: It is my  
7 understanding that we have not received any  
8 recommendations from Commissioner Heriot.

9 COMMISSIONER HERIOT: I can testify that  
10 that is correct. I have not made any recommendations  
11 for the California SAC.

12 COMMISSIONER GAZIANO: I hope you do,  
13 Commissioner Heriot.

14 COMMISSIONER HERIOT: I will now. I will  
15 come up with some now.

16 COMMISSIONER MELENDEZ: That's fine with  
17 us. Commissioners --

18 CHAIRMAN REYNOLDS: Why are we talking  
19 about this, though? I mean --

20 COMMISSIONER MELENDEZ: I just think that  
21 --

22 CHAIRMAN REYNOLDS: -- I take her at her  
23 word. She says that she has not submitted any names.

24 COMMISSIONER HERIOT: It wasn't my word.  
25 It was Marty's word.

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1 COMMISSIONER GAZIANO: But I hope she  
2 submits dozens. So to me, it's irrelevant whether  
3 she's done it yet or is going to do so in the future.

4 COMMISSIONER HERIOT: It is my job to  
5 submit recommendations, but, as a matter of fact, I  
6 haven't done it. I apologize for having failed to  
7 make more suggestions for the California SAC.

8 COMMISSIONER MELENDEZ: I think we need a  
9 little more information. Maybe you can provide that.

10 CHAIRMAN REYNOLDS: I think you need to  
11 get more information before putting this on the table.

12 COMMISSIONER MELENDEZ: You haven't given  
13 me the information. Every time I ask for information,  
14 you stand on "That is privileged information." I have  
15 a whole --

16 COMMISSIONER HERIOT: I just begged you to  
17 ask him what --

18 CHAIRMAN REYNOLDS: You said that she  
19 submitted a bunch of names. Where does that come  
20 from? Either your information was faulty or you made  
21 it up.

22 STAFF DIRECTOR DANNENFELSER: Should I  
23 speak to this topic?

24 VICE CHAIR THERNSTROM: Yes, speak to it.

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1 STAFF DIRECTOR DANNENFELSER: Not if we  
2 don't have to.

3 COMMISSIONER HERIOT: Are we talking about  
4 the previous SAC? I was not a member of the  
5 Commission when the previous SAC was put together.

6 CHAIRMAN REYNOLDS: Does that make a  
7 difference?

8 COMMISSIONER YAKI: Move to adjourn.

9 CHAIRMAN REYNOLDS: I didn't start this.  
10 Oh, no. No. If we can keep a quorum?

11 COMMISSIONER HERIOT: I am here for the  
12 long haul.

13 VICE CHAIR THERNSTROM: I am not.

14 (Laughter.)

15 CHAIRMAN REYNOLDS: Someone go get Abby a  
16 sandwich.

17 COMMISSIONER GAZIANO: I need a drink.

18 CHAIRMAN REYNOLDS: I needed one earlier.

19 COMMISSIONER TAYLOR: That was at 8:00 in  
20 the morning.

21 (Laughter.)

22 CHAIRMAN REYNOLDS: These are trying  
23 times.

24 COMMISSIONER MELENDEZ: I don't think we  
25 have the information right now. I don't think it's

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1 divulged to us fully. I think we can find that out,  
2 but we have heard that.

3 COMMISSIONER HERIOT: Can I just note --

4 COMMISSIONER GAZIANO: I will state on the  
5 record that there is nothing wrong with her submitting  
6 names.

7 COMMISSIONER MELENDEZ: That's fine. Then  
8 we --

9 COMMISSIONER HERIOT: Well, no. It sounds  
10 like we're even saying that an ordinary citizen who is  
11 not a commissioner cannot submit names because,  
12 remember, when the SAC was chartered, the one that  
13 exists now, I was not a member of the Commission. So  
14 what is all this talk about conflict of interest?

15 STAFF DIRECTOR DANNENFELSER: With respect  
16 to people who get appointed to the SACs, we send out a  
17 list. You know, we explain the outreach. And then in  
18 terms of each member, we tell the commissioners where  
19 that recommendation came from.

20 And there have been a number of cases  
21 where Commissioner Heriot, Commissioner Thernstrom,  
22 and some others have recommended people and we put  
23 that in there. So I don't know if Commissioner Heriot  
24 has recommended -- I don't believe she has recommended

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1 more than two that have gotten appointed in any  
2 particular SAC.

3 And I can recall a situation where she did  
4 recommend two people in one state and we accepted one  
5 of them because they did have similar backgrounds. So  
6 we were looking for some more diversity. So we only  
7 accepted one of them.

