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

PRESENT:

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

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

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
IVY DAVIS, Director, Eastern Regional Office
DEMITRIA DEAS
BARBARA DELAVIEZ
PAMELA A. DUNSTON, Chief, Admin. Services and Clearinghouse Division
YVETTE HAWKINS
MONICA KIBLER
SOCK-POON McDOUGALL
LENORE OSTROVSKY
EILEEN RUDERT
KARA SILVERSTEIN
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN
COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD
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VICE CHAIR THERNSTROM: Well, good morning. I am Vice Chair Abigail Thernstrom. The meeting will come to order.

I do apologize for the delay. It was in part my fault. I couldn't get a taxi to come in this morning, and whenever it rains a little bit in Washington, you would think there was a tsunami or something.

Anyway, this is a meeting of the U.S. Commission on Civil rights at 9:30 a.m. It's actually not 9:30 anymore. It is quarter of ten, on May 9th, 2008. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C.

All Commissioners are present except three of our Commissioners who are on the phone: Chairman Reynolds, Commissioner Yaki, and Commissioner Melendez, and I'm very sorry they can't be here.

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

I. APPROVAL OF AGENDA

VICE CHAIR THERNSTROM: Is there a motion to approve the agenda? Is there a motion to approve the agenda?
COMMISSIONER KIRSANOW: So moved.

VICE CHAIR THERNSTROM: A second?

COMMISSIONER TAYLOR: Second.

VICE CHAIR THERNSTROM: Okay. I would like to amend the motion to approve the agenda to strike discussion of the following items: the briefing report on racial categorization in the census; the briefing report on the educational effectiveness of historically black colleges and universities; re-charters of the SACs of Florida, Kentucky, and Wyoming; the FY '09 budget; the 2010 program planning.

Have I got a motion to that effect, to strike discussion of those items?

CHAIRMAN REYNOLDS: So moved.

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Okay. Have we got any discussion of those?

(No response.)

VICE CHAIR THERNSTROM: Hearing none, all in favor please indicate by say aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Opposed?

(No response.)

VICE CHAIR THERNSTROM: Motion to amend
the agenda -- the motion to approve the agenda -- I'm sorry -- the motion to amend the motion to approve the agenda is approved unanimously.

I would also like to move that the Commission add a discussion of the following item to the May '08 agenda after the Staff Director's report: concurrence in the appointment of Martin Dannenfelser as Staff Director of the U.S. Commission on Civil Rights.

Any discussion of that motion?

COMMISSIONER YAKI: I have a question.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: This is Commissioner Yaki.

Were we ever going to get any materials on Dannenfelser?

VICE CHAIR THERNSTROM: We evidently have them here. I thought that both of -- well, I knew that Chairman Reynolds wasn't going to be here, but I had hoped that both Commissioners Yaki and Melendez were going to be here, and we had them here for you. If you'd like the --

COMMISSIONER YAKI: I notified the staff well ahead of time that I would not be attending in person.
VICE CHAIR THERNSTROM: Yeah, okay. That's my error then, but in any case, would you like them E-mailed right now to you?

COMMISSIONER YAKI: That would be pretty helpful, yes.

VICE CHAIR THERNSTROM: And, Commissioner Melendez, how about you?

COMMISSIONER MELENDEZ: Yes, that will help.

VICE CHAIR THERNSTROM: So could we have them E-mailed to both Commissioners Yaki and Melendez?

Okay. That's being taken care of right away.

Is there any further discussion? Obviously, everybody should have had that material, and there's been a great deal on the Acting Staff Director's plate, and I --

COMMISSIONER GAZIANO: Where on the agenda are we placing the concurrence?

VICE CHAIR THERNSTROM: It's after the Staff Director's report. So they will have the E-mail versions.

So we do have a motion on the table to move that discussion to after the Staff Director's report.
COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: And any discussion on that?

(No response.)

VICE CHAIR THERNSTROM: All in favor say aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: And opposed?

COMMISSIONER YAKI: Abstain.

VICE CHAIR THERNSTROM: Okay. I'm sorry. Was that Commissioner Melendez?

COMMISSIONER YAKI: No, Commissioner Yaki.

VICE CHAIR THERNSTROM: Commissioner Yaki, I'm sorry. For the reporter's sake, you're going to have to say your name and I don't --

COMMISSIONER YAKI: Commissioner Michael Yaki abstains.

VICE CHAIR THERNSTROM: Okay. Good. You work on the volume because I could hardly hear you before, which is why I got mixed up as to who it was.

COMMISSIONER YAKI: It's my morning voice. What can I say.

VICE CHAIR THERNSTROM: I'm sympathetic.

The second item is the approval of the minutes for March 7, 2008. Is there a motion to approve the
minutes?

COMMISSIONER KIRSANOW: So moved.

COMMISSIONER GAZIANO: Second.

COMMISSIONER YAKI: Point of order we approved the amendment to amend the agenda have we approved the amended agenda yet?

COMMISSIONER HERIOT: No we have not.

VICE CHAIR THERNSTROM: I am sorry that’s my fault, let us go back and before we have a motion to approve the minutes let’s approve the amended agenda.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: I have a point of information. Commissioner Yaki. In the packet of information that we received it says that we have a proposed change to the 2008 briefing schedule. I do not know what exactly that agenda item means. Does that mean the Heriot concept paper? Does that mean the entire briefing schedule? What does that mean?

There's no back-up materials on that other than the Commissioner Heriot's concept paper.

VICE CHAIR THERNSTROM: As I understand it, it's the concept paper and moving that briefing to September and canceling what is now scheduled for September.
COMMISSIONER YAKI: Okay. Well, it would be nice if that were spelled out rather than just simply whatever. Okay. Go on. Okay.

VICE CHAIR THERNSTROM: You know, just going back to your previous point of order, the way the previous motion read, the motion to amend the motion to approve the agenda is approved is how it read. So I think we did vote.

COMMISSIONER HERIOT: Not the usual way it's done.

VICE CHAIR THERNSTROM: I'm reading the script here. I'm sorry.

COMMISSIONER YAKI: But that was the motion prior to the last motion.

VICE CHAIR THERNSTROM: No, it actually was -- let us just have a motion to approve the amended agenda.

COMMISSIONER HERIOT: So moved.

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: All right. All in favor.

(Chorus of ayes.)

Anybody opposed?

COMMISSIONER YAKI: I abstain.

VICE CHAIR THERNSTROM: You abstain.
Okay. So we have Commissioner Yaki abstaining and otherwise all Commissioners approving.

Okay. So we're on now to the minutes of March 7th, 2008.

II. APPROVAL OF MINUTES OF MEETING, MARCH 7, 2008

VICE CHAIR THERNSTROM: Is there a motion to approve these minutes?

COMMISSIONER GAZIANO: I think there's a motion to amend.

COMMISSIONER HERIOT: Yeah.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER HERIOT: I believe it's incorrect here, number four of the motions. It says that we had a motion to discuss, rather to confirm OPM's designation of Robert Lerner as Acting Staff Director, and it says that motion was approved two-zero with six Commissioners abstaining.

I believe that those Commissioners dissented and the motion was not passed.

(Electronic interference.)

VICE CHAIR THERNSTROM: Was that a point somebody was trying to make?

COMMISSIONER GAZIANO: I think that we did allow it.

COMMISSIONER HERIOT: I don't remember

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such a discussion.

COMMISSIONER GAZIANO: Right. I thought we allowed it on the agenda, and then we tabled it once we got to it on the agenda, but Commissioners Yaki and Melendez -- I think, Commissioner Yaki, that was your motion. So do you remember the sequence?

VICE CHAIR THERNSTROM: I'm told it was tabled by --

COMMISSIONER GAZIANO: It was tabled when we got to it, but I think that during the approval of the agenda, and I didn't figure this out until you mentioned it, Gail, that we allowed it to come onto the agenda with most of us abstaining.

Commissioner Yaki, are you following this exciting discussion?

(No response.)

VICE CHAIR THERNSTROM: Commissioner Yaki, we need you.

COMMISSIONER YAKI: Well, quite frankly, as the conversation started, someone's Blackberry buzzed off and I missed a crucial sentence as to what in the heck we are talking about.

VICE CHAIR THERNSTROM: Okay.

Commissioner Gaziano, please go over that again.

COMMISSIONER GAZIANO: Well, with help
from Commissioner Heriot, we're looking at the minutes from March 7th, and on the first page there is set out approval of the agenda, one, two, three, four, and it's number four that we're trying to reconcile with the statement on the next page right before program planning that we tabled the actual motion to vote on reconfirming Robert Lerner.

The question is --

COMMISSIONER YAKI: See, there we went again. Someone's Blackberry just buzzed off again, and whatever you just read I did not hear.

COMMISSIONER GAZIANO: The question is whether we approved initially just putting this on the agenda and then we later tabled it. Does number four on the first page of the minutes reflect accurately that we at least allowed it on the agenda?

I'm just trying to kind of clarify my recollection of this.

COMMISSIONER YAKI: I really do not have any recollection of that.

COMMISSIONER GAZIANO: That was your motion. So I'm just trying to --

COMMISSIONER YAKI: Well, I understand it was my motion, but since about 98 percent of my motions -- well, all of my motions on this particular
item have lost, I think I have really no burning recollection of exactly procedurally how it went. I do believe that there is a weird vote on it, but you can't have a two-zero vote when there's a majority of Commissioners present voting.

VICE CHAIR THERNSTROM: Let me read you what the minutes say on the assumption that they are accurate. "The Commissioners voted six to two to table a motion regarding whether the Commission should vote to confirm OPM's designation of Robert Lerner as Acting Staff Director. Chairman Reynolds, Vice Chair Thernstrom and Commissioners Gaziano, Heriot, Kirsanow and Taylor voted in favor of the motion to table. Commissioners Melendez and Yaki voted against."

COMMISSIONER YAKI: Well, that sounds familiar. I do not understand item four under approval of the agenda on the first page.

COMMISSIONER GAZIANO: That's my recollection of that, but I suppose we could strike it without doing any harm. The minutes don't have to include every single step that we took. So since no one remembers that, I second -- Commissioner Heriot, was there a motion to strike?

COMMISSIONER HERIOT: You can move.

COMMISSIONER GAZIANO: I move to strike
four on the first page.

COMMISSIONER HERIOT: I second.

VICE CHAIR THERNSTROM: Does that satisfy you, Commissioner Yaki?

COMMISSIONER YAKI: Why would it satisfy me one way or the other.

COMMISSIONER HERIOT: He doesn't care.

VICE CHAIR THERNSTROM: You don't care.

COMMISSIONER YAKI: I don't care.

VICE CHAIR THERNSTROM: Good. That expedites things.

We've got a motion on the table, I believe; is that correct? All in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed?

(No response.)

VICE CHAIR THERNSTROM: Okay, and for the record, the motion was to strike item four.

And we have not approved the minutes themselves, no. So we need a motion now once again to approve the minutes.

COMMISSIONER HERIOT: So moved.

VICE CHAIR THERNSTROM: Anybody second?

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Good. Please
second it.

Any discussion?

(No response.)

VICE CHAIR THERNSTROM: All in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed?

(No response.)

VICE CHAIR THERNSTROM: It is unanimously approved.

We move on to announcements.

COMMISSIONER YAKI: I'm sorry. I abstain.

VICE CHAIR THERNSTROM: You abstained.

Please correct the record there. Commissioner Yaki has abstained.

VICE CHAIR THERNSTROM: All right.

Announcements.

III. ANNOUNCEMENTS

VICE CHAIR THERNSTROM: One announcement on May 2nd, 2008, Mildred Loving died in her home in Milford, Virginia. She was a black woman whose challenge to Virginia's ban on interracial marriage led to the landmark 1967 Supreme Court decision Loving v. Virginia, which invalidated Virginia's anti-miscegenation statute.

On January 7th, 1959, the Lovings, who had
married in the District of Columbia and then moved to Virginia, pleaded guilty to violating Virginia's ban on interracial marriages. A trial judge sentenced them to a year in jail, but suspended the sentence on condition that they leave the state for 25 years. "Almighty God," he wrote, "created the races, white, black, yellow, Malay, and red, and He placed them on separate continents. The fact that He separated the races shows He did not intend for the races to mix."

At the time -- this is just 41 years ago -- Virginia was one of 16 states banning interracial marriages. The Supreme Court found the law violated both the equal protection and the due process clauses of the 14th Amendment, thereby invalidating all such statutes nationwide.

That the Court's decision was roughly four decades ago is certainly a sobering reminder of a not too distant and very racially ugly past. It was not even until some time in the late 1950s, if memory serves me correctly, that surveys of American racial attitudes began to ask questions about interracial marriage. Before then there was no point in asking particularly Southern whites what they thought. We already knew the answer.

But remembering Loving v. Virginia serves...
to make another point as well, it seems to me. Racial attitudes in this country have come a long way in a remarkably short time by historical standards.

COMMISSIONER HERIOT: I think we should note for the record that there never was a better named Supreme Court case than *Loving v. Virginia*.

VICE CHAIR THERNSTROM: Oh, that's a good point. If those of you on the phone can't hear it, Commissioner Heriot just said there was never a better name for a Supreme Court case.

But 1967 is the date of my son's, my youngest child's birth, and I thank my God, you know. That was yesterday, and this seems like yesterday that there was still a ban on interracial marriage, too.

Anyway, a sobering moment, but also, it seems to me, encouraging.

Staff Director's report. Would you care to add something?

COMMISSIONER YAKI: Yes, Commissioner Yaki.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: Point of information. I just read the March 7th transcript. I think the minutes were correct. I think procedurally it was an
error in approving it on the agenda because it was two votes in favor, six abstentions, which should not have put it on the agenda in the first place.

But the minutes were technically correct.

That is what we did.

VICE CHAIR THERNSTROM: And we can leave the minutes as is, I assume.

COMMISSIONER YAKI: Yeah, I'm telling you procedurally there was --

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER YAKI: -- an error, but the minutes were technically correct.

VICE CHAIR THERNSTROM: All right. Thank you.

We are at the point of the Staff Director's report.

IV. STAFF DIRECTOR'S REPORT

VICE CHAIR THERNSTROM: Dr. Lerner, your last Staff Director's report.

STAFF DIRECTOR LERNER: That is correct. Thank you, Madam Chairman. I appreciate that very much.

I'll just report a few things that we're doing. As some of you already know, the C-SPAN link to the video of the April 4th briefing session will
soon be put on our Website. It received a fair amount of publicity, I'm pleased to note.

The second point I'd like to make is simply that the statutory report is proceeding apace, and we have, in fact, received our response to interrogatories from most of the components of the Department of Justice, and we are busy working them into the next draft of the statutory report.

And aside from that, everything more or less continues on course I'm pleased to say, and that's all.

Thank you.

VICE CHAIR THERNSTROM: And I want to thank you personally for your service in two jobs at once at this commission, which I know has been one job too many.

Does anybody have anything they want to question the Staff Director about?

CHAIRMAN REYNOLDS: I'm sorry. This is Commissioner Reynolds.

Commissioner Thernstrom, the last ten seconds of your statement I couldn't make out.

VICE CHAIR THERNSTROM: Just now?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: I just thanked Dr.
Lerner for his service and said I appreciated the fact that he was carrying two jobs at once here, and that two jobs at once is always one job too many.

CHAIRMAN REYNOLDS: Yes. I would just like to add my thanks for Dr. Lerner's efforts. It was a difficult time for Dr. Lerner and the staff, but thank you for your efforts.

STAFF DIRECTOR LERNER: Well, thank you, Mr. Chairman.

VICE CHAIR THERNSTROM: Anybody else got anything else to say in response to Dr. Lerner's staff report? Otherwise we'll move on.

(No response.)

VICE CHAIR THERNSTROM: Commissioners Yaki and Melendez, do you have Martin Dannenfelser's bios?

COMMISSIONER YAKI: Not yet.

VICE CHAIR THERNSTROM: You do not have them?

COMMISSIONER YAKI: E-mail is really slow. So I'm still looking.

COMMISSIONER TAYLOR: Just a question as to an acronym. COOP, what does that stand for? It appears to be something within the Administrative Services and Clearinghouse Division.

STAFF DIRECTOR LERNER: It is correct. It
has to do with the security plan that we're required
to have, and would you like to say something about
that?

All right. I'm told that it stands for
Continued Operations. It's pronounced as "coop" and
it has to do with continuing operations for emergency
plans in the case of a major disaster, which our
capable Chief of ASCD is working on.

COMMISSIONER TAYLOR: Thank you.

VICE CHAIR THERNSTROM: How is E-mail
working?

COMMISSIONER YAKI: I received it.

VICE CHAIR THERNSTROM: You've got it.

Have both of you got it now?

I don't want to introduce Mr. Dannenfelser
without both of you having the information on him.

COMMISSIONER MELENDEZ: I have it.

VICE CHAIR THERNSTROM: All right, and do
you need any more time to look at it?

COMMISSIONER YAKI: I looked at it. It's
a one-pager. So thanks.

VICE CHAIR THERNSTROM: Okay. Are we set
then and I can introduce him?

COMMISSIONER YAKI: Yes. Is that the
totality of the Staff Director's report?
VICE CHAIR THERNSTROM: That is the entirety of the Staff Director's report.

COMMISSIONER YAKI: There's not even any update on where we are with the '09 budget process? Forgetting the content of the '09 budget process, have we submitted an '09 budget yet?

STAFF DIRECTOR LERNER: No, we have not.

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

CHAIRMAN REYNOLDS: This is Commissioner Reynolds.

I've been working with staff on the '09 budget, and our latest conversation took place early this week, and I expect for this issue to be wrapped up by the end of next week.

VICE CHAIR THERNSTROM: Is there anything that we need to discuss with respect to what the outstanding issues are?

CHAIRMAN REYNOLDS: I had a series of questions and right now staff are just going back to consult with the records so that they can provide me a response.

COMMISSIONER YAKI: This is Commissioner Yaki.

I would just urge the Chair to consider
the fact that in years prior the Commission has thanked OMB for their recommendation and submitted their own budget, and given the fact that in the appropriation last year before the rescission, we had been approved for a $200,000 increased over what OMB had recommended that we consider using the prior approved 9.0 million as a baseline with which to structure the '09 budget, assuming hopefully that this year a similar across-the-board rescission will not impact our budget.

CHAIRMAN REYNOLDS: Well, you're the second Commissioner that has suggested that we entertain the idea of thanking OMB and putting forth a budget that deviates from OMB's budget. I think that the suggestion is definitely worthy of a discussion, and what I'll do is for the next business meeting, which will take place in June, it will be placed on the agenda.

COMMISSIONER TAYLOR: When we place it on the agenda, could someone give me a --

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER TAYLOR: When we place that on the agenda, would someone be available, please, to discuss how we have handled it in the past? I want to have a sense of how we've done this in the past for
various years. I just don't recall here what we've done for the past couple of years, but I'd like to know that information when we discuss this.

COMMISSIONER GAZIANO: Sure.

CHAIRMAN REYNOLDS: We'll have our budget people ready to answer questions.

COMMISSIONER TAYLOR: Thank you.

