U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, MARCH 7, 2008

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

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)
ABIGAIL THERNSTROM, Vice Chairman
TODD GAZIANO, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER (via telephone)
ARLEN D. MELENDEZ, COMMISSIONER
ASHLEY TAYLOR, COMMISSIONER (via telephone)
MICHAEL YAKI, COMMISSIONER

DR. ROBERT LERNER, Delegated the Authority of the Staff Director, OSD

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
DEBRA CARR, Esq., Associate Deputy Staff Director, OSD (via telephone)
DEMITRIA DEAS
BARBARA DELAVIEZ
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MONICA KIBLER
SOCK-FOON MACDOUGALL
TINALOUISE MARTIN, Director of Management (via telephone)
EILEEN RUDERT
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN
COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD
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Adjourn
VICE CHAIR THERNSTROM: This is Vice Chair Abigail Thernstrom and the meeting will please come to order. This is a meeting of the U.S. Commission on Civil Rights at 9:30 a.m. on March 7, 2008. The meeting is held at 624 9th Street, N.W., Room 540, Washington, D.C.

Chairman Reynolds, Commission Kirsanow and Commissioner Taylor, all three will participate in this meeting by telephone. The other Commissioners are present.

VICE CHAIR THERNSTROM: The first item on the agenda, Approval of the Agenda, is there a motion to approve the agenda?

COMMISSIONER YAKI: I have a point of order.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: Can we have a roll call of the people on the phone right now?

VICE CHAIR THERNSTROM: Sure. Roll call of people on the phone.

CHAIRMAN REYNOLDS: Chairman Reynolds.

COMMISSIONER TAYLOR: Commissioner Taylor.

COMMISSIONER KIRSANOW: Kirsanow here.
COMMISSIONER YAKI: Okay. I didn't hear the other Chair. I wanted to make sure.

VICE CHAIR THERNSTROM: Thank you.

I. APPROVAL OF AGENDA

VICE CHAIR THERNSTROM: The first item on the agenda is the Approval of the Agenda. Is that motion to approve the agenda?

COMMISSIONER TAYLOR: I'd like to make a substitute motion or at least a motion to amend the agenda so that we can discuss the minutes for the January 11th meeting after we get the Staff Director's report because I've noted that the Staff Director is going to discuss Six Sigma.

VICE CHAIR THERNSTROM: Commissioner Taylor, you need to announce and that goes obviously for Commissioners Kirsanow and the Chair. You need before you speak for purposes of the reporter to give your name.

COMMISSIONER TAYLOR: I will do so.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. I second the motion.

VICE CHAIR THERNSTROM: Okay. Is there any discussion?

COMMISSIONER YAKI: On what? On that particular motion?
VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: I just want the Chair to know that I have additional motions to amend the agenda. But I will make them separately.

VICE CHAIR THERNSTROM: Okay. Well, let's vote on this one. All in favor, aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed?

(No verbal response.)

VICE CHAIR THERNSTROM: Any abstentions?

(No verbal response.)

VICE CHAIR THERNSTROM: It is unanimous. There are further motions to amend the agenda I understand. Commissioner Yaki.

COMMISSIONER YAKI: Yes. Just a second.

COMMISSIONER MELENDEZ: I would like to amend the agenda to discuss some issues that --

VICE CHAIR THERNSTROM: Hold on one second. Can everybody hear Commissioner Melendez because he's talking quite softly?

CHAIRMAN REYNOLDS: No.

COMMISSIONER MELENDEZ: Can you hear now?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: I'd like to amend the agenda to talk about a few items that I think are
important. One of the issues I'd like to put on the agenda is to include discussions of whether future hiring of special assistants must have White House clearance. That's been an issue.

COMMISSIONER YAKI: I'll second that motion. Do them one at a time.

VICE CHAIR THERNSTROM: Do them one at a time. Do we have any discussion on that?

COMMISSIONER GAZIANO: This is obviously just to amend the agenda. Right?

COMMISSIONER YAKI: Yes.

VICE CHAIR THERNSTROM: Vote please.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: This is just not the issue but just a vote to amend the agenda.

COMMISSIONER HERIOT: Where are we putting it on the agenda?

VICE CHAIR THERNSTROM: Where?

COMMISSIONER HERIOT: What's the motion?

The motion to put it where on the agenda?

VICE CHAIR THERNSTROM: Where should this go on the agenda?

COMMISSIONER MELENDEZ: After the Staff Director's report maybe.

COMMISSIONER HERIOT: We could put it at
the end.

(Off the record discussion.)

VICE CHAIR THERNSTROM: Management and Operations, I'm told that is the right place for it. Commissioner Melendez, is that all?

COMMISSIONER MELENDEZ: Yes. I would also like to amend the agenda to discuss revising the management order of precedence for times when our Acting Staff Director is not going to be available for whatever reason.

CHAIRMAN REYNOLDS: I'm sorry. I didn't hear Commissioner Melendez.

COMMISSIONER MELENDEZ: I would like to amend the agenda to discuss revising the management order of precedence to provide for some backup for times when even the OCRE Director is gone. I think we need one more person behind him as a backup.

VICE CHAIR THERNSTROM: Well, is there already, do people already have that covered?

(Off the record discussions.)

DR. LERNER: I don't think so. But we need to check on it.

VICE CHAIR THERNSTROM: Yes, maybe you could find out --

DR. LERNER: Okay. It's something to put
on the agenda for next meeting.

VICE CHAIR THERNSTROM: -- if that contingency is already covered.

COMMISSIONER GAZIANO: May I ask if your agenda item is just a forward-looking discussion? That's my understanding of it anyway.

It doesn't cover the existing situation we're in right now.

COMMISSIONER MELENDEZ: Yes. Just to discuss it.

COMMISSIONER GAZIANO: -- where we're at with that.

COMMISSIONER MELENDEZ: And then the other amendment to the agenda would be whether or not we have to vote to confirm the OPM designation of Dr. Lerner as the Acting Staff Director, whether or not we have to vote to confirm that OPM recommendation.

COMMISSIONER YAKI: I'll second that.

VICE CHAIR THERNSTROM: Any discussion?

COMMISSIONER GAZIANO: We tabled that motion last month and I'm not sure I have an objection to it coming onto the agenda, but I probably renew my motion to table it.

VICE CHAIR THERNSTROM: I've just been informed and this is my main direction here but we
have to vote on amending the agenda. We have to take a vote on amending the agenda.

COMMISSIONER GAZIANO: Yes. I'm just talking for clarification.

COMMISSIONER HERIOT: We didn't actually vote on the first one.

COMMISSIONER YAKI: Yes, we did.

VICE CHAIR THERNSTROM: You were saying?

COMMISSIONER HERIOT: The very first one, but not the one to move.

COMMISSIONER MELENDEZ: We'll have to do the second one.

VICE CHAIR THERNSTROM: For the second one, I understand.

COMMISSIONER HERIOT: We've gone on to a third one.

VICE CHAIR THERNSTROM: We've gone onto a third. Okay.

COMMISSIONER YAKI: I didn't know whether we were doing it as a group or one at a time.

VICE CHAIR THERNSTROM: I'm sorry. Yes. Can we do this as a group?

COMMISSIONER YAKI: That's fine.

VICE CHAIR THERNSTROM: Or do people prefer to do one at a time?
COMMISSIONER HERIOT: One at a time.

(Off the record discussion.)

VICE CHAIR THERNSTROM: We'll go one at a time. Okay. The second one was the staff director, the order of --

COMMISSIONER YAKI: Precedence.

VICE CHAIR THERNSTROM: Right. If for some reason Dr. Lerner is unavailable for a week.

(Off the record comment.)

VICE CHAIR THERNSTROM: So did we have a second on that? I think we did.

COMMISSIONER MELENDEZ: Yes.

VICE CHAIR THERNSTROM: All right. All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed?

(No verbal responses.)

VICE CHAIR THERNSTROM: No. That was unanimous. Anybody abstaining?

(No verbal response.)

VICE CHAIR THERNSTROM: That was a unanimous vote. Okay. Now we're onto the third motion which is the OPM designation of Dr. Lerner.

COMMISSIONER YAKI: I seconded that.

VICE CHAIR THERNSTROM: Discussion? You
were starting a discussion.

COMMISSIONER GAZIANO: I'm going to abstain when we take a vote on bringing this into the agenda. But based on our ruling last month, I at the appropriate time move to table.

VICE CHAIR THERNSTROM: All right. So can we have a vote on including it in the agenda? All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: How many people was that?

COMMISSIONER GAZIANO: Two.

VICE CHAIR THERNSTROM: Well, we have two votes in favor here. All opposed?

(No verbal response.)

VICE CHAIR THERNSTROM: Abstentions?

COMMISSIONER GAZIANO: Abstain.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. I abstain.

VICE CHAIR THERNSTROM: I abstain myself.

COMMISSIONER HERIOT: I abstain.

VICE CHAIR THERNSTROM: Four abstentions.

We have two other people on the phone.

COMMISSIONER KIRSANOW: Commissioner Kirsanow abstains.
COMMISSIONER TAYLOR: Taylor abstains.

COMMISSIONER GAZIANO: There you go. It carries.

VICE CHAIR THERNSTROM: It carries. Okay, and are there any other motions that Commissioners Melendez or Yaki are hoping to add to this agenda?

COMMISSIONER YAKI: There are. Madam Chair.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: There are additional motions, but I believe that they are more properly brought up within subject matter jurisdiction of each item that's currently on there.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER YAKI: Unless there's a preference of the Committee to know before, or the Commission, beforehand to know what it is I'm going to be bringing up.

VICE CHAIR THERNSTROM: No, I don't think so. This is simply a question of amending the agenda. We have now amended the agenda with three items.

(Off the record comments.)

VICE CHAIR THERNSTROM: Right. And I have a motion from somebody to amend the agenda to delete discussion of FY 2010 Program Planning and under this
motion the discussion of that program planning would
be tabled until the May 2008 business meeting.

COMMISSIONER YAKI: Second.

VICE CHAIR THERNSTROM: I skipped
something. I'm sorry. We'll have to go back to it.
Okay. Second. Any discussion?

COMMISSIONER HERIOT: Did you make the
motion?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: No, we seconded it.
We didn't have a motion.

VICE CHAIR THERNSTROM: You're right. I
said I know of a motion. All right. I turn it into a
motion.

COMMISSIONER HERIOT: Okay.

VICE CHAIR THERNSTROM: I'll turn it into
a motion and then we have a second here. Is there any
discussion of this?

COMMISSIONER YAKI: I heard a motion the
first time.

COMMISSIONER GAZIANO: Can I just for
clarification maybe amend the motion to postpone
consideration of any briefing of program planning
beyond July of this year?

VICE CHAIR THERNSTROM: Do we have a
second on that?

COMMISSIONER HERIOT: Is there a need to do that?

VICE CHAIR THERNSTROM: Is there a need to do that?

DR. LERNER: Yes. You have to have a second.

COMMISSIONER HERIOT: Is there a need for the motion, not is there a need to have a second?

DR. LERNER: And a second.

(Off the record discussion.)

COMMISSIONER GAZIANO: Never mind. I can cover that motion later. If there's not a second, I'll renew the motion later.

CHAIRMAN REYNOLDS: No, this is Commissioner Reynolds. I'll second it.

(Off the record comments.)

VICE CHAIR THERNSTROM: All right.

COMMISSIONER GAZIANO: I'm just trying to save time.

VICE CHAIR THERNSTROM: No, no.

COMMISSIONER GAZIANO: But I can make the motion later. That's going to be my intent later it seems.

(Off the record comment.)
VICE CHAIR THERNSTROM: All right. All in favor? We have a second on this and I have managed to skip a motion that we needed to do here.

(Off the record comments.)

VICE CHAIR THERNSTROM: Pardon me?

(Off the record comment.)

VICE CHAIR THERNSTROM: It's we're encompassing what we just did.

COMMISSIONER HERIOT: Okay. This is Todd's substitute motion that we're voting on.

VICE CHAIR THERNSTROM: We're voting on Todd's substitute motion.

COMMISSIONER HERIOT: Okay. What is it again?

COMMISSIONER GAZIANO: To postpone -- The substitute motion is to postpone consideration of briefing reports and other hearings beyond July of this year.

COMMISSIONER HERIOT: Briefing schedules.

COMMISSIONER GAZIANO: Briefing schedules, I'm sorry. You're right.

COMMISSIONER HERIOT: Not reports.

COMMISSIONER GAZIANO: Briefing schedules.

COMMISSIONER YAKI: So that mean you would be wiping out an agenda item. Under Program Planning,
you want to change the second, third and fourth
bullets with one substitute motion because that
encompasses all three of those.

COMMISSIONER GAZIANO: Correct.

COMMISSIONER YAKI: Okay. So the correct
motion is you wish to amend Item VI, Program Planning,
eliminate the second, third and fourth bullets with a
motion to only discuss changes to the briefing
schedule prior to July.

COMMISSIONER GAZIANO: And including July.

VICE CHAIR THERNSTROM: Including July.

COMMISSIONER YAKI: Including July of

2008.

COMMISSIONER GAZIANO: Correct.

COMMISSIONER YAKI: Which would be more
proper.

VICE CHAIR THERNSTROM: So that we're
taking one step at a time here, one big step at a
time, instead of looking so far forward.

COMMISSIONER YAKI: I'll second it.

VICE CHAIR THERNSTROM: All in -- Any
discussion?

(No verbal response.)

VICE CHAIR THERNSTROM: All in favor?

(Chorus of ayes.)
II. APPROVAL OF MINUTES

VICE CHAIR THERNSTROM: Okay. We need to approve the minutes of December 3rd and February 8th. As agreed upon, we will deal with the January 11, 2008 minutes after the Staff Director's report.

The minutes of December 3rd meeting were tabled at the January meeting in order to ascertain the date of the appointment of Commissioner Kirsanow. In a certificate issued by the White House, the status issue was resolved when the General Counsel provided the supporting documents. The minutes for the February 8th meeting was sent to the Commissioners.

Because the issues raised by the minutes of each meeting are different I suggest voting on them separately. Can I have a motion to approve the minutes of December 3rd?

COMMISSIONER YAKI: So moved.

COMMISSIONER TAYLOR: Second, Taylor.

VICE CHAIR THERNSTROM: Okay. Any discussion, questions, regarding the minutes?

(No verbal response.)

VICE CHAIR THERNSTROM: If not, can we
vote the approval?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All right.

Anybody opposed?

(No verbal responses.)

VICE CHAIR THERNSTROM: Any abstentions?

COMMISSIONER GAZIANO: Abstain.

VICE CHAIR THERNSTROM: Okay. You have to give your name.

COMMISSIONER GAZIANO: I was --

VICE CHAIR THERNSTROM: You were here?

COMMISSIONER GAZIANO: Yes, I'm here. I wasn't here for the December and so I have no basis to vote.

VICE CHAIR THERNSTROM: Right.

Commissioner Gaziano abstains.

(Off the record discussion.)

COMMISSIONER YAKI: I move approval of February 8th minutes.

VICE CHAIR THERNSTROM: Wait a minute. We have one abstention and otherwise unanimous vote that is reported.

Yes, February 8th. You've just move to approve them. Do we have a second? Second?

COMMISSIONER HERIOT: I'll second it.
VICE CHAIR THERNSTROM: Any changes, discussion, questions?

COMMISSIONER YAKI: You can be like an auctioneer, Madam Chair. You just look at someone even bobbing their head and that becomes a second.

VICE CHAIR THERNSTROM: All right. All in favor, please indicate by saying aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed?

(No verbal response.)

VICE CHAIR THERNSTROM: Any abstentions?

(No verbal response.)

COMMISSIONER YAKI: Point of order.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: I would like to find out if we have -- If we've lost anyone on the telephone line.

CHAIRMAN REYNOLDS: Commissioner Reynolds, still here.

COMMISSIONER TAYLOR: Taylor here.

COMMISSIONER KIRSANOW: Kirsanow here.

COMMISSIONER YAKI: Okay. Then what was that --

COMMISSIONER KIRSANOW: This is Kirsanow.

I would like to -- Commissioners to -- But it's
extremely difficult for me from time to time to pick
up the voice. So if I'm silent, it's because I'm
listening intently.

VICE CHAIR THERNSTROM: You're so involved
in this complicated discussion.

COMMISSIONER YAKI: You mean it's not just
the mute button or something like that.

VICE CHAIR THERNSTROM: Please everybody
speak up for those of us who are not here.

CHAIRMAN REYNOLDS: Be careful of what you
wish for.

VICE CHAIR THERNSTROM: Right. And that
was for the month of March.

III. ANNOUNCEMENTS

VICE CHAIR THERNSTROM: Congress has
designated the month of March as National Women's
History Month. During this month, we recognize and
celebrate the rich and vital contributions of women to
the history and culture of the United States. The
vision and determination have both strengthened and
transformed our country.

Our nation is one of great opportunities
and today women are seizing those opportunities to
shape the future of America in all walks of life. A
record number of women are serving the halls of
Congress. The number of women who own businesses continue to grow. Women in the Armed Forces are making a vital contribution to our nation's security by serving the cause of freedom and peace around the world.

During National Women's History Month, we honor the staff leadership and the hard work of American women. The U.S. Commission on Civil Rights calls upon public officials, educators, librarians, all people of the United States to observe this month with appropriate programs and activities that highlight and honor the contributions that women have made to our nation.

IV. STAFF DIRECTOR'S REPORT

VICE CHAIR THERNSTROM: And with that, we turn to Staff Director's report. Dr. Lerner, will you please provide the Staff Director's report?

DR. LERNER: Thank you. Let me just discuss briefly the Six Sigma Process. At the most recent business meeting, the Commission heard from Booz Allen Hamilton's Ken Thompson and our then staff director just to describe the process by which he might improve our performance in both the rechartering process and in streamlining report writing. Here is where it stands now. What I'm going to give is a
Regional staff has had training in the SAC rechartering process. And it might add to this and I participated in this myself and I discussed with some detail how the SACs assisted by their regional offices could help in producing our annual statutory report in a more systematic way than has been hitherto been done by helping us to produce case studies are particular problems, the one governed in this case by the statutory report in their particular locale.

This information is actually quite useful. Just to give an example, this current year, the report, the SACs in the Western Regional Office produced some important and interesting information about religious discrimination and the processes of meeting such religious discrimination in Oregon and Washington.

Now where does the process stand? On the SAC rechartering that are on the agenda for today the processes outlined in the Six Sigma Report are not used. However, in future rechartering, we were expecting to follow the procedures outlined and therefore approved.

The report part of the process has not moved forward because, in fact, it was unclear to the
staff exactly what was agreed upon at that particular meeting. So we wanted to wait to get direction from the Commissioners as to how we should proceed and are ready to proceed.

Okay. Let me just say a couple of other announcements. As many of you know, we have a brand new phone system and it's working quite well. Pam and her staff deserve a lot of credit for getting this thing operational. I want to add one thing.

VICE CHAIR THERNSTROM: Thank you, Pam.

DR. LERNER: Yes. I believe that that's gratitude for that. I would just make one comment. When we were having training, the woman who was conducting the training sessions commented that our previous phone system was so old that she had never since she started doing training in 1993 had seen a system so old. So she was totally unfamiliar with it. So this is a change long overdue and I thank you, Pam, and your staff for making it work.

One other comment is we have two interns working on the statutory report. Neither is present because Friday is not a day they report here. One is Kelsey Barton who is a junior and Political Science major and Afro American Studies major at Howard and the other is Andrew (A.J.) Schiera who is a junior and
Political Science major at the University of Pennsylvania. The staff has found them very helpful indeed.

That's the end of my report.

II. APPROVAL OF MINUTES (Cont'd.)

VICE CHAIR THERNSTROM: Okay. So we now return to the question of approval of the January 11, 2008 minutes. Michael, yes. Michael.

COMMISSIONER YAKI: Is the Chair recognizing Commissioner Yaki?

VICE CHAIR THERNSTROM: Yes, I am recognizing Commissioner Yaki.

COMMISSIONER YAKI: Thank you, Madam Chair.

A question about the Lean Six Sigma Process that goes through issues brought up the former staff director. In his report on Lean Six Sigma, he noted that there would be required, probably be required, changes to our administrative instructions with regard to how we handle briefing reports if we were to adopt Lean Six Sigma for national and briefing reports.

How is that being accommodated and when will those changes be brought up to a vote (1) and (2) are those processes being used on the national report
right now?

DR. LERNER: I can answer some of that.

VICE CHAIR THERNSTROM: The Staff Director is going to answer those.

DR. LERNER: Yes, the changes that are going to make as far as report writing processes to the administrative instructions are going to have -- There are going to be changes in two kinds of things. One is the nature of the first draft that Commissioners will be receiving. This provided for the Commissioners to receive an executive summary of two to three pages long rather than the full scale first draft that we have previously provided.

And that also will change the review process. Commissioners will have 21 days to review rather than the prior 30 days that were given and because -- But in a sense and in exchange for that, Commissioners will gain an additional 12 days of review time altogether. They will be given 30 days to review the second draft as opposed to the 14 days currently allowed. Also the Commissioners will have 15 days to review before a vote is taken instead of the seven to ten days currently allowed.

The changes to the administrative instructions, Commissioner Yaki, that's quite right
and AI 1-6 will have to be changed. But as I said
before, none of this has been done because it was
unclear to us exactly what the position the Commission
had taken. In other words, did the Commission intend
for the adoption of the Lean Six Sigma Process from
rechartering and report writing or simply for
rechartering? My reading of the minutes was ambiguous
I must admit. So we thought it was wise to await
instruction by the Commission before we proceed with
it.

VICE CHAIR THERNSTROM: And I would like
to have a motion to adopt this new process for our
statutory and briefing report as well as to authorize
the Office of the Staff Director to edit our
administrative instructions as needed to ensure this
occurs.

COMMISSIONER TAYLOR: This is Commissioner
Taylor.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER TAYLOR: If I may. I think
just so the record is clear, I believe, we should have
a motion with respect to how the Lean Six Sigma
Process applies to our statutory reports and our
briefing reports and would it be an appropriate time
to make that motion?
VICE CHAIR THERNSTROM: Yes.

