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

PRESENT:

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

MARTIN DANNENFELSER, Staff Director
STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
MARGARET BUTLER
CHRISTOPHER BYRNES, Director, RPCU
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MAHA JWEIED
ROBERT LERNER, Asst. Deputy Staff Director
SOCK-FOON MACDOUGALL
TINALOUISE MARTIN, Director, OM
EMMA MONROIG, Solicitor
EILEEN RUDERT
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
KIMBERLY SCHULD
RICHARD SCHMECHEL
# TABLE OF CONTENTS

I. Approval of Agenda .............................. 4

II. Approval of Minutes of 2/20/09 and 3/30/09 Meetings .............................. 6

III. Announcements .................................. 9

IV. Staff Director's Report ......................... 11

V. Program Planning
   Update on Status of 2009 Statutory Report .. 33
   Approval of Findings and Recommendations for the Briefing Report on Department of Justice Voting Rights Enforcement for the 2008 Presidential Election .. 36
   Approval of Briefing Report on Provision of Supplemental Educational Services under the No Child Left Behind Act .......... 128
   Approval of Concept Paper for a Commission Briefing on Health Disparities ...... 175

VI. Management and Operations
   Update on the Status of Briefing Reports .. 191
   Motion Regarding Evaluation of Staff Director Performance ...................... 191
   Motion Regarding Staff Director's Provision of Quarterly Financial Reports to the Commission .......................... 191
   Motion Regarding Commission Preparation of a Public Service Announcement .... 191
   Motion Regarding Review and Standardization of Agency Regulations, Administrative Instructions and other practices .... 191

VII. State Advisory Committee Issues
   Tennessee SAC ...................................... 200

VIII. Adjournment .................................... 203
CHAIRMAN REYNOLDS: The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights. It is 9:36 Eastern Standard Time on April 17th, 2009. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C.

Is Commissioner Kirsanow on the phone?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Okay. Very good.

Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIRMAN REYNOLDS: Excellent.

Commissioners Kirsanow, Yaki and Reynolds are participating by phone. All other Commissioners are present at Commission headquarters.

The first item on the agenda is the approval of the agenda.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: I move that we approve the agenda. Is there a second?

COMMISSIONER MELENDEZ: Second.

Commissioner Melendez.

CHAIRMAN REYNOLDS: Discussion?
COMMISSIONER MELENDEZ: Second.

CHAIRMAN REYNOLDS: Any discussion?

(No response.)

CHAIRMAN REYNOLDS: Okay. Since I'm participating by phone, I'll call out each Commissioner by name. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner -- I'm sorry. Was that yes?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.
CHAIRMAN REYNOLDS: Okay. The motion passes unanimously.

Okay. The second item on the agenda is the approval of the minutes for the meetings held on February 20th and March 30th of 2009.

II. APPROVAL OF MINUTES OF FEBRUARY 20, 2009 AND MARCH 30, 2009 MEETINGS

CHAIRMAN REYNOLDS: We'll vote on each set of the minutes separately. I move that we approve the minutes for the February 20th, 2009 meeting. Is there a second?

COMMISSIONER TAYLOR: Second.

COMMISSIONER KIRSANOW: Kirsanow. Second.

COMMISSIONER GAZIANO: I have a minor amendment. I have a few style points I may raise later with staff, including whether we need to mention every time there's a vote that one Commissioner was not present when we state that up front, but my only substantive request is in the last paragraph, the last paragraph before Program Planning, the last paragraph in Management and Operations. It says, "Commissioner Gaziano stated that he was only voting against the proposed budget." I would like to clarify that sentence: was only voting against the proposed budget because he -- and this would be the change language --
"wanted to request a higher amount from Congress than OMB had approved."

CHAIRMAN REYNOLDS: I assume that no one has any heartburn with that clarifying point.

(No response.)

CHAIRMAN REYNOLDS: Okay. With that revision to the February 20th set of minutes, Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

COMMISSIONER THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay. The motion passes unanimously.

Next up is the -- oh, I move that we
approve the March 30th, 2009 minutes. Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez.

On page 2 of the Staff Director's report, it says that Commissioner Melendez introduced a motion to lift the moratorium on special assistants so there would be hiring by all Commissioners who indicated they would be hiring assistants by 2010. That was not me. I believe it was the Chairman.

CHAIRMAN REYNOLDS: Okay. Let's make the revision.

Okay. With that revision, Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.
COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: The motion passes unanimously.

COMMISSIONER GAZIANO: For future minutes, there's a phrase in both of them that the following staff participated in the meeting. Some staff participated and some were present, and I think that just the phrase something like, "The following staff were present or participated." For example, in the minutes we just approved it said the following staff participated. I don't even know whether they were on the line or not. I think that wasn't significant enough to change the minutes, but if we could try to have it reflect something like that in the future, I'd appreciate it.

III. ANNOUNCEMENTS

CHAIRMAN REYNOLDS: Okay. All right. April 4th Marks the 41st anniversary of the death of Dr. Martin Luther King, Jr., who was shot and killed as he stood on a balcony of the Loraine Motel in Memphis, Tennessee, where he had gone to support black
sanitary Public Works employees. He was assassinated only a day after his famous "I have been to the mountaintop" sermon in which he revealed that he was not afraid to die.

Dr. King was the founder and president of the Southern Christian Leadership Conference and a recipient of a Nobel Peace Price. The nation celebrates his birthday as a national holiday every third Monday in January. This month we pause to reflect on the life and contributions of Dr. Martin Luther King, Jr. and his legacy as a civil rights leader.

In addition, this month also marks the 70th anniversary of the legendary Marian Anderson's historic performance on the steps of the Lincoln Memorial on Easter Sunday 1939. She sang there for some 75,000 people and a radio audience of millions after the Daughters of the American Revolution refused to allow her to sing to an integrated audience at Constitution Hall because of her race. Their refusal led to First Lady Eleanor Roosevelt to resign her DAR membership and prompted President Roosevelt to give permission for the outdoor concert.

With her performance that day Anderson elegantly and powerfully challenged the racial
prejudices of the day. She became an important symbol of grace during the civil rights movement and notably singing at the March on Washington for Jobs and Freedom in 1963.

Okay, and finally, we also commemorate the enactment of the Civil Rights Act of 1866 this month, which was passed on April 9th, 1866, and a congressional override of President Andrew Johnson's veto. The act declared all persons citizens who were born in the United States and not subject to any foreign power. Among other things, it reinforced the rights of freed men during reconstruction against black codes enacted by former slave states following the passage of the 13th Amendment in an attempt to circumvent the 13th Amendment.

The Civil Rights Act of 1866, the first of its kind, protected the rights of all Americans, including former slaves, to make contract, to sue, to bear witness in court, and to own private property.

Next up, the Staff Director's report. Mr. Staff Director, please present your report.

IV. STAFF DIRECTOR'S REPORT

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

There are some specific items on the
agenda for updates on the status of the 2009 statutory report and the status of the briefing report. So I will discuss those items at those points in the agenda. An update on briefing reports was included in the Staff Director's report in the meeting binder that was sent to Commissioners on April 9th.

During the March reporting period, OCRE received 119 written complaints, no congressional complaint, one walk-in complaint, 23 E-mail complaints, and 130 telephone complaints. Fifty-nine were repeat calls. In total, staff received and processed 268 complaints during the March reporting period.

The library staff received 75 telephone inquiries. They completed 28 simple reference requests and performed 12 research projects of various sizes. An additional 66 research requests were completed utilizing automated search services.

And there were 136 written requests and 139 E-mail requests for publications during the March period as well. Two hundred and seventy-nine publications were mailed and 40 different publications were requested. "Getting Uncle Sam to Enforce your Civil Rights," "Compilation of Civil Rights Laws," and the catalogue of publications were our most requested
publications during this period. Currently there are 45 requests for publications in process.

Staff is currently finalizing the position description for the Budget and Finance Chief in anticipation that that position will be advertised shortly, and staff is reviewing proposals from vendors for external accounting services in FY 2010. At the same time, the current accounting service memorandum of understanding is being reviewed for possible reduction of costs and services.

Staff is working on updating the Commission's budget to include the additional 340,000 approved for FY '09. The hiring of three additional special assistants and possibly a fourth in fiscal year 2009 will be accommodated with these additional funds. Upgrades and improvements to this conference room, as well as other Commission space are also being explored.

Regional Directors have been asked to describe their SAC recruitment and meeting plans for the remainder of the fiscal year. We're also considering plans for a public service announcement that can be prepared with these additional funds.

Instructions and training continues to be provided to employees for the conversion to the E2
travel system. Another training session is scheduled to take place on April 28th, 2009. I've notified special assistants and other staff of the availability of that training if they're interested in signing up for it.

We continue to work with the regional offices on re-chartering State Advisory Committees and their conducting of meetings in the states and reviewing reports from the Advisory Committees.

And that's my report at this time.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Mr. Staff Director.

CHAIRMAN REYNOLDS: Are there any questions for the Staff Director?

COMMISSIONER GAZIANO: I have one or two. I didn't see the Internet numbers, and I'm going to remain interested in those. Would you mind sending those to --

STAFF DIRECTOR DANNENFELSER: I will and they were not --

COMMISSIONER GAZIANO: -- the Commissioners and try to include them in --

STAFF DIRECTOR DANNENFELSER: They were not available at the time of the report, but I will try to get those to you and send them all to all
Commissioners.

COMMISSIONER GAZIANO: And try to make sure they're in all --

STAFF DIRECTOR DANNENFELSER: Yes.

COMMISSIONER GAZIANO: -- of our future --

STAFF DIRECTOR DANNENFELSER: That's our goal each month.

COMMISSIONER GAZIANO: Okay. If they're like they've been in the past, they sort of dwarf the number of reports that the citizens are receiving from us, and I want the kind of records that most people read to reflect that.

CHAIRMAN REYNOLDS: Any other questions or comments?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here.

Back in December we had talked about hiring a deputy staff director is that still in the works or have we decided to use that money for the special assistants? I'm not sure exactly where we are financially. I know that there are some things that are proposed and we don't hear about them, and then for assistants it just seems like maybe we're trying to use that money in place of the staff director. That's why I keep asking for some line items as far as
the money that's being moved around.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: There were some problems with the hiring process. The issue has been held in abeyance until we decide when or if we go forward with this, and we'll put this matter on the agenda for the next business meeting.

COMMISSIONER MELENDEZ: Okay. The other question I had, I know I had asked about the -- what was it? -- the conference that we were supposedly supposed to have some time this year. As far as an update, I think I had asked for an update so that the Commissioners could receive some type of updates as far as the planning and where we are because I know that we're going to be getting close to the end of the year. It is already April and we haven't heard too much about a specific date or anything that's leading up as far as planning or cost or anything like that. So I'd like to see that the Staff Director includes that in the report each time so that we kind of know where we are with that unless we're going to postpone that to the following year or something along those lines.

STAFF DIRECTOR DANNENFELSER: We are still
planning to go forward. I have been having some
internal discussions with staff about that, and we do
plan to get a meeting called together very soon to
more formally move that process forward.

VICE CHAIR THERNSTROM: A meeting within
the staff or --

STAFF DIRECTOR DANNENFELSER: Yes, within
the staff. We want to get the special assistants very
engaged, among others, in that process, and so we will
have a meeting with staff, and we'll also be, like I
said, bringing the special assistants into that in a
very active role.

VICE CHAIR THERNSTROM: And I can't
remember when we're talking about.

STAFF DIRECTOR DANNENFELSER: Well, it
would be before the end of the fiscal year. So we
haven't set a date at this point. That will be part
of the planning process.

CHAIRMAN REYNOLDS: Mr. Staff Director, I
have a question for you. Could you describe the E2
tavel system? I know that we have some transitional
issues that we need to work out, but could you
describe the benefits of a new system and also briefly
tell us what's going to be done to correct some of the
problems that we had in planning for this business
meeting.

STAFF DIRECTOR DANNENFELSER: Well, I'm asking the Director of the Office of Management to come up to the front. I'll start on this and I think I'll ask her to elaborate.

But this is something that GSA is phasing out of the current service provider that we have, and one of the major reasons is to get more of these arrangements done electronically. There have been problems in the past cited by the auditors when we had too many paper records, and part of this process is to really get more of it done electronically so we have a better system for doing that.

We have had concerns about service and particularly being able to deal with a live person when there's a concern. So that's something that we are trying to address. But I think I will ask the Director of the Office of Management to elaborate a little bit further at this point.

COMMISSIONER YAKI: This is Commissioner Yaki.

While the Director of Management comes up to speak, let me just throw something out. We have a two-step or three-step or sometimes unfortunately five to seven-step process for making air reservations.
The first step is making the reservation. The second step is getting the authorization to book that reservation, and it seems to me that for me one of the frustrations I had about coming out here, which unfortunately I could not come in the end because of a family problem, is that whoever the reservationist is, I don't know if we have a regular one like we did at the other one or if it's all going to be electronic, and if it's going to be electronic, how is that made? And then secondly and more importantly is how then is that reservation turned into a booked ticket, which was done previously by getting the travel authorization. The travel authorization was then sent to the travel agent, and then the ticket was booked. I don't know how that process still remains or not. All I can say is that it has been extremely frustrating for me, especially flying from the West Coast, in wanting to try and get reservations made earlier. The flights I take, which are nonstop, are extremely crowded and often get booked up very fast, and you know, having to wait until the day before to actually buy a booked ticket, you know, affects your seating. It affects everything, and I just don't think that's the kind of thing I want to
see if that's what we're going to have to be dealing
with this new travel agency.

    And all I can say is that the personnel
whom I did deal with so far are the travel agency, and
they've been close to incompetent. They don't seem to
know what they're doing. They argue with you on E-
mail, which I find very odd for someone who's supposed
to be doing service for us, and I just want to know
what we're going to be doing to deal with, you know,
one, the problems we're having with reservations and,
two, how we make sure that we get the transition from
reservation to ticketing done is a smoother and much
faster way than what we've experienced so far.

    STAFF DIRECTOR DANNENFELSER: Well, let me
just respond briefly, and then I'll turn it over to
the Director of Management.

    I did speak to someone last weekend, you
know, when you and I were exchanging E-mails about
this situation, and the person I spoke to said that
the tickets are normally issued 48 hours before. In
this case the reservation had been made, and I know
there had been some changes, that you had made a
change on the seating, for instance. So I don't think
the fact that the ticket had not been issued affected
the ability not to change --
COMMISSIONER YAKI: -- the airplane in the middle aisle. I mean, first of all, if we're dealing with 48-hour ticketing for people from the West Coast, I think that's unacceptable. If that's what their standard is going to be that they're going to impose upon us, I say we get rid of them or they change, but 48-hour ticketing for folks from the West Coast, at least for me, is completely unacceptable.

STAFF DIRECTOR DANNENFELSER: Again, these are --

CHAIRMAN REYNOLDS: I don't know. Can someone unpack this ticketing process here? When you say that we have 48-hour ticketing, what does that mean?

STAFF DIRECTOR DANNENFELSER: I think that's actually the issuing of the ticketing. My understanding is that this doesn't have any effect on the reservation process itself, but most people --

COMMISSIONER YAKI: Oh, it has tremendous impacts on the reservation process.

COMMISSIONER HERIOT: Could I comment here?

COMMISSIONER YAKI: Anyone flying from the West Coast, if you want to try to avail yourself of an upgrade or change your seats -- and I'll be very
blunt. At the amount of miles I fly, I can check in earlier and change my seat earlier than 48 hours. If they do not actually issue the tickets until two days before, I am simply stuck there in limbo, and I will do anything, such as try and get a better seat or what have you because these morons apparently don't know how to book me, even though I clearly gave them all the information they need to book my seating.

The reason I change it is because they put me in like Row 36, Seat E in the middle, when there are vacant seats way farther up in different sections of the airplane.

So I've never had these problems ever from the very beginning with Omega.

CHAIRMAN REYNOLDS: Well, Mr. Staff Director, is there any reason why we couldn't have the ticketing completed, well, a week ahead of schedule? We know when we're going to come in for our meetings. Is there any reason why we couldn't get this done in advance?

STAFF DIRECTOR DANNENFELSER: Well, I'll turn it over to the Director, to say I still think there's a distinction here that the seating change was made during the reservation period. While the reservation had been made --
COMMISSIONER YAKI: No, no.

STAFF DIRECTOR DANNENFELSER: -- there was a seating change even though the ticket had not technically been issued.

COMMISSIONER YAKI: But let me unpack this a little bit so that you understand, Mr. Staff Director.

STAFF DIRECTOR DANNENFELSER: I didn't hear the first part of the question.

COMMISSIONER HERIOT: Mr. Chairman, can I comment here? Because I think I've got some additional information here.

You know, first of all, I want to echo what Commissioner Yaki is saying. For a West Coast person, it makes a big difference. It's the difference between sitting with two squalling children in the back and getting a better seat. You cannot change your seat unless you have everything already in place. It has happened to me several times. So there's no doubt that Commissioner Yaki is correct on this.

But it's much worse than that. The new system, the first ticket I got, which was last time, right when I was about to leave to the airport, I found that, in fact, they had booked me for the day
before. This is a serious, serious error, and I thought at first that it was such a serious error that since I was the person who had chosen the day, I must have been that I had forgotten that I had wanted to come the day before.

But, no, what I had asked for was not what I had gotten. The ticket was for the day before, and it was just lucky that United happened to have a seat because they usually don't on their nonstop flights.

So I have resorted to booking my own flight, and I know I don't see that there's any alternative to that. The current system is just utterly unworkable. I'm not going to get another ticket that's booked for the wrong day.

VICE CHAIR THERNSTROM: And yet as I remember, the whole system didn't really allow you to book your own flights or it went into meltdown.

Commissioner Yaki, this is not a new problem. This is not a problem simply because you live on the West Coast. When I was coming regularly from Boston, I had meltdown every month about this ticketing process because you are perfectly right. It does make a difference when you are actually ticketed.

So I mean, yes, there's a reservation in your name, but that does not allow upgrades. That
does not allow changing the seats. I mean, the whole process is ridiculous.

COMMISSIONER GAZIANO: Three of us.

CHAIRMAN REYNOLDS: Let's hear some more about the process. We were about to have someone provide us some additional information.

COMMISSIONER GAZIANO: Tina Martin, take it over, please.

MS. MARTIN: Okay. The process is still the same. You have to do your authorization first before you can even get a reservation, and I know we've been having problems with actually getting the authorizations in on time. I don't know if it's a user error or if it's not timely that it's coming from the Commissioners. I don't know where that part is, but we must have an authorization first, and it must be approved.

CHAIRMAN REYNOLDS: Wait a minute. When you say an "authorization," what does that mean?

MS. MARTIN: The authorization is approved to allow you to even travel.

CHAIRMAN REYNOLDS: Who does the authorizing?

MS. MARTIN: The Staff Director approves all travel. Once the Staff Director approves the
travel, then it must come to Budget to certify the funds. Once you have those two approvals, then the tickets are issued with this new system.

When we were with Omega, Omega issued tickets without authorization.

COMMISSIONER YAKI: I just want to say I regularly put in my request. I think the last trip may have been different. I'm not sure, but actually I don't think it was. I regularly put in my request at least two weeks, usually three, to get the ball rolling on the ticketing. And up until this change it worked very, very smoothly, but once this change occurred, you know, the reservationist person whom I had an E-mail with had a meltdown about it, and I didn't get the authorization until the weekend before this past weekend to get ticketed, and those guys apparently don't really work much on the weekends. Only through the intercession of the Staff Director did they even get around to getting that ticket done.

But you know, I just want to put on the record that unless it's a last minute change, I ask for -- I generally plan my travel well in advance. I'm sure Gerry does as well and everyone else on the Commission does. We build our schedules around this time that we're going to be here. We know when we're
going to be here for the most part, and you know, still things get delayed.

CHAIRMAN REYNOLDS: Okay. Tina, please continue.

MS. MARTIN: Well, as I was saying, when we were with Omega, Omega was approving travel reservations before they received an authorization approval. So that would probably be the reason why you didn't have a problem, because they were violating the federal travel regulations by even issuing those tickets.

I can also say that I have rarely received a travel authorization two to three weeks in advance. When I get travel authorizations to be certified, I'm getting them maybe three to four days before a person travels or, in your case this weekend --

COMMISSIONER YAKI: That is completely wrong.

MS. MARTIN: -- Mr. Yaki --

COMMISSIONER YAKI: I can show you every E-mail that I sent.

CHAIRMAN REYNOLDS: Well, no, no, no. Hold on, hold on.