COMMISSIONER GAZIANO: I would like to move that Chair Reynolds -- give him antibiotics because it sounds like he's not feeling very well.

CHAIRMAN REYNOLDS: Yes, but I take pride in the fact that I go to work sick.

VICE CHAIR THERNSTROM: I'm sure your colleagues appreciate that.

(Laughter.)

COMMISSIONER YAKI: I'm sure that the productivity of KBL is greatly enhanced by being the vector of infection.

VICE CHAIR THERNSTROM: Exactly.

CHAIRMAN REYNOLDS: Typhoid Gerry.

COMMISSIONER YAKI: A quick question for the Chair from Commissioner Yaki.

He said he was, quote, going to wrap it up by the end of next week. Does that mean it will be submitted to Congress prior to our discussion of it in
June?

CHAIRMAN REYNOLDS: No. Loose phrase. What I meant by that loose phrase was that I anticipate that my questions and concerns will have been answered and resolved by next week, and then we all have to have a conversation before -- we have to vote on this.

COMMISSIONER YAKI: Okay. A final question, Mr. Chair. This may be premature, but in terms of planning for the next meeting, is everything going to be conducted on the 6th? Is that the plan?

CHAIRMAN REYNOLDS: I don't think it has been finalized. We have canvassed Commissioners on whether it would be better to have it the day before the briefing or after the briefing that will take place in June, and I believe right now the consensus is that it will take place on June, with the recognition that that means that it's likely that one or more Commissioners will have to stay over until Saturday.

COMMISSIONER YAKI: No, that's okay. I don't mind that. I just need that resolved very quickly because I have to juggle some court issues for a couple of my clients that may occur that week in terms of what day I leave, et cetera.
CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: If it is going to be all on June 6th, that's fine. I'll just make my travel arrangements accordingly. If it's going to be June 5th, I have a lot of moving around to do.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: I have a question on the statement of the Chairman, and you say that one of the Commissioners raised the same question about deviating from the OMB budget.

Is it fair to say that if we do so, that our budget is dead on arrival, and you know, a ton of bricks is going to land on us from the administration?

COMMISSIONER YAKI: Aren't they all distracted by a marriage going on in Crawford this weekend? Why don't we throw it in right now?

COMMISSIONER GAZIANO: This is Commissioner Gaziano for those on the phone, anyway.

I think that's why Commissioner Taylor asked for some review of the history, and I just want to second his request for the review of the history. I think that would include, in particular, years in which the Commission deviated from the actual amount, if that has occurred in the past. I understand that it may have occurred in the past, and so a history of
that might inform our discussion.

COMMISSIONER HERIOT: And the consequences, what happened when we asked for more. Did we actually get it or did we get clobbered?

COMMISSIONER GAZIANO: And one question. When you're dead on arrival, Madam Chairman, usually the reference they use to the Hill, the question is whether this Commission has the authority to request something independent of what OMB has agreed to.

CHAIRMAN REYNOLDS: That is the central question.

VICE CHAIR THERNSTROM: Chairman Reynolds, you have something to say. I also have a response to that, but go on, please.

CHAIRMAN REYNOLDS: Oh, no. I finished my statement.

VICE CHAIR THERNSTROM: You said that's the question.

But our AIs require us to submit it to OMB.

COMMISSIONER GAZIANO: I think we should submit it through OMB. The question is what we submit through OMB.

VICE CHAIR THERNSTROM: Yeah, I was just about to say that, but if we reject the OMB
recommendation, it's just going to come back on our lap again, you know.

CHAIRMAN REYNOLDS: Isn't this a conversation that we should have in June after we've had the benefit of the staff's analysis of what we've done in the past?

VICE CHAIR THERNSTROM: The only reason for my bringing it up now is that you're in the midst of having the conversation with the staff, and I'm a little bothered by the prospect of delaying this further.

I also have one other question, which is I wonder if we couldn't in response to Commissioner Taylor's very good request, I wonder if we couldn't get that history before the June meeting so that we can all stare at it and have, you know, some familiarity here with the past process to guide us in thinking about the current one.

So if that would be possible for the staff to do -- Dr. Lerner just nodded his head -- and if there's other information that it would be useful for us to have before we actually have a discussion in June, if you don't mind there will be a new Staff Director to contact, but I think that it would expedite and clarify the process if we have more
information rather than less.

CHAIRMAN REYNOLDS: Agreed.

VICE CHAIR THERNSTROM: Well, let me now -

COMMISSIONER YAKI: This is Commissioner Yaki again on the Staff Director's report.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: I'd like reports about the discovery request by the Veterans Administration or Veterans Office on a complaint filed against us. I heard that there is an EEO complaint filed against us by somebody else, and I've also heard that we're in the process of some additional hires. I'd like to know what the status of those are.

VICE CHAIR THERNSTROM: I'm going to ask David Blackwood to address the first issue.

MR. BLACKWOOD: This is David Blackwood.

Commissioner, I believe you're referring to the Department of Labor Claim filed by Jack Daily pursuant to the Veterans Employment Opportunities Act. Mr. Daily did file a claim approximately six weeks ago. That claim is now terminated. We received notice just yesterday that Mr. Daily has elected to pursue his claim before the Merit Systems Protection Board.
We have not received anything from the MSPB. I will notify you when we do. At that point he will presumably have to clarify his claims.

That's all I have.

COMMISSIONER YAKI: What about the discovery requests --

MR. BLACKWOOD: Are moot.

COMMISSIONER YAKI: -- from DOL went unanswered or what?

MR. BLACKWOOD: We filed a response raising a question about the statute of limitations inasmuch as a claim under the VEOA. The Veterans Employment Opportunities Act must be filed within 60 days. We are now three years after the fact of Mr. Daily's time here.

The Department of Labor refused to respond. The time expired for an election, and Mr. Daily has pursued his claim with the MSPB. Therefore, the discovery was not responded to, and like I say --

COMMISSIONER YAKI: Well, I heard there's an additional EEO complaint. Has that been filed by somebody?

MR. BLACKWOOD: An additional EEO complaint? There is Mr. Beatty who is now pursuing. He is further down the EEO chain. He has filed with
the EEOC.

COMMISSIONER YAKI: He's our former budget
something or other, right?

MR. BLACKWOOD: No, Tyro Beatty was the
former HR Director.

COMMISSIONER YAKI: Okay.

MR. BLACKWOOD: There is a potential
claim, but since it is a potential claim, I don't
think we should talk about it at this stage. When it
matures, we will, of course, report it if it's pursued
further.

COMMISSIONER YAKI: Can we get some
information about it at some point?

MR. BLACKWOOD: Yes.

COMMISSIONER YAKI: I mean, I'm really not
fond of the idea that someone may be suing us whether
it's in our individual or official capacities or what
have you, and we don't know about it until much
further down the chain.

I'd just like to know about these things.
That's all.

MR. BLACKWOOD: Well, the claim by Mr.
Daily has been communicated previously. It's in the
monthly report. The VEOA does not provide for any
individual liability. We will, of course, when the
claim is filed -- and for the first time Mr. Daily
must detail his claims before an authority -- we will
provide to all the Commissioners.

VICE CHAIR THERNSTROM: Can we move on or
are you --

COMMISSIONER MELENDEZ: This is
Commissioner Melendez. I had one question having to
do with the budget. I recognize that we're talking
about the 2009 appropriation, but I still have
questions on where we stand today on the 2008.

I had requested in the past, recognizing
that we had far less money, something like 8.4 million
to operate in 2008, and that we were going to have to
make about 340,000 cuts to it this year, and we're
already just about halfway through the year, and I
still haven't seen anything as to how we were going to
revise the budget for operating for the rest of this
year.

So I think that's important. I'd like to
see something before the June meeting that kind of
addresses where those cuts for 340,000 would be
actually made or have they been made already.

COMMISSIONER YAKI: This is Commissioner
Yaki.

To add to that, the question that wasn't
answered that I did ask had to do with are we in the process of hiring any new people and what is the status of that and what positions are they.

STAFF DIRECTOR LERNER: To my knowledge, we're not hiring any new people, and I certainly haven't signed off on any such things. So the answer is no.

VICE CHAIR THERNSTROM: Does that satisfy you?

COMMISSIONER MELENDEZ: Commissioner Melendez.

If we can get something before the June meeting on addressing 2008, that would satisfy me.

COMMISSIONER YAKI: So we're not in the process of hiring anybody?

VICE CHAIR THERNSTROM: No. The Staff Director just said we are not in the process of hiring anybody.

COMMISSIONER YAKI: Okay.

VICE CHAIR THERNSTROM: So tell me again what it is you would like.

COMMISSIONER MELENDEZ: Well, I had asked in the past based on the fact that we had received 8.4 million, it seemed like we were anticipating something like 8.8 million, which is nearly $400,000 less to
operate on this year. I had asked in the past what
were the revisions that we were going to make for this
year's 2008 budget to operate for the rest of the
year.

I haven't received anything throughout all
of those requests, and here we are halfway through the
year. I still don't know what the budget is going to
look like for the rest of the year as to how we made
those cuts.

VICE CHAIR THERNSTROM: Dr. Lerner.

COMMISSIONER YAKI: To echo Commissioner
Melendez's point, when this was reported to us late
last year or earlier this year by then Staff Director
Marcus, he painted a rather gloomy portrait of doom
regarding the Commission's ability to continue on its
agenda with regard to briefings and other items.

And I had asked this question before with
regard to impact on our ability to carry on briefings
et cetera because at the time the Staff Director
indicated that three or more briefings would have to
be cut, blah, blah, blah, blah, blah. So far nothing
like that has been done, and I'm just trying to figure
out, as is Commissioner Melendez. We don't want to be
heading toward any anti-deficiency issues, given the
fact that we don't know how exactly the Commission has
dealt with this unexpected downturn in our appropriations.

VICE CHAIR THERNSTROM: Okay. Dr. Lerner is ready and eager to answer the question.

STAFF DIRECTOR LERNER: Yeah, this is Dr. Lerner.

When the previous Staff Director outlined his year's budget, he also made it clear that we could meet the shortfall by not filling five positions --

COMMISSIONER YAKI: Just lost it. Hello, sorry. Someone's Blackberry is going berserk over there because it is completely interfering with this. I don't know if the Chair is experiencing the same interference as I am.

CHAIRMAN REYNOLDS: I am.

VICE CHAIR THERNSTROM: Yeah. No, we all are. I will --

COMMISSIONER YAKI: But it's especially bad. You can hear the buzz while you can still talk to each other. When it comes over the phone line --

VICE CHAIR THERNSTROM: Yeah, I'm about to look. I don't think it could be my Blackberry, and I've had my Blackberry under the table, but I don't know where my Blackberry is. Wait a minute. I think it's over here.
All right. We will move at least my Blackberry from anywhere near. I have just moved my Blackberry to way away from the chair. So maybe it was mine and I can't find it even to turn it off. So maybe that will solve the problem.

Where were we?

STAFF DIRECTOR LERNER: I was about the respond to Commissioner Yaki's --

COMMISSIONER YAKI: I had heard Staff Director said we could still and then blah, blah, blah.

STAFF DIRECTOR LERNER: Thank you.

Let me actually fill this out now. Essentially former Staff Director Marcus and our Budget Officer Tina Martin went through our budget, and it was ascertained that if we didn't, in fact, make the five new hires that were originally proposed as part of the 8.8 million budget request that we had made for fiscal '08, that and a couple of other savings, we would, in fact, be able to meet the 8.4 million budget that we have without any issues about the Anti-deficiency Act, which I agree, by the way, is a major problem, and it's one of the accomplishments of my predecessor, if I could be so bold, is to say that they managed not to do that in this particular
administration.

Now, in addition to that, we have some extra savings because, in fact, we didn't have a Staff Director for about three months, and therefore, his salary is part of what we have saved as well. But I talked to our budget officer, Director of the Office of Management Tina Martin, and as of last week we were going very well, indeed, of meeting that budget target of 8.4 million for the fiscal year.

COMMISSIONER YAKI: Okay.

COMMISSIONER GAZIANO: I just want to add obviously when we are discussing the budget, I'd also like to see some sort of general information on how we're doing this year as well. I think we're going to get to it later in the agenda, eliminating a September briefing. I had hoped and stated in our March briefing that we could still have one, and so I think we may even take some action at this meeting to eliminate that.

So I just appreciate updates, general updates. This is probably for the next Staff Director.

VICE CHAIR THERNSTROM: It is definitely for the next Staff Director. This is our day to say goodbye and thank you for Dr. Lerner.
STAFF DIRECTOR LERNER: Thank you very much.

VICE CHAIR THERNSTROM: Okay. Can we move on so I can introduce the new staff director and we can have a vote on his appointment?

V. CONCURRENCE WITH APPOINTMENT OF MARTIN DANNENFELSER AS STAFF DIRECTOR

VICE CHAIR THERNSTROM: Those of you on the phone, any problem with doing so?

(No response.)

VICE CHAIR THERNSTROM: Okay. On May 1st, 2008, the President of the United States announced his intention to appoint Martin J. Dannenfelser, Jr. of Virginia to be Staff Director for the U.S. Commission on Civil Rights. Mr. Dannenfelser has been serving as senior advisor to the Assistant Secretary at the Administration for Children and Families at the Department of Health and Human Services. Prior to this he served as Deputy Assistant Secretary for Policy and external affairs at the Administration for Children and Families, the Department of Health and Human Services.

Earlier in his career he served as a Vice President of the family research council and in various positions of the Office of Congressman
Christopher Smith of New Jersey.

Pursuant to Section 4 of the Civil Rights Commission Amendments Act of 1994, the Staff Director of the Commission is appointed by the President with the concurrence of the majority of the Commissioners.

I will call the name of each Commissioner in order to determine if the majority of Commissioners concur with this appointment.

Chairman Gerald Reynolds.

CHAIRMAN REYNOLDS: Aye. I support it.

VICE CHAIR THERNSTROM: Commissioner Todd F. Gaziano.

COMMISSIONER GAZIANO: Aye.

VICE CHAIR THERNSTROM: Commissioner Pete -- I never knew the middle initials of everybody before, but here they are -- Commissioner N. Kirsanow.

COMMISSIONER KIRSANOW: Just N. Kirsanow?

(Laughter.)

COMMISSIONER KIRSANOW: I've been demoted.

I concur.

VICE CHAIR THERNSTROM: Oh, Peter. I left you out.

COMMISSIONER KIRSANOW: You forgot my name. What an affront.

VICE CHAIR THERNSTROM: It has not been an
easy morning. Sorry about that.

Commissioner Peter N. Kirsanow.

COMMISSIONER KIRSANOW: Yes, I concur.

VICE CHAIR THERNSTROM: Commissioner Gail L. Heriot.

COMMISSIONER HERIOT: I concur.

VICE CHAIR THERNSTROM: Commissioner Arlan D. Melendez.

COMMISSIONER MELENDEZ: Madam Chair, I would abstain mainly because I didn't really receive this, his bio, until just not too long along, and I wasn't really informed of his appointment till really late. So no reflection of Mr. Dannenfelser. I think he'll do a good job for us. I look forward to working with him and especially on the budgets.

So thank you.

VICE CHAIR THERNSTROM: And I concur that it is unfortunate that you didn't have these materials before.

Commissioner Yaki, Michael Yaki.

COMMISSIONER YAKI: You're not going to do my middle initial?

VICE CHAIR THERNSTROM: Well, I don't have one in front of you, Commissioner Yaki.

COMMISSIONER YAKI: I'll give you leave to
sort of make one up.

(Laughter.)

COMMISSIONER YAKI:  For the same reasons as Commissioner Melendez, I welcome Mr. Dannenfelser to the Commission and I wish him the best of luck, but because this was sort of sprung on us at the last minute, I'm going to abstain.

VICE CHAIR THERNSTROM:  Okay, and Commissioner Ashley L. Taylor.

COMMISSIONER TAYLOR:  I vote in the affirmative.

VICE CHAIR THERNSTROM:  And I do as well. Obviously this is Vice Chair Abigail Thernstrom, and I don't seem to have a middle initial though. I missed one.

COMMISSIONER YAKI:  Do you know yours?

VICE CHAIR THERNSTROM:  I do know mine, my maiden name.

COMMISSIONER HERIOT:  Tell, tell.

VICE CHAIR THERNSTROM:  Oh, it's a deep, dark secret.

(Laughter.)

COMMISSIONER YAKI:  Clinton.

VICE CHAIR THERNSTROM:  No, it's Obama.

Okay. We have two abstentions and
otherwise a unanimous support. So the yeas are Gerald Reynolds, Todd Gaziano -- you'll forgive me if I leave out the middle initials -- Peter Kirsanow, Gail Heriot, Ashley Taylor, and myself, and the two abstentions are Arlan Melendez and Michael Yaki.

And we welcome you to the Commission and wish you the best of luck, especially dealing with the budget of problems.

(Applause.)

VICE CHAIR THERNSTROM: So our congratulations and I hope not our condolences.

MR. DANNENFELSER: Thank you very much. I appreciate this, and I'm very honored by your support.

And I also wanted to just introduce my wife Marjorie Dannenfelser who is here in the audience.

Thank you very much.

VICE CHAIR THERNSTROM: Well, thank you for coming, and I hope we'll see you at some future meetings.

So next topic on the agenda, proposed changes to the '08 briefing schedule.

VI. PROGRAM PLANNING, PROPOSED CHANGES TO 2008 BRIEFING SCHEDULE

VICE CHAIR THERNSTROM: At the March 7th
meeting, the Commission voted to schedule encouraging minority students to pursue careers in science, technology, engineering and mathematics, to schedule that briefing for July 11th, 2008, pending circulation and approval of a concept paper. Commissioner Heriot circulated her concept paper in advance of this meeting on May 7th, 2008.

Can I have a motion that the Commission approve that concept paper?

Did everybody get that concept paper?

COMMISSIONER MELENDEZ: I haven't received it. This is Commissioner Melendez. If you could send it again to me.

VICE CHAIR THERNSTROM: We'd be delighted to since there was some delay here. It was sent by E-mail. Let me get this straight.

COMMISSIONER YAKI: Well, I will vouch for the fact that -- Commissioner Yaki -- I will vouch for the fact that I've had a number of bounce-backs from Commissioner Melendez's server over the past two months, and sometimes I had to send stuff two and three times in order for it to get through.

VICE CHAIR THERNSTROM: Well, are you willing to let us go forward at this point to have a motion to approve the concept paper? And I
understand, Commissioner Melendez, you will have to
abstain since you haven't seen it, and we will make
sure it gets to you retroactively, as it were.

Can we do that?

COMMISSIONER YAKI: I'm not going to speak
on behalf of Commissioner Melendez. It's whatever --

VICE CHAIR THERNSTROM: No, I'm speaking
to Commissioner Melendez.

COMMISSIONER MELENDEZ: I had a question.
That's going to be in July and what was in July?
Another one to the end of the year or something?

VICE CHAIR THERNSTROM: I'm sorry. It was
a business meeting. I'm a little confused about the
calendar by this time, too. Business meeting, we were
going to discuss the statutory report and vote on it.
So it was a substitute for that.