COMMISSIONER TAYLOR: After we adopt the January 11th minutes.

VICE CHAIR THERNSTROM: It's -- I mean, we should have a motion on the approval of the January 11th and then a discussion and that discussion would have included Commissioner Yaki's remarks. But I think at this point we do need, yes, a motion to adopt the process to the reports.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. I move that the Lean Six Sigma Process be applied to both SAC recharters and reports, both briefing and statutory reports.

VICE CHAIR THERNSTROM: And we have a second on that?

COMMISSIONER TAYLOR: With a friendly amendment if I may.

VICE CHAIR THERNSTROM: Sure.

COMMISSIONER TAYLOR: That the motion should make clear that we're talking about the fiscal and non-statutory report and briefing reports going forward, so we don't undo what we've already done.

VICE CHAIR THERNSTROM: Yes. And you had to announce your name. That was?

COMMISSIONER TAYLOR: I'm sorry.
Commissioner Taylor. I apologize.

VICE CHAIR THERNSTROM: So we accept that friendly amendment.

CHAIRMAN REYNOLDS: This is Commission Reynolds. Yes, I did.

VICE CHAIR THERNSTROM: Okay. So we have a motion on the floor. We had a second on that motion. Yes, we have with Commissioner Taylor seconding it with his friendly amendment. So discussion.

COMMISSIONER YAKI: I have a question, Madam Chair.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: Commissioner Taylor rightfully talked about this as a prospective motion. However, in the discussion that I believe we just had with the Staff Director, it appeared that the `08 statutory report was being processed in accordance with Lean Six Sigma. Is that correct?

DR. LERNER: No, it is not.

COMMISSIONER YAKI: Is not?

DR. LERNER: No. It's being processed under the current regime.

COMMISSIONER YAKI: Okay. That was my point of clarification.
VICE CHAIR THERNSTROM: Are we ready to vote on this? Everyone in favor please say aye.

COMMISSIONER YAKI: I have one more question.

VICE CHAIR THERNSTROM: Yes. Sure.

COMMISSIONER YAKI: For the -- Will this also apply to the backlog of reports that we currently have or only for reports as we begin to -- new reports for new briefings subsequent to this motion?

DR. LERNER: Our hope is that and our expectation is that it will be applied to only subsequent reports and briefings that are to be done, not reports based on previous briefings. So in other words, the old briefing reports that we're working on for the Commission will be done under the old process and the new ones going forward perhaps from April will be under the new process.

COMMISSIONER YAKI: Just as a point of inquiry, would it make some sense to -- Since this apparently is a more streamlined functionality approach toward reports, wouldn't it make sense to apply it to some of the incredible number of backlog reports that we currently have?

VICE CHAIR THERNSTROM: We've gone through a lot of the process of those reports.
DR. LERNER: Right.

COMMISSIONER TAYLOR: This is Commissioner Taylor. One of the meanings to my friendly amendment and, Commissioner Yaki, just to let you know my thinking is frankly, I think, by making a clean break and making this a prospective motion it would give us a better sense of whether or not the Lean Six Sigma Process is effective and improving our work product and is timeliness. If we go back and rejiggle some old ones the picture tube just won't be as clear. So I'd like to do it prospectively so we all know whether or not the process is effective and worthwhile.

VICE CHAIR THERNSTROM: There's also a problem I believe with having to first amend the AIs before we would -- If we're going backwards, we can't do that without first amending the AIs.

COMMISSIONER YAKI: That's correct. Okay.

VICE CHAIR THERNSTROM: So I don't think this is a possibility, Commissioner Yaki.

COMMISSIONER YAKI: Okay. Got to help move things along.

VICE CHAIR THERNSTROM: Yes. No, I understand. So let's have a vote on the motion.

COMMISSIONER YAKI: A lot of doggies still in that corral back there.
VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER YAKI: There are a lot of doggies back in that corral.

VICE CHAIR THERNSTROM: We know that and I hope that under the new process that in fact deadlines will be taken seriously by everybody and that everybody includes me because there has been a problem of deadlines. For various reasons we just have not met.

But, in any case, let's have a vote on the motion that's on the floor. All in favor indicated by saying aye. This is prospective only on reports.

COMMISSIONER YAKI: The motion included the SACs.

VICE CHAIR THERNSTROM: Okay. The motion included the SACs.

COMMISSIONER TAYLOR: Yes, it did.

VICE CHAIR THERNSTROM: That we had already agreed on previously as I understand it.

COMMISSIONER YAKI: The Commission voted in favor of it.

VICE CHAIR THERNSTROM: Yes. All right.

COMMISSIONER GAZIANO: Aye.

VICE CHAIR THERNSTROM: Is there --

(Laughter.)
COMMISSIONER YAKI: Nay.

VICE CHAIR THERNSTROM: All in favor please say aye.

(Chorus of ayes.)

COMMISSIONER YAKI: I move to divide the question.

VICE CHAIR THERNSTROM: It's too late to do that, Commissioner Yaki. We already have a motion and it was seconded and we are voting on that motion.

COMMISSIONER YAKI: Until the vote is taken, I can --

DR. LERNER: But we're halfway through it.

COMMISSIONER YAKI: She didn't call for the vote. We just said aye.

DR. LERNER: No.

VICE CHAIR THERNSTROM: I did call it.

(Off the record comments.)

DR. LERNER: She did, yes.

VICE CHAIR THERNSTROM: So all in favor please say aye.

(Chorus of ayes.)

COMMISSIONER KIRSANOW: Kirsanow aye.

VICE CHAIR THERNSTROM: Kirsanow aye.

COMMISSIONER YAKI: I abstain.

CHAIRMAN REYNOLDS: Reynolds aye.
COMMISSIONER TAYLOR:  Taylor aye.

VICE CHAIR THERNSTROM:  Taylor aye.

COMMISSIONER MELENDEZ:  Abstain.

VICE CHAIR THERNSTROM:  So we have two abstentions. Commissioners Yaki and Melendez have abstained and the rest are ayes and no opposition.

COMMISSIONER YAKI:  Now the minutes.

VICE CHAIR THERNSTROM:  Now that we've settled that question can I have a motion to approve the minutes of January 11th?

CHAIRMAN REYNOLDS:  So moved, Reynolds.

COMMISSIONER TAYLOR:  Second, Taylor.

COMMISSIONER MELENDEZ:  I have some questions.

VICE CHAIR THERNSTROM:  I'm opening that up to discussion right now.

COMMISSIONER MELENDEZ:  On the Staff Director report.

VICE CHAIR THERNSTROM:  Questions on the Staff Director report. Why didn't you bring them up -

COMMISSIONER MELENDEZ:  We're still under that rubric, aren't we?

VICE CHAIR THERNSTROM:  We can finish the vote on this and then go back to the Staff Director's
report. So let us -- We are now since we have a motion simply to approve the January 11\textsuperscript{th} minutes. We have a motion, a second. All in favor -- Is there any discussion of those minutes?

COMMISSIONER YAKI: Just a point of information. Wasn't the fact that they were ambiguous in the first place the reason why we just had this corrective vote? So therefore should the minutes reflect, be amended to reflect, that the ambiguity was not resolved and perhaps the way the minutes thought it was?

VICE CHAIR THERNSTROM: It seems to me with the vote today that it's perfectly obvious that we are resolving an ambiguity and the minutes should reflect the ambiguity that existed at that time. Unless somebody has a different view, they should speak to it.

COMMISSIONER YAKI: Because the discussion before was that there's a discussion whether there was an ambiguity.

VICE CHAIR THERNSTROM: No, but really the motion assumed there was an ambiguity that needed clarification and so we've taken a vote on that. We have clarified it. The minutes stand as minutes of that meeting with the ambiguity buried in it. That
ambiguity has been recognized and voted on and we move forward.

COMMISSIONER YAKI: Okay. Remove the question.

VICE CHAIR THERNSTROM: Thank you. All in favor of approving the minutes of July 11th please say aye. We have two -- We've already taken a vote on it.

COMMISSIONER HERIOT: January.

VICE CHAIR THERNSTROM: January. We've already taken a vote. There were, do I understand correctly, two nos and the rest --

COMMISSIONER GAZIANO: No.

COMMISSIONER HERIOT: No.

VICE CHAIR THERNSTROM: No. I'm sorry.

COMMISSIONER GAZIANO: That was on something else.

VICE CHAIR THERNSTROM: I'm sorry. Okay. Let's have a vote. All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Reynolds aye.

COMMISSIONER KIRSANOW: Kirsanow aye.

COMMISSIONER TAYLOR: Taylor aye.

VICE CHAIR THERNSTROM: Thernstrom aye.

COMMISSIONER YAKI: Yaki abstains.

VICE CHAIR THERNSTROM: Yaki abstains.
COMMISSIONER GAZIANO: I abstain.

COMMISSIONER MELENDEZ: Abstain.

VICE CHAIR THERNSTROM: Three abstentions. Commissioners Gaziano, Yaki and Melendez abstain. The motion is approved.

Okay. Now further questions on the Staff Director's report.

COMMISSIONER MELENDEZ: Yes, this is Commissioner Melendez. I had a question whether or not we responded to the Congressional request. I think there were some letters that came in as per some information. Did we respond to those?

DR. LERNER: We are in the process of responding to them, yes. There was a fair amount of information that was asked for and the staff is pulling together the responses.

COMMISSIONER MELENDEZ: Okay. What is the status of the campus anti-Semitism campaign? Are we still working on that? I know we --

DR. LERNER: I believe so. Sock-Foon, do you remember the status? What is the status of the campus anti-Semitism campaign?

MS. MacDOUGALL: This is Sock-Foon MacDougal. As my schedule permits, I continue to research groups which we send campus campaign
postcards.

(Off the record discussions.)

VICE CHAIR THERNSTROM: Anyway, your question on this is, Commissioner Melendez?

COMMISSIONER MELENDEZ: He gave the update. That was the --

(Simultaneous speakers.)

COMMISSIONER MELENDEZ: The last question I had was on the statutory --

VICE CHAIR THERNSTROM: I thought maybe you had something in mind. I didn't ask you that.

COMMISSIONER MELENDEZ: No. That was just an update.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER MELENDEZ: The last question was on the statutory report. The staff is currently developing a systematic approach to selecting persons, jails, advocacy groups and faith-based organizations to which they send the interrogatories. Could you please describe the criteria of Office of Civil Rights' evaluation is using to determine who to send these interrogatories to and how many institutions you're planning to contact?

DR. LERNER: Yes. Because of the nature of the OMB limitations and also the nature of the time
involved we are not able to do a full-scale survey which, of course, in an ideal world would be desirable. So we selected specific cases suggested by both people who had participated in the briefing session and elsewhere. We asked them to indicate instances that might select out. A thought might be an especially egregious violators of religious right of prisoners and we tried to select what we would call in statistical jargon a purposive sample that would reflect it, meaning that we can't generalize as you would in the statistical sense. But this should give a kind of a representation of those prisons and jails where these deprivations of rights might be occurring.

Again, Sock-Foon, is there anything you would like to add?

MS. MacDOUGALL: This is Sock-Foon MacDougall. Dr. Lerner, I believe you characterized it correctly.

DR. LERNER: Thank you.

COMMISSIONER MELENDEZ: Thank you.

VICE CHAIR THERNSTROM: Anything else on the Staff Director's report?

Okay. We're moving onto a motion to adopt policy of the reporting of Commissioner appointment status and I'd like a motion that the Commission
should adopt a policy, that the Commissioner notifies the Staff Director or his designee of the appointment dates, terms and party affiliation. Under this motion, the Staff Director will ensure that this information is posted on the Commission's website as part of the Commissioner's biographies and any changes to this information will be immediately distributed to Commissioners in order to update it within five business days of such notice. The Staff Director shall prepare an administrative instruction to implement this policy.

And I have a --

COMMISSIONER GAZIANO: I will make a similar motion.

VICE CHAIR THERNSTROM: Does anybody want to move this and then we can ask for a friendly amendment?

COMMISSIONER GAZIANO: That's fine.

COMMISSIONER YAKI: I'll second it.

COMMISSIONER GAZIANO: I don't know that anyone's moved it.

COMMISSIONER YAKI: She just read it.

COMMISSIONER HERIOT: Abby keeps calling for a motion and you keep seconding it. You need to have a motion first. Calling for a motion is not the
same as moving it.

VICE CHAIR THERNSTROM: I will move it.

Okay. We have a second in Commissioner Yaki and you want a friendly amendment.

COMMISSIONER GAZIANO: Since there's disagreement, let me just -- Who has made the motion?

VICE CHAIR THERNSTROM: I just did.

COMMISSIONER GAZIANO: Okay. Let me just make a friendly motion then. I don't know. There may be some Commissioners who don't know what the right term is. I think it's improper --

VICE CHAIR THERNSTROM: What do you mean by "term"?

COMMISSIONER GAZIANO: There seems to be disagreement between branches of government as to when certain terms begin and end. Isn't the -- I think the real issue of concern is whether a Commissioner's party affiliation is stable or whether a Commissioner's party affiliation changes during the course of their tenure so that the appointing authority can make appropriate appointments under the statute.

So I would ask that the motion be amended just to specify that Commissioners need to inform the officials as in the original motion of any change in
their party affiliation.

VICE CHAIR THERNSTROM: I do believe we now have from General Counsel a complete record of beginnings and ends of terms. Is that not correct?

MR. BLACKWOOD: To the best we can.

VICE CHAIR THERNSTROM: To the best we can.

MR. BLACKWOOD: Which was shared with Commissioners.

VICE CHAIR THERNSTROM: Which has been shared with Commissioners. Everybody should have that. I don't think there's a lot of dispute over what these terms are. I mean, I don't mind. I can accept your --

(Off the record discussion.)

VICE CHAIR THERNSTROM: Commissioner Gaziano does have a point and I'm happy to go along with it. We can't have a conflict between the appointing authority's understanding of the term of appointments and our own understanding. Now is that a possibility?

MR. BLACKWOOD: This is David Blackwood. Unfortunately, it is a real possibility because since the case of United States v. Wilson there have been several appointments by Congressional authorities
which have set term limits that are contrary to the
Wilson case, specifically, I believe each of the
Congressional appointees. Explicitly, I know Yaki and
Melendez, Commissioners, have terms dates. The House
sets terms dates that are directly contrary to the
Wilson case. There is an issue.

VICE CHAIR THERNSTROM: So that speaks in
favor of Commissioner Gaziano's friendly motion and I
accept that.

COMMISSIONER YAKI: Wait, wait, wait.

VICE CHAIR THERNSTROM: I'm not cutting
off discussion here. I'm just saying as the person
who made the original motion I'm accepting his
friendly motion. Yes.

COMMISSIONER YAKI: With all due respect,
friendly motions just can't be accepted. They still
have to be voted upon.

VICE CHAIR THERNSTROM: I understand that.
There hasn't --

COMMISSIONER YAKI: And in the absence of
the unanimous consent --

COMMISSIONER HERIOT: -- friendly
amendment to the motion. It still has to be voted on.

VICE CHAIR THERNSTROM: All right. I'm
sorry.
COMMISSIONER YAKI: So there is no unanimous consent. Before we do that, I have a question for Mr. Blackwood. What exactly do you mean by my term does not coincide with the -- What did you mean in your reference to my term and Commissioner Melendez's term?

MR. BLACKWOOD: Well, it's not -- This is Mr. Blackwood again. I'm not referring to Commissioners Yaki and Melendez. It's all the Congressional appointments. By way of example although I did not bring the guidebook down, your term, for example, is several months, is designated several months beyond what would be calculated using the Wilson, the decision of Wilson.

COMMISSIONER YAKI: How so? I did not know that I had an end date on my appointment.

MR. BLACKWOOD: Absolutely, you do.

VICE CHAIR THERNSTROM: We all do.

COMMISSIONER YAKI: No. What I mean is I do not recall that in the reading of the appointment into the Congressional record that an end date had been specified.

COMMISSIONER GAZIANO: Michael, if you would permit me to -- I don't know about yours but that was the case with mine and based on my reading of
U.S. v. Wilson the House had extended my, purports to extend my, term about three months, two and a half months, beyond what the term would be calculated under the authority of U.S. v. Wilson. It may not be the case with you.

VICE CHAIR THERNSTROM: But it has always been the case.

COMMISSIONER GAZIANO: But there is a conflict in the House or at least some of the Congressional appointing authority at a minimum but that it would be all done under U.S. v. Wilson.

I also don't think that it's necessary or important for any particular purpose for the Commissioners to state what their view of their term is since it again operates as a matter of law. But it does seem to make sense to me and I thought this was a concern several Commissioners had raised including you in your draft motion that we notify the Commission regarding any change in our party affiliation. That makes sense to me.

VICE CHAIR THERNSTROM: This would simply strip the motion, the original motion, of the terms, the appointment dates terms, and focus entirely on the question of party affiliation.

COMMISSIONER YAKI: But, see, actually
what Mr. Blackwood raises makes me wonder why we would do that and why we would not amend the motion to require that the General Counsel attempt to engage in discussions to ensure that there is not conflict between what our records state, what Congress may state, and again I ask the question. I don't recall anyone giving me an end date.

VICE CHAIR THERNSTROM: There was one on the Congressional letter. There was one when I was appointed in 2001.

COMMISSIONER GAZIANO: Just David can, if he knows yours, he can speak to that. But I just don't know that we need to resolve whether all four of the Congressional appointees have. I think it's somewhat inappropriate for an officer of the Commission to try to resolve the legal conflict between the two branches. That's irrelevant for this motion. Why don't we just --

VICE CHAIR THERNSTROM: Yes, I mean, what are we gaining?

COMMISSIONER GAZIANO: Why don't we just tackle --

COMMISSIONER YAKI: I don't think it's --

Sorry. Go ahead.

COMMISSIONER GAZIANO: Why don't we just
tackle the issue of concern and you, if you want to, take up convincing the House or the Senate or the D.C. Circuit to resolve that disagreement, then more power to you.

VICE CHAIR THERNSTROM: But, Michael, what are we gaining with including that information?

COMMISSIONER YAKI: I'm not saying we include it. I would say I would move to amend the amendment to reinstate that section. But instead of having the General Counsel verify the dates, I would have the General Counsel examine the effective dates of every Commissioner appointment, reconcile it in accordance with his or her understanding of the real appointment time and *U.S. v. Wilson* and if there is a discrepancy, communicate such to the appointing authorities in order for these things not to become a problem later on.

The dates become, just to answer your question, Commissioner Gaziano, the dates become somewhat important because, for example, one of the issues that we had at the end of the year were a number of the end of the year appointments that involved Commissioner Thernstrom, Commissioner Braceras's expiring appointment which was, of course, Commissioner Kirsanow and what the exact dates even
just the dates of those appointments became an issue of inquiry because White House announced one thing. The papers actually went another. That becomes an issue in terms of when you calculate the timing and when the effective date is.

So I think that it is important that this be resolved with the assistance of the General Counsel because that's what the General Counsel is supposed to help do.

COMMISSIONER GAZIANO: Sure.

COMMISSIONER YAKI: And I think that in addition to that, yes, I agree about that we have to get at the issue of the ping pong registration. But I think we can do that.

I think the motion takes care of that. I have no problem with that part. I just wanted to make sure on the second part the General Counsel actually opened up a can of worms that I was unaware of. In terms of my own appointment, I would like to see rather than me go back, someone else go back. I think the General Counsel is perfectly situated as the counsel for the Commission to examine this issue, look at where there may be a potential discrepancy or issue and communicate with the appointing authorities as to resolve that so that there is a safe harbor for all of
us when the question of what the actual appointment
date is.

COMMISSIONER GAZIANO: Have you made --
Has your motion been seconded to amend the amendment?

COMMISSIONER YAKI: As you pointed out, I
had really set a motion. I know --

COMMISSIONER GAZIANO: Well, that's what
I'm trying to understand. My preference is --

COMMISSIONER YAKI: -- any of the
substance of what I wanted to do.

COMMISSIONER GAZIANO: I was confused
whether you made a motion. My preference -- I agree
with you that this is important. My preference is we
not do it with this motion.

VICE CHAIR THERNSTROM: I would like to
hear from the General Counsel on this.

MR. BLACKWOOD: If I might by way of
example, Commissioner Yaki, and I'm reading off the
Congressional record. The last line of your
appointment says that "you have been granted a six
year term expiring May 3, 2011."

COMMISSIONER YAKI: Okay.

MR. BLACKWOOD: That's directly contrary
to the calculation under the Wilson case which would
have your term expire December 15, 2010. That's
approximately a six-month discrepancy. Commissioner Melendez, I believe, has approximately seven or eight months that he would lose because Congress specifically picked a date directly contrary to the holding in Wilson.

If you're asking who wins, I believe the court controls. We have brought this to Congress's attention. Copies of these binders were forwarded to the appropriate committees, especially with regard to knowing that Commissioner Gaziano's position was coming up and it had no effect.

COMMISSIONER YAKI: Okay.

MR. BLACKWOOD: But it is an issue. I did talk to Mr. Schmechel, for example. It's something that the Commission is going to have to be aware of three years from now. There were signals --

COMMISSIONER YAKI: To whom?

MR. BLACKWOOD: To Congress that they need to address this before your dates expire.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. Commissioner Yaki brings up an important issue. But I believe that it should be addressed separately. The way I read the motion the motion would require Commissioners to notify the Staff
Director. As it's currently written, it would notify the Staff Director of the appointment date and term. That is problematic because if a commissioner picks a date that's not consistent with Wilson, we have a problem.

VICE CHAIR THERNSTROM: But I believe it is --

CHAIRMAN REYNOLDS: With respect to point of clarification, we don't have that problem.

VICE CHAIR THERNSTROM: Okay, but I believe there is a motion to, unless I'm confused, strike. There's an amendment to --

CHAIRMAN REYNOLDS: Yes, I support that, but I'm also making the point that Commissioner Yaki has brought up an important point that we need to address. But I'm saying that we should address it separately.

