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
COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECKEL
KIMBERLY SCHULD
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Adjourn
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.)
COMMISSIONER YAKI: That is an image I can now live without.

I. APPROVAL OF AGENDA

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

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

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

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

CHAIRMAN REYNOLDS: Any in opposition?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

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

COMMISSIONER MELENDEZ: What?
CHAIRMAN REYNOLDS: Let me back up. How did you vote?

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

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez?

COMMISSIONER MELENDEZ: I will vote no also.

CHAIRMAN REYNOLDS: Okay. I'm curious.

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

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

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

VICE CHAIR THERNSTROM: I was going to say --

COMMISSIONER HERIOT: I thought this was for their benefit.

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

CHAIRMAN REYNOLDS: Well, that was the idea.
COMMISSIONER HERIOT: Okay. Then I vote no.

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

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

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

COMMISSIONER GAZIANO: Discussion sometimes leads to --

COMMISSIONER HERIOT: The motion speaks for itself.

COMMISSIONER YAKI: The motion does not speak for itself.

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

COMMISSIONER YAKI: Point of inquiry.

Point of information.

CHAIRMAN REYNOLDS: Yes, Commissioner Yaki?
COMMISSIONER YAKI: Is this a discussion item or an action item?

VICE CHAIR THERNSTROM: We don't know yet.

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

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

COMMISSIONER TAYLOR: I vote no.

CHAIRMAN REYNOLDS: Okay. Todd, where are you?

COMMISSIONER GAZIANO: I am confused.

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

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

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

COMMISSIONER HERIOT: I vote no, then.

COMMISSIONER MELENDEZ: That is my reason for --

CHAIRMAN REYNOLDS: Life should be simpler.

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

CHAIRMAN REYNOLDS: Okay.
COMMISSIONER GAZIANO: I vote yes for discussion.

CHAIRMAN REYNOLDS: Yes for discussion?

Commissioner Taylor?

COMMISSIONER TAYLOR: No.

CHAIRMAN REYNOLDS: Okay. Vice Chair Ternstrom?

VICE CHAIR TERNSTROM: No.

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

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

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

(Laughter.)

II. APPROVAL OF MINUTES OF DECEMBER 12, 2008 MEETING

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

VICE CHAIR TERNSTROM: Yes. So moved.

CHAIRMAN REYNOLDS: Okay. A second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?
(No response.)

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

Okay. With that amendment, all in favor?

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

CHAIRMAN REYNOLDS: Okay. Marty?

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

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

COMMISSIONER YAKI: I left after the briefing.

CHAIRMAN REYNOLDS: Oh. Okay.
COMMISSIONER YAKI: Actually, my presence isn't reflected other than I would like the fact that my presence was here for the briefing.

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

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

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

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

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

STAFF DIRECTOR DANNENFELSER: And we will note that Commissioner Yaki attended the briefing. It will note whoever. It will note all of the commissioners who attended the briefing.
COMMISSIONER YAKI: I also would like to amend the minutes. I think that the minutes should also reflect that before I left, I objected to the inclusion of the matter brought in at the last minute regarding the deputy staff director position that we had not been notified about it until basically as that meeting was about to begin.

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

COMMISSIONER YAKI: I most certainly did object.

COMMISSIONER GAZIANO: Did you object on the record?

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

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

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

CHAIRMAN REYNOLDS: Okay. Are we going to start up? Maha, I think you are going to lose the bet. I could be wrong. In any event, we are going to review the transcript. But with the other undisputed
amendments, I suggest that we vote. All in favor, please say, "Aye."

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

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: I oppose.

COMMISSIONER GAZIANO: No.

CHAIRMAN REYNOLDS: Any abstentions?

COMMISSIONER HERIOT: I abstain.

CHAIRMAN REYNOLDS: Todd, how did you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN REYNOLDS: Okay.

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

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

VICE CHAIR THERNSTROM: Yes. So why --

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

CHAIRMAN REYNOLDS: Okay. I would like to amend the motion. Let's postpone voting on the December 12th meeting until after we have reviewed the
transcript, made the suggested changes, circulated the
document in the hopes that we can reach a consensus.
That's my motion. May I have a second?

COMMISSIONER MELENDEZ: Second.

VICE CHAIR THERNSTROM: Second it.

CHAIRMAN REYNOLDS: Do we need to discuss
the motion?

VICE CHAIR THERNSTROM: No.

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

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

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: I will abstain.

CHAIRMAN REYNOLDS: Okay. All right.

Commissioner Yaki abstained. The remaining
commissioners voted to approve the motion. The motion
passes. Okay.

III. ANNOUNCEMENTS

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

In the not too distant past, we had a
racial caste system in this country. And in what is,
comparably speaking, a short period of time, we have
gone from an oppressive society, where the positions of blacks in society were decided for them to where we have our first black President. This is a fabulous cause to celebrate.

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

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

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

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

At this point, Mr. Staff Director, please discuss your report.
STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

IV. STAFF DIRECTORS’S REPORT

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

CHAIRMAN REYNOLDS: Welcome aboard.

STAFF DIRECTOR DANNENFELSER: On the issue of briefing reports, the briefing report on the No Child Left Behind Act and supplemental education services will likely be sent to commissioners for review today. Comments will be requested by February 22nd. This review period is a week longer than usual to accommodate participation in the upcoming inaugural festivities.
We are also anticipating a modification today for the commissioners' statement that was submitted for the census briefing report. The report will then be prepared for submission to GPO. Editorial and legal sufficiency reviews have been completed for the covert wiretapping and illegal immigration briefing reports. Appropriate changes are being incorporated so that those two reports can soon be sent to commissioners.

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

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

A draft of the Blaine amendments briefing report is being finalized by OGC and will soon be sent to the Staff Director. The briefing report on encouraging minority students to pursue careers in science, engineering, technology, and mathematics, the STEM briefing, is being prepared by the Attorney
Adviser in the Office of the Staff Director. A draft will likely be submitted to the Staff Director by next week.

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

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

The staff members continue to engage in background research and are developing an annotated outline for a draft report, which will be available within about the next ten days and be sent to commissioners for their review.
OGC met with the four commissioner assistants this week to provide a status report on the 2009 statutory report and to receive recommendations from them.

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

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

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: I have a question.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Mr. Staff Director, could we get -- maybe we've got it and I'm just missing seeing it. I would like a list, actual list, with a timetable of these briefing reports. I am obviously very eager to get these things out the door. Too many that have been sitting around for too long. So just I would like something in writing, what
our expectations are as to when we're getting what done.

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

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

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

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

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

CHAIRMAN REYNOLDS: Okay. I am not suggesting that we not continue with the conversation.
I'm just pointing out what I see to be an inconsistency.

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

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

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

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

STAFF DIRECTOR DANNENFELSER: An SES panel met yesterday and reported seven finalists, if you will, the best qualified candidates. We had 95 applications initially, of which 24 were considered qualified by our HR Department with respect to people who submitted complete applications and who were at least minimally qualified for the position.
The QRB, the Qualifications Review Board, with respect to OPM is something that would be necessary if the person selected is someone who is not currently in the career SES. So that --

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

STAFF DIRECTOR DANNENFELSER: Seven that they --

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

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

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

STAFF DIRECTOR DANNENFELSER: That is my understanding, yes.

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

STAFF DIRECTOR DANNENFELSER: To schedule interviews with the seven candidates, which I would anticipate beginning those interviews next week.
COMMISSIONER YAKI: My next question has to do with just within those seven, are there issues of budgetary impact in terms of some would come in at one level, some would come in at another level depending on who has picked?