COMMISSIONER GAZIANO: I thought in the
March meeting we had set July as the date for this
hearing.

COMMISSIONER HERIOT: Yeah.

VICE CHAIR THERNSTROM: That's what we're
saying.

COMMISSIONER GAZIANO: Sorry.

COMMISSIONER YAKI: I have a question. I
had heard rumors we were going to cancel September.
Why don't we just put it in there?

COMMISSIONER HERIOT: That's the idea.

COMMISSIONER GAZIANO: I think that will be in the next --

COMMISSIONER HERIOT: That's what we're planning to do when we get through here.

VICE CHAIR THERNSTROM: Yeah. First we have to approve the concept paper, and then we are going to go on to the schedule. So we need a motion to approve the concept paper before we go on to the question.

COMMISSIONER HERIOT: I move that we approve the concept paper and that we reschedule this from July to September.

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

COMMISSIONER KIRSANOW: Second.

COMMISSIONER YAKI: What?

VICE CHAIR THERNSTROM: The motion is from Commissioner Heriot. We approve the concept paper and move the briefing from July to September, but it is two separate motions. It should be two separate motions, I believe.

COMMISSIONER GAZIANO: Why does it need to be?
COMMISIONER HERIOT: It doesn't need to be two separate motions.

COMMISIONER GAZIANO: Why does it need to be?

CHAIRMAN REYNOLDS: Vice Chair Ternstrom, this is Commissioner Reynolds.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: I am going to get off the phone at this point. I'm getting in the bed.

VICE CHAIR THERNSTROM: Feel better.

Don't infect too many people at your office.

CHAIRMAN REYNOLDS: I will try.

COMMISSIONER YAKI: You have a bed in your office? What kind of place is that?

(Laughter.)

CHAIRMAN REYNOLDS: All right, Michael. Take care.

COMMISSIONER HERIOT: Get better, Gerry.

Bye-bye.

VICE CHAIR THERNSTROM: All right. I have just been told by the Staff Director, but I only could understand half of what he said just because there was other interference, that we really should have two motions here.

COMMISSIONER YAKI: Well, the Chair is
gone. So I just want to know who's leading the coup.

VICE CHAIR THERNSTROM: Who's leading the coup?

COMMISSIONER YAKI: Yes. I mean are you leading the coup, Abby? The Chair is no longer here.

VICE CHAIR THERNSTROM: Would you like to lead the coup?

COMMISSIONER YAKI: I have led so many in my life it's almost old hat.

VICE CHAIR THERNSTROM: It suits you.

I've led a lot in my life, too, Michael Yaki.

COMMISSIONER YAKI: I'm sure you have.

VICE CHAIR THERNSTROM: They're not quite the same coups.

COMMISSIONER MELENDEZ: This is Commissioner Melendez again. I think this discussion also ties into the budget for the remainder of the year and how can we talk about additional briefings when we don't even know where we are financially?

VICE CHAIR THERNSTROM: I don't believe there are any budgetary implications if we cancel a briefing and replace it with another one.

So let's divide this as we originally planned into two motions. Commissioner Heriot, please make the first motion, which is the first half of your
motion, approving the concept paper.

COMMISSIONER MELENDEZ: Can I ask a question, please?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER MELENDEZ: Mr. Melendez. Can Ms. Heriot kind of just briefly summarize what it is, the concept paper, even though I don't know? I haven't seen it.

COMMISSIONER HERIOT: Can we just E-mail it to you?

VICE CHAIR THERNSTROM: Well, he's not going to get it in time. He'd like to vote on it.

COMMISSIONER HERIOT: Okay. Well, it's the same thing we were talking about in the March meeting. This would be a briefing on math and science. What I've titled it is "Encouraging Minority Students to Pursue Careers in Science, Technology, Engineering, and Math."

The idea is that there is no better ticket into the middle class than a degree in math, science, engineering, or math. There are lots of jobs in these areas. The problem is that among the black and Hispanic students who express an interest in majoring in math, science, engineering or technology, they drop out. They fail to pursue that ambition in larger
numbers than white or Asian students do.

And the question then becomes why. What is it about black and Hispanic students that causes them to drop their desire to major in this area more often than other students do?

And Rogers Elliott, Christopher Strenta and their co-authors have done a study which suggests that mismatch may play a role in this, that students who are getting racial preferences in admissions to colleges will tend to have entering credentials in the bottom part of the class.

COMMISSIONER YAKI: Stop.

COMMISSIONER HERIOT: And all students in the bottom part of the class tend to shy away from these majors. What Elliott, et al., found was that it's not a matter of individual credentials. It's not simply a matter of lack of preparation, but rather it's a function of mismatch, and that's why historically black colleges and universities tend to do very well. They turn out more than their proportionate share of math and science majors.

VICE CHAIR THERNSTROM: I'd like to just slightly amend that description. Commissioner Heriot said what is it about these students, and I'd like that part what is it about the experience of these
students.

COMMISSIONER HERIOT: Friendly amendment.

VICE CHAIR THERNSTROM: And so you know, otherwise I'm fine with that description.

Are there any reactions?

COMMISSIONER YAKI: This is Commissioner Yaki.

VICE CHAIR THERNSTROM: You have to speak up, Michael. I'm sorry.

COMMISSIONER YAKI: This is Commissioner Yaki.

VICE CHAIR THERNSTROM: I love that new voice. I hope you bring it here to the Commission meetings as well.

Go ahead.

COMMISSIONER YAKI: I want to ask what it's doing for you, Madam Chair.

(Laughter.)

COMMISSIONER GAZIANO: I don't know for her, but it's the kind of dark, Vaderesque counsel that I appreciate.

COMMISSIONER YAKI: Todd, I am your father.

(Laughter.)

VICE CHAIR THERNSTROM: Say it isn't so.
COMMISSIONER YAKI: My concern about this, I mean, I have many concerns about it, but --

VICE CHAIR THERNSTROM: Now, that's a big surprise.

COMMISSIONER YAKI: -- in terms of just Commission resources and procedure, this seems to be very much along the lines of a briefing we did last year with Richard Sander on law school admissions. We have a lot of other priorities that have been in the pipeline that have been pushed back to '09, pushed back even to '10. My concern is I have a concern about the content obviously. I have concerns about the scholarship of Mr. Sander, and even though I know that this vote -- would someone please shut off their freaking Blackberry?

VICE CHAIR THERNSTROM: You know, there's no Blackberry anywhere near this --

COMMISSIONER YAKI: Well, if anyone has a phone that transmits E-mail, that will do it.

VICE CHAIR THERNSTROM: Yeah. I've moved my -- no, I don't have a phone that transmits E-mail, and I've moved everything very far away.

COMMISSIONER YAKI: I've shut off everything where I am.

I have obviously problems with the
content. I have problems with Sander's methodology, and even though I know I'm going to lose on this vote, I would hope that the panel would be balanced with views of those who would not agree with Elliott and Sander, et cetera, number one.

Number two, again, I think that I'm not going to vote against this. I will abstain. I believe that Commissioner Heriot and Commissioner Gaziano to me made an argument that they have -- this is something that as newer Commissioners they would like to see. I know this is not Commissioner Gaziano's. He made that clear last night, but in terms of Commissioner Heriot being newer on the Commission, having a right to present this, I will not stand in the way by voting no, but I would hope that the briefing would be balanced, and I just wanted to state for the record that in the context of our overall budget and our overall planning, you know, this issue has been dealt with before as recently, I think, as last year, although I don't know how long the backlog is on some of our reports, and that there are other issues that cry out for the Commission to look at.

You know, I have concerns about the role the media has played with regard to race in the
presidential election. I know that will not get done before November, and I'm a realist in that, but I understand that this is something that Commissioner Heriot feels passionately about. It will go forward. I hope it is balanced, but I hope everyone understands the context in which this is being done and how many other, I think, very worthy items of Commissioner scrutiny are still languishing at the bottom of some heap somewhere when we are taking something that has already had a fair amount of exposure, the so-called mismatch theory and report that was released as recently as the end of last year.

VICE CHAIR THERNSTROM: Commissioner Taylor has something to say. Let me just say first I will be adamant on the question of a balanced panel. I feel, as you know, very, very strongly about that issue in general, and I agree that there are a lot of other topics that we could address, and I hope we're going to find a way of somehow adding to the list of briefings.

But Commissioner Taylor.

COMMISSIONER TAYLOR: I don't want to belabor this too much. I want us to get to a vote quickly, but beyond extending the privilege to the fellow Commissioners, particularly the folks that are...
new and haven't had a chance to offer briefings in areas that interest them, I think it's critical with respect to the black middle class in asking this question as to why the students are either -- for whatever reason -- I won't characterize the reason -- but falling away at some point in the process when they had expressed an interest in the hard sciences early on.

Commission Yaki, I don't think it's ground that we're going to replow because, to your point about having a balanced panel, I want to hear a panelist who disagrees on the mismatch theory explain why they are falling away. If not by way of mismatch, I want to know why they're falling away, and if there's a different view on that, I want to make sure that person is at the table.

And I support your position, and this will not be, and I will do my best to make sure it's not simply narrow focus. I want to hear that contrary view, not an argument about mismatch, but if the person says mismatch is not the reason, I want an explanation as to what is going on and why the HBCUs seem to be getting it right.

So I think it's an important issue.

COMMISSIONER YAKI: This is Commission
Yaki again.

I think there is one other issue that I had, and it has nothing to do with anything other than timing, which is this is obviously a briefing that I wish to attend, and I have a -- I think July is way too early to get that kind of good panel obviously to put it all together. September would obviously be better towards accommodating that.

I have a possible looming conflict on the 12th and was wondering if there was any reason to go in October rather than September.

VICE CHAIR THERNSTROM: In October rather than September. I don't remember what we've got scheduled for October.

COMMISSIONER YAKI: We just have a business meeting scheduled for October. So we slipped the business meeting to September, which would be after our August non--

COMMISSIONER GAZIANO: Well, we have some budget issues regarding --

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: I mean I would have liked to have had a briefing in July and September, but if we --

VICE CHAIR THERNSTROM: No, but there's
another point.

    COMMISSIONER YAKI: I understand that's not going to happen, but if we postpone this until October --

    VICE CHAIR THERNSTROM: We can't do that, Commissioner Yaki, because this has got to be within this fiscal year. Can we look at another date in September, if that's problematic for you? Because we can't go over into the next fiscal year.

    COMMISSIONER YAKI: Oh, I forgot, I keep on --

    VICE CHAIR THERNSTROM: And, by the way, I want to add on this question of mismatch, it may well be that we will come out of this briefing with quite a strong consensus that the problem is in the K through 12 education rather than the primary explanation being a mismatch.

    I mean I would certainly myself go into this briefing eager to explore the issue with some intellectual integrity, but anyway, can we talk? If you can't make that September date, do you know that you can't make that September date or is that just simply a possibility?

    COMMISSIONER YAKI: It's a possibility at this point. I'll know better by the next meeting. So
I would just --

VICE CHAIR THERNSTROM: All right. So can we just postpone the question with the understanding --

COMMISSIONER YAKI: Yeah, that's fine.

VICE CHAIR THERNSTROM: -- that we have to make it in --

COMMISSIONER YAKI: Abigail, that is fine.

VICE CHAIR THERNSTROM: Good. I'm not sure I know how to change my voice, but I'm -- great.

And as long as the staff can treat it that way, that's fine evidently, as long as the staff understands it will be some time in September, but we have not had yet a motion.

COMMISSIONER GAZIANO: I think we do have a motion pending.

COMMISSIONER HERIOT: There is a motion. It's the double motion.

VICE CHAIR THERNSTROM: We have a motion pending?

COMMISSIONER GAZIANO: The contact paper and to move it to September.

COMMISSIONER YAKI: I thought we had two motions.

VICE CHAIR THERNSTROM: Yeah, we were
going to change it --

COMMISSIONER HERIOT: It's one motion.

VICE CHAIR THERNSTROM: -- to two motions.

COMMISSIONER HERIOT: But that hasn't happened. Nobody said --

COMMISSIONER YAKI: The first motion is to accept the contact paper.

VICE CHAIR THERNSTROM: The first motion is to accept the contact paper. Am I wrong that --

COMMISSIONER HERIOT: We have the double motion on the table.

VICE CHAIR THERNSTROM: I'm being told once again that it would be a lot easier if we could separate those two.

COMMISSIONER HERIOT: Why?

COMMISSIONER TAYLOR: By way of just moving us along, can I offer a substitute motion that we approve the concept paper?

COMMISSIONER GAZIANO: Second.

COMMISSIONER TAYLOR: Madam Chair, may we have a vote?

VICE CHAIR THERNSTROM: Yeah, let's have a vote on this approving the concept paper. All in favor, please say aye.

(Chorus of ayes.)
VICE CHAIR THERNSTROM: Nays or abstentions?

COMMISSIONER YAKI: I'm voting no.

VICE CHAIR THERNSTROM: That's Commissioner Yaki voting not.

COMMISSIONER MELENDEZ: Abstaining, Melendez.

VICE CHAIR THERNSTROM: Melendez is abstaining.

COMMISSIONER TAYLOR: The second motion, Madam Chair, that we tentatively place this for our September 12th meeting, with the understanding that Commissioner Yaki's schedule may become clear at the next meeting and so we may move it, but the staff should be preparing for this for the September meeting.

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Wait a minute.

COMMISSIONER YAKI: And that we have a briefing.

VICE CHAIR THERNSTROM: We have to have a motion that the Commission cancel its September 12th briefing on religious discrimination in the workplace, and instead schedule the briefing entitled "Encouraging Minority Students to Pursue Careers in..."
Science, Technology" --

COMMISSIONER TAYLOR: I accept that by way of a friendly amendment.

COMMISSIONER HERIOT: Accepted as a second.

VICE CHAIR THERNSTROM: Okay. The motion then should read I move that the Commission cancel its September 12, 2008 briefing on religious discrimination in the workplace and instead schedule the briefing titled Encouraging Minority Students to Pursue Careers in Science, Technology, Engineering and Mathematics for September 12th, 2008, with the understanding that the September 12th, that precise date, may be altered in the future.

COMMISSIONER HERIOT: Call the question.

VICE CHAIR THERNSTROM: So we got a second on that?

COMMISSIONER HERIOT: Yes, I seconded.

COMMISSIONER MELENDEZ: Question.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER MELENDEZ: Commissioner Melendez.

Where does religion in the workplace -- is that moved to somewhere else or is it just canceled?

VICE CHAIR THERNSTROM: It's canceled in
the language here.

COMMISSIONER MELENDEZ: Okay. I'm very interested in that subject, but I hope we can put it back on somewhere in the future.

COMMISSIONER HERIOT: We're leaving open that possibility.

VICE CHAIR THERNSTROM: Yeah, we are leaving open that possibility. We have yet to schedule or to figure out the precise further briefings.

COMMISSIONER MELENDEZ: Okay.

COMMISSIONER YAKI: Well, I would like then to amend. This is Commissioner Yaki. I would like to see the religious discrimination in the workplace put on the briefing schedule for 2009.

VICE CHAIR THERNSTROM: Would you not be willing to wait until we go over the briefing, the entire briefing schedule for 2009 rather than take this one topic and --

COMMISSIONER YAKI: I would object. I believe that this was something that the Commission voted on and approved for putting on there. If we need to move it to accommodate the briefing by Commissioner Heriot, I would simply ask that it's reasonable instead of canceling it to simply remove it
from the schedule and reschedule it at an appropriate
time in the 2009 fiscal year.

COMMISSIONER MELENDEZ: I would agree with
that. Commissioner Melendez.

VICE CHAIR THERNSTROM: Well, we've got a
motion on the table. That is a friendly --

COMMISSIONER GAZIANO: I'm sorry. I
thought we already voted on moving it to September.
This is --

COMMISSIONER YAKI: That was never --

COMMISSIONER GAZIANO: It didn't sound
like a motion to me, Madam Chairman. It sounded like
Commissioners Yaki and Melendez were expressing a
preference.

COMMISSIONER HERIOT: We haven't voted.

VICE CHAIR THERNSTROM: We have not voted.

COMMISSIONER GAZIANO: Oh, we haven't?
I'm sorry.

COMMISSIONER HERIOT: I call the question
on Ashley's motion.

VICE CHAIR THERNSTROM: We're calling the
question on Ashley's motion.

COMMISSIONER TAYLOR: As amended.

VICE CHAIR THERNSTROM: As amended. Do
you want to restate it once again?
COMMISSIONER HERIOT: You just did.

VICE CHAIR THERNSTROM: I restated it.

Okay. All in favor.

(Chorus of ayes.)

COMMISSIONER TAYLOR: Have we considered 2009?

COMMISSIONER HERIOT: Sure, because --

COMMISSIONER GAZIANO: Okay. So what --

VICE CHAIR THERNSTROM: Wait a minute, wait a minute. I have not heard -- I've got the ayes. I have not heard from those on the phone as to how they're voting.

COMMISSIONER MELENDEZ: Could you restate the motion?

VICE CHAIR THERNSTROM: Okay. Commissioner Taylor moved that the Commission cancel its September 12th, 2008 briefing on religious discrimination in the workplace and instead schedule the briefing entitled "Encouraging Minority Students to Pursue Careers in Science, Technology, Engineering and Mathematics" for the September 12th, 2008 meeting.

So that is the entire motion. We can then --

COMMISSIONER HERIOT: Do you understand it?
VICE CHAIR THERNSTROM: With the understanding that the September date, the September 12th date may be moved within the month of September. Now, that is the motion on the table. The question has been called. We have got a vote from everybody except Commissioners Yaki and Melendez on that motion.

COMMISSIONER MELENDEZ: I abstain.

COMMISSIONER YAKI: I abstain also.

I'd like to now add a motion that the canceled briefing of religious discrimination in the workplace be placed on the calendar for a briefing in the 2009 fiscal year briefing schedule.

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

COMMISSIONER MELENDEZ: I second that.

Melendez.

VICE CHAIR THERNSTROM: So any discussion on that?

COMMISSIONER HERIOT: What does that mean to put it on the briefing schedule?

COMMISSIONER GAZIANO: I think that means we commit to doing it some time in 2009, and I'm not prepared to commit --

COMMISSIONER HERIOT: We don't have the competing ideas.
COMMISSIONER GAZIANO: -- to doing --

yeah, I'm not prepared to vote to commit to doing that in 2009.

I also want the record to reflect I don't think that Commissioner Yaki meant to include -- that I voted for this briefing which we've now set for September on its merits and not because it was based on any particular Commissioner's turn to have a briefing. So --

COMMISSIONER YAKI: Now, Commissioner Gaziano, you're wrong. That's exactly what I said.

COMMISSIONER GAZIANO: Well, okay. Then I take -- I differ with you on why I voted that way.

COMMISSIONER YAKI: I'm sure we do.

VICE CHAIR THERNSTROM: Look. There is an important point here. I believe is it correct we've only got at the moment budgetary -- given our budgetary constraints, we are only having four briefings in '09, and the question is do we really want to settle on any one topic before we now have --

COMMISSIONER HERIOT: Put it on the list that we consider when we consider them all.