COMMISSIONER GAZIANO: Yes.

VICE CHAIR THERNSTROM: I don't think anybody's in disagreement with the fact that it is an important question obviously if there's a six months discrepancy in Commissioner Melendez's term between the --

COMMISSIONER YAKI: I just vote the common law rule of squatter's rights after December 2010.
(Off the record comments.)

VICE CHAIR THERNSTROM: I think that applies to all of us. Are we ready?

(Off the record comments.)

VICE CHAIR THERNSTROM: Commissioner Melendez.

COMMISSIONER MELENDEZ: Mr. Blackwood, how are the commissioners supposed to report their party affiliation under this motion? Is it their voter registration or their voting or what?

VICE CHAIR THERNSTROM: It can't be their voter registration for those of us who live in the state where there is no party registration.

DR. LERNER: Actually, we haven't --

MR. BLACKWOOD: This is Mr. Blackwood again. I would suggest that the proper way to do it is self certification. As Commissioner Thernstrom pointed out, several states don't require party affiliation to be recorded and therefore any -- I think it has to be a process of self certification.

VICE CHAIR THERNSTROM: Self declaration.


COMMISSIONER YAKI: I'm a Democrat.

VICE CHAIR THERNSTROM: You are?

COMMISSIONER YAKI: Absolutely.
VICE CHAIR THERNSTROM: That is news.

(Laughter.)

COMMISSIONER YAKI: I'm self certifying for the record right now.

VICE CHAIR THERNSTROM: Bring out the cameras.


VICE CHAIR THERNSTROM: All the national media that's here please take note.

All right. Are we ready to vote on this and I believe this is a motion that has been amended.

COMMISSIONER HERIOT: Could you reread the motion?

COMMISSIONER GAZIANO: Before we read the motion as amended, I may have one quick question.

VICE CHAIR THERNSTROM: Okay. The motion reads "The Commissioners adopt a policy that the Commissioners notify the Staff Director or his designee of their party affiliation. Under this motion, the Staff Director will ensure that this information is posted on the Commission's website as part of the Commissioners' biographies and any changes to this information will be immediately distributed to Commission and order updated within five business days
of such notice. The Staff Director shall prepare an administrative instruction to implement this policy."

COMMISSIONER GAZIANO: My one question since I did amend other parts of the original, is an administrative instruction important, valuable? Is that necessary? If we just adopt a policy here, isn't that good enough?

VICE CHAIR THERNSTROM: Mr. Blackwood.

MR. BLACKWOOD: The instruction is necessary to instruct the staff what to do.

COMMISSIONER GAZIANO: I want clarification of whether that's even necessary. But I appreciate the clarification obviously that the AI doesn't, wouldn't, necessary apply to the Commissioner action. But is an AI even necessary if we have instructed the Staff Director to see that it's properly posted on the website?

MR. BLACKWOOD: Well, you need a Commission vote to determine, to order, the staff what to do.

COMMISSIONER GAZIANO: That's fine, yes.

MR. BLACKWOOD: And I think that part --

COMMISSIONER GAZIANO: Do we really need then an AI to --

COMMISSIONER HERIOT: That puts it in the
handbook. It makes it easier for continuity.

VICE CHAIR THERNSTROM: What is your concern here? We have it in the AI. It becomes part of the handbook. Commissioner Melendez. No, it's Commissioner Yaki. Is that right?

COMMISSIONER YAKI: Yes, I have an issue with the self certification. I think that if you're in a state where there is no party affiliation listed when you vote, that's fine. But I think that where you do live in a state where party affiliation is part of how you vote that the part of the attestation of your party status. In other words, I just don't want self certification just because a couple states don't require it. I would like tangible proof in those states that do allow for parties certification.

VICE CHAIR THERNSTROM: So you want an inconsistent rule. One rule applies to people living in certain states and another rule applies to people living in states --

COMMISSIONER YAKI: No. As an accommodating rule. I'm accommodating those who live in those states that don't require party affiliation and for those states that do I think that it's perfectly reasonable to ask for that certification.

COMMISSIONER HERIOT: Then there's a third
category of states, states that will automatically
list you. They will tell you "You may vote in the
Republican or Democratic primary." But they don't
bother to tell you that if you choose to do so then
you'll be automatically listed as a member of that
party.

VICE CHAIR THERNSTROM: What is the
downside, Commissioner Yaki, to having people identify
themselves?

COMMISSIONER YAKI: I think the issue is
self evident and I'll leave it at that.

VICE CHAIR THERNSTROM: I'm sorry. I may
be --

COMMISSIONER GAZIANO: I will take your
advice. Since you haven't put it in the form of a
motion, I think that we can take your advice under
advisement. Is there any further discussion on the
motion?

COMMISSIONER YAKI: No, I'm going to make
a motion to amend your motion to include that in
states where party registration is allowed that
attestation of party status through documentation is
required. For those states that do not require party
identification as part of their voter registration
process that self certification will suffice.
COMMISSIONER GAZIANO: Is there a second on that? I would like to address.

COMMISSIONER MELENDEZ: Yes, second.

COMMISSIONER GAZIANO: Okay. Can I just ask how is that going to work? How is that going to work? Who has the responsibility to obtain the paperwork, to provide the paperwork?

VICE CHAIR THERNSTROM: And to enforce it.

COMMISSIONER YAKI: I don't know. I've always found it very easy to go down to my local registrar's and get a little printout that says I'm a Democratic.

VICE CHAIR THERNSTROM: Well, it is -- Look. If you are an in a state like I was like Massachusetts, your party identification which has a category of un-enrolled, otherwise known as Independent, your party identification switches for, let's say, for two weeks and you've taken the ballot of one party or another and then you return to register in whatever party or get back to enrolled if you please. So, you know, there isn't a consistent party registration because the state allows you to move back and forth.

COMMISSIONER HERIOT: What is the matter of concern is that you move back and forth without
even realizing it. A person can vote in a primary not realizing that their jurisdiction will automatically by operation of law cause them to be considered a particular party member and might not find out about that for years.

VICE CHAIR THERNSTROM: Yes, that's an even stronger reason.

COMMISSIONER GAZIANO: I suppose. I move the question. I think it's Mr. Yaki's amendment to my amendment to the motion.

VICE CHAIR THERNSTROM: All those in favor of Mr. Yaki's motion to amend.

COMMISSIONER YAKI: Commissioner Yaki.

VICE CHAIR THERNSTROM: Commissioner Yaki's motion, sorry, to amend Commissioner Gaziano's motion say aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed.

(Chorus of nays.)

VICE CHAIR THERNSTROM: It fails. We are back to the motion that Mr. Gaziano made which I did read aloud. Do I need to read it aloud again?

CHAIRMAN REYNOLDS: No.

COMMISSIONER GAZIANO: My question was answered. I move the vote on the motion unless there
is further discussion.

    COMMISSIONER HERIOT: I just want to make a point for the record here is that we're not claiming that any of this has any particular operation of law. We are talking about a motion that would require us or state what we believe our party affiliation to be. But we're not endorsing any particular theory as to how these decisions are made because those are decisions made by a different authority.

    You know, when the President of the United States appoints someone they may have their view of what constitutes a Republican or a Democrat or an Independent.

    VICE CHAIR THERNSTROM: Or may not even ask.

    COMMISSIONER HERIOT: Or may forget that this is at issue. We're not. We're not making law here. We're just --

    VICE CHAIR THERNSTROM: Or may explicitly say it doesn't matter.

    COMMISSIONER HERIOT: It's just a reporting of it.

    COMMISSIONER GAZIANO: And I want to associate myself with those remarks and add that the statutory requirements may be unconstitutional and an
appointing authority may have that view and an 
appointing authority's judgment is probably non-
justifiable.

COMMISSIONER HERIOT: Or the OLC's memo 
about how the wall works and that may or may not be 
anybody else's view of how the wall works. We're just 
talking about reporting what we consider our party 
affiliation to be at any time.

COMMISSIONER YAKI: I would offer a 
slightly contrary point of view and that is I think 
that there's a long statutory history going to the 
issue that party affiliation was important for the 
purposes of --

(Off the record discussion.)

COMMISSIONER TAYLOR: This is Commissioner 
Taylor. Do you have a question?

COMMISSIONER YAKI: No, I was pausing 
because the Chair was on the phone.

VICE CHAIR THERNSTROM: I'm very sorry.

COMMISSIONER YAKI: Was on her cell phone?

VICE CHAIR THERNSTROM: I'll take it off.

I'm terribly sorry. I forgot to turn it off before.

COMMISSIONER YAKI: That's not an issue.

It happens to everyone, Madam Chair.

I think that this is an important issue.
I think it goes toward issues of balance. I think that to understand that commissioner -- I speak only for myself, but at least for Commissioner Yaki and perhaps the function that party affiliation changed like a Kleenex for the purposes of complying with the structural requirements is I think contrary to statutory intent and certainly the spirit of the law in which we were created and that is why I have a concern about the self certification and why I have a concern that it's more than just a non-issue according to some other members of the Commission.

VICE CHAIR THERNSTROM: I just want to say one thing. Evidently, there's a problem with the rustling interfering with our communication with our three commissioners coming by phone. So everybody try to keep the rustle down.

Anyway, anybody else want to --

COMMISSIONER YAKI: Commissioner Taylor had something to say.

VICE CHAIR THERNSTROM: Yes, Commissioner Taylor.

COMMISSIONER TAYLOR: Yes, I have a question. Is this motion -- Does this motion require a commissioner to provide their "view" on party affiliation or note the party that they are registered
with if that state has party registration? In other words, could a commissioner have a different view than their registered party affiliation?

COMMISSIONER GAZIANO: Would you read the sentence?

VICE CHAIR THERNSTROM: Yes. The sentence reads, "The Commissioners notify the Staff Director or his designee the party affiliation." So it seems to me this is a matter of self identification. On the other hand, we cannot have more than four members of any one party on the Commission.

COMMISSIONER YAKI: This, of course, is a basic question. If Commissioner Melendez and I have some change in medical condition that prompts us to self identify as Republicans right now, that you would out of compliance with the statute as we are sitting.

COMMISSIONER GAZIANO: I'm not sure that's correct, but I --

COMMISSIONER YAKI: The medical condition --

(Laughter.)

COMMISSIONER GAZIANO: Which is why I don't think we need to debate the motion. Commissioner Taylor, I am sure you will self identify with all of the proper considerations and I don't know
that we need to specify in the motion anymore what those proper considerations are.

COMMISSIONER YAKI: Commissioner Taylor, I think if the President found out that you registered with the Green Party you would be receiving a stern letter or phone call in very short order.

VICE CHAIR THERNSTROM: Well, we do not need to go there, Michael, Commissioner Yaki, I should say. Can we have a vote on the motion as -- Is there more discussion or can we have a vote on the motion that's on the table?

CHAIRMAN REYNOLDS: Let's vote.

COMMISSIONER KIRSANOW: Kirsanow. Please read the motion.

VICE CHAIR THERNSTROM: The motion reads that the Commissioners adopt a policy that they notify the Staff Director or his designee of their party affiliation. Then it goes on to say and with this motion the Staff Director will ensure that this information is posted, etc.

COMMISSIONER KIRSANOW: Thank you.

VICE CHAIR THERNSTROM: Can we have a vote on this? All in favor say aye.

CHAIRMAN REYNOLDS: Commissioner Reynolds aye.
COMMISSIONER KIRSANOW: Kirsanow aye.

COMMISSIONER TAYLOR: Taylor aye.

(Chorus of ayes.)

COMMISSIONER YAKI: No.

COMMISSIONER GAZIANO: Aye.

COMMISSIONER MELENDEZ: No.

VICE CHAIR THERNSTROM: Okay. So there are two nos from Commissioners Yaki and Melendez and otherwise everybody has voted aye.

V. MANAGEMENT AND OPERATIONS

VICE CHAIR THERNSTROM: We go on to the FY 2008 and FY 2009 budgets and that is for our Staff Director to report on.

DR. LERNER: Thank you. Basically, 2008 is very straightforward. We are proceeding on schedule. If we -- We have completed the first quarter of our spending. So we have a report from the GSA and we spent approximately the amount of money that we had expected to be so that we're going to be in compliance with the Anti-Deficiency Act and other acts. In other words, we spent about a quarter of it so far which is what we had hoped to do. Obviously, that means the changes that were suggested by our budget director and urged by our former staff director are included which means that none of the new hiring
and there was a slight diminution of, but not very
large one, of some OSSD travel moneys.

COMMISSIONER YAKI: I have a question on
that.

DR. LERNER: Let me just finish and then
yes. So that's our situation. So we're doing well
with the current constraint of what we have. I'm
sorry, Commissioner Yaki. Go ahead.

VICE CHAIR THERNSTROM: Wait a minute. Is
that the end of the 2008?

DR. LERNER: Pretty much.

VICE CHAIR THERNSTROM: Okay.

DR. LERNER: Well, wait a minute. I do
have one more thing.

VICE CHAIR THERNSTROM: Well, let's finish
with the 2008.

DR. LERNER: I had almost forgotten. I
think the staff under fairly difficult situation has
actually accommodated admirably and let me just make
one point in terms of procedure which is that because
of the nature of the number of people that we have
left on the Commission staff many people are working
more than one job and have many different
responsibilities.

VICE CHAIR THERNSTROM: More than one job
within the Commission?

        DR. LERNER: Yes, within the Commission
and they've taken on -- They're multi-tasking above
and beyond in some cases the original responsibilities
and their efforts as far as I'm concerned are most
appreciated.

        VICE CHAIR THERNSTROM: Commissioners Yaki
and Melendez both have something to say and so do I.

        COMMISSIONER YAKI: I have a question
about your statement about none of the new hiring.
It's my understanding that in this quarter, at least,
in the last month and a half, there have been two new
hires to the Commission now.

        DR. LERNER: Those were hires that were
done under the previous dispensation.

        COMMISSIONER YAKI: What do you mean by
that?

        DR. LERNER: Well, what I mean by that is
they were done before (a) I became Acting Staff
Director and (b) they are not part of the list that
the previous staff director had actually put out.

        COMMISSIONER YAKI: I understand that they
aren't part of the list. But they are nevertheless
two new hires. Correct? Did we not lose one special
assistant and then hire another one and did we not
VICE CHAIR THERNSTROM: We hired a replacement for a special assistant.

COMMISSIONER YAKI: The question is in a budget scenario that was documented by the former staff director the issue was never brought up as to what the impact of (a) hiring a replacement was and (b) hiring the new attorney advisor was in terms of --

VICE CHAIR THERNSTROM: But there was a hold on --

DR. LERNER: Replacements.

VICE CHAIR THERNSTROM: It's just a replacement.

DR. LERNER: Both hires are replacements.

VICE CHAIR THERNSTROM: Yes, and if you look at the transcript from February 17 of 2006 it does make it very clear, the record makes it very clear, that we are refraining from hiring additional special assistants. But we are not in any way putting a hold on --

VICE CHAIR THERNSTROM: Pardon me?

DR. LERNER: -- Sorry.

VICE CHAIR THERNSTROM: Well, the question is also hire a new attorney advisor?
VICE CHAIR THERNSTROM: On replacements.

COMMISSIONER YAKI: But we hired a new attorney advisor.

DR. LERNER: Pardon me?

COMMISSIONER YAKI: We hired a new attorney advisor.

DR. LERNER: No, it was we were replacing one or one that we had previously had.

COMMISSIONER YAKI: Well, I think the term "replacement" and "new hire" are being used rather cavalierly in this situation because the replacement actually still works as far as I can tell from the emails I receive within the Office of OSD and so I find that very peculiar.

DR. LERNER: Well, with a new person, of course, there are issues of transition. But the replacement is assuming and will totally assume the duties of the --

COMMISSIONER YAKI: That may be true, Dr. Lerner, but as I recall the person who was being replaced has been supposedly in the other job for more than several months and I'm just wondering what transition we're talking about here.

DR. LERNER: Actually, I don't believe that's correct. But okay.
COMMISSIONER YAKI: At least, not according to the Staff Director's reports as we go back in time. Perhaps I can refresh your memory and get you the appropriate citation.

VICE CHAIR THERNSTROM: Commissioner Yaki, I would just like to read from this transcript so that we have it in this record as well from the February 17, 2006 transcript. I said, "The point is we would want to be able to replace the special assistant with another special assistant and not necessarily the person that is the commissioner." And the Chair Reynolds says, "That's right." And then I go on to say, "But we would want to keep the same number of special assistants, the total number, so I would just refrain from hiring additional commissioner special assistants so the number, the total number, doesn't go down. That's my only point. I'm not saying that any particular commissioner is entitled to a special assistant." And Commissioner Yaki says, "I agree."

So I think with respect to the special assistant there's a clear record here.

COMMISSIONER YAKI: There is actually -- I agreed because there was some information that was available at the time. My question actually goes to when was the new special assistant actually hired and
did they go through White House clearance. My understanding is that usually took about two months. So I'm just trying to figure out exactly when this new person was put into the system and then actually hired.

VICE CHAIR THERNSTROM: And by the way, the 2007 budget submission includes, contemplated, the Commissioners approved, eight Commissioners, four special assistants. I mean, this was the expectation. This is for FY `08. I'm sorry. This was the expectation we all agreed to.

I don't think that there's an issue with respect with the special assistants and the answer to the question of whether the White House, whether the name was submitted to the White House. The answer is yes.

COMMISSIONER YAKI: So when was that done?

VICE CHAIR THERNSTROM: The precise date, I don't have that.

(Off the record comment.)

VICE CHAIR THERNSTROM: We may have it. We can ask Myrna and Tim Fay can go ask Myrna when the paperwork was submitted to the White House.

COMMISSIONER YAKI: I'll take that later. You can move on.
VICE CHAIR THERNSTROM: Yes, I mean this is -- You do realize this is an OPM rule. It's not a Commission rule.

COMMISSIONER YAKI: And that's exactly my point.

VICE CHAIR THERNSTROM: I mean we don't have liberty to simply disregard OPM.

COMMISSIONER YAKI: And then that's exactly my point. I think that OPM has no jurisdiction over our special assistants for White House clearance and I'm trying to figure out exactly the time line for when that occurred.

VICE CHAIR THERNSTROM: The Staff Director just said to me that he believes OPM has jurisdiction over everybody.

COMMISSIONER YAKI: I believe that's correct.

MR. BLACKWOOD: The question is -- This is Dave Blackwood again. The question has come up several times about process and I'm not the expert on it and unfortunately Ms. Martin is not here. But I will give you my best explanation. OPM is the only source that can process any sort of hire here at the Commission, any, all Schedule Cs and we have the form. We have pulled that up. And we have several
publications from OPM that say all Schedule Cs must be cleared by the White House.

We have tried to determine the source of that policy. It appears, and I can't say for sure, it is a policy. It is not a rule. It is not a regulation. It is a policy, however, that appears to have been followed by several White Houses going back to the Reagan Administration.

I don't have the rule. We have requested a copy of the source of the material from OPM and its general counsel and we haven't received a response as of this time.

So I will tell you this. We have -- I have requested from OPM's counsel. If we submit an request to hire someone and don't go through the White House. What happens? And he said, "We'll cross that bridge when we get to it." But we've also been informally been told in essence it's simply not going to get processed. We can submit the request and OPM won't do anything.

COMMISSIONER YAKI: Okay.

VICE CHAIR THERNSTROM: Anything else?

COMMISSIONER MELENDEZ: Yes, I have a question. As far as the approval of the Commission on any of these special assistants, I know that there is
times when we, the Commission, actually approved, we've been before the Commission and we vote on --

VICE CHAIR THERNSTROM: We don't vote on particular people. We voted to give you a special assistant.

COMMISSIONER MELENDEZ: Okay. But we didn't do that in this situation?

COMMISSIONER YAKI: It's a replacement.

VICE CHAIR THERNSTROM: No, it's a replacement.

COMMISSIONER YAKI: So the answer is no.

COMMISSIONER MELENDEZ: But my concern is that --

COMMISSIONER YAKI: Is it your replacement? Is the person assigned to you, Commissioner Thernstrom?

VICE CHAIR THERNSTROM: No, but it specifically said as I read in those minutes that person does not have to be assigned to me.

COMMISSIONER YAKI: May I ask a question?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: Given my request earlier in the year, why was there no consideration that he'd be given to me?

VICE CHAIR THERNSTROM: Well, Tim Fay was
regarded as my replacement and for complicated reasons we decided to -- I mean, he is my assistant and I was sharing Lisa with Gail and we're still sharing an assistant. He was replacing the person whom we are sharing.

COMMISSIONER GAZIANO: I'd like the record to reflect that if any individual Commissioners have special assistants individually assigned to them that I would like one.

COMMISSIONER YAKI: I agree. Commissioner Thernstrom, my only point is that my understanding of the regs and the law is that the special assistants are to a commissioner. Whether or not that person chooses to assist another commissioner is an issue between one commissioner and another. But that special assistant is assigned to a particular commissioner. I believe that the paperwork for Mr. Fay specifies that he is assigned to Commissioner Heriot. Is that correct?

VICE CHAIR THERNSTROM: That is correct. On the other hand, we have not changed the ratio of special assistants and we are in -- You know, I mean, the question of whether it is meaningful legally to have had Mr. Fay assigned to Commissioner Heriot instead of me is a separate issue that we would have
to discuss separately it seems to me. We did not regard it as anything but continuing the sharing arrangement.

And in these minutes specifically that I read to you it talked about, we talked about, the question of whether the replacement was for a replacement for a specific commissioner. Look. There are --

COMMISSIONER YAKI: No. The minutes reflect the placing of special assistants which in my view meant that if you lost one, if your person left you, you would get one. But that is a different situation where the person is no longer assigned to you and is assigned instead to a new commissioner. That's my point.

VICE CHAIR THERNSTROM: Well, I know it is, but we have to resolve the basic disagreement over whether Mr. Fay is still assigned to me or not. I regard him as assigned to me in the same way that Lisa Neuder was assigned to Gail Heriot and that is --

COMMISSIONER YAKI: You might want to ask OPM on their view of whether that's something that could formally assigned. In other words, if Special Assistant Fay were to say to you, "Commissioner Thernstrom, I'm sorry. I can't do it. I have to do
this work for Commissioner Heriot." You say, "No, we share this." If there were an issue, I think OPM would say, "Commissioner Thernstrom, you lose."