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

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

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

COMMISSIONER YAKI: Do we know historically if that was the range for the previous deputy staff director? It has been obviously adjusted for inflation or step increases, what have you, but
was that through a GS or SES range where the previous
deputy staff director's salary was paid that or was it
paid significantly lower?

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

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

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

STAFF DIRECTOR DANNENFELSER: Well, for purposes of budgeting, I think we anticipate the
possibility of paying the maximum amount. And then if
we wind up paying less than that, things related to
salary history come into play.
Several years ago, there used to be several different tiers within the SES, but those were abolished. And now they have just one wide range. And salary history could be a factor in determining what that salary would be for that person.

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

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

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

CHAIRMAN REYNOLDS: Well, at this point, I just want to jump in just to point out the obvious that the ultimate impact to our budget will not be known until we get a little further down the process.
Some of these questions are premature, and it requires
the Staff Director to speculate.

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

    CHAIRMAN REYNOLDS: Well, again --

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

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

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

    CHAIRMAN REYNOLDS: Kind sir --

    COMMISSIONER YAKI: -- to the point where

    CHAIRMAN REYNOLDS: Kind sir, I did not
interrupt you during your questioning, at least for
the most part. In any event, let me finish the thought. If you are talking about $45,000, that is not going to cause financial stress at this agency. And, quite frankly, we need some additional help at the agency in terms of management. I think that it is money well-spent.

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

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

CHAIRMAN REYNOLDS: Commissioner? Commissioner?

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

CHAIRMAN REYNOLDS: Commissioner Yaki, you have sucked up quite a bit of time on this issue.
COMMISSIONER YAKI: It is an important discussion because --

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

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

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

Yes, you know, we realized we had to spend some of that to get our house in order. Now that we have gotten our house in order, for an agency that has stated and continues to state in its budget submissions that we are short personnel, that we need personnel and various others, the fact that we would create a position that essentially eats the equivalent
sum total of three potential FTEs I think is completely irresponsible and why I objected to the fact that it was brought up at the last minute at the December meeting and why it is perfectly appropriate under the Staff Director's report to continue talking about this in a way because I don't think there is any particular --

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

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

COMMISSIONER YAKI: The problem, Mr. Chair -- and I understand the logic of what you are saying, but let's take that logic to its conclusion, which is that the Staff Director is someone I believe who works for the agency, someone who works for us. We ratify
his or her appointment. If I recall, this was not a
discussion brought up in the initial 2009 budget
submission that we had for the agency and, in fact,
was, as I say, sprung up on us at the December
meeting. So that is one of my concerns.

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

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

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

COMMISSIONER YAKI: Yes.

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

COMMISSIONER GAZIANO: Mr. Chairman?

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

COMMISSIONER MELENDEZ: Yes. I guess I
still have a concern on the timing of the whole
proposed hiring process of a deputy director. My main
concern is -- let me ask this question because it's
kind of -- you know, as you know, the issue on making
these changes, as I went up, Director Marcus was with
us.

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

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

The other question is this. You know,
because of the timing -- and I know that it's almost
as if we are on a fast track to do this. And, as I
mentioned, with the new President coming on board,
it's just not a good timing to do this. I know that
we could have -- advertising a position, we did that
really hastily. I think we did two weeks. We could
have basically done three, as described in the AI 236.
Let me ask this question. Sometimes I always get the impression that somebody is lined up for the job, -- you know what I mean? -- somebody's friend. And I ma not saying that is true, but let me ask this question. To your knowledge, Mr. Staff Director, did any current agency employee discuss the hiring of a deputy staff director with anyone not a current Commission employee prior to the job posting being made public? If so, who would that be? If you can just answer it for the record?

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

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

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

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

COMMISSIONER GAZIANO: No. I just want a clarification of the --
COMMISSIONER MELENDEZ: I asking the Staff Director. I'm not asking the commissioners to answer for the Staff Director. He's the Staff Director.

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

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

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

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

If you believe that we have violated some type of rule, I mean, you have done so in the past. You have communicated with me, indicating when you felt that there was something inappropriate. And we had conversations about it.
So in this particular instance, why do you believe that someone has been preselected?

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

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

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

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

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

COMMISSIONER MELENDEZ: Okay. That is all I asked.

COMMISSIONER HERIOT: Was that the question?

CHAIRMAN REYNOLDS: Okay. My --
COMMISSIONER HERIOT: Wait, wait, wait. I am not sure what the question was. I thought it was contacting anybody.

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

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

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

STAFF DIRECTOR DANNENFELSER: As Commissioner Gaziano mentioned, in a December 12th meeting, we had a very public discussion about the
likelihood of a deputy staff director position being announced.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Gaziano?

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

I think that several of us would also appreciate the same kind of list that Vice Chair Thernstrom asked for on the briefing reports. I assume you would probably send it to all of us as well, but I am just suggesting that at least I would like that and others.
With regard to the Web site, I continue to be pleased with the kind of reporting. One thing that I would probably like in the future that we have done with other sorts of written requests, if it is possible to list the three or five -- I don't know if it is, but I assume it is -- most visited Web pages or if you have download kind of capabilities and a number. If there are 40,579 visits, you know, whether it's this report, that report, or my bio, I think that might be helpful.

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

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

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

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

STAFF DIRECTOR DANNENFELSER: The group that met yesterday was three SES people who reviewed
the applications. And then the QRB is something that is organized by OPM in the event that the person who is ultimately selected for the position is not a member of the career SES. Anybody who is not a member of the career SES has to go before this Qualifications Review Board and have their credentials analyzed and to make the case to that board as to why they are a suitable candidate to join the SES for that particular position.

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

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

So I would hope that we would have a meeting, whether we are going to have any telephonic meeting -- we have a meeting on February 20, March 20, where if you were able to make a recommendation to us before then, we would have the ability under the AI to
ratify that. And the person could begin sooner than the expiration of the 30 days.

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

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

COMMISSIONER GAZIANO: Okay. That's fine.

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

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

What do you think the contingency would be for you completing the process or the timing for completing the process under those different contingencies and making a recommendation to us?
And I am not going to try to hold you to this, but I certainly think it is worthy of filling sooner, rather than later.

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

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

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

COMMISSIONER GAZIANO: Okay. Well, let me just clarify my remarks earlier. After the December 12th meeting, I don't remember that I certainly asked anyone to even stand ready to apply for the position,
but I certainly mentioned that we might be listing the position at some point in the future.

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

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

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

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

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

STAFF DIRECTOR DANNENFELSER: Yes, Mr. Chairman.

CHAIRMAN REYNOLDS: Are there any additional questions or concerns?

STAFF DIRECTOR DANNENFELSER: Yes. Commissioner Melendez had some.
COMMISSIONER MELENDEZ: I have a question about just in general, I had read the complaints, that section that has complaints, and you list the number of how many complaints.

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

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

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

STAFF DIRECTOR DANNENFELSER: Yes.

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

What I sent on a number of questions was actually an accumulation of questions I asked over the
course of a year. So when those 24 supposed interrogatories were referred to in a memo I received from General Counsel, just for the record, it was actually my question asking for a response that was accumulated, you know, that number 24.

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

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

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

My only point would be that if, for some reason, it's too confidential, you feel that, "Just answer me back so that at least I get a response and say that it's confidential and we can't answer it for a citing." One of the AIs, I believe -- was it 2-9 or something? Is that section 2-9?
STAFF DIRECTOR DANNENFELSER: Well, there are some things that are not necessarily that you absolutely can't get, but it's a matter of for the Commission to decide whether that's something they want to release. And if so, do they want to release it in an open setting or in perhaps an executive session?

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

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

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

STAFF DIRECTOR DANNENFELSER: No.