MS. MARTIN: I'm not saying it's coming from you.
CHAIRMAN REYNOLDS: She's telling you when it arrives in her shop. She's not suggesting --

COMMISSIONER YAKI: Oh, no, that's right. I'm sorry. I take that back.

CHAIRMAN REYNOLDS: Okay.

MS. MARTIN: And for instance, I was saying about this weekend travel I had just received your authorization on the Friday before you were traveling the next week. So I'm saying I don't know where the hold-up is, but I'm not getting travel authorizations to be approved two or three weeks in advance.

COMMISSIONER YAKI: Well, let me just shed some light on this, Mr. Chair, because I put my request in the beginning of the week before, and I kept on asking when am I going to get booked, when am I going to get my reservation done. My go time is I want my ticket a week before booked and done.

As it turned out, I did not get a reservation until the following Wednesday, which was wrong, and then did not get the supposed authorization until late Friday evening.

CHAIRMAN REYNOLDS: Well, Commissioner Yaki, I think that this can be fixed. Mr. Staff Director, can you describe the process in your shop?
I mean, the suggestion is that the dates are selected. That information is conveyed, I assume, initially to your shop, and then from there it's supposed to go to Tina's shop. The discussion thus far suggests that this information is being bottlenecked in your shop.

STAFF DIRECTOR DANNENFELSER: Some of it is some of the Commissioners make their own reservations. Others request that they be made through my office, and then they are put in the system, and then once they are in the system and processed in the system, they'll come to me for approval, and once I approve them, they go immediately to Tina for approval.

CHAIRMAN REYNOLDS: Well, I mean, we can solve at least a piece of the problem by insuring that once the information lands in your shop, that it's not necessarily expedited, but just processed in an orderly and a timely fashion. That's one piece.

Commissioner Yaki also mentioned that the customer service rep. for E2 were unprofessional. We need to circle back to E2 and just remind them that we expect professionalism.

And, Commissioner Heriot, I guess your problem has been fixed since we now had the ability to
book our own flights, but going forward we should be mindful of getting this process improved. In fact, since we already have dates selected for the rest of the year, I don't see any reason why we couldn't book flights for the rest of the year and put the burden on the Commissioners to cancel.

Now, there may be reasons why we shouldn't do that. Marty, Tina, is there a reason why we can't do that or at least shouldn't?

COMMISSIONER GAZIANO: That relates to a question I have, if you don't mind, Mr. Chairman. I have great sympathy for those of you who must travel. I've heard these horrible stories. So I'm also reluctant to butt in, but I've also heard that the prices they get on these open-ended tickets are three times as high, and I have some interest in, of course, those who want to try to save the Commission's money. So I do just want to understand whether Commissioners can book their own tickets and whether that might --

COMMISSIONER YAKI: Commissioner Gaziano, we fly at a government rate. There's a government rate set by the airlines. It is not something where you buy these $2,500 open-ended, nonrefundable ticket. We're not allowed to do that. We're only allowed to buy whatever qualifies as the government fare on the
various airlines.

COMMISSIONER GAZIANO: Is the government fare though still higher? That's what I understand. It's still higher than the rate that you might be able to get.

COMMISSIONER YAKI: It's still higher if you don't want to fly on the four o'clock flight that gets in at midnight and leave on the 10:00 p.m. flight that gets in at 2:00 a.m.

COMMISSIONER HERIOT: No, actually I get the very same flight. I've booked it for about $450 through Orbitz. We would have paid, I think, 1,200 via the government rate. The government rate is much, much higher than the Orbitz rate. The government rate is more flexible, but then again, it's rare for us to change our plans here, and even if I were to miss my plane, I'd only pay, I think, an extra $100 which still wouldn't get anywhere near the government rate.

VICE CHAIR THERNSTROM: Mr. Staff Director, is there some way of figuring all of this out without extensive discussion?

COMMISSIONER YAKI: Gail, Commissioner Heriot --

CHAIRMAN REYNOLDS: One at a time.

VICE CHAIR THERNSTROM: Pardon me?
CHAIRMAN REYNOLDS: One at a time.

VICE CHAIR THERNSTROM: Oh, I'm sorry. I thought I was the only one talking. I wondered whether it was possible to resolve this issue, which I take very seriously because I've had a lot of experience before I moved, resolve this issue outside of this meeting because it seems to me that the Staff Director, in consultation with whoever wants to talk to him about it, Commissioner Yaki, Commissioner whoever wants to talk to him about it. Can we resolve it outside of this?

CHAIRMAN REYNOLDS: I think that that's a good idea. Is that amenable to -- I mean, is that suggestion -- is everyone else comfortable with that suggestion?

COMMISSIONER YAKI: Yes, I am.

COMMISSIONER TAYLOR: Mr. Chair, if I may.

CHAIRMAN REYNOLDS: Go ahead.

COMMISSIONER TAYLOR: Just one question. Is our problem an internal problem? Is our problem with the vendor?

VICE CHAIR THERNSTROM: It's both.

COMMISSIONER TAYLOR: It's both? Okay.

CHAIRMAN REYNOLDS: Well, I would expect the Staff Director to analyze the problem, see where
the bottlenecks are, identify the problems, and then come up with a game plan so that these issues are resolved. And we'll do that off line.

Any other comments or questions about the Staff Director's report?

COMMISSIONER GAZIANO: One just quick question. Was the letter sent regarding the EEOC report?

STAFF DIRECTOR DANNENFELSER: That has been sent, yes.

COMMISSIONER GAZIANO: Okay. And would you mind sending copies of that to us?

STAFF DIRECTOR DANNENFELSER: Yes, I will.

COMMISSIONER GAZIANO: Thank you.

CHAIRMAN REYNOLDS: Okay. Next up an update on the 2009 statutory report.

V. PROGRAM PLANNING

UPDATE ON STATUS OF 2009 STATUTORY REPORT

CHAIRMAN REYNOLDS: Mr. Staff Director.

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

The staff has been continuing to work on that, and there is still some statistics that have been coming in very recently. The report is now in the neighborhood of 120 pages, and I'm going to ask
David Blackwood to give us some more detail about that.

MR. BLACKWOOD: Thank you.

This is David Blackwood.

The Staff Director is correct. We're up to about actually more than 120 pages. We have substantially, not completely, but substantially completed the data research that we need, and that portion of the report is in good shape and basically in the proper order. We have spent a lot of time collecting data, and frankly, we will continue. Some of the sources we have dealt with have indicated that additional reports, especially from the Fed., will be forthcoming in the next month or two.

That said, I feel very confident about the shape of the report as far as the data collection. Where we still have substantial work to do is with regard to the narrative describing what the data means. Although we have done an analysis internally about what the data means and have had many discussions about that, we haven't actually created the narrative and put it in the report.

I will now shoot up a flare, which is I think that we may require -- I can't say yet -- but may require an additional week beyond the 27th to
complete the report in order for you all to have a report that is in substantially the form where we believe it is complete. I can't say that until the middle of next week.

We will spend a lot of time this weekend drafting the narrative and filling in those spaces. That said, I do want to put you on notice that I may in the middle of next week say that I don't think I'll need any more, but I may request an additional week beyond the 27th to get the report out to you in a substantially completed form.

CHAIRMAN REYNOLDS: Well, David, if you provide us with a document that's substantially complete, I suspect that no one is going to have heartburn over providing you with an additional week.

That was an attempt at humor. So --

(Laughter.)

VICE CHAIR THERNSTROM: It failed.

CHAIRMAN REYNOLDS: I shouldn't quit my day job.

Questions? Are there any questions for David?

(No response.)

CHAIRMAN REYNOLDS: Okay. Next up is the findings of fact and recommendations for the briefing
report on the Department of Justice's voting rights enforcement for the 2008 presidential election.

V. PROGRAM PLANNING

APPROVAL OF FINDINGS AND RECOMMENDATIONS FOR THE BRIEFING REPORT ON DEPARTMENT OF JUSTICE VOTING RIGHTS ENFORCEMENT FOR THE 2008 PRESIDENTIAL ELECTION

CHAIRMAN REYNOLDS: Part A of the briefing report on the DOJ voting rights enforcement for 2008 presidential election was approved on January 9th, 2009. Part B, the findings and recommendations for its briefing report were included in the binders that were sent to Commissioners on April 9th.

On April 12th, Commissioners received an E-mail containing amended findings and recommendations proposed by Commissioner Heriot to expedite the approval process.

I move that we vote on Commissioner Heriot's revised findings and recommendations as our baseline rather than those distributed in the meeting binders. Is there a second?

COMMISSIONER KIRSANOW: Kirsanow. Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: Commissioner Yaki here.
As a person who had requested the briefing on the DOJ's preparation for the 2008 election, I'm just going to reiterate for both the proposed findings and as for Commissioner Heriot's findings that (a) we don't need them because that wasn't really the purpose of what that briefing was about. It was to be informational. It was to be preparatory. It was for people to listen and learn as to what DOJ was planning to do. It was for policy makers to react accordingly, whether in Congress, whether in the nonprofit world, et cetera.

Number two, given the abbreviated nature of the briefing and the fact that if you really want to see anything with regard to findings or recommendations as to what this preparation would be, it would be, I would think, much more defensible to do so in the context of information adduced and produced in the public record through a post election period to see exactly how those preparations went and what those results would be with a critical eye.

I think it is very difficult, if not impossible, to talk about extrapolating from what people said they were going to do in 2008 to any conclusions about their performance during the 2008 election. I mean, we can all sort of go to other
sources or outside sources to try and do so, but that really was outside the record of the 2008 hearing, and I think that both the recommendations found prepared by staff and the recommendations that I know were worked on very hard by Commissioner Heriot, nonetheless I still think are founded for the most part in material extraneous to what was discussed at this particular hearing.

So I am not going to support any findings and recommendations to this report at all.

VICE CHAIR THERNSTROM: Mr. Chairman.

CHAIRMAN REYNOLDS: Yes, go ahead.

VICE CHAIR THERNSTROM: So, Commissioner Yaki, I'm a little confused here. We didn't hold a post election briefing in which the questions that you raise, the important questions you raise we were briefed on, were discussed, and it does seem to me that when we issue a briefing report that has no findings -- forget about the recommendations for the moment -- but has no findings even, that it means nobody is going to read the report.

I mean, the way people read reports is they look for, you know, what's the bottom line on what these people found, and it becomes, you know, something to go into a dead letter box without some
effort at summarizing what we found at the briefing that we held.

So I mean, I would like also to know what the performance was, but that is a separate question.

COMMISSIONER GAZIANO: Mr. Chairman.

COMMISSIONER YAKI: This is Commissioner Yaki.

I would say that I might be persuaded as to the findings issue related to that. I think that it's difficult to talk about recommendations in the report for an election that's past without doing any examination of that past election with an eye toward what was being discussed at the previous hearing.

VICE CHAIR THERNSTROM: Well, I'm not in disagreement with -- I understand that point perfectly, but I am very reluctant to throw out the findings.

COMMISSIONER GAZIANO: Yes, these don't relate to -- they're not that specific. You know, I certainly agree with Commissioner Yaki that not every one of our briefings needs to result in a briefing report with findings and recommendations. They may be moot or it may not have been that kind of a briefing.

There's two reasons why I think we should go forward with approving findings and recommendations
if we can, and I think a majority -- we probably know where this is. This is a recurring issue for us, and it was on what the Justice Department has been doing, how it has increased its supervision of election over the years, and this is also central to our jurisdiction.

So for both of those reasons, and third, these particular findings and recommendations don't require us to delve into what exactly happened in the last election. They were on general matters.

So for all of those reasons I think that these findings and recommendations are pretty important.

VICE CHAIR THERNSTROM: I mean, Mr. Chairman, I think if I understand correctly Mr. Yaki has problems with sentences like, "DOJ should take aggressive steps to insure all states comply with how this requirement. . . ." Well, that's "should take."

It is a little bit of a dated statement. We don't know if DOJ has begun to do so at this point and so forth.

I mean, I think, Commissioner Yaki, is that your point? That's in the recommendations section.

COMMISSIONER YAKI: Yes, sure. Yes,
Commissioner Thernstrom, that's one of them.

COMMISSIONER GAZIANO: And there is evidence they haven't been doing it as late as the most recent New York special election, but I certainly think --

COMMISSIONER YAKI: And that is outside of what our briefing contemplated.

COMMISSIONER GAZIANO: All I'm saying is --

COMMISSIONER YAKI: And it's evidence that, you know, is seen through a filter. I may look at that differently.

COMMISSIONER GAZIANO: I understand. So we can propose amendments to each other to strike a sentence and I'll, you know, have a view and we'll each have a view as to whether that sentence should stay or not, but the general point about whether we should have findings and recommendations on an issue like this seems to me to, you know, not warrant a lot of discussion.

COMMISSIONER YAKI: Well, then we should have a real hearing rather than an abbreviated briefing, which have very few people invited, which have more substantiation of different viewpoints, and --
COMMISSIONER GAZIANO: I think you helped identify the witnesses for this hearing.

COMMISSIONER YAKI: -- been opining on these. I mean this goes back to -- you know, Mr. Chair, this goes back to my general problem with the bootstrapping of the briefing format into a hearing recommendation.

CHAIRMAN REYNOLDS: Commissioner Yaki, this issue you have voiced your disapproval with the process that we use, and we have debated this issue. I do believe that our process can and should be improved, but I think that the briefing process that we have in place now, overall it has served us well, and I recognize that you have a violent disagreement on that position.

COMMISSIONER GAZIANO: Although for this particular hearing didn't Commissioner Yaki -- didn't he identify many of the witnesses for this briefing. I thought you were pretty pleased with it.

COMMISSIONER YAKI: Actually, no, Commissioner Gaziano. Don't make those kinds of assumptions, thank you very much.

CHAIRMAN REYNOLDS: Well, I mean, he was not --

COMMISSIONER GAZIANO: I was asking a
question, but you seem to be --

CHAIRMAN REYNOLDS: There's no crime in
that. If it is, we'd all be in trouble. In any
event --

VICE CHAIR THERNSTROM: I have an
alternative proposal, Mr. Chairman, if --

CHAIRMAN REYNOLDS: Go ahead.

VICE CHAIR THERNSTROM: -- it would be
appropriate to make it. I've got a little problem
with kind of recommendations when this election is
long over also, but a lot of the recommendations
could, in fact, be folded into the findings if they
are not already there, and I think they pretty much
are there.

I would be very happy to see simply
findings from this briefing, and the recommendations,
as I say, what is important in those recommendations,
I think most of it is in the findings, and what is not
can be incorporated into the findings unless they are
clearly of a dated nature.

COMMISSIONER HERIOT: Mr. Chairman, I
don't think any of the recommendations are of a dated
nature. You know, elections continue to be held in
the future. Most of what we're looking at here are
things that clearly apply into the future. I don't
think that anybody would look at any of our recommendations here and say that because the 2008 election is over, therefore, these things don't matter anymore.

VICE CHAIR THERNSTROM: Not that they don't matter, but we just don't have the information as to what has been done and --

COMMISSIONER HERIOT: I don't think there's anything that we're asserting that we think a particular thing has or has not been --

COMMISSIONER GAZIANO: Yes, again, I think there's great care in improving upon earlier ones where we were making conclusions that DOJ, for example, may have been failing. For example, it simply says, "DOJ should take aggressive steps to insure that all states comply with HAVA." That's true whether they have done it, have not done it, as failing, are doing an admirable job. I think there were some questions raised by witnesses on that, and all we're saying is that DOJ should take aggressive steps to comply with HAVA.

CHAIRMAN REYNOLDS: Well, folks, the motion on the table right now is to use Commissioner Heriot's revised findings and recommendations. I suggest that we vote on that, and then we just start
marching down through the findings and recommendations
and entertain whatever amendments or substitutions
that folks would like to make.

COMMISSIONER HERIOT: Are we voting then?
COMMISSIONER GAZIANO: Call the question.
VICE CHAIR THERNSTROM: Somebody is trying
to --

COMMISSIONER HERIOT: Call the question.
VICE CHAIR THERNSTROM: Somebody was
trying to talk and I couldn't hear them.
COMMISSIONER GAZIANO: Somebody might have
gotten off.

COMMISSIONER HERIOT: Yes, somebody just
hung up, I think.

COMMISSIONER GAZIANO: Call the question.
CHAIRMAN REYNOLDS: Okay.
VICE CHAIR THERNSTROM: Can we find out
who, if anybody --

COMMISSIONER HERIOT: We'll be able to
figure that out during the roll call.

VICE CHAIR THERNSTROM: All right.
CHAIRMAN REYNOLDS: Commissioner Yaki, as
you still on?

COMMISSIONER YAKI: Yes, I am.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Still here.

CHAIRMAN REYNOLDS: All right. Everyone is on. Okay. If that's the case, Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE CHAIR THERNSTROM: We are voting simply on now moving forward on -- I mean, there will be further discussion on these findings one by one and recommendations; is that correct?

CHAIRMAN REYNOLDS: That is correct, and the findings that I'm referring to Commissioner Heriot's revised findings and recommendations.

VICE CHAIR THERNSTROM: Right. I understand that.

Okay. All right. Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. My tally: Commissioner Melendez abstains; Commissioner Yaki voted against the motion; the remaining Commissioners voted in favor of the motion. The motion is approved.

Okay. I move that the Commission approve Finding No. 1. Do I need to read this into the record?

COMMISSIONER HERIOT: Do we have to have separate motions or just separate votes on these?

CHAIRMAN REYNOLDS: Separate votes.

COMMISSIONER HERIOT: So I don't think you need to move it. Just, you know, let's do vote on number one. I don't think you need a second or anything.

COMMISSIONER GAZIANO: Okay. I move that we not read these into the record since we have them all before us.

CHAIRMAN REYNOLDS: Okay. If that's the case then, it's open for discussion.

VICE CHAIR THERNSTROM: They will be in the written record anyway, for those who are interested obviously.

CHAIRMAN REYNOLDS: Okay. Does anyone
have any concerns, suggested revisions regarding the first finding?

COMMISSIONER HERIOT: Call the question.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez voted against the motion; Commissioner Yaki abstained; the remaining Commissioners voted in favor of the motion. The motion to adopt the Finding No. 1 passes.

Next up is the second finding. Open for
COMMISSIONER TAYLOR: Question. We take the election of 2000 as our starting point for comparison.

COMMISSIONER HERIOT: That's what we had the data for.

COMMISSIONER TAYLOR: Okay. I just wanted that on the record. That's what I wanted to hear.

COMMISSIONER HERIOT: Yes, that's what --

COMMISSIONER TAYLOR: Okay.

VICE CHAIR THERNSTROM: I'm not sure why the word "only" is "in the year 2000 the Voting Section sent only 640 federal observers."

COMMISSIONER HERIOT: If you want to strike it, I'm happy with that.

VICE CHAIR THERNSTROM: All right. I want to strike the "only." It implies, you know --

COMMISSIONER HERIOT: Only to emphasize the fact that the numbers went way up. That's all, but it easily can be struck.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Any other comments?

COMMISSIONER YAKI: Yes. This is Commissioner Yaki.

This goes to a substantive point which
came out in the briefing, and that is despite the
number of federal observers or monitors, under
guidelines promulgated by DOJ, their ability to
interact with local election officials is extremely
limited and in some ways relegated to a status where
they are actually prohibited by order of DOJ from
interacting with either local election officials or at
the polling place and certainly local registrars or
voters.

So I just put that out there to add a
little color to the fact that you may send down 1,500
people, but if all they can do is sit around and watch
and not do anything proactively, it's not as helpful
as perhaps it could be.

VICE CHAIR THERNSTROM: Well, but that
seems to me a point that supports voting on
recommendations because that's a point that could be
-- you could ask to be included in the recommendation
section.

CHAIRMAN REYNOLDS: Any other questions or
comments?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez,
how do you vote?

COMMISSIONER MELENDEZ: No.
CHAIRMAN REYNOLDS: Commissioner Kirsanow.
COMMISSIONER KIRSANOW: Yes.
CHAIRMAN REYNOLDS: Commissioner Thernstrom.
VICE CHAIR THERNSTROM: Yes.
CHAIRMAN REYNOLDS: Commissioner Taylor.
COMMISSIONER TAYLOR: Yes.
CHAIRMAN REYNOLDS: Commissioner Gaziano.
COMMISSIONER GAZIANO: Yes.
CHAIRMAN REYNOLDS: Commissioner Heriot.
COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Yaki.
COMMISSIONER YAKI: No.
CHAIRMAN REYNOLDS: Okay. Commissioners Melendez and Yaki voted no; the remaining Commissioners voted in the affirmative. The motion passes.

We're up to the third finding. Questions, comments, substitutions, revisions?