VICE CHAIR THERNSTROM: Well, luckily, the conditions under which he were hired, I mean, he understood from the very beginning that we were, that two of us in effect were, hiring him and all of this boils down to budget issues.

We have no money and I'd like to interject something here on that question. There are a lot of people on this staff, I know, on the Commission staff who are worried with this kind of discussion going on that there will be layoffs and I would like to say speaking only for myself here, but other commissioners are free to join me, that I will do everything in my power to protect layoffs on this Commission and that furthermore I join Dr. Lerner's statement that I know there are people working more than 40 hours a week here. I know that there are people doing excellent work and I personally feel very grateful to them and in very tough times, they're pitching in and I'm again going to do my best to see that there are no layoffs. And any additional special assistants would mean layoffs. We cannot in my view go there.

COMMISSIONER YAKI: I just raise the issue
that when I brought up the desire to have a special assistant because of the workload, because of the immense backlog of reports that are out there and the fact that it is difficult as a full-time lawyer to have the time to devote the reports that come out as they are coming out. At the very time that I raised that with the former staff director he had not yet extended an offer for the new attorney advisor. But as soon as I did, he did that and that we can talk all we like about how our budgets have been.

But I would like -- I'm sure the staff knows full well that two years for reasons that are still inexplicable, we returned $500,000 to the Treasury that last year we spent an inordinate amount of money on the Hawaii special state advisory committee issues in an attempt to try and juggle a resolution from them which ultimately failed but at an enormous expenditure at the end of the year to the Commission and that I think for me any questions my willingness to try and help the staff knows full well that one of the first things I did when I came on board was address this issue very directly with the Chair on the issue of the regional offices, on the issue of layoffs.

But part of me is extremely skeptical.
nowadays because of the fact that at the end of the
last two years we have had enormous sums of money, one
where we simply gave it back and the other one that we
just simply spent as much as we possibly could.

VICE CHAIR THERNSTROM: The attorney
advisor is a replacement. Now on the question of --

COMMISSIONER YAKI: It's not a
replacement. It is not a replacement. It is -- We
have two highly paid individuals who all we did is we
rotated positions from OSD elsewhere. We have someone
working in Atlantic right now who is earning, an
attorney advisor essentially position, salary and
there were two highly paid people in Atlantic and we
have very few in other parts of the country. That
person was in OSD and rotated out for reasons
unbeknownst. Why that happened, I have no idea.

Then we had another person who actually, I
think, does a very good job, Mr. Byrnes, who was with
OSD and rotated out again to do some other position
that was created with a new rubric.

So when you say replacement, I get a
little hot under the collar because I don't
necessarily view it as replacements and when we talk
about how hard the staff is working, I know how hard
the staff is working. I talk to them as much as I can
even though pretty much I'm prohibited from talking
to them by directive of the former staff director.  
But I know how hard they are working and I also know
that one of the reasons that they are working this
hard goes directly to one of the issues that I want to
raise later on in this report.

VICE CHAIR THERNSTROM: Well, I'd like the
Staff Director to address what you said. My
understanding is that no matter you can nitpick about
the budget here and there, the money spent on the
Hawaiian SAC meeting or whatever. You are not going
to get the money without layoffs for a special
assistant for every single commissioner. We're just
not going to get there. Dr. Lerner.

DR. LERNER: Yes. Let the record reflect
also that all the appointments are indeed
replacements. Mr. Byrnes is replacing a director of
the Regional Program Coordination Unit which is as
everyone knows here a very important part of the task
in managing the Commission having to do with --

COMMISSIONER YAKI: And who was that
person and how long was that position vacant?

DR. LERNER: We had an acting person there
and --

COMMISSIONER YAKI: And why was that
position vacant? In other words, there was an active person, but how long had that position been vacant? I mean, we --

DR. LERNER: I think --

COMMISSIONER YAKI: We've can do budget all day long, Dr. Lerner. I know this stuff very well. So why don't we just end it because we should have a discussion offline because we can go into all the vacancies that have been there for years in the agency and then all of sudden hires become replacements for those when we froze a lot of those for the specific purpose of keeping other parts of the agency going.

VICE CHAIR THERNSTROM: I mean, Commissioner Yaki, I'm a little confused here. You have said SAC rechartering is a priority, but that is one of the functions of the regional director. Look.

COMMISSIONER YAKI: Well, no. I just said SAC priority, SAC rechartering is a priority, but that to me is a substantive issue, not necessarily a timing issue.

COMMISSIONER MELENDEZ: But you need a body to do it.

VICE CHAIR THERNSTROM: You need a body to do it and I am going to be very unhappy if a great
deal of time of Dr. Lerner's is taken up with arguing about was somebody a replacement and exactly the details of this because we are --

COMMISSIONER YAKI: -- a long history of the agency.

VICE CHAIR THERNSTROM: Well, hold on a minute.

COMMISSIONER YAKI: -- having only been here for four months.

VICE CHAIR THERNSTROM: Hold on a minute. We are in theory -- I mean, Dr. Lerner has two jobs at the moment. His other job is extremely important to moving the briefing reports, the background of the reports of and getting out a statutory report. We will have a new staff director. It seems to me it is at that point that you want to go over your concerns about how money is allocated.

But in the meantime to the best of our ability we should allow Dr. Lerner to do the job he was hired to do in this agency at the start of his tenure here.

COMMISSIONER YAKI: We'll address that later on this agenda item. Thank you.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: I have no more
COMMISSIONER MELENDEZ: Going back to the budget, I think that is probably the main issue that we're talking about here. I have asked in January for a specific line item, some type of budget item actually because really what happened was that my understanding was we ended up with a lot less money, about $440,000 less, starting October 1 running through the fiscal year and the issue that I brought up in January was that we needed to see a commission what that actually looks like and whether those cuts are going to be through the 2008 budget and basically have a hand in making some recommendations. But we have to see something as far as line items so that we know where those cuts will actually be for 2008 because included in those are the -- I think, there is a separate budget to cover SACs' meeting expenses. You know, I'd like to see that budget as far as is it still the same as far as the allocation going to the SACs.

DR. LERNER: Yes.

COMMISSIONER MELENDEZ: And how much has actually been expended already in the first quarter which was October 1st through January 1st.

And you had mentioned or Mr. Marcus had
mentioned that we were going to consider cutting some of the briefings. So this whole issue plays into whether or not we have any money at all and so I'm not sure where we are with this budget as far as spending.

So that's really the crux of what we're actually talking about here. Until I can see something, some type of budget, that tells me where we're at and I asked for that in January and I think it makes us skeptical when -- The real question in budgets is the question of whether or not you should even fill a position and maybe it even goes to special assistants because the Commission has to somewhere look at the budget and say, "Well, it's nice that we can fill a position in any thing that we call replacement, not just the special assistants." But the question would be do we have the money to do that and how comfortable are we in looking at something on paper that actually gives us a comfort zone to support.

We talked about whether or not we should hire a human resources person and all those things that we think are major components of operation here. So I think that until we can see a budget and have some input into these key positions I think we're still kind of in the dark as to where we are. But
that's my -- That's something I brought up in January.

DR. LERNER: Well, I think I would like to reiterate what I said previously. That is we're not engaging, we're not having -- Our budget is in fact -- We're on course to spend that money that we've been allocated and no other. The direction that the previously staff directors has taken is the one that's being pursued now. Tina and I are monitoring it closely to make sure that we're following -- we're not going to fall short and we're not.

As far as replacing anybody now, unless there are retirements or people leaving the agency, we have no additional funds to replace anybody else. As far as your requests are concerned, we're actually looking at putting responses together to them but we haven't finished them in terms of the memo that you sent us.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. What's the issue that's on the table now?


VICE CHAIR THERNSTROM: It's a discussion of the 2008 budget and which Commissioner Yaki has a lot of budget related concerns.
We have not yet heard from, Dr. Lerner, on the 2009 budget which are you reporting on.

DR. LERNER: Yes, just in the most general terms. As you all know, our allocation from OMB is cut back to $8.8 million as precisely was the year before and we are trying to accommodate the schedule, the program that was voted on and is part of our strategic plan to have a national civil rights conference in 2009, and we've actually worked it out how we'll be able to do it in a scaled-down manner consistent with our budget obligations but I'm not ready to share the details with that yet. That's pretty much all.

COMMISSIONER MELENDEZ: A question.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER MELENDEZ: Was there a deadline date to actually submit the appropriations to Congress? I thought it was past already and so what are we doing to try to get it in late?

DR. LERNER: It has been the case in the past -- right after the State of the Union is the traditional deadline for turning in a budget and we haven't that this year for various reasons.

But, in fact, we expect to be able to meet it, we expect to be able to turn this in, reasonably
soon and I understand from talking to people in various agencies that the consequences are not necessarily severe because this is something that many agencies are in the situation of doing.

CHAIRMAN REYNOLDS: No.

COMMISSIONER YAKI: What?

VICE CHAIR THERNSTROM: I think Commissioner, Chair Reynolds, has something to say.

CHAIRMAN REYNOLDS: Hello?

VICE CHAIR THERNSTROM: Yes. We recognize you.

CHAIRMAN REYNOLDS: No.

(Off the record discussion.)

VICE CHAIR THERNSTROM: Chairman Reynolds.

CHAIRMAN REYNOLDS: I'm -- I didn't have a comment to make at this point.

VICE CHAIR THERNSTROM: We heard this no.

CHAIRMAN REYNOLDS: It didn't come from me. Unless my -- picked up the other line.

(Off the record discussion.)

VICE CHAIR THERNSTROM: All right. We'll disregard. That's a -- statement.

COMMISSIONER YAKI: Point of intervention.

Is the 2009 budget coming before the Commission at some point?
DR. LERNER: Yes, absolutely.

COMMISSIONER MELENDEZ: Now what is the specific time frame that we would expect this --

DR. LERNER: I'm hoping we have it by the next meeting.

COMMISSIONER MELENDEZ: Okay.

VICE CHAIR THERNSTROM: Does anybody else have anything to discuss about the FY 2009 budget because we have a long discussion here of the briefing report on racial categorization of the 2010 census and I'm beginning to fear this meeting will go on for an unacceptably long time.

So can we move onto that? We have to vote on each finding and each recommendation with the understanding, of course --

COMMISSIONER YAKI: Point of order. I think there was an item with regard to Management and Operations regarding in the order of precedence in terms of --

VICE CHAIR THERNSTROM: You are right. We did inject that. Okay. Do you want to make motion with respect to that?

I just want to answer the question that was raised before about -- Well, it's about to be on the table about what happens when the staff director
is absent and the deputy staff director or the individual serving as acting staff director who has assumed responsibility to manage the office, what happens when he or she is absent as well and the AI in 1-18(b) Order of Precedence says "When the staff director and the deputy staff director are both absent the assistant staff director for the Office of Civil Rights Evaluation shall assume the duties and authority of the acting deputy staff director." And there is nothing else.

COMMISSIONER YAKI: Right. And since he was the assistant staff director, that's why we wanted to put something behind him since he has now delegated the authority of the staff director. Correct? Yes. I mean, that was the title.

So I move that "the Commission amends its AI 1-18(b) to insert in the Order of Precedence after the assistant staff director that the associate deputy staff director be fourth in order of precedence and to require SES qualifications and Commission vote of approval on any person assuming the duties the administrative head for more than 14 consecutive calendar days." I'm going to amend that to say "or until the next calendar business meeting and to restrict any person who has assumed the duties of
administrative head and otherwise present the same
authority for exercising the authority for contracts
over 3,000 value without receiving an advanced
Commission vote of approval."

(Off the record discussion.)

VICE CHAIR THERNSTROM: Are you proposing
something, Commissioner Yaki?

COMMISSIONER GAZIANO: Is there a second?

Has there been a second, Madam Chair?

VICE CHAIR THERNSTROM: I'm sorry. I was
preoccupied here. Is there an actual motion?

COMMISSIONER YAKI: That I just read, yes.

VICE CHAIR THERNSTROM: I'm terribly
sorry.

COMMISSIONER YAKI: Okay.

VICE CHAIR THERNSTROM: Could you read it
for my benefit again?

COMMISSIONER YAKI: I move that the
Commission amend its administrative instruction 1-
18(b) regarding order of precedence to insert after
"assistant staff director" the "associated deputy
staff director as fourth in order of precedence, that
the associated deputy staff director would have SES
qualifications, that Commission vote of approval for
that person assuming the duties of the administrative
head for more than 14 consecutive calendar days or
the next calendar business meeting of the Commission
and to restrict any person who has assumed the duties
of administrative head not otherwise possessing
assigning authority from exercising assigning
authority for contracts over $3,000 value without
receiving in advance Commission vote of approval."

That's my motion.

VICE CHAIR THERNSTROM: Do we have a
second to that motion?

COMMISSIONER MELENDEZ: Second.

COMMISSIONER GAZIANO: Madam Chair, if
it's all right for me to ask a question. Before I
vote, I think there's some aspects of that motion that
don't make a lot of practical sense, particularly that
whoever has the authority of the staff director only
have such a limited budgetary authority. But I'd like
to know whether such a motion is consistent with law
should we approve it. Is it possible we could get an
opinion whether all of the parts of this motion are
consistent with law if we were to approve it, that
this motion would have any effect?

VICE CHAIR THERNSTROM: I think that's an
excellent idea.

COMMISSIONER YAKI: May I respond, Madam
Chair?

VICE CHAIR THERNSTROM: Of course.

COMMISSIONER YAKI: This is sort of the DEFCON 4 version of what happens when you go down the chain of command and you're getting now toward less and less senior albeit SES perhaps qualified individuals who are temporarily heading the agency and I think that it's prudent because such a person will have had ostensibly limited experience in terms of running the agency as a whole to place some restrictions on that person from a budgetary point of view simply because of the issue and experience.

We're talking about No. 4. We're not talking about No. 1, No. 2 and No. 3. We're talking about the person fourth in order and I think it's very appropriate that the fourth person have less carte blanche, shall we say, during that time period. Otherwise, you can get into a situation where you may have No. 4 totally disagreeing whoever was No. 3. No. 3 goes away on vacation and No. 4 signs a contract obligating the agency to some insane consulting gig and then we're stuck.

VICE CHAIR THERNSTROM: This is so academic.

COMMISSIONER GAZIANO: Let me just -- If I
can just raise something. Some of my legal concerns, Madam Chair, if that's all right.

VICE CHAIR THERNSTROM: Absolutely. But I do want to interject here that I have every hope we're going to get a staff director before too long. I find this unnecessary to address, but I --

COMMISSIONER GAZIANO: Well, if you don't --

VICE CHAIR THERNSTROM: I do want to hear the legal concerns here.

COMMISSIONER YAKI: Then I'll just point this out. If Dr. Lerner has a medical emergency in his family, if he needs to attend to some urgent need and needs to go, there is right now nothing in place to deal with the fact that there is anyone here to sign on behalf of the agency. If that happens, God forbid, during -- but if there is some instance that requires Dr. Lerner's attention elsewhere and outside from the agency where he could not perform the duties assigned to him as the delegated authority of the staff director, then issues such as Commissioner Heriot and Commissioner Melendez's travel could be at issue and there are just simple things that are part of what the staff director does and having no succession for Dr. Lerner I think is imprudent.
COMMISSIONER GAZIANO: My legal concern --

(Off the record discussion.)

COMMISSIONER GAZIANO: Madam Chairman, my legal concerns sort of I think --

VICE CHAIR THERNSTROM: May I just say one thing before that? I don't think you are correct to say that, for instance, travel would be a problem as I understand it. But go ahead.

COMMISSIONER GAZIANO: I think Commissioner Yaki's concerns cut against his motion. But skipping those, let me just mention my legal concern is that the President is charged under the Constitution to commission all officers. The statute that organizes our Commission requires the President to appoint -- Subject, of course, to our approval, it is the President's responsibility to fill, to see, that this Commission has a director.

Some of the conditions in Commission Yaki's motion seem to put limits on the President's authority. I don't know all of the body of the Executive law, but I know some of the body of Executive law from when I used to help advise the President on filling in such positions and I am dubious whether some of the conditions in the motion
are consistent with the President's authority. I'm not sure one way or the other.

But it seems imprudent, but let me put that aside. I just think that we can make some order of precedence but some of this doesn't make legal sense to me.

COMMISSIONER YAKI: Madam Chair, I would just say that I thank Commissioner Gaziano for making the point I'm going to be making later on in the meeting which is that if it is indeed the President who is responsible for doing the appointing authority for the staff director and somehow anything beyond that may be unconstitutional, then the very question of succession here is why I put it on the table.

COMMISSIONER GAZIANO: You missed --

COMMISSIONER YAKI: Under Commissioner Gaziano's theory, how can we have any succession whatsoever for this absent Presidential authorization in regulations from OPM?

COMMISSIONER GAZIANO: I think you misinterpret my point.

COMMISSIONER YAKI: I don't think I did at all.

VICE CHAIR THERNSTROM: You have to speak up for the --
COMMISSIONER GAZIANO: I think you misinterpret. The President has particular statutory authority in appointing a permanent staff director. He has other authority under the Constitution and a number of other laws in filling a vacancy and such an appointment and I think some of the conditions in your motion may not be lawful. So until --

COMMISSIONER YAKI: So you would rather have the agency have Dr. Lerner be required to stay here at all times because we have nothing in hand to alleviate him of his burdens should he be required, should his attention be required elsewhere? Is that basically it?

COMMISSIONER YAKI: No.

COMMISSIONER GAZIANO: Then how would you propose to interpret that? Some of the conditions in your motion make no sense.

COMMISSIONER YAKI: Why?

VICE CHAIR THERNSTROM: But also, Commissioner Yaki --

CHAIRMAN REYNOLDS: This is Chairman Reynolds. I just want to go back to Vice Chair Thernstrom's comment that this is indeed an academic question. Sure. We can spin out scenarios where we would have to make some adjustments. But we're not

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there.

I don't see a concrete problem, the problem in front of us, and if a concrete problems arises, I think that we can address the issue in a calmly fashion via poll vote or having a meeting via telephone conference. So again, I fully support Vice Chair Thernstrom's comments that the point, the issue, is academic at this point.

VICE CHAIR THERNSTROM: And it is not correct as I understand it that for instance Commissioners Heriot and Melendez and Yaki could not travel in the absence of if Dr. Lerner for some reason could not approve those.

I would like to call the question on this.

COMMISSIONER MELENDEZ: I have one question. I think the question is what would happen if he was sick for a week and the question is who's in charge. I mean, the staff here have to know that and either you have to say there's nobody in charge, everybody just does their jobs as to what their jobs are. Either say that or say something because that's the issue.

VICE CHAIR THERNSTROM: I think the Chairman has just addressed that. If we get to that point, let it address it at that time. I hope we will
not get to that point. I hope we're going to have our staff director in place before too long so that Dr. Lerner can go back to what he was originally hired to do and we desperately need him in that position and in the meantime, the question is as the Chair just said, as I said, before. It's abstract. I would like to call the question.

COMMISSIONER YAKI: Madam Chair, I would just like to add that it may be abstract. I would just remind the Chair and wherever Mr. Chair is that our record of getting timely notation votes in telephone conferences is not exactly terribly --

VICE CHAIR THERNSTROM: Well, we have not had an emergency before. I'm sure we could get it passed. I would like to call the question. I'd like to have a second on calling the question.

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Okay. All in favor of this motion.

COMMISSIONER YAKI: Of calling the question.

VICE CHAIR THERNSTROM: Of calling the question.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: And we have two
nays over there. Did I hear?

COMMISSIONER MELENDEZ: Yes.

VICE CHAIR THERNSTROM: So it's --

COMMISSIONER YAKI: The question is called. Now the main motion.

VICE CHAIR THERNSTROM: The question is called, but the reporter should note we had two nays, Commissioners Yaki and Melendez.

Now the motion.

COMMISSIONER YAKI: No.

COMMISSIONER GAZIANO: Isn't it your motion?

COMMISSIONER YAKI: No.

COMMISSIONER GAZIANO: Didn't you substitute it?

COMMISSIONER YAKI: Okay. Then yes.

(Laughter.)

(Off the record comments.)

COMMISSIONER YAKI: I'm so used to voting no. So I vote aye.

VICE CHAIR THERNSTROM: It is still your motion.

COMMISSIONER YAKI: Good. I vote aye.

COMMISSIONER MELENDEZ: Aye.

(Chorus of nays.)
VICE CHAIR THERNSTROM: The motion does not carry. Two ayes. The rest are nays.

Okay. And then there was an additional motion that, Commissioner Yaki, you wanted at this point, the OPM.

COMMISSIONER YAKI: What?

VICE CHAIR THERNSTROM: Designation of Dr. Lerner -- You had another motion before we move onto the Census.

COMMISSIONER YAKI: Yes. I want to move - - I want to discuss -- I put on the agenda the discussion on whether to confirm the OPM designation of Dr. Robert Lerner as Acting Staff Director and I believe that there are certain --

COMMISSIONER GAZIANO: Point of order, Madam Chair. Is there a motion?

COMMISSIONER YAKI: Well, I'm recognized as speaking on the issue right now. I'm not speaking on the motion. I have the floor.

The issue that I wish to bring a motion to deals with I think a rather unclear area of law. The courts have been unclear on it as well. But I think from the perspective of what our authority is with regard to the staff director that this is a situation where in the absence of a Presidential authorization
the Commission should be entitled to and should be
required to designate the person to whom the acting
duties of the staff director lie.

COMMISSIONER HERIOT: You need to make a
motion and then --

(Simultaneous speakers.)

VICE CHAIR THERNSTROM: You need to make a
motion here. You're into the discussion of a motion.

COMMISSIONER YAKI: That is why I'm about
to make a motion.

VICE CHAIR THERNSTROM: Then make the
motion.