VICE CHAIR THERNSTROM: Yeah, beyond simply on the list that we consider as part of our overall planning?
COMMISSIONER GAZIANO: Sure. That's going
to be my ground for voting against the pending motion.
I'm just explaining that I'm not necessarily going to
vote for it or against it later, but I intend to vote
against the pending motion at this time to commit us
to any particular topic, especially before we've
decided on the budget amount.

We're going to discuss in June what amount
we're going to request --

VICE CHAIR THERNSTROM: Exactly.

COMMISSIONER GAZIANO: -- from Congress,
and that seems to me to be somewhat relevant to how
many briefings we have and what --

COMMISSIONER TAYLOR: Madam Chair, point
of clarification.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER TAYLOR: Commissioner Yaki,
is it your intention by this vote that we are voting
to hold this as one of our briefings in '09, our
fiscal year '09 briefing or that we consider this
before we make a final determination as to what
briefings will be held in the fiscal year?

VICE CHAIR THERNSTROM: I think it's the
former, is it not?

COMMISSIONER GAZIANO: Let him respond.
COMMISSIONER YAKI: I think that Commissioner -- I think I would agree with Commissioner Melendez that this was something that was approved by the entire Commission, that it would seem important enough in terms of its scope, variety, in terms of topics that we look at, that it seemed worthy of Commission review, and that in that situation if we are going to remove it from the calendar for the purposes of placing another briefing on, that we accommodate the fact that it had previously enjoyed a vote of the Commission and that absent any compelling reason to release it from its priority, I think that it should be one of the four briefings for 2009.

COMMISSIONER TAYLOR: Commissioner Yaki, I am with the government, and I am here to help. I have a substitute motion which actually is friendly. It may not sound friendly, but, Madam Chair, I would substitute the following motion: that we place this briefing on religious discrimination in the workplace as a topic to consider for briefings in fiscal year '09 at the same time we consider other briefings, but that we explicitly put this on the list of those that should be considered before we make a final decision.

COMMISSIONER YAKI: Commissioner Taylor, I would not consider that a friendly amendment. I would
consider that a hostile takeover. The fact is that in
the past, in 2006 and 2007, when we have had briefings
that have been approved by majority, actually
unanimous votes of the Commission in terms of
accepting briefing schedules, when changes were made
unless someone who had originally sponsored one
voluntarily decided to change it, we had simply moved
it, moved it down the pipe from 2006 to 2007, et
cetera and to 2008.

Actually I can point to briefings in 2006
and 2007 that were moved for various reasons, other
pressing issues, what have you, from the previous
year, but they kept their priority as previously voted
upon by the Commission.

VICE CHAIR THERNSTROM: Yeah, Commissioner
Yaki, you know, we need -- you're into a discussion of
this, and we never had a second on Commissioner
Taylor's motion. Could you just hold it a minute and
let's see if we've got a second on that motion?

(No response.)

VICE CHAIR THERNSTROM: There's dead
silence in this room.

COMMISSIONER GAZIANO: The motion dies.

VICE CHAIR THERNSTROM: The motion, it has
just died Commissioner Yaki.
COMMISSIONER GAZIANO: If there has been sufficient discussion on Mr. Yaki's motion, I'd like to call the question.

VICE CHAIR THERNSTROM: Restate the motion, please, Commissioner Yaki.

(Pause in proceedings.)

VICE CHAIR THERNSTROM: Commissioner Yaki, Commissioner Taylor's motion has died, his friendly amendment. Could you restate your original motion?

COMMISSIONER YAKI: My original motion was that the briefing on religious discrimination in the workplace be placed for briefing during the 2009 fiscal and operational year, period.

VICE CHAIR THERNSTROM: We've got a second on that? Did we have a second before?

COMMISSIONER YAKI: I'm pretty sure Melendez seconded.

COMMISSIONER MELENDEZ: Yeah, I seconded.

VICE CHAIR THERNSTROM: You did second it. That's correct.

So now we're into discussion. I'm sorry. Let's have a vote on that. All in favor.

COMMISSIONER KIRSANOW: We need discussion.

COMMISSIONER GAZIANO: We had a
discussion. It's a further discussion?

(No response.)

VICE CHAIR THERNSTROM: I'm calling for a vote. We've had a discussion. All those in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All those opposed?

COMMISSIONER GAZIANO: Opposed or nay.

COMMISSIONER HERIOT: Nay.

COMMISSIONER TAYLOR: Nay.

VICE CHAIR THERNSTROM: Two nays, three nays.

I'm abstaining. We've got three nays.

How many ayes? I'm sorry.

COMMISSIONER KIRSANOW: Three.

COMMISSIONER HERIOT: Three. It fails.

VICE CHAIR THERNSTROM: It fails.

COMMISSIONER HERIOT: Three, three.

COMMISSIONER YAKI: I'm changing my vote to a nay so that I can move for reconsideration at the next meeting when the Chair is back.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER GAZIANO: You could reconsider anyway, Michael, but sure.

VICE CHAIR THERNSTROM: Yeah, I mean, Michael --
COMMISSIONER HERIOT: We're not against considering it in the future.

VICE CHAIR THERNSTROM: Nobody is against reconsidering this in the future. The only opposition -- nobody is against this topic. The only opposition was giving it a privileged status.

COMMISSIONER YAKI: Well, in the past when we have had to kick a briefing off for time, budget or other pressing issues that came on --

VICE CHAIR THERNSTROM: I understand your point. I understand your point.

COMMISSIONER YAKI: -- we kicked them back to the follow fiscal year. This is a change. This is a change in precedence in terms of how the Commission has operated in terms of how it has worked.

VICE CHAIR THERNSTROM: Well, this has failed, Michael. I don't think the discussion should continue.

COMMISSIONER YAKI: Like I said, I change my vote to a nay for the purpose of moving for reconsideration at --

VICE CHAIR THERNSTROM: You can move for reconsideration without any -- you know, nothing is stopping you from moving --

COMMISSIONER YAKI: I have to be on the
prevailing side in order to move for reconsideration.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER YAKI: I'm changing my vote to a nay.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER YAKI: I will do so at the next meeting.

VICE CHAIR THERNSTROM: All right.

Commissioner Yaki has changed his vote to a nay.

All right. We're on to the briefing report on voter fraud and voter intimidation.

VI. PROGRAM PLANNING, BRIEFING REPORT ON VOTER FRAUD AND VOTER INTIMIDATION

VICE CHAIR THERNSTROM: So Part A of the report reflects the Commissioner and panelist input on the briefing the Commission held on October 13th, 2006, on voter fraud and voter intimidation, Part A, is distributed in draft form to Commissioners on February 11th, 2008, and as amended to include changes by Commissioners as of April 18th, 2008, contains a briefing overview, summary of the issue, and why the Commission chose to conduct a briefing, summary of the proceedings consisting of synopses of the panelists' oral statements during the briefing, and a synopsis of the question and answer questions and copies of the
panelists' written statements.

Can I have a motion that the Commission approve for publication, along with any concurring and dissenting statements submitted by any Commissioner by May 23rd, 2008?

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 the majority of votes, discussion of Part B obviously becomes moot. This bifurcated vote is taken pursuant to the policy adopted by Commissioners at the April 13th, 2007 business meeting.

So I need a motion on Part A.

COMMISSIONER GAZIANO: I so move.

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Okay. Any discussion of approving Part A, when obviously, once again, the concurring and dissenting statements can still come in?

(No response.)

VICE CHAIR THERNSTROM: No discussion? I hear no discussion. So let's have a vote. All in favor?
COMMISSIONER YAKI: Wait, wait. My mute button was on and I couldn't find it. I know many of you would like to find my mute button.

VICE CHAIR THERNSTROM: We could just put ours on here, Commissioner Yaki.

COMMISSIONER YAKI: You can just close your ears because I'm about to talk right now.

I had serious concerns about this briefing as it was put together, and I think that part of those concerns were, at the time, enunciated strongly enough that --

VICE CHAIR THERNSTROM: I'm sorry. Were what strongly enough?

COMMISSIONER YAKI: Enunciated strongly enough --

VICE CHAIR THERNSTROM: Enunciated, okay.

COMMISSIONER YAKI: -- to the Staff Director that there was some noticeable changes in briefings after that because I did not believe at the time that this was a balanced panel by any stretch of the imagination. We had only one speaker who was concerned with the issue of voter intimidation, and that was Ms. Donna Brazile, and we had two speakers on voter fraud identification. That was Hearn and Fund, and one for the national ID card, Pastore.
I expressed my concern privately to the Chair that this was an unbalanced panel, that the issue of voter intimidation which is something that I expressed during the hearing is something that I am quite familiar with from doing voting monitoring in the southwest and in Southern California, did not receive a proper placement at this briefing, and --

VICE CHAIR THERNSTROM: But wait a minute. What is the relevance of this point in terms of --

COMMISSIONER YAKI: Well, I think the relevance is that I don't believe this briefing complied with AI Instruction 1-6, and I'd like to know how this report allegedly did comply with the Administrative --

VICE CHAIR THERNSTROM: I don't see the relevance of this. We have held the briefing. The question is now the shape of the report on the briefing.

COMMISSIONER YAKI: Well, I'm saying that the shape of the report is illegitimate because of the failure to comply with the AI in its formation and --

VICE CHAIR THERNSTROM: But we cannot hold the briefing again.

COMMISSIONER YAKI: Pardon?

VICE CHAIR THERNSTROM: We can't hold the
briefing again, and we do not have in our Part A reports that express the views of people who did not testify at the briefing so that we're not wandering all over the map on subjects and they don't become simply political or academic exercises, more likely academic.

COMMISSIONER YAKI: Well, I know, but Part A included -- because I felt that there was -- and, by the way, one of the things that kind of drives me crazy about when we get stuff is when we get stuff in drips and drabs, and this is something where we received the findings, but the entire report I had to then go pull back from E-mails several months back in order to try and find it, you know --

VICE CHAIR THERNSTROM: Well, I would like at a future meeting to discuss that issue.

COMMISSIONER YAKI: -- which is an issue when you don't have a special assistant.

VICE CHAIR THERNSTROM: No, it's --

COMMISSIONER YAKI: But I --

VICE CHAIR THERNSTROM: It's an issue of short staffing.

COMMISSIONER YAKI: To me this goes to the integrity of what these briefing reports are, which has I have said all along I believe that briefing
reports have very little integrity. I believe that they brief the Commission on --

VICE CHAIR THERNSTROM: Michael, you're just way off the question here.

COMMISSIONER YAKI: -- about points -- support other questions or information, but are not and cannot be the final pronouncements on matters and key issues where we refuse to exercise --

VICE CHAIR THERNSTROM: Michael, this is a discussion in another context. It is not a discussion that is pertinent to voting on Part A.

COMMISSIONER YAKI: I absolutely believe it does because it goes to the legitimacy of this report, and I am expressing my concern about the legitimacy of the findings and recommendations of this report given the fact that we did not follow our administrative instructions and did not have a balanced panel.

Some people are trying to move to strike a recommendation that or finding that I actually find to be quite appropriate.

VICE CHAIR THERNSTROM: Well, we are going to go through --

COMMISSIONER YAKI: And which I had raised during this, and if the answer is, well, it wasn't
adequately covered, my answer back is that of course it was not adequately covered. We didn't have a balanced panel that would allow all aspects of it to have been covered.

COMMISSIONER GAZIANO: Madam Chairwoman, I understand Commissioner Yaki's making an argument against my motion to approve Part A and proceed because he thinks perhaps maybe that it shouldn't be published at all. I don't know that he will have a second to his motion or that he will get the votes for his motion, but I --

VICE CHAIR THERNSTROM: Well, there is a motion on the table, and it's yours, I believe.

COMMISSIONER GAZIANO: That's correct. It has been seconded, and that's fine if he wants to express that opinion. I disagree with it and intend to vote yes on my motion.

But thank you very much, Mr. Yaki, for clarifying your thoughts on that.

VICE CHAIR THERNSTROM: And I'm calling the question. All of those in favor of voting on Part A.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Opposed.

COMMISSIONER YAKI: Nay.
COMMISSIONER MELENDEZ: I'll abstain.

VICE CHAIR THERNSTROM: Okay. So we have Commissioner Yaki voting nay and Commissioner Melendez abstaining, and the rest of the Commission voting aye.

We move on to -- Part A having been approved, we move on to Part B. So Part B contains the Commission's -- as amended by Commissioners as of April 18th, 2008, contains the Commission's findings and recommendations. Under this motion, the Commission will vote individually on each finding and recommendation. These findings and recommendations receiving the majority vote would be included in the report with a vote tally and a sentence explaining any opposition for that item.

So I would like a motion that the Commission approve Finding 1, which reads as follows:

"In recent years, real and perceived flaws in the election system have resulted in concern and mistrust of the voting process in the United States. These allegations include misplaced and/or" -- it says "indiscernible." I'm not sure that's really the right word, but --

COMMISSIONER YAKI: Is that a hanging chad?

VICE CHAIR THERNSTROM: Yeah, I guess.
"long waits at polling places, confusing or malfunctioning voting mechanisms, uncertainty regarding identification, and other voting requirements. They also include voter fraud and voter intimidation."

Can I have a motion on that finding?

COMMISSIONER TAYLOR: Second.

VICE CHAIR THERNSTROM: Okay. So let us discuss this finding. Surely, Commissioner Yaki, you have something to say.

COMMISSIONER YAKI: I'm thinking.

COMMISSIONER HERIOT: Call the question.

COMMISSIONER YAKI: I will pass for the time being.

VICE CHAIR THERNSTROM: Okay. I'm calling the question then. All in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed?

COMMISSIONER YAKI: I'll abstain.

VICE CHAIR THERNSTROM: Commissioner Yaki is abstaining. Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Oh, abstain.

VICE CHAIR THERNSTROM: Two abstentions. Yaki and Melendez abstain and otherwise approved.
Okay. Finding 2 reads as follows: "Both voter fraud and voter intimidation disfranchise voters and seriously weaken our political system."

May I have a motion?

COMMISSIONER KIRSANOW: So moved.

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Okay. So any discussion?

COMMISSIONER YAKI: I'm opposed.

VICE CHAIR THERNSTROM: We have not called the question. I'm delighted to do so.

COMMISSIONER YAKI: That's my discussion. I oppose this.

VICE CHAIR THERNSTROM: That's your discussion.

COMMISSIONER GAZIANO: Oh, okay. That's fine.

VICE CHAIR THERNSTROM: Have you got anything further to say? Commissioner Melendez, got anything to say? Anybody else got anything to say?

Calling the question. Yes or no, all in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Opposed.

COMMISSIONER MELENDEZ: Opposed, Melendez.
COMMISSIONER YAKI: Opposed, Yaki.

VICE CHAIR THERNSTROM: Yaki and Melendez opposed. Everyone else is in favor. It should be noted, of course, that the Chair is no longer with us and, therefore, not voting.

Finding 3, "allegations of voter fraud have included claims of multiple voting, voting by dead people, providing false information regarding felon status, vote buying, and submitting false registration information."

COMMISSIONER KIRSANOW: So moved.

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Okay. Any discussion regarding --

COMMISSIONER YAKI: I would just like to state that in response to questions at the briefing, no one could really give me great examples of this kind of activity going on, but mere speculation.

VICE CHAIR THERNSTROM: Well, but the motion reads "allegations of voting fraud have included." It didn't -- you've been asked to speak up -- but the motion reads "allegations of voting fraud." It does not say hard evidence of voting fraud. So that's pretty squishy language, and by the way, on the previous --
COMMISSIONER MELENDEZ: I'm going to do a very squishy abstain on this one.

VICE CHAIR THERNSTROM: Okay. On the previous finding, too, I have a strong preference for using the term "disfranchise" rather than "disenfranchise," but that is my --

COMMISSIONER GAZIANO: I second that strongly. I don't like the misuse of English.

VICE CHAIR THERNSTROM: Exactly. The word should be "disfranchise."

Anyway, we have got a motion on the table on Finding 3. Do we have any further discussion?

(No response.)

VICE CHAIR THERNSTROM: All in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed?

(No response.)

VICE CHAIR THERNSTROM: Abstentions.

COMMISSIONER MELENDEZ: Abstain, Melendez.

VICE CHAIR THERNSTROM: Commissioner Yaki, what are you doing?

COMMISSIONER YAKI: I'm thinking. I'll vote in favor of this because it's allegations.

VICE CHAIR THERNSTROM: Okay. Very nice.

We have got only one abstention and otherwise all in

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favor.

Okay. Finding 4, "allegations of voter intimidation," and again, this is "allegations."
"Allegations of voter intimidation have included claims" -- claims, not evidence -- "regarding the imposition of unauthorized identification requirements and the intentional misrepresentation of voter eligibility, the misuse of provisional ballots, and misinformation about the time and place of election and the requirement to vote."

COMMISSIONER TAYLOR: So moved.
COMMISSIONER HERIOT: Second.

(No response.)
VICE CHAIR THERNSTROM: Hearing no discussion, I'm calling the question. All those in favor.

(Chorus of ayes.)
VICE CHAIR THERNSTROM: All those opposed?
(No response.)
COMMISSIONER MELENDEZ: Abstention, Melendez.
VICE CHAIR THERNSTROM: Melendez abstains, and Yaki does what?
COMMISSIONER YAKI: I already voted yes.


COMMISSIONER MELENDEZ: Yes.

VICE CHAIR THERNSTROM: Okay. Finding 5. I need a motion to approve Finding 5, which reads, "among the difficulties faced by election officials is the fact that the pool of qualified voters is constantly changing with almost 40 million people moving each year. As a result many jurisdictions have flawed or outdated voter roles."

COMMISSIONER HERIOT: So moved.

COMMISSIONER TAYLOR: Second.

COMMISSIONER YAKI: I'd like to add a comment to this, Commissioner Thernstrom.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: It's too bad that we didn't get the chance to have more testimony on this item because I would argue that also among the difficulties is finding competent election officials, which as is evidenced by some of the confusion at voting polls and voting areas falls squarely upon the ability of an election official to deal with the challenges of voting on election day.

That's just a comment.
COMMISSIONER GAZIANO: I think some of that is covered in some of the recommendations. But your opinion is duly noted.

VICE CHAIR THERNSTROM: Yeah, I'm completely sympathetic with the fact that up and down the line of authority on elections there's a great deal of incompetence, but I would add the naughty statement that that's true of the public sector to too great an extent in general, but whatever.

COMMISSIONER YAKI: I think you just insulted your own agency then.

VICE CHAIR THERNSTROM: Yes, I guess I did, including myself.

COMMISSIONER YAKI: I'm abstaining. So it doesn't apply to me.

VICE CHAIR THERNSTROM: Okay. I think this is on the floor. Can we call the question?

All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed?

(No response.)

VICE CHAIR THERNSTROM: Is that a unanimous vote?

COMMISSIONER MELENDEZ: Yes.

VICE CHAIR THERNSTROM: It is a unanimous
vote in favor.

Finding 6 reads as follows: "in addition, the growing use of unofficial third party voter registration drives has led to a rise in reports of voter registration fraud, especially fraud committed by those who have been paid by the piece to register voters."