8 But we can have that. Again, we can go  
9 back and look over the forms that we sent to the  
10 commissioners, but it could be in that case that she  
11 submitted some additional names that didn't get there.  
12 But certainly in terms of the names that are appointed  
13 --

14 COMMISSIONER GAZIANO: This level of  
15 detail --

16 STAFF DIRECTOR DANNENFELSER: -- whoever  
17 recommended them we --

18 COMMISSIONER GAZIANO: This level of  
19 detail is inappropriate to me.

20 STAFF DIRECTOR DANNENFELSER: -- provide  
21 them to the commissioners.

22 COMMISSIONER HERIOT: The thing is,  
23 though, you can't say a commissioner should recommend  
24 no more than one because when a recommendation is

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1 being made, I don't know whether the person will  
2 accept a position.

3 So the whole thing is just completely  
4 silly. We have such a difficult time chartering these  
5 SACs. The notion that we should be decreasing the  
6 number of recommendations that commissioners or anyone  
7 else makes seems utterly inappropriate and a general  
8 waste of time of this Commission.

9 Moreover, if we're talking about the  
10 previous California SAC, again, I was not a member of  
11 the Commission at that time. I don't think that we're  
12 sending out letters to congressmen saying, "Please  
13 recommend no more than one person for a commission  
14 because we don't want more than one recommendation  
15 from you. We want as many recommendations as we can  
16 get, not just from commissioners but from everyone."

17 We are not suffering from an excessive  
18 number of persons who want to be on SACs. Remember,  
19 this is an unpaid position. And we are very lucky to  
20 get the people that we get.

21 CHAIRMAN REYNOLDS: Commissioner Melendez,  
22 unless you have something else, I will second  
23 Commissioner Yaki's motion to adjourn.

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1                   COMMISSIONER MELENDEZ: Well, I thought we  
2 had the other issue and whether or not we should be  
3 able to sit as commissioners on state advisory --

4                   COMMISSIONER HERIOT: We have now got a  
5 pending motion to adjourn.

6                   CHAIRMAN REYNOLDS: After listening, I  
7 withdraw my motion.

8                   COMMISSIONER GAZIANO: Are you making that  
9 motion? Is that your motion?

10                  CHAIRMAN REYNOLDS: Actually, I didn't  
11 make my motion. So --

12                  COMMISSIONER HERIOT: It was never made.

13                  COMMISSIONER MELENDEZ: What was your  
14 motion?

15                  CHAIRMAN REYNOLDS: It would have been,  
16 well, the same motion that I sent to you where  
17 commissioners who were sitting on SACs would not be  
18 allowed to vote to recharter that particular SAC.

19                  COMMISSIONER YAKI: I will withdraw my  
20 motion to adjourn to put that motion on the table if  
21 that's what --

22                  COMMISSIONER GAZIANO: Which motion?  
23 Commissioner Melendez talked about a motion. I don't  
24 support either, but I want to know which motion we're  
25 --

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1                   COMMISSIONER MELENDEZ:       There weren't  
2 actually motions that were actually agendized.  What  
3 it was was discussion.  And motions came out of the  
4 discussion.

5                   CHAIRMAN REYNOLDS:  Gentlemen.  Gentlemen,  
6 I've got to say the way this issue has unfolded -- I  
7 try to work with you.  I believe that you have raised  
8 a legitimate issue.

9                   And I am going to make the motion.  I am  
10 going to support the motion because I think that the  
11 arguments associated with that particular issue have  
12 some weight.  But you lose credibility when you throw  
13 nonsense up.  I mean, to say that she submitted a  
14 bunch of names and it turns out that that is not the  
15 case, that is a problem for me.

16                   There was the suggestion that she had done  
17 something that was inappropriate.  And then it turns  
18 out that so far, there is no evidence to support the  
19 --

20                   COMMISSIONER GAZIANO:  It also turns out  
21 that if the allegation were true, that it was  
22 beneficial and it was praiseworthy.  That is what we  
23 have established here today by our vote.

24                   CHAIRMAN REYNOLDS:  Let me read the  
25 motion, then, so we can get out of here.  I move that

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1 the Commission adopt a policy whereby commissioners  
2 who serve as members of a state advisory committee  
3 would be precluded from voting on rechartering that  
4 committee.

5 Under this motion, a commissioner serving  
6 on a state advisory committee would be precluded from  
7 participating in both the discussion of the recharter  
8 of that committee and the vote on the recharter of  
9 that committee. The Staff Director shall prepare an  
10 administrative instruction to implement this policy.