COMMISSIONER YAKI: The issue is in
Robert's Rules I have the right to the floor to speak
to this.

COMMISSIONER GAZIANO: But you were
recognized. I think you were recognized to make a
motion.

COMMISSIONER YAKI: I was recognized to
have the floor.

COMMISSIONER GAZIANO: Madam Chair, did
you recognize him to speak?

VICE CHAIR THERNSTROM: I recognized him
to make a motion. If you would make the motion, you
can then say anything you want.
COMMISSIONER YAKI: No, because as soon as I make the motion he's going to make a motion --

COMMISSIONER GAZIANO: Yes, I need to make a motion to table.

COMMISSIONER YAKI: So he was -- Because --

VICE CHAIR THERNSTROM: Well, you can't --

COMMISSIONER HERIOT: That's the whole purpose of a motion to table is to get things off the agenda.

VICE CHAIR THERNSTROM: Yes, you can't have a discussion of --

COMMISSIONER YAKI: Fortunately, I just did. So I would like to move that the Commission vote on whether to confirm the OPM designation of Dr. Robert Lerner as staff director. Do I have a second?

COMMISSIONER MELENDEZ: Second.

COMMISSIONER GAZIANO: I move to table the motion for the same reasons that we agreed to table it last month that it will be of no legal consequence --

COMMISSIONER HERIOT: Second.

COMMISSIONER YAKI: I'm sorry. While he's talking, are we going into debate or not? If he wishes to open up the debate, I will.

COMMISSIONER HERIOT: I have a question.
VICE CHAIR THERNSTROM: I'm calling the question.

COMMISSIONER YAKI: No. You can't call the question. You just go --

COMMISSIONER HERIOT: It's a nondebatable motion.

COMMISSIONER YAKI: You just go straight to a vote.

COMMISSIONER GAZIANO: It's a nondebatable motion.

COMMISSIONER YAKI: You can just go straight to the vote.

VICE CHAIR THERNSTROM: It's a nondebatable motion. I'm sorry.

All in favor?

(Chorus of ayes.)

COMMISSIONER YAKI: No.

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Ayes.

VICE CHAIR THERNSTROM: Commissioners Kirsanow and Taylor.

COMMISSIONER DIRSANOW: Ayes.

COMMISSIONER TAYLOR: Ayes.

VICE CHAIR THERNSTROM: Okay. The motion fails. I mean, the motion passes.
COMMISSIONER HERIOT: The motion to table carries.

VICE CHAIR THERNSTROM: The motion to table passes. Sorry about that.

VI. PROGRAM PLANNING

VICE CHAIR THERNSTROM: We are moving onto the Racial Categorization in 2010 Census. I believe that is the next item.

COMMISSIONER MELENDEZ: Correct.

VICE CHAIR THERNSTROM: At the August 24, 2007 business meeting, Commissioners tabled the vote on the briefing report on the racial categorization on the 2010 Census which was based on a Commission briefing held on April 7, 2006, a little while ago. When the report came up for subsequent vote at the October 12, 2007 business meeting, Commissioners again tabled the report and requested that it be revised. Commissioners also agreed to submit alternative findings and recommendations on December 13, 2007. OSD distributed a revised draft of the report requesting that Commissioners submit proposed alternatives, findings and recommendations. As of January 24, 2008, staff had not received any proposed alternative findings and recommendations. So OSD circulated the report --
(Telephonic interruption.)

Chair Reynolds, is that --

CHAIRMAN REYNOLDS: Yes, that's me.

VICE CHAIR THERNSTROM: Okay.

(Laughter.)

COMMISSIONER YAKI: We are Children's Services right now.

VICE CHAIR THERNSTROM: -- alternative findings and recommendations by February 15, 2008. On February 29, 2008, OSD distributed a proposed final draft addressing Commissioner's comments received by that date.

Could I have a motion that the Commission approve for publication alone with any concurring and dissenting statements submitted by any Commission by March 21, 2008. Part A of the report produced by the staff and reflecting Commissioner and panelist's input on the briefing the Commission held on April 7, 2006 on racial categorization in the 2010 Census.

Part A distributed in draft form on February 29, 2008 contains a briefing overview and summary of the issue, why the Commission chose to conduct this briefing, summary of the proceeding consisting with a synopsis of the panelists, all statements during the briefing and synopsis of the
question and answer session and copies of 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 of 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 Commissioners at the April 13, 2007 business meeting.

So moved by me and I need a second.

CHAIRMAN REYNOLDS: Commissioner Reynolds second.

VICE CHAIR THERNSTROM: Okay. So changes, discussion, questions? This is regarding the motion to adopt Part A of the Census report. Yes, Commissioner Yaki.

COMMISSIONER YAKI: Vice Chair Thernstrom, I would like to amend the date for concurring and dissenting statement to -- Hang on. Let me check my calendar because I have a trial and this is something that I want to write on. Could we push it to April 11th?

VICE CHAIR THERNSTROM: That's a motion. Anybody -- Do we have a second on that?
COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Okay. All in favor?

(Chorus of ayes.)

COMMISSIONER HERIOT: That was April the?

VICE CHAIR THERNSTROM: Eleventh.

COMMISSIONER HERIOT: Eleventh.

VICE CHAIR THERNSTROM: Any opposition?

(No verbal response.)

VICE CHAIR THERNSTROM: Okay. That passes unanimously. The date now for concurring and dissenting statements is April 11th and if we all get an email that reminded us of that date I would very much appreciate it.

COMMISSIONER YAKI: I have a question, Madam Chair, for the staff.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: Again delegated authority staff director person. One of the reasons why this was pushed back had to do with the fact that the Census Bureau had completed some of the testing on the questions dealing with Hispanic identification. I know this was one of the reasons why then Commissioner Braceras also supported our pushing it back.

Do we have -- I was looking for something
in the report that discussed what those findings were and how they may -- what the findings of that particular testing were and how it may affect the findings and conclusions of the report. But I did not see any. I was just wondering what there was with regard to the Census Bureau.

VICE CHAIR THERNSTROM: Well, I've just been informed by Dr. Lerner that if there is, whom I should add knows a great deal about the Census I've discovered, much more it seems to me then the rest of us put together. But in any case, he is not aware of such findings.

COMMISSIONER YAKI: Okay. The briefing which was in April 2006 discussed testing that was ongoing with regard to some of the variations of the at the moment open ended questions as it pertained to Hispanics. We received information that communicated to the Commission at the time that those questions, rather the testing sample, had been completed and that the findings had not been. Since those findings were somewhat critical to the discussion of Hispanic identification in the findings of the report that they needed to be contacted, discussed and reviewed in the context of the report.

That was pretty much -- I remember there
was pretty much unanimous agreement at the
Commission at the time that that was important enough
to warrant going back and ensuring that we were not
putting out a report that was out of date with the
most recent testing done by the Census with regard to
that.

VICE CHAIR THERNSTROM: Commissioner Yaki,
two things.

COMMISSIONER YAKI: Right.

VICE CHAIR THERNSTROM: One, we must get,
that is our household must get, three or four emails a
week from the Census. I do not recall but I could be
wrong any announcement of such findings.

COMMISSIONER YAKI: No, it wasn't like --
This was part of the testing process --

VICE CHAIR THERNSTROM: I understand.

COMMISSIONER YAKI: -- that went toward
the questions that were raised about --

VICE CHAIR THERNSTROM: I understand, but
there usually are announcements of findings with
respect to testing questions. Now what is your bottom
line here? What would you like the Commission to do?

COMMISSIONER YAKI: My bottom line is that
I have it on good authority that those questions were
precluded. Now if they have not finished the analysis
yet, if it is something in process, and is at least something that they should know, but they are proceeding. In the testimony of the Census Commissioner, he referenced the fact that they are doing ongoing testing on some of these issues and they are going to be completed by 2006.

VICE CHAIR THERNSTROM: Well, the problem here is we don't have specifics. Dr. Lerner who keeps up with the Census, I kind of keep up with the Census, don't have any specifics and I'm not sure what you would like to do at this point given the absence of my knowledge.

(Off the record discussion.)

COMMISSIONER YAKI: Well, I am somewhat distressed to hear that in the face of a specific request with a specific reference to -- And I'm sorry, I don't have it with me at this time, I did have it with me at the first time that this was tabled, but in that instance, I made a specific reference to begin this.

VICE CHAIR THERNSTROM: I understand that. But what would you like to do today?

COMMISSIONER YAKI: Well, in the absence -
- Yes?

MR. BLACKWOOD: This is David Blackwood.
If I could, Commissioner, I believe and I was just consulting with Kim Tolhurst who worked on the report. You did make a citation to a specific, approximately 10-15 page report. We did look at it. It did not change any part of the report substantively and that's why we did not include it in this version.

COMMISSIONER YAKI: Okay. That's what I wanted to know. That's all I wanted to know.

VICE CHAIR THERNSTROM: All right. So the reason I didn't register on these there was no substitute change.

COMMISSIONER YAKI: But there was a report.

VICE CHAIR THERNSTROM: Okay. Well, it didn't register on me because there was no substantive change. But Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes.

Administrative instruction 1-6 requires that a checklist be physically sent to the Commissioners on this process. Was that done?

(Off the record comments.)

MR. BLACKWOOD: No.

COMMISSIONER YAKI: That's right. Ken would always send that out.

COMMISSIONER GAZIANO: A point of order,
Madam Chairman. I'm sorry to ask what I'm sure is
maybe a question and an answer which is known to the
rest of you. But if we approve Part A and then we
have some disagreement about Part B or want to
postpone what would the consequence of the vote on
Part A be?

VICE CHAIR THERNSTROM: Part A does not
include the findings and recommendations.

COMMISSIONER GAZIANO: I understand that.
I'm just saying if we make some disposition other than
approving Part B and we've already approved Part A
what would the consequence of that be. I suppose we
could revisit that Part A. I just want to know what
the consequence of this vote on Part A is if we don't
approve at this particular meeting.

COMMISSIONER HERIOT: Let me add to that.

COMMISSIONER GAZIANO: Sure.

COMMISSIONER HERIOT: If we don't approve
of quite a few of the findings of fact and the
recommendations, are we better off voting no on Part A
or should we vote yes on Part A if we find it
obnoxious in itself but don't particularly want to see
it published but believe there are lots of changes
that we might want to make to the findings and
recommendations. I mean, are we better off with a
motion to postpone this? Are we better off voting no on Part A?

VICE CHAIR THERNSTROM: It's not going to be published without findings and recommendations.

COMMISSIONER GAZIANO: That's my question.

COMMISSIONER HERIOT: That's part of the question.

VICE CHAIR THERNSTROM: No. It doesn't get published without findings and recommendations.

COMMISSIONER YAKI: Well, we have published before without findings and recommendations.

VICE CHAIR THERNSTROM: Yes, I've just been informed by Dr. Lerner that we can do any kind of fixing we want to Part A while we wait for the rest.

COMMISSIONER HERIOT: Fixing to Part A?

DR. LERNER: Whatever changes are necessary. What I meant was whatever changes are necessary can be made in response to the vote on Part A. You can make while we're waiting to hear about the rest from the Commission. That's all I meant.

COMMISSIONER HERIOT: We can inspect A now and then just hold that in reserve and then --

DR. LERNER: Well, if you --

COMMISSIONER HERIOT: -- negotiate on B.

DR. LERNER: If you approve of it, we can
make sure the report conforms to whatever it is you've approved for that particular part and we'll wait for instructions about the rest of it.

VICE CHAIR THERNSTROM: Does that work?

(Off the record conversation.)

COMMISSIONER YAKI: For the listeners, there's a conference going on.

VICE CHAIR THERNSTROM: Commissioner Heriot, are you saying here, and it is certainly a legitimate suggestion, that it makes no sense not to do this as a package vote A and B together? What would you like?

COMMISSIONER HERIOT: I don't -- I have disagreements with Part B.

VICE CHAIR THERNSTROM: Right.

COMMISSIONER HERIOT: My disagreements with Part A are simply that I'm not certain that it's worth our time to deal with Part A if we don't have a Part B.

VICE CHAIR THERNSTROM: Well, we will have a Part B.

COMMISSIONER GAZIANO: I understand that there is some previous agreement to how to proceed. But would you prefer to amend whatever that previous agreement is so that we consider Part A and Part B...
together?

COMMISSIONER HERIOT: I don't know what our previous agreement is. What do you mean?

COMMISSIONER GAZIANO: I think we're proceeding under Part A and Part B based on a previous agreement that Commissioner Braceras suggested.

COMMISSIONER YAKI: It's an administrative instruction.

COMMISSIONER HERIOT: That's an AI.

COMMISSIONER GAZIANO: Oh, that's an AI.

COMMISSIONER HERIOT: Yes.

(Off the record discussion.)

COMMISSIONER GAZIANO: We could amend it for this particular report, could we not?

COMMISSIONER HERIOT: I don't know what's going to be the easiest use of our time.

COMMISSIONER GAZIANO: Sure.

VICE CHAIR THERNSTROM: All right. I've just been reminded of something by Kim Schuld that is important to you which is that this process was supposed to be approved, we have voted on a Part A. Then we move onto a Part B and if we're not going to move onto a Part B today then I think once again we need to postpone this vote.

COMMISSIONER HERIOT: That's fine.
COMMISSIONER MELENDEZ: Just a comment.

One of the reasons I asked on the administrative instruction A-6 was that the checklist actually kind of gives us some comfort level that it's been looked at and by a pack of people.

COMMISSIONER YAKI: I'm not sure who the external reviewers were.

COMMISSIONER MELENDEZ: I'm not sure who that even is or whether or not it's even done. So I think that's part of the process that I'm not sure where we are with that. But I think --

MR. BLACKWOOD: Commissioner Melendez, this is David Blackwood. It occurs to me and I may be incorrect but you asked about the checklist. This report goes back to 2006 and we can recall several months ago there was a long discussion about when the AI applied and when it didn't. I'm just -- While we can look into whether the checklist was sent, this may be a report that is so old that the checklist didn't apply.

COMMISSIONER MELENDEZ: Okay.

MR. BLACKWOOD: I'm not saying it doesn't, but I'm just saying that might be the explanation.

VICE CHAIR THERNSTROM: I have a question.

I'm sorry. Commissioner Melendez, do you want to
While he's conferring, I have a question here. Suppose this is postponed once again. What is the process going to look like by which we arrive at the -- and by which we can vote on both Parts A and B?

CHAIRMAN REYNOLDS: This is Commissioner Reynolds.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: I think it would be helpful if individuals would articulate what their concerns are. I mean, it's one thing to postpone this, but I think we would be in a better position to vote on it at the next business meeting if we had, if whatever concerns folks have were articulated.

VICE CHAIR THERNSTROM: At this meeting or as a document circulated to all commissioner?

CHAIRMAN REYNOLDS: During this meeting. I just want to get a better sense of what the issues are.

COMMISSIONER HERIOT: Well, I sent in my proposed recommendations awhile ago.

CHAIRMAN REYNOLDS: I'm sorry. I didn't hear you.

COMMISSIONER HERIOT: I sent in my proposed recommendations awhile ago. I thought there
was actually room for a person in negotiations among the commissioners and the differing views and I offered to try to hammer that out and --

CHAIRMAN REYNOLDS: Can't we do that during this meeting?

COMMISSIONER HERIOT: No, I don't think you can draft something like that during a meeting. That's much too complicated.

COMMISSIONER MELENDEZ: Just a comment. I think even former Commissioner Braceras I know that she had tremendous concerns on the Hispanic categorizations and all those different things and like Gail Heriot is saying I think that the Part B is really -- Nobody is really satisfied with that. So I think if we're going to go forward, it seems to me that we're going to have to table this and probably do extensive work on this because nobody seems to be satisfied with Part B.

VICE CHAIR THERNSTROM: Yes, but look. We're not going to get to the point of unanimity on Part B. That is the function of allowing concurrences and dissents by individual commissioners.

I just -- You know, the way we're going on this Census report it seems to me that --
COMMISSIONER MELENDEZ: And I think too
the issue is so old and I would recommend that we just
go with no recommendations and take what these people
said at the hearing and put that together and send it in.

COMMISSIONER YAKI: Commissioner Thernstrom, I think the practical issue is that the
concerns expressed by Commissioner Heriot and I can't
speak for Commissioner Gaziano and the concerns that
may be expressed by Commissioners Yaki and Melendez
may actually result in a majority being unsatisfied
with the findings and recommendations as is. So I'm
not too certain whether you could even proceed to get
to the point where you have concurrences and dissents
because you may not get any consensus for majority on
anything in Part B for varying reasons.

VICE CHAIR THERNSTROM: Well, I mean,
there is such a thing as a plurality vote, it would
seem to me, for findings and recommendations.

COMMISSIONER HERIOT: You don't have a
plurality. You'll have four-four.

CHAIRMAN REYNOLDS: This is Commissioner
Reynolds. If you were to table this at the next
meeting I would recommend that we each submit to the
extent that we did reach from the current findings and
recommendations that we each submit and circulate
our own findings and recommendations and that we sit
down at the next business meeting and negotiate and
have the written items in front of us.

COMMISSIONER HERIOT: I just want to say
that it's complicated and I think it's best to
negotiate at least in part via email where everybody
sees what everybody's proposal is and can make
comments on it so that we as the Commissioners take
more responsibility for our recommendations.

VICE CHAIR THERNSTROM: What if we
accepted, Commissioner Heriot, Part A, rejected Part B
and then went forward to asking each commissioner to
submit a statement with respect to Part B?

COMMISSIONER HERIOT: Is there any
advantage to passing Part A now when we're clearly not
going to be able to pass everything?

COMMISSIONER YAKI: What you're simply
saying is a Part A with eight potential commissioners'
statements and no findings and recommendations?

VICE CHAIR THERNSTROM: No.

COMMISSIONER GAZIANO: No, I think she's
just saying pass half now. Get to B later.

DR. LERNER: It's just a report.

COMMISSIONER GAZIANO: Yes, but I'm not
sure that there is -- If we have to move ahead on B, I'd slightly prefer postponing the whole thing. But I'll claim my share of the blame in trying to discern what the process was as a new commissioner in participating in this report and my difficulty was that I saw some findings and recommendations but I understood other commissioners were going to be sending in comments. So I didn't know whether my comments to the findings would be relevant and it's only lately that I've understood the content of one of the other commissioner's comments.

So the suggestion that Commissioner Heriot made makes sense to me and I'll be a better boy and hopefully I'll have something more concrete to participate in.

CHAIRMAN REYNOLDS: Okay. At this point, this is Commissioner Reynolds, I move that we table this issue until our next business meeting but during the interim that we circulate our proposed findings and recommendations to all the commissioners and try to have negotiations offline if that's acceptable to everyone else.

COMMISSIONER YAKI: Second. I'll second it.

VICE CHAIR THERNSTROM: Fine. Any
discussion on that proposal? Any further
discussion I should say?

COMMISSIONER YAKI: No.
VICE CHAIR THERNSTROM: All right. All in
favor aye.

(Chorus of ayes.)
VICE CHAIR THERNSTROM: We're missing two
votes via the phone.

COMMISSIONER TAYLOR: Yes. Commissioner
Taylor aye.
VICE CHAIR THERNSTROM: And Kirsanow?

Have we lost Kirsanow?

COMMISSIONER YAKI: No, he'll be leaning
over to hit the mute button.
COMMISSIONER KIRSANOW: Sorry. I'm still
here. Aye.

(Laughter.)
VICE CHAIR THERNSTROM: You have to undo
the mute button. Okay. It's passed unanimously I
believe.

So we've just gotten rid of pages and
pages of this script.

(Off the record comments.)
MR. SCHMELCHEL: I think it's fine. If
you want I can check with him at the end of the
meeting.

COMMISSIONER YAKI: That's unanimous for those who were present.

COMMISSIONER HERIOT: Yes, he's just not here. It's just a vote.

VICE CHAIR THERNSTROM: Okay.

Commissioner Melendez was not here.

COMMISSIONER HERIOT: You can't verify what he would have voted.

VICE CHAIR THERNSTROM: But it was otherwise unanimous. And Commissioner Yaki assures us that Commissioner Melendez is with him on this.

Okay. Proposed changes.

COMMISSIONER HERIOT: I would move to strike that.

(Laughter.)

COMMISSIONER YAKI: I'm proud to share anything with my fellow Commissioner Melendez.

VICE CHAIR THERNSTROM: Okay. I believe we are up to Proposed Changes in 2008 Briefing Schedule and there's a motion pertaining to the April briefing in advance of this meeting. Two motions were circulated with respect to changes, changing the previously agreed upon topics for our April and June briefings. Can I have a motion that the Commission
conduct a briefing on the impact of illegal
immigration on wages and employment opportunities of
black workers. Tentatively on April 4th assuming the
availability of appropriate speakers, this briefing
will be based on the concept paper distributed to
Commissioners by email on March 5, 2008.

Under this motion, the briefing currently
scheduled for that date, the review of the Community
Reinvestment Act would be postponed. So I move that
we conduct such a briefing and I need a second.

CHAIRMAN REYNOLDS: Second. This is
Commissioner Reynolds.

VICE CHAIR THERNSTROM: So.

COMMISSIONER HERIOT: Would it be
appropriate to include in that a provision that if the
witnesses are not available for April that
alternatively it be held in May and that the business
meeting be held in April instead? Can we do that all
as one motion?

COMMISSIONER YAKI: That would mean that
the Census report would be April instead of May.

COMMISSIONER HERIOT: Yes.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
do you accept the friendly amendment?
VICE CHAIR THERNSTROM: I'm trying to think of the implications of this. I'm just conferring with the Staff Director on the availability of witnesses here.

(Off the record discussion.)

VICE CHAIR THERNSTROM: I personally would like to go ahead with the motion as it's now structured and that is for the briefing on April 4th. And if we can't get witnesses, we can't get people, then we, of course, will have to have some kind of reconsideration of this schedule.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Would we have enough time to make that adjustment?

COMMISSIONER HERIOT: Yes, isn't it easier to do it my way and that way we may not have to call a telephone meeting if we can't schedule the witnesses; whereas your way we're certain to have to schedule it if we can't get the witnesses?

