U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY

JUNE 1, 2007

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WASHINGTON, D.C.

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The Meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 11:30 a.m., Abigail Thernstrom, Vice Chairman, presiding.

PRESENT:

ABIGAIL THERNSTROM, VICE CHAIRMAN
JENNIFER C. BRACERAS, COMMISSIONER (via telephone)
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER

KENNETH L. MARCUS, STAFF DIRECTOR
STAFF PRESENT:

TYRO BEATTY, Director, Human Resources Division
DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
TERESA BROOKS
CHRISTOPHER BYRNES, Attorney Advisor to the Office
   of the Staff Director and Acting Deputy
   General Counsel, OGC
DEBRA CARR, Associate Deputy Staff Director, OSD
RANITA CARTER
PAMELA A. DUNSTON, Chief, ASCD
BARBARA FONTANA
LATRICE FOSHEE
MAHA JWEIED
SOCK FOON MacDOUGALL
EMMA MONROIG, Solicitor/Parliamentarian
KARA SILVERSTEIN
KIMBERLY TOLHURST
AUDREY WRIGHT
MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
LISA NEUDER
RICHARD SCHMELCHEL
I-N-D-E-X

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VICE CHAIR THERNSTROM: Good morning. Will the meeting come to order? This is a meeting of the U.S. Commission on Civil Rights at 624 Ninth Street, Room 540, Washington, D.C. All commissioners are physically present, except Commissioner Braceras, who will participate by phone, and Chairman Reynolds, who will not be participating today.

This morning we will have a brief meeting regarding the re-chartering of Virginia and Michigan State Advisory Committees. And afterwards, we will hold a briefing on School Choice, the Blaine Amendments, and anti-Catholicism.

I. Approval of Agenda

VICE CHAIR THERNSTROM: First item on the agenda is, our first item is approval of the agenda. Can I get a motion to approve the agenda?

COMMISSIONER KIRSANOW: So moved.

COMMISSIONER HERIOT: Could I make a motion to amend the agenda? Would that come now or later?

VICE CHAIR THERNSTROM: It comes now.

COMMISSIONER HERIOT: Okay. Because I would like to move to put the affirmative action in...
law schools briefing report on the agenda so that we can extend the time for it to be published on account of an ethics issue that I need to get resolved. I am employed by University, and it occurred to me last week as I was drafting my concurring remarks that that may have something to do with whether or not I'm allowed to participate in the matter, I guess given a memo that I think addresses part of my question. But I need to resolve whether or not I can participate before.

VICE CHAIR THERNSTROM: So your motion is simply to, your motion is to postpone?

COMMISSIONER HERIOT: Postpone publication

VICE CHAIR THERNSTROM: Postpone publication.

COMMISSIONER HERIOT: -- on the report so we would have to have an amendment intended to include that.

VICE CHAIR THERNSTROM: And you're moving to amend the agenda?

COMMISSIONER TAYLOR: I'll second the motion to amend the agenda and further suggest that we have this discussion after the Staff Director's Report but before item five.
VICE CHAIR THERNSTROM: Okay. So that's a further amendment of the agenda. It's a re-ordering of items on the agenda. Any further discussion? Okay. Any further discussion? All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed?

(No response.)

VICE CHAIR THERNSTROM: Let the record show --

COMMISSIONER YAKI: Abstention. I abstain.

VICE CHAIR THERNSTROM: Okay. Let the record show that Commissioner Yaki has abstained and, otherwise, it was unanimous. Jennifer, did you vote on that?

COMMISSIONER BRACERAS: Yes, I voted with the majority.

II. Approval of Minutes of May 11 Meeting

VICE CHAIR THERNSTROM: Okay. Second item, approval of the minutes of May 11th, 2007. Can I get a motion?

COMMISSIONER TAYLOR: So moved.

VICE CHAIR THERNSTROM: Very good. Second?

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Any discussion?
(No response.)

VICE CHAIR THERNSTROM: Hearing none, all in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Any opposed?

(No response.)

VICE CHAIR THERNSTROM: It's approved unanimously.

III. Announcements

VICE CHAIR THERNSTROM: I have one announcement before we begin. Last week, the nation lost an important figure in the civil rights movement, Marion King Jackson died May 22nd at the age of 74. She worked in Atlanta for Maynard Jackson and Andrew Young Administrations. In 1962, in an incident that came to echo through the campaign to desegregate the south, Ms. King Jackson was knocked down, kicked in the stomach, when she went to Albany in July 1962 to deliver food and supplies to her husband, Slater King, leader of the Albany movements. Later, King had been jailed, along with 113 civil rights activists, for staging protests against the city's segregated public facilities and businesses. King Jackson was six months pregnant. She lost consciousness, later lost her child. The next day, hundreds marched through the
streets of Albany, Georgia in protest. And today we recognize the life of Ms. Jackson and her lasting legacy on the civil rights movement.

And with that, we move on to the Staff Director's Report. Mr. Staff Director, do you have anything to report?

IV. Staff Director's Report

STAFF DIRECTOR MARCUS: Thank you, Madame Vice Chair. I'm aware that the Commission has tried to streamline the business meeting in order to get as quickly as possible to today's briefing and that our witnesses are here. There is one matter that I think would be worth bringing to the attention of Commissioners, and it is that we are contemplating bringing on as a consultant an expert in process improvement matters to assist with process improvement analysis and implementation at the Commission, particularly with respect to national office projects and state advisory committee chartering. The consultant would be an expert in improvement methodologies and process mapping, such as Lean and Six Sigma methodologies. We would want someone who might be an expert consultant with prior experience working with public sector entities, reviewing agency processes, making concrete recommendations for
improvement, and implementing recommendations and evaluating the results. This would be a part of a strategy to improve quality and timeliness of Commission reports and state advisory committee re-chartering. That's the one point I wanted to bring to people's attention.

COMMISSIONER YAKI: Who is this consultant that we're talking about?

STAFF DIRECTOR MARCUS: We would have an open competition, and we would see who bids. I am aware that there are a number of consulting firms who are in this business. Some of them are large major consulting firms, and some of them are specialists in process improvement. We would simply advertise it and see who the best bidder is.

COMMISSIONER YAKI: And where would we get the funding for this from?

STAFF DIRECTOR MARCUS: From our current operations. We would essentially be funding it out of the savings from attrition. We lost some staff members, and it's taken a little longer than we might have expected to fill some positions, which gives us a little bit of extra money.

VICE CHAIR THERNSTROM: Commissioner Yaki, you got anything further?
COMMISSIONER YAKI: Not on that topic.

VICE CHAIR THERNSTROM: Well, I realize you might have a few things to say on other topics, but on that topic that's it?

COMMISSIONER YAKI: Yes.

VICE CHAIR THERNSTROM: Anybody else got any questions about the Staff Director's Report? If not, okay.

VICE CHAIR THERNSTROM: So I now need a motion, the publication of the briefing report on affirmative action in American law schools. It's a motion to postpone --

COMMISSIONER HERIOT: Motion to postpone pending resolution of the ethical issue.

COMMISSIONER MELENDEZ: I have a couple of questions --

VICE CHAIR THERNSTROM: Yes, Commissioner Melendez?

COMMISSIONER MELENDEZ: -- on the Staff Director's Report.

VICE CHAIR THERNSTROM: Wait a minute. Where were you just now?

COMMISSIONER MELENDEZ: Well, I didn't know you were going to close out the --

COMMISSIONER YAKI: Actually, and I
actually thought it was just one topic of the Staff Director's Report, so I didn't know --

VICE CHAIR THERNSTROM: I see. Okay. All right. We'll go back to it.

COMMISSIONER MELENDEZ: Okay. I had a question as to, I know that we're having a number of vacancies within the office, and I didn't see it in the -- I know that in your last report we talked about, I mean you had basically said that there are a number of vacancies: Attorney Advisor; Office of Staff Director's Chief Budget and Financing; two staff assistants for Office of Management. Could you just give us a rundown as to the vacancies and whether or not these we're filling vacant positions or are we adding actually brand new positions to the office here? It relates to actually what's happening in general to even the regions as to number of vacancies in regions and the whole process of filling all these different positions both in the office here and in the regions. Could you kind of give us some insight as to what you're actually doing?