COMMISSIONER MELENDEZ: Okay. Yes. I didn't know where we stood with that. What public service announcements or advertising campaigns is the
Commission now doing?  And how much money is planned for that in 2009?

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

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

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

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

So we're wanting to go back to them to try to get clarification on some of those numbers when they factor in at least the really big ticket items that need to be considered.
COMMISSIONER MELENDEZ: Okay. That's all I have, Mr. Chairman.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

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

STAFF DIRECTOR DANNENFELSER: I can answer it. And the General Counsel if he believes I am stating it inaccurately or would like to expand upon it, I think we would invite him to do so. The Commission, both with the General Counsel position and with the deputy staff director position, should be given an opportunity to act on the Staff Director's decision to select the particular person for that position. If the Commission does not act within 30 days, then the Staff Director can proceed to fill the position, to go through the administrative processes to fill the position.
It is my view that if the Commission does act, the Commission can act to veto it, which would stop --

COMMISSIONER GAZIANO: But if we affirmatively ratify --

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

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

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

Thank you.

STAFF DIRECTOR DANNENFELSER: Thank you.

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

Mr. Staff Director?

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

- FUTURE BRIEFING TOPICS

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

We had a good discussion at the September meeting and subsequently approved the concept paper for the December briefing. This list may serve as a reference point for discussion at this business meeting as commissioners consider topics for the third quarter and later in the fiscal year.
I recommend that the Commission have a briefing in March that will help inform our preparation of the 2009 statutory report. We can also consider a new topic for a briefing to be held in April, May, or June and that the consensus can be reached on the third quarter briefing topic during this meeting. The Commission could then be in a position to consider a concept paper on that topic in February.

CHAIRMAN REYNOLDS: Okay. Questions?

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

COMMISSIONER HERIOT: Hearing or briefing?

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

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

COMMISSIONER MELENDEZ: Discussion. I know that one of the issues was to narrow down the report further. Are you saying that we would discuss narrowing it down at the February meeting?
COMMISSIONER GAZIANO: I hope that we narrow it down as the next item on our agenda today and that based on that discussion, it will help one or more of us draft a concept paper for the briefing.

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

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

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

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

COMMISSIONER KIRSANOW: Not quite.

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

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?
VICE CHAIR THERNSTROM: I am confused. Don't we already have a concept paper for the statutory report?

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

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

STAFF DIRECTOR DANNENFELSER: No.

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

CHAIRMAN REYNOLDS: Right. Okay. So do you want to have that conversation now?
COMMISSIONER GAZIANO: Should we vote first on whether that should be our March --

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

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

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

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

CHAIRMAN REYNOLDS: Sure.

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

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

We have been meeting with a variety of federal agencies that he outlined. And, frankly, we are getting a great deal of cooperation from those agencies. The only entity that we are having a little bit of difficulty with at this stage, although it appears that they are beginning to realize we are not
going away, is Fannie Mae. Freddie Mac we already met with, but Fannie Mae has due to the press of business not had an opportunity to meet with us yet. That is being corrected.

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

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

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

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

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

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

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

MR. BLACKWOOD: I would say that most of
the data is publicly available. That's one of the
things that we found out in this process. This is not
a question of we have too little. It is going to be a
question of synthesizing what we have. The
interrogatories are going to be outstanding, but we
don't need the interrogatories. They are not going to
delay us is my point of view.

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

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

   I do think it has to be narrowed for us to
hit the time constraints, to hit our deadlines, but to
still address the topics you have all outlined for us,
I need to spend more time.
The staff is very conscious of the fact that at some point we have to pinch it. It is too sprawling as it is. But what I anticipate is, one, giving you the outline; two, perhaps on a separate memorandum, some form, saying, we think this might need to be a topic. You know, this is going to be an issue, especially with regard to time constraints, and maybe give some indication where the process itself is going.

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

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

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

CHAIRMAN REYNOLDS: Okay. Commissioner Gaziano?
COMMISSIONER GAZIANO: Thank you for the update. And we can discuss about commissioner input once you have the narrowing to us, but I wanted to ask Dr. Lerner a few more questions.

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

DR. LERNER: Yes.

COMMISSIONER GAZIANO: What is your thought on that?

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

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

DR. LERNER: It's original as --
COMMISSIONER GAZIANO: -- or is analysis at least.

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

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

COMMISSIONER GAZIANO: So the small additions are willing to --
COMMISSIONER HERIOT: This is not original research, then. Is that --

DR. LERNER: That is right.

COMMISSIONER HERIOT: It is not original research?

DR. LERNER: That is correct.

COMMISSIONER HERIOT: Okay.

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

DR. LERNER: Yes.

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

DR. LERNER: Oh, yes.

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

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

It uses a statistical test that is not particularly well-known to most people. It is a
statistical test that is not particularly powerful, although it is commonly used in the industry; that is, in the credit-scoring industry.

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

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

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

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

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

COMMISSIONER GAZIANO: A study that is not accepted as statistically significant to serious scholars is a different kind of study. Whether it's
the same result or not, it is statistically significant and done in a very robust and valid way.

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

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

DR. LERNER: Well, there are a variety of data sets that we have looked at for descriptive purposes. Some of the background material that we hope to include is in things like trends in minority home ownership over time, trends in minority credit, obtaining of mortgages and credit, especially when we have some information perhaps on subprime mortgages. We're looking at more general information on things like interest rates and things like that. We're also looking at information on things like default and foreclosures for different minority groups over time where they exist.
We have actually got sources for all of those things. Many of them, in fact, they are all, publicly available in some form or another. It is a matter of bringing them in. We are, in fact, doing some of that now.

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

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

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

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

DR. LERNER: May I respond?
COMMISSIONER GAZIANO: Sure.

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

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

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

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

COMMISSIONER GAZIANO: That's a good qualification that maybe "predatory" is more
pejorative than meaningful but whether we still can
form a hypothesis whether there is racial animus in
the lending that caused a certain type of lending or
certain type of financial loss, foreclosures, and
such, correct?

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

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

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

You may not know today what the best
witnesses are, but we want to be able to look at the
narrowing, hopefully approve that, and then say, hey,
if that is what we are examining, we want the head of
the Fannie Mae or Fed or --
MR. BLACKWOOD: I can tell you we have talked generally in terms. I mean, I would see, although the topic would narrow, I could actually see the panels being fairly large because we have a large number of government entities that would testify on their own panel.

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

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

COMMISSIONER GAZIANO: But if our focus is going to be some small subset, then I think that -- I
will just speak for myself. I would prefer to have
more time on just the officials that might illuminate
our oral inquiry, rather than all of the --

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

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

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

But obviously we don't decide that. And
we'll continue to follow the project outline until you
tell us we can narrow it. So we would like to get
that to you as soon as we can because, yes, it will save us time, too, going forward and the same thing with the witness-proposed project outline, not outline but the types of witnesses we would anticipate having.

CHAIRMAN REYNOLDS: Commissioner Taylor?

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

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

COMMISSIONER TAYLOR: Okay.

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

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

COMMISSIONER TAYLOR: I guess then my only recommendation would be, Mr. Chair, that when the
staff receives the comments, they should indicate whether they feel comfortable proceeding because they feel like they can work through the comments or if they need a teleconference to make a decision.

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

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

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

CHAIRMAN REYNOLDS: Dr. Lerner?

DR. LERNER: Mr. Chairman, may I make a comment? Only that from the point of view of the staff perspective in planning the briefing, the sooner the better that we have a decision because it is so easy to line up speakers. Now, it's true insofar as we have federal agency folks who are in D.C. It's not necessarily a problem, but it's also possible you might want to avoid a divergent set of views.
For example, the second hypothesis that Commissioner Gaziano refers to, this business about relaxed lending standards, that has been widely debated among economists.