VICE CHAIR THERNSTROM: Well, we would have enough time provided that the staff director can decide.

COMMISSIONER HERIOT: Why create extra
work for ourselves.

VICE CHAIR THERNSTROM: We'll know fairly quickly who we can get. He is expecting to know.

COMMISSIONER HERIOT: Yes, but even if he knows quickly, we possibly could save a conference call my way. We won't save it your way.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. Is there a downside to accepting the friendly amendment?

COMMISSIONER HERIOT: If we decide that the split isn't good again we can hold a conference call. But there's a chance of saving a conference call my way.

(Off the record discussion.)

VICE CHAIR THERNSTROM: I'm sorry. There's a little discussion going on here about holding the schedule of business meetings and -- Could you speak to the issue of whether it would work or not?

(Off the record discussion.)

VICE CHAIR THERNSTROM: I would like to hear from the Staff Director on any concerns he might have.

DR. LERNER: Are we not proposing to adopt, what exactly, with respect to which version of
this am I looking at?

VICE CHAIR THERNSTROM: Well, the question is whether we simply hold the briefing in May instead of April. Is that correct?

COMMISSIONER HERIOT: No.

COMMISSIONER YAKI: No.

COMMISSIONER HERIOT: The question is should we have the motion and that motion is that in April we will have the briefing unless speakers are not available in which case we will have it in May instead.

VICE CHAIR THERNSTROM: In which case May because it already has a seemingly availability approach.

COMMISSIONER HERIOT: Yes.

VICE CHAIR THERNSTROM: What we're doing is --

COMMISSIONER HERIOT: I'm adding a big certain for if we don't get the witnesses when we want we'll hold it in May.

VICE CHAIR THERNSTROM: That's not a problem it seems to me. I missed something.

COMMISSIONER HERIOT: And then that would put the business meeting in April if the witnesses weren't available in April.
VICE CHAIR THERNSTROM: Yes. I understand now. I'm sorry. Two many people talking to me at once and I'm losing it. But as far as -- That's fine with me. Is there anybody opposed to that?

COMMISSIONER MELENDEZ: Yes. I have a question. Where did this briefing come from? Is something new that we just added that wasn't originally thought of last year as we scheduled briefings for this year? And the other question is what's the jurisdiction on this. Is this something that has to do with -- I'm a little bit puzzled by this briefing in general.

VICE CHAIR THERNSTROM: Does somebody else want to talk to that? Chairman Reynolds, do you want to talk to that? It was originally your idea.

CHAIRMAN REYNOLDS: Actually, it's not my idea.

(Laughter.)

VICE CHAIR THERNSTROM: Giving credit where credit is not due. Commissioner Kirsanow, was it your idea?

COMMISSIONER KIRSANOW: I have no idea what you're talking about.

(Laughter.)
COMMISSIONER GAZIANO: The topic for the April, was that your child?

COMMISSIONER HERIOT: That's on immigration on wages.

VICE CHAIR THERNSTROM: This is impact of immigration on wages and employment opportunities of black workers. Wasn't that not your proposed topic?

COMMISSIONER KIRSANOW: I believe it was.

VICE CHAIR THERNSTROM: Would you like to speak to Commissioner Melendez's concern that this is somehow not an appropriate U.S. Commission on Civil Rights topic.

COMMISSIONER MELENDEZ: Right. I think I'm asking about the jurisdiction and whether or not it's actually discrimination. I recognize that there's immigrants. But I don't know if it's particularly discrimination.

COMMISSIONER KIRSANOW: I do think that we have jurisdiction possibly on two points. First is the administration of justice. It strikes me that at least debating the proposition that immigration laws of the country are being enforced. And whether or not that's a matter of policy or not, I'm agnostic. But to the extent they're not and they have an impact on a particular community that is a protected class over
which we may have jurisdiction I think we have
jurisdiction.

The second is with respect to -- we don't
often have visions or assurances on the impact of
either policies or practices on certain protected
classes and here whether it's a policy or a practice,
I'm not sure. But it's one or the other and I do
think it has an impact or it may have. We'll see.
There is at least in the -- reports out there from
some credible sources that I've seen that suggest that
there is an impact on black workers or low income
workers passed the other protected classes. The
reason I used -- cohort is I thought we might be able
to more ably get our arms around that. That's why I
chose black workers.

VICE CHAIR THERNSTROM: It's a disparate
impact issue as does the area that immigrants have a
disparate impact on equal employment opportunity of
African Americans in this country. That seems to me a
legitimate Commission topic.

COMMISSIONER MELENDEZ: Wouldn't that
apply not just to African Americans, but to everybody
in general?

VICE CHAIR THERNSTROM: Well, it may have.
We have -- I don't want to speak for Commissioner
Kirsanow here, but we do have disparities already
in wages and wealth between African Americans and
other groups in this society. So the question is
whether the immigrant population, the integral
immigrant population, is continuing to -- is
increasing the problem of -- reinforcing the problem
of those disparities.

Commissioner Kirsanow, do you want to
expand on that?

COMMISSIONER KIRSANOW: I'm not sure what
the question was, but if I understood it, it's why
it's not expanded to other categories.

VICE CHAIR THERNSTROM: Commissioner
Melendez says, well, look, integral immigrants may
have an impact on everybody's wages and --

COMMISSIONER KIRSANOW: I think that it
would be disparate for us to do a credible job on
expanding this to every protected class. That's why I
thought that using the category of black workers is
something we could get our arms around and in addition
because I haven't seen at least in a casual view of
the literature out there any studies that have been
done with respect to the impact of illegal immigration
on other protected classes. I am aware of that some
studies at least have attempted to address the issue
with respect to black workers.

VICE CHAIR THERNSTROM: Yes, and I would second that. There is quite a bit of scholarship on that question. And I think in terms of protected classes and inequality in American society it is African Americans that we are most concerned about. Commissioner Yaki.

COMMISSIONER YAKI: One point and if it sounds a little sarcastic it probably is.

VICE CHAIR THERNSTROM: I was going to say I'm sure it is.

COMMISSIONER YAKI: I mean, if this is the majority's embracing of the disparate impact theory of discrimination then why don't we put it out here in the description of the project. I mean, as it is written, I do not believe it fulfills our statutory mandate. If we want to describe in particular the administrative of justice or disparate impact as Commissioner Thernstrom just referenced issues to be raised that to me at least would arguably qualify it for a discussion.

My own particular opinion is that I think that this is a discussion and a debate that requires more than one month's notice to what I would presume to be the relevant universe of people who would want
to testify about this. There are regional issues. There are regional differences. As was noted depending on what part of the country you may be in, it may be the African American cohort as Commissioner Kirsanow describes it. It may be Asian American. It may just be low income workers in general.

And I think this needs seriously more substantial refining to even qualify under our statutory mandate. That being said, I would never support this briefing in the first place because I think that for the Commission to engage in what I think is -- and this study is asking the wrong question and the question is not whether illegal immigration has an impact on low income jobs in this country. I think anyone who would dispute that obviously doesn't understand the nature of our economy.

But to put it in the context of an either or or limited resource issue I think leads dangerously toward a path that I think the Commission does not want to put its stamp on and I think that because of that I would oppose that.

VICE CHAIR THERNSTROM: What do you mean by an either or?

COMMISSIONER YAKI: That it posits this
either or situation that between illegal immigrants
who -- And let's call it -- Let's not be coy about
this. It would involve the primarily Latino community
and the African American community. I think that's
sort of pitting one against the other in the way the
question is formed. I think that's unhelpful to the
state of race relations in this country.

VICE CHAIR THERNSTROM: Well, this is an
interesting --

COMMISSIONER YAKI: I still have the
floor, Madam Chair.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: I have the resource
issue I need to ask and that is we had a briefing
scheduled for April. It is March How much work has
been done on that briefing in April and how much work
on this briefing has been done already prior to our
vote to authorize it? I direct that to the Staff
Director.

DR. LERNER: We have devoted relatively
little work to the April, the currently-scheduled
April briefing, and we've devoted some preliminary
work to the change of topic. But that's it.

COMMISSIONER YAKI: May I ask if I may
given that normally this -- Let me ask you this. Is
it the normal course of business that we wait until
the month before or month of to issue invitations to
briefings?

DR. LERNER: Yes.

COMMISSIONER YAKI: So normally we would
just not do any work at all on the April briefing
until March.

DR. LERNER: Not as far as getting
speakers is concerned which is the critical part. No.

COMMISSIONER YAKI: Pardon?

DR. LERNER: The key part for our briefing
is of course having speakers or witnesses.

COMMISSIONER YAKI: Right.

DR. LERNER: That's the most important
part from my perspective.

COMMISSIONER YAKI: Right. And was that
work done for the April briefing?

DR. LERNER: No. It has not been done.
It has been contemplated but it's not been done.

COMMISSIONER YAKI: Why wasn't it done?

DR. LERNER: Because it was approximately
a month before we were going to have to do it. That's
why. We were going to start right now.

COMMISSIONER YAKI: But in my recollection
on briefings we've done in the past those invitations
went out substantially earlier. I remember that Staff Director Marcus and I would be communicating about speakers as much as two to three months in advance simply because depending on the quality on the speaker, these are people who have reputations, speaking engagements, classes, what have you. So I guess I'm asking. Are you now instituting a policy that we're going to be waiting a month before to start contacting these speakers for briefings because I would say that if that's the case that --

COMMISSIONER GAZIANO: I would suggest that he's working two jobs and that he doesn't want to create any policy for the new staff director. I would cut him a break.

COMMISSIONER YAKI: Exactly.

VICE CHAIR THERNSTROM: Staff Director --

COMMISSIONER YAKI: I would say that if he assumed this job and again we can have this debate about if you're so worried about why he's working two jobs, why didn't we have a discussion about this in the first place? The issue is I want to know whether or not preparations for the April briefing were cut short because this briefing was contemplated already and what action was taken on this briefing.

COMMISSIONER GAZIANO: Can I --
COMMISSIONER YAKI: What action was taken on this briefing prior to a vote by the Commission to authorize it because we had this issue before. I would remind the Commission. You were not here and you were not here. But with regard to the very first national statutory report that we did which was the Adarand report we had issues with, and I think the Chairman will agree, because the Chairman admitted that it was a mistake, that they change the scope of the report prior to ratification by the entire Commission and the Chair admitted that that was a mistake and should not have been done. Remember? Interrogatories had been sent out with regard to the changed scope of that.

And my concern is that why would we be expending resources and time on a subject that had not yet been authorized by the entire commission.

COMMISSIONER KIRSANOW: Madam Chair, could I respond to it?

VICE CHAIR THERNSTROM: You can. I do want to say just one sentence here. In terms of the legitimacy of this topic, it is no more illegitimate than, for instance, the economic stagnation of the black middle class which we've had a briefing on.

COMMISSIONER YAKI: And which by the way
had not findings and recommendations.

VICE CHAIR THERNSTROM: Whatever.

Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes. Again, I have difficulty hearing everything that's being said, but if I get the gist of Commissioner Yaki's question and I'll let the Staff Director respond also, but what I understand is that, I'm interested in this particular topic and I had posed it through my assistant to the Staff Director to see if, in fact, this was doable. It is something that we can put together in relatively short order and I thought it could be because I'm aware of a couple of pieces of literature on this and who the authors are and I thought we could probably put something together fairly quickly.

But I wanted to get a sense for whether or not my preliminary thought that it could be done quickly was in fact correct. So I wanted to see if, in fact, there was a possibility of getting the witnessed lined up quickly. So I don't know. I'll let Bob respond to what, in fact, has been done, but I know that I wanted to see if, in fact, prior to today's vote whether or not this could be done or whether it's a moot point.
VICE CHAIR THERNSTROM: Wait a minute.

Commissioner Gaziano wants to talk for a second. But also Commissioner Heriot's motion covers the problem of getting appropriate speakers and if we can't get them it gets postponed. I just -- I think that has been taken care of. Should we ask --

COMMISSIONER GAZIANO: If I could just clarify because Commissioner Kirsanow sort of got to my last point in a more factual way. The implication of one of the commissioners is that if somehow our acting staff director notified that we are going to be taking up a motion to change the topic to a specific topic in April, did anything in advance of our vote, then that somehow would be improper. I find that silly and I think Commission Kirsanow has correctly pointed out that it was highly prudent for the staff to at least do some preliminary work that would inform our vote today and I thank them for that.

VICE CHAIR THERNSTROM: Yes, exactly. It would be silly because we would not know whether this is a legitimate topic to take up in April if we can get the speakers. Dr. Lerner.

DR. LERNER: I think I've lost the question at this point. What did you need me to say?

VICE CHAIR THERNSTROM: You wanted to say
something on -- Well, I guess -- Commissioner Yaki, do you have a question on the table for the Staff Director to answer?

COMMISSIONER YAKI: I think that the statements made by Commissioner Gaziano sort of says it all and that is that if the Staff Director halted action on the April 11th scheduled briefing in favor of finding out if there are speakers available for an April briefing on this particular topic then it's a question about why similar calls couldn't have been made about whether the April briefing speakers would have been available as well in the case that we did not approve this. It's just an observation at this point. You know, you guys are going to do this. I just want to get a vote and get it over with.

COMMISSIONER GAZIANO: I didn't hear him actually say he called the witnesses. Maybe that's wrong. I don't know what preliminarily he did. But I just wanted the record to reflect and he can correct me, but I don't know that calls have actually been made.

COMMISSIONER YAKI: I thought I heard the word "calls."

DR. LERNER: For the previously scheduled briefing or for the one that's proposed to change?
What are we talking about?

COMMISSIONER GAZIANO: I don't know that that's necessary. I'm just saying that I don't understand that. If you want to clarify it, then you're welcome to.

DR. LERNER: Well, we've done a little bit of work on the scheduled topic but we haven't formally invited anybody or anything like that.

COMMISSIONER YAKI: But you have made inquiries as to whether people would be available, correct?

DR. LERNER: Actually not. We have basically canvassed who would be an appropriate speaker. That's as far as we have gotten.

COMMISSIONER YAKI: Okay.

VICE CHAIR THERNSTROM: All right, can we have a vote on this? It's the Heriot motion, I believe, that we are voting on. Do you want to restate it?

COMMISSIONER HERIOT: Okay, I move that we hold a briefing in the April slot -- April 4th on the subject that was previously specified in --

VICE CHAIR THERNSTROM: Illegal immigration and employment opportunities of black workers.

COMMISSIONER HERIOT: And that if we are
unable to schedule speakers for the April meeting,
that we alternatively hold that briefing in the May
meeting slot and move the May business meeting to the
April meeting slot.

VICE CHAIR THERNSTROM: Right. Is there
any further discussion of this or can we vote on it
now?

COMMISSIONER MELENDEZ: I had a question.

VICE CHAIR THERNSTROM: We need a second.

COMMISSIONER KIRSANOW: Second

VICE CHAIR THERNSTROM: We have a second.

Go on.

COMMISSIONER MELENDEZ: Yes, isn't that a
real short time frame, now that you're saying April
4th.

VICE CHAIR THERNSTROM: We have just
discussed and nauseam this question and Commissioner
Heriot's motion takes care of that problem.

COMMISSIONER MELENDEZ: But my concern,
also just for the record, is that we just received
this list for 2009, I believe, all these priorities
for topics and briefings and --

COMMISSIONER HERIOT: But we've put that
off.

COMMISSIONER MELENDEZ: I understand that,
but even when we scheduled for this year, we took a
lot of time in setting priorities. We picked the top
three all of us and we finally out of dozens of topics
get it down and not only that. Because the budget
plays into this because I still haven't had an answer
whether or not as Staff Director Marcus said that, one
of the statements, was that we could end up cutting
down to three briefings for 2008. So it makes it even
more important as to what three would we actually
listen to and if this was one of them, it sure would
be important to me to go back and analyze and try to
throw my contact with Staff Director and throw one of
mine that I think should replace the April meeting.

So I'm just saying in the fairness of how
to go about doing it anyone of us could connect the
Staff Director and say, "Start doing some research so
I can present it" and I would be competing to get Mr.
Kirsanow's topic also. That's the only point I'm
making. It's kind of like we are just interjecting
really not consistent with the way the process runs
and all the work we get in to prioritizing our top
three and all that stuff.

VICE CHAIR THERNSTROM: There is a problem
here. There's been a problem of deciding topics too
far in advance. We have taken care of that.
The second thing is there is a motion on the floor. It has been seconded and we need to vote on it. All in favor of Commissioner Heriot's motion.

(Chorus of ayes.)

COMMISSIONER MELENDEZ: Nay.

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: Commissioner Taylor, are you on?

(No verbal response.)

VICE CHAIR THERNSTROM: We lost you? I think Commissioner Taylor is now not participating in the meeting or at least not at this moment and so the ayes do prevail and there were two no.

So then we move onto the June briefing and I would like a motion that the briefing on the Patriot Act as it applies to anti-Arab and anti-Muslim discriminations currently scheduled for June 6, 2008 be cancelled. The Commission instead will consider a briefing on the efforts of the Justice Department to monitor voting rights enforcement for the 2008 Presidential election which I believe was Commissioner Yaki's suggested topic.

COMMISSIONER YAKI: Yes.

VICE CHAIR THERNSTROM: So is there a
second on that?

COMMISSIONER MELENDEZ: Second it.

VICE CHAIR THERNSTROM: And let's have a discussion on that.

COMMISSIONER YAKI: The reason, Madam Chair, that I put this out there was (1), and again Commissioner Gaziano was not here at the time, when we were discussing the briefings for June with the former staff director, I think Commissioner Heriot was here, we were talking about the fact that the June 6th briefing may have had substantial overlap with the domestic surveillance briefing that we had earlier in 2005. And in the informal agreement that had been worked out in terms of the Democratic members being able to have a briefing scheduled of their choosing on the calendar that we would have the discretion to substitute. Rather than inject anything overtly partisan, I thought that instead we should simply look at the issues in a preemptive manner of voting rights enforcement for the 2008 presidential election because that is obviously going to be a very interesting and exciting topic.

VICE CHAIR THERNSTROM: Anybody else?

Yes, Commissioner Gaziano.

COMMISSIONER GAZIANO: A couple of
questions. Let me just ask you about the topic first. Well actually, let the record reflect that we don't need to say very much, that I think this informal agreement as you refer to, this set-aside for certain members of certain political parties is not consistent with the best policies of the commission. But if it is, then I want to know when I get my hearing. And I don't know if Commissioner Heriot may want to know when she gets her hearing, but if it is a sort of ideological set-aside, I have a different kind of concern with that. But let me just ask you to elaborate -- the Justice Department is doing great work enforcing the Voting Rights Act, so what is your purpose in devoting commission time, money and energy on highlighting their good work.

COMMISSIONER YAKI: Well I suppose that any more than highlighting a racially charged issue such as illegal immigration and their impact on jobs. This would have -- the impact would actually have the exact opposite impact which is that despite your characterization which may be correct about what Justice is or is not doing with regard to the voting right enforcement I think the question is not what their performance is but really what they see the trouble issues are, potential issues, what states are
places that they think special attention should be
played, where there have been problem opportunities in
the past. There have been numerous allegations made
about polling places in Ohio in 2004 presidential
election. There are questions that abound with regard
to how local registrars work and interpret.

This is not meant as an attack on the
Justice Department. It is meant more for the Justice
Department to illuminate us and the Congress and other
effected people, sort of what areas they are
highlighting, what areas they are focusing on and
quite frankly if there are those with differing
opinions on where that emphasis should be they would
be part of the hearing as well.

COMMISSIONER GAZIANO: Since we don't have
a concept paper, if we're going to vote on this at
all --

COMMISSIONER YAKI: We do have a concept
paper. Richard, do you want to pass this out? That
we have.

COMMISSIONER GAZIANO: I'd like to look at
the concept paper, but do I have your personal
agreement that I get to pick a hearing, either later
this year, or before it's your turn again?

COMMISSIONER YAKI: I have no problems
with that, Commissioner. The fact is that Commissioner Melendez and I come to agreement on what we would ask for in terms of our briefings, when we've had situations where briefings had to be cut back, and whenever those couldn't get in, then we would make a decision which one would proceed. I mean, it's something that --

COMMISSIONER GAZIANO: Actually, I think it makes no sense for you to agree to that, to mine. But I might want to exercise that if --

VICE CHAIR THERNSTROM: Well, we have not agreed as a Committee on how to proceed going forward. Let's put that off for another day.

COMMISSIONER GAZIANO: I'm just raising the issue that I do want to --

COMMISSIONER YAKI: I mean, if your view is simply that whatever ideological event you have to simply be the turn of every single hearing that we have, that's fine, if you just want to eliminate it to our ability to have any -- that's fine, if that's what you're stating, go ahead and do that. I was proceeding under a set of understandings that we worked with the Chairman, Commissioner Taylor, Commissioner Kirsanow, Commissioner Braceras, and Commissioner Thernstrom. You, obviously, have a
different -- you have your own way of doing about it. Whatever you want to do, fine. Fine with me.

COMMISSIONER GAZIANO: I want to take up your topic on the merits, too. Did you email this to the other Commissioners on the call?

COMMISSIONER YAKI: No, we just brought it up. Wait, wait, wait. On the other -- on the -- however, the subject matter was emailed, the first paragraph was pretty much emailed in my proposed motions email of last week.

COMMISSIONER GAZIANO: I don't think this content was in your proposed email. I can pull it out and --

(Simultaneous speakers.)

VICE CHAIR THERNSTROM: Commissioner Taylor is back on the line. We've got a full complement.

COMMISSIONER GAZIANO: Could we email this to the other Commissioners.

COMMISSIONER YAKI: Sure.

COMMISSIONER GAZIANO: And perhaps move another month while we all have an opportunity to consider it? I'm just asking if that would be inconvenient for anyone.

COMMISSIONER YAKI: Actually, Commissioner
Thernstrom, I guess Commissioner Gaziano raises a good point. And because we have just heard from the delegated authority's system staff director that it only takes a month to put together a briefing, I'm willing to table discussion of this until the next meeting. Okay? Does that meet with your approval, Commissioner Gaziano?