STAFF DIRECTOR MARCUS: I'll give it a try. It's a big topic. The Commissioners are probably aware that we currently have and for quite some time have had a large number of vacancies. I
believe that the formal number of vacancies in the
Commission is somewhere in the vicinity, and, perhaps,
if we had someone from Office of Management, they
might help me, but I believe it's in the vicinity of
30 or so, which is to say we have slightly greater
than 40, somewhere between 40 and 50 full-time
employees. And I believe that we have in the vicinity
of 70-some odd positions. So we have vacancies, I
believe, and the Director of HR can correct me if I've
gotten those numbers wrong, something in the vicinity
of 30-odd vacancies. That's been true for some number
of years as the Commission's size has shrunk.

We do have some positions that are high-
level important positions that we are trying to fill.
I'll try to give you a few examples. I believe,
Commissioner Melendez, you mentioned the vacancy in
the Office of the Staff Director. That's the position
that was filled last time, and I introduced the new
Attorney Advisor, Kara Silverstein. We have a
relatively new vacancy for administrative assistant
or, I forget the title, secretary in the Office of
Management to replace someone who left the agency
about a month or two ago.

But beyond that, there are a number of
them in the regional structure which are very
important. We have had for quite some time vacancies in the regional director positions for Kansas City and Los Angeles, and we more recently have vacancies for the Chicago and Kansas City offices. I developed a plan for dealing with it, which I believe is set out in a memo I issued on May 9 describing positions in the regional offices. But, essentially, what I've been planning to do is to fill the position of Regional Programs Coordination Unit Chief, which has been absent for quite some time, and to try to fill the four regional director positions at a level which is higher than the Civil Rights Analyst position of 13 which we've had but lower than the 50. In other words, to get GS-14 for those slots. And in some cases, they may provide promotion opportunities for existing employees within the Agency.

We also have had a couple of secretarial vacancies within the regional structure which has provided an opportunity for promotional opportunities for a couple of internal secretaries. One secretary was recently promoted in Los Angeles, and there is a potential for promotion within the Kansas City office.

COMMISSIONER YAKI: Promoted from what to what in LA?

STAFF DIRECTOR MARCUS: In Los Angeles?
COMMISSIONER YAKI: Yes.

STAFF DIRECTOR MARCUS: We had for some time both a junior secretary and a senior secretary, and I believe the Junior Secretary was at a GS-5 and a senior at a GS-7. The Senior Secretary, GS-7, retired after many years of service. And as a result, the GS-5 secretary was asked to do a higher level and greater volume of work than she had been doing previously and a greater volume of work and higher level than is usually expected of a GS-5. We created a promotion opportunity to a, I believe it was a GS-6 to reflect the higher level of work that she had been doing. She applied for the position and was accepted. She is now at a GS-6 level.

Similarly, we had a GS-7 and a GS-5 from Kansas City. The GS-7 secretary retired. The GS-5 is seeking a promotion to a -- I'm sorry, let me retract that last sentence. There is a position available for competition at a GS-6 level in Kansas City.

COMMISSIONER YAKI: What were the previous classifications for the Regional Director positions in Los Angeles, Kansas City, and Denver?

STAFF DIRECTOR MARCUS: There were civil service positions rather than Schedule A Attorney positions, if that's what you're asking.
COMMISSIONER YAKI: Yes.

STAFF DIRECTOR MARCUS: If your question is more technical, I'm going to need some help with it.

COMMISSIONER YAKI: Well, I mean, help me with the understanding of the word excepted, E-X-C-E-P-T-E-D, when you talk about positions.

STAFF DIRECTOR MARCUS: That's a term that usually refers to certain professionals that are hired into federal government, including attorneys.

COMMISSIONER YAKI: And is that separate and apart from civil service standard filling of a position?

STAFF DIRECTOR MARCUS: The rules are a little bit different, yes.

COMMISSIONER YAKI: Why are we changing those classifications for those Regional Director positions?

STAFF DIRECTOR MARCUS: Well, that's a good question. In my experience -- well, let me give a little context for those who are not familiar. In the past, we have opened the positions only as a civil service position. More recently, we are advertising them as a civil service or, alternatively, an attorney position. In my experience prior to joining the
Agency, it is, it may be easier to attract a greater range of applicants, including attorneys, if you advertise a position in both ways. There are some attorneys who may be qualified for a position but who will be less likely to apply for it if it is not advertised as an attorney position.

For instance, at the Department of Education, what we found was that, for regional director positions, when we advertised not only as a civil service position but also as a Schedule A or attorney position, we found we could encourage a greater number of attorneys, as well as non-attorneys, to apply for the position and then simply select the best qualified applicant. What I found is that there were many equal opportunity specialists who had many important skills to bring to that agency in the regional director position, and some of them were excellent directors. But there were also many attorneys who could bring to bear legal analysis and increase the legal quality of the office. And that by advertising positions in both ways, we could try to increase the range of people applying and simply to select the best person. That's essentially the technique we've been using in the newly-opened or recently-advertised regional director positions. It
doesn't mean that we are preferring either to get attorneys or non-attorneys, it means that we are trying to encourage everyone who is qualified to apply.

COMMISSIONER YAKI: But, historically, how those positions have been advertised in vacancies for civil service only, or have they also been advertised previously with excepted attorney positions as well?

STAFF DIRECTOR MARCUS: To the best of my knowledge, it's been civil service only.

VICE CHAIR THERNSTROM: Why isn't it an improvement in review to expand the pool?

COMMISSIONER YAKI: I think that for an agency that has morale issues, such as ours, the ability to seek promotion from within or seek qualified people from other agencies in similar positions to come over and take over these responsibilities is, I think, preferable to wholesale opening up and bringing in new people who may not have the same kind of background, experience, or institutional memory for this agency, which I think has lost a lot of institutional memory in the past two years that I've been on the Commission. And this kind of a change is surprising to me and one that causes me some concern and why I'm asking the questions.
VICE CHAIR THERNSTROM: Yes. I mean, I frankly don't understand why the first criterion isn't getting the best person for the job and that maybe somebody with what you call an institutional memory, it may not. I mean --

COMMISSIONER YAKI: Maybe I just have a preference for the idea that positions that historically have been within the civil service remain in the civil service. And that's probably just a philosophical point that I have on this, but I also don't believe that absent the right kind of outreach and recruitment that you certainly can't find someone in that category, rather than opening the door up to the outside.

VICE CHAIR THERNSTROM: Yes, well, should we move on or somebody else got something to say?

COMMISSIONER MELENDEZ: I think the only point maybe Michael is making, including myself, is that if we are changed from, you know, going in a different direction or even expanding a process which we've had in place for a number of years of civil servants, I think that before we go that route we should talk about it within the Commission and really talk about the rationale. The issue now is that the way we're putting out the applications or soliciting
for people to fill these positions has already been put in effect and it's already been broadcast that we're trying to get applicants both ways. But I think that if we're going to change from here on out that we should talk about it as far as the rationale, what we're doing now after the fact. And I think that's the only point we're making is that we should, if we're going to deviate from standing practice, we should at least know the rationale behind it, and that's all we're saying.

COMMISSIONER YAKI: And as someone who in his first two or three months on the job here deliberately made a decision not to request a special assistant, along with others, for the specific purpose of ensuring that we had the budgetary means to keep the regional offices open, I have a very special interest in what's going on with the regional offices. I'm surprised at some of the changes that are going on in terms of how they're going to be staffed and the recruitment prospect for those jobs.

VICE CHAIR THERNSTROM: Well, I mean, it would seem to me we all have exactly the same interest in that we want quality people in these jobs. And especially within a slimmed-down agency, it's important that every person we hire be of the highest
quality that we can find. I think the rationale has been stated by the Staff Director: expanding the pool. But maybe the Staff Director has something more --

COMMISSIONER YAKI: Just to let you know, in terms of that last statement that you made, Vice Chair Thernstrom, we had a little brouhaha a few months ago over the fact that whether or not, what the individual Commissioner's roles were with regard to the appropriations process. I can tell you right now that I had been contacted by members of the Appropriations Committee seeking input as to the issue of something that should normally bring cheer to everyone, which is increasing appropriations for the Agency above and beyond the President's request. But, you know, due to the various constraints of my knowledge of how we're proceeding, what we are doing, and what positions are or are not available, it's difficult for me to answer the Committee on those questions, other than to say, generally, we need more funds, we need these positions. One of the questions I have is, out of 30 positions that are vacant, how many of them have we left vacant over the years due to attrition? What are their classifications and pay grades? And I guess I'll state this for the record right now because it would be helpful for me to have
that information in order to pass it on to individuals
who may be interested in seeking to help us secure
additional appropriations for this Agency. Now, I
don't know if the Staff Director is allowed to tell me
that, though, because he's bound to support the
President's staff requests, so I'm kind of in a bind.

STAFF DIRECTOR MARCUS: That information
is certainly something we can share with you.