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

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

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

CHAIRMAN REYNOLDS: Sure. I'm speaking for myself. Commissioner Melendez?
COMMISSIONER MELENDEZ: That's fine.

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

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

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

Part A as distributed in draft form to commissioners on January 8th, 2009 contains the following: a brief overview and summary of the issue and why the Commission chose to conduct this briefing; a summery of the proceedings, consisting of synopses of the panelists' oral statements during the briefing and a synopsis of the question and answer session and copies of the panelists' written statements.
Under this motion, if a majority of the Commission votes to adopt part A of the briefing report, the Commission will then open discussion on part B. If part A fails to obtain a majority of votes, discussion of part B becomes moot. This bifurcated vote is taken pursuant to the policy adopted by the commissioners at the April 13th, 2007 business meeting.

Is there a second?

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

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

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

COMMISSIONER HERIOT: Well, I would move to amend to include because I won't vote for it unless there is also the right to respond. So I would move to amend your motion to include and then a two-week
period during which commissioners can respond to each
other's statements.

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

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

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

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

CHAIRMAN REYNOLDS: Discuss it.

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

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

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

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Why don't you just, a friendly amendment to your motion, back out the part about the schedule for responses?
CHAIRMAN REYNOLDS: And that's the only change?

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

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

COMMISSIONER HERIOT: Yes, move to adopt part A.

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

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

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

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

CHAIRMAN REYNOLDS: Yes.

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

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

CHAIRMAN REYNOLDS: Okay. Are we talking about typos?
COMMISSIONER HERIOT: Yes, some are typos.

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

COMMISSIONER HERIOT: Let me just run through the list.

CHAIRMAN REYNOLDS: Okay.

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

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

(No response.)

CHAIRMAN REYNOLDS: Next?

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

CHAIRMAN REYNOLDS: Which page are you on?
COMMISSIONER HERIOT: Page 11. You know, if you've got somebody who is not knowledgeable about election law, they don't know what these sections mean. We should draw up a footnote that just makes it clear which sections we are talking about and what is in those sections.

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

COMMISSIONER HERIOT: That's all right.

Page 13.

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

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

STAFF DIRECTOR DANNENFELSER: Which sections are you referring to?

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

STAFF DIRECTOR DANNENFELSER: Okay.

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

Page 41, middle of the page, should say, "African American," not "Africa American."
Page 45, line 5, similar, "HAVA litigation was has." We don't need both of those words there. That's the end of my typo list.

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

COMMISSIONER HERIOT: The footnotes.

CHAIRMAN REYNOLDS: Okay. So are we done?

Additional questions, comments?

(No response.)

CHAIRMAN REYNOLDS: Are we ready to vote?

Okay. All in favor of part A, please say, "Aye."

COMMISSIONER HERIOT: With those changes.

CHAIRMAN REYNOLDS: Yes, as amended by Gail.

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

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes. Okay. This was a bifurcated vote. Next up we will have a discussion of the findings and recommendations. Under this motion, the Commission will vote individually on each finding and recommendation. Those findings and recommendations receiving a
majority vote will be included in the report with a vote tally and a sentence explaining each opposition vote for that item.

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

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

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

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: And I can explain that.
CHAIRMAN REYNOLDS: Okay. So we have a second. Discussion?

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

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

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

COMMISSIONER HERIOT: Todd, there is a pending motion now because you seconded it. So now you have to move to amend that motion to do what you want to do. You should --
VICE CHAIR THERNSTROM: And I don't understand why we're not just going through these. I mean, you can propose amendments.

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

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

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

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

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

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

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

COMMISSIONER GAZIANO: Sorry.

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

COMMISSIONER HERIOT: Motion to what now?

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, Todd, explain your motion so that Gail --
COMMISSIONER HERIOT: Can you withdraw your motion so that we don't have to do a --

CHAIRMAN REYNOLDS: Yes. Withdrawn.

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

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

CHAIRMAN REYNOLDS: Second. Okay. Discussion? Yes?

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

I think the evidence that we received was substantial, but we didn't have state witnesses to defend them. And I would be more comfortable, as an example, maybe tightening them, saying that the Commission received substantial evidence that the DOJ
was not requiring states to do X or the Commission
received substantial evidence that the states were not
doing Y.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Melendez?

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

CHAIRMAN REYNOLDS: I believe that the --
COMMISSIONER MELENDEZ: Is that what we're saying here?

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

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

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

VICE CHAIR THERNSTROM: Has a telephone conference been scheduled?

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

COMMISSIONER HERIOT: We should. We should do it.

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

COMMISSIONER HERIOT: Yes. Should we go once --

CHAIRMAN REYNOLDS: Let's continue.

COMMISSIONER HERIOT: And then what I thought about one and two is that they are unnecessary. I mean, nobody disputes these facts.
VICE CHAIR THERNSTROM: Yes. They are still worth restating for --

COMMISSIONER HERIOT: I don't think so.

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

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

VICE CHAIR THERNSTROM: Yes.

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

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

CHAIRMAN REYNOLDS: Finding 3, any comments?

COMMISSIONER HERIOT: I thought 3 was fine.

CHAIRMAN REYNOLDS: Four?

PARTICIPANT: If there were numbers in the testimony -- and right now I don't remember, I would probably prefer that, but otherwise I don't have any -- did this substantially increase?
VICE CHAIR THERNSTROM: Yes. I second that. I want real numbers.

CHAIRMAN REYNOLDS: Five?

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

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: Take care, Pete.

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

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

Also, when we use terms like "certain states," it sounds like we know which states it is, but we're not telling. It should be "some states."
VICE CHAIR THERNSTROM: I agree. And the "for instance" should be very concrete, "For instance, Ohio did" X or --

COMMISSIONER HERIOT: If we've got that.

VICE CHAIR THERNSTROM: If you've got that.

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

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: Ohio should be a different sentence.

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

CHAIRMAN REYNOLDS: Finding 6?

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

If they are not required, we need to make sure that we don't suggest that there is some requirement that is being violated here.
COMMISSIONER GAZIANO: The one word I care about is "computerized." They are, states are, required to maintain up-to-date statewide voter registration rules. I am not sure whether they are required --

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

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

COMMISSIONER HERIOT: Yes.

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

COMMISSIONER GAZIANO: It is a HAVA.

COMMISSIONER HERIOT: Yes.

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

COMMISSIONER GAZIANO: Exactly.

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

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Yes. Before we go to it further down the list, as the person who asked for this hearing to be held, I have a pretty good recollection of exactly the direction and manner in which it was done.

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

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

If we start going into that realm, we are going way outside what the record was. And if we are doing that, then we might as well say that if we are going to have any findings and recommendations
regarding preparations for the November '08 election, then we need to measure what the impacts of some of the statements made by DOJ, in particular, or by some of the witnesses, what realities occurred on the ground.

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

That is a long way of saying in many ways, I see no reason for findings and recommendations for this particular report as it was essentially an informational briefing frozen in time for the purposes of an election occurring a few months later. If we want to do a postmortem on how these issues or how these preparations really play out with regard to the election and then whether or not anything that they talked about did or did not succeed and what proscriptions or prescriptions should result from that, I would be glad to do that.
But I just don't know if this is a very productive exercise and use of our time given that, by its very nature, it was general, it was specific, very general, not very specific, there are specifics that I cared about, quite frankly, and which I talked about a lot with regard to what the powers and rights of monitors versus the other category, which, unfortunately, my fluid brain can't get into right now, what their abilities to interact with election officials were, what the powers were, how they were going to select people to go out, et cetera, I just don't see that it's -- I think it would be a good utility for historical records and for anyone who wants to do 20/20 hindsight to have the report out as section 8. But I don't know how much utility is going to be with B, especially when we talk about a lot of recommendations, for which there is very, very little testimony and even fewer specifics.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

And I don't care whether you eliminate things, but what I don't want is vague statements
suggesting wrongdoing without a factual basis for making such assertions.