COMMISSIONER GAZIANO: It meets with mine, if it meets with others.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. I will defer to Commissioner Yaki on this point. We do have an understanding this phone call set aside, I believe this issue was raised by Commissioner Braceras, the understanding was reached, and while I do have concerns about it, it does have a beneficial effect in that it assures that there is diverse viewpoint, ideological viewpoint.

COMMISSIONER HERIOT: Does it make more sense to set it now?

VICE CHAIR THERNSTROM: Yes. Commissioner Yaki, I think you've got the votes for this briefing. I mean, I don't like these set-asides period, and I think we do need to address that whole question down the road whether we go forward with this set-aside arrangement. But I think you've got the votes, and it
would be in the interest of the staff to simply settle this.

COMMISSIONER HERIOT: Otherwise, it will just go on like another meeting.

VICE CHAIR THERNSTROM: Today. I mean, I'm going to support you on this topic.

COMMISSIONER YAKI: Well, I was just trying to be accommodating to the new Commissioner.

VICE CHAIR THERNSTROM: Well, I think the new Commissioner --

COMMISSIONER GAZIANO: I can -- if you give me three minutes, I'll --

COMMISSIONER HERIOT: Let's vote on this.

VICE CHAIR THERNSTROM: Commissioner Heriot is saying let's vote on it. I suspect --

COMMISSIONER YAKI: Why don't we proceed to the SACs and get that over with.

COMMISSIONER HERIOT: We're not done with this topic.

VICE CHAIR THERNSTROM: No, I want to get done with this topic. I want to vote on this. I think you've got your votes to hold this briefing.

COMMISSIONER YAKI: Fine. I'm ready for a vote. And I think we may have a proposal for July --

VICE CHAIR THERNSTROM: Okay. Let us vote
on this proposal, that the June 6\textsuperscript{th} meeting will be a briefing on the efforts of the Justice Department to monitor voting rights enforcement for the 2008 Presidential election. All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Commissioner Reynolds, aye.

VICE CHAIR THERNSTROM: And Taylor?

COMMISSIONER TAYLOR: Taylor, aye.

VICE CHAIR THERNSTROM: And aye from me, as well.

COMMISSIONER GAZIANO: Nay.

VICE CHAIR THERNSTROM: And Commissioner Gaziano votes nay. So it has passed. That is going to be the June 6\textsuperscript{th} briefing. And we can address in the future, and I hope we will, the question of set-asides for --

COMMISSIONER YAKI: It's just a remedy for disparate impact.

COMMISSIONER HERIOT: Yes, for the record I'd like to say that I basically object to set-asides. If there are going to be set-asides, I want my own set-aside.

VICE CHAIR THERNSTROM: Okay. That's fine.
COMMISSIONER HERIOT: Nothing that we have done today has anything to do with what we're going to be able to do next year when our budget is less.

VICE CHAIR THERNSTROM: Absolutely. I sign on to that sentiment. When we're down to let's say six briefings a year, we cannot possibly have set-asides. So to be discussed in the future, it should be a future agenda item.

I would like to take a break before we go on to this --

COMMISSIONER HERIOT: Could we just do July, because we haven't done July yet.

VICE CHAIR THERNSTROM: Oh, July.

COMMISSIONER HERIOT: I make a motion that we hold our briefing in July on the subject of increasing the number of minority math and science majors in colleges and universities.

VICE CHAIR THERNSTROM: We got a second on that?

COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: Okay. Look, I would like to have before I vote on that, as interested as I am in that topic, I would like to have distributed a one-page concept paper of how you see
this topic, what kind of evidence data we can rely, -- whether we can rely upon, and how we can get our arms around the whole subject. And, so I would just like -- I'd like to stare as you are spinning this out as interested as I am in that topic.

COMMISSIONER HERIOT: Well, I can't write something in right away.

VICE CHAIR THERNSTROM: No.

COMMISSIONER HERIOT: I would much prefer to have it voted on today, so that is not my preference.

VICE CHAIR THERNSTROM: Right. But we are talking -- this time, we're talking about July. We do have a little time. We could vote on that.

COMMISSIONER HERIOT: Again, this is not my preference.

COMMISSIONER GAZIANO: Would that be your preference to every other topic that anyone else suggests today for July?

COMMISSIONER HERIOT: I do have a second--

(Simultaneous speakers.)

COMMISSIONER YAKI: It's a business meeting.

VICE CHAIR THERNSTROM: In July?

COMMISSIONER YAKI: Yes.
COMMISSIONER HERIOT: That's why I want it to be --

COMMISSIONER YAKI: And then we're hitting the magic four.

VICE CHAIR THERNSTROM: Yes. Well, depending on what happens with -- and the question is whether we're going to need a business meeting in July. I don't know.

COMMISSIONER HERIOT: Well, I did propose to you that I was willing to do this motion as a group to include all the things that we have now approved. And I didn't do that, because you didn't want me to.

COMMISSIONER GAZIANO: Yes. I think we should have a vote on that. But it's also -- what is this magic four? Does that include the statutory report briefing? I didn't think so, so we've got now one for April, you all approved one for June, or we approved one for June with me voting in the negative. This would be the third briefing for the year.

COMMISSIONER YAKI: No, but the fiscal year started in October. We had a briefing in December, as well.

COMMISSIONER HERIOT: I would move to reconsider the April motion then. In reliance upon your statement, Abby, I shouldn't do this as a group,
I didn't.

VICE CHAIR THERNSTROM: Well, because I thought we couldn't do it as a group. People had views on individual topics that we had to allow a discussion, we had to allow the discussion that has taken place.

COMMISSIONER HERIOT: You didn't mention that you were not in favor of doing this without a written statement.

VICE CHAIR THERNSTROM: Look, nobody has to go along with me on this. I would like to see the topic spelled out so that I can connect the dots and see how we're going to do this, exactly. The rest of the Commissioners are free to disagree with me on this. I can't quite get my arms around --

COMMISSIONER GAZIANO: Can I ask if we can just vote to put it on, and then we can always take it back off, if the concept paper isn't persuasive to us. Would that be a satisfactory solution to the Chair?

CHAIRMAN REYNOLDS: Sounds like a good compromise.

VICE CHAIR THERNSTROM: Well, I am just told that July is traditionally the month when we take a vote on the statutory report.

COMMISSIONER GAZIANO: Well, I assume we
can take a vote on the statutory report after a hearing, can we not? After a briefing, can we not?

VICE CHAIR THERNSTROM: That usually takes a really long time. It's a big report. It's complicated.

COMMISSIONER HERIOT: Well, we did it by telephone last time. And we didn't do it in July last time.

COMMISSIONER YAKI: Several times.

COMMISSIONER HERIOT: And, again, I think it's abusive to bring this up to me now.

COMMISSIONER GAZIANO: I don't know -- our Chairman was joining in my compromise. My compromise is that we vote today, we get the concept paper. And we're always free at our next business meeting to revise that if the concept paper is not persuasive. I thought I heard Chairman Reynolds --

CHAIRMAN REYNOLDS: It's a compromise in words, and provides us with the flexibility to really look at the issue. If for whatever reason any -- the majority of Commissioners have a problem with the idea as spelled out on paper, we would have the flexibility to revisit the issue. At the same time, though, we could move forward.

VICE CHAIR THERNSTROM: Commissioner Yaki.
COMMISSIONER GAZIANO: And we could also move the date of this July hearing, possibly, if that becomes an issue.

CHAIRMAN REYNOLDS: That is correct.

VICE CHAIR THERNSTROM: Commissioner Yaki.

COMMISSIONER YAKI: Yes, Madam Vice Chair.

My question -- when we talked about -- one of the reasons I voted for the motion to table the discussions on the 2010, 2009, and the 2008 briefing schedules had to do with the issue of resource allocation, timeliness, ripeness, staleness. One of the things that we found is that we have -- sometimes we just decide to do topics like when we voted on the Patriot Act issue, and that's superseded by other events. I assume that's the rationale behind the April briefing, and perhaps for the proposed July issue, as well.

But I would just like to say that if the issue is one of submitting concept papers for consideration at the next meeting, I would be in favor of that, because there are other issues and briefings that I believe are of a timely nature that I would like to see the Commission consider as a whole, which I think are non-partisan, which are within our statutory mandate. And if we're going to be starting
to add or change around briefings for the remainder 
of the year, I would like that to be in the context of 
everyone having the opportunity to do that, rather 
than just simply one topic you would consider for July.

There are issues that -- one of the, I think, serious issues that I think that we need to look at, and probably should have looked at a long time ago is the -- what appears to be, and maybe I'm wrong - but just simply by looking at the -- reading the news, and other kinds of reports, the issue of, for example, racism on college campuses that stems beyond anti-semitism, but to issues where people are holding parodies of Martin Luther King Day, where there are hate topics, not hate topics, hate crimes being committed by people of all races against others. It's something that I think is extremely important and timely. And although it's not directly connected, that we know of, to the two campus hearings yesterday, I think that it's something that's very important. And I would want to present a concept paper for it, as well. I would rather --

COMMISSIONER GAZIANO: Could you yield for a minute to my question to you?

COMMISSIONER YAKI: Yes. I will yield.
COMMISSIONER GAZIANO: I'm very interested in that topic. Would you consider substituting the campus racism topic for the DOJ?

COMMISSIONER YAKI: No, because I think the DOJ --

COMMISSIONER GAZIANO: Okay. I want the record to reflect that you have -- now that you've gotten your DOJ one, you're promoting one that I find more interesting.

(Simultaneous speakers.)

COMMISSIONER YAKI: I'm taking back the floor from you.

COMMISSIONER GAZIANO: Certainly, go ahead.

COMMISSIONER YAKI: The -- I'm not going to sit here and defend one a priority, and the other is not. I do believe that the 2008 election as it pertains to --

(Static interference.)

COMMISSIONER YAKI: -- campus racism is one that I believe is not partisan, is one that I would bring up for the entire Commission to look at. There are others, as well, and I would just propose that if we're looking at -- first of all, I think there are two questions that have to be asked. One,
if we're refiguring our 2008, I think that we should do it all at one time for the remainder to decide, but what is out there, when is the --

(Static interference.)

COMMISSIONER YAKI: And, number two, and more importantly is, I think the Staff Director has to do an analysis before we commit ourselves any further as to what are resources available for the remainder of the year through October. It's not December, it's the end of September, that we have resources for. And I would just put that out there.

VICE CHAIR THERNSTROM: Commissioners Kirsanow, Taylor, and the Chairman, do you have anything to say on this whole question?

CHAIRMAN REYNOLDS: I guess I have mixed feelings. The bottom line is, a Commissioner is free to submit a concept paper, and submit a motion asking to replace the scheduled briefings, so I am comfortable with Commissioners Yaki and Heriot circulating concept papers, and at least in the case of Commissioner Yaki, then having a -- I assume he would move to replace a scheduled briefing with one that he's recommending.

VICE CHAIR THERNSTROM: Well, we're talking about July here. We don't have any concept
COMMISSIONER YAKI: Nor a briefing schedule for that.

COMMISSIONER GAZIANO: Madam Chairman, can I ask, I suppose maybe it's the Acting Staff Director one question. Is it conceivable that we have money in the budget for a September briefing? What is your best thought?

STAFF DIRECTOR LERNER: Actually, in the schedule that was handed out by the previous Staff Director, there is a September briefing.

COMMISSIONER GAZIANO: If we have a July briefing, and a business meeting at the same time, is there enough money in the budget to do a briefing in September?

STAFF DIRECTOR LERNER: I'm not 100 percent certain. I'd have to find out. I think so.

COMMISSIONER GAZIANO: I thought that was sort of scheduled. I don't know. I, obviously, have a lot to learn as far as the Commission's finances, but I would hope that July is not the last briefing that we could do this fiscal year.

VICE CHAIR THERNSTROM: Chairman Reynolds, let's just go back to what you were saying. You were suggesting concept papers, and I said well, at the
moment we don't have any concept papers on either -
- we don't have a concept paper for either topic. My
only -- this is not opposition to the topic. I have
simply suggested, I've been thinking about it this
morning, that I would like to see a concept paper
before we take a vote on this. I regret that I didn't
say it before, but I didn't.

    COMMISSIONER GAZIANO: Madam Chair?

    VICE CHAIR THERNSTROM: Yes.

    COMMISSIONER GAZIANO: I would have liked
to have seen the concept paper for the June hearing,
but I yielded to the Commission to have the vote so
that we set that. And I doubt that that will be
changed, and so I, again, would urge the Commission to
make a tentative vote - I hope it's not tentative on
the math/science question, because I think it's an
incredibly important one. And, obviously, if any
other Commission -- if the concept paper, that is not
persuasive, and any other concept paper is more
persuasive for the July hearing, we can set that in
our next business meeting, whether it's in April or
May.

    COMMISSIONER YAKI: Point of information.

    VICE CHAIR THERNSTROM: Yes.

    COMMISSIONER YAKI: Chair Reynolds, just
for your information, the April briefing was actually one of the two that Commissioner Melendez and I put on the schedule. Actually, it wasn't Commissioner Melendez, that was actually left over from Commissioner Meeks, and then taken up by Commissioner Melendez as part of his priorities for the 2007 schedule. It was originally scheduled for 2006, and then bumped over to 2007. So for all intents and purposes, one of the ones that we have put on the agenda has already been replaced by something else.

CHAIRMAN REYNOLDS: Can we vote on the July motion, the motion --

COMMISSIONER HERIOT: I've been here for a year now, and I haven't had any affect upon any of these topics for briefings. This is the one that I spoke to you about, Chairman Reynolds, and to many other members of the Commission, and was led to believe that they would support such a briefing. And now after I voted in favor of other briefings, I'm finding that some people are not in favor.

COMMISSIONER REYNOLDS: No, I don't believe anyone --

VICE CHAIR THERNSTROM: I haven't said I wasn't in favor.
COMMISSIONER REYNOLDS: -- expressed opposition. The only question was whether -- well, this process requires that we circulate a concept paper beforehand, that's our practice. I don't have a problem voting now. As I said before, we will vote today, assuming that the motion passes, you will circulate the concept paper. I'm assuming that the concept paper will be fine, and garner a majority of votes. If not, then we would revisit the issue. That's how I see this unfolding.

COMMISSIONER YAKI: Second.

COMMISSIONER REYNOLDS: Are we ready to vote?

COMMISSIONER YAKI: Yes. It's called and seconded.

VICE CHAIR THERNSTROM: Okay. All in favor of --

COMMISSIONER YAKI: Calling the question.

VICE CHAIR THERNSTROM: Calling the question.

COMMISSIONER HERIOT: You don't vote on calling the question.

COMMISSIONER YAKI: Yes, you do.

COMMISSIONER HERIOT: It's supposed to be bi-partisan.
COMMISSIONER YAKI: It's a two-page -

COMMISSIONER GAZIANO: If it's unanimous.

COMMISSIONER YAKI: Well --

COMMISSIONER GAZIANO: There's no one objected to calling the question?

VICE CHAIR THERNSTROM: Everybody is in favor of calling the question. Now the motion that's on the table, Commissioner Gaziano, is it your motion, or --

COMMISSIONER KIRSANOW: It's Gail's motion.

VICE CHAIR THERNSTROM: Your motion on the table, but it was modified --

COMMISSIONER GAZIANO: No, I just seconded. I just seconded and spoke in favor of it.

VICE CHAIR THERNSTROM: But --

COMMISSIONER YAKI: Where does the motion start?

VICE CHAIR THERNSTROM: Included, but you --

COMMISSIONER GAZIANO: I didn't modify the motion. I just was describing how I thought we could sort of proceed to confirm it, proceed to undo it, if there's dissatisfaction, just to get support for the motion. The motion is that we have a briefing on this
topic in July. And unless we change that, and if
the motion passes, unless we change that, then we'll
have the briefing in July.

(Simultaneous speakers.)

COMMISSIONER HERIOT: Which makes it no
different from any other briefing.

VICE CHAIR THERNSTROM: Right. Is it
everybody's understanding, however, that there will be
some kind of, between now and the next meeting, some
kind of concept paper --

COMMISSIONER REYNOLDS: Yes, that's
already been agreed.

VICE CHAIR THERNSTROM: Okay. Now as part
of your agreement in --

COMMISSIONER YAKI: Is that part of the
motion?

VICE CHAIR THERNSTROM: As part of the
package of this motion, Commissioner Heriot.

COMMISSIONER HERIOT: I have no problem
with a concept paper.

VICE CHAIR THERNSTROM: Okay. Before the
next meeting. All right. Everybody in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Commissioner Reynolds,
aye.
COMMISSIONER KIRSANOW: Aye

COMMISSIONER TAYLOR: Taylor, aye.

VICE CHAIR THERNSTROM: I'm voting aye, as well.

VICE CHAIR THERNSTROM: Commissioner Yaki, I haven't heard from you.

COMMISSIONER YAKI: I said aye.

VICE CHAIR THERNSTROM: Aye. Oh, it's unanimous.

COMMISSIONER YAKI: Do you want to take a break?

VICE CHAIR THERNSTROM: Yes, I want to take a break. Short break, everyone.

(Whereupon, the proceedings went off the record at 12:51:27 p.m., and went back on the record at 1:03:23 p.m.)

VICE CHAIR THERNSTROM: All right. Have we got Commissioners Taylor, Kirsanow, and the Chair back, still on?

COMMISSIONER TAYLOR: You have Taylor.

VICE CHAIR THERNSTROM: And Yaki. Yaki is on the phone now. Okay. Have we got Chairman Reynolds on the phone?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: Good. So we're
moving on to the State Advisory Committee issues. We're going to vote on the re-chartering of the following five State Advisory Committees; Ohio, New Jersey, Rhode Island, Texas, and Vermont. Is it necessary for me to read every one of these names out into the record? It seems to me not. Could I have a motion to re-charter the Ohio State Advisory Committee? Under this motion, the Commission appoints the individuals in your briefing report. The Chair would be George W. Dent. And this is based on the recommendations of --

(Off mic comment.)

VICE CHAIR THERNSTROM: All right. I am just told that I should read the names. The Chair would be George W. Dent, as I said; Hal R. Arkes, Cassandra A. Bledsoe, Diane E. Citrino, I hope I pronounced that right, Ruth Colker, Dilip D. Doshi, David F. Forte, Scott Gerber, David Harris, Jad A. Humeidan, I am not pronouncing this name correctly, and I apologize to him in advance, Robert C. Harrod, Kelli L. Johnson, Kevin R. McDermott, John A. Powell, William J. Shin, Edith Thrower, Aaron Wheeler. These members will serve as uncompensated government employees. The Commission appreciates the hard work they will no doubt contribute to this State Advisory
Committee, and to this motion, the Commission authorizes the Office of the State Director to execute the appropriate paperwork for the appointment. So moved. Is there a second?

CHAIRMAN REYNOLDS: Second. Commissioner Reynolds.

VICE CHAIR THERNSTROM: Any discussion?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here.

VICE CHAIR THERNSTROM: Yes. Speak up. It's right there, Commissioner.

COMMISSIONER MELENDEZ: My concern is the balance of men and women on this. Is it really unbalanced, I believe.

VICE CHAIR THERNSTROM: Well, there are 12 men and 5 women. Any further discussion?

COMMISSIONER YAKI: I'm sorry. I didn't hear that.

VICE CHAIR THERNSTROM: Commissioner Melendez raised the question of the gender balance, and I answered there are 12 men and 5 women.

COMMISSIONER YAKI: Well, I think what Commissioner Melendez was relating was the fact that we had raised last year the fact that the SACs were tremendously imbalanced in terms of gender, and while
I thought we made some progress, at least on two of the SACs back to the former ratio, this one being 71 percent male, and I know that -- I think that New Jersey being 69 percent male. But this is an important issue with the dealings with the new criteria by the majority in 2005 for SAC members, and we should submit that for the record.

VICE CHAIR THERNSTROM: It's no to say that, and for the record, does anybody else have any comments on this?

COMMISSIONER GAZIANO: Just one question. I think it's important to certainly re-charter these SACs. I understand there's a maximum of about 19 could --

COMMISSIONER YAKI: I can't hear. Speak up, please.

COMMISSIONER GAZIANO: Can other candidates be added? I think it's terribly important to re-charter them, but --

COMMISSIONER YAKI: Can't hear.

VICE CHAIR THERNSTROM: Commissioner Gaziano is raising the question of whether there is room still for additional members that if we vote on it today, re-charter it, come up with some additional names.
COMMISSIONER GAZIANO: I'm not sure that's necessary. I'm just saying, I think it's more important to vote today, but I just, for point of clarification, want to know if it's possible, if it's necessary, we could add two more later. Is that consistent with our AIs?

COMMISSIONER YAKI: We have done so in the past, Commissioner Gaziano.

COMMISSIONER GAZIANO: Thank you. I suggest we vote on the slate.

VICE CHAIR THERNSTROM: As you know, Commissioner Yaki, it's not easy to find people who want to serve on this uncompensated board. But, in any case, I suggest that we vote on this today, as well.

COMMISSIONER YAKI: Madam Chair, is that a challenge, if I were to find people who are willing to serve, being put on the Committee?

VICE CHAIR THERNSTROM: They would have to be voted on, obviously. Is there further discussion?

COMMISSIONER MELENDEZ: Yes, I have a question. Are we trying to determine certain groups and organizations from which we're soliciting recommendations for these SACs? According to the record, we reached out to the National Association of
Scholars, the Office of the Mayor, the City of Columbus, Ohio Civil Rights Commission, Moritz College, Alarent National Conference for Community and Justice, Xavier College, McMicken College, and University of Toledo in a nomination process. Is that what we're trying to do, reach out to certain organizations?

VICE CHAIR THERNSTROM: Well, I mean - I think that's evident from his -- we reach out to a wide variety of organizations. This isn't some kind of right-wing conspiracy going on here. You want to say something about this?

STAFF DIRECTOR LERNER: Basically, just to reiterate it, we reach out to a wide variety of organizations to make sure there's a --

COMMISSIONER MELENDEZ: There's probably a lot of organizations we don't reach out to, do you think?