COMMISSIONER YAKI: Okay.

COMMISSIONER MELENDEZ: I have just one
other question. Are we providing enough time as far
as the, it sounded like we are on short time frames as
far as when these positions close for filling. Do we
have adequate time for getting the right person?
Because I think they're important positions because
they actually play into the issue of the SACs and all
those different situations. My understanding they're
real short time frames. It's almost as if, you know,
anything we can do is move somebody in-house based on
the fact that the time frames are really short for
filling these positions.

STAFF DIRECTOR MARCUS: Well, we have two
categories of positions. There are some, for
instance, Regional Director positions, where we have a
likelihood of highly-qualified internal applicants who
we've provided a standard but rather short period, I believe in the vicinity of ten days. In the Los Angeles office where we are making a more aggressive effort for external outreach because we do not have the qualified applicants, at least in Los Angeles, we are opening it for a longer period. I believe that it is announced on a rolling basis for one year and that we will check the applicant pool on a regular basis, I think about every 30 days.

VICE CHAIR THERNSTROM: Are there any more questions about the Staff Director --

COMMISSIONER MELENDEZ: Yes. I know that we had one position, and we commend Barbara Fontana, who for 20 years I believe she has been with us as a librarian. Are we planning to fill that right away, or what's the status on that position?

COMMISSIONER YAKI: That means I've got to return my books.

STAFF DIRECTOR MARCUS: That's a good question, and I have not yet decided on that. There are, essentially, two ways we can go. First, we have, as you know, two professionals in the library: Ms. Fontana, whom we will sorely miss upon her retirement; and Ms. Williamson. They're very busy. We definitely can use two people in that office. On the other hand,
we have other areas that have not been filled. For instance, congressional and public affairs. The question in my mind is whether to backfill for Ms. Fontana in the library or to backfill finally in a congressional and public affairs position that's been vacant. And I'd have to say, at this point, I'm still assessing the needs in the two areas.

COMMISSIONER YAKI: Okay. And that's going to be helpful for me to get that.

COMMISSIONER MELENDEZ: Even with the regional directors, it sounds to me, because of the short time frame for soliciting people, it almost appears that we're going to be moving in-house analysts into those positions. If that's true, then what's going to happen is we're going to have to backfill analysts, and the question would be if you move analysts into these regional directors, do we end up with the same situation as the librarians where you'll say, basically, there's no need to fill analysts, and we'll just end up with the analysts being the regional directors and then just basically cut costs or whatever. We'll have a skeleton operating regional offices with just a director that's filled by the analysts and no analyst being filled.

STAFF DIRECTOR MARCUS: Well, let me start
by saying I like to have as many people in the regional structure as we can afford to have consistent with the budget. But the budget has been very tight, and that's been a continuing challenge for us. I think it would be, at a minimum, inappropriate to comment on who potentially would fill the position before it's selected because we are adhering very scrupulously to all the federal rules on applications, including not pre-selecting individuals. So after we fill them, we can figure out who has filled the position and what the ramifications would be. But what I can say generally is that, while I would like to get as many people as possible in the regional office, it is very much the case that I have fewer people than I would like to have and that I am sure that, after we've made whatever changes are made based on the applications and appointments, that we will continue to have a very tight skeletal staffing in the regional offices.

COMMISSIONER MELENDEZ: Okay. My only point is I hate to see the regional offices suffer because we build up capacity within the central office here, and I hope that doesn't happen.

STAFF DIRECTOR MARCUS: I don't think that will happen, but there is one thing I should say in
connection with that, which is that I think that we have had some significant challenges as a result of having a vacancy in the office of the Regional Programs Coordination Unit Chief. Now, I don't know whether that's something you would consider to be national office or regional because the person actually sits in Washington headquarters but deals with regional work. It is my view that we can increase the efficiency and productivity of all of the offices best if we have someone in a full-time position.

Now, I should say that I very much respect the hard work which one of our regional directors has done on an acting basis as RPCU chief. But I do think that filling that position on a full-time basis, even though you might describe it as a headquarters national position, is going to be vitally important to the regional structure, even if it means having one fewer person in a regional office.

VICE CHAIR THERNSTROM: I am extremely concerned about the time, so if we could move on it would be --

COMMISSIONER YAKI: I just one, two quick requests. One, could I get, through electronic means, the listings for the job announcements for Regional
Director positions in Denver, if available; Los Angeles; and any other Regional Director positions for which we're advertising, number one. And number two, if, in the course of my request for data regarding personnel, if someone could also give me a budget that would cover necessary travel for regional director and regional staff to cover their areas because I've also heard that sometimes regional directors can't go anywhere because they don't have the money to do it.

STAFF DIRECTOR MARCUS: Well, we've all been constrained on travel, myself included, and the Commissioners, I'm sure, have been doing less travel than they would like to. We can certainly provide the operational plan for --

COMMISSIONER YAKI: No, I already know about our travel. I was talking about the regional office travel.

STAFF DIRECTOR MARCUS: The operating plan for regional travel I'd be happy to provide.

COMMISSIONER YAKI: Okay.

STAFF DIRECTOR MARCUS: And I think the first point you asked for was the listings or public announcements on the positions?

COMMISSIONER YAKI: No, no, no. Yes, the first one for the regional directors. And the request
before that had to do with the unfilled vacancies, what they are, what their pay grades are, what the budget authority is for them, whether they're not filled because of attrition or what have you, so that I can see what I can do to deal with it.

STAFF DIRECTOR MARCUS: That's fine.

COMMISSIONER MELENDEZ: Just a last question for this. RPCU Chief, that's here in this office?

COMMISSIONER YAKI: That's the regional programs chief, right?

STAFF DIRECTOR MARCUS: It's the head of regional programs who works within Washington headquarters, yes.

COMMISSIONER MELENDEZ: But that's going to be an in-house filling of that one, also?

STAFF DIRECTOR MARCUS: That's correct.

VICE CHAIR THERNSTROM: But that's not an also, that is the position that the Staff Director was talking about before.

COMMISSIONER MELENDEZ: Okay. So it's already filled or --

STAFF DIRECTOR MARCUS: No, no, it's been advertised internally, and my hope is that we will have qualified applicants from whom I can make a
selection. And if so, then, yes, it will be filled internally.

COMMISSIONER MELENDEZ: But we're real limited, though, aren't we, if we're just in-housing it here?

STAFF DIRECTOR MARCUS: I believe we have some very qualified people, and I'm hoping that they will apply. It's true that there are not very many for that position, but we do have some good people.

VICE CHAIR THERNSTROM: Okay. We're moving on, and I apologize for those who have come as witnesses. The morning has been a bit delayed, but let's see if we can move quickly here.

V. Publication of the Briefing Report on Affirmative Action in American Law Schools

VICE CHAIR THERNSTROM: I need a motion on the postponement of the law school, affirmative action in American law school briefing report.

COMMISSIONER HERIOT: I want to move to delay it pending resolution of my issue, so I would so move.

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

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Any discussion on
that? Yes, Commissioner Yaki?

COMMISSIONER YAKI: I'd like to amend the motion to include delaying consideration of the State Advisory Committee issues on Virginia and Michigan until that answer is brought back up.

VICE CHAIR THERNSTROM: We're going to get to the State Advisory Committee issues in a minute. Why don't you simply hold your motion at that point to delay it? Why is it part of this package?

COMMISSIONER YAKI: Because I made the motion. Do I have a second?

COMMISSIONER MELENDEZ: I'll second that.

VICE CHAIR THERNSTROM: Any discussion of the motions? They're completely different topics. I need to consult with the parliamentarian evidently. It's a completely, the parliamentarian tells me it is a completely different topic. It is not appropriate to put the two topics together in one motion. You are saying -- I mean, yes, I mean the question can be divided. The law school briefing. We're going to get to the SAC question. You, at that point, make a motion on the SAC. What would you like to do at this point? The parliamentarian has just given us advice.

COMMISSIONER YAKI: Well, if you want to make the motion that it's out of order, then do so,
but I'm not going to withdraw my amendment to the motion.

COMMISSIONER KIRSANOW: Why don't we simply vote on Michael's amendment, and then that will put forth square the severing of the two subjects.

VICE CHAIR THERNSTROM: It's out of order. I'm sorry, it's out of order. The parliamentarian informs me that it is out of order. So we are back to a motion that has been made and seconded, I believe, to postpone for two months --

COMMISSIONER HERIOT: Well, I didn't say for two months. I just said pending. This is just on my issue.

VICE CHAIR THERNSTROM: I see. I see.

Okay.