VICE CHAIR THERNSTROM: You see, this goes back to my point about folding in recommendations into the findings. This really is a recommendation. More action will be needed. I'm looking at four here.

COMMISSIONER GAZIANO: We're on three.
COMMISSIONER HERIOT: We're on three.
COMMISSIONER GAZIANO: We're on three.

VICE CHAIR THERNSTROM: I'm sorry. I was continuing to read ahead. Okay. I'm sorry.

COMMISSIONER YAKI: While you're reading that, this is Commissioner Yaki.

My objection with Finding No. 3 is that it falls into the category of you can play with statistics any way you want. What isn't revealed is how many complaints were brought to the Department of Justice, what kind of complaints were investigated, were brought to the Department of Justice, and what kinds and type of complaints were the ones that they chose to enforce during that period of time.

I think that you will find a potential difference of opinion amongst organizations over the efficacy and, indeed, the selection of the cases that DOJ brought during that period of time. So the idea that they were vigorously enforcing and doing all of these wonderful things I think was belied by some of the other testimony during the hearing and why I will be opposing this particular section as well.

COMMISSIONER HERIOT: Well, that will be very appropriate for you to put into your Commissioner's statement I would think.

VICE CHAIR THERNSTROM: I would not object
to a further sentence in three which simply said, Commissioner Yaki, what you just said, differing views. It is important to distinguish between enforcement of one kind and another. I would not have any problem in expanding three to include a final sentence to include your point.

COMMISSIONER TAYLOR: And, Commissioner Yaki, this is Commissioner Taylor.

I think your point is not inconsistent with what we have in front of us, and everybody understands the difference between simply quantifying the number of cases prosecuted under a statute and discussing the, quote, quality of those prosecutions and saying in the statement that there were mixed opinions on what aspects were enforced, but the numbers speak for themselves.

So, I mean, I don't think your comment is being inconsistent with what we have before us, and I would agree with Commissioner Thernstrom that that is something that could be added.

COMMISSIONER GAZIANO: But I think it might -- that kind of detail -- be more appropriate in our statements. I know there were some disputes about, for example, the case that was brought in Mississippi, the Knoxby case, but I think it was
absolutely an appropriate case. So I don't know that we need to -- that's the kind of thing that we can debate --

VICE CHAIR THERNSTROM: Well, two sentences.

COMMISSIONER GAZIANO: -- in our -- some people were displeased about the Knoxby prosecution, but the citizens seemed quite delighted.

VICE CHAIR THERNSTROM: But two sentences that acknowledge disagreement of the sort that Commissioner Yaki alluded to would not in any way -- I think would strengthen, in fact, this finding.

COMMISSIONER TAYLOR: Let me say --

COMMISSIONER HERIOT: Well, if we wanted to put in something about the Knoxby case in particular --

VICE CHAIR THERNSTROM: No, no.

COMMISSIONER HERIOT: -- I think that's the one where I've heard that there was dispute. I don't know that --

VICE CHAIR THERNSTROM: I don't think we have to get into, but to say that there were -- whatever.

COMMISSIONER TAYLOR: Hold on. This is Commissioner Taylor.
Commissioner Yaki, this conversation in my view is only relevant if it is going to draw your support for the motion. If a sentence along the lines which you described would draw your support for this finding if we added it, I'd be inclined to continue this discussion. If it's not, then we should move on, in my view.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: So what Commissioner Taylor is saying in essence is that if I choose to attempt to put lipstick on this creature that --

CHAIRMAN REYNOLDS: Creature pig?

COMMISSIONER YAKI: No, I wasn't going to say that.

-- that I'm naturally going to have to vote for it?

VICE CHAIR THERNSTROM: Well, no.

CHAIRMAN REYNOLDS: No, no.

COMMISSIONER YAKI: I think that is flawed. I think this section is entirely flawed. If the majority were of such a mind to try and provide a modicum of balance, I think that would be a smart political thing to do, but if they choose not to upon the requirement of me voting for it, forget it.

COMMISSIONER TAYLOR: No, no. Let me say
what I mean and what I mean is that I took your suggestion and your thought as a helpful suggestion and a positive suggestion that would, indeed, strengthen the finding and make it more complete, and that I would welcome it. If your offer was an offer to join in the process and support it, I am there with you.

COMMISSIONER YAKI: But that's exactly what I just said to Commissioner Taylor, which is that if --

COMMISSIONER TAYLOR: I just like it when I say it better.

COMMISSIONER YAKI: -- my support for this finding is conditioned upon -- is only -- let me restate that.

If you're saying that your only reason for including my comments would be to gain my support for this particular finding, my response is you should do it anyway. The majority should do it anyway as a matter of balance, but to me the balance is still struck far, far egregiously on the other side.

COMMISSIONER GAZIANO: Do you have a sentence -- do you have a sentence to propose?

CHAIRMAN REYNOLDS: So it was an offer of compromise. The compromise wasn't good enough. So
I'll call the question at this point.

Commissioner Melendez.

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE CHAIR THERNSTROM: I'm abstaining. I don't understand why we can't add just another sentence here and why --

COMMISSIONER GAZIANO: We haven't heard a concrete sentence.

VICE CHAIR THERNSTROM: Yes. Why Commissioner Yaki can't come forward with a concrete sentence that I would be happy to vote for.

CHAIRMAN REYNOLDS: Commissioner Taylor.

Commissioner Taylor.

COMMISSIONER TAYLOR: Yes. I vote aye.

CHAIRMAN REYNOLDS: I'm sorry. You vote what?

COMMISSIONER TAYLOR: I vote aye.

CHAIRMAN REYNOLDS: Okay. Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.
COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Commissioner Yaki would have come up with a sentence but he wasn't going to support it in the end.

(Laughter.)

COMMISSIONER YAKI: So the answer is no. It's your choice whether you want to put it in there or not. By choosing not to, you simply bias the report even more and from that point of view it helps me out. So thank you very much.

COMMISSIONER GAZIANO: Let the record reflect that Commissioner Yaki did not offer a sentence. He just complained.

CHAIRMAN REYNOLDS: Okay, okay. Hold on, hold on. Okay. I am going to vote against the --

COMMISSIONER YAKI: I didn't see you -- I didn't see you offering anything, Commissioner Gaziano.

CHAIRMAN REYNOLDS: Okay. Okay, folks. The discussion is over. We're just voting now.

There are three votes against the motion.

I'm going to vote against --

COMMISSIONER YAKI: Grow up, Todd.

CHAIRMAN REYNOLDS: There are three votes
against the motion, four in favor, and one abstention. The motion passes. 

STAFF DIRECTOR DANNENFELSER: Mr. Chairman, this is Staff Director. I've been advised that for the benefit of the public that is in attendance at the meeting that we do need to read the findings and recommendations into the record as part of a Sunshine Act requirement. 

CHAIRMAN REYNOLDS: Okay. 

VICE CHAIR THERNSTROM: We don't have to start from the beginning, I hope. 

CHAIRMAN REYNOLDS: I move that the following finding, Finding No. 4, be approved. 

COMMISSIONER YAKI: Point of order. Shouldn't we, if that is the case, shouldn't we then rescind the votes so far. 

COMMISSIONERS: No. 

COMMISSIONER GAZIANO: We can read them into -- by the way, I'm not sure I agree with that interpretation of the Sunshine Act, but I don't mind. I don't mind for those who think that's the case re-reading these into the record. 

VICE CHAIR THERNSTROM: But can we re-read into the record one through three later and move on at this point?
CHAIRMAN REYNOLDS: Sure. Okay. I'm reading number four, Finding No. 4, into the record.

"Despite this expansion of the Voting Section elections and enforcement activities, various problems continue to exist. For example, some states have failed to comply with HAVA's requirement that each state implement in a uniform and nondiscriminatory manner a single, uniform, centralized, interactive, computerized, statewide voting registration list and/or with the minimum requirements for that list. This has resulted in deceased, or no longer residents or other ineligible voters remaining on the rolls. Although the voting rights section has engaged in some enforcement activities in this area, more action will be needed to bring all states into compliance."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: Well, this is what I -- I mean, this was my point before when I was reading four instead of three by mistake. There really is an implicit recommendation here, and if we have problems with the recommendations, it seems to me the solution is to have them read exactly as four does, which really contains a recommendation, and you
know, the others, the recommendations that we think are important can be folded into the findings as in this case one is.

COMMISSIONER GAZIANO: I'm not sure that the distinction between findings and recommendations needs to always be perfect, but I still see this as an objective. The last phrase of this is an objective statement, which is supported by a lot of testimony from the briefing.

"More action will be needed to bring all states in the" -- I don't think any of the states deny that --

COMMISSIONER HERIOT: It doesn't even state whose action.

COMMISSIONER GAZIANO: Yes.

COMMISSIONER HERIOT: It says more action is needed.

COMMISSIONER GAZIANO: I don't think the states deny this. The testimony as I remember it is that states are years behind in complying and that there has been a fair amount of attention. I'm not saying that -- we're not saying at least in this finding who's at fault and what it's going to take. We're just making the observation that there's still work to be done here. So it's still kind of an
objective statement to make.

COMMISSIONER HERIOT: Yes, it's not a recommendation. More action refers to any. It doesn't even say whose action.

VICE CHAIR THERNSTROM: Well, wait a minute. More action will be needed. If you changed "will be" to "is needed," it is a recommendation.

COMMISSIONER HERIOT: To whom? It doesn't recommend anything. It just says the law is not being complied with now.

VICE CHAIR THERNSTROM: Well --

COMMISSIONER HERIOT: You know, whereas in the recommendations we're saying that DOJ should do something.

CHAIRMAN REYNOLDS: Well, I mean, the last sentence does smell like a recommendation to me. I mean, wouldn't an appropriate --

COMMISSIONER GAZIANO: Is that critical if some of our findings sound sort of --

CHAIRMAN REYNOLDS: Commissioner Gaziano, let me finish the thought.

Would everyone's concerns be addressed if we made the last sentence or at least some -- some formulation of the last sentence, if we just made it into a stand alone recommendation?
COMMISSIONER HERIOT: No, no, no, no, no, because the thing is you can strike it entirely, and that's fine, but I had thought that it was important to acknowledge that the Voting Section has done something. It just hasn't done --

COMMISSIONER GAZIANO: It hasn't completed its work.

COMMISSIONER HERIOT: Yes, it just --

VICE CHAIR THERNSTROM: Recommendation 3 talks about HAVA's requirement, and you can put in there the Voting Section has done something. I mean, it quacks like a duck. It is a duck, whatever.

CHAIRMAN REYNOLDS: So the two proposals --

VICE CHAIR THERNSTROM: I'm agreeing with you, Mr. Chairman.

CHAIRMAN REYNOLDS: Well, I see two proposals. One is to either fold that last sentence or some configuration of that last sentence into another recommendation.

Number two, have it be a stand alone recommendation.

And number three is to strike it in its entirety.

COMMISSIONER HERIOT: No, it's the same.
The only thing that's in this sentence that matters here is acknowledging that we're not accusing the voting rights section of having done nothing because they have done something. We can take that last sentence in the findings, and we can strike it as long as we then take the part about the Voting Section has engaged in some enforcement activities in this area, should somehow be folded into three.

COMMISSIONER GAZIANO: And could I suggest --

VICE CHAIR THERNSTROM: Three is a recommendation.

COMMISSIONER GAZIANO: Could I suggest an amendment to just complete the thought? Maybe the last sentence could read or I propose that it read, "Although the Voting Section has engaged in some enforcement activities in this area, not all states are in compliance."

CHAIRMAN REYNOLDS: That works for me.

VICE CHAIR THERNSTROM: That's fine.

COMMISSIONER YAKI: This is Commissioner Yaki.

This is yet another example of how we take one very small part of an issue, drain all of the life out of it, and turn it into one particular orientation...
about HAVA when the fact of the matter is that -- and, again, this was outside the record, inside the record and it was outside the record as shown during the electoral campaign -- and that had to do with the fact that there were plenty of instances of overzealous Secretaries of State waving the flag of HAVA to purge tens of thousands of voters who should not have been and never should have been purged.

Now, that actually was brought up in testimony during the hearing, and yet we seem to be concerned about dead people on the list rather than the live people who are getting shut out and kicked off as well in the implementation of HAVA. I just want to point that out.

COMMISSIONER HERIOT: We've actually --

CHAIRMAN REYNOLDS: Unless I'm mistaken, I believe that the concern that you just put on the table is in either a finding or recommendation.

COMMISSIONER HERIOT: Yes, it's in the recommendation.

VICE CHAIR THERNSTROM: I mean, I think it's an extremely important point also, but --

CHAIRMAN REYNOLDS: And one that's recognized in a recommendation.

VICE CHAIR THERNSTROM: Yes, and one
that's recognized in one of the recommendations. I agree. I mean, again, if we wanted --

COMMISSIONER YAKI: I looked at those recommendations. It's more about getting rid of -- telling states to get rid of the dead wood. Well, some states for their own purposes, whether political or not, decided to create a definition of dead wood that would have knocked out thousands who voted, and in fact, DOJ had to intervene or threaten to intervene in two of those instances to prevent the misinterpretation of HAVA by those states.

That was -- the misinterpretation of HAVA was brought up during the discussions, is not recognized in this particular finding, and that is why I am going to vote against it.

CHAIRMAN REYNOLDS: Would you like to make a recommendation or revision?

COMMISSIONER GAZIANO: The last sentence of Recommendation 3, I think, touched on Commissioner Yaki's concern. I'm not sure that's enough for him, but it is there.

VICE CHAIR THERNSTROM: Commissioner Yaki, as somebody who understands what you're saying perfectly well and is sympathetic to what you're saying as well, all I would like from you is for you
to actually come up with language that we could consider, and that was what was frustrating when we were talking about an additional sentence for whatever finding that was.

You know, all I was asking --

COMMISSIONER YAKI: Commissioner Thernstrom, I would have come up with a sentence, but Commissioner Taylor says they would only accept it if I voted for it. To me the point is --

COMMISSIONER GAZIANO: Because that --

COMMISSIONER YAKI: -- something which I believe against. If you want to make -- if you can make it better --

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: -- because that's what you should be doing, that should be a prerogative of the majority, not for me to legitimize a process which I fundamentally disagree with.

VICE CHAIR THERNSTROM: But we were trying to alter the process.

COMMISSIONER YAKI: As to number four, if you want a sentence, I would simply state this, and that would benefit in the "for example" sentence after Footnote No. H, which is -- or Footnote No. -- let's see. Where's that? Hang on.
COMMISSIONER TAYLOR: While he's looking for that, for the record, that's not what I said.

This is Commissioner Taylor.

COMMISSIONER YAKI: It was what you said, Commissioner Taylor.

COMMISSIONER TAYLOR: No, no, no.

COMMISSIONER YAKI: You said would I support it. This has resulted in --

COMMISSIONER TAYLOR: That's not -- that's not --

COMMISSIONER YAKI: -- Number 8, and then I would add if you want, I would add a sentence that says, "Additional concerns have been raised with regard to states' overzealous implementation of HAVA resulting in thousands of legitimate voters being disenrolled and disenfranchised.

VICE CHAIR THERNSTROM: Perhaps thousands. We don't have an accurate count.

CHAIRMAN REYNOLDS: -- legitimate eligible?

COMMISSIONER YAKI: Eligible -- no, no, not eligible. I mean they are on the rolls. I would just say thousands of voters being disenrolled and disenfranchised.

CHAIRMAN REYNOLDS: Concerns with that
revision?

(No response.)

CHAIRMAN REYNOLDS: Okay. I call the question. Commissioner Melendez?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: That was a no?

COMMISSIONER MELENDEZ: No.

VICE CHAIR THERNSTROM: Wait a minute. I'm sorry, Mr. Chairman. Where are we? Commissioner Yaki has suggested a sentence. Are we considering that sentence or not?

CHAIRMAN REYNOLDS: Okay. Let's be clear. Does anyone object to the revision offered by Commissioner Yaki?

COMMISSIONER HERIOT: Yes.

COMMISSIONER GAZIANO: Yes.

VICE CHAIR THERNSTROM: I need to hear it again.

COMMISSIONER YAKI: After Footnote 9, which cites the compelling testimony of Hans Spakovsky, I would add, "Additional concerns have been raised regarding perceived overzealous enforcement of HAVA that has resulted in registered voters being disenrolled and disenfranchised."

COMMISSIONER GAZIANO: With the advent of
provisional balloting, no one should have been disenfranchised. Everyone has a right to vote.

COMMISSIONER YAKI: That assumes perfect information for all those people who were disenrolled, and I think that the record is more than adequate and more than clear that that doesn't always happen.

COMMISSIONER GAZIANO: Well, your second formulation is better than your first because you were complaining of thousands who didn't get to vote if they weren't on the rolls, but I still think that it is a misleading sentence.

COMMISSIONER HERIOT: Yes, but you can just put that they have been taken from the rolls. You don't have to say they were disenfranchised.

CHAIRMAN REYNOLDS: I'm sorry, Commissioner.

COMMISSIONER YAKI: If you are purged after the deadline for registration, you most certainly are disenfranchised. You are not able then to, unless by court order you're restored to the voter rolls, you cannot come back with a voter reg. form and say, "Let me vote. You kicked me off thinking I was dead."

COMMISSIONER YAKI: Am I wrong to say that you can cast a provisional ballot?
COMMISSIONER GAZIANO: Can you give us a minute? We're trying to think of a friendly amendment.

CHAIRMAN REYNOLDS: Okay. The amendment that Commissioner Yaki offered, Gail, Todd, do you have concerns?

COMMISSIONER HERIOT: Hold on for just a second.

COMMISSIONER GAZIANO: We're looking at another sentence that we might be able to offer Commissioner Yaki in lieu of his.

VICE CHAIR THERNSTROM: I mean, I was at a polling place on Election Day monitoring this stuff, and people were given provisional ballots if there was any question. Now, it may have been my local election polling place.

COMMISSIONER YAKI: Commissioner Thernstrom, I was on the voter protection team in the last election,

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: And I can tell you that the distribution of provisional ballots varied from jurisdiction to jurisdiction.

VICE CHAIR THERNSTROM: Okay. I'll believe you on that. I'm willing to go with some
modification here that acknowledges your point. I'm happy to, more than willing. I, you know, believe in everybody being able to vote who is eligible to do so.

COMMISSIONER KIRSANOW: Kirsanow here.

Just a point of information. I will be off the call for approximately ten minutes, but I will rejoin.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: We may or may not have a friendly amendment. Could we -- Commissioner Yaki, would you mind reading your proposed addition again?

COMMISSIONER YAKI: Can the reporter do it? Because I've simply been saying it for the past few times. Each time I say it, it changes a little bit. So for accuracy I would prefer that the transcript be read back.

COMMISSIONER GAZIANO: Well, that's fine. It's gotten a little bit better your second time. I was hoping your third time it might even reflect some of our additional concerns. If you could end with, for example, that legitimate voters -- I think Gail may have a rephrasing of your -- that legitimate voters were purged from the rolls. So I might be able to go with it. When you add the extra thousands have
been disenfranchised, I have a little bit of a concern.

CHAIRMAN REYNOLDS: Okay. Gail, are you in a position to just read the proposed --

COMMISSIONER HERIOT: I think I can do this one working off Commissioner Yaki's proposal. "Additional concerns have been raised regarding perceived overzealous enforcement of HAVA that has sometimes resulted in legitimate voters being improperly purged from the rolls."

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Fine with me.

COMMISSIONER HERIOT: There it is then. Should I read it again?

VICE CHAIR THERNSTROM: Yes, read it once more.

COMMISSIONER HERIOT: "Additional concerns have been raised regarding perceived overzealous enforcement of HAVA that has sometimes resulted in legitimate voters being improperly purged from the rolls."

VICE CHAIR THERNSTROM: Good.

COMMISSIONER YAKI: I think it should be thousands because that's exactly the numbers that were being -- that were raised in Ohio, in Montana, but you...
know, whatever.

CHAIRMAN REYNOLDS: Okay, all right. With that friendly amendment, I call the question. Commissioner Melendez.

COMMISSIONER MELENDEZ: No.

COMMISSIONER GAZIANO: We're voting on the additional sentence or are we voting on the --

COMMISSIONER HERIOT: Are we voting on the whole thing or is it the friendly amendment so that we can do the whole thing now?

VICE CHAIR THERNSTROM: We can do the whole thing.

COMMISSIONER HERIOT: Unless it's an unfriendly amendment. If somebody does not feel that it is friendly.