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

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

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

I mean, I agree that we should not be in the position of casting aspersions on anyone or conclusions without a very adequate record. And I think part of the problem is that that wasn't the intent of this briefing at all. It is more about what are you guys doing, how are you preparing. If we want
to go into that kind of analysis, that is a different issue with a different record.

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

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

VICE CHAIR THERNSTROM: I understand that, but --

COMMISSIONER HERIOT: I think this could be worth --

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

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

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

COMMISSIONER YAKI: I don't think we did.

COMMISSIONER GAZIANO: Mr. Chairman?
VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER YAKI: I don't think we did.

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

COMMISSIONER YAKI: Okay. Well, I think --

CHAIRMAN REYNOLDS: Commissioner Gaziano?

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

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

With regard to the 5 through 8, I think they help support the recommendations, which is, regardless of exactly how we phrase it, whether it was
substantial evidence or significant evidence, we had certain experts, certain scholars who testified, for example, about illegal noncitizen voting that crossed many state lines.

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

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

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

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

COMMISSIONER GAZIANO: Sir, I didn't interrupt.

CHAIRMAN REYNOLDS: Michael, let him finish.

COMMISSIONER GAZIANO: We received significant, important, whatever of what one scholar believed was evidence of a widespread problem. Admittedly, he said -- and we had some back and forth between the commissioners and the DOJ witnesses, where
we said, "Do you expect this is under-reported? Well, is this the tip of the iceberg, the kind of prosecutions you bring? Is that just the tip of the iceberg?"

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

COMMISSIONER YAKI: What?

COMMISSIONER GAZIANO: Then that supports the recommendation --

COMMISSIONER YAKI: One person?

CHAIRMAN REYNOLDS: Commissioner.

COMMISSIONER YAKI: Sorry.

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

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

COMMISSIONER YAKI: No. I mean, I think the statements speak for themselves. The fact that you can try and extrapolate from one witness --
CHAIRMAN REYNOLDS: So that was a yes.

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

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

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

VICE CHAIR THERNSTROM: Well, but if the --

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

VICE CHAIR THERNSTROM: The question is whether we do have it. And let us look carefully at
exactly what we have here because I am not going to be satisfied with -- I mean, you can find witnesses to say anything.

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

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

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

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

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

CHAIRMAN REYNOLDS: Are you sure?

COMMISSIONER HERIOT: Yes.

(Laughter.)

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

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

The last one, number 4, "DOJ should enforce the requirement that noncitizens not be allowed to register to vote," I doubt that there is a statute that says states must not allow noncitizens to
vote in federal elections. It probably says something a little different from that.

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

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

    COMMISSIONER HERIOT: No.

    CHAIRMAN REYNOLDS: Any other? Commissioner Melendez?

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

    CHAIRMAN REYNOLDS: That's a good point.

    COMMISSIONER MELENDEZ: -- and hashing it out, because if we try to do this over the phone, some people are going to be there. It's inaugural week. We're not going to have enough time.
So I'm suggesting we just bring this back on the agenda, work everything out up to that point, and let's just either have recommendations or not. And that will give us adequate time. I just don't feel comfortable on the --

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

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

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

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

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

CHAIRMAN REYNOLDS: Okay. We sound like we have an agreement. Next step is the State Advisory Committee issues.
COMMISSIONER GAZIANO: Are we still going
to have some sort of conference call to have a general
discussion on the narrowing the statutory --

CHAIRMAN REYNOLDS: Yes. That was not --

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

CHAIRMAN REYNOLDS: Okay. So that would be --

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

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

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

COMMISSIONER YAKI: That is because I am
sick.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: So, as I
understand, the General Counsel will get us some
thoughts and recommendations. Do you know an exact date?

MR. BLACKWOOD: No.

COMMISSIONER GAZIANO: It's ten days?

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

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

MR. BLACKWOOD: Hopefully.

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

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

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

MR. BLACKWOOD: The 30th.

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

MR. BLACKWOOD: Correct.
CHAIRMAN REYNOLDS: Someone throw out a date for the --

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

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

COMMISSIONER MELENDEZ: Okay.

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

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Ninth?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. The 5th?

COMMISSIONER HERIOT: Yes, depends on the time.

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

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

COMMISSIONER GAZIANO: Is the 4th workable? That gives us the weekend and a few days.
COMMISSIONER YAKI: Mr. Chair, that week is difficult for me because I will be in meetings. And getting away to do a phone call during that -- I will be in meetings starting Tuesday through either Thursday or Friday and then on a plane. And trying to put the signal in -- some of these meetings are rather fluid -- is going to be rather difficult for me. The following week is a little better.

CHAIRMAN REYNOLDS: Okay. The 7th?

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

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: The 7th I can do.

It's a Saturday.

COMMISSIONER GAZIANO: The 7th is a weekend. I would prefer non-weekend and we have to have staff on the phone.

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

Michael?

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

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

Any time in February?
COMMISSIONER HERIOT: I think all we need is a quorum. This is not official. It's not controversial.

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

COMMISSIONER MELENDEZ: The 20th.

(Laughter.)

CHAIRMAN REYNOLDS: Arlan, that was pretty good.

COMMISSIONER HERIOT: All we need is a quorum.

COMMISSIONER GAZIANO: What happened to the 11th?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: What happened to the 11th?

CHAIRMAN REYNOLDS: Okay. Any objections? Commissioner Melendez?

COMMISSIONER MELENDEZ: Eleven is fine with me.

CHAIRMAN REYNOLDS: Okay. The 11th it is.

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

CHAIRMAN REYNOLDS: That works for me.

VICE CHAIR THERNSTROM: 11:00 a.m.?
CHAIRMAN REYNOLDS: Yes. Is that too early for you, Gail?

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

CHAIRMAN REYNOLDS: 2:00 o'clock Eastern?

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

It might be.

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


VI. STATE ADVISORY COMMITTEES

- RECHARTERING ALABAMA SAC

CHAIRMAN REYNOLDS: At this point, unless we want to continue this particular discussion, I would like to move on to the SACs. I move that we recharter the Alabama State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based on the recommendations of the Staff Director: David Beito, Valerie Askew, Lulu Bridges, Margaret Brown, Richard Finley, Ed Haden, Randy Kelly, Shana Kluck, Raphael Maharaj, Harriet Means, Byron Perkins, Mary Peters, Maurice Shevin, and L'Tryce Slade. I also move that
the Commission reappoint David Beito as the Chair of the rechartered State Advisory Committee. These members will serve as uncompensated government employees.

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

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes, a discussion.

Commissioner Melendez. There was I think a notion that we had reached out to the congressional district of this state, but we had received some information that Congressman Arthur Davis' office was not contacted as far as congressional people if we stated they were all contacted.

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

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

COMMISSIONER MELENDEZ: Okay. You might let them know that at least his office, Mr. Davis, apparently they didn't receive any notification.
CHAIRMAN REYNOLDS: We will look into it.

Any other comments?

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

COMMISSIONER TAYLOR: Can he still submit a name?

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

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

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

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

PARTICIPANT: Fourteen.

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

COMMISSIONER MELENDEZ: Nineteen.