COMMISSIONER TAYLOR: I was going to move to further refine the motion that we postpone it specifically for two months, and I think that should be a sufficient amount of time to have Commissioner Heriot, have her issues addressed by the staff, and that the Commission just ask the Staff Director to set a date. I understand you collect all this information to put on the web site, and you give us another date by which all the information from Commissioners on the report should be received so it can be collected on
COMMISSIONER YAKI: Woe, woe, woe, I think
the time for collecting information from Commissioners
was closed as of midnight --

COMMISSIONER TAYLOR: Well, she hasn't
submitted anything, I know that.

COMMISSIONER YAKI: She submitted, she
submitted information --

VICE CHAIR THERNSTROM: Are you suggesting
re-opening the record for the Commissioners
themselves?

COMMISSIONER TAYLOR: Yes, I am.

VICE CHAIR THERNSTROM: Is that part of
your motion?

COMMISSIONER TAYLOR: For the
Commissioners themselves, yes.

VICE CHAIR THERNSTROM: So could you
restate the motion?

COMMISSIONER TAYLOR: I would move that,
for purposes of publication, what would be included in
the affirmative action report on American law schools,
that we reopen the record insofar as it pertains to
Commissioner submissions and that we extend the time
for publication for two months, and I think that would
give Commissioner Heriot time to have her issues
addressed.

COMMISSIONER YAKI: One clarification. If the question is whether or not Commissioner Heriot's information can be included, that's separate and apart from opening the record for additional information. If you want to open it for additional information, I have deep problems with that.

COMMISSIONER TAYLOR: By additional information, I meant comments from Commissioners.

COMMISSIONER YAKI: But we're only dealing with a possible subtraction, not addition. I find it highly irregular that we would have a time that was negotiated for comments to this report and then now we're being told that we can reopen the whole books on it and rewrite everything that we've done before. I think that, in terms of staff delay or staff time, that the question is whether or not Commissioner Heriot's piece, statements that she wrote, can be adequately resolved through this ethics issue that she has raised. That is a different question. In other words, if it can't be resolved, then they're withdrawn. If they can be resolved, they can be included. But what you're doing is opening the whole thing up to everything.

COMMISSIONER BRACERAS: Well why don't we
vote on two separate motions. Let's resolve
Commissioner Heriot's issue, and then if Commissioner
Taylor has other issues, we can raise that separately.

VICE CHAIR THERNSTROM: Well, if we do
that, I would like the first vote to be on opening the
record, once again, for Commissioner input.

COMMISSIONER HERIOT: You want to go with
Ashley's motion as a motion without mine first? Is
that --

VICE CHAIR THERNSTROM: I mean, if we're
going to separate the two, I mean there doesn't seem,
to me, any, and I'll turn to the parliamentarian
again, this does not seem to be two issues that need
to be separated. Commissioner Ashley has made one
motion that's got two parts to it. They're both, you
know, part of it, simply a package of postponement.
Is there any reason why we have to separate these two?

MS. MONROIG: No, I don't think so.

VICE CHAIR THERNSTROM: Well, I would
prefer then simply a vote on Ashley's motion, which
has been seconded, I believe. Is that correct? It's
been seconded?

COMMISSIONER HERIOT: Well, if it hasn't
been, I'll second it.

VICE CHAIR THERNSTROM: Okay.
COMMISSIONER TAYLOR: I'm in favor of that bridge.

VICE CHAIR THERNSTROM: All right. Is there any further discussion of voting on Ashley's motion --

COMMISSIONER BRACERAS: I'm sorry. What specifically is Commissioner Taylor's motion?

COMMISSIONER TAYLOR: It will allow Commissioners to submit reports, submit comments rather --

COMMISSIONER BRACERAS: Because if we're holding it open for Gail anyway

COMMISSIONER TAYLOR: Correct.

COMMISSIONER BRACERAS: -- anyway, if you or I --

COMMISSIONER YAKI: Wait, wait, wait. We're not holding it open for Gail to make new comments. We're holding it open for Commissioner Heriot to determine whether or not --

COMMISSIONER BRACERAS: No, I understand. Commissioner Taylor's motion, as I understand it, I think what he's saying is since Commissioner Heriot needs time to resolve an issue anyway, for those of us, we're not changing anything that's there, that those of us who may not have read now would have the

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time to do so.

VICE CHAIR THERNSTROM: Well, in addition, if Commissioner Heriot wants to write further, she would also have additional time.

COMMISSIONER HERIOT: Yes, but there is some new issues being brought up that I didn't expect to be brought up. There are all sorts of things in here.

COMMISSIONER YAKI: What do you mean by new issues? What do you mean by new issues?

COMMISSIONER HERIOT: Your extensive comments about procedures.

COMMISSIONER YAKI: I don't see how that was a new issue at all. We talked about it ad nauseam during many of the hearings, Commissioner Heriot. If you couldn't anticipate that, that's not my problem. The whole point of the deadline was the deadline. Now if we're going to open it all up, I expect that we'll have new comments of our own to put in. If we want to keep on playing this ping-pong of reopening it up, fine; we can do so. Not my problem.

VICE CHAIR THERNSTROM: We're not going to keep playing what you call ping-pong here, but if we are holding this open, if we are postponing the vote, which is the suggestion, which we actually voted on
already. No, we amended the agenda; I'm sorry. We're postponing the vote. Then that time should additionally be available, it seems to me, for any additional comments from Commissioners, including additional comments of Commissioner Heriot. She's a commissioner. She would also have that privilege.

COMMISSIONER YAKI: As would I.

VICE CHAIR THERNSTROM: As would you absolutely.

COMMISSIONER KIRSANOW: Call the question.

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

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed?

COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: Let the record show that Commissioners Yaki and Melendez have opposed and it was, otherwise, unanimous. So the record will be open for two months, and any commissioners can submit further comments on the substance of the report that they wish. Okay. We are now moving on now.

Distinguished members of the panel, I do want, once again, to apologize to you for the delay here this morning. We're really looking forward to what is an incredibly important discussion on what I
call the mini-Blaine Amendment. Some people call them baby Blaine, but whatever. So we appreciate your being here and --

COMMISSIONER YAKI: Point of order. Are we skipping the State Advisory Committee reports?

VICE CHAIR THERNSTROM: No, we're doing them right this minute.

COMMISSIONER YAKI: Okay.

VICE CHAIR THERNSTROM: I simply apologize, once again, for the delay.

COMMISSIONER YAKI: I was here on time.

VICE CHAIR THERNSTROM: Commissioner Yaki, I'm sorry for the delay. I apologize to you, as well, for the delay.

VI. State Advisory Committee Issues

VICE CHAIR THERNSTROM: We are considering next the motions to re-charter the Virginia and Michigan State Advisory Committee. These motions have now been before the Commission for two months will be voted on at this meeting. At the April 13th meeting these motions were tabled in respect to the House Committee on the judiciary. At the time the Chairman wanted to have an opportunity to answer a letter received from Chairman Conyers and Chairman Nadler about the SACs. The Commission responded on May 10th,
2007 to the letter. Congressman Nadler then sent a letter that requires both answers to interrogatories and the production of documents. On May 24th, the Chairman responded that the Commission would provide a response as soon as it was able to, which he estimated as four weeks from receipt of the May 10 letter.

At the May 11th meeting, the motion to re-charter the Virginia and Michigan SACs were tabled once again until today. After two months, we must act on these motions. The SACs need to assist the Commission with its fact-finding, investigative, and information dissemination functions. Too much time has obviously elapsed. Therefore, the first motion that will be considered is to re-charter the Virginia State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based on the recommendation of the Staff Director: Linda Chavez recommended as Chairperson; Lloyd R. Cohen; Stanley A. Cook; Edmund Cooke; Horace Cooper; Toa Q. Do, and forgive me if I'm mispronounced the name; Rachel H. Fisher; Todd Gaziano; Louisa Coan Greve; James M. Hingeley; Curt Levey; Richard Samp; Jeanene E. Sims; Andrew Shannon; Ryung Suh; Jason Torchinsky; Lacy B. Ward, Jr.

I also move that the Commission appoint
Linda Chavez as Chairperson of the newly-chartered Virginia State Advisory Committee. These members will serve as uncompensated government employees, and the Commission appreciates the hard work they will no doubt contribute to this State Advisory Committee. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Can I have a second?

COMMISSIONER KIRSANOW: Second.

COMMISSIONER YAKI: Point of order. The three resumes we got today, are they included in the motion?

STAFF DIRECTOR MARCUS: Yes, they are.

COMMISSIONER YAKI: Were they read? I didn't hear some of the names.