VICE CHAIR THERNSTROM: No, no, no. We can do the whole thing. It was a friendly amendment.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, have you returned?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

COMMISSIONER KIRSANOW: I am back, but I
was off. So I can't. I don't know. I'm going to have to abstain.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: We're voting on your pension, Commissioner Kirsanow.

VICE CHAIR THERNSTROM: I'm voting on my what?

COMMISSIONER YAKI: We're voting on your pension, Commissioner Kirsanow.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. We have Commissioners Melendez and Yaki voting no; Commissioner Kirsanow abstaining; the remaining Commissioners voting in the affirmative. The motion passes.

Next up I move that we approve the
following finding, which is Finding No. 5. I'm going to read it into the record.

"Ensuring that overseas military voters are able to exercise their right to vote remains a serious problem. It can take paper ballots 30 days to get to a combat soldier in Iraq or Afghanistan and another 30 days to get the ballot back to the appropriate jurisdiction. Even if upon receipt of the ballot the serviceman or woman immediately votes and sends it back, the chances that it will get back in time to be counted may be only 50-50 so long as paper ballots are the method by which servicemen and women must vote. It is crucial that the Voting Section stand ready for immediate action when violations of the" --

COMMISSIONER GAZIANO: UOCAVA.

CHAIRMAN REYNOLDS: No. What is this?

VICE CHAIR THERNSTROM: It's UOCAVA.

CHAIRMAN REYNOLDS: Okay. OCAVA.

VICE CHAIR THERNSTROM: UOCAVA.

CHAIRMAN REYNOLDS: "And other applicable laws occur since time will be of the essence. Between 2001 and 2008, the Voting Section has brought multiple lawsuits to enforce UOCAVA in the courts. On several occasions the relief sought was ultimately attained
through state legislation."

Is there a second?

COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: Second, but let the record show it is UOCAVA.

COMMISSIONER HERIOT: I have a friendly amendment to my own, and that is in honor of our brave servicemen and women in the Navy, Air Force and Marines, that word "soldier" in the third line should be changed to serviceman or woman.

VICE CHAIR THERNSTROM: Thank you.

COMMISSIONER GAZIANO: Isn't soldier sex, gender--

COMMISSIONER HERIOT: It's not service neutral. It's not service neutral.

COMMISSIONER GAZIANO: Oh, oh.

COMMISSIONER HERIOT: A sailor is not a soldier.

COMMISSIONER GAZIANO: Sorry.

CHAIRMAN REYNOLDS: Gail, I have a question. The line that reads "may be only 50-50," is there data to support that statement?

COMMISSIONER HERIOT: There's testimony in our briefing to support that, but it only says "may only be 50-50." So we fudged a little bit.
CHAIRMAN REYNOLDS: Okay. Any other questions or comments?

(No response.)

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

(No response.)

CHAIRMAN REYNOLDS: Okay. We'll skip him for now.

Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Was that a yes?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay. Commissioner Kirsanow?
(No response.)

CHAIRMAN REYNOLDS: okay. He is off the line. Commissioner Melendez voted against the finding; Commissioner Kirsanow did not participate in the vote; the remaining Commissioners vote in the affirmative. The motion passes.

Next up, Finding No. 6. I move that Section 303(b)(4)(A)(i) of HAVA amend NVRA to require that voter registration applications created pursuant to that act specifically ask, "Are you a citizen of the United States of America?" If that question is left unanswered, Section 303(b)(4)(B) direct the Registrar to notify the applicant of that failure and provide a second opportunity to complete the form, thus making it clear that applicants who fail to answer that question in the affirmative are not to be registered (or if registered, are registered only for state elections in which non-citizens are permitted to vote). Yet in several states, Ohio, South Dakota and Iowa, applications are reportedly accepted when the citizenship question has been left unanswered. This may be the result of state officials who do not wish to go to the trouble of providing a second opportunity mandated by law and prefer to follow the path of least resistance by simply accepting the application. This
presents a serious problem as federal law forbids non-citizens from voting in federal elections. When state law permits non-citizens to register and vote, they may only vote using a ballot that does not give them the opportunity to cast a vote for a candidate for federal office."

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, are you back on the line?

(No response.)

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.
Commissioner Yaki.

COMMISSIONER YAKI: I just want to state that given the breadth of this here and the fact that most of these recommendations focus on HAVA and testimony brought up by Hans Spakovsky really quite, I think, misses the point of what that briefing was about, and I vote no.

CHAIRMAN REYNOLDS: Okay. Commissioners Melendez and Yaki voted no; Commissioner Kirsanow did not participate in the vote; the remaining Commissioners voted in the affirmative. The motion passes.

Now we're up to the recommendations. I move that we approve the first recommendation, which reads, "DOJ should be commended for its willingness through the Voting Section to play an aggressive and proactive role in preventing voting rights violations, especially through its dramatic expansion of its election monitoring function. In any democracy, elections must not only be fair. They must appear fair if the results are to be regarded as legitimate. The Voting Section's efforts have made an important contribution to insuring both the appearance and the reality of election integrity."

Is there a second?
VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: What is the purpose of this section?

VICE CHAIR THERNSTROM: Recommendation, you mean?

COMMISSIONER YAKI: What is the purpose of this recommendation? I mean, there is so much counter -- there were so many counter statements made during the hearings. The fact that there is a substantial chorus of criticism of the voting rights section, the cases that it chose, how it did it, the politization of that section, I just think this is, for lack of a better word, garbage and I'm going to vote against it.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, have you returned?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: I'm going to abstain.
on this one.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: You know, I'm going to change my -- I'm staring at this. I want to change my vote to an abstention also.

CHAIRMAN REYNOLDS: Interesting.

VICE CHAIR THERNSTROM: Well, I just --

CHAIRMAN REYNOLDS: No. It doesn't require an explanation.

VICE CHAIR THERNSTROM: No, I'm sorry. I was distracted by something before, and I've just stared at the language again. I'm going to abstain.

CHAIRMAN REYNOLDS: Okay. Bear with me, folks. Okay. I'm just counting up the votes here before deciding how I will vote. I am also -- okay.

(Pause.)

VICE CHAIR THERNSTROM: Is that how you decide how to vote, Mr. Chairman?

COMMISSIONER YAKI: Are you running out of
fingers, Mr. Chairman? What's going on here?

CHAIRMAN REYNOLDS: No. I'm torn, and I guess it goes back to the argument that Commissioner Yaki made earlier about statistics. I believe that the statement that DOJ and the voting rights section has been aggressive and proactive rests on those statistics.

COMMISSIONER HERIOT: Especially the election monitoring function with the number of observers and monitors that they now have.

CHAIRMAN REYNOLDS: I'm sorry, Commissioner Heriot.

COMMISSIONER HERIOT: The sentence is, you know, focused especially on the expansion of the election observer program.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: Those are the monitors who sit around with their hands in their pockets.

CHAIRMAN REYNOLDS: Okay. I'm going to vote for it.

VICE CHAIR THERNSTROM: They don't really have a choice about how many -- there's a process here that determines the numbers, but anyway.

CHAIRMAN REYNOLDS: Okay. Here's the vote: three abstentions, two votes against it, three
votes for it. Commissioner Kirsanow did not participate in the vote. If I understand how our rules work, this motion passes.

Next up, I move that the following --

VICE CHAIR THERNSTROM: Mr. Chairman, there's too many votes there. Do it again.

COMMISSIONER GAZIANO: No, he got it.

VICE CHAIR THERNSTROM: You got it?

COMMISSIONER GAZIANO: Three, two, two and one; three ayes, two noes, two abstentions, and one not voting.

VICE CHAIR THERNSTROM: Okay, okay. Never mind.

CHAIRMAN REYNOLDS: Hold on now. Hold on.

COMMISSIONER HERIOT: You got it.

COMMISSIONER GAZIANO: Your math is right.

VICE CHAIR THERNSTROM: No, I withdraw my comment.

CHAIRMAN REYNOLDS: Okay. I move that the following recommendation, Recommendation 2, be approved. "DOJ's role in prosecuting voter fraud, such as by doubling voting by nonresidents and voting by non-citizens, which is assigned to the Public Integrity Section, is also important. When illegitimate votes are counted, the votes of
legitimate voters are effectively nullified. Insuring both the appearance and reality of election integrity requires that DOJ place a high priority on combating this voter fraud. We urge DOJ to initiate action to prevent illegal voting and not simply wait to hear of and react to specific accusations of wrongdoing."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER YAKI: This is Commissioner Yaki.

I've just got to say this. We had a fair amount of testimony on the issues about why do we have election monitors, why do we have DOJ lawsuits going on with regard to voter intimidation. There is not a single mention of voter intimidation, which I believe has far more scientific and statistical data backing it up than does the issue of voter fraud.

Indeed, in previous hearings that we've had on the voting rights, it was pretty much there were statements made by government officials within the Department of Justice who talked about the low number of voter fraud cases that were ever brought to their attention and that major concerns exist and still remain about voter intimidation.
The fact that we have nothing on that, the fact that we don't even discuss it, the fact that it doesn't appear in this in a single word to me continues to just undermine and underscore the illegitimacy of this report.

CHAIRMAN REYNOLDS: Well, I don't believe that it renders the report illegitimate, but you do raise an important point. Voter intimidation was discussed at the hearing.

COMMISSIONER YAKI: In a great way.

CHAIRMAN REYNOLDS: And I don't believe that it's reflected in the findings of fact and recommendations. Commissioner Yaki or any other Commissioner, does anyone have any findings of fact and recommendations that they would like to make on that particular point?

COMMISSIONER TAYLOR: This is Commissioner Taylor.

I would support adding right after "to prevent illegal voting and voter intimidation."

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: Not in their bailiwick, I don't think. That should go in the first recommendation. That's part of voting rights.

CHAIRMAN REYNOLDS: Okay. Where are we?
COMMISSIONER TAYLOR: So you're saying the second one is strictly limited to voter fraud?

COMMISSIONER HERIOT: Yes, I don't think the public integrity section does, unless it happens to be criminal, but most of that voter intimidation stuff is done by the Civil Rights Division and the Voting Section. This just happens to be the way this breaks down.

CHAIRMAN REYNOLDS: Well, how about this?

COMMISSIONER YAKI: I mean, one of the points made by, I believe, Mr. Coates during the hearing was that they have made a determination that in elections where they believe race can or might be an issue is one of the factors that go into the decision to dispatch election monitors and election observers. That point was made by me during the hearing with regard to the fact that we had an historic opportunity with an African American running for President and asked what his feelings and concerns were about that with regard to voter intimidation.

This Commission has had a number of hearings in the past that talk about the scourge of voter intimidation, about pamphlets and flyers that appear that tell people the wrong day to vote, that tell them that they're not registered, that tell them,
you know --

CHAIRMAN REYNOLDS: Commissioner Yaki, I think --

COMMISSIONER HERIOT: Mr. Chairman, Mr. Chairman, I think I can do this.

CHAIRMAN REYNOLDS: -- that that issue should be recognized, and right now we're discussing the best way to incorporate a finding or recommendation on that point.

COMMISSIONER HERIOT: Yes, Mr. Chairman. I think I know where to do it. You know, the point here is that that's -- you know, when Commissioner Yaki says that it was Mr. Coates who brought that up, that's probably right. That's my point. That's part of what the Civil Rights Division does.

So I think the way to accommodate this is to go back up to Recommendation No. 1 where we are talking about the Voting Section and we are talking about the Civil Rights Division.

COMMISSIONER YAKI: It should also be a finding.

COMMISSIONER HERIOT: And in Recommendation No. 1 we talk about the aggressive and proactive role that they've had in preventing voting rights violations. Put in there, comma, "including
voter intimidation," comma.

CHAIRMAN REYNOLDS: Okay. How about this? Why don't we vote on the recommendation that we have in front of us? We're going to have to go back and read those other findings into the record, and why don't we deal with voter intimidation at that time?

VICE CHAIR THERNSTROM: Because Commissioner Heriot is suggesting that we add something to Recommendation No. 1.

COMMISSIONER GAZIANO: Which we did. I don't know that we --

COMMISSIONER YAKI: Are we going to have a finding on it?

COMMISSIONER GAZIANO: I don't know that we need a separate finding. Again --

COMMISSIONER YAKI: Why wouldn't we have a finding on it? You give three freaking paragraphs on HAVA and let's get rid of illegal voters, not a single word about the history and current and continued practice especially against immigrant citizens, Latino voters, and African American voters and voter intimidation.

We at the very least as a Commission to fulfill our function should put that as a finding rather than simply bury it in one catch-all word,
"voter intimidation," in the recommendations.

COMMISSIONER GAZIANO: Okay, and the --

COMMISSIONER YAKI: -- ignore our entire charter, but if you want to do that, go ahead.

COMMISSIONER GAZIANO: No, and in the future, Commissioner Yaki, if you really want us to consider those things, I wish you would send them to us weeks in advance like other Commissioners have. If you would have proposed a finding, it would have been easier for us to consider that and possibly accept it.

But if you want to work on one now, then we can consider it when we go back to the findings.

VICE CHAIR THERNSTROM: Well --

COMMISSIONER GAZIANO: I don't think it's necessary, but --

COMMISSIONER HERIOT: I think it's already implicit here, but we can easily --

CHAIRMAN REYNOLDS: Let's vote on the recommendation that we have on the table. We're going to circle back around and read certain findings into the record, and we will deal with the voter intimidation issue at that time.

Now, with respect to the Recommendation No. 2, Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.
CHAIRMAN REYNOLDS: Commissioner Kirsanow.
(No response.)
CHAIRMAN REYNOLDS: Vice Chair Thernstrom.
VICE CHAIR THERNSTROM: Yes, on the assumption that we are going to incorporate in some way or perhaps both in the findings and in the first recommendation Commissioner Yaki's suggestion.
CHAIRMAN REYNOLDS: I'm a little confused. Are you making this vote contingent upon what happens?
VICE CHAIR THERNSTROM: No. I'm just saying that that -- I am voting on the assumption, yes, on the assumption that we will do that.
CHAIRMAN REYNOLDS: We will take up this issue again, the voting intimidation issue.
VICE CHAIR THERNSTROM: Okay. So my answer is yes. All right.
CHAIRMAN REYNOLDS: All right.
Commissioner Taylor.
COMMISSIONER TAYLOR: Yes.
CHAIRMAN REYNOLDS: Commissioner Gaziano.
COMMISSIONER GAZIANO: Yes.
CHAIRMAN REYNOLDS: Commissioner Heriot.
COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Yaki.
Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. Commissioner Kirsanow did not participate in the vote. Commissioners Melendez and Yaki voted against the motion. The remaining Commissioners voted for it.

The motion passes.

We're up to Recommendation No. 3. I move that "DOJ take aggressive steps to insure that all states comply with HAVA's requirements, that each state implement in a uniform and nondiscriminatory manner a single uniform, official, centralized, interactive, computerized, statewide voter registration list and with the minimum statutory requirements for that list. In keeping with both the text and the underlying purpose of that statute, DOJ should insure that the state lists be up to date and available at every polling place within the jurisdiction. At the same time, however, DOJ must be mindful that sometimes legitimate voters have been improperly removed from the rolls. So care must always be taken when attempting to remove ineligible voters from those rolls."

Is there a second?

COMMISSIONER TAYLOR: Second.
CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: Why do we have no reference to provisional voting here?

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, would you care to expand on your statement?

VICE CHAIR THERNSTROM: Well, so care must be taken -- just a minute. Give me a minute here.

Something to the effect "and that voters who believe they have been improperly removed from the rolls have their right to cast provisional ballots."

CHAIRMAN REYNOLDS: Now, are you thinking of a stand alone sentence or incorporating in --

VICE CHAIR THERNSTROM: Well, I think it became a little complicated. So a stand alone sentence here. "Voters who believe that they have been improperly removed from the rolls" -- "it is important to enforce the right of voters to provisional ballots when voters believe that they have" --

COMMISSIONER HERIOT: That kind of has the feel to it as if people are not being allowed to cast provisional ballots, and we don't have testimony to that effect.

VICE CHAIR THERNSTROM: Well, I mean, I think that Commissioner Yaki is right that the
 provision of -- that the availability of provisional ballots has varied from jurisdiction to jurisdiction.

COMMISSIONER HERIOT: I don't know that that's in the record.

VICE CHAIR THERNSTROM: Commissioner Yaki, was that in the record?

COMMISSIONER YAKI: I don't know.

VICE CHAIR THERNSTROM: I don't remember.

CHAIRMAN REYNOLDS: So, Abby, please -- COMMISSIONER HERIOT: We make mention of provisional ballots.

CHAIRMAN REYNOLDS: -- provide us with a sentence or two.

VICE CHAIR THERNSTROM: Well, why don't you go on and I will work on it for a minute?

CHAIRMAN REYNOLDS: Okay. Any other comments?

(No response.)

CHAIRMAN REYNOLDS: All right. Vice Chair Thernstrom, we will wait until you finish with your wordsmithing.

VICE CHAIR THERNSTROM: Okay.

(Pause in proceedings.)

VICE CHAIR THERNSTROM: Well, okay.

"Those voters who believe they have been improperly
removed from the rolls are entitled to provisional ballots."


COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: I'm sorry, Commissioner Melendez?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Vice Chair Kirsanow -- Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

VICE CHAIR THERNSTROM: He's left the room.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Nope.

CHAIRMAN REYNOLDS: Okay. Commissioners Melendez and Yaki voted against the motion. Commissioners Kirsanow and Taylor did not participate in the vote. The remaining Commissioners voted in
the affirmative. The motion passes.

    COMMISSIONER HERIOT: Commissioner Taylor
    is here now.

    COMMISSIONER TAYLOR: I want to put my
    vote on the record. I just want to make sure that it
    hasn't changed substantially from what was written
    here. I apologize.

    COMMISSIONER HERIOT: Abby added --

    COMMISSIONER GAZIANO: Abby added one
    sentence that said -- a very simple sentence. Would
    you read it?

    VICE CHAIR THERNSTROM: "Those voters who
    believe they have been improperly removed from the
    rolls are entitled to provisional ballots."

    COMMISSIONER GAZIANO: So with that
    amendment?

    COMMISSIONER TAYLOR: With that amendment,
    Taylor votes aye.

    CHAIRMAN REYNOLDS: Okay. Commissioners
    Melendez and Yaki voted against the motion.
    Commissioner Kirsanow did not participate in the vote.
    The remaining Commissioners voted in the affirmative.
    The motion passes.

    Okay. I move that we approve
    Recommendation 4, which reads, "It is unacceptable
that men and women of our Armed Services who are
making sacrifices for the country that will never be
adequately repaid are sometimes denied the opportunity
to vote in federal elections. While primary
responsibility for ensuring that opportunity lies with
the states, the Secretary of Defense, and the
Department of Defense, DOJ through the Voting Section
should be vigilant in its enforcement of UOCAVA"

VICE CHAIR THERNSTROM: UOCAVA.

CHAIRMAN REYNOLDS: I'm sorry?

VICE CHAIR THERNSTROM: UOCAVA.

CHAIRMAN REYNOLDS: Okay. UOCAVA. "We
recommend that the Voting Section be especially
mindful of the need for advanced preparation and speed
whenever paper ballots which must be moved great
distances in a timely manner are used."

Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER GAZIANO: I'd just like to

speak to one point relating to the finding. The
testimony as I recall was that some jurisdictions, you
know, under court order still kind of dragged their
feet. Other jurisdictions, you know, provided for
FedEx returns, which made a huge difference.
There is public returns in the most recent New York special election, but only 20 percent of the military service personnel who requested ballots, their ballots were counted, and 20 percent is a pretty shameful return rate for that jurisdiction or for any jurisdiction in that they did have warning that they needed to do a better job.

So I'm just in support of this recommendation, but I just want to sort of supplement the record that the testimony was that jurisdictions could do things, could do appropriate things to comply with this statute and that a lot of jurisdictions have to be taken kicking and screaming in court to take this seriously.

VICE CHAIR THERNSTROM: And I would also like to add something to this, but if this is factually incorrect, somebody should tell me. We refer here, while primary responsibility for ensuring that opportunity lies with the states, the Secretary of Defense, the Department of Defense, DOJ, the Voting Section, I believe that in many cases the problem lies with the county or the political subdivision that actually conducts the elections and it is not a statewide problem. It is a problem of a particular county.
COMMISSIONER GAZIANO: As I understand it, the federal government usually makes responsible the states and their subdivisions and then leaves it up to the states to figure out how they're going to.

VICE CHAIR THERNSTROM: Yes, the states don't do it, and it is the local authorities that are often the problem.

COMMISSIONER HERIOT: Okay. So I would consider it a friendly amendment to add after the word "states" "their political subdivisions."