COMMISSIONER HERIOT: Yes. Let him submit and see. If the selection goes up to 15, it goes up to 15. But we can approve this now, have a chartered SAC.
COMMISSIONER GAZIANO: We can add three more at least.

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

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

CHAIRMAN REYNOLDS: Commissioner Melendez, you had --

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

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

STAFF DIRECTOR DANNENFELSER: I think also if you consider having worked in a congressional office the volume of correspondence and phone calls and so on, that sometimes contact is made that is not captured in that particular office, but we will
certainly go back and try to make sure that that contact is made.

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

COMMISSIONER MELENDEZ: All right.

CHAIRMAN REYNOLDS: Okay.

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

COMMISSIONER TAYLOR: Can we call the question, then?

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

VICE CHAIR THERNSTROM: Okay.

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

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

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

COMMISSIONER MELENDEZ: Abstain, one.

CHAIRMAN REYNOLDS: Commissioner Melendez abstains.

COMMISSIONER YAKI: I abstain.
CHAIRMAN REYNOLDS: Commissioners Melendez and Yaki abstain. The motion passes.

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

CHAIRMAN REYNOLDS: Okay. Do you have something?

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

COMMISSIONER YAKI: Where?

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

COMMISSIONER YAKI: Interesting.

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

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Okay.

- COMMISSIONER INVOLVEMENT IN SACS

CHAIRMAN REYNOLDS: Next up Commissioner Melendez has expressed some concerns about commissioners serving on state advisory committees.
So I open up the floor to Commissioner Melendez to discuss his concerns.

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

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

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

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

I mean, people sometimes will contact you and ask. Because I am a commissioner and I'm from the
State of Nevada, they will actually ask me what is happening with the state advisory committee. And I will say, "Well, you know, you can send your name into the regional director, Western Region, you know, and see how he can put you in the pool to be elected."

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

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

I'm not saying it's wrong or right. Maybe it's kind of maybe there just aren't any rules as to what we are supposed to be doing here. Maybe it is reason for us to discuss it openly as commissioners as to where should we go with this or does everybody that
comes in really not know what the ground rules are, so you have some people doing it and some people not? So I just wanted us to at some point maybe talk about that so we know what we could recommend for the future.

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

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

But there was one hypothetical that I toyed around with. And that is if there were a disagreement between a SAC member and a SAC member who was also a sitting commissioner, that individual might moderate their view if they were worried that that
commissioner would not support that person being reappointed the next time the SAC was rechartered. And that's why I asked you about my proposal, which is to prevent sitting commissioners from voting on the SACs where they are members of the SAC.

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

COMMISSIONER HERIOT: I think you should submit those names.

COMMISSIONER MELENDEZ: But, see, the problem is I don't even have -- and that's why fulfilling the Western Region with a director -- we had Tom Pilla at one time. Now we've got a secretary who is out there. That's why I have always been adamant about making sure that these regional offices are adequately staffed by somebody other than a secretary that would really take the brunt of me submitting my name to him, I mean.
But then I kind of feel funny about, well, how much influence is he going to have because I am a commissioner, he is a regional director?

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

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

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

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

COMMISSIONER MELENDEZ: I mean, you could if there are really no set ground rules. And I am not saying it is right or wrong. I'm just saying that --
CHAIRMAN REYNOLDS: Is this an intellectual exercise? Then we have a problem.

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

CHAIRMAN REYNOLDS: Commissioner Heriot?

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

COMMISSIONER MELENDEZ: Right.

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

COMMISSIONER MELENDEZ: Okay.

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

So I think you should, by all means. If you have anyone in any state that you think should serve on a SAC, submit it to the Staff Director. If you are worried about making a member of the lower staff feel put out, submit it to the Staff Director.
But my impression is that we are not turning out SACs fast enough. If we are going to charter 50 states, we have got to average about 2 per meeting. And we are not doing that. We need more names, not fewer. So give any name that you possibly have. And let the staff try to put together a balanced SAC.

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

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

So I think the best way to deal with it is simply when you have got somebody who is on a SAC and they have been appointed to the Commission, let them stay there until the expiration of that SAC, which will be no more than two years and probably less
because usually the SAC will already have been going along for a while before they get appointed.

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

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

CHAIRMAN REYNOLDS: Commissioner Gaziano?

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

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

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

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: In theory, I think
that there is much, much merit to I think both sides.
The one thing I think that we need to do, though, for
the purposes of the appearance of impropriety -- and I
think that is just as important as whether there is impropriety there itself -- is to have stronger -- I won't say "stronger" because we don't have any -- conflict of interest guidelines. And by this I mean the following. I do not believe that any person who sits on a SAC should be allowed to make recommendations to that SAC while he or she is a member, number one, because --

COMMISSIONER GAZIANO: Can you explain why?

VICE CHAIR THERNSTROM: Why?

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

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

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

COMMISSIONER YAKI: I believe that if you are a member of that committee and you are a member of the appointing body of that committee, I think that to me creates an irreconcilable appearance of a conflict of interest.
COMMISSIONER HERIOT: That is what subcommittees always are. That happens routinely.

COMMISSIONER YAKI: It is not a subcommittee.

COMMISSIONER GAZIANO: Explain the logic.

COMMISSIONER YAKI: It is not a subcommittee.

CHAIRMAN REYNOLDS: Lower your voices.

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

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

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

CHAIRMAN REYNOLDS: Commissioners.

COMMISSIONER YAKI: Let's see. You want a logical argument, Commissioner Gaziano? Okay. Here we go. You are on the Virginia SAC. You are just regular Todd Gaziano on the SAC. I am Commissioner Yaki on the Virginia SAC. No. Let's put it this way. You are not even on the SAC. I do not know why. I do not know why. I don't think it is proper for me to be in a position as a member of that
SAC to decide who I am going to recommend to that SAC and then also vote on it at the same time. I think that creates an --

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

COMMISSIONER YAKI: I don't think you --

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

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

COMMISSIONER HERIOT: There is a --

CHAIRMAN REYNOLDS: Folks, enough. Lower your voices.

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

(Laughter.)

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

COMMISSIONER YAKI: I agree. Let me speak in a calm and clear voice. I think we have a problem if we are the -- and, in fact, there are GSA rules that talk about this, that talk about the fact that
you have problems of appearances of impropriety under undue influence if you are someone who has power, influence over that person with whom you sit. So I think that if you also serve on the Commission and are recommending people for the state SAC upon which you sit, I think that creates the impropriety.

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

COMMISSIONER YAKI: Yes.

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

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

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

CHAIRMAN REYNOLDS: Well, let Mr. --

COMMISSIONER YAKI: No, no, no. But I think this is what he was trying to say, that we are not in a position to engage in that balancing act the
entire time when we are recommending who or what we want to say. So when we are recommending --

CHAIRMAN REYNOLDS: He is right here.

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

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

COMMISSIONER YAKI: No. He did. He did.

CHAIRMAN REYNOLDS: Balance?

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

CHAIRMAN REYNOLDS: The Commission balance --

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

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

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

CHAIRMAN REYNOLDS: Well, I want to finish this. I want to finish this. I mean, okay. Now balance has been brought into, I mean, put on the
So if I understand I don't know who now. Who owns this balance issue?

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

CHAIRMAN REYNOLDS: And how does that relate to --

COMMISSIONER MELENDEZ: Well, I mean, the issue would be if you are having me from the -- let's say I have a whole bunch of friends and they're all Democrats. Somebody on the Commission is going to go "What did Chairman Melendez recommend to Tom Pilla?"