VICE CHAIR THERNSTROM: I am reading the names that I've got.

STAFF DIRECTOR MARCUS: The three names to which you're referring I believe would be --

COMMISSIONER YAKI: Gaziano.

VICE CHAIR THERNSTROM: Gaziano I named.

COMMISSIONER YAKI: Cooke.

STAFF DIRECTOR MARCUS: And Greve.

VICE CHAIR THERNSTROM: And Greve. I did name those.
COMMISSIONER YAKI: Okay. Can I divide the question on the issue of the Chair?

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

COMMISSIONER MELENDEZ: Second.

VICE CHAIR THERNSTROM: Is that a motion? I guess we have to vote separately on dividing the issue, do we? Yes. All in favor of dividing the issue of the Chair versus the other appointments?

COMMISSIONER YAKI: Dividing the motion is not a motion that requires a vote.

STAFF DIRECTOR MARCUS: No, it does not.

VICE CHAIR THERNSTROM: It does not?

COMMISSIONER YAKI: You just divide it. It's just two votes.

VICE CHAIR THERNSTROM: Okay. Let us vote on the appointments other than the Chair. Is that what we're doing here?

STAFF DIRECTOR MARCUS: That would be great.

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

COMMISSIONER YAKI: Is there discussion on this?

VICE CHAIR THERNSTROM: Oh, discussion.
I'm sorry.

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez. I just wanted to just elaborate a little bit. As you know, there are a number of issues that we have concerning, in fact, we sent a letter to the Staff Director and the other commissioners just May 31st on some of our concerns. And I think one of those is the disparity issue on gender. That's just one of the many issues that we have in, basically, making sure our process is working here at the Commission as far as having a broad number of people that participate on these SACs. Not only that, with the inquiry by the subcommittee, the judicial, and all these different things all happening all at the same time, I think that we have to take the situation seriously because if we don't address it at some point and we just keep plowing forward, you know, I don't think that's responsible of the Commission, basically, on some of the statistics that we've looked on historically. When we see, you know, women are basically not participating on an equal footing as men, I mean we're the Commission on Civil Rights. And I think that gender and all those different things are basically part of what we're all about here at the Commission. So if we're just going to turn a blind
eye to not even looking at the statistics and just move forward, I don't think that's responsible of what we're charged with doing.

COMMISSIONER BRACERAS: Can I be heard?

COMMISSIONER MELENDEZ: I'm still talking. Let me finish. Thank you, Ms. Braceras. But even if we look at the Virginia, when we talk about, you know, 79 percent men, 21 percent women on this one, and it's just a continuing situation of what we pointed out. And there are only 12 SACs that actually have been approved so far, and I recognize that we still have, you know, 40 or so or 38, something like that, to charter. But I think we need to address this issue at some point. You know, I just don't think we're not really looking at that. I don't know. I'm just hoping for a discussion before we vote on this very --

COMMISSIONER BRACERAS: Yes, I'd like to discuss this, if I could be heard.

COMMISSIONER MELENDEZ: Sure.

COMMISSIONER BRACERAS: I guess my response is this. If you have specific concerns about this SAC or individuals on this SAC and their qualifications to serve on the SAC, then, by all means, bring them up. But if you have concerns about the statistical breakdown or the process of which we
choose SAC members, then, frankly, I consider that discussion closed. I mean, we had lengthy, lengthy, lengthy meetings, discussions, and, ultimately, conclusions on how we were going to choose SACs. We made a deliberate decision to move away from a model of proportional representation and statistical analyses of specific groups, and we decided to choose people based on their resumes and their qualifications rather than their skin color and their gender. And we discussed that ad nauseam, and we voted on the procedure and the policy. So that is a closed issue.

If you want to talk about these particular members and whether or not they're qualified, there is that different issue, so be my guest.

COMMISSIONER MELENDEZ: My point -- this is Commissioner Melendez. If we were to end up with 95 percent men and 5 percent women, and I think that nothing is set in stone. We can set some policy, but as we look at --

COMMISSIONER BRACERAS: Yes, if you have a majority to change the policy, you can do that, but I don't think you do.

COMMISSIONER MELENDEZ: But I'm saying I have the right to raise the issue to all of the commissioners --
COMMISSIONER BRACERAS: Right. And I'm telling you that we have a majority for a different policy, and that majority has not changed. In fact, it's only increased.

COMMISSIONER YAKI: Well, I'm so proud that you're able to count it that way, Jennifer --

COMMISSIONER BRACERAS: Thank you.

COMMISSIONER YAKI: -- because just to point out this points out to me, as I stated in my separate dissent on the American law school report, that this Commission has taken quite a wrong turn. I objected to the criteria as they were adopted by the majority a year ago. I predicted that this kind of event would happen. We are not talking nearly about, quote/unquote, best qualified individuals, but we are also talking about ensuring that there was a fairly balanced viewpoints spread across there. And if you look at the statistics in terms of breakdowns among party lines, gender lines, in education, in fields, there is skewing in every single category that would not seem to lend any credence to the majority's claim a year ago that this would increase and broaden the balance of the Commission. To the contrary, it has skewed it so totally to one side as to make the SACs pretty much a toothless laughing stock in terms of
their ability to handle the issue of civil rights.

So, yes, Commissioner Braceras, you do have the majority. Yes, you did have the vote to change it. And, yes, it is the right of Commissioner Melendez and myself to point out the fact that those things which we knew would happen have indeed happened, and that Virginia is just yet another example down the road of the fact that the Commission of Civil Rights turns a blind eye to its responsibilities to promote and increase diversity, awareness of affirmative action, and civil rights in this country.

COMMISSIONER BRACERAS: I really didn't know that our mandate was to promote diversity and affirmative action.

COMMISSIONER YAKI: Well, you know, it may be that --

COMMISSIONER BRACERAS: Our statutory mandate is to study civil rights issues --

COMMISSIONER YAKI: Our statutory mandate --

COMMISSIONER BRACERAS: -- not to promote a particular policy agenda one way or the other.

COMMISSIONER YAKI: Commissioner Braceras, we can agree to disagree on that. That is certainly
my point of view, and that was a point that was not
carried in the majority vote on this issue. My point,
though, continues --

COMMISSIONER BRACERAS: Your point --

COMMISSIONER YAKI: My point continues --

COMMISSIONER BRACERAS: -- racial
preference. Is that your point of view?

COMMISSIONER YAKI: Well, shall we get
into a debate on this right now?

COMMISSIONER BRACERAS: I just want a yes
or no. Is that your perspective?

COMMISSIONER YAKI: I believe that this
Civil Rights Commission has a commitment to do
everything that it can in its power to increase
awareness of, promote internal programs that ensure
that the citizens of this country are afforded every
opportunity to fulfill their highest qualities,
regardless of race, color, or creed. And if the means
by which to effectuate that include policies that
recognize, promote, affirmatively take actions that
are based upon race, gender, whatever, to remedy past,
present, and future discrimination, yes, I do believe
that. And that is my philosophy. It was a philosophy
of the Commission back when it was created in 1957
when they were --
VICE CHAIR THERNSTROM: Affirmative action was not an issue in --

COMMISSIONER YAKI: Not affirmative, but they were charged with changing the way this country dealt with, they investigated without the benefit of congressional action in terms of where they could or could not go. They investigated, they subpoenaed. They boldly moved forward to say these things are wrong. You have managed to put together SACs that are going to sit around and twiddle their thumbs and talk about, oh, isn't everything great now, except for the fact all those pesky programs that help people of color?

COMMISSIONER BRACERAS: Okay. You know what? With all due respect, that's a complete non-sequitur. We are here to discuss at this moment the appointment of the Virginia SAC. You can discuss them on the merits and you can vote against them or you can vote for them. But the policy is not open to debate right now, and if you want to raise it --

COMMISSIONER YAKI: Well, it's fine that we would close debate when you were among the first people when I first came to the Commission who said we should be allowed to debate, we should be allowed to discuss, and now here you are saying let's close it
all and change it all.

COMMISSIONER BRACERAS: We had that debate.

VICE CHAIR THERNSTROM: All right. We need to focus on the issue at hand. Everybody is in agreement on the goals that you stated, Commissioner Yaki. There is disagreement over the means. That is no surprise. There has been disagreement over the means. It is not part of our statutory mandate to promote racially-preferential policies, though you may think those are the only means that promote the goals that you were talking about of furthering racial equality in this country and gender equality. You seem to imply in your comments on gender that gender is a point of view and that, if there is a lack of proportional gender representation, we somehow, as Commissioner Braceras said, lack diversity in viewpoints, and I think that that's, as she has stated, a non-sequitur. I think there's a motion on the table, and it needs to be voted on.