Now, again, we have got a rise in reports. It doesn't say whether they're accurate or not. Yeah, we need a motion and we need a second.

COMMISSIONER TAYLOR: So moved.

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Any discussion?

COMMISSIONER YAKI: Yes. My concern is that there are official voter registration drives that do use bounties to register voters, and I think that this unfairly smears them by use of the second clause in the sentence.

VICE CHAIR THERNSTROM: Well, even though it says "unofficial third party voter registration drives"?

COMMISSIONER YAKI: I mean it says "especially fraud committed by those who have been paid by the piece to register voters." That then applies to more than just unofficial third parties.
VICE CHAIR THERNSTROM: It's a modification. It modifies the first half of the sentence, which refers to unofficial third party voter registration drives. I would not read the sentence that way, Commissioner Yaki.

COMMISSIONER HERIOT: You can't use the word "especially" unless you're talking --

COMMISSIONER YAKI: I thought it was related to the rise of reports of voter registration fraud which can include many other things as well. So whatever. I'm abstaining from this. Let's move on.

VICE CHAIR THERNSTROM: Okay. Calling the question. All in favor.

(Chorus of ayes.)

COMMISSIONER YAKI: Abstain.

COMMISSIONER MELENDEZ: Melendez also.

VICE CHAIR THERNSTROM: Melendez, how are you voting?

COMMISSIONER MELENDEZ: Abstaining.

VICE CHAIR THERNSTROM: Two abstentions.

COMMISSIONER KIRSANOW: Three abstentions.

COMMISSIONER HERIOT: Three.

VICE CHAIR THERNSTROM: Oh, three abstentions. Commissioner Kirsanow is also abstaining.
Finding 7, "at the same time such practices as expanded absentee voting, same day registration, and voting exclusively by mail while providing greater voter access have posed difficulties in verifying voter identity and qualifications, as well as protecting against voter intimidation."

Can I have a --

COMMISSIONER TAYLOR: So moved.

VICE CHAIR THERNSTROM: And a second?

COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: Any discussion?

(No response.)

VICE CHAIR THERNSTROM: No discussion.

I'm calling the question.

COMMISSIONER YAKI: I just don't understand how protecting the voter and intimidation relates to everything before that, but that's why I'm going to abstain.

VICE CHAIR THERNSTROM: Okay. All in favor?

(Chorus of ayes.)

COMMISSIONER YAKI: Abstain.

COMMISSIONER MELENDEZ: Abstain, Melendez.

VICE CHAIR THERNSTROM: Two abstentions, Yaki and Melendez, and otherwise it is approved.
Finding 8, "many other democracies have adopted photo identification requirements as a means to defer fraud and increase voter confidence. Indeed, almost 100 democracies already vote via a photo identification card."

That is the beginning and end of Finding 8. Can I have a motion?

COMMISSIONER HERIOT: So moved.

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Discussion? No discussion on this?

(No response.)

VICE CHAIR THERNSTROM: Okay. Call the question. All in favor?

(Chorus of ayes.)

COMMISSIONER YAKI: Abstain.

COMMISSIONER MELENDEZ: Abstain, Melendez.

COMMISSIONER TAYLOR: Opposed, Taylor.

VICE CHAIR THERNSTROM: Opposed, Taylor. I will go along with it. Okay. So one opponent, Commissioner Taylor.

COMMISSIONER MELENDEZ: I'd like to change mine to opposed against it also, Melendez.

VICE CHAIR THERNSTROM: Melendez, two opposed.
COMMISSIONER YAKI: I'll change mine to opposed as well.

VICE CHAIR THERNSTROM: Three opposed. Commissioner Taylor has gotten everybody's courage up here.

COMMISSIONER TAYLOR: It's not my effort. It's not my effort to have this eliminated. I am very hesitant to begin to refer to other democracies and what other countries do because it's a gate that swings both ways.

I try to be careful in that area. That's all.

VICE CHAIR THERNSTROM: Well, actually, I think that is an excellent --

COMMISSIONER YAKI: I appreciate that, Commissioner Taylor, because --

VICE CHAIR THERNSTROM: You'll have to speak up, Commissioner Yaki.

COMMISSIONER YAKI: I appreciate that, Commissioner Taylor, because obviously the definition of what constitutes a democracy can be rather, as you say, flexible.

VICE CHAIR THERNSTROM: You know, I agree with you. I'm opposed.

(Laughter.)
COMMISSIONER HERIOT: Okay. We have a majority now? So we can just strike it.

VICE CHAIR THERNSTROM: Strike it. We have a majority opposed. I wish you would have made your argument before.

COMMISSIONER HERIOT: Madam Chair, I have a motion to insert a new finding.

VICE CHAIR THERNSTROM: So do you want to leave it to the end or this is --

COMMISSIONER HERIOT: Actually I was going to put it after eight, but now that eight has been stricken, we can -- I can make a motion that this be considered Finding No. 8.

VICE CHAIR THERNSTROM: Okay, all right.

COMMISSIONER HERIOT: And it would read this way. It's in light of the Supreme Court's new decision in Crawford.

I move that we insert as Finding No. 8 the following: in recently upholding Indiana's voter ID law, the Supreme Court affirmed the state's legitimate and important interest in preventing voter fraud and promoting public confidence in the integrity of the electoral process to encourage citizen participation in the democratic process, Crawford v. Marion County Election Board, and I've got the citation here.
VICE CHAIR THERNSTROM: Right, and as I understand what Commissioner Heriot is saying, she is just repeating what the Supreme Court said.

COMMISSIONER HERIOT: Just acknowledging.

VICE CHAIR THERNSTROM: Acknowledging. She's not asking whether people agree or disagree --

COMMISSIONER HERIOT: Absolutely not.

VICE CHAIR THERNSTROM: -- with the holding of the Supreme Court.

COMMISSIONER HERIOT: Just want to make sure that anyone reading this knows that we know the decision was made.

VICE CHAIR THERNSTROM: Can I have a second on that?

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Discussion?

(No response.)

VICE CHAIR THERNSTROM: Okay. I'm calling the question. All in favor?

(Chorus of ayes.)

COMMISSIONER YAKI: Opposed.

COMMISSIONER MELENDEZ: Abstain.

VICE CHAIR THERNSTROM: So Commissioner Yaki abstains and --

COMMISSIONER YAKI: Opposed. Commissioner
Yaki opposed.

VICE CHAIR THERNSTROM: I'm sorry.

Commissioner Yaki, opposed.

COMMISSIONER YAKI: Opposed.

VICE CHAIR THERNSTROM: Opposed.

Commissioner Melendez is sticking with your abstention?

COMMISSIONER MELENDEZ: Yes.

VICE CHAIR THERNSTROM: Okay. So Finding 9. There is a need for improved administration of elections to assure that votes are accurately counted and verified. This includes a need to address a shortage of trained poll workers.

Can I have a motion?

COMMISSIONER TAYLOR: I'm going to second Commissioner Yaki's motion on this.

VICE CHAIR THERNSTROM: Commissioner Yaki?

COMMISSIONER TAYLOR: Because I know this is the theme he --

VICE CHAIR THERNSTROM: I would invite you to expand that beyond trained poll workers if you would like. Do you want to expand the group? I mean, poll workers it seems to me is a narrower category than you had in mind a few moments ago.

COMMISSIONER YAKI: No, it's not just poll
workers. I think that in many counties around this country, including I would say my own county, we have had serious issues with competency of election officials.

VICE CHAIR THERNSTROM: So can we just change it to election officials, striking "poll workers"? Would you like to offer that?

COMMISSIONER YAKI: No, I would say that there's a need for improved administration of elections to assure that votes are accurately counted and verified. This includes a need to have in place well in advance of elections qualified election officials and trained poll workers.

VICE CHAIR THERNSTROM: You don't regard poll workers as election officials?

COMMISSIONER YAKI: No, because they usually are hired like the day of, you know.

VICE CHAIR THERNSTROM: Okay. That's fine.

COMMISSIONER TAYLOR: Second.

COMMISSIONER YAKI: The election officials are the registrars, you know, the city clerks.

VICE CHAIR THERNSTROM: Right. I've got it. So that's a friendly amendment to this, and it has just been seconded by Commissioner Ashley.
COMMISSIONER TAYLOR: Taylor.

VICE CHAIR THERNSTROM: Commissioner Taylor.

COMMISSIONER TAYLOR: Do I get two votes?

(Laughter.)

VICE CHAIR THERNSTROM: You don't know what my morning was like. Commissioner Taylor. Okay. So has somebody seconded that?

COMMISSIONER GAZIANO: Taylor seconded it.

VICE CHAIR THERNSTROM: Right. Can you read it back? Commissioner Yaki, read it back.

COMMISSIONER YAKI: How can I read it back when I'm just doing it on the fly here?

There's a need for improved administration of elections to assure that votes are accurately counted and verified. This requires qualified and competent election officials and trained poll workers in place well in advance of elections, period.

VICE CHAIR THERNSTROM: Okay. If there is no discussion, calling the question. All in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: I'm voting aye. Anybody abstaining? Anybody opposed?

(No response.)

VICE CHAIR THERNSTROM: That is a
unanimous vote.

We move on to the recommendations. Recommendation 1 reads as follows: "state and local governments should undertake efforts to improve an expand training of poll workers on issues of voter eligibility, identification, use of provisional ballots, voting machine operations and standards and the prevention of voter fraud and voter intimidation."

May I have a motion?

COMMISSIONER KIRSANOW: So moved.

COMMISSIONER TAYLOR: Second.

VICE CHAIR THERNSTROM: Discussion?

(No response.)

VICE CHAIR THERNSTROM: All right. I'm calling the question.

COMMISSIONER YAKI: Wait, wait, wait.


COMMISSIONER YAKI: Has the word "election official."

VICE CHAIR THERNSTROM: Yeah, I was waiting for you to do that. I don't have any problem with that.

COMMISSIONER GAZIANO: Where?

COMMISSIONER YAKI: Expand training of election officials and poll workers.
VICE CHAIR THERNSTROM: Okay. I'll second that. All in favor?

(Chorus of ayes.)

COMMISSIONER YAKI: Yaki, aye.

VICE CHAIR THERNSTROM: Anybody opposed?

(No response.)

VICE CHAIR THERNSTROM: Okay. Second recommendation, rules concerning poll workers should be modified to facilitate a larger and more qualified pool of poll volunteers, including active recruitment of volunteers who are familiar with digital technology. For example, removing requirements that poll workers staff the polls for an entire day might enable more students and persons who work part time to assist at the poll.

COMMISSIONER TAYLOR: So moved.

VICE CHAIR THERNSTROM: Second.

COMMISSIONER YAKI: So basically we want 16 year olds who know how to play "Grand Theft Auto" to help us with our new-fangled touch screens and computer voting?

VICE CHAIR THERNSTROM: And they may do a good job. I mean, the implication, it seems to me, Commissioner Yaki, is that jurisdictions would be hiring competent people here. I mean, we're not
suggesting incompetence.

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: And I don't think a 16 year old is necessarily incompetent.

COMMISSIONER HERIOT: I think usually --

COMMISSIONER YAKI: Not when it comes to computers, they're not.

VICE CHAIR THERNSTROM: Yeah, they require --

COMMISSIONER HERIOT: -- other requirements. You have to be a registered voter.

VICE CHAIR THERNSTROM: You have to be a registered voter, right.

COMMISSIONER HERIOT: Or they can have other requirements. We're not saying that any requirement that states have now they should jettison. We're just saying in addition, among the pool of people who would otherwise be qualified.

VICE CHAIR THERNSTROM: Okay. Any further discussion?

(No response.)

VICE CHAIR THERNSTROM: All in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Opposed?

(No response.)
Recommendation 3, state and local government, as well as civic groups and political parties, should take active steps to advise the public of basic voting procedures, including the information on the times and places of election.

This is very uncontroversial. Do I have a motion?

COMMISSIONER GAZIANO: So moved.

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Discussion?

(No response.)

VICE CHAIR THERNSTROM: Calling the question, all in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed?

(No response.)

VICE CHAIR THERNSTROM: That passed unanimously.

Four, the Department of Justice must be actively involved in and devote greater resources to the investigation of voter fraud and voter intimidation.

COMMISSIONER GAZIANO: Madam Chair, I move to strike the recommendation and renumber subsequent
recommendations. My main ground is that there is no finding of fact that supports this recommendation, and I think there's insufficient evidence in certainly our briefing and I believe elsewhere for us to conclude the Justice Department isn't devoting sufficient resources.

COMMISSIONER TAYLOR: Second.

COMMISSIONER GAZIANO: Madam Chair, I'd move to strike, and I think Commissioner Ashley has seconded -- Commissioner Taylor. I'm sorry.

VICE CHAIR THERNSTROM: You don't have the same excuse I do.

COMMISSIONER GAZIANO: Fine.

COMMISSIONER YAKI: This is Commissioner Yaki.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: To me if the Commissioner were still putting out its federal funding report every year as it had for many years, we would be able to look at the budget for this within Justice and compare from year to year and make a determination as to what kind of resources actually are being devoted to investigation of voter fraud and voter intimidation.

I do not understand why we would say that
they should be actively involved in the investigation of voter fraud and intimidation. The question of resources, I understand Commissioner Gaziano's concern as to does that mean that they are devoting enough or are they devoting too little. There's an implication there that may or may not be based on fact.

I will say, however, that I did find statements in the briefing that would lead me to conclude that they must be actively involved and that when it comes to -- I think we found in the statements of John Fund and others that in the issue of absentees, for example, very little is done to investigate voter fraud in that instance, which I think Mr. Fund called the place most likely for voter fraud to occur.

In addition, I can tell you that one of the reasons why the hearing I requested on June 6th is occurring has to do precisely with level of resources devoted to voter intimidation and polling problems that go on.

So in some ways this is too restrictive. I think that there are other issues involving election officials, voting machines, the discretion election officials have in terms of insuring that the franchise is exercised by anyone who wants it to be. I
understand Commissioner Gaziano's concern about the squishiness of the words "devoting greater resources to," but I do think that there must be a statement for recommendation that involves DOJ's involvement and active involvement in voter fraud, voter intimidation and the fair conduct of the franchise at the polling place.

COMMISSIONER GAZIANO: Sure. Well, let me explain why I propose to strike the whole recommendation then. I appreciate you conceding we have insufficient knowledge to say whether they're spending more or enough or should spend more.

I don't think if we strike this that it states our position that the Justice Department should not investigate a lot of voter fraud and a lot of voter intimidation, but this is just kind of also a vague and squishy statement. There may be hundreds of claims of voter fraud or intimidation that the statement and local government can investigate perfectly well in itself. The Department of Justice has particular authority in certain areas, and I think as it stands this statement, you know, may mislead, even striking the "and devote greater resource to" phrase, may be more misleading.

Since we're going to take this up in June,
I suppose we can try to craft some statements at that time as to what the Department of Justice's proper authority and role should be.

COMMISSIONER YAKI: Well, that would be nice, except that I would highly doubt that we would have a report on that briefing during any time before the next century given the pace at which our reports have been coming out at glacial speed.

And I think it would be extremely remiss if we have a report on voter fraud and voter intimidation that doesn't suggest in our role as watchdog of the federal government's civil rights that DOJ must continue to be actively involved in and ensure that adequate resources are devoted to the investigation of voter fraud, voter intimidation and election day decisions by election officials that have a profound impact on the integrity of the vote count.

VICE CHAIR THERNSTROM: Yeah, I wonder if we would get some consensus here if we changed this to the original, instead of striking it, the original motion or original recommendation for it to read simply, "The Department of Justice must be actively involved in." Obviously it's going to be.

COMMISSIONER GAZIANO: Why don't you say "remain actively involved in"?
VICE CHAIR THERNSTROM: Okay. "Remain actively involved in and devote adequate resources to the investigation of."

COMMISSIONER HERIOT: Can we change "must" to "should"? Because to conform to the other recommendations?

VICE CHAIR THERNSTROM: Yes, sure.

COMMISSIONER HERIOT: Otherwise it makes it look like it's different.

VICE CHAIR THERNSTROM: Okay. "Should remain actively involved and devote adequate resources to the investigation of voter fraud and voter intimidation." Commissioner Yaki, would that --

COMMISSIONER YAKI: That's fine. I just think it would be silly for us not to have any statement on DOJ.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER GAZIANO: With the understanding or the discussion that I've already set forward, obviously they ought to stick to the statutes and the authorities that grant them power in this area. I'm find with that friendly amendment.

VICE CHAIR THERNSTROM: Okay. So we now have a friendly amendment on the floor and --

COMMISSIONER KIRSANOW: And a second.
VICE CHAIR THERNSTROM: And a second. Can we vote on this? All in favor --

COMMISSIONER HERIOT: Read it one more time.

VICE CHAIR THERNSTROM: The Department of Justice should remain actively involved in and devote adequate resources to the investigation of voter fraud and voter intimidation.

All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed?

Anybody abstaining?

(No response.)

VICE CHAIR THERNSTROM: We have a unanimous vote on that.

Recommendation 5, "states should improve public confidence that votes will be counted accurately by insuring that all voting machines are accurate and tamper proof and creating" -- I'm sorry for giggling, but good luck, folks -- "and creating a physical record of votes in employing a voter verification paper audit trail."

Can I have a motion on that?

COMMISSIONER TAYLOR: So moved.

COMMISSIONER HERIOT: Second.
COMMISSIONER GAZIANO: With the understanding that the aside won't be in the actual record.

VICE CHAIR THERNSTROM: That's right.

(Laughter.)

VICE CHAIR THERNSTROM: Have we got a discussion of this?

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: Aside from my skepticism that, in fact, they're going to be able to actually ensure. Any discussion? No.

Okay. Calling the question, all in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody abstaining or opposed?

COMMISSIONER KIRSANOW: Kirsanow abstains.

VICE CHAIR THERNSTROM: Kirsanow abstains.

With one abstention, Commissioner Kirsanow, this has been approved.

Okay. Recommendation 6, "states need to ensure that HAVA is properly enforced and takes special precautions to make sure that all voter registration forms are accounted for and that registration rolls are as up to date as possible by taking steps, such as, one, assigning each
registration form an its receipt a unique number that can be tracked; two, requiring that forms be returned within 14 days after they have been signed; three, prohibiting third party organizations from paying for voter registrations by the piece; four, making their best effort to coordinate voter information with such materials as death records, driver's licenses, jury duty responses, local tax rolls. Where possible states should also coordinate their voter registration data with the voter registration and other data available from other states."

Can I have a motion?

COMMISSIONER YAKI: I've got a question. Where did this come from?

VICE CHAIR THERNSTROM: I don't know the answer to that. Does somebody else?

We're getting you an answer.

COMMISSIONER GAZIANO: If this Commission adopts this, what precisely is your question?

VICE CHAIR THERNSTROM: Do you think that this was not in the briefing record?

COMMISSIONER YAKI: Yeah, I mean, where did these recommendations on the row come from, especially --

VICE CHAIR THERNSTROM: We've got the
pages in the transcript here, 115 to 120, 120 to 123.

COMMISSIONER YAKI: From whom did they emanate?