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: "The states, their political subdivisions, the Secretary of Defense" --

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: -- "and the Department of Defense."

VICE CHAIR THERNSTROM: Thank you.
CHAIRMAN REYNOLDS: Okay. Other comments?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, have you returned?

COMMISSIONER KIRSANOW: I have. I vote yes.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER GAZIANO: Twice.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

VICE CHAIR THERNSTROM: We've got a fraudulent vote here.
(Laughter.)

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER GAZIANO: I just want my vote to be counted.

CHAIRMAN REYNOLDS: I'm sorry. Was that a vote in the affirmative?

COMMISSIONER GAZIANO: It was. You just called on me twice, and they're --

COMMISSIONER HERIOT: It was two votes.

COMMISSIONER GAZIANO: -- objecting that you called on me twice. As long as my vote counts once, that's fine.

I'm sorry and -- okay. What's the final tally?

CHAIRMAN REYNOLDS: Okay. If I heard Commissioner Yaki right, we have one vote against the motion. That's Commissioner Melendez. The remaining Commissioners vote in the affirmative. The motion passes.

Okay. I move that we approve Recommendation 5, which reads, "We believe that states that currently, one, register persons who fail to answer the citizenship question on voter registration applications made pursuant to NVRA and, two, fail to keep a separate registration list for such persons and
provide them with non-federal ballots for voting purposes are out of compliance with federal law. We, therefore, recommend that the Voting Sections take appropriate enforcement action in order to prevent the possibility of non-citizens voting in federal elections. If necessary the Voting Section should seek a court order requiring that state officials either reject such applications from persons who fail to state that they are American citizens (after being contacted and provided a second chance to do so as provided by law) or keep a separate list of such registrants and provide voters on that list only with non-federal ballots."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER TAYLOR: This is Commissioner Taylor. I'm not an expert in this area, and so I don't feel perhaps as comfortable as others may feel in stating that something appears to be out of compliance with federal law. I would prefer to have some language that is softer than that because I don't feel comfortable making that declarative statement as far as something out of compliance.

I could be persuaded otherwise, but I
would prefer to have language that causes us concern and reflects the problem, something to that extent. I think it's a problem. I'm just not sure in terms of making that declaration.

CHAIRMAN REYNOLDS: Okay. Do you have any compromise language in mind?

COMMISSIONER GAZIANO: It raises serious concerns under federal law?

COMMISSIONER TAYLOR: Yes, raises concerns or we strongly encourage states to do this. I mean one and two I like, and I want states to do it.

COMMISSIONER HERIOT: But we're recommending that DOJ actually undertake an enforcement action.

COMMISSIONER TAYLOR: Right, and I'll go to that last sentence in a minute, but the first -- well, let me go to the last sentence because we jump right to a court order, and there are many things short of a court order. I know it says "if necessary," but when we put the court order in the language it has suggested that that is a preferred tool of enforcement.

COMMISSIONER HERIOT: It's a last resort, if necessary.

COMMISSIONER TAYLOR: But putting it in,
expressly identifying it suggests that it's a primary
tool from my perspective at least, and I just want to
see it done, and I don't have to suggest how they do
it by way of court or otherwise. I just want to see
it done.

CHAIRMAN REYNOLDS: Okay. Well, how about
this? "If necessary, the Voting Section should seek
an appropriate remedy, including a court order
requiring," yaddy-yaddy-yada.

COMMISSIONER TAYLOR: Yes, something like
that, right, right. Something to that effect.

VICE CHAIR THERNSTROM: Why not just cut
off all the language starting with "if necessary"?
"We, therefore, recommend the Voting Section take
appropriate enforcement action in order to prevent the
possibility of non-citizens voting in federal
elections," period, stop, end.

CHAIRMAN REYNOLDS: And everything else
after that is deleted?

COMMISSIONER GAZIANO: I prefer a little
bit of specificity. What is concerning you about the
specificity of what we want them to do since it does
track the language of the statute pretty closely, what
they are required to do. It's almost restating what
the statute requires.
VICE CHAIR THERNSTROM: Well, I was just trying to solve that problem that Commissioner Taylor had.

COMMISSIONER GAZIANO: I thought we had with the Chairman's --

COMMISSIONER TAYLOR: With the Chairman's suggestion --

COMMISSIONER GAZIANO: -- suggestion. That works for me.

COMMISSIONER TAYLOR: I'd just like to be careful in these recommendations that people don't take from it that we view it as the preferred method of enforcement.

COMMISSIONER GAZIANO: I think that sounds good to me.

VICE CHAIR THERNSTROM: All right, okay.

COMMISSIONER TAYLOR: Fine. That's all.

VICE CHAIR THERNSTROM: All right.

COMMISSIONER HERIOT: So could somebody read that to me again?

COMMISSIONER GAZIANO: The voting -- Mr. Chairman, do you have that?

CHAIRMAN REYNOLDS: Oh.

COMMISSIONER GAZIANO: The Voting Section -- let me see if I have your language. "The Voting
Section should seek an appropriate remedy," comma, "including a court order," comma --

CHAIRMAN REYNOLDS: Right.

COMMISSIONER GAZIANO: -- and then the rest.

CHAIRMAN REYNOLDS: Yes, that was my formulation.

COMMISSIONER HERIOT: Okay. That's fine.

CHAIRMAN REYNOLDS: Offered as a friendly amendment.

COMMISSIONER GAZIANO: Accepted, I take it.

CHAIRMAN REYNOLDS: Okay. Any other questions or comments?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

VICE CHAIR THERNSTROM: Wait a minute. I have. "Including a court order," "possibly including a court order" or "including a court order when necessary," or something. I'm just softening it slightly.

You know, this sounds like --

COMMISSIONER HERIOT: Well, it already begins with "if necessary." That's why I was --
VICE CHAIR THERNSTROM: Oh, I see.

COMMISSIONER HERIOT: -- this was not.

That was my way of trying to do what --

VICE CHAIR THERNSTROM: I get it, I get it. I'm sorry. I missed the "if necessary."

COMMISSIONER YAKI: I have a question.

VICE CHAIR THERNSTROM: I apologize.

COMMISSIONER YAKI: Mr. Chair.

CHAIRMAN REYNOLDS: Yes. Commissioner Yaki.

COMMISSIONER YAKI: Was there any evidence produced at the hearing that this has actually occurred?

COMMISSIONER GAZIANO: Yes.

COMMISSIONER HERIOT: Yes.

COMMISSIONER GAZIANO: There was some testimony from Maryland, I believe.

COMMISSIONER HERIOT: -- states, yes.

COMMISSIONER GAZIANO: Maryland, there was incidence, incidents from --

COMMISSIONER HERIOT: Maryland was a different issue.

COMMISSIONER YAKI: And how widespread was it? Thousands?

COMMISSIONER HERIOT: The testimony was
that it was occurring in Ohio, South Dakota, and Iowa.

COMMISSIONER YAKI: Testimony by whom?

COMMISSIONER HERIOT: I don't recall. I mean, this is basically the mirror image of Finding No. 6.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes, and I have to jump off again for five minutes, but I'll be back.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes. Did we fix the first sentence, too, by the way?

COMMISSIONER GAZIANO: I'm not sure. What was your concern again?

CHAIRMAN REYNOLDS: The first sentence?

COMMISSIONER GAZIANO: Let's go back.

COMMISSIONER TAYLOR: Yes, I think we agreed upon it. It was just that --

COMMISSIONER HERIOT: What was it then?

COMMISSIONER TAYLOR: The concern that
raises serious questions with respect to compliance with federal law, something to that --

COMMISSIONER GAZIANO: Yes, the last phrase, I think, maybe was "failed to keep a separate registration list for such persons and provide them with non-federal ballots for voting purposes raises serious concerns under federal law."

COMMISSIONER HERIOT: That's not grammatical, is it?

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: It would have to be "the failure."

COMMISSIONER HERIOT: States raise, states raise.

COMMISSIONER TAYLOR: Or "states which raises," no.

COMMISSIONER GAZIANO: Okay, okay.

COMMISSIONER HERIOT: States are currently --

CHAIRMAN REYNOLDS: That was a friendly amendment. It's my understanding that that amended, that that friendly amendment was acceptable to Commissioner Heriot.

COMMISSIONER HERIOT: Yes, but I'm still working on it here.
CHAIRMAN REYNOLDS: Oh, okay.

COMMISSIONER HERIOT: States currently do one and two. Raise, what was the rest of it?

COMMISSIONER GAZIANO: Serious.

COMMISSIONER TAYLOR: Serious.

COMMISSIONER HERIOT: All right.

COMMISSIONER GAZIANO: Concerns under federal law.

COMMISSIONER TAYLOR: Right.

COMMISSIONER HERIOT: Concerns under federal law. Okay.

VICE CHAIR THERNSTROM: Good.

COMMISSIONER HERIOT: We need to re-vote then.

CHAIRMAN REYNOLDS: Okay, and that presents a problem since -- well, okay. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, are you still on the line?

(No response.)

COMMISSIONER GAZIANO: We'll give him another chance maybe.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom.
VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Oh, no.

CHAIRMAN REYNOLDS: Oh, no. Okay.

Commissioners Melendez and Yaki voted against the motion. Commissioner Kirsanow did not participate in the vote. The remaining Commissioners voted for it. The recommendation passes.

At this point we are going to circle back, and I'm going to read the certain findings into the record.

Finding No. 1. "Two sections at the Department of Justice play an important role in enforcing voting rights of U.S. citizens.

"a. The Voting Rights Section of the Civil Rights Division enforces such statutes as the Voting Rights Act, the Help America Vote Act, the Uniformed and Overseas Citizens Absentee Voting Act, and the National Voter Registration Act. The Voting
Section plays a proactive role in preventing violations of these statutes and is responsible for Election Day programs run by DOJ. The Voting Section has approximately 85 attorneys and support staff.

"b. The Public Integrity Section is part of the Criminal Division and is responsible for prosecuting those who corrupt elections and governmental processes and addresses such issues as ballot fraud, vote buying, ballot stuffing, voting by non-citizens, multiple voting by individuals, bribery of officials, extortion by officials, and violations of campaign finance laws. It is responsible for working in a consultative capacity with local U.S. Attorneys' offices across the country to prosecute such crimes. The Public Integrity Section has approximately 29 trial attorneys and 13 support staff."

Okay. Finding No. 2.

COMMISSIONER HERIOT: Mr. Chairman.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: Mr. Chairman, here's where we could include voter intimidation in the findings, is in Finding No. 2.

CHAIRMAN REYNOLDS: Okay. Well, let me read it, and then we can start the discussion.
"Since the election of 2000, the Voting Section has greatly expanded the number of federal observers from the Office of Personnel Management and DOJ staff members who are sent into the field to monitor federal elections. In the year 2000, the Voting Section sent 640 federal observers and 110 DOJ staff members to serve as monitors. In the year 2004, however, the numbers were increased to 1,463 federal observers and 533 DOJ staff members. In 2006, a record was set for midterm elections with over 1,500 federal observers and DOJ staff members deployed. At the time of our briefing, plans were being made to staff a comprehensive program to ensure ballot access in the historic 2008 election."

Okay. Voter intimidation. Is this a good spot for it?

COMMISSIONER HERIOT: Yes. What I would suggest is at the end of the first sentence there after the words "federal elections" add "for purposes that include the prevention of voter intimidation."

COMMISSIONER GAZIANO: "And voter fraud."

Why don't we include both?

COMMISSIONER HERIOT: Voter fraud is public integrity section.

COMMISSIONER GAZIANO: Okay. I thought
they both had a role in -- I thought Voting Section
also --

COMMISSIONER HERIOT: Yes, I can't say for
sure that -- you know, let's just put it this way.
"For purposes that include the prevention of voter
intimidation."

COMMISSIONER GAZIANO: It's not wrong. I
just think --

COMMISSIONER HERIOT: I don't think it's
wrong either. I think they also do voter fraud. If
they see it, I mean, they would then report it to the
Public Integrity Section, I assume.

Do you recall want voter fraud in there?

COMMISSIONER GAZIANO: Unless -- you know,
it's the same observers who report both.

COMMISSIONER HERIOT: Okay, okay. So
let's do that. Added at the end there, "for purposes
that include the prevention of voter intimidation and
voter fraud."

CHAIRMAN REYNOLDS: Okay. Any other
comments? I mean, is that an acceptable way to fold
in voter intimidation?

COMMISSIONER HERIOT: I think we have to
vote on it.

CHAIRMAN REYNOLDS: Well, I just want to
make sure that, I mean, if there are other suggestions. I just want to give people an opportunity to voice their opinions.

Okay. We're going to --

COMMISSIONER YAKI: I think it's highly inadequate, but I do not have the record in front of me, and we'll be voting now.

CHAIRMAN REYNOLDS: Okay. AT this point we will vote on Finding No. 2, as amended.

Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Thernstrom, Vice Chair Thernstrom.

COMMISSIONER GAZIANO: She has stepped out of the room.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Nope.
CHAIRMAN REYNOLDS: Okay. Commissioners Melendez and Yaki voted against the motion. Vice Chair Thernstrom did not participate in the vote. The remaining Commissioners voted for this. So the motion passes.

Okay. We're up to Finding No. 3. Okay. Finding No. 3 reads as follows: "from 2001 to 2008, the Voting Section vigorously enforced the statutes that are entrusted to its care. Indeed, the 18 lawsuits filed in 2006 were double the average number of lawsuits filed annually in the previous 30 years. Nine of the 11 cases were brought by DOJ under Section 208, which request that a voter who needs assistance to vote 'be given assistance by a person of the voter's choice,' were filed by the Voting Section between 2001 and 2008. Similarly, during this period, 27 cases were filed by the Voting Section under Section 203, which requires certain jurisdictions to provide election materials in the language of the applicable language minority group residing there -- more cases than in all the years since Section 203's passage in 1975 combined. The Voting Section also filed more lawsuits to enforce the National Voter Registration Act of 1993 between 2001 and 2008 than it had in the previous eight years."
COMMISSIONER YAKI: You're just reading these, right?

CHAIRMAN REYNOLDS: Yes.

Okay. Does anyone remember at which point I started reading in --

COMMISSIONER HERIOT: Yes, you've done it now.

COMMISSIONER GAZIANO: You started at number four. So you're caught up.

COMMISSIONER HERIOT: You're finished. You're finished. What we need to do is skip back over to Recommendation No. 1 to include voting intimidation.

CHAIRMAN REYNOLDS: I thought we -- I thought we -- oh, oh.

COMMISSIONER HERIOT: We've just got to add three words here, I think.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Correct.

COMMISSIONER HERIOT: My recommendation would be to add after the words "voting rights violations" in the first sentence, put in, comma, "including voter intimidation," comma.

CHAIRMAN REYNOLDS: Okay. With that friendly amendment, Commissioner Melendez, how do you
vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE CHAIR THERNSTROM: To tell you the truth, I was out of the room just now. Get back to me. I will look at a scribbled version here.

CHAIRMAN REYNOLDS: Okay. I just want to remind you that you voted for it the first time around. Right now we're just voting on a friendly amendment.

Okay. Commissioner Taylor.

COMMISSIONER TAYLOR: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No, no, no, no, no.

COMMISSIONER HERIOT: You only get one vote there.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom, let me know when you're ready.
VICE CHAIR THERNSTROM: I abstained the first time and the question is does this solve the problem.

CHAIRMAN REYNOLDS: No, actually you voted in favor of it the first time.

VICE CHAIR THERNSTROM: No, I didn't.

CHAIRMAN REYNOLDS: You didn't. Okay.

VICE CHAIR THERNSTROM: No.

COMMISSIONER HERIOT: But the only issue here is whether or not it is improved by adding the new language.

VICE CHAIR THERNSTROM: Right.

COMMISSIONER HERIOT: Including voter intimidation. You can vote --

COMMISSIONER HERIOT: I vote yes on it.

CHAIRMAN REYNOLDS: Okay. Commissioners Melendez and Yaki voted against the motion. Commissioner Taylor abstained. The remaining Commissioners voted for it. The motion passes.

Okay. If someone wants to remind me where we are.

COMMISSIONER HERIOT: We're done.

COMMISSIONER YAKI: You're on the fifth floor. No, you're in Kansas City.

CHAIRMAN REYNOLDS: Okay. Fourth bullet.
Okay.

VICE CHAIR THERNSTROM: Mr. Chairman, was there something I wanted -- I'm sorry. I've lost track a little bit here -- added in the way of a reference to provisional ballots that --

COMMISSIONER HERIOT: We did that.

COMMISSIONER GAZIANO: We added. We accepted it.

VICE CHAIR THERNSTROM: We have done it?

COMMISSIONER GAZIANO: Accepted, approved.

VICE CHAIR THERNSTROM: It doesn't need to go anywhere else? Okay.

I want to make a general statement here. There are a number of issues that Commissioner Yaki brought up this morning that if I had had the chance to see them in a timely manner beforehand, I would have fiddled with language and tried because I thought that they were good points and tried to come up with some kind of suggestions, and I would hope he would, too.

The difficulty is I can't listen at the very last minute to really what were substantial objections and incorporate his concerns into findings and recommendations that have been already formulated.

And, you know, it's a problem with this Commission
altogether that we get material too late to properly
evaluate, but it has been screamingly evident today
when a Commissioner comes in with very serious and
sound points, and we cannot properly evaluate them
because we haven't seen them beforehand.

CHAIRMAN REYNOLDS: I want to encourage
all Commissioners to the extent they have friendly
amendments or objections, if you put --

COMMISSIONER YAKI: None of mine are going
to be friendly.

VICE CHAIR THERNSTROM: Friendly,
unfriendly, whatever. I mean, you know, this is a
process that hasn't worked for me this morning simply
because I'm hearing stuff for the first time that has
validity.

CHAIRMAN REYNOLDS: Right. I just want to
encourage everyone to circulate their friendly
amendments, their objections, their proposed
substitutions ahead of time so that we can have an
opportunity to think about it and in some cases to,
you know, have some discussions so that we're better
prepared to deal with these issues at the meeting.

COMMISSIONER TAYLOR: Mr. Chair.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER TAYLOR: A final comment, if
I may, that the perfect is always the enemy of the good, and I think the changes we have made, while they may not have elaborated in the detail that Commissioner Yaki may have wanted on issues like voter intimidation, I think adding the language has improved our product, made it more complete, and I think it's a good process. Again, it may not be perfect, but I think it's good.

VICE CHAIR THERNSTROM: But you would not disagree with me that seeing suggestions beforehand would help.

COMMISSIONER YAKI: The major point of the hearing was divided into two. One-half of it was completely on voter intimidation. The fact that the staff recommendations had nothing about it is to me abysmal.

CHAIRMAN REYNOLDS: But we understand that, Commissioner Yaki. We're just asking that you raise your concerns sooner. Give us an opportunity to --

COMMISSIONER YAKI: But how can you miss the entire half of a hearing. That to me is -- we have --

CHAIRMAN REYNOLDS: Commissioner Yaki, we do have the ability to. I mean, we must evaluate the
credibility of the witnesses, and there will be situations where we believe that one side was demonstrably put on a better case than the other. But the bottom line is --

COMMISSIONER YAKI: So the fact that our findings and recommendations are based in large part on the testimony of Hans Spakovksy is supposed to make us feel better?

COMMISSIONER GAZIANO: I disagree with that characterization.

CHAIRMAN REYNOLDS: Yes, but, Commissioner Yaki, let's stay focused. Right now we're just trying to improve our internal processes.

COMMISSIONER YAKI: Well, when internal processes ignore half of an entire hearing --

CHAIRMAN REYNOLDS: Commissioner Yaki, do you believe --

COMMISSIONER YAKI: --it's not something that is going to be --

CHAIRMAN REYNOLDS: -- that it is a good idea for all Commissioners to share their concerns beforehand so that we can improve the decision making process at meetings?

VICE CHAIR THERNSTROM: Yes, I mean, if I had heard a lot of what you said this morning
beforehand, I would have stared at it very carefully, thought about what we might do with it, thought about how we might meet your concerns. I mean, I don't want to run roughshod over any Commissioners on this body. I don't care whether they have a D, and R, or an I label after their names, and so my request is that you communicate such concerns giving us sufficient time to think about them. That's all. It's a very simple point.

COMMISSIONER HERIOT: I've just got one clarification here. At the DOJ briefing, there was not one panel on voter fraud and one on voter intimidation. That was the previous briefing that we had --

COMMISSIONER GAZIANO: Correct.

COMMISSIONER HERIOT: -- that was done the previous year.

COMMISSIONER GAZIANO: Which we had a lot more findings and recommendations --

COMMISSIONER HERIOT: Yes, yes.