COMMISSIONER YAKI: I think that would be very surprising to the people back in the 1920s who chained themselves to the White House to vote thinking that the viewpoint, no further viewpoint of women should be included in the ability to vote for the --
VICE CHAIR THERNSTROM: Nobody is excluding women. We do not have --

COMMISSIONER YAKI: We have 24-percent women in the Virginia SAC. Overall, we have 35 percent --

COMMISSIONER BRACERAS: If we had 50-percent women and they all thought like Commissioners Thernstrom, Heriot, and myself, something tells me you wouldn't be pleased.

COMMISSIONER YAKI: I wouldn't be pleased, but, nevertheless, I wouldn't be thinking to myself this criteria that you adopted is so fatally flawed that it can't even do a good job of playing with the numbers for your own side.

VICE CHAIR THERNSTROM: I see. All women think alike, and I would like to move on to the question here. Can we have a vote on --

COMMISSIONER YAKI: Oh, I would disagree with that statement.

VICE CHAIR THERNSTROM: Well, you are implying --

COMMISSIONER YAKI: Not at all. Not at all.

VICE CHAIR THERNSTROM: I'm sorry. There isn't --
COMMISSIONER YAKI: That was Jennifer's point.

COMMISSIONER BRACERAS: My point was that your professed concern for the gender balance on this Commission seems to me to be a pretext for something else because if, hypothetically, the SAC were 50-percent female, that they happened to be conservative women, and I'm not saying Commissioners Thernstrom, Heriot, and myself agree on every issue, but we all lean conservative. And if that were the case in the SAC, you'd be equally as displeased. So your professed concern with the gender balance is, in my view, a pretext for your view about what they should look like --

COMMISSIONER YAKI: You may choose to think what you want, Commissioner Braceras. I'm simply pointing out the fact that, apparently, your great criteria has resulted in a skewing of the SACs that is so far out of balance with what the goals, purported goals of your reforms were supposed to be.

VICE CHAIR THERNSTROM: Well, I do not think that is correct, and you are going to object, I can safely predict, to the appointment of Linda Chavez, who, of course, is a woman as Chair. But somehow that will not count. Commissioner Melendez,
do you have a fast comment? Because I think we really need to take a vote on this. We do have people waiting here as witnesses, and this is not fair to them.

COMMISSIONER MELENDEZ: Well, unfortunately, when we put the controversial issue, like the SACs, before briefing, this is what we're stuck with, so it's not my fault. I'm just responding to the way this meeting is structured. So with that, you know, I have questions as far as the process, and I always had, as far as the responsibilities of the regions and the SACs themselves as to how we actually get a list of 11 people or 12 or whatever it is on getting, as to how these applications actually come in to the Commission. You know, that's my concern.

As you know, there were some applications, basically, that really had nothing, very little written as far as why they wanted to even be on the State Advisory Committee. Some of these applicants actually have resumes that have nothing to do with why they would want to be on the State Advisory Committee. Some of them, basically, just sent their resumes in. Even the situation with Linda Chavez, who you're recommending as Chair, I think there's just a resume there. It doesn't really even have a statement
stating why she would want to be on the State Advisory Committee.

VICE CHAIR THERNSTROM: What would qualify as a statement as to why she wants -- I mean, she used to be Staff Director here.

COMMISSIONER MELENDEZ: Well, I mean, I think we're talking about a process here. So if somebody -- and I think on that application form itself it says something about saying something about why you want to be on the State Advisory Committee. If somebody sent one in blank with nothing there, the question is would we basically consider them at all. I'm just talking about processes here as to how we gain that.

And then I asked the question on whether or not the recommendations should come from the regions as far as who those people should be or even some solicitation from the SACs themselves or something like that because I know that there's a lot of question as to who actually makes the call and who puts these people actually on this list here, all the way from the office here of the Staff Director. And I think that, at some point, we need to actually determine how did those names get picked. There's some situations where some of these applications may
not have been filled out by the person themselves, and they may have been filled out by even the office here, by staff or the Staff Director here, and I don't think that's actually appropriate for us to be doing that. I think that if a person is not going to fill out their own application and send it in they shouldn't even be considered for the appointment. Those are points that I think are valid questions that we need answered.

I would ask the question how many of the 17 names in this recharger did the regional staff send applications to without any intervention from this office here? I mean, that's a valid question that I'd ask the Staff Director.

STAFF DIRECTOR MARCUS: So the question is how many applications were sent by regional offices without any involvement from the Staff Director?

VICE CHAIR THERNSTROM: Well, there's also been a charge that you are filling out applications, and the people themselves, the nominees themselves are not applying and filling out their own application.

STAFF DIRECTOR MARCUS: Let me take those two separately, and maybe I'll take the latter one first.

VICE CHAIR THERNSTROM: He has charged both. He has charged -- take the latter one first.
STAFF DIRECTOR MARCUS: Okay. I'll take the latter one first. We've had different ways of trying to have the applications filled out. And the involvement of staff has deferred both regionally and on a case-by-case basis. The most common way is simply to send the materials out to the applicant and ask them to fill it out and send it in. In some cases, they will fill it out, they'll send it in, and a staff member will say, well, there's some things you might want to consider because a question isn't answered or something could be added.

In some cases, the staff will, at some point, either at the beginning or in the middle, will work with the applicant on the filling out of the application. And in some cases, the staff member will begin the process. In other words, it will essentially help start the writing of the application and then get in a dialogue based on information from the applicant, then have a conversation with the person. If it's accurate, what you would add, and essentially work with the applicant to get the document filled.

What I found was that, on a regional basis, where the regional staff was doing more of the work on their own, they were chartering the SACs must
more rapidly and efficiently, and we were having much
more success in getting SACs chartered than in those
areas where the region was leaving the work entirely
up to the applicants. So I've encouraged, in some
cases, for staff to be more aggressive about working
with the applicants, especially in cases where we've
been falling behind or it's taken an unusually long
period of time to get a particular state chartered, or
where there was some reason why we wanted to get
things done quickly.

So I would say that we've done it in all
of those different ways, including having staff take a
very active role in the preparation of the
applications.

COMMISSIONER MELENDEZ: Okay. Let me ask
this question. Have you sent or instructed regional
staff to send applications to certain people, rather
than the regional staff director himself making that
call?

STAFF DIRECTOR MARCUS: Well, I've
certainly asked them to reach out to various people,
and I'm sure they've inferred that that might include
sending out the application packets, so there's no
question that there are many cases that application
packages have been sent out because I provided a name.
VICE CHAIR THERNSTROM: This is, it seems to me, off track. I'm sorry. We need to have a vote on these names --

COMMISSIONER MELENDEZ: I don't think it's off track at all. I think that we're talking about a process here that either the regional directors have a great say in coming up with a list of people in the region or either it's controlled by the Staff Director in the office here as to picking somebody out in California or people that you know out there and basically you send the applications to them directly rather than the regional directors really having control over that.

And that's the same reason why we even question the issue on whether or not attorneys should actually hold those regional director spots or whether or not it should be under civil service because it raises in my mind, after we kind of see the process unfolding here, that there's tremendous influence as to the Staff Director of this office controlling who actually is going to end up on these SACs nationwide. That's a real concern to us, and my position has always been that we need to work on this so that we better define as the role of the regional directors as to how much say they have and basically setting forth
a certain number of people within their regions with input from the SAC people. Otherwise, you know, we're always going to be scrutinized as to the process of how these people are selected.

And I think that it's the same situation where we kind of just don't really want to talk about those real important decisions on how these people are selected. And I think that's an important issue that we can't just sweep under the rug and just move on, and that's one of the concerns that I have on this whole issue.

COMMISSIONER KIRSANOW: Madame Chair, with all due regard to, I think, the very appropriate questions raised by Commissioner Melendez, Commissioner Braceras is correct insofar as at least two Commission meetings the process issues were debated, the selection issues were debated. This is a process question that doesn't go pertinently to the discrete issue of the Virginia SAC, and I would call to question.

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

COMMISSIONER TAYLOR: Second.

VICE CHAIR THERNSTROM: Yes. Okay. I would like to vote. We are going to vote right now on
these members, and a separate vote will be taken on the chair. All in favor of appointing the members that have been listed to the Virginia SAC?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: I have some opposition, I believe. All opposed?

COMMISSIONER YAKI: No.

COMMISSIONER MELENDEZ: Opposed.