Well, he sent 4 or 12 Democrats unless you're saying that I should -- I mean, there is certain influence I am going to have because the most --

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

COMMISSIONER MELENDEZ: And that's --

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

COMMISSIONER MELENDEZ: But that's the reason why I kind of look more towards having the regional people kind of do most of these submittals.
CHAIRMAN REYNOLDS: Are you asking commissioners to withdraw from --

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

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

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

COMMISSIONER YAKI: No, you don't.

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

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

CHAIRMAN REYNOLDS: Commissioner Gaziano, I believe it was ridiculous for you to resign based on
what was placed on the table. I understand the game, but to take up time with this, I mean, this is petty.

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

COMMISSIONER HERIOT: Just to clarify --

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

CHAIRMAN REYNOLDS: Commissioner Heriot?

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

CHAIRMAN REYNOLDS: Who knows?

COMMISSIONER HERIOT: Well, let me --

CHAIRMAN REYNOLDS: Does anybody remember?

Does anybody remember?

COMMISSIONER HERIOT: -- make just a motion, a clarification of commissioner duties. I move that commissioners be urged to make as many recommendations for the SAC as possible so that we can charter these SACs as efficiently as possible, that in making a recommendation, commissioners should not be required to consider balance because that has to be considered all at the same time.
If I make extra recommendations, I recommend too many lawyers, it's because I know lawyers. I figure that the staff under the direction of the Staff Director is going to cast out some of those lawyers and is going to come up with a balanced SAC for each state.

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

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

Commissioner Yaki?

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

COMMISSIONER HERIOT: But this actually clarifies that by making it --
CHAIRMAN REYNOLDS: Does that concern come to fruition?

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

COMMISSIONER HERIOT: We're making it --

COMMISSIONER YAKI: I mainly have --

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

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

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

COMMISSIONER YAKI: Because Commissioner Melendez has brought it up.

CHAIRMAN REYNOLDS: Yes. Again, this is not the first time that this has been discussed. We have discussed it in the past. We have discussed it today. We have discussed it offline. You have elected not to participate when we vote for SACs. What is the point? I mean, what are we trying to accomplish here?
COMMISSIONER YAKI: I deliberately elect not to ratify a process that I believe is not truly representative and diverse.

CHAIRMAN REYNOLDS: No. I understand that.

COMMISSIONER YAKI: That is a totally different situation.

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

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

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

COMMISSIONER YAKI: And we will probably have it again.

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

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

COMMISSIONER MELENDEZ: Well, the point --

COMMISSIONER YAKI: -- continue to believe that the makeup of the SACs is not truly representative and diverse enough, period.
CHAIRMAN REYNOLDS: Why didn't you say that?

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

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

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

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

COMMISSIONER YAKI: Remember who brought --

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

COMMISSIONER YAKI: Mr. Chair?

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

VICE CHAIR THERNSTROM: And I want lunch.

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

VICE CHAIR THERNSTROM: Lunch.

COMMISSIONER MELENDEZ: Well, just to move on and close this, you know, the --
COMMISSIONER HERIOT: We have a pending motion.

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

COMMISSIONER MELENDEZ: Objections?

COMMISSIONER MELENDEZ: Objection.

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

Is that possible?

COMMISSIONER GAZIANO: Yes.

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

COMMISSIONER MELENDEZ: Maybe there should be.

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

COMMISSIONER MELENDEZ: Okay.

COMMISSIONER HERIOT: We did vote.

CHAIRMAN REYNOLDS: You objected.

Commissioner Yaki, I didn't catch your vote.

COMMISSIONER YAKI: I abstain.

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: No.

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

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

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

COMMISSIONER HERIOT: And we have also put it on the record that we are grownups and we understand that not all of our proposals will get
through because of the need for balance. And we ultimately vote on a SAC package.

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

COMMISSIONER HERIOT: Then send 20.

COMMISSIONER MELENDEZ: Maybe there should be a limit.

COMMISSIONER HERIOT: Send 20.

COMMISSIONER MELENDEZ: You have already voted it.

COMMISSIONER HERIOT: Send 40.

CHAIRMAN REYNOLDS: Is this --

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

COMMISSIONER HERIOT: At the end of the --

CHAIRMAN REYNOLDS: What is a lot more?

Some people vote --

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

CHAIRMAN REYNOLDS: Well, no. No. I am trying to see. I mean, if you believe that there is a
problem and, I mean, if you have examples of commissioners submitting the overwhelming majority of the recommendations and those recommendations being adopted, then I think that your argument is on firm ground. Now, if this is --

COMMISSIONER HERIOT: I don't think so.

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

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

CHAIRMAN REYNOLDS: What is a whole bunch?

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

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

COMMISSIONER HERIOT: I think you should ask the Staff Director how many names I submitted for the California SAC.

CHAIRMAN REYNOLDS: Okay. Do we have an answer? Do we have an answer?
COMMISSIONER HERIOT: Are we talking about the SAC that we haven't chartered yet, upcoming California SAC?

CHAIRMAN REYNOLDS: I don't know. Let's ask --

STAFF DIRECTOR DANNENFELSER: It is my understanding that we have not received any recommendations from Commissioner Heriot.

COMMISSIONER HERIOT: I can testify that that is correct. I have not made any recommendations for the California SAC.

COMMISSIONER GAZIANO: I hope you do, Commissioner Heriot.

COMMISSIONER HERIOT: I will now. I will come up with some now.

COMMISSIONER MELENDEZ: That's fine with us. Commissioners --

CHAIRMAN REYNOLDS: Why are we talking about this, though? I mean --

COMMISSIONER MELENDEZ: I just think that --

CHAIRMAN REYNOLDS: -- I take her at her word. She says that she has not submitted any names.

COMMISSIONER HERIOT: It wasn't my word. It was Marty's word.
COMMISSIONER GAZIANO: But I hope she submits dozens. So to me, it's irrelevant whether she's done it yet or is going to do so in the future.

COMMISSIONER HERIOT: It is my job to submit recommendations, but, as a matter of fact, I haven't done it. I apologize for having failed to make more suggestions for the California SAC.

COMMISSIONER MELENDEZ: I think we need a little more information. Maybe you can provide that.

CHAIRMAN REYNOLDS: I think you need to get more information before putting this on the table.

COMMISSIONER MELENDEZ: You haven't given me the information. Every time I ask for information, you stand on "That is privileged information." I have a whole --

COMMISSIONER HERIOT: I just begged you to ask him what --

CHAIRMAN REYNOLDS: You said that she submitted a bunch of names. Where does that come from? Either your information was faulty or you made it up.

STAFF DIRECTOR DANNENFELSER: Should I speak to this topic?

VICE CHAIR THERNSTROM: Yes, speak to it.
STAFF DIRECTOR DANNENFELSER: Not if we don't have to.

COMMISSIONER HERIOT: Are we talking about the previous SAC? I was not a member of the Commission when the previous SAC was put together.

CHAIRMAN REYNOLDS: Does that make a difference?

COMMISSIONER YAKI: Move to adjourn.

CHAIRMAN REYNOLDS: I didn't start this. Oh, no. No. If we can keep a quorum?

COMMISSIONER HERIOT: I am here for the long haul.

VICE CHAIR THERNSTROM: I am not.

(Laughter.)

CHAIRMAN REYNOLDS: Someone go get Abby a sandwich.

COMMISSIONER GAZIANO: I need a drink.

CHAIRMAN REYNOLDS: I needed one earlier.

COMMISSIONER TAYLOR: That was at 8:00 in the morning.

(Laughter.)

CHAIRMAN REYNOLDS: These are trying times.

COMMISSIONER MELENDEZ: I don't think we have the information right now. I don't think it's
divulged to us fully. I think we can find that out, but we have heard that.