VICE CHAIR THERNSTROM: From whom did they emanate? Commissioner Yaki wants to know from whom they emanated.

We have to go through and look up each one.

COMMISSIONER YAKI: Just move on because I'm voting against the whole thing.

VICE CHAIR THERNSTROM: Commissioner Taylor, do you have something here?

COMMISSIONER TAYLOR: The question is whether the third recommendation, prohibiting third party organizations from paying for voter registrations by the piece -- does that violate HAVA, consistent with HAVA, or just what's the current status? Are we recommending a change to HAVA? That's the question, if we're saying prohibit that practice.

MR. BLACKWOOD: This is David Blackwood.

That issue is not addressed in HAVA. So it wouldn't require a change in HAVA, and several states have adopted specific provisions of this kind.

COMMISSIONER TAYLOR: They have. Okay.

COMMISSIONER YAKI: What states?
VICE CHAIR THERNSTROM: What states?

MR. BLACKWOOD: I have to look it up, but definitely Missouri.

COMMISSIONER YAKI: All right. I'm definitely voting against this whole thing. So let's just move on.

COMMISSIONER HERIOT: Don't like Missouri?

VICE CHAIR THERNSTROM: Was it Missouri that did it for you?

Okay. I'm calling the question. All in favor?

COMMISSIONER YAKI: No, no, no, it has nothing to do with Missouri.

VICE CHAIR THERNSTROM: Well, those who live in Missouri will be pleased to hear it, and they won't put signs up that you're not allowed to come into the state.

(Laughter.)

VICE CHAIR THERNSTROM: All in favor.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Opposed. Commissioner Yaki, speak up. You're voting against it.

COMMISSIONER YAKI: Opposed.

VICE CHAIR THERNSTROM: Commissioner
Melendez, we haven't heard --

COMMISSIONER MELENDEZ: I abstain.

VICE CHAIR THERNSTROM: Okay.

Commissioner Melendez abstains. Commissioner Yaki is opposed, and otherwise it is approved.

Recommendation 7, "in order to prevent systemic voter intimidation, Congress should pass legislation that will make it unlawful for any person or group to deliberately deceive another person regarding the time, place or manner of an election or the qualifications for or restrictions on voter eligibility for any such election with the intent to prevent such persons from exercising the right to vote in such an election."

COMMISSIONER YAKI: That actually may have happened in North Carolina. I'm all for it.

COMMISSIONER MELENDEZ: And me.

COMMISSIONER GAZIANO: I so move.

VICE CHAIR THERNSTROM: Have we got a second on this?

COMMISSIONER MELENDEZ: Second.

COMMISSIONER TAYLOR: Let me offer a substitute if I could to try to make it, I think, somewhat clearer, and the substitute would read as follows. "There are a number of proposals currently
pending in Congress that purport to deal with the problem of voter intimidation or voter access. Any legislative proposals that treat voter intimidation and access should also address the real and documented problem of voter fraud (or vice versa) if they are to have the intended effect of promoting electoral reform and restoring confidence in the electoral process."

VICE CHAIR THERNSTROM: Could you read that again? I'm sorry.

COMMISSIONER TAYLOR: I shall. "There are a number of proposals currently pending in Congress that purport to deal with the problem of voter intimidation or voter access. Any legislative proposals that treat voter intimidation and access should also address the real and documented problem of voter fraud (or vice versa) if they are to have the intended effect of promoting electoral reform and restoring confidence in the electoral process."

COMMISSIONER GAZIANO: I accept that as a friendly amendment.

VICE CHAIR THERNSTROM: Is there any discussion on that?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez.

Does that mean what we have in front of us
now having to do with intimidation specifically regarding telling a person -- deceiving them, telling them to go somewhere else to vote and the times and those things, is that specifically included in Ashley's proposed substitute?

Because I like this language that's in there now in Recommendation 7 talking specifically about someone telling somebody to go to another polling station and it's the wrong one, those type things that are specific to this what we see in front of us now.

COMMISSIONER TAYLOR: Commissioner Melendez, this is Commissioner Taylor.

My recommended substitute was not intended to eliminate that specific example that you referenced. My recommendation was to make this clear to encompass your specific recommendation, but to make clear that the Commission wanted to make sure that when Congress addresses this issue, they address the twin issues. Well, "twin" is probably a bad word, but the related issues within the context of insuring integrity and electoral process of both voter intimidation and voter fraud, and that they always do so together, and that to focus on either while ignoring the other wouldn't be prudent, and you need
to address both in any statutory improvements.

COMMISSIONER YAKI: This is Commissioner Yaki.

What Commissioner Melendez was asking is what happened to that sentence in your amended version because it seemed to disappear.

COMMISSIONER TAYLOR: It did. The text did disappear.

COMMISSIONER YAKI: I mean, this is a ticky-tacky, little thing, Commissioner Taylor, but if you remove that sentence from what you just wrote, I'm not voting for it.

VICE CHAIR THERNSTROM: Please, I'm sorry. Let's get this clear, why you do not think that point has been removed. Read it again. "There are a number of proposals currently pending in Congress that purport to deal with the problem of intimidation and access." Then read the read.

COMMISSIONER TAYLOR: To me this is the critical piece. "Any legislative proposals that treat voter intimidation and access should also address the real and documented problem of voter fraud (or vice versa) if they are to have the intended effect of promoting electoral reform and restoring confidence in the electoral process."
The text that you're referring to, Commissioner Yaki, again, I have no specific opposition to that. I just want to make sure that as Congress considers either issue that they do so without ignoring either one. If they're focusing on voter fraud, I want them to focus on intimidation and vice versa. That's all.

COMMISSIONER YAKI: Okay. Commissioner Taylor, you just approved a recommendation on HAVA that essentially is all about voter fraud. It goes to voter ID. It goes to all this other kind of stuff. This is the only finding standing alone on voter intimidation, and I think that there is an overabundance of caution on your part, which I think is admirable, but I think is adequately addressed in the recommendations before.

And, quite frankly, and this will be, you know, argued ad nauseam in my dissent to this report is that despite the flame throwers of voter fraud that is thrown out by John Fund and others, the actual number of cases, as I think all of us know, are extremely low, whereas the cases of voter intimidation, misleading is undisputed just by the evidence that the Justice Department has.

So I mean, to me if you want to take your
thing and make it a secondary Recommendation No. 9 or 10, I would be fine with it, but to completely gut the recommendation as it stands on voter intimidation, I think, is something I will not abide.

VICE CHAIR THERNSTROM: Well, do you have disagreements, Commissioner Taylor, with Recommendation 7 so that you would have a problem on voting for that and adding yours as well as Commissioner Yaki is suggesting?

COMMISSIONER HERIOT: Why not just add something at the end of yours that says we recommend that Congress pass legislation on both those topics together speedily?

VICE CHAIR THERNSTROM: I don't think that quite does it.

COMMISSIONER YAKI: No, I understand what Commissioner Taylor is trying to do. I would draft it slightly differently as a stand-alone, separate recommendation.

VICE CHAIR THERNSTROM: And by the way --

COMMISSIONER HERIOT: Standing alone it might suggest that we would endorse the pending legislation, which we don't.

VICE CHAIR THERNSTROM: No, I don't think that. It's an "if."
COMMISSIONER GAZIANO: As I understand Commissioner Yaki's motion, it's that we don't want to suggest that it would be effective for Congress to address one versus the other. I think there's a special virtue in that.

VICE CHAIR THERNSTROM: Now, wait a minute.

COMMISSIONER GAZIANO: It sounds like Commissioner --

VICE CHAIR THERNSTROM: Commissioner Taylor's or Commissioner Yaki's?

COMMISSIONER GAZIANO: Commissioner Taylor's friendly amendment which I accepted, which is now part of the pending motion, I think is an important improvement on this. What Commissioner Yaki is suggesting might, if it's a separate recommendation, might be read to contradict the force of what Commissioner Taylor has amended.

COMMISSIONER HERIOT: I can be taken out of context.

COMMISSIONER YAKI: It doesn't necessarily need to be. The next recommendation could be as any part of any comprehensive voter legislation affecting the franchise whether it be voter intimidation or voter fraud, both issues should be addressed, blah,
blah, blah, blah, blah, blah.

I don't see how that contradicts.

COMMISSIONER GAZIANO: It's theblah, blah, blahs where I have concern.

COMMISSIONER YAKI: Blah, blah, blah is what Commissioner Taylor wrote.

COMMISSIONER HERIOT: It's going to be taken that we endorse that legislation, and that's the whole point, is to make sure that we don't, but rather we think that the issue should be treated together. You don't want it to have a separate slug.

VICE CHAIR THERNSTROM: I don't think that it comes -- well, I think these two can be merged together, and I don't particularly, with all due respect, Commissioner Taylor, like the awkwardness of the "or vice versa." I think we could smooth that out.

COMMISSIONER TAYLOR: Okay.

COMMISSIONER GAZIANO: Are we going to pass on this recommendation? I kind of wanted to.

VICE CHAIR THERNSTROM: We want to approve some version of this recommendation.

COMMISSIONER YAKI: If you guys don't want to approve anything about voter intimidation, be my guest.
COMMISSIONER TAYLOR: No, no. I want to.

COMMISSIONER YAKI: Please, do it.

COMMISSIONER TAYLOR: My thought is that obviously we're concerned about voter intimidation, but the larger message that I am trying to send is that we are concerned about both issues and we are ignoring -- we are not ignoring either issue, and I want to make sure that Congress knows that and that both issues are important, and so I don't --

COMMISSIONER YAKI: Commissioner Taylor, I don't see how letting the recommendation stand there on its own be followed by a second recommendation on voter fraud and then a recommendation that says that these issues should be addressed together at the Congress since they are blah, blah, blah, blah, blah, that's fine with me. I just don't think stripping seven and shoving it into what you wrote is (a) at all very powerful and (b) I just think it misses making a statement on a very important point and mushes both of the issues together.

VICE CHAIR THERNSTROM: Well, but my understanding, Commissioner Taylor, is that what you're concerned about is that one issue or the other be addressed and not --

COMMISSIONER TAYLOR: Correct, lest anyone
misinterpret what we do here to suggest that we have put more emphasis on one or the other. We're trying to send the opposite message, that is, we believe both are important and should be addressed at the same time.

VICE CHAIR THERNSTROM: So the question is whether --

COMMISSIONER TAYLOR: Let me try this. If -- let me think out loud, which is dangerous. We're going to put Yaki's mic on mute now while I think out loud, but I hope Commissioner Yaki didn't hear that.

Michael, that was a joke.

There are a number of --

VICE CHAIR THERNSTROM: Michael, are you there?

COMMISSIONER YAKI: Oh, no, I'm taking notes.

COMMISSIONER TAYLOR: If we use the first sentence --

COMMISSIONER YAKI: When the revolution comes, Mr. Taylor will be very high on a certain list.

VICE CHAIR THERNSTROM: Are we bringing back the guillotine?

COMMISSIONER YAKI: No, no, no, nothing quite so --
COMMISSIONER TAYLOR: There are a number of proposals currently pending in Congress. I don't think there's a problem. What you're referring to is a specific recommendation. If we put a specific recommendation into the recommendation, I would want to put something like, "That said, any proposal that treats voter intimidation," and then go on to say what we just said about balance so that if we reference something like we have in the current text, we have a sentence right after it that says we don't make that recommendation without also saying that the legislation should also include something on X.

So if you understand what I said, Commissioner Yaki, if that concept works, I can try to write something and we can pass on this for a moment.

VICE CHAIR THERNSTROM: We can pass on it for a moment and go on to the next --

COMMISSIONER KIRSANOW: Actually I like your initial proposal. Two things. One is all that we've got currently pending in Congress --

COMMISSIONER YAKI: I can't hear Commissioner Kirsanow.

COMMISSIONER KIRSANOW: To my knowledge, all that we currently have in Congress is legislation specifically, the Deceptive Practices and Voter
Intimidation Act --

COMMISSIONER MELENDEZ: Commissioner Kirsanow needs to get closer to his microphone.

COMMISSIONER KIRSANOW: I'm as close as I can get.

VICE CHAIR THERNSTROM: Take it out and put it up to your mouth.

COMMISSIONER KIRSANOW: The facts on the ground are that we have --

COMMISSIONER YAKI: Can we adjust the volume? I can hear Commissioner Thernstrom fine. Everyone else is like a two on the ten scale on the dial.

COMMISSIONER KIRSANOW: How is this? Is this any better? Can you hear me now? A Verizon commercial. Do I get a royalty?

Hello, can you hear me?

COMMISSIONER YAKI: I can hear you.

COMMISSIONER KIRSANOW: Okay.

COMMISSIONER YAKI: But you have to speak slowly and enunciate because it's very dim.

COMMISSIONER KIRSANOW: Okay. So am I.

We currently have pending in Congress -- I think it's languishing in committee -- the Deceptive Practices and Voter Intimidation Act. I'm not aware
of any other legislation that is currently pending, and it deals only with the topic of intimidation.

We have a finding that defines intimidation and addresses voter intimidation, and I think Commissioner Taylor's original friendly amendment addressed the facts on the ground that, given the pending legislation which we have already defined in a finding, that anything that Congress passes address the tandem issues of voter intimidation and voter fraud.

If, in fact, there were legislation introduced that dealt with voter fraud, then we would probably revisit and say legislation of that nature should also address the other problem of voter intimidation, but that's not currently the facts on the ground.

VICE CHAIR THERNSTROM: Speak, Commissioner Yaki, and you will be heard.

COMMISSIONER YAKI: I'm still unclear as to what exactly Commissioner Taylor wishes to do. All I am saying is I would like the integrity of the sentence in Recommendation 7 to be maintained. If he wishes then to add a sentence to that stating that in any legislation affecting voter intimidation, the subject of voter fraud as referenced in finding blah,
blah, blah, blah, blah, blah, should also be -- I mean, I have no objection to that. I just have an objection to taking what is there and smushing it the other way, "smushing" not being exactly a term of art but the best I can do on --

VICE CHAIR THERNSTROM: It's a legal term of art, right?

COMMISSIONER YAKI: -- four hours of sleep. So.

COMMISSIONER TAYLOR: How about this? Again, I'll try to think out loud. I'm going to try to articulate --

COMMISSIONER YAKI: Are you going to insult me again, Ashley, if you do that?

COMMISSIONER TAYLOR: I didn't insult you. I just turned off your mic.

The first sentence I'm going to see if I can construct this so that it's balanced, and then I'll talk the way I would dictate or write.

The first sentence is the sentence we have now. "There are a number of proposals currently pending in Congress." That's the first sentence.

The second sentence, Commission Yaki, would be the sentence that you like. "Congress should pass X dealing with voter intimidation."
COMMISSIONER HERIOT: As it's written?

COMMISSIONER TAYLOR: As it's written now.

COMMISSIONER HERIOT: In order to prevent

systemic --

COMMISSIONER TAYLOR: Right. The third
sentence would be a sentence dealing with a specific
proposal to address voter fraud. So we have
intimidation, on one hand, fraud, on the other, and
then the final sentence to wrap up the paragraph would
be, "That said," comma, "any legislative proposals
that treat voter intimidation and access should also
address," so that we have a recommendation from the
Commission with respect to intimidation, a
recommendation from the Commission with respect to
fraud, and then the final sentence saying, that said,
we don't want any legislative proposal that only deals
with one of the issues and not the tandem issues.

COMMISSIONER YAKI: Why don't we put them
in three separate recommendations rather than shoving
them all into one?

VICE CHAIR THERNSTROM: Why?

COMMISSIONER GAZIANO: That loses the
virtue of saying that they shouldn't do one without
the other.

COMMISSIONER HERIOT: They get taken out
of context. People don't remember and they're not
told about the one about the --

COMMISSIONER TAYLOR: As a practical
matter, Commissioner Yaki, I would tell you when the
press picks up this, I don't want the press to focus
on a single finding or recommendation, or
recommendation in this case because it's easy, and if
they're going to focus on a recommendation and ignore
the other one, I personally want to be able to say
that the reporter when they wrote the article selected
to ignore our next sentence in the same specific
recommendation.

They probably won't do that, but it's
easier for them to do so if we separate them into
different recommendations. So I want the public to
know that we believe these are tandem issues, which I
think is the best way to phrase it, that should always
be considered together.

VICE CHAIR THERNSTROM: I don't see that
you lose anything by accepting Commissioner Taylor's
friendly amendment.

COMMISSIONER YAKI: Well, I have no idea
what in the hell it says. I do have a problem with
it.

VICE CHAIR THERNSTROM: He can read it
again.

COMMISSIONER TAYLOR:  The first sentence, Commission Yaki, would read, "There are a" -- well, first of all, there's four sentences. There's an introduction, specific example on intimidation, specific example on fraud. The third sentence demands balance or fourth sentence, rather, demands balance.

The first sentence, "there are a number of proposals currently in Congress that purport to deal with the problem of voter intimidation or voter access," period.

COMMISSIONER HERIOT:  Or voter fraud, don't we?

COMMISSIONER TAYLOR:  "Or voter fraud," rather, period.

Next sentence, "Congress should pass legislation," and then we use the balance of that sentence. Commissioner Yaki, are you with me?

COMMISSIONER YAKI:  Yeah, but I don't know why we take out the first clause. Why don't we --

COMMISSIONER TAYLOR:  Okay.

COMMISSIONER YAKI:  Why do you not want the word "voter intimidation" in the second sentence?

COMMISSIONER TAYLOR:  I'm not opposed that that. That's fine. I was trying to make it clean.
That's fine.

"In other to prevent systemic voter intimidation," comma --

COMMISSIONER YAKI: Taken as is. Okay.

COMMISSIONER TAYLOR: Yeah, that would be the second sentence.

COMMISSIONER YAKI: Okay.

COMMISSIONER TAYLOR: The third sentence would read, "In order to prevent systemic voter fraud," comma, "Congress should," and then we have to insert a specific recommendation to prevent voter fraud.

COMMISSIONER HERIOT: Can we have those two sentences just separated by a semicolon?

COMMISSIONER TAYLOR: I like that.

Commissioner Yaki, I did hear your question about the specific recommendation. Can I hold that question on the sideline until we get to the last sentence and then come back to it?

So that the last sentence would read, "Any legislative proposals that treat voter intimidation and access must also address the real and documented problem of voter fraud (or vice versa)" -- I know it's not --

COMMISSIONER YAKI: Yeah, yeah. That's
fine.

COMMISSIONER TAYLOR: "If they have any,"

blah, blah, blah, blah.

COMMISSIONER YAKI: I want to know what

your examples of fraud are going to be.

COMMISSIONER TAYLOR: Right.

COMMISSIONER YAKI: We seem to have like

20 of them in this report already. We have eight, we

have nine, we have ten, we have 11. Are we going to

cram them all into one?

COMMISSIONER TAYLOR: I would be inclined

to have one simple --

COMMISSIONER YAKI: Then what's the point

of having eight, nine, ten, and 11?

VICE CHAIR THERNSTROM: Well, let's get to

those next. Why don't we decide --

COMMISSIONER YAKI: Commissioner Taylor,

this is why having -- I don't understand what the

paranoia about the press is on this when we have four,

five, six arguable recommendations that go toward

voter fraud, and one on voter intimidation.