COMMISSIONER GAZIANO: -- on voter intimidation in --

COMMISSIONER HERIOT: So we're getting two different briefings mixed up here. This was the briefing on DOJ --
COMMISSIONER YAKI: No, I'm not --

COMMISSIONER HERIOT: -- performance.

COMMISSIONER YAKI: -- Commissioner Heriot. When we had the panel with DOJ, the present DOJ, not the former DOJ officials there, I spent a fair amount of time and, in fact, was sort of asked to move it along on questions involving voter intimidation, the --

COMMISSIONER HERIOT: Yes, but that was not the nature of the panel. We had a governmental officer panel and we had another panel.

COMMISSIONER YAKI: -- which can of training was given to them, the adequacy, how they were preparing, what were the factors involved.

CHAIRMAN REYNOLDS: This is so --

COMMISSIONER YAKI: We had a fair -- we had a very large amount of testimony on it, and the fact that zippo appeared in the summary and findings to me is not something that I should be responsible for every single time because this is not limited to this particular report. It happens --

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: -- time and time and time again.

CHAIRMAN REYNOLDS: It is a simple request
to all Commissioners. Each individual Commissioner can decide whether they will abide by, will respond to the request or not. We will have a more productive meeting if these concerns are raised beforehand. That's the only point that's being put on the table.

COMMISSIONER YAKI: The only time in which I'm able to raise points in the public record about the deficiencies of this process is at the public record. So I will reserve my right to bring it up when and where I choose.

COMMISSIONER HERIOT: All right.

CHAIRMAN REYNOLDS: No one has suggested that you not bring it up or that you alter when you bring it up. The only thing that has been put on the table -- I mean, you have raised some issues some of which have persuaded me, some of which have not. The only thing I'm saying is that the meetings will go better and you may, indeed, be in a position to persuade more people that your argument is a superior one if you give us more notice. It's a notice issue. That's all.

So next --

COMMISSIONER GAZIANO: Thank you for raising the point, Vice Chair.

CHAIRMAN REYNOLDS: -- can someone tell me
where we are?

    VICE CHAIR THERNSTROM: Commissioner Yaki, in my making that point it wasn't simply directed to you. It's a larger problem of this Commission.

    CHAIRMAN REYNOLDS: Vice Chair Thernstrom, let's just let it go and move on.

    VICE CHAIR THERNSTROM: Okay.

    CHAIRMAN REYNOLDS: Someone tell me where we are.

    COMMISSIONER GAZIANO: No Child Left Behind.

    CHAIRMAN REYNOLDS: Okay.

V. PROGRAM PLANNING

APPROVAL OF BRIEFING REPORT ON PROVISION OF SUPPLEMENTAL EDUCATIONAL SERVICES UNDER THE NO CHILD LEFT BEHIND ACT

    CHAIRMAN REYNOLDS: Based on the information offered during the January 26, 2007 briefing and taking into account the changes to No Child Left Behind regulations issued by the U.S. Department of Education on October 28, 2008, staff offers for approval its draft report on supplemental educational services under No Child Left Behind Act. This report with accompanying findings and recommendations was sent to Commissioners on April
9th, along with the rest of the meeting materials.

I move that the Commissioners approve for publication, along with any concurring and dissenting statements submitted by any Commissioner by May 17th, 2009, Part A of the report produced by staff and reflecting Commissioner and panelist input on the briefing the Commission held on January 26, 2007 on educational services under the No Child Left Behind Act.

Part A as distributed in draft form to Commissioners on April 9th, 2009 contains a briefing overview and summary of the issue and why the Commission chose to conduct this briefing, a summary of the proceedings consisting of synopses of panelists' oral statements during the briefing, and a synopsis of the question and answer session, and finally copies of the panelists' written statements.

Under this motion if the majority of the Commission votes to adopt Part A of the briefing report, the Commission will then open discussion on Part B. If Part A fails to obtain a majority of votes, discussion of Part B becomes moot. This bifurcated vote is done pursuant to the policy adopted by Commissioners at the April 13th, 2007 business meeting.
Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion.

(No response.)

CHAIRMAN REYNOLDS: All right.

Commissioner Melendez, how do you vote? Commissioner Melendez?

COMMISSIONER MELENDEZ: Would you repeat that?

CHAIRMAN REYNOLDS: How do you vote?

COMMISSIONER MELENDEZ: On?

COMMISSIONERS: Part A.

COMMISSIONER MELENDEZ: Yes, we're okay with Part A.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER MELENDEZ: Yes. I vote yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain, and I just want the record to reflect this briefing was before I
was on the Commission, and I don't have the confidence on the subject matter to vote one way or the other. So I'll abstain from the votes on the findings and recommendations for that reason as well.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: I'm also going to abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Commissioners Gaziano and Heriot abstain. The remaining Commissioners vote in favor of the motion. The motion passes.

COMMISSIONER HERIOT: Can I also put on the record that this was before my term as well?

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: Which is a reminder to all of us that we need to get these reports out in a more timely fashion.

COMMISSIONER GAZIANO: Yes, I voted on some briefings before my commission. This is one that I just -- and I'll try to continue to do so, but I'm not going to always succeed in getting to the confidence level I think I need to vote on this.

CHAIRMAN REYNOLDS: Understood. Part B as distributed in draft form to Commissioners on April
9th, 2009 contains findings and recommendations for the No Child Left Behind report. Under this motion the Commission will vote individually on each finding and recommendation. Those findings and recommendations receiving a majority vote would be included in the report with a vote tally and a sentence explaining any opposition for that item.

The first finding, I move that we adopt the first finding, which reads as follows: "panelists testified that some school districts did a better job of notifying prospective parents about the availability of supplemental educational services, opportunities and others. Several panelists reported notification problems for Detroit, Michigan and Dallas, Texas school districts. Other panelists reported that the District of Columbia Public Schools and the Passaic, New Jersey school districts notified parents in a timely fashion. Both problems and successes and parental notifications were reported for the Camden and Newark, New Jersey school districts.

"An August 2006 GAO report stated that 50 percent of school districts did not provide timely parental notification about SES opportunities, indicates these problems are likely to be pervasive.

"Successful parental notification efforts
included: using parents and teacher coordinators to notify parents about SES opportunities; partnering with parents and community organizations to assist with notification; mailing parents letters explaining the rationale for SES opportunities and including a written, easy to understand guide to SES; conducting supplemental educational services provider fairs for parents with child care; advising SES availability on cable television; providing native language notification to parents; and providing parents with a customer satisfaction survey.

"The U.S. Department of Education now requires local educational agencies to display information about SES on their Websites in a timely manner."

Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER MELENDEZ: Yes, this is Commissioner Melendez.

One question I have is: is the staff here supposed to submit recommendations?

VICE CHAIR THERNSTROM: It was staff in collaboration with others. These are not simply staff recommendations.
COMMISSIONER MELENDEZ: Okay. Because we're kind of mixing because I saw a sponsor at the top of the draft, at least the one I was sent out, and I wasn't sure whether -- because it was just like the other one that I saw Ms. Heriot's draft come to me and then the other one came. So it was kind of like the question was whose drafts are these.

I would expect that it would be part of the formal findings and then we would basically comment on that on the basis that you give us. I'm not sure whose recommendations these are sometimes.

STAFF DIRECTOR DANNENFELSER: The original report when it was sent out to Commissioners for review did not contain findings and recommendations, and Commissioner Thernstrom has sponsored these particular findings and recommendations along with a second from Commissioner Taylor.

COMMISSIONER MELENDEZ: Okay. I guess the question would be why wouldn't you send your draft in also?

STAFF DIRECTOR DANNENFELSER: We initially thought that we would put the report out without them and then invite Commissioners to submit findings and recommendations if they deemed that appropriate. In the report that just went out last week, the Title 9
report, that did contain findings and recommendations.

The normal practice going forward will be that the reports will have findings and recommendations from the staff. From certain cases, as with the covert wiretapping report, we made a determination that they weren't appropriate for that report, but going forward the usual practice will be that the reports will have findings and recommendations from the staff and then Commissioners can offer amendments to those as they see fit.

COMMISSIONER MELENDEZ: Okay. The other question was since some of these time frames on when these first came out, a lot of time has transpired, and because there's no regulations that have come into effect, in 2008 have we considered any changes having to do with, you know, that things have changed since the first time as far as, you know, legally revealing old reports basically that are still pending?

STAFF DIRECTOR DANNENFELSER: We did make a pretty substantial notation at the beginning of the report of the regulations that went into effect in October of 2008 and the findings, and recommendations do take those new regulations into account.

COMMISSIONER MELENDEZ: Right, because it's actually the legal sufficiency, you know, that's
required by AI that we're supposed to do that we did
at the beginning, but if new regulations come in, does
it mean that we have to go back and --

STAFF DIRECTOR DANNENFELSER: There was a
legal sufficiency review done --

COMMISSIONER MELENDEZ: After the point
of --

STAFF DIRECTOR DANNENFELSER: --
subsequent to the -- well, the legal sufficiency
review did point out about the new regulations that
those were taken into account. A footnote was added
with a description of the new regulations.

COMMISSIONER MELENDEZ: Okay, all right.

COMMISSIONER TAYLOR: When do the new
regulations go into place. Part A indicates it was
November, and our notation at the beginning indicates
that it was October.

STAFF DIRECTOR DANNENFELSER: I'll have to
do double back on that. I believe it was October --

COMMISSIONER TAYLOR: October?

If Part A indicates that, we'll make a correction.

CHAIRMAN REYNOLDS: Any other comments?
(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez,
how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain. You can record an abstain for all of them for me.

CHAIRMAN REYNOLDS: Okay. Commissioner Heriot.

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: And can I also assume that you're going to abstain from the subsequent findings of fact and recommendations?

COMMISSIONER HERIOT: Unless I see something that looks wrong to me, in which case I might vote no.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

COMMISSIONER MELENDEZ: I'd like to change
mine to abstain. So this isn't really as a concern as
the other ones.

CHAIRMAN REYNOLDS: Commissioner Melendez,
do I understand that you're changing your vote from a
no to an abstain?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Okay. We have five
abstentions: Commissioners Melendez, Kirsanow,
Gaziano, Heriot and Yaki.

COMMISSIONER HERIOT: Should we consider
putting --

CHAIRMAN REYNOLDS: The remaining
Commissioners --

COMMISSIONER HERIOT: -- this off under
the circumstances?

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: Should we consider
putting this off under the circumstances? That's a
lot of abstentions.

VICE CHAIR THERNSTROM: Do we have the
votes, Mr. Chairman?

CHAIRMAN REYNOLDS: yes.

VICE CHAIR THERNSTROM: Then I suggest we
go forward. We have taken a vote. We record the
votes. We announce the results.
CHAIRMAN REYNOLDS: The vote is five abstentions, three votes in favor of it. The motion passes.

COMMISSIONER YAKI: I move to reconsider.

CHAIRMAN REYNOLDS: Okay. Is there a second?

Okay. I second the motion.

COMMISSIONER TAYLOR: Point of order. I just don't know the answer to this question. Can an individual who abstained make that motion or must you be part of the prevailing party?

VICE CHAIR THERNSTROM: You have to be part of the prevailing party.

COMMISSIONER HERIOT: He can change his vote though.

COMMISSIONER TAYLOR: It's just a question.

CHAIRMAN REYNOLDS: Commissioner Yaki, would you like to change your vote?

COMMISSIONER YAKI: Yes, I want to change my vote to a no.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: Not part of the prevailing party.

COMMISSIONER HERIOT: But he can change
his own vote.

COMMISSIONER TAYLOR: He can change his vote. He just can't make the motion to reconsider.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER YAKI: It is if we get a three-three deadlock. Then we push it back until next week. So I'm voting no.

CHAIRMAN REYNOLDS: No, I don't think it works that way.

VICE CHAIR THERNSTROM: It doesn't work that way.

COMMISSIONER YAKI: Why?

COMMISSIONER HERIOT: If it became a three-three --

CHAIRMAN REYNOLDS: Right now the vote is four to --

COMMISSIONER HERIOT: Yes, if enough people change from abstain to no or yes to a no, then it would.

CHAIRMAN REYNOLDS: Right now we have four abstentions, one no vote and three yes votes.

COMMISSIONER YAKI: Yes. So it's three yes, three noes. We decide to push it off to the next meeting.

CHAIRMAN REYNOLDS: But that's not the
case. It's one no and --

    COMMISSIONER YAKI: Well, I'm saying in a hypothetical, which is why I changed my vote. If anyone wishes to change with me, that's fine.

    CHAIRMAN REYNOLDS: Okay. The motion carries.

    COMMISSIONER HERIOT: Wait, wait, wait, wait.

    CHAIRMAN REYNOLDS: The motion is approved.

    Okay. The second finding, "many panelists criticized the quality of services offered by both district managed and private SES providers. These problems included children being tutored by unqualified individuals, a lack of communication between and among parents, teachers and providers regarding learning goals and strategies, consistent failures by providers to apprise parents of their children's progress, and students in SES programs not meeting their educational requirements."

    "The U.S. Department of Education now requires local educational agencies and schools to more closely monitor the quality and effectiveness of SES services offered by an approved provider, including not only educational outcomes, but also
parents' evaluations of the services."

  Is there a second?

  VICE CHAIR THERNSTROM: I second it.

  CHAIRMAN REYNOLDS: Discussion.

  (No response.)

  CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

  COMMISSIONER MELENDEZ: Abstain.

  CHAIRMAN REYNOLDS: Commissioner Kirsanow.

  COMMISSIONER KIRSANOW: Abstain.

  CHAIRMAN REYNOLDS: Commissioner Thernstrom.

  VICE CHAIR THERNSTROM: I vote yes.

  CHAIRMAN REYNOLDS: Commissioner Taylor.

  COMMISSIONER TAYLOR: Yes.

  CHAIRMAN REYNOLDS: Commissioner Gaziano.

  COMMISSIONER GAZIANO: Abstain.

  CHAIRMAN REYNOLDS: Commissioner Heriot.

  COMMISSIONER HERIOT: Abstain.

  CHAIRMAN REYNOLDS: Commissioner Yaki.

  COMMISSIONER YAKI: Abstain.

  CHAIRMAN REYNOLDS: Okay. Commissioners Melendez, Kirsanow, Gaziano, Heriot, and Yaki abstained. Commissioners Thernstrom -- well, the remaining Commissioners voted in favor of the motion.
So the motion passes.

Okay. The third finding. I move that we approve the following finding: "panelists raised concerns about SES funding. Among the reported problems were: SES programs were unavailable because school districts were late in releasing funds; school districts failed to address the lack of SES programs because it was against their financial interest; there were not enough openings in tutoring programs; school and districts were reluctant to fund SES programs because up to 20 percent of schools' Title 1 money must be diverted from classroom services in order to fund SES services; and at the end of the school year many school districts had funds remaining from their SES allocation."

"As of October 28, 2008, the U.S. Department of Education enacted strict new regulations that specified in detail the amount of funds affected schools must set aside for SES and that remove financial incentives for school districts to withhold such funds."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion.

(No response.)
CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN REYNOLDS: Commissioner -- Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER GAZIANO: Abstain.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Same vote. We have three Commissioners voting in favor of the motion. The remaining abstains. The motion passes.

I move that we adopt Finding No. 4, which reads, "Several panelists stated that school districts placed unnecessary barriers to existing and prospective SES providers attempting to offer
services. Among the problems discussed were: parents reported being pressured by a school district into enrolling their children with a district managed SES provider instead of a private provider; districts provided little, if any, assistance to private SES providers while assisting the providers chosen by the districts; school districts were not allowed to use their own teaching staff to provide SES services if no other provider in the area was able to provide services to individual students; and school districts in need of improvement were not allowed to use their own teaching staff to provide SES services despite evidence that their teaching staff was capable of offering a high quality program."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion.

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Abstain, and Mr. Chair, I'll be off for the next five minutes, but I'll return.

CHAIRMAN REYNOLDS: Okay. Vice Chair
Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Okay. We have three votes in favor, including my own, of the motion. The remaining votes were abstentions. The motion passes.

I move that we approve Finding No. 5, which reads, "A number of panelists pointed out the importance of parental participation in the success of SES programs. Several panelists provided testimony that their school systems make a special effort to involve parents not only in choosing a provider, but also in monitoring their children's academic progress. Their testimony suggests that higher parental involvement positively affects their children's academic outcomes in SES programs."

"Still other panelists cited a lack of parental participation as an obstacle to the success
of SES programs. Lower income parents, single parents and non-English speaking parents face special challenges in finding the time and travel resources to participate in getting their children into SES programs and monitoring their progress. Non-native English speaking parents are often put in the position of having their grade school children try to read and interpret SES notices to them. Parents with limited means of transportation have difficulty attending SES informational events as well as difficulty picking up and dropping off their children for after hours SES programs. Such parents also face difficulty in arranging transportation of their children to other better performing schools."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

(No response.)

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.
CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Okay. Commissioner Kirsanow did not participate in the vote. There are three votes in favor of the motion, four abstentions. The motion passes.

Now we're up to the recommendation. I move that we approve the following recommendation: "all school districts should ensure that the parents of SES eligible children receive notification about the program. School districts should provide timely notification to parents of SES eligible children so they may make an informed decision concerning their children's participation in the program. To improve their notification efforts, school districts should use methods that have succeeded in other schools."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion.

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: Abstain.
CHAIRMAN REYNOLDS: Commissioner Kirsanow.
(No response.)
CHAIRMAN REYNOLDS: Vice Chair Thernstrom.
VICE CHAIR THERNSTROM: Yes.
CHAIRMAN REYNOLDS: Commissioner Taylor.
COMMISSIONER TAYLOR: Yes.
CHAIRMAN REYNOLDS: Commissioner Gaziano.
COMMISSIONER GAZIANO: Abstain.
CHAIRMAN REYNOLDS: Commissioner Heriot.
COMMISSIONER HERIOT: Abstain.
CHAIRMAN REYNOLDS: Commissioner Yaki.
COMMISSIONER YAKI: Abstain.
CHAIRMAN REYNOLDS: Okay. Commissioner Kirsanow did not participate in the vote. There are three votes in favor of the motion. The remaining votes are abstentions. The motion is approved.

I move that the second recommendation be approved. The second recommendation reads as follows:

"school districts could benefit from reviewing the 'best practices' employed by the Passaic and the District of Columbia Public Schools to improve the quality of SES provider services. Effective methods used by these schools included: making available student and parent SES provider evaluation forms;
addressing complaints concerning quality of service in a timely manner; carefully monitoring providers and annually evaluating them; and using an electronic management system to coordinate SES services.

"Services could also be improved if states only certify providers that have proven they can deliver high quality services. To ensure high quality service, states should be allowed to mandate the employment of only highly qualified teachers by providers and should consult with school districts on quality of services offered by prospective providers.

School districts should also make certain that parents, schools, and SES providers closely coordinate and work together to improve student academic achievement."

Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: Well, I don't know what a highly qualified -- I don't know how a highly qualified teacher is defined, and it's worrisome when it's given a conventional definition.

CHAIRMAN REYNOLDS: I share that same concern.

Commissioner Melendez, how do you vote?
COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

(No response.)

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I don't know. I would like that struck, the highly qualified teachers.

CHAIRMAN REYNOLDS: Okay. So you want to back up and continue the discussion to see if we can come up with some language?

VICE CHAIR THERNSTROM: Yes, I would like to.

CHAIRMAN REYNOLDS: Okay. Let's see it.

How about --

VICE CHAIR THERNSTROM: Do you know what? If we restricted it to simply services could also be improved if states only certify providers that have proven they can deliver high quality services, period, end.

COMMISSIONER TAYLOR: Yep.

CHAIRMAN REYNOLDS: Okay. With that friendly amendment, Commission Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

(No response.)
CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain.

CHAIRMAN REYNOLDS: I'm sorry, Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom fixed my concern. So I'm voting for it. We have three votes in favor of the motion, four abstentions. Commission Kirsanow did not participate in the vote. The motion passes.

I move that we approve Recommendation No. 3, which reads, "School districts should provide funds for SES services in a timely fashion to maximize parental choice and opportunities for their children to benefit from SES. Responsible parties should make certain that all tutoring programs have sufficient capacity to meet projected student enrollment."
Sufficient funds should be provided to cover all SES related expenses. School districts should ensure that their SES funds are used effectively and for the benefit of participating students."

Is there a second?

VICE CHAIR THERNSTROM: I second that.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Has Commissioner Kirsanow returned?

(No response.)