COMMISSIONER HERIOT: Can I just note --

COMMISSIONER GAZIANO: I will state on the record that there is nothing wrong with her submitting names.

COMMISSIONER MELENDEZ: That's fine. Then we --

COMMISSIONER HERIOT: Well, no. It sounds like we're even saying that an ordinary citizen who is not a commissioner cannot submit names because, remember, when the SAC was chartered, the one that exists now, I was not a member of the Commission. So what is all this talk about conflict of interest?

STAFF DIRECTOR DANNENFELSER: With respect to people who get appointed to the SACs, we send out a list. You know, we explain the outreach. And then in terms of each member, we tell the commissioners where that recommendation came from.

And there have been a number of cases where Commissioner Heriot, Commissioner Thernstrom, and some others have recommended people and we put that in there. So I don't know if Commissioner Heriot has recommended -- I don't believe she has recommended
more than two that have gotten appointed in any particular SAC.

And I can recall a situation where she did recommend two people in one state and we accepted one of them because they did have similar backgrounds. So we were looking for some more diversity. So we only accepted one of them.

But we can have that. Again, we can go back and look over the forms that we sent to the commissioners, but it could be in that case that she submitted some additional names that didn't get there. But certainly in terms of the names that are appointed --

COMMISSIONER GAZIANO: This level of detail --

STAFF DIRECTOR DANNENFELSER: -- whoever recommended them we --

COMMISSIONER GAZIANO: This level of detail is inappropriate to me.

STAFF DIRECTOR DANNENFELSER: -- provide them to the commissioners.

COMMISSIONER HERIOT: The thing is, though, you can't say a commissioner should recommend no more than one because when a recommendation is
being made, I don't know whether the person will accept a position.

So the whole thing is just completely silly. We have such a difficult time chartering these SACs. The notion that we should be decreasing the number of recommendations that commissioners or anyone else makes seems utterly inappropriate and a general waste of time of this Commission.

Moreover, if we're talking about the previous California SAC, again, I was not a member of the Commission at that time. I don't think that we're sending out letters to congressmen saying, "Please recommend no more than one person for a commission because we don't want more than one recommendation from you. We want as many recommendations as we can get, not just from commissioners but from everyone."

We are not suffering from an excessive number of persons who want to be on SACs. Remember, this is an unpaid position. And we are very lucky to get the people that we get.

CHAIRMAN REYNOLDS: Commissioner Melendez, unless you have something else, I will second Commissioner Yaki's motion to adjourn.
COMMISSIONER MELENDEZ:  Well, I thought we had the other issue and whether or not we should be able to sit as commissioners on state advisory --

COMMISSIONER HERIOT:  We have now got a pending motion to adjourn.

CHAIRMAN REYNOLDS:  After listening, I withdraw my motion.

COMMISSIONER GAZIANO:  Are you making that motion?  Is that your motion?

CHAIRMAN REYNOLDS:  Actually, I didn't make my motion.  So --

COMMISSIONER HERIOT:  It was never made.

COMMISSIONER MELENDEZ:  What was your motion?

CHAIRMAN REYNOLDS:  It would have been, well, the same motion that I sent to you where commissioners who were sitting on SACs would not be allowed to vote to recharter that particular SAC.

COMMISSIONER YAKI:  I will withdraw my motion to adjourn to put that motion on the table if that's what --

COMMISSIONER GAZIANO:  Which motion? Commissioner Melendez talked about a motion.  I don't support either, but I want to know which motion we're --
COMMISSIONER MELENDEZ: There weren't actually motions that were actually agendized. What it was was discussion. And motions came out of the discussion.

CHAIRMAN REYNOLDS: Gentlemen. Gentlemen, I've got to say the way this issue has unfolded -- I try to work with you. I believe that you have raised a legitimate issue.

And I am going to make the motion. I am going to support the motion because I think that the arguments associated with that particular issue have some weight. But you lose credibility when you throw nonsense up. I mean, to say that she submitted a bunch of names and it turns out that that is not the case, that is a problem for me.

There was the suggestion that she had done something that was inappropriate. And then it turns out that so far, there is no evidence to support the --

COMMISSIONER GAZIANO: It also turns out that if the allegation were true, that it was beneficial and it was praiseworthy. That is what we have established here today by our vote.

CHAIRMAN REYNOLDS: Let me read the motion, then, so we can get out of here. I move that
the Commission adopt a policy whereby commissioners who serve as members of a state advisory committee would be precluded from voting on rechartering that committee.

Under this motion, a commissioner serving on a state advisory committee would be precluded from participating in both the discussion of the recharter of that committee and the vote on the recharter of that committee. The Staff Director shall prepare an administrative instruction to implement this policy.

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Again I don't think you have dealt with the problem that you have identified.

CHAIRMAN REYNOLDS: Which? There have been so many.

COMMISSIONER HERIOT: You were talking about the possibility of there being some undue influence, people are going to --

CHAIRMAN REYNOLDS: Is there a --

COMMISSIONER HERIOT: Hold on. Hold on. Let me finish.
CHAIRMAN REYNOLDS: -- hole in the logic?
Yes, there is. I can see that.

COMMISSIONER HERIOT: It's not a hole.
It's like there's no logic there. And if you are trying to deal with the possibility that SAC members will be fearful that commissioners will not vote to renew them if they don't do what the commissioner wants, that is a problem from allowing commissioners to attend SAC meetings. That is not a problem from being a member of the SAC. So this does not take care of that problem.

There have been allegations of bullying of SAC members, but they have not been on the SACs that commissioners have been members of. There have been allegations of that sort. And if we want to deal with that, then we have to deal with that.

But this doesn't deal with that. This just keeps us from lunch is what it does.

CHAIRMAN REYNOLDS: Commissioner Gaziano, then Commissioner Yaki and --

VICE CHAIR THERNSTROM: Is there a motion on the table to adjourn?

CHAIRMAN REYNOLDS: No. It has been withdrawn.
COMMISSIONER HERIOT: I move to substitute
for the current motion a motion to adjourn.

VICE CHAIR THERNSTROM: I second that.

CHAIRMAN REYNOLDS: All in favor?

COMMISSIONER MELENDEZ: We have a motion
on the floor that's --

COMMISSIONER HERIOT: But we have made a
motion to substitute.

COMMISSIONER MELENDEZ: You need to take
action on that motion already on the floor.

COMMISSIONER HERIOT: The motion to
substitute does that.

CHAIRMAN REYNOLDS: There has been a
second. All in favor, please say, "Aye."

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

COMMISSIONER HERIOT: Now we have got to
vote on the motion to adjourn. We have only
substituted. We have got to do it right. Now. Call
the question on the motion to adjourn.

COMMISSIONER YAKI: There was only a voice
vote on that, and there was not a call for the yeas
and nays. All I heard were "Ayes," and there was no
division of the "Ayes," of the "Yeas" and "Nays."

VICE CHAIR THERNSTROM: Let's do a count.
COMMISSIONER YAKI: You don't have to do that. Just "All in favor, say, 'Aye,'" "All in favor, say, 'Object.'" That's all.

COMMISSIONER HERIOT: Just call for the nays.

CHAIRMAN REYNOLDS: Okay. Who objects?

COMMISSIONER YAKI: I do.

COMMISSIONER HERIOT: Okay. Now we vote on the motion to adjourn.

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

COMMISSIONER HERIOT: No, no. That motion is already there. It was substituted out. We just have to vote on it.

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

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

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: Object.

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez and Commissioner Yaki object. The remaining
commissioners voted in favor. Let's go. Let's leave.
Let's leave quickly.

(Whereupon, the foregoing matter was concluded at 1:50 p.m.)