VICE CHAIR THERNSTROM: Okay. Let the record show Commissioner Melendez and Commissioner Yaki have opposed. It is otherwise unanimous. Let us move on to the Chair. This is now a separate motion to appoint Linda Chavez as Chair of the newly re-chartered Virginia State Advisory Committee. May I have a second on that?

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Is there further discussion at this point?

COMMISSIONER MELENDEZ: Yes. Again, as I pointed out, Ms. Chavez responded to the questionnaire's request for a statement of her demonstrated influence in civil rights by attaching a resume, as I pointed out. From my reading, that resume does not list any involvement in any civic, religious, civil rights, or other social organization
whatsoever in Virginia. Would the Staff Director please describe Ms. Chavez' experience in working with community issues in Virginia?

STAFF DIRECTOR MARCUS: I would respond to that, and I'll say that there are some applicants who merely sent in a resume, and I said to staff, well, we should not just provide a resume but ask for a specific narrative response. But with Ms. Chavez, the material she provided demonstrates such an extraordinary level of experience that it seemed to me that everything that we might need was provided here. It indicates, among other things, that she has been a Staff Director of the U.S. Commission on Civil Rights, the Chairman of the National Commission on Migrant Education, the White House Director of Public Liaison. She's been a member of the Administrative Conference of the United States. She was elected to the United Nations Human Rights Commission to serve a four-year term as U.S. expert to the UN subcommission on the prevention of discrimination and protection of minorities. She does live in the Commonwealth of Virginia and is concerned about international, national, and state civil rights issues, and I think her credentials to serve as Chair are simply extraordinary.
VICE CHAIR THERNSTROM: I mean, if you want to pick somebody, pick somebody on the list whose credentials you find questionable, certainly the last person to pick, it seems to me, is Linda Chavez.

COMMISSIONER MELENDEZ: Can I ask a question? Whether or not you can certify that Ms. Chavez is currently a resident of Virginia? I know that some of these applications have, you know, who knows how old they are.

VICE CHAIR THERNSTROM: She is a resident of Virginia?

COMMISSIONER MELENDEZ: Is that right? Okay. In the resume, she says that in 2001 she withdrew her name after being nominated by George W. Bush for Secretary of Labor. Do you know why she withdrew her name?

STAFF DIRECTOR MARCUS: Well, I read the book that she wrote, and I certainly remember the newspapers at that time. I can't say that I have any personal information. I just remember both the news accounts and her discussion in her writing.

VICE CHAIR THERNSTROM: And it's irrelevant to the question of her chairmanship here.

COMMISSIONER MELENDEZ: Okay. Ms. Chavez currently runs the Center of Equal Opportunity. To
VICE CHAIR THERNSTROM: No, she does not.

Roger Clegg is President of the Center for Equal Opportunity.

COMMISSIONER MELENDEZ: Okay. But she's affiliated with that?

VICE CHAIR THERNSTROM: She's past president. She's Chairman of the Board.

COMMISSIONER MELENDEZ: Okay. What characteristics make you think Ms. Chavez will be the best chairperson for the SAC?

STAFF DIRECTOR MARCUS: Well, I've described some of her credentials. She is well known both in the state and nationally for her expertise on civil rights issues. She's prominent, she's well known, and has a depth of knowledge on the issues that we deal with nationally and within the Commonwealth of Virginia. And as she seems to me to be a very strong candidate.

COMMISSIONER MELENDEZ: Okay.

VICE CHAIR THERNSTROM: I mean, if she's not a candidate. She devoted her life to these issues, her professional life. If she's not a candidate, I don't know who is.

COMMISSIONER KIRSANOW: Why don't we just
speed this up by highlighting the thing that
disqualifies her in the minds of some for
chairmanship, and that is that she's a conservative --

VICE CHAIR THERNSTROM: And a woman.

COMMISSIONER KIRSANOW: -- in favor of
equal opportunities opposed to racial preferences.

VICE CHAIR THERNSTROM: Okay. And they
would disqualify her that she's a woman.

COMMISSIONER YAKI: If you say so.

VICE CHAIR THERNSTROM: No, I don't, but
we seem to be into gender issues here.

COMMISSIONER YAKI: Only in the twisted
way that you're talking about them right now.

VICE CHAIR THERNSTROM: Whatever. It's a
lame effort at making a joke.

COMMISSIONER YAKI: Then don't do it.

COMMISSIONER KIRSANOW: With due regard to
the time issues and the fact that we've got some
splendid witnesses, I would call the question.

VICE CHAIR THERNSTROM: Okay. All in
favor of Ms. Chavez as Chair of the Virginia State
Advisory Committee?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed?

COMMISSIONER MELENDEZ: Opposed.
COMMISSIONER YAKI: No.

VICE CHAIR THERNSTROM: Let the record state that Commissioners Yaki and Melendez were opposed, and it was otherwise unanimous.

VICE CHAIR THERNSTROM: Let us go on now to the re-chartering of the Michigan State Advisory Committee.

COMMISSIONER YAKI: Divide the question on the Chair, as well.

VICE CHAIR THERNSTROM: Divide the question on the Chair, as well. So let us discuss, actually let me put, I'm going to put all the names out without discussing, without reference to the, without separating any one name as Chair. William B. Allen; Lawrence Almeda; Marion A. Brown; Donna Budnick; Leon Drolet; James K. Pett; Imad S. Hamad; Kary L. Moss; Howard S. Schwartz; Arthur T. White; Levon R., and, again, forgive me if I mispronounce the name. Do you know how to pronounce his last name? Yuille. It's Y-U-I-L-L-E. Gerald L. Zandstra. These members will serve as uncompensated government employees. The Commission appreciates their hard work. They will contribute to the State Advisory Committee under this motion. The Commission authorizes the Staff Director to execute the
appropriate paperwork for the appointment.

Have we got a motion? Well, we need a second actually on that, yes.

COMMISSIONER TAYLOR: Second.

VICE CHAIR THERNSTROM: Okay. Any discussion?

COMMISSIONER MELENDEZ: Yes. I have some questions on some of the individuals, like, for example, Howard Schwartz. In looking at his, I guess his resume or his experience, he lists no specific or social activities in his resume or statement. The only mention he makes of civil rights experience is from the 50s and 60s, before he says his radical politics dissolved into a deeper understanding of the world. Are you aware of any current or recent civil rights or community work that Mr. Schwartz is involved in?

STAFF DIRECTOR MARCUS: He has told me, and it's unfortunately been a few months so I don't recall the exact details, but he certainly has described to me various concerns and activities to ensure nondiscrimination and equal opportunity on the campus of his university. And there were a few examples over the years, and he, as I recall, worked very hard to ensure that the institution would comply
with equal opportunity law. I also understand that he's been active in the last couple of years on Michigan State's civil rights issues, including the Michigan Civil Rights Initiative.

COMMISSIONER MELENDEZ: Okay. And then there was this Arthur White. He kind of stood out because where you check off your race affiliation, he had said he finds this item to be offensive. I don't know what he meant by that. So I guess he didn't --

VICE CHAIR THERNSTROM: There are people who do not particularly want to fill out check boxes. They regard themselves as Americans and are not interested in these racial and ethnic categories.

COMMISSIONER MELENDEZ: Okay. And not only that, but I think the other concern is, maybe I should have brought it up in the Virginia, but there are some highly, not that people are totally not qualified, but even on people that we think are qualified that have been rejected, for example Linda Parker of this proposed SAC, at least I felt that she was highly qualified. Ms. Parker previously reviewed in the U.S. Attorney's Office in Michigan but, since December 2003, has been Director of the Michigan Department of Civil Rights. So, you know, the same argument that's been said about Ms. Chavez about, you
know, serving in civil rights capacity, when we see somebody that's actually serving in civil rights capacity that's rejected, well, we're going to also have concern going the other way.

STAFF DIRECTOR MARCUS: Generally speaking, I don't like to discuss candidates who've been rejected for fear of bringing embarrassment on people who may be distinguished public servants and who might be dissuaded from implying if they think they may be subjected to any sort of public embarrassment. In the case of Ms. Parker, her application was, as I recall, a strong one, and I think that there should be no cause for embarrassment.

As I recall, I received recommendation for two people from the same office. Both are employed from the Michigan Office for Civil Rights. I had the same situation within the State of Michigan with respect to another organization. Ms. Parker and one of her subordinates were both recommended, and my concern is that it would be awkward to have on the Committee two people, one of whom is a supervisor and the other of whom is a subordinate, for fear that there would be at least perceptions of a lack of independence.