CHAIRMAN REYNOLDS: This is Commissioner Reynolds.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: I mean, any Commissioner is in a position to make recommendations as far as candidates are concerned, and that also includes the ability to recommend organizations that
the Commission should reach out to, to get recommendations. The goal is to have a diversity of viewpoints. I think that we've done a pretty good job so far. But, again, if you folks have some additional organizations that you would like for us to look at, please make your recommendations. If there are candidates that you would like to be considered, please make your recommendations.

COMMISSIONER YAKI: Point of information.

VICE CHAIR THERNSTROM: Go on.

COMMISSIONER YAKI: Were these SAC appointments done pursuant to the Leading Six Sigma process?

VICE CHAIR THERNSTROM: No, I don't believe so.

STAFF DIRECTOR LERNER: No, they were not.

VICE CHAIR THERNSTROM: Do you have something more to say on that question?

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: Was that a yes, or a no?

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: No. Are we ready to vote, or is there more discussion about this SAC?

COMMISSIONER MELENDEZ: Well, I still have
a concern that there's -- we have too many people from one organization. I think it has to be more balanced. I mean, we have four members from the Leadership of, I think it's Federalist Society Practice Group. You know, when you get four members out of the group, then you're kind of -- are we as balance as we should be, and as diversified as we should be?

VICE CHAIR THERNSTROM: Does anybody want to speak to that?

CHAIRMAN REYNOLDS: This is Chairman Reynolds. It looks like this SAC has a diversity appoint, it has members from the Federalist Society, and it has viewpoints from the other end of the spectrum, and everything in-between. So I'm ready to vote.

VICE CHAIR THERNSTROM: And a lot of these are new appointments, of course.

(Simultaneous speakers.)

VICE CHAIR THERNSTROM: Let's take a vote.

COMMISSIONER REYNOLDS: Got to work with what you've got.

VICE CHAIR THERNSTROM: Let's take a vote here. All in favor of re-charting the Ohio SAC?

CHAIRMAN REYNOLDS: Commissioner Reynolds,
aye.

COMMISSIONER KIRSANOW: Kirsanow, aye.

COMMISSIONER TAYLOR: Taylor, aye.

COMMISSIONER YAKI: Yaki, absolutely no.

VICE CHAIR THERNSTROM: Aye. Is that different from a no?

COMMISSIONER YAKI: Well, there could be definitive no, unequivocal no, 100 percent no, end result meaning no.

VICE CHAIR THERNSTROM: Okay. And Melendez is no, as well?

COMMISSIONER MELENDEZ: Yes.

VICE CHAIR THERNSTROM: So we have two nos, and the rest are ayes. New Jersey SAC, and I will read the names here. And I'm making a motion to re-charter the New Jersey SAC. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director; Leanna Brown recommended as Chair, Elisa Basnight, Richard F. Collier, Jr., Jane R. Dunhamm, Sherine El-Abd, Lora L. Fong, Brian M. Gaffney, John H. Hart, Shavar D. Jeffries, Lawrence S. Lustberg, David R. Oakley, Clement A. Price, Saulo Santiago, Judd A. Serotta, Ruth J. Seehan, Morris G. Smith, William J. Stephney, Jackson Toby, Peter W. Wood. Is
there a second?

COMMISSIONER REYNOLDS: Second.

VICE CHAIR THERNSTROM: Okay. Discussion?

COMMISSIONER YAKI: Madam Chair?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: I was curious that OSD recommended five of the same individual that Commissioner Heriot recommended. I mean, is that -- were they Commissioner Heriot's recommendations, or were they OSD's?

VICE CHAIR THERNSTROM: Well, anybody -- I mean, before Commissioner Heriot responds to that, I have to repeat what the Chairman said, which is anybody is free to recommend any names. And, indeed, the Commission welcomes recommendations, names, and names of organizations, as well. The Staff Director has something to say.

STAFF DIRECTOR LERNER: There is --

VICE CHAIR THERNSTROM: Oh, you have to continue to identify yourself when you're on the telephone. That was Commissioner Yaki.

COMMISSIONER GAZIANO: I assume the Staff Director can also ignore our recommendations. That's part of the review process. It's great that we make recommendations, but we don't have the power to,
except as a Commission make these people happen.

VICE CHAIR THERNSTROM: Right. If Commissioner Heriot recommended certain people, she doesn't -- that's not an entitlement to have those names in the final package. And nobody else has such an entitlement, but we recommend -- we welcome all recommendations. Commissioner Heriot, have you got anything to say on this?

COMMISSIONER HERIOT: That my memory is faulty, I'm afraid, and I don't even recall to whom I made the recommendations. And of the four names there, Peter Wood is the one that I'm most familiar with, and the other three were recommended to me by a former SAC member.

VICE CHAIR THERNSTROM: Right. And I'm familiar with Peter Wood, as well, but I didn't recommend him. I didn't make any recommendations. Are we ready to vote on this, or is there --

COMMISSIONER MELENDEZ: I have a question.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER MELENDEZ: In New Jersey, 15.2 percent is Hispanic according to the 2005 census, but only one of the 19 SAC nominees identifies as Latino. That would be 6 percent of the SAC. I just think that it's -- there should be, again, diversity
in that population that we don't have in this SAC.

The other thing is that when we last saw
the New Jersey SAC charter in July of 2007, six of the
names were different. In other words, since we had
that SAC that was pending and we looked at those names
back then, they've been changed, so now they've been
inserted or replaced either by the Staff Director, or
some of the Commissioners, so I just have a concern
for people that were waiting, no fault of their's, and
all of a sudden they're kind of out of the picture.

VICE CHAIR THERNSTROM: Do you want to
respond to this Chris?

MR. BYRNES: Sure. The package reflects
adjustments sort of recommended by Commissioners, but
through the Office of the Staff Director. Once sort
of Commissioner recommendations come in, we've got to
re-evaluate sort of what impact those will have on the
overall balance. So there are changes, it's not that
anyone sort of did anything wrong, or there was
anything particularly wrong with an individual
candidate, it was more than the overall balance was
sort of reconfigured. But we appreciate your
question.

COMMISSIONER MELENDEZ: It also has a
gender imbalance, too. It's just like the other one
that was two-thirds men, one-third women, I believe.

COMMISSIONER GAZIANO: I would just like the record to reflect, my question on the Ohio SAC and this one, that it is commendable what the Commission has done before I joined to eliminate strict notions of proportionality on gender, race, ethnicity. And I find it, again, a little bit disappointing to suggest that men can't represent the interests of women, or a similar analogy. So I just want to move on to vote on this slate. If you have any reason to believe that -

COMMISSIONER YAKI: Madam Chair?

VICE CHAIR THERNSTROM: Yes?

COMMISSIONER YAKI: Well, I would just like to put on the record that I find --

VICE CHAIR THERNSTROM: Please identify yourself for the record.

COMMISSIONER YAKI: This is Commissioner Yaki.

VICE CHAIR THERNSTROM: Yes. Thank you. Go on.

COMMISSIONER YAKI: Actually, Commissioner Yaki would like to state for the record that Commissioner Yaki believes that New Jersey SAC, in Commissioner Yaki's opinion, is one of the more
egregious examples of how this SAC process is not working, and how the SAC is not representative of the populations that we're attempting to represent and protect. That is the end of Commissioner Yaki's statement.

VICE CHAIR THERNSTROM: Well, we do have eight Democrats, seven Republicans, four Independents. We've got four reappointments. I don't know. I have to join Commissioner Gaziano on this, speaking as a woman. I do not care how many women there are. I care about the quality of the people on the SAC. I will hope that we've done a good job in picking quality people. I really don't care about their gender, I'm sorry to say.

COMMISSIONER MELENDEZ: Just a comment, again going back to the Hispanic population. I think that, for the record, that the Commission ought to do a better job in reaching out to those populations. That's all I have.

VICE CHAIR THERNSTROM: And I believed we've moved away from any notions of proportional representation, as however you define that, as one of the conditions of assembling these groups.

COMMISSIONER TAYLOR: Commissioner Ternstrom?
VICE CHAIR THERNSTROM: Yes.

COMMISSIONER TAYLOR: This is Ashley. I'm going to state for the record, I absolutely believe that composition of these SACs as reconstituted, and re-chartered, is vastly improved with respect to a diversity of viewpoint than the SACs as I recall reviewing when I joined the Commission. And I think that's an important point to make, and I think that will add to, again, those diverse viewpoints being provided by the various SACs around the country. And I did not see that diversity when I joined the Commission with the SACs in their current form.

VICE CHAIR THERNSTROM: And I will second that. There certainly wasn't a diversity of viewpoints, and that does not serve the Commission well, or its reputation well. Can we have a vote on the New Jersey SAC, unless other people have important matters they want to discuss with respect to it. All in favor, aye.

(Chorus of ayes.)

COMMISSIONER KIRSANOW: Kirsanow, aye.

CHAIRMAN REYNOLDS: Reynolds, aye.

VICE CHAIR THERNSTROM: And?

COMMISSIONER YAKI: Yaki's yipper nope, no way, not a chance.
CHAIRMAN REYNOLDS: I register a yes for Yaki.

(Laughter.)

VICE CHAIR THERNSTROM: And Commissioner Melendez has also voted nay. We are now going on to the Rhode Island SAC. And under this motion, which I make, the Commission appoints the following individuals at the recommendation of the Office of Staff Director; Norman Orodenker, recommended as Chair, Raymond Bell, Ann C. Clanton, Sara S. Enright, Joseph M. Fernandez, Bennie Y. Fleming, Jodi L. Glass, Patrick Guida, I guess it is, David B. Hammerstrom, Ali B. Hassan, John E. Holt, Arthur C. Jones, Ann C. Keefe, Lola M. Lange, Johanna L. LeClair, Pamela C. Moffatt I guess it's Icart, but again forgive me if I've got your name wrong, Jonathan D. Orent, James Vincent, Darrell Waldron. And once again, these members will serve as uncompensated government employees. The Commission appreciates the hard work they will, no doubt, contribute to the SAC. Under this motion, the Commission authorizes the Office of Staff Director to execute the appropriate paperwork for the appointment. So I need a second on the Rhode Island SAC.

CHAIRMAN REYNOLDS: Commissioner Reynolds,
second.

VICE CHAIR THERNSTROM: Okay. Any discussion? Hearing none, all in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Commissioner Reynolds, aye.

COMMISSIONER KIRSANOW: Kirsanow, absolutely, unequivocally, definitively yes.

(Laughter.)

COMMISSIONER KIRSANOW: Yaki is not the only one --

(Laughter.)

COMMISSIONER GAZIANO: It's only the double negatives that turn affirmative. The double affirmatives don't turn negative, so it's only the double negatives I have a concern with.

VICE CHAIR THERNSTROM: Commissioner Yaki, are you on the phone? Commissioner Yaki?

COMMISSIONER YAKI: Yes.

VICE CHAIR THERNSTROM: Have you voted?

Oh, you voted yes. There's a unanimous --

COMMISSIONER YAKI: No, you asked is Commissioner Yaki on the phone.

VICE CHAIR THERNSTROM: Oh.

COMMISSIONER YAKI: To which I answered
VICE CHAIR THERNSTROM: How do you vote, Commissioner Yaki?

COMMISSIONER YAKI: On Rhode Island --

VICE CHAIR THERNSTROM: Now, don't break your record.

COMMISSIONER YAKI: No, I think I will holding my nose vote yes.

VICE CHAIR THERNSTROM: And would you like -

CHAIRMAN REYNOLDS: Now we closed the voting. No, this is Commissioner Reynolds. Are you holding your nose because you're voting with the majority, or is the problem with the candidates?

COMMISSIONER YAKI: I leave that to your interpretation.

VICE CHAIR THERNSTROM: You don't ask why.

We have a unanimous vote on the Rhode Island SAC.

COMMISSIONER GAZIANO: They'll be glad to hear that.

VICE CHAIR THERNSTROM: And we move on to the Texas SAC. And I move --

COMMISSIONER YAKI: This will not be unanimous.

VICE CHAIR THERNSTROM: I thought you had
had an episode here that wasn't going to last long.

I move the Commission re-charter the Texas SAC. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Office of Staff Director; Russell B. Casey recommended as Chair, Elise M. Allen, Charles Z. Burchett, Bill Calhoun, Lisa A. Callahan, Francis A. Connot, Jason P. Casales, Cecilia R. Castilio, Norvell D. Glenn, Vino M. Granya, Merrill Matthews, Harriet Miller, Martha Orosko, Bobby Singe, Leslie G. Carroll, Barbara J. Walters, and if I've pronounced anybody's name wrong, please forgive me once again. These members will serve as uncompensated government employees. The Commission appreciates the hard work they will, no doubt, contribute to the SAC. Under this motion, the Commission authorizes the Office of Staff Director to execute the appropriate paperwork for the appointment. So I am making a motion, and I need a second.

CHAIRMAN REYNOLDS: Reynolds, and I second the motion.

VICE CHAIR THERNSTROM: Okay. Discussion. We've certainly got discussion, I've already understood from Commissioner Yaki.

COMMISSIONER YAKI: Madam Chair?
VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: Could the Staff Director illuminate me about the qualification of Russell Casey?

VICE CHAIR THERNSTROM: He's putting on his microphone.

STAFF DIRECTOR LERNER: Would it be more appropriate for Chris?

COMMISSIONER YAKI: Whoever.

STAFF DIRECTOR LERNER: Okay. Judge Casey is a Justice for the Peace in Tarrant County, Texas. He's also on the Real Estate Advisory Board, and has been active in a number of capacities. He has been on the City of Hurst Traffic Commission, the HEBISD District Level Improvement Committee, Tarrant County Election Judge, Delegate to the State Republican Convention, Member of MENSA, Northern Tarrant County Right-to-Life Education Advisory Board, Tarrant County College Real Estate Advisory Board, and past Republican Representative of the Tarrant County Elections Signor Verification Committee.

COMMISSIONER YAKI: Okay. So what are his qualifications, again to sit on a State Advisory Committee for Civil Rights, other than the Right-to-Life group?
STAFF DIRECTOR LERNER: He's a Justice of the Peace, and I consider that --

VICE CHAIR THERNSTROM: He's done election process --

STAFF DIRECTOR LERNER: He's actually done quit a bit about elections and election process, which I think does, indeed, qualify him to be on this Committee.

VICE CHAIR THERNSTROM: Other discussion?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez --

COMMISSIONER YAKI: Are you serious, that's your rationale?

COMMISSIONER MELENDEZ: We're proposing --

CHAIRMAN REYNOLDS: We're serious.

COMMISSIONER MELENDEZ: To be the chair?

COMMISSIONER YAKI: Well, he's your guy. Don't hold me accountable for him.

CHAIRMAN REYNOLDS: Thank you, emphatic no.

VICE CHAIR THERNSTROM: Commissioner Melendez.

COMMISSIONER MELENDEZ: The proposal is to have him to become the Chairman of the SAC. Is that right? Okay. I just, for the record, this lady by
the name of Mara Orosko, she's one of the returning
members of the SAC, so she would have been a good
Chairwoman.

The other issue is the Mr. Lino Graglia. Is he taken off, or is he still on there, because my understanding was that he had already served on, for 13 years on the Texas SAC from 1985-1998.

VICE CHAIR THERNSTROM: What are the rules about coming back after an absence? We don't seem to know whether that conflicts with any rule that the Commission has established. Evidently, the question of a break in service has not been addressed. It should be.

COMMISSIONER HERIOT: Do we have the wording of the rule?

VICE CHAIR THERNSTROM: We can take a vote today, and if there is -- and look into this question. And if there is a violation of the term limit, he has to step down off the SAC. I suspect there will not be any language that's going to answer the question for us.

COMMISSIONER HERIOT: There might be. There are also cases on this.

VICE CHAIR THERNSTROM: Well, we can look into it. We can vote on this pending inquiry into the
question of term limits, and if Professor Graglia
runs into a problem, Professor Graglia then steps off
the SAC.

COMMISSIONER HERIOT: I think we're going
to have to rebalance the SAC. Maybe what we should do
is vote pending whether or not this is a problem. And
if it is a problem, then we've got to rebalance the
SAC, rather than just have a SAC without Lino Graglia.

VICE CHAIR THERNSTROM: Why is one person
stepping down going to weigh the balance of, any of
you?

COMMISSIONER HERIOT: He's a pretty
assertive guy. I think it's a different SAC without
Lino Graglia.

VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER YAKI: What balance, we want
view point balance.

VICE CHAIR THERNSTROM: I'm sorry. What?

COMMISSIONER YAKI: We want view point
balance.

VICE CHAIR THERNSTROM: Ideological.

COMMISSIONER YAKI: We definitely want
view point balance. I don't know that that's a
problem.

VICE CHAIR THERNSTROM: A lot of outspoken
people on this SAC.

COMMISSIONER HERIOT: I don't know which way they're speaking, though.

VICE CHAIR THERNSTROM: Well --

COMMISSIONER HERIOT: I'm happy to vote for it now.

VICE CHAIR THERNSTROM: What would you like to do, Commissioner Heriot?

COMMISSIONER HERIOT: One possibility is just to vote for it pending whether or not this is, in fact, a problem. If it is, find a substitute for him, and we go back --

VICE CHAIR THERNSTROM: How is that different from what I just suggested?

COMMISSIONER HERIOT: I thought you were suggesting that the SAC would carry on without a substitute for him.

VICE CHAIR THERNSTROM: Well, we can always add people to these SACS. But, fine, I'm happy to go along with -- then that's a seat that we have to find a substitute for. That's fine. I'd like to move that we approve this SAC, but that Professor Graglia's appointment to the SAC is dependent, his continued service on the SAC is dependent upon the outcome of research on breaks in -- research on the question of
term limits, and that if he cannot serve, we find a
substitute. Got a second on that?

COMMISSIONER TAYLOR: Taylor, second.

VICE CHAIR THERNSTROM: Okay. All in
favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Reynolds, aye.

COMMISSIONER KIRSANOW: Kirsanow, aye.

COMMISSIONER TAYLOR: Taylor, aye.

VICE CHAIR THERNSTROM: And let the record
show that Commissioner Melendez is opposed. And we
are -- and Commissioner --

COMMISSIONER YAKI: Wait, wait, wait.

Hello!

VICE CHAIR THERNSTROM: Yes, I was about
to say you weren't on it, but you are.

COMMISSIONER YAKI: Commissioner Yaki says
no way, partner.

COMMISSIONER HERIOT: Commissioner Yaki,
is that the best you could do on that one? You're not
helping yourself.

VICE CHAIR THERNSTROM: Yes. Commissioner
Yaki, I was --

COMMISSIONER YAKI: I'm in the middle of
talking to --
VICE CHAIR THERNSTROM: Yes, I was about to say Commissioner Yaki was not on the phone for the record, but you are on the phone. I was not overlooking you. I was about to announce your absence.

COMMISSIONER GAZIANO: And he's worried about the double negative, so I'm glad for that.

VICE CHAIR THERNSTROM: Okay. I'm going to move on. I move that the Commission re-charter the Vermont State Advisory Committee. Under this motion, the Commission appoints the following individuals to the Committee based on the recommendations of the Office of the Staff Director; Curtiss G. Reed, recommended as Chair, Frances Bazluke, John H. Bloomer, Luther M. Brown, Ellen Mercer Fallon, Ann H. Hagman, Leslie Ann Holman, Gary A. Kowalski, Terrance D. Martin, Marion C. Milne, Cheryl W. Mitchell, Tara O'Brien, Eric D. Sakai, I guess it is, Stephanie L. Sidortsolva, Diane B. Snelling, Tracey H. Tsugawa, and Stewart R. Wood. And, again, my apologies to anybody whose name I got wrong. These members will serve as uncompensated government employees. The Commission appreciates their hard work where they will, no doubt, contribute to the SAC. Under this motion, the Commission authorizes the Office of Staff Director to execute the appropriate paperwork for the appointment.
I have made that motion. I need a second. Nobody wants to --

COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: Okay. Thank you, Commissioner Gaziano. Any discussion of the Vermont SAC, which is our last discussion.

COMMISSIONER HERIOT: Madam Vice Chair?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: What happened to Laurie Morrow? Wasn't she on this at one point?

VICE CHAIR THERNSTROM: I think she was -- she, evidently, withdrew her name from consideration. I don't know what the story is there.

COMMISSIONER GAZIANO: I'm sorry. I don't - I buried some of my papers. What's the number that we're voting on today, the total number?

VICE CHAIR THERNSTROM: Of this SAC?

COMMISSIONER GAZIANO: Yes.

VICE CHAIR THERNSTROM: Seventeen. The previous SAC had 14.

COMMISSIONER GAZIANO: I just understand that there's an issue of -- that arises. The rule is 19 is the max, so this is another SAC that potentially could take two more? Okay.

VICE CHAIR THERNSTROM: And it's another
SAC in terms of imbalance, they have four Democrats, five Republicans, eight Independents.

COMMISSIONER GAZIANO: That's imbalance?

VICE CHAIR THERNSTROM: No, I'm just talking about the balance.

COMMISSIONER GAZIANO: Good.

VICE CHAIR THERNSTROM: Are we ready to vote, or is there some discussion of the Vermont SAC? All right. All in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Reynolds, aye.

COMMISSIONER KIRSANOW: Kirsanow, aye.

VICE CHAIR THERNSTROM: Aye.

COMMISSIONER TAYLOR: Taylor says aye.

VICE CHAIR THERNSTROM: And Commissioner Melendez says aye. Yaki?

COMMISSIONER YAKI: And Commissioner Yaki, once again, holding his nose votes aye.

VICE CHAIR THERNSTROM: It is unanimous, with one nose-holder. I believe that we can adjourn.

COMMISSIONER GAZIANO: I move to adjourn.

VICE CHAIR THERNSTROM: I was going to say, we need a motion. And I second it. Thanks, guys, who are on the phone. It's been long, and you've been very patient. I very much appreciate it.
(Whereupon, the proceedings went off
the record at 1:38:44 p.m.)