11 Is there a second?

12 VICE CHAIR THERNSTROM: Second.

13 CHAIRMAN REYNOLDS: Commissioner Heriot?

14 COMMISSIONER HERIOT: Again I don't think  
15 you have dealt with the problem that you have  
16 identified.

17 CHAIRMAN REYNOLDS: Which? There have  
18 been so many.

19 COMMISSIONER HERIOT: You were talking  
20 about the possibility of there being some undue  
21 influence, people are going to --

22 CHAIRMAN REYNOLDS: Is there a --

23 COMMISSIONER HERIOT: Hold on. Hold on.  
24 Let me finish.

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1 CHAIRMAN REYNOLDS: -- hole in the logic?  
2 Yes, there is. I can see that.

3 COMMISSIONER HERIOT: It's not a hole.  
4 It's like there's no logic there. And if you are  
5 trying to deal with the possibility that SAC members  
6 will be fearful that commissioners will not vote to  
7 renew them if they don't do what the commissioner  
8 wants, that is a problem from allowing commissioners  
9 to attend SAC meetings. That is not a problem from  
10 being a member of the SAC. So this does not take care  
11 of that problem.

12 There have been allegations of bullying of  
13 SAC members, but they have not been on the SACs that  
14 commissioners have been members of. There have been  
15 allegations of that sort. And if we want to deal with  
16 that, then we have to deal with that.

17 But this doesn't deal with that. This  
18 just keeps us from lunch is what it does.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
20 then Commissioner Yaki and --

21 VICE CHAIR THERNSTROM: Is there a motion  
22 on the table to adjourn?

23 CHAIRMAN REYNOLDS: No. It has been  
24 withdrawn.

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1 COMMISSIONER HERIOT: I move to substitute  
2 for the current motion a motion to adjourn.

3 VICE CHAIR THERNSTROM: I second that.

4 CHAIRMAN REYNOLDS: All in favor?

5 COMMISSIONER MELENDEZ: We have a motion  
6 on the floor that's --

7 COMMISSIONER HERIOT: But we have made a  
8 motion to substitute.

9 COMMISSIONER MELENDEZ: You need to take  
10 action on that motion already on the floor.

11 COMMISSIONER HERIOT: The motion to  
12 substitute does that.

13 CHAIRMAN REYNOLDS: There has been a  
14 second. All in favor, please say, "Aye."

15 (Whereupon, there was a chorus of "Ayes.")

16 COMMISSIONER HERIOT: Now we have got to  
17 vote on the motion to adjourn. We have only  
18 substituted. We have got to do it right. Now. Call  
19 the question on the motion to adjourn.

20 COMMISSIONER YAKI: There was only a voice  
21 vote on that, and there was not a call for the yeas  
22 and nays. All I heard were "Ayes," and there was no  
23 division of the "Ayes," of the "Yeas" and "Nays."

24 VICE CHAIR THERNSTROM: Let's do a count.

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1 COMMISSIONER YAKI: You don't have to do  
2 that. Just "All in favor, say, 'Aye,'" "All in favor,  
3 say, 'Object.'" That's all.

4 COMMISSIONER HERIOT: Just call for the  
5 nays.

6 CHAIRMAN REYNOLDS: Okay. Who objects?

7 COMMISSIONER YAKI: I do.

8 CHAIRMAN REYNOLDS: And Commissioner  
9 Melendez also objects. Any abstentions?

10 (No response.)

11 COMMISSIONER HERIOT: Okay. Now we vote  
12 on the motion to adjourn.

13 CHAIRMAN REYNOLDS: Okay. I move to  
14 adjourn. Is there a second?

15 COMMISSIONER HERIOT: No, no. That motion  
16 is already there. It was substituted out. We just  
17 have to vote on it.

18 CHAIRMAN REYNOLDS: Okay. All in favor,  
19 please say, "Aye."

20 (Whereupon, there was a chorus of "Ayes.")

21 CHAIRMAN REYNOLDS: Any objections?

22 COMMISSIONER YAKI: Object.

23 COMMISSIONER MELENDEZ: Yes.

24 CHAIRMAN REYNOLDS: Okay. Commissioner  
25 Melendez and Commissioner Yaki object. The remaining

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1 commissioners voted in favor. Let's go. Let's leave.  
2 Let's leave quickly.

3 (Whereupon, the foregoing matter was  
4 concluded at 1:50 p.m.)

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