And in this case, the other employee was
the Indian or Native American specialist within the
Michigan Office for Civil Rights, and my view was that
both of the candidates were very strongly qualified
for the office. But between the two, the woman who
was an expert in Indian affairs brought a kind of
civil rights experience and expertise that would be
useful to have on the Committee and that, while Ms.
Parker had various broad civil rights expertise and is
certainly someone who has stature within the State of
Michigan, that, giving balance to the Committee as a
whole, having the candidate who had the Indian rights
expertise would be helpful.

COMMISSIONER KIRSANOW: Madame Chair, I'm
astonished and somewhat offended that the Staff
Director would consider issues of diversity in his
appointments to the Michigan Civil Rights SAC.

COMMISSIONER MELENDEZ: Ron Robinson also
rejected, and I'm not sure exactly how many other
people were rejected. My concern, going into the
regional -- Ron Robinson was actually recommended by
the region, but you decided not to follow their
recommendation. So that's what I'm getting at.

VICE CHAIR THERNSTROM: I'm very reluctant
to have the Staff Director go through the reasons why
somebody was rejected. I don't think it's fair to
them. I don't think that this is a proper public discussion.

STAFF DIRECTOR MARCUS: The only thing that I would add is that when I make recommendations, I'm recommending everyone in the committee, and I try to develop a committee that doesn't just have the best individuals but also that has a good balance. If someone is not selected, it may not have to do with any deficiencies they have. It may mean that a different group just seemed to have a better mix. And I have occasionally indicated to regional staff that just because a person is not accepted in one particular year doesn't mean that they might not be a strong candidate in a future year.

COMMISSIONER YAKI: But just on my point, and I also want to apologize to the speakers today. I'm sorry you got caught up in this. I was trying before the meeting to have this pushed back because I knew it was going to be, unfortunately, a lengthy discussion. But when the Staff Director talks about attempting to make sure there is balance or not too many people from the one organization, I just look at the fact of the seven of the nominees for the Michigan SAC, four of them all belonged or are members of or active in the same group, which is the director, which
is the founder group of the Michigan Civil Rights Initiative, so-called civil rights initiative, the Prop. 209 clone that they passed in Michigan.

So, you know, we can talk all we want about how two people from an office both disqualified themselves from being involved, but we have four people who all belong to the same affinity group, organization, campaign, whatever you want to call it, who are nominated as well. And it just seems to me that the rationale for disqualification or balance is not quite as there as one would seek it to be.

VICE CHAIR THERNSTROM: Well, that is, of course, an organization that is not ongoing. It is not the same thing as an office in which there is a question of somebody's subordinate in status to somebody else on the Commission. I mean, you know, this is --

COMMISSIONER YAKI: But it goes to the idea of do you want people with some element of differences and distinctions, even if they are on the same page, or do you just want people who are all in lockstep on something? I mean, one of my issues, as you know, with the California SAC were the high number of people involved in Prop. 209 who were appointed to the, who were non-members of the California SAC.
VICE CHAIR THERNSTROM: I don't know why
you assume that because they all worked on the
Michigan Civil Rights Initiative they're all in
lockstep on every issue that will come before the
Michigan SAC.

COMMISSIONER YAKI: Well --

VICE CHAIR THERNSTROM: I'd like to call
the question.

COMMISSIONER MELENDEZ: Just a couple of
questions. The Chair is saying that we shouldn't be
asking questions like people that you rejected?
That's inappropriate to ask those, so, basically, what
you would be saying is that this Commission, all the
power would be in the Staff Director to basically make
the calls, override regional directors' recommendation
or even the SACs themselves, and we should just take
for granted that that basically is being done in an
upright manner, so that our job as oversight of the
Staff Director and the Commission in general, we
shouldn't be asking those questions. Is that what
you're saying?

COMMISSIONER KIRSANOW: We can go to
private session, which we have the capacity to do
under our regulations and our administrative
instructions, to discuss that out of the purview of
the public. But there is public embarrassment. I think that Commissioner Melendez raises good issues that can very easily be addressed, but we simply should not and I would object to doing that in the public forum.

VICE CHAIR THERNSTROM: But not really that. Most of these names where you got resumes this morning have been available to you for some time. You could have called the Staff Director and raised the issues. The question of these SACs have been on the table for a couple of months now.

COMMISSIONER YAKI: I would object to that, Madame Vice Chair. I mean, the whole point of public debate and robust discussion is to discuss some of this in the light of day. And as much as we have and do continue to try and work behind the scenes in getting answers on questions, I think that there's some and I think that the SACs are, for Commissioner Melendez and I, important enough that this is a topic that we wish to raise on the public record. And, yes, these names have been out there for a time, but, yes, we've also postponed it numerous times in response to different sets of circumstances. And the chance for us to raise our concerns and objections on the public record is today.
VICE CHAIR THERNSTROM: Well, look, there are two different questions here. Could you have gotten the answer to the questions you specifically raised with the Staff Director about specific people who were rejected prior to this meeting? The answer is yes. Are you entitled to bring up general questions about process? Of course. But, you know, you have asked some questions about specific people that I think and his thinking on those specific people that I think could have been more efficiently discussed. And then on the basis of that information, you come to the Commission and discuss what you want.

COMMISSIONER YAKI: Madame Chair, with all due respect, with regard to the proposed Chair on the Michigan SAC, I raised the issue in public over a month ago and have not received any information about that since.

VICE CHAIR THERNSTROM: Well, we're going to get to the question of the Chair in a minute, so why don't we --

COMMISSIONER YAKI: Well, I'm just saying if I raised it, there was an opportunity to have that discussion behind the scenes. That has not happened, so we're going to have to do it in open session.

COMMISSIONER MELENDEZ: I just have one
last question, and this will be it. I want to make sure that all of these applications are up to date because I know they've been pending for a while and I know that there's even one person, Mr. Zandstra, that says he's running for Senate. So I just want to make sure that we can certify that all these people are at least living in the same state right now. If I could ask that.

VICE CHAIR THERNSTROM: Well, I would say that we take a vote on this right now. If, subsequently, there is further information about their residential status, then that, of course, would need to be dealt with. But I doubt that there's going to be any question that everyone of these people are residents of Virginia. I think we can vote today on the assumption that they are. I mean Michigan. If we find out otherwise, obviously it disqualifies you.

Calling the question, can we have a vote on these names? We are separating the question. We are voting on all the names, but we are separating the question of which one of these people will be voted on as Chair. All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Aye. All opposed?

COMMISSIONER YAKI: Nay.
VICE CHAIR THERNSTROM: Any other opposition aside from Commissioner Melendez?

COMMISSIONER MELENDEZ: I vote no.

VICE CHAIR THERNSTROM: He votes no.

Anybody else vote no?

COMMISSIONER YAKI: I already said.

VICE CHAIR THERNSTROM: I didn't hear you. I'm sorry. So we have a unanimous vote with the exception of Commissioners Yaki and Melendez, who have voted no.

COMMISSIONER YAKI: Which was a non-unanimous vote.

VICE CHAIR THERNSTROM: I'm sorry. You nodded. Well, I didn't hear a nod. We move on to the question of the Chair, and I am going to recommend as Chair of the Michigan State Advisory Committee Leon Drolet. Can we have a discussion on that?

COMMISSIONER KIRSANOW: I think we need a second first.

VICE CHAIR THERNSTROM: Oh, well, I need a second, of course.

COMMISSIONER KIRSANOW: I'll second.

COMMISSIONER YAKI: What happened to Mr. Allen? Apparently, he was going to be recommended before. I'd just like to know on the record what
prompted the change to Mr. Drolet.

VICE CHAIR THERNSTROM: Commissioner Yaki raised concerns last time about Mr. Allen. Those concerns have been duly noted. Mr. Drolet has very strong credentials for the position, and it was my belief that we should simply respond to your concerns and move to another name.

COMMISSIONER YAKI: I guess that the case was never closed after all. Okay. Thank you. Let's just vote.

VICE CHAIR THERNSTROM: Okay. All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed?

COMMISSIONER YAKI: No.

COMMISSIONER MELENDEZ: No.

VICE CHAIR THERNSTROM: Oh, any abstentions? Commissioner Heriot abstains. Commissioners Melendez and Yaki voted in opposition, and the rest of the Commissioners voted in favor of Mr. Drolet as Chair of the Michigan Advisory Committee. Are we taking any kind of break?

VII. Adjourn

VICE CHAIR THERNSTROM: Yes, okay. The meeting is adjourned, the business meeting is
adjourned, and we will begin the briefing. And, once again, I apologize to those people who are -- our briefers come forward please.

(Whereupon, the foregoing matter was adjourned at 11:19 a.m.)