CHAIRMAN REYNOLDS: Vice Chair Ternstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Okay. The same
configuration as last time. Commissioner Kirsanow
didn't participate in the vote. We have three votes
in favor of the motion. The remaining votes were
abstentions. The motion passes.

I move that we approve Recommendation No. 4, which reads, "School Districts should insure that
parents are able to select an SES provider that best
meets the educational needs of their children without
regard to whether the SES provider is a school
district or a private provider. School districts
should also insure that parents are allowed to
evaluate the merits of private SES providers and are
allowed to select a private provider for their
children if they feel that choice best meets the needs
of their children. Districts should not pressure
parents to use district supplied providers, nor should
districts be allowed to discourage parents from
choosing a private provider. Districts that are in
need of improvement should only be allowed to use
their own teaching staff to provide SES services if it
is determined that their staff is qualified and able
to provide a high quality program."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?
(No response.)

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Has Commissioner Kirsanow returned?

(No response.)

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain, notwithstanding that I like the idea of parental choice in general and would probably support this one if I had more confidence in understanding the statute.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. I'm going to abstain. We have one no vote, four abstentions. Commissioner Kirsanow didn't participate in the vote. Two yes votes, and the motion passes.

I move that Recommendation 5 be approved.
by the Commission. That recommendation reads as follows: "the proper authorities should assess the 'parent profile' for their districts and design SES strategies that take into account the particular socioeconomic situation of the students' parents.

"In districts where parents are inclined to be active partners with their children's SES programs, the focus should be on accommodating and encouraging those parents to participate in the programs.

"In districts where parental participation tends to be low, schools should consider alternate strategies for implementing SES that provide more direct support and encouragement to the students themselves and that are less dependent on the parents' participation for success."

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER TAYLOR: We start with proper authorities.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER TAYLOR: I'm sorry. We start with the phrase "the proper authorities." Would it be too restrictive --
CHAIRMAN REYNOLDS: Okay. Let me catch up with you.

COMMISSIONER TAYLOR: Yes, just the first. We start with the proper authorities. The question is whether or not that should read "the school districts" or not.

CHAIRMAN REYNOLDS: Okay. I'm sure I consider that a friendly amendment.

COMMISSIONER TAYLOR: It's really a question.

CHAIRMAN REYNOLDS: Oh.

COMMISSIONER TAYLOR: Yes, it's a question for the floor.

CHAIRMAN REYNOLDS: Okay. Well, I will offer that as a friendly amendment. I think that actually the issue that you pointed out is important.

VICE CHAIR THERNSTROM: Okay, but we don't need the redundancy then, "for their districts." "The district should assess their parent profiles and design SES" --

COMMISSIONER TAYLOR: Profiles.

VICE CHAIR THERNSTROM: "Profiles and design SES." We don't need "districts should for their district."

CHAIRMAN REYNOLDS: Okay.
VICE CHAIR THERNSTROM: Just cleaning up the language.

CHAIRMAN REYNOLDS: Any other questions or comments?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: I'm back, but I didn't hear the discussion. I'll have to abstain.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes, but, Commissioner Kirsanow, there was basically no discussion. If you just look at Recommendation 5, there wasn't any discussion except changing from "proper authorities" to "districts." If you just look at the language, you can vote.

COMMISSIONER KIRSANOW: Nonetheless I'll abstain.

CHAIRMAN REYNOLDS: Okay. Let's see. Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Abstain.
CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Okay. We have one, two, three, four, five abstentions; three in favor of the motion. The motion has been approved.

VICE CHAIR THERNSTROM: Mr. Chairman, I really regret very much to say, since I am extremely interested in the proposal that is about to be discussed, but I have to leave.

CHAIRMAN REYNOLDS: I understand.

STAFF DIRECTOR DANNENFELSER: Mr. Chairman.

CHAIRMAN REYNOLDS: Yes.

STAFF DIRECTOR DANNENFELSER: I'd like to propose a comment period for Commissioner comments. Go back to the first report on the 2008 election enforcement, that we have a comment period of May 17th for comments on that report, and that since we have two reports here, that we extend the comment period for the No Child Left Behind report to June 17th.

CHAIRMAN REYNOLDS: Okay. Walk me through your dates again. First identify the briefing report that you've spoken about.

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STAFF DIRECTOR DANNENFELSER: For the Justice Department's enforcement of the 2008 presidential election, that we have a Commissioner comment period that runs until May 17th, and that for the No Child Left Behind briefing report we have a Commissioner comment period that runs until June 17th.

COMMISSIONER HERIOT: Before we adopt those dates, I have two other questions relative to dates. Keeping in mind that we may get the draft 2009 statutory report a little later than the April 27th, we still then should try to keep on track. What is a reasonable period for us to be reviewing that? And that's going to be a longer document.

What is the next -- if I could ask maybe the General Counsel if he's more familiar with that to comment -- what is our next deadline? I don't have that in front of me.

MR. BLACKWOOD: Frankly, I don't have it in front of me either, but we would have to extend your review time for a week as well.

COMMISSIONER GAZIANO: That may be. I just want to know how many balls we're going to have up in the air. If we have one versus the other, I'd prefer the one I abstained from to be first and to have a little more time on the Justice Department
preparation, but I also just want us all to be, when we agree to these deadlines, to be aware of what else we have on our plate.

STAFF DIRECTOR DANNENFELSER: The schedule that had been developed anticipated a 30-day comment period for the statutory report. So if it had been April 27th, it would have been May 27th. So I guess under that we would anticipate if it’s May 4th, that it would be June 4th.

COMMISSIONER GAZIANO: Yes, I assume that that will be most of our first priority since it’s longer and we have a statutory deadline to keep. I just want to factor that in.

I also want to ask for these or any reports -- and I suspect we may utilize it more on the Justice Department report -- that we are going to circulate all Commissioner comments promptly to allow for rebuttal period.

STAFF DIRECTOR DANNENFELSER: I think that's something that the Commissioners will have to vote on.

COMMISSIONER GAZIANO: I thought we had generally decided going forward we were going to have a rebuttal period, but if not, then I just want to clarify that we should generally have a rebuttal
opportunity, and I know we haven't finalized and we
can finalize maybe at the next meeting whether we're
going to, you know, detail about page limits and that
sort of thing, which we never did. We set them for
one last fall. Whether we want to stick to those,
revise them, we should probably get to that. It's a
good reminder.

But I do want to make sure that
Commissioner statements for these are circulated, and
that we have a chance to --

COMMISSIONER HERIOT: Promptly.

COMMISSIONER GAZIANO: Promptly, and that
we have a chance to respond.

STAFF DIRECTOR DANNENFELSER: Well, again,
that is something that we did for the 2008 report, and
there has been discussion of making that a more
broadly based policy, but it's my understanding that
we have not formally voted for a broad policy of doing
that. So I believe we would have to vote to do that
for this particular report, and we would also have to
factor that into our --

COMMISSIONER HERIOT: I move --

STAFF DIRECTOR DANNENFELSER: -- at the
end of the process.

COMMISSIONER HERIOT: I move that for this
and all future briefing reports and statutory reports until we pass a more detailed rule, that for all such reports that the Staff Director promptly circulate all Commissioner statements and that other Commissioners have the right to write a response that would be due 30 days after the Staff Director circulates those statements.

COMMISSIONER GAZIANO: A friendly amendment. That the subsequent statements should also be promptly circulated to not necessarily open up a third unless there's some issue that a Commissioner thinks is unfair or unreasonable, and so on.

COMMISSIONER HERIOT: Okay. That's a friendly amendment.

STAFF DIRECTOR DANNENFELSER: I think we're going to run into a problem.

COMMISSIONER GAZIANO: I second it.

STAFF DIRECTOR DANNENFELSER: If we have two 30-day periods there, that's going to really put us in a bind as far as getting reports done by September 30th.

COMMISSIONER GAZIANO: The statutory report, I think the comment period would only be after we approved the final report, not for review. Our interim review is not the comment period. So I don't
think that it would be a concern.

But once we approve, you know, Part A and finding some recommendations for any future report, whether it's statutory report, briefing report, hearing report, Commissioner Heriot's motion is that wherever Commissioners are writing their own comments, that those are promptly circulated when received, and that there is a period, in her motion 30 days --

COMMISSIONER HERIOT: We ought to add days for the original statement, too. Let me reformulate the motion.

For these newly adopted briefing reports and for any subsequent briefing reports, I move that Commissioners have 30 days from the date of adoption to write their statements unless some other rule is set in a particular case; that the Staff Director promptly circulate those statements and that Commissioners have 30 days from the date of that circulation to write a response, and that those responses also be promptly circulated by the Staff Director.

So 30 days, 30 days.

CHAIRMAN REYNOLDS: Okay. Now, Mr. Staff Director, that proposal, how does it fit in the context of Lean Six Sigma?
STAFF DIRECTOR DANNENFELSER: The second comment period is not anticipated within Lean Six Sigma.

CHAIRMAN REYNOLDS: So that would essentially add 30 days to the process. So that would bring us under Lean Six Sigma currently from end to end we should be done within 70 days; is that correct?

STAFF DIRECTOR DANNENFELSER: No. The whole process of Lean Six Sigma from the period of the point of the briefing is about seven and a half months.

CHAIRMAN REYNOLDS: Oh, I'm sorry. That's right. So we would be tacking on 30 days to that amount of time.

STAFF DIRECTOR DANNENFELSER: Yes. Now, in the context of the statutory report that becomes more problematic because we have a high deadline that we have to get that to Congress by September 30th.

COMMISSIONER GAZIANO: Maybe we should reconsider a special rule for the statutory report, but that we are going to accept that there is going to be a rebuttal period that we're going to have to work in.

Obviously we missed the September 30 deadline last year. I'm not sure that is something
that we want to do again this year. So maybe we can
just punt on exactly what our timing is going to be
for this year's statutory report.

COMMISSIONER TAYLOR: I think in the past
when we have discussed this there have been briefing
reports that no Commissioner intended to submit
supporting or opposing personal statements, and so we
saw no need to delay the process of finalizing the
report for that reason. So I would have for this
process to unnecessarily lengthen the publication of
our final document.

COMMISSIONER GAZIANO: A further friendly
amendment is that if no Commissioner submits a comment
within the comment period or all Commissioners
indicate to the Staff Director they're not going to,
then it's final, and we probably should write this up
in a rule.

And after the first round of comments, we
can all promptly notify the Commissioner that we have
no further comments, and so we can cut these periods
short. These are sort of the periods --

COMMISSIONER HERIOT: The idea here is to
have a default rule.

COMMISSIONER TAYLOR: Yes. No, it's my
recommendation that we get the Staff Director to write
this up. I mean, I like it.

COMMISSIONER HERIOT: Yes.

COMMISSIONER TAYLOR: I just want to --

COMMISSIONER HERIOT: I think that we're going to have to write this up.

COMMISSIONER TAYLOR: Okay.

COMMISSIONER HERIOT: And I would like to just have a default rule in place now so that we don't make the mistake of believing that there won't be replies when I intend to write one.

COMMISSIONER TAYLOR: Right.

COMMISSIONER HERIOT: No, the idea that Lean Six Sigma, you know, doesn't allow for this is putting the cart before the horse.

STAFF DIRECTOR DANNENFELSER: No, it presently doesn't anticipate it. Commissioners can always amend the process.

COMMISSIONER HERIOT: And we're doing that right now.

STAFF DIRECTOR DANNENFELSER: It's on the table.

COMMISSIONER YAKI: Of course, we did spend what, $200,000 on Lean Six Sigma.

COMMISSIONER GAZIANO: And it will greatly
improve the staff work --

COMMISSIONER YAKI: I'm sure --

COMMISSIONER GAZIANO: -- the staff work that goes to getting these --

COMMISSIONER YAKI: -- days on briefing reports that are illegitimate to begin with. Perfect.

CHAIRMAN REYNOLDS: So, Michael, we know your views on this issue.

Folks, where are we in the process?

COMMISSIONER GAZIANO: We have a motion, I think, with two friendly amendments.

COMMISSIONER HERIOT: And no second yet.

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Okay, and we're voting on the fifth and final recommendation?

COMMISSIONER GAZIANO: Oh, I thought we had --

COMMISSIONER HERIOT: No, that's done.

COMMISSIONER GAZIANO: No, we got done.

COMMISSIONER TAYLOR: That's done.

CHAIRMAN REYNOLDS: Okay. What are we voting on?

COMMISSIONER GAZIANO: Staff Director was proposing times for comments.

CHAIRMAN REYNOLDS: So let's go through
this again after this discussion. What is the proposed date for the enforcement briefing report.

COMMISSIONER HERIOT: No. Gerry, I've made a motion here. I made a motion for a default rule as to all such briefing reports, that there would be a 30-day period from the date it's adopted, and then the Staff Director would promptly circulate those statements that have been written, and 30 days from the date that they are circulated, replies would be due, and the Staff Director would be directed to circulate those replies.

CHAIRMAN REYNOLDS: Okay. I must proceed now.

If there's no further discussion, Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Well, I do have discussion. Are you saying that we're actually setting in a policy that we're working on?

COMMISSIONER HERIOT: This is a just a -- before we have a better rule that is written and more detailed, this would be our default rule, which we can change for any particular report.

COMMISSIONER GAZIANO: And, for example, we may extend the date since we have three potentially to come --
COMMISSIONER HERIOT: Yes. What I don't want to happen is that a report gets adopted and we forget to set a period. This would just be the default. We could have any other rule in place for any particular report, but I don't want a situation where we leave the room forgetting to set the timing for responses and replies and then it's too late to do so without calling an entire meeting of the Commission.

COMMISSIONER GAZIANO: Yes, and I think --

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, has that led you to the information you were seeking?

COMMISSIONER MELENDEZ: Well, are we talking about dissents here?

COMMISSIONER HERIOT: We're talking about dissents --

COMMISSIONER GAZIANO: Responses, whatever they are.

COMMISSIONER HERIOT: Responses, all responses.

COMMISSIONER GAZIANO: Let's just call them responses.

COMMISSIONER HERIOT: Anything, anything you want to write. This is what gives you the right
when you walk out of the room if we've forgotten to set the time period for your statement, whether it's concurrence or dissent, you will have that right, and you will have the right to respond to what someone else says.

COMMISSIONER GAZIANO: Except that Commissioners are sort of good faith in understanding when we discussed this was that you should not hold back information from a response that -- and that responses should generally be responsive to other Commissioners' comments.

COMMISSIONER YAKI: Mickey is calling you on that line.

CHAIRMAN REYNOLDS: I'm sorry?

STAFF DIRECTOR DANNENFELSER: The question as it pertains to these two particular briefing reports, are you proposing that they both have a deadline of May 17th?

COMMISSIONER GAZIANO: Let's vote on the motion. Let's vote on the motion. I prefer to vote on the motion first --

COMMISSIONER HERIOT: Yes, all I want is a default and then we can modify.

COMMISSIONER GAZIANO: -- and then we can -- and then we can see whether we want to modify it
for these three.

CHAIRMAN REYNOLDS: Folks, slow down. What are we voting on now? Are we voting on Gail's motion?

COMMISSIONER GAZIANO: Correct.

COMMISSIONER HERIOT: Yes, just as a default rule so we've got something in place, and then we can change it --

CHAIRMAN REYNOLDS: I understand.

COMMISSIONER HERIOT: -- for these particular reports.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

Is Commissioner Kirsanow still on the line?

(No response.)

CHAIRMAN REYNOLDS: Okay, and please confirm that Vice Chair Thernstrom has left.

COMMISSIONER GAZIANO: She has.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.
COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. We have two nos and the remaining votes support the motion. The motion passes.

So what does this all mean about the date?

COMMISSIONER HERIOT: Now we can set a particular date.

CHAIRMAN REYNOLDS: Okay. Hold on.

Commissioners Yaki.

COMMISSIONER YAKI: Thank you very much.

I have said in the past, and I'll say it again, I'm not a big fan of our statements being due contemporaneous with a Commission meeting, and our next Commission meeting is the Friday two days before May 17th.

COMMISSIONER GAZIANO: Yes, I propose that we extend the ones for both voting rights and No Child Left Behind because I want to concentrate on the statutory report, and I assume other Commissioners may. So why don't we set May -- is May a month with 31 days? -- May 31? Is that a week day?

COMMISSIONER TAYLOR: It's a Friday.

COMMISSIONER GAZIANO: That's a Sunday.
COMMISSIONER TAYLOR: Oh, no, Sunday.

COMMISSIONER GAZIANO: So why don't we say June 1 as the day for initial comments.

CHAIRMAN REYNOLDS: For which --

COMMISSIONER GAZIANO: For the Voting Rights Act that we just approved and the No Child Left Behind that we just approved.

CHAIRMAN REYNOLDS: Okay. So they would be due at the same time.

COMMISSIONER GAZIANO: Commissioners can work on one or both, but that subject -- if someone wants to make it June 10, whatever, but.

COMMISSIONER HERIOT: And then have the replies due, again, 30 days after the Staff Director --

COMMISSIONER GAZIANO: Thirty days after the Staff Director circulates our comments.

CHAIRMAN REYNOLDS: Okay. Is that acceptable to everyone?

(No response.)

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR DANNENFELSER: Well, can I just pick up on something Commissioner Gaziano mentioned a few minutes ago? If a Commissioner knows that they are not going to comment, if they could let
me know that that way we can know when everyone who
wants an opportunity to comment --

COMMISSIONER GAZIANO: That's very
reasonable.

STAFF DIRECTOR DANNENFELSER: -- has done
so, and we might be able to shorten some of these time
frames under that --

COMMISSIONER TAYLOR: A recommendation.

You should ask us.

STAFF DIRECTOR DANNENFELSER: Oh, I will.

COMMISSIONER TAYLOR: Don't just rely upon
us. Just ask us.

STAFF DIRECTOR DANNENFELSER: Okay.

COMMISSIONER TAYLOR: Because you'll get
answers faster.

CHAIRMAN REYNOLDS: Okay. At this point
are we done with those particular issues?

(No response.)

CHAIRMAN REYNOLDS: Good enough.

Commissioner Taylor has prepared a briefing proposal
on health care disparities. A concept paper was
circulated with the meeting materials you received
last week.

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APPROVAL OF CONCEPT PAPER FOR A COMMISSION
BRIEFING OF HEALTH DISPARITIES

CHAIRMAN REYNOLDS: The briefing would consist of two panels dealing with the persistent gaps between the health status of minorities and non-minorities. I propose that we consider this topic in two parts.

First we will vote on whether this is a briefing topic the Commission wants to adopt, and we can hear more from Commissioner Taylor about his concept paper during that time, and then we'll vote to select a date for the briefing.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Okay. Commissioner Taylor, you're on.

COMMISSIONER TAYLOR: Given where we are, as I look at the clock, I won't go into great detail. Everyone, I think has read the concept paper and the briefing proposal. I want to give most of this credit to Kim. She's done a great job in working with the staff. They have put together, I think a great paper.

The one thing I would say is that in giving this even more thought it may be beneficial if we focus on even more narrowly a particular disease or condition, and I'd be open to those suggestions, but I
just want to keep this as revised as possible so that
we do not have a wide ranging discussion, but we can
really focus on something and ask the panelists that
are coming to be very specific in their comments.

So I'd be open to any thoughts about what
folks think we could do along those lines.

COMMISSIONER HERIOT: I guess I have a
couple of comments. I agree this is a great topic,
and I also agree that focusing it a little bit more is
probably a good idea. The area that I thought might
be good would be heart disease and hypertension as
opposed to just everything in the whole world because
I think heart disease and hypertension has a lot to
it.

And that would also mean, I think, not
focusing so much or perhaps not at all on the federal
program that the briefing proposal talks about and
rather just focusing on heart disease and
hypertension.

COMMISSIONER GAZIANO: I'd like to sort of
add along those lines to focus a little bit more on
our jurisdiction. We ought to look at whether the
provision of health care -- what its impact is having
on heart disease, and especially to the extent to
which intentional or unintentional discrimination of
the type that we have the authority to look at is a contributing factor, how much of a contributing factor it might be if it is a contributing factor, and what other factors might be leading to disparities in health care outcome for the heart disease, if that's what we're going to be focusing on.

CHAIRMAN REYNOLDS: Commissioner Gaziano, would you clarify or define what you mean by "unintentional discrimination"?

COMMISSIONER GAZIANO: I suppose I mean subconscious. A doctor might look at one type of patient and -- I don't know -- his heart may go out more to some one of one race or sex.

CHAIRMAN REYNOLDS: I've got you.

COMMISSIONER GAZIANO: But not necessarily. I suppose there are some, I understand, accusations that this exists. It may not exist as claimed at the conscious level.