COMMISSIONER HERIOT: This is the only one

that's on pending legislation.

COMMISSIONER GAZIANO: This is the only

one where we're recommending Congress actually pass
legislation, and also there may be some press who are 
fed something selectively. The press may not read all 
of our wonderful recommendations, shocking though that 
may be.

COMMISSIONER YAKI: Given the amount of 
press that the Commission gets nowadays, I don't think 
that if we tied them to a stake and glued their 
eyeballs open and made them watch this we'd get 
anything out of it anyway

VICE CHAIR THERNSTROM: But look. You 
yourself --

COMMISSIONER HERIOT: You're protesting 
too much here.

VICE CHAIR THERNSTROM: You yourself 
raised the issue earlier about having -- raised the 
question earlier about having a briefing on media 
handling of the race issue in this presidential 
election. You are yourself a little skeptical about 
the quality of reporting in the media.

COMMISSIONER YAKI: Yes, and since they do 
such a great job of not covering us, my skepticism is 
based more on their general decision to ignore 
everything that we do.

VICE CHAIR THERNSTROM: Well, they can 
have an episode of deciding to pay attention to us,
and the question is what will happen --

COMMISSIONER GAZIANO: I'm happy, Commissioner Taylor, I'm happy to abstain from the amended amended amended motion. I don't know that I'm comfortable in discussing either example, but I understand that Commissioners Yaki and Melendez really like this one.

My other problem with it as it originally read is it seems rather broad that we're endorsing a particular piece of legislation that's rather vague. Does this cover grade school elections? Does it cover non-federal elections?

But I just wanted to sort of explain why I may abstain from this particular one and why I preferred Commissioner Taylor's original version, but if the rest of you all like it, then fine.

VICE CHAIR THERNSTROM: I am comfortable with Commissioner Taylor's most recent formulation of a recommendation.

COMMISSIONER YAKI: Well, we still don't know what the third freaking sentence is. So how can anyone be comfortable with what it says?

COMMISSIONER TAYLOR: Well, let me try to cut to the quick. If we --

COMMISSIONER YAKI: No insult intended,
Commissioner.

VICE CHAIR THERNSTROM: No, no, but it was pretty -- you know. There are limited possibilities here.

COMMISSIONER TAYLOR: If we think through a specific example that we would want to recommend to Congress with respect to voter fraud, Commissioner Yaki, will it draw your support?

I'm willing to go through the exercise if it will draw your support.

COMMISSIONER YAKI: Well, let me put it to you this way. I don't know if it will draw my support. I think that if the Commission chooses to not do anything on voter intimidation, then I will have a field day with that with the press, but I don't think the Commission will do that.

So then the issue is what are you going to do about it. You are proposing something that I don't know what the third item is going to be or if you want to choose from the menu of eight, nine, ten and 11, all of which -- or five or six -- all of which could -- well, six is clearly federal because HAVA is a federal law.

You know, you can do whatever you want. I mean, I'm not -- to me I'm agnostic about it at this
point because if you're going to do it, you're going
to do it and you'll probably get the votes. I'm just
saying that you have lots of other items that deal
with voter fraud. Pick whatever you want to do and
put in there. If you just want to put in the general
statement that legislation should be twinned with
voter fraud stuff, that's your right to do that, but
you know, if you want to strike the entire voter
intimidation thing altogether, be my guest and I'll
have lots of fun with that.

VICE CHAIR THERNSTROM: Well, Commissioner
Yaki, that's a little bit of a puzzling statement to
me since a minute ago you claimed we can't get any
press about Commission activities in general, and now
you are kind of threatening to have a field day with
the press on what we do with this.

But in any case, I think --

COMMISSIONER YAKI: I didn't say that I
couldn't do it.

VICE CHAIR THERNSTROM: I see. Well,
please be our guest, but --

COMMISSIONER GAZIANO: But to clarify,
Commissioner Taylor is asking if you would agree and
is your answer no?

COMMISSIONER YAKI: I don't know what
Commissioner Taylor is going to say in the third sentence.

COMMISSIONER GAZIANO: Okay. Let's postpone that then.

COMMISSIONER YAKI: What he said I might agree, but if --

VICE CHAIR THERNSTROM: Well, we are trying to make a good faith effort to meet your concerns here.

COMMISSIONER HERIOT: Do we have the word "systemic" now appearing in this?

COMMISSIONER TAYLOR: We do not have.

COMMISSIONER HERIOT: Systemic, that sort of functions as a finding, and I would rather strike "systemic" with regard to either voter fraud or voter intimidation.

VICE CHAIR THERNSTROM: It sounds like we've got it.

COMMISSIONER HERIOT: In order to prevent voter -- okay.

COMMISSIONER TAYLOR: If we're included his specific example of what Congress should do, we would have that in there.

VICE CHAIR THERNSTROM: Do you want to put this on hold, go on to the next finding and come back
to it?

COMMISSIONER TAYLOR: No. I consider this just to be part of the discussion period, and I think my substitute motion with the second is what remains on the floor. So I just --

VICE CHAIR THERNSTROM: Well, I thought that you wanted to tweak.

COMMISSIONER YAKI: There is no third sentence as far as I can tell. Commissioner Taylor, am I wrong? You keep on saying "the third sentence that would say this," but you haven't said what it is.

COMMISSIONER TAYLOR: Let's pass on it for the moment and let me give it some thought.

VICE CHAIR THERNSTROM: Okay. That was my question. Would you like to pass for the moment and go on?

COMMISSIONER TAYLOR: Yes, ma'am.

VICE CHAIR THERNSTROM: Okay.

Recommendation 8 reads, "Prior to an election standards should be put in place for conducting voting in the event of voting machine malfunctions and instructions should be provided as to the proper use of provisional ballots."

Can I have a motion on that?

COMMISSIONER HERIOT: So moved.
COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Okay. Discussion on this.

COMMISSIONER YAKI: This is Commissioner Yaki.

All right. To whom are we saying standards should be put in place? Are we talking about states, secretaries of state? Are we talking about local registrars? Who's going to promulgate these standards?

I mean, not to be nit-picky here, but voting is a multi-headed hydra in terms of who tells who to do what and when.

VICE CHAIR THERNSTROM: I mean, this is a perhaps woefully uninformed question of mine, but as I understand it, it would depend. It would vary from state to state who was responsible here. No?

COMMISSIONER GAZIANO: Yeah. I think it's a question whether it should be state standards, whether we should leave it blank, that it's just standards at whatever level of government.

VICE CHAIR THERNSTROM: Who's responsible?

COMMISSIONER GAZIANO: I agree that this is a hydra-headed issue. Why isn't it preferable then just to leave it unmodified, Commissioner Yaki, so
that --

COMMISSIONER YAKI: Because the question is --

COMMISSIONER GAZIANO: I would hope that --

COMMISSIONER YAKI: -- you have city clerk. You have a county registrar. You have a state secretary of state, and they're all looking at each other going, "Well, whose job is it?"

COMMISSIONER GAZIANO: Well, that's why I think it's better for us at least at this point sitting here to leave it blank. I mean, the Election Assistance Commission has some role. In different states there are different officials that have different role. So, you know, why can't we just endorse that standards should be put in place and leave it to all the officials that have some responsibility to take their share of responsibility?

VICE CHAIR THERNSTROM: Yeah, I just don't see why we have to kind of wade into particulars that are going to vary from locality to locality.

COMMISSIONER HERIOT: The alternative if you put it in the active voice would just be to say appropriate authorities should put into place.

VICE CHAIR THERNSTROM: Okay. Appropriate
authorities. I'm fine with that.

COMMISSIONER YAKI: I'm fine with that, too. That's what I was looking for. Thank you, Commissioner Heriot.

VICE CHAIR THERNSTROM: Okay. A friendly amendment here. Appropriate authority should be put in place for the standards for conducting voting in the event of voting machine malfunctions, and there has to be a comma there, and instructions should be provided as to the proper use of provisional ballots.

Are we okay with that?

(No response.)

VICE CHAIR THERNSTROM: Can I call the question on that? Commissioner Kirsanow, you have something?

COMMISSIONER KIRSANOW: No.

VICE CHAIR THERNSTROM: All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Anybody opposed to that?

(No response.)

VICE CHAIR THERNSTROM: Okay. That was a unanimous vote in favor.

Can I have a motion for Recommendation 9, which reads as follows: "states should adopt a photo
identification requirement for both registration and voting. Such requirement would increase voter confidence to deter fraud and extend to the voting process the same security required to rent a movie, board a flight or enter many federal buildings."

COMMISSIONER KIRSANOW: Madam Chair, I'd offer an amendment to that recommendation.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER KIRSANOW: It would be essentially the same, but increase the specificity and would read as follows. "States should adopt a photo identification requirement for both registration and voting by, for example, requiring all citizens who register to vote with a mail-in form where the form is actually sent by mail or hand delivered to provide proof of their identity with their registration application or when they appear at the polling station. Such requirement would improve voter confidence, deter fraud, and extend to the voting process the same security common required to board a flight or enter many federal buildings."

COMMISSIONER YAKI: I have a friendly amendment to that friendly amendment.

VICE CHAIR THERNSTROM: Yeah, go on.

COMMISSIONER YAKI: I think that we should
knock out the examples because someone with a non-expiring federal ID was not allowed to vote in Indiana.

COMMISSIONER GAZIANO: You'd like that?

COMMISSIONER YAKI: They said to the person, "I don't care if you work for blankety-blank agency and I don't care if this is a federal ID. There's no expiration date on it, and you have to go get a state driver's license."

VICE CHAIR THERNSTROM: That's actually true at airports. I had a non-expiring Massachusetts State Board of Education ID which was not acceptable.

COMMISSIONER YAKI: I would just not have the federal building issue or rent a movie or board a flight. I mean, it's obvious --

VICE CHAIR THERNSTROM: Well, its' underscoring the fact that in many contexts a photo ID is essentially.

COMMISSIONER YAKI: Yes, but I'm just telling you that in Indiana, a guy that -- oh, by the way, I understand there's a copy of Peter's motion. Is there one that I can get to?

VICE CHAIR THERNSTROM: I just got handed a copy.

COMMISSIONER GAZIANO: I thought they were
E-mailed.

COMMISSIONER YAKI: They were not E-mailed.

VICE CHAIR THERNSTROM: I did not have --

COMMISSIONER GAZIANO: One of our assistants is nodding that they were E-mailed.

COMMISSIONER YAKI: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

COMMISSIONER YAKI: Oh, it's at the bottom of this thing, this thing I got at 7:04 a.m. Yeah, I mean, whatever. I'm going to vote against it. So let's just move on.

VICE CHAIR THERNSTROM: Okay. We are voting on the friendly amendment.

COMMISSIONER KIRSANOW: You need a second, I believe.

VICE CHAIR THERNSTROM: I was going to say --

COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: -- we have not had a second on that.

COMMISSIONER GAZIANO: Second. Two seconds.

COMMISSIONER YAKI: Let's be factually incorrect about federal IDs. That's just to be really
VICE CHAIR THERNSTROM: I missed that.

COMMISSIONER YAKI: I said let's go ahead and be factually incorrect about federal IDs in this recommendation. It's fine with me.

COMMISSIONER HERIOT: What's factually incorrect about it?

COMMISSIONER YAKI: Non-expiring federal IDs are not accepted by poll workers. There's a federal employee in Indiana who had to go back and get his driver's license who had a non-expiring federal ID which would have allowed him into a federal building --

COMMISSIONER HERIOT: That's not in here.

COMMISSIONER YAKI: -- but is not sufficient to allow him to vote.

COMMISSIONER HERIOT: It's not in here.

COMMISSIONER GAZIANO: You may be raising an interesting point, but it's not part of the recommendation.

VICE CHAIR THERNSTROM: It's just not part of the text.

COMMISSIONER YAKI: Yes, it is. I'm reading Recommendation No. 9. "Enter many federal buildings." Maybe I'm wrong. Maybe I'm reading the
wrong E-mail.

COMMISSIONER GAZIANO: But I thought you were objecting to the additional language that Peter offered as a friendly amendment. So your objection is to the original recommendation.

COMMISSIONER YAKI: No, Peter amended No. 9 as I'm reading it from the E-mail that was sent to me at 7:04 a.m., and with this.

VICE CHAIR THERNSTROM: "Or enter many federal buildings." That's correct.

COMMISSIONER YAKI: Period.

VICE CHAIR THERNSTROM: Yeah, it does.

COMMISSIONER GAZIANO: Yes, but it's a separate sentence. Such a requirement would increase voter confidence. Yaddy-yaddy-yada.

COMMISSIONER HERIOT: It is precisely the same requirement with precisely the same --

COMMISSIONER YAKI: It will increase voter confidence because the ID that you use in a federal building is good for voting, and that's not true.

COMMISSIONER HERIOT: It doesn't say that.

VICE CHAIR THERNSTROM: No, it doesn't say that.

COMMISSIONER KIRSANOW: That's not what it reads.
COMMISSIONER YAKI: Then why in the heck even put it in there because someone who reads it will say, "Well, the Commission said that it's a fraud and" --

COMMISSIONER HERIOT: The Commission says they require an ID at federal buildings, and that's correct. There's nothing here about the details of exactly which ID or exactly how it must be held.

COMMISSIONER YAKI: But by giving an examples we're telling people it's as easy as these kinds of IDs. Well, it's not as easy as these kinds of IDs it turns out --

COMMISSIONER HERIOT: It's easier because you can vote --

COMMISSIONER YAKI: -- if you brought it to the poll and thought that you would get a ballot.

VICE CHAIR THERNSTROM: Commissioner Heriot.

COMMISSIONER HERIOT: In some ways it's easier to vote because you can vote provisionally even if you don't have an ID.

COMMISSIONER YAKI: They did not let this guy in Indiana vote.

COMMISSIONER HERIOT: Nobody is --

COMMISSIONER YAKI: They sent him home to
get a driver's license.

COMMISSIONER HERIOT: -- the requirements are identical. It's just saying they're analogous.

VICE CHAIR THERNSTROM: Listen. We are not going to --

COMMISSIONER KIRSANOW: Can we agree to disagree and call the question?

VICE CHAIR THERNSTROM: -- hang this whole thing on the story of one voter.

COMMISSIONER YAKI: Shall we talk about the nuns then?

COMMISSIONER KIRSANOW: Call the question.

VICE CHAIR THERNSTROM: I call the question. We've got on the table, I believe, Commissioner Kirsanow's substitute.

COMMISSIONER YAKI: No, I'm voting no. Let's move on with the vote.

COMMISSIONER GAZIANO: Aye.

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: Have we got two noes there or one no?

COMMISSIONER MELENDEZ: No, Melendez.

COMMISSIONER HERIOT: Aye.

VICE CHAIR THERNSTROM: And is anybody in this room voting no or abstaining? No. So okay. Two
nays and the rest are ayes.

Okay. Where are we? Ten, unless we are ready to go back to -- are we ready to go back to eight?

PARTICIPANT: Not yet.

VICE CHAIR THERNSTROM: Not yet.

Okay. Ten reads, "To avoid unnecessary barriers to voting, any required photo identification should be provided without cost to the indigent, and active outreach should be made to register and qualify those who are currently without such identification."

Please put a comma after --

COMMISSIONER HERIOT: Yeah, there should have been a comma here.

VICE CHAIR THERNSTROM: Yeah, you're missing a comma after "indigent."

"Those without photo identification should be allowed to vote by provisional ballot."

So we are leaving out any recommendation with respect to what happens after a provisional ballot is cast in terms of verifying the identification of the voter.

COMMISSIONER HERIOT: Yeah, we are leaving options to the state.

VICE CHAIR THERNSTROM: Right.
Discussions -- well, first place, do I have a motion on that?

COMMISSIONER KIRSANOW: So moved.

VICE CHAIR THERNSTROM: And a second?

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Okay. Discussion.

(No response.)

VICE CHAIR THERNSTROM: No discussion.

I'll call the question. All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Melendez and Yaki?

COMMISSIONER YAKI: Abstain.

VICE CHAIR THERNSTROM: Aye. Okay. We've got a unanimous vote on ten.

COMMISSIONER YAKI: What?

COMMISSIONER HERIOT: He just abstained.

VICE CHAIR THERNSTROM: Oh, you abstained.

I'm sorry. Got to get that voice back. Who has abstained? Commissioners Yaki and Melendez both?

COMMISSIONER YAKI: Yaki. Yaki abstains.

COMMISSIONER MELENDEZ: Melendez approves.

It's only.

VICE CHAIR THERNSTROM: Melendez approves.
Okay.

Recommendation 11. "To address the special challenges posed by absentee ballots, states should adopt requirements that voters' signatures on the absentee ballots be matched with a digitalized version of the signature maintained by election officials."

COMMISSIONER GAZIANO: So moved.

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Discussion.

(No response.)

VICE CHAIR THERNSTROM: All right. Call your question. All in favor.

(Chorus of ayes.)

COMMISSIONER YAKI: Abstain.

COMMISSIONER MELENDEZ: Abstain, Melendez.

VICE CHAIR THERNSTROM: Abstain Melendez and Yaki, and otherwise everyone has approved.

So we are back to eight -- seven. I'm sorry, seven.

COMMISSIONER TAYLOR: I'll take one more stab at it.

COMMISSIONER GAZIANO: I have a possible friendly amendment to the friendly amendment when you're done.
COMMISSIONER TAYLOR: Well, I have not been able to come up with a specific example of what we want to recommend or should recommend to Congress they should do in the way of preventing voter fraud. The only thing I could think of would be to add the phrase at the end of the current sentence, which in my proposal was the second sentence. Commissioner Yaki, it's the sentence that starts with "in order to prevent systemic voter intimidation," but then to add so long as Congress also included the specific expansion of or efforts to eliminate voter fraud.

COMMISSIONER HERIOT: We're not going to use "systemic," are we? Just in order to prevent voter intimidation.

COMMISSIONER TAYLOR: Yeah. We shouldn't have it limited to simply systemic voter.

COMMISSIONER HERIOT: Yeah. We shouldn't suggest that we believe it is systemic.

COMMISSIONER TAYLOR: Right.

COMMISSIONER GAZIANO: Can I offer a suggestion? Again, one of my concerns with including that phrase is that it isn't limited to Congress' authority over federal elections. It sweeps broader than that.

I'm also just a little bit uncomfortable
telling Congress what it should do with regard to, you
know, this specific provision. What about this for
the second and third, to replace the second and third
sentences? "Congress should pass legislation to
strengthen or expand prohibitions against voter
confusion, intimidation, and voter fraud in federal
elections," period.

VICE CHAIR THERNSTROM: I don't think you
can voter confusion is something that you can
prohibit.

COMMISSIONER GAZIANO: Just to strengthen
the --

COMMISSIONER YAKI: Karl Rove would be out
of a job.

(Laughter.)

COMMISSIONER GAZIANO: Well, let me put it
this way. I think it's clear that Congress' responsibility wouldn't be to make sure that everyone
has perfect clarity, but to create prohibitions --
well, I don't know. Maybe someone could help me with the language -- someone intentionally trying to create confusion, intimidate or engage in fraud in federal elections.