Other people say, no, it's that people of certain races actually come into the doctor's office too late. It's harder to control, but there may be some attitudes about whether certain people in certain communities are worthy of expensive drugs or worthy of invasive procedures.

But I want to focus on the possible
discrimination.


Commission Melendez, how do you vote?

COMMISSIONER MELENDEZ: Well, I just had a comment. This seems to be a broad topic, and is this actually a briefing that we're looking at here?

COMMISSIONER TAYLOR: Correct. This will be a briefing, and I hope the suggestions we've heard today focusing on heart disease and hypertension and being very specific in terms of our requests for all of the panelists to focus on when they identify disparity, whether the disparity is caused by discrimination in their opinion, whatever their opinion may be, other aspects whether it's cultural, personal decisions, whatever their answers may be, but be very focused on not only identifying a disparity, but identifying the source of the disparity based on their research or experience and doing it in the context of hypertension or heart disease.

And I think if we limit it to those specific issues it won't be a wide ranging discussion.

COMMISSIONER MELENDEZ: What about what the country kind of looking at, you know, covering health care for every citizen and all of those different things they're looking at now? Would this
be a possibility for a statutory report?

    COMMISSIONER TAYLOR: I don't know the
answer to the questions whether or not it could be,
but I would think this would not preclude us from
making this a statutory report, and in fact, if we
focus this briefing on hypertension and heart disease,
it may tell us whether or not we want to use this
topic in a more expanded form as the foundation for
our statutory reports. So it could be helpful to
inform our decision, I think.

    COMMISSIONER MELENDEZ: The other disease
I'm real concerned about is diabetes because I know
Native Americans and African-Americans, I know a lot
of people, which they usually get that first. Then
they basically have the heart problems after the
diabetes. I'm not sure. I just want to include that
as a possibility of our -- if we're going to look at a
specific disease.

    COMMISSIONER TAYLOR: I consider that to
be a friendly suggestion, and I would -- I'm not going
to do this. I'm going to ask Kim to work with other
members of the staff to consider diabetes as well in
terms of, again, keeping us focused and then we select
one, hopefully have a little flexibility after we get
this passed today.
So it will either be diabetes, heart disease, back slash, hypertension, but one of those two categories to keep us focused. I consider that to be a friendly and helpful suggestion.

COMMISSIONER GAZIANO: And I take it there's consensus. I'd like the vote, when we approve this, to be that we're going to be -- the Commission is going to be focusing on the delivery of health care rather than, you know, -- and the extent to which the delivery of health care leads to these results and that necessarily will involve people saying, well, with regard to whatever disease we pick, there are these other causes, and it's not the delivery of health care.

COMMISSIONER YAKI: Why not?

COMMISSIONER GAZIANO: Pardon?

COMMISSIONER YAKI: Why not?

COMMISSIONER GAZIANO: Why not what?

COMMISSIONER YAKI: Why wouldn't that be a legitimate area to delve into?

COMMISSIONER GAZIANO: I'm just saying our main research question ought to be whether the delivery of health care is contributing and to what extent, if it is contributing to these.

COMMISSIONER YAKI: Why is it delivery of
health -- it is disparity. This is not about health
care delivery. It's health care disparity.

COMMISSIONER GAZIANO: Yes, I'm trying
to --

COMMISSIONER YAKI: The conditions that
exist in these people, not whether or not -- I don't
know. I mean, I don't know where exactly -- when I
looked at this topic I wasn't quite sure exactly where
-- there is a subsequent briefing that we should be
considering that is a corollary to this, and that goes
into the issue of environmental justice, when you look
at asthma rates among minority kids, when you look at
exposure to lead poisoning, when you look at infant
mortality. There are health disparities present there
that have been well documented by any number of
different studies, and some of those questions go not
just to the health care delivery system, but to the
issues that environmental justice has and where
through deliberate acts by zoning and planning
officials things are located in a way that cause more
health problems and that has a serious and substantial
impact on the populations of people who have to live
in those areas for which there's a strong correlation
with minority or newcomer status.

So I'm all in favor of what Commissioner
Taylor is doing, but I don't think that we should simply narrow it to whether or not we have just docs or nurses. There are other things that go into these disparities and their measurements that I think we would be foolish to ignore.

COMMISSIONER GAZIANO: Mr. Chairman, Commissioner Yaki's question sort of suggests how I can clarify my point. Environmental justice issues may be interesting, but I would suggest that we not try to take those particular ones on in this in just a briefing. Part of what I mean is that I don't think that our hearing should focus on whether different types of health care systems, whether the disparity would exist or not, and we just look at the existing health care systems we have.

Because there's a huge other debate about, you know, whether we should have universal health care, socialized medicine or whatever, is whether our existing health care system is failing and contributing to disparities. And I think it's very wise when we're doing that to focus on one major class of diseases, whether it's health care, diabetes or something else.

The reason I think health care may be good is because there are some genetic arguments. There
are some socioeconomic arguments, and there are some arguments about -- and it's the number one killer, and there are --

COMMISSIONER HERIOT: Heart disease. You kept saying health care.

COMMISSIONER HERIOT: I'm sorry.

COMMISSIONER HERIOT: You meant heart disease.

COMMISSIONER GAZIANO: Heart disease. It's the number one killer, I still think, and then there are some arguments that some treatments and procedures are not provided in a disparate way.

But I will yield to others if there's a convincing argument why a different disease presents the better focus for our study.

COMMISSIONER TAYLOR: Commissioner Yaki, it's Commissioner Taylor.

I'm not opposed to the direction you're going in sort of in theory. I do want to keep us somewhat focused by using a disease set as our foundation, and then if the issues come up with that disease set, I'd like to address it, but I think if we limit it to a disease set, such as hypertension, diabetes, or heart disease, then I think we can have the type of report and panels that we could all be
proud of.

And the environmental justice issue in my mind doesn't seem to lend itself to focusing on a disease set. It forces you into a much broader discussion which may be useful, but I couldn't fit that within a disease.

COMMISSIONER YAKI: Well, I will tell you this. As someone who has lived with asthma all my life, I take this issue very seriously, and when you look at, one, the number of asthma cases in minority kids in this country, it's skyrocketing. (a) That's a big problem.

(b) When you look at the treatments that they receive for that asthma compared to what is available on the market, there's a gigantic disparity there as well.

I'm just pointing that out, Commissioner Taylor. It's not to criticize what you want to do, but there are adult onset diseases, but there are also childhood chronic diseases that, you know, you might want to take a look at as well.

And separate and apart from this, I do believe and always have believed that we should have a briefing on environmental justice since it raises many of the very issues that we care about in terms of
reverse redlining and other kinds of things that go on
with regard to planning decisions by localities and
how it affects minorities in this country.

STAFF DIRECTOR DANNENFELSER: Just a point
of --

CHAIRMAN REYNOLDS: Okay. At this point
are we ready to vote?

STAFF DIRECTOR DANNENFELSER: Mr.
Chairman, I'd just like to get a point of
clarification on when we talk about a set of diseases
do we intend to include heart disease, hypertension
and diabetes as all fitting in the same set?

COMMISSIONER TAYLOR: No, it's one or the
other.

STAFF DIRECTOR DANNENFELSER: One of those
three.

COMMISSIONER TAYLOR: The concept paper
would limit it to one of those three, and I would ask
the staff working with Kim as we look at possible
panelists and the available literature --

STAFF DIRECTOR DANNENFELSER: Although
it's possible that hypertension and heart disease
could be one.

COMMISSIONER TAYLOR: Could be one, right.

COMMISSIONER HERIOT: Yes, heart disease
and hypertension go together. Diabetes is the alternative.

COMMISSIONER TAYLOR: Correct, correct.

So that the concept paper would give us some flexibility, but limit it to those either two or three categories depending on how we define it.

CHAIRMAN REYNOLDS: Okay. Mr. Melendez, how do you vote?

COMMISSIONER GAZIANO: Could I just -- before, so that we have a proper understanding, second Commissioner Heriot's suggestion that although the information from the HHS program will be valuable informing it, but we won't try to examine -- it's not a review of their work. It's not --

COMMISSIONER TAYLOR: No, not at all.

VICE CHAIR THERNSTROM: It's not focusing on the effectiveness of that program. We're going to try to do our own finding focusing on discrimination.

Thanks.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, are you on the line?

COMMISSIONER KIRSANOW: I am. I vote yes.
CHAIRMAN REYNOLDS: How do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay. The vote passed unanimously.

Commissioner Taylor, as for when you would like this briefing to take place, do you have a date or a month in mind?

COMMISSIONER TAYLOR: I do. I would recommend June 12th of this year as the date for this briefing.

CHAIRMAN REYNOLDS: Okay. Now, have we done enough work to know if we can put together all the facts and identify all of the folks that we would like to invite? Basically, have we done enough work at this point to select a date and feel confident that we can pull it off?

COMMISSIONER TAYLOR: I believe we have.
The concept paper lists some more than two dozen possible names. I think with the narrowing of this, the focus on a particular disease set, it will be easier to identify our panelists. It will be very focused. So I'm confident now we've given ourselves enough time, given all the work we've already done.

I would add in addition if we can vote on the date that we also attempt, if we can, to have this held on the Hill, so I would ask the staff, assuming this vote is in the affirmative, to begin the process of thinking about who we need to contact to make sure this hearing or this briefing, rather, is held on the Hill as opposed to here.

CHAIRMAN REYNOLDS: Okay. I second the motion. Do we need to discuss the date and the place where the briefing will take place?

COMMISSIONER HERIOT: I just have this comment. I think the idea of having it on Capitol Hill is a very good idea, such a good idea that if we can't get it there in June, much more likely to get it there in August. Not much happens in August.

COMMISSIONER YAKI: We're in recess in August.

COMMISSIONER HERIOT: Yes.

COMMISSIONER TAYLOR: I don't think we
have a meeting in August.

COMMISSIONER HERIOT: Yes, but we could have a meeting in August. If we had a meeting in August we could always hold it on Capitol Hill.

COMMISSIONER TAYLOR: I tend to agree, and if we have problems getting on the Hill on that date, I may come back and ask you all to move it.

CHAIRMAN REYNOLDS: Okay. So we're voting on the date, June 12th, and that we have this briefing take place on Capitol Hill.

Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

Commissioner Yaki?

COMMISSIONER YAKI: What I was going to say is that if we did it in July it would be after the July 4th recess.
CHAIRMAN REYNOLDS: The date that --

COMMISSIONER YAKI: I'm just saying to Mr. Taylor July 10th is after the July 4th recess of Congress and you're pretty much guaranteed a room then.

COMMISSIONER TAYLOR: The Staff Director said that we may need to -- I don't know how long our session would be -- to vote on the statutory report.

STAFF DIRECTOR DANNENFELSER: In July.

COMMISSIONER TAYLOR: I mean, let's aim for June and revisit next month.

CHAIRMAN REYNOLDS: Okay. With that information, Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay. The motion passes unanimously.

Okay. Next up, okay, Mr. Staff Director would you please provide us with an update on the status of the briefing reports?

VI. MANAGEMENT AND OPERATIONS

UPDATE ON STATUS OF BRIEFING REPORTS

STAFF DIRECTOR DANNENFELSER: Yes, Mr. Chairman. Of course, we have just dealt with two of them today, No Child Left Behind and the voting enforcement for the 2008 election.
The covert wiretapping and the War on Terror report was sent to Commissioners on April 8th, and --

COMMISSIONER YAKI: I'm out of here.

STAFF DIRECTOR DANNENFELSER: -- requested comments on that by May 3rd.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: Mr. Chair, Kirsanow also.

CHAIRMAN REYNOLDS: Okay. Hold on a moment. Let me -- okay, all right. We still have a quorum.

COMMISSIONER HERIOT: Can we vote on the SAC first so that we make sure we keep our quorum?

CHAIRMAN REYNOLDS: I'm sorry. What did you say?

COMMISSIONER HERIOT: Can we vote on the SAC first so that we make sure we keep our quorum?

CHAIRMAN REYNOLDS: Okay. That should, I hope --

COMMISSIONER HERIOT: Oh, I'm sorry. There are other motions that are coming up, too. I withdraw that. I thought maybe we were just going to do reports for a while. Sorry.

CHAIRMAN REYNOLDS: Okay. Commissioner
Heriot, you're suggesting that we take care of --

COMMISSIONER HERIOT: No, I withdraw my
suggestion. I didn't realize that this section has
all of the motions that Commissioner Melendez had
wanted. So never mind. I just wanted to --

CHAIRMAN REYNOLDS: So we'll stick with
the original order then, right?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Okay. Mr. Staff
Director, did you finish?

STAFF DIRECTOR DANNENFELSER: No. I
mentioned that the covert wiretapping and the War on
Terror report were sent to Commissioners on April 8th.
Comments were requested by May 3rd. That is a little
bit shorter comment period than we've normally be
doing by about five days shorter, but there are no
findings and recommendations with that report, and
subsequent changes in policies by the Bush
administration and subsequent legislation that was
passed by Congress seem to have minimized the issues
that would still be in play on that particular issue.

So I'm hoping that that May 3rd, if
Commissioners have comments, that they will be able to
submit them by May 3rd.

The Title 9 athletics report was sent to
Commissioners on April 9th. I had requested comments by May 19th on that. That is something that we may want to talk about the date for that in light of the fact that we have these other comment periods that we have discussed today with the two reports that were just passed. So I would entertain some suggestions on a possible change to that date for comments.

Racial categorization in the 2010 census is now posted on the Websites. Copies have been sent to Congress and additional copies are available at headquarters, and some have been sent to the regional offices.

The Multi-ethnic Placement Act briefing report, we have final comments from the panelists in terms of clarifications we were trying to get. The editorial and legal sufficiency reviews have been completed, and OCRE has submitted draft findings and recommendations to the Office of the Staff Director for review.

The illegal immigration report, editorial and legal sufficiency reviews have been conducted. The panelists have been consulted and appropriate edits have been incorporated. I'm currently reviewing the revised version that incorporates those different suggestions and will hopefully be able to send that to
Commissioners for review in the near future. Of course, we'll have to factor that into the overall schedule of reports since there are a number of them in play right now.

The encouraging minority students to pursue careers in science, engineering, technology, mathematics, the stem report, we have final clarifications from panelists regarding their statements. The attorney advisory for the Office of the Staff Director has submitted the draft report to me for my review, and the attorney advisor and the OCRE Director are continuing to draft findings and recommendations. So that report will soon be available for submission for editorial and legal sufficiency reviews.

The educational effectiveness of historically black colleges and universities, that draft had previously been completed along with findings and recommendations, and there has been a discussion among Commissioners about considering and releasing that report jointly with the stem briefing report.

The discrimination against Native Americans in border towns, OCRE is making final changes for resubmission of that report to the Staff
Director.

The Blaine amendments briefing report, that draft will be finalized by OGC for submission to the Staff Director. OGC is currently very engaged on the statutory report, but will turn back to that one as soon as time permits.

The English in the work place briefing report, that is one that OGC has followed up with panelists on the briefing transcripts. We did extend the comment period on that. It was extended until April 20th, and we are receiving many comments on that particular report.

And that's my update on the briefing reports.

CHAIRMAN REYNOLDS: Questions?

COMMISSIONER GAZIANO: This is Commissioner Gaziano.

Other Commissioners may have specific requests to either extend the comment period, but because Vice Chair Thernstrom asked for this review and she's not here, and in lieu of all the other motions we have, what I'd like to request is that we put on our agenda for the May meeting whether the Commission might want to give further direction to the staff of whether to prioritize some of these, whether
we're interested in, you know, completing some of these with findings and recommendations, without findings and recommendations.

As I explained this morning, I think that's appropriate in some cases, but I'd rather not take the time up, but I'd like if that's agreeable to the Chairman and not too disagreeable to other Commissioners, I'd like the other Commissioners to then review the reports and come to that meeting with some ideas of whether we have higher priorities for some of these pending reports.

CHAIRMAN REYNOLDS: I support your suggestion.

STAFF DIRECTOR DANNENFELSER: I would just ask one question relating to the covert wire tapping, if that one might be left at May 3rd to keep open the possibility of it being considered at the May meeting. That would then provide enough time, assuming there were not terribly in depth comments, that that could be sent to Commissioners if the Chairman were to decide to schedule it for the May meeting.

CHAIRMAN REYNOLDS: Where is it in the process? You're still collecting --

STAFF DIRECTOR DANNENFELSER: No, no. Well, the covert wiretapping was sent to Commissioners
on April 8th with requests for comments to be submitted by May 3rd.

CHAIRMAN REYNOLDS: Okay, and to date have you received any comments?

STAFF DIRECTOR DANNENFELSER: No.

CHAIRMAN REYNOLDS: Okay. All right.
Well, let's play that by ear. I mean, I think that under one scenario where we don't have any comments, that would suggest one course of action. If we received comments, it would suggest another course of action or could suggest another course of action.

Okay. At this point we are -- oh, okay.
Commissioner Melendez has submitted several motions, eight altogether, and I have placed four on the agenda for this meeting.

VI. MANAGEMENT AND OPERATIONS

FOUR MOTIONS PROPOSED BY COMMISSIONER MELENDEZ

The intention is to deal with the remaining motions at another hearing -- I'm sorry -- at another meeting. Some of the motions implicate HR issues, and so I've asked Marty to be at the ready to walk us through.

The first is his motion, and I will support the motion.

COMMISSIONER MELENDEZ: Mr. Chairman.

CHAIRMAN REYNOLDS: Well, I'll read it
into the record.

COMMISSIONER MELENDEZ: Mr. Chairman.

CHAIRMAN REYNOLDS: I move that the Staff Director --

COMMISSIONER TAYLOR: Mr. Chairman.

COMMISSIONER MELENDEZ: Mr. Chairman.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: I don't think my mic is coming through. I'd like to withdraw my motions. I think that the motion before that I have, I wanted the majority of the Commissioners to weigh into that, and we have lost quite a few, including Michael Yaki. So I would like to table those to a more opportune time, at least the motions that I've set forth today if that's possible.

CHAIRMAN REYNOLDS: Understood. I second the motion. Discussion.

(No response.)

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Aye, yes.

COMMISSIONER GAZIANO: Are we voting on removing or not --

COMMISSIONER HERIOT: Motion to table.

COMMISSIONER GAZIANO: Oh, motion to
CHAIRMAN REYNOLDS: The motion is to table discussion of the four motions proposed by Commissioner Melendez.

Commissioner Taylor.

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Aye, but I'll let Commissioner Melendez know that it's on his request. I think I would have supported a couple of them.

CHAIRMAN REYNOLDS: Well, and you'll have an opportunity to support them in the future.

COMMISSIONER GAZIANO: Yes. I just wanted to let him know that.

CHAIRMAN REYNOLDS: Okay. Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Okay. The motion passes unanimously.

Next up is State Advisory Committee issues.

VII. STATE ADVISORY COMMITTEE ISSUES

TENNESSEE SAC

CHAIRMAN REYNOLDS: We have the Tennessee SAC that's ready for rechartering. Nine of the 11
previously appointed members were eligible for reappointment. Two of these nine declined reappointment. The remaining seven previously appointed members are being recommended for reappointment.

Recommended Advisory Committee members were selected in compliance with the State Advisory Committee membership selection guidelines following the Lean Six Sigma project approved by Commissioners in January of 2008. Commission staff reached out to a wide variety of organizations and individuals. The Staff Director details his outreach in the April 10th memo to Commissioners.

I move that the Commission recharter the Tennessee State Advisory Committee. In this motion the committee appoints the following individuals to that committee:

- Reverend Bernie Miller
- Tiffany Cox
- Amber Gooding
- Gregory Grisham
- Brian Fitzpatrick
- John Harris
- Nika Jackson
- Jason Johnson
Furthermore, the Commission appoints Reverend Miller to serve as chair of the rechartered Tennessee State Advisory Committee. These members will serve as uncompensated government employees. Under this motion the Commission authorizes the Staff Director to execute the appropriate paper work for the appointment.

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER GAZIANO: We had a second.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER GAZIANO: Gail seconded.

CHAIRMAN REYNOLDS: Okay. Bear with me. I had a list of Commissioners who were still on the phone, which I have promptly misplaced.

COMMISSIONER HERIOT: Call the question.

CHAIRMAN REYNOLDS: In any event, here we go. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Aye.
CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Okay. We have one abstention. The remaining Commissioners voted in favor of the motion. The motion passes.

And we have covered all of our agenda items with the exception of the ones that we have tabled.

**VIII. Adjournment**

Folks, thank you very much and we'll meet again next month.

(Whereupon, at 1:17 p.m., the meeting was concluded.)