VICE CHAIR THERNSTROM: That's fine.

COMMISSIONER GAZIANO: But just make it a
little bit more generic, that those are the three subjects that we are concerned about that we think Congress actually needs to do something on.

So this is a positive statement. We really think legislation is necessary. Legislation is necessary in all of these areas, without getting so specific as to what Congress needs to do in one area versus another area.

COMMISSIONER TAYLOR: I would accept that friendly amendment, and even to make it closer to the original text, if we started with "in order to prevent voter intimidation and voter fraud," comma, and then we add the friendly amendment.

COMMISSIONER YAKI: I have a question.

VICE CHAIR THERNSTROM: Please go ahead.

COMMISSIONER YAKI: I do not understand the '65 Voting Rights Act to be confined only to federal elections.

COMMISSIONER GAZIANO: I'm not saying that that isn't -- that will, of course, still be in place, but where I think we want additional legislation is specifically to cover federal. I don't necessarily want to have third grade class presidents covered, for one thing.

COMMISSIONER YAKI: No, but how about
those elections covered by the Federal Voting Rights?

VICE CHAIR THERNSTROM: The Federal Voting Rights Act covers all elections, including to water boards or, you know, local school boards or county councils on up the ladder.

COMMISSIONER YAKI: But it does not count whether you're going to be vice president of your third grade class.

VICE CHAIR THERNSTROM: It does not.

COMMISSIONER GAZIANO: But it has other limitations in them, certain jurisdictional limits that I admit I don't fully understand, but I'm not --

VICE CHAIR THERNSTROM: Well, it does and it doesn't.

COMMISSIONER GAZIANO: -- and I'm not saying that I certainly disagree with those, but what's needed, the additional legislation that's needed --

COMMISSIONER YAKI: I mean some of the most egregious examples of voter intimidation have been, in violations of the Voting Rights Act, have been at the local school board levels. I'm not going to be one to limit what we're talking about to simply national or federal elections.

COMMISSIONER TAYLOR: Well, in this regard
if we simply make a recommendation to Congress that Congress should do X, implicit in that recommendation is that they should act within their authority.

VICE CHAIR THERNSTROM: I can -- yeah.

COMMISSIONER TAYLOR: I don't think we have to go any --

VICE CHAIR THERNSTROM: Right.

COMMISSIONER TAYLOR: I don't think we have to go beyond that point to make it specific. No one is going to --

VICE CHAIR THERNSTROM: But, Michael, I'm completely confused about your point. The Voting Rights Act, we're not recommending here that the Voting Rights Act be amended in any way, and the Voting Right Act already empowers the Justice Department and private plaintiffs to go after violations or purported violations of either Section 5 or Section 2 of the statute.

So, I mean, this is not intended to amend the Voting Rights Act. That's --

COMMISSIONER GAZIANO: Sure, and again, I don't -- maybe it's not necessary to put that in the federal election, but let me just explain. You know, I think it's an improvement to say to strengthen or expand because I actually think some of the voter
intimidation and confusion attempts are certainly already covered by federal law, and that's a hot debate. I don't think we should be saying that they're not already covered.

COMMISSIONER HERIOT: The Department of Justice is already prosecuting people for voter intimidation under a statute that they believe covers it, but doesn't clarify it perhaps as much as it ought to be. So we don't want to suggest by our recommendations that we think current law does not cover voter intimidation because we don't want to interfere with these prosecutions.

VICE CHAIR THERNSTROM: The Fifteenth Amendment also covers voting intimidation.

COMMISSIONER HERIOT: But it's not a criminal law.

VICE CHAIR THERNSTROM: No.

COMMISSIONER HERIOT: We don't want to suggest the statutes do not currently cover this. That's not to say they can't be improved.

COMMISSIONER TAYLOR: Can I try this?

COMMISSIONER GAZIANO: Sure.

COMMISSIONER TAYLOR: Stick with me, Commissioner Gaziano, if you would.

First sentence, "there are a number of
proposals currently in Congress that purport to deal with the problem of voter intimidation or voter access," period.

COMMISIONER HERIOT: Or voter fraud.

COMMISIONER TAYLOR: "Or voter fraud," period. That would be the first sentence.

The second sentence would begin, "In order to prevent voter intimidation and voter fraud," comma -- Commissioner Gaziano, I do not have your language in front of me, but then we would insert --

COMMISIONER GAZIANO: "Congress should pass legislation to strengthen or clarify prohibitions against intentional voter confusion, intimidation and voter fraud," period.

COMMISIONER TAYLOR: Period. Madam Chair, are you with me?

VICE CHAIR THERNSTROM: Again, "clarify prohibitions against intentional voter"?

COMMISIONER GAZIANO: Confusion.

VICE CHAIR THERNSTROM: Confusion.

COMMISIONER GAZIANO: Intimidation -- you can't prevent the unintended confusion.

COMMISIONER TAYLOR: Right.

COMMISIONER GAZIANO: But "the intentional confusion, intimidation and voter fraud,"
COMMISSIONER YAKI: You really have put Karl Rove out of a job.

VICE CHAIR THERNSTROM: We will ignore that.

COMMISSIONER TAYLOR: Then we go to our final sentence. "Any legislative proposals that treat voter intimidation and access should also address the real and documented problem of voter fraud (or vice versa) if they are to have the intended effect of promoting electoral reform and restoring confidence in the electoral process," period.

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Can we just say either voter intimidation or fraud rather than the vice versa?

COMMISSIONER TAYLOR: That sounds grammatically correct. Does that capture "or vice versa" though? Does it necessarily make the reader go back and reverse the two? It's a question.

COMMISSIONER HERIOT: If you read it as you condition it, it doesn't.

VICE CHAIR THERNSTROM: It doesn't quite do that.

COMMISSIONER GAZIANO: Can I make one
amendment to my suggested amendment to your amendment?

VICE CHAIR THERNSTROM: Oh, no. Wait a minute.

COMMISSIONER GAZIANO: Replace "deception" for "confusion." "Intentional deception."

VICE CHAIR THERNSTROM: I like that better.

COMMISSIONER TAYLOR: That's better.

VICE CHAIR THERNSTROM: It is better.

COMMISSIONER HERIOT: That's right.

COMMISSIONER TAYLOR: How do we put in the concept of vice versa so that it actually reads that way? I know it's a little clumsy.

COMMISSIONER HERIOT: Any legislative proposal should treat both.

COMMISSIONER KIRSANOW: In tandem.

COMMISSIONER TAYLOR: In tandem?

VICE CHAIR THERNSTROM: Yeah, that's fine. Both in tandem. Okay. Shall we read this? I actually like it a lot. Shall we read it?

And, Commissioner Yaki, it is an attempt to meet your objections, but, you know, that doesn't mean, of course, you're going to sign on.

COMMISSIONER TAYLOR: Let me read it again for clarification before we all vote.
VICE CHAIR THERNSTROM: Yes.

COMMISSIONER TAYLOR: All right. Here we go.

"There are a number of proposals currently in Congress" --

VICE CHAIR THERNSTROM: "Pending in Congress"; is that correct?

COMMISSIONER TAYLOR: "Currently pending in Congress."

VICE CHAIR THERNSTROM: Right.

COMMISSIONER TAYLOR: That's "pending in Congress."

"That purport to deal with the problem of voter intimidation or voter fraud. In order to prevent voter intimidation or voter fraud," comma, "Congress" --

COMMISSIONER GAZIANO: "Should pass legislation to strengthen or improve prohibitions against intentional voter deception, intimidation, and voter fraud."

COMMISSIONER TAYLOR: Period. "Any legislative proposals that treat voter intimidation and access should also address" let's say "the tandem problem of voter fraud."

COMMISSIONER HERIOT: That doesn't sound
COMMISSIONER GAZIANO: Doesn't sound good?

COMMISSIONER HERIOT: No.

VICE CHAIR THERNSTROM: You had a better.

COMMISSIONER HERIOT: Yeah. "Any legislative proposal should treat both problems in tandem."

One of the problems we have right now is that Todd's language brings up this notion of intentional voter deception as if it's not a subset of voter intimidation. So that makes it sound like yet a third problem.

COMMISSIONER GAZIANO: My only reason for doing so was to try to capture some of what I thought Mr. Melendez and --

COMMISSIONER HERIOT: Yeah, but why don't we just make it clear that --

COMMISSIONER GAZIANO: -- Yaki --

COMMISSIONER HERIOT: -- is a subset by saying, "To strengthen or improve prohibitions on voter intimidation, including intentional voter deception"?

COMMISSIONER GAZIANO: That's fine.

COMMISSIONER HERIOT: "And voter fraud."
COMMISSIONER TAYLOR: That's fine.

COMMISSIONER HERIOT: Because that way that makes it clear that that's part of voter intimidation and not a separate category because that way then in the last sentence if we talk about both, it's clear what the both are. We've only got one and two, intimidation and fraud. Any legislative proposal should treat both problems in tandem if the proposals are to have the intended effect of promoting electoral reform and restoring confidence in the electoral process.

VICE CHAIR THERNSTROM: I like it.

COMMISSIONER TAYLOR: Do you have a recommendation on the last sentence?

COMMISSIONER KIRSANOW: No, I think that's the last sentence right there.

VICE CHAIR THERNSTROM: Does anybody need it read again?

COMMISSIONER MELENDEZ: Just the third sentence, the third paragraph or whatever it is. Could you read that again?

COMMISSIONER HERIOT: Third sentence, that's nine. I hope I can do it again. "Any legislative proposal should treat both problems in tandem if those proposals are to have the intended
effect of promoting electoral reform and restoring confidence in the electoral process."

VICE CHAIR THERNSTROM: All right. Can we call the question on this? In the first place it has to be in a motion.

COMMISSIONER GAZIANO: I thought that was a friendly amendment to my original amendment, and I accept it.

COMMISSIONER HERIOT: Second if there was no second.

VICE CHAIR THERNSTROM: Right, okay.

COMMISSIONER MELENDEZ: I want discussion on this.

VICE CHAIR THERNSTROM: Okay. Go ahead.

COMMISSIONER MELENDEZ: Melendez here. Really what has happened is the original language has totally disappeared. I was in better shape when I was surrounded by something preceding the original language and then Ashley adding something after the original language, but now it has completely disappeared to something that's totally foreign. So I'm going to support that.

VICE CHAIR THERNSTROM: What is foreign about that?

COMMISSIONER MELENDEZ: I wanted to have
the original language and basically if we wanted to
add something to it, above it or below it, then that
was fine, but now it's --

VICE CHAIR THERNSTROM: What has been
lost?

COMMISSIONER MELENDEZ: It's basically
just really broadened out, and my opinion is Congress
doesn't really do anything when things are really
broad. You have to be really specific as to what's
actually happening, you know, in real life, on the
ground, at the voting places where we hear constantly
that people are told to go to the wrong voting
station, and that's still happening today. I thought
that's what the Commission was all about.

We send something in broad and it's
probably going to have no effect because everybody
knows that we're dealing with intimidation and voter
fraud. So you just as well not send anything in.

COMMISSIONER GAZIANO: Commissioner
Melendez, if I could just reiterate one point I made
earlier, as it was originally phrased, it suggests
that Congress should pass this legislation. A normal
reader would think that such a law doesn't already
exist, and I think such a law already exists, and I
don't want to undermine the existing prosecutions
because I don't know that Congress is really going to get this done, despite our powerful recommendations.

But I don't want someone to be able to sort of argue in court as a defense to a prosecution that the U.S. Commission on Civil Rights doesn't believe that there is such legislation.

So that's why to partially meet what I understood to be your and Commissioner Yaki's concerns, I, you know, wanted that word "voter deception" put in there. I think people in Congress know what that means. I hope they do, but I don't want to pass something that implies that there isn't already some legislation that covers that.

It can be improved upon. It can be clarified.

VICE CHAIR THERNSTROM: It's actually -- I mean, the original legislation is covered by Section 2 of the Voting Rights Act.

COMMISSIONER TAYLOR: This is Commissioner Taylor. In many ways, I think this new language strengthens, I think, the point of the language previously offered because it broadens the category of intentionally deceiving someone so that, you know, we list these specific incidents, but I think by listing this and telling Congress these are the specific items
they should make unlawful, we limit what we're suggesting, and I think it's important to broaden that category with respect to voter deception generally. Any actions taken to deceive would be included in this new language.

COMMISSIONER YAKI: This is Commissioner Yaki.

And while I understand Commissioner Taylor's sentiment and intent, to me the problem is one of context, and the context extends back to what I felt was the imbalance of the briefing panel itself and the imbalance in the recommendations. It would be one thing to say that we have improved Recommendation 7 in the context of a holistic recommendation on voter intimidation and voter fraud. It's quite another when it's surrounded by a number of pat recommendations that are strictly designed at reinforcing the need for bait or national identity cards for elections.

And as much as people want to say we're trying to ensure that only eligible people vote for elections, the real fact of the matter is that the real problem in our voting system nowadays is voter deception, is voter intimidation, and even the record of the hearing suggests that despite the concern that there could be widespread problems with dead people or
other people mastering and other people coming out to vote, the fact of the matter is that when you look at DOJ prosecutions, when you look at state Attorney General prosecutions, when you look at local DA prosecutions, the incidences of voter fraud are extremely low, whereas the documented incidences and the lack of resources that I allege does exist on voter deception and voter intimidation is very real, is targeted at the communities that this Commission was empowered to protect, namely, communities of color, minorities, the poor.

And we have a situation here where this is a giant, big valentine to the national ID folks. So you know, what was a good, stand-alone recommendation on the one item that I believe there is a real record of abuse and a real record of prosecutions that gets diminished while voter fraud gets conflated upwards when it may or may not deserve it, and certainly based on the record it may not, notwithstanding the Supreme Court's decision that you can have this kind of idea, but the practical effect is that that's not what the real problem is. That was never what the real problem was, and that's certainly not what the briefing ended up addressing.

And that is my concern about this entire
report, this entire briefing, and let's just call the
question and get this thing over with so we can get on
with our life.

VICE CHAIR THERNSTROM: We're calling the
question and invite you, of course, to write a dissent
to this report, and I would hope you would keep in
mind in doing so that the Voting Rights Act does cover
voter intimidation, and your argument is really not
with a lack of congressional authority in this sphere.

But I'm calling the question. All in
favor of the last reiteration of this finding, please
indicate by saying aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: And --

COMMISSIONER YAKI: No. Commissioner Yaki
votes no.

VICE CHAIR THERNSTROM: And Melendez?

COMMISSIONER MELENDEZ: Opposed.

VICE CHAIR THERNSTROM: Okay. So we have
two opposed and otherwise a unanimous approval.

We've got just left here nothing more -- I
know everybody wants to adjourn -- the motion to
approve the Texas State Advisory Committee nominee.

COMMISSIONER YAKI: Point of order.

VICE CHAIR THERNSTROM: Yeah.
COMMISSIONER YAKI: I would like to move the due date for dissent back at least a week because it falls upon I think the day before the Memorial Day holiday.

VICE CHAIR THERNSTROM: It's now on May 23rd; is that correct?

COMMISSIONER GAZIANO: Back to the future, back to the past? Which way back?

VICE CHAIR THERNSTROM: You want to have a longer time --

COMMISSIONER YAKI: Yes.

VICE CHAIR THERNSTROM: -- in which to respond. Name a date.

COMMISSIONER YAKI: I'm pulling up my calendar. I like June 4th.

VICE CHAIR THERNSTROM: Is that acceptable to everybody?

COMMISSIONER YAKI: No, no, no. June 5th. What am I talking about? June 3rd is an election day. June 5th.

VICE CHAIR THERNSTROM: June what?

COMMISSIONER YAKI: Fifth.

VICE CHAIR THERNSTROM: Five. If that is acceptable to everybody, let us make it June 5th.

Let's move on to the last item.
VII. STATE ADVISORY COMMITTEE ISSUES,

APPOINTMENT TO TEXAS SAC

At the March 7th, 2008 business meeting, the question was raised as to whether Texas SAC nominee Professor Lino Graglia was eligible for appointment on account of his previous service on the Texas SAC. The Commissioners agreed that in the event he was ineligible to serve because of term limits, they would consider an additional nominee in order to maintain the balance on the SAC. Since Professor Graglia has served on the Texas SAC from '85 to '98, he is ineligible under the ten-year limit memorialized in A-1 5-9.

On April 16th, Dr. Lerner circulated a memo to all Commissioners recommending Professor Glen Thurow as the replacement candidate for appointment on the SAC.

May I have a motion to approve Professor Thurow appointment to the Texas SAC?

COMMISSIONER KIRSANOW: So moved.

VICE CHAIR THERNSTROM: And a second?

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Any discussion?

(No response.)

VICE CHAIR THERNSTROM: All in favor say
aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM:  Opposed?

Abstentions?

COMMISSIONER YAKI:  Opposed.

COMMISSIONER MELENDEZ:  Opposed, Melendez.

VICE CHAIR THERNSTROM:  Melendez is opposed.

COMMISSIONER YAKI:  Opposed, Yaki.

VICE CHAIR THERNSTROM:  Opposed, Yaki.

COMMISSIONER YAKI:  Can we make a firm decision that we're going to combine the briefing and our business meeting on the 6th? Can we just do it now?

COMMISSIONER GAZIANO:  Without the Chair being on the phone, I would suggest we --

COMMISSIONER YAKI:  -- impinge on having to make this decision now.

COMMISSIONER HERIOT:  We didn't hear you.

COMMISSIONER GAZIANO:  Speak up please.

Speak up please.

COMMISSIONER YAKI:  I would like us to make a decision now on whether we're going to consolidate the business meeting and the briefing all on June 6th.
COMMISSIONER GAZIANO: Since the Chairman isn't here and he --

VICE CHAIR THERNSTROM: The Chair prefers that evidently.

COMMISSIONER GAZIANO: The Chair prefers which?

VICE CHAIR THERNSTROM: To consolidate the two on the 6th.

COMMISSIONER HERIOT: So an all day meeting?

VICE CHAIR THERNSTROM: Yeah.

COMMISSIONER MELENDEZ: So the West Coast people would just travel back probably on Saturday?

VICE CHAIR THERNSTROM: Yes, that's correct.

COMMISSIONER MELENDEZ: All right.

COMMISSIONER YAKI: Because they canceled most of the 7:30 flights.

VICE CHAIR THERNSTROM: You'd have to stay another night. That's true, but I thought that was what you were just proposing.

COMMISSIONER MELENDEZ: Yes.

VICE CHAIR THERNSTROM: All right. So you're on board with it.

COMMISSIONER MELENDEZ: I'm on board.
VICE CHAIR THERNSTROM: Has anybody got any objection to that?

(No response.)

VICE CHAIR THERNSTROM: So it's done.

COMMISSIONER YAKI: Okay. Thank you.

VICE CHAIR THERNSTROM: Anything else before we adjourn?

(No response.)

VICE CHAIR THERNSTROM: We are adjourned.

(Whereupon, at 12:56 p.m., the Commission meeting was concluded.)