U.S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

FRIDAY, JUNE 12, 2009

The meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 1:30 p.m., Gerald A. Reynolds, Chairperson, presiding.

PRESENT:

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

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
CHRISTOPHER BYRNES, Attorney Advisor to the OSD
DEBRA CARR, Associate Deputy Staff Director, OSD
SOCK-FOON MACDOUGALL
EMMA MONROIG, Solicitor/Parliamentarian
LENORE OSTROWSKY, Attorney/Advisor to the OSD and Acting Chief, PAU
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PROCEEDINGS

(1:40 p.m.)

CHAIRMAN REYNOLDS: All right. Good afternoon. This is Chairman Reynolds. The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights. It is 1:40 p.m., Eastern Standard Time, on June 12th, 2009. The meeting is being held at 624 Ninth Street, N.W., in Room 540, Washington, D.C.

Commissioners Kirsanow, Yaki, and --

VICE CHAIR THERNSTROM: Thernstrom.

CHAIRMAN REYNOLDS: -- and Vice Chair Thernstrom are participating by phone, and Commissioners Melendez, Taylor, Heriot, Gaziano, and the Chairman are participating in person.

COMMISSIONER TAYLOR: Mr. Chairman.

CHAIRMAN REYNOLDS: yes.

COMMISSIONER TAYLOR: Before we get into the first item, a personal moment. I wanted to thank everyone from the OCRE staff for the work they did on the briefing. You all did a lot of work, and it was a job well done, pulling the room together, getting our panelists in place, and I just wanted to thank all of you all for your work.
CHAIRMAN REYNOLDS: Yes, indeed. You did an outstanding job. That was one of the best briefings that we've had to date.

COMMISSIONER HERIOT: It is kind of shocking and sad that C-SPAN doesn't want to see our business meetings.

(Laughter.)

COMMISSIONER HERIOT: It's very sad.

VICE CHAIR THERNSTROM: Some of us couldn't hear that, and Commissioner Heriot needs to get somehow hooked up in a way that we're going to hear it, too.

CHAIRMAN REYNOLDS: Okay. We're adjusting our microphone.

COMMISSIONER GAZIANO: It was a hilarious joke.

COMMISSIONER HERIOT: I'll tell you later, Abby.

VICE CHAIR THERNSTROM: All right. I'll hold my breath until you do.

CHAIRMAN REYNOLDS: Okay. First item on the agenda is the approval of the agenda.

I. APPROVAL OF AGENDA

COMMISSIONER TAYLOR: So moved.

CHAIRMAN REYNOLDS: Second?
COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER KIRSANOW: Kirsanow here.

I move to amend the agenda to include consideration of a letter that I think Dominique may have distributed.

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: I have a question about it. I, actually, Tim Fay on my behalf, asked yesterday that it be noted explicitly with the names that Commissioner Yaki --

COMMISSIONER HERIOT: Different letter.

CHAIRMAN REYNOLDS: Abby, different letter.

VICE CHAIR THERNSTROM: Oh, different letter. Sorry about that. What letter are you talking about?

COMMISSIONER KIRSANOW: Abby, this is the letter to the Civil Rights Division asking them to give us an explanation as to their actions related to the dismissal of charges against individuals who had been accused of engaging in violation of the Voting Rights Act in Philadelphia.

VICE CHAIR THERNSTROM: Very good. Okay.
Sorry about that.

I don't seem to have that letter, by the way, but I'm --

CHAIRMAN REYNOLDS: That's Tim's fault.

(Laughter.)

VICE CHAIR THERNSTROM: Or it's my distracted mind-fault.

CHAIRMAN REYNOLDS: Additional discussion?

(No response.)

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Well, this is just amending the agenda.

COMMISSIONER GAZIANO: The amended -- the amended --

COMMISSIONER HERIOT: We're not talking about the substance of the letter.

COMMISSIONER GAZIANO: Right.

CHAIRMAN REYNOLDS: Pete, assuming that this passes, do you have a preference on where it falls on the agenda?

COMMISSIONER KIRSANOW: The problem I have, and I apologize, is I don't have a copy of the agenda in front of me. So I'm not sure precisely where it should be placed. So I'm amenable to where anyone wants to place it.
CHAIRMAN REYNOLDS: Okay. Well, if that's the case then --

VICE CHAIR THERNSTROM: Can somebody E-mail me the letter, please?

COMMISSIONER KIRSANOW: I'll send it to you, Abby.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Okay. Pete, I'm going to place it after the discussion of Management and Operations.

COMMISSIONER KIRSANOW: Thank you.

CHAIRMAN REYNOLDS: Okay. Let's vote.

All in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Melendez, how did you vote?

COMMISSIONER MELENDEZ: I voted yes.

CHAIRMAN REYNOLDS: Okay. The motion passes unanimously. So it will be added to the agenda.

Any other changes?
(No response.)

CHAIRMAN REYNOLDS: Okay. All right, folks. Did you have a question, Commissioner Heriot?

No, I'm sorry. I was looking in your direction.

Okay. Next. The second item on the agenda is the approval of the minutes of the meeting held on May 15th, 2009.

II. APPROVAL OF MINUTES OF MEETING OF MAY 15, 2009

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All those in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

COMMISSIONER HERIOT: I abstain.

CHAIRMAN REYNOLDS: Okay. Let the --

COMMISSIONER HERIOT: Only because I hadn't read it yet. I was too fascinated by the materials for the briefing.

CHAIRMAN REYNOLDS: Okay. Commissioner
Heriot abstains. The remaining Commissioners voted in favor of the motion.

Okay. Next are the announcements for the month of June.

III. ANNOUNCEMENTS

CHAIRMAN REYNOLDS: On June 6, 1873, pioneering feminist Susan B. Anthony was fined for voting in the 1872 presidential election. She led a group of women who voted illegally to test their status as citizens.

Following her death in 1906, after five decades of tireless work, the Democratic and Republican Parties both endorsed women's right to vote. In August of 1920, the 19th Amendment to the United States Constitution was finally ratified, allowing women to vote.

Next I would like to recognize -- well, at this point, Commissioner Yaki, would you please introduce your special assistant?

Commissioner Yaki?

COMMISSIONER YAKI: I'm sorry. I have the heat on.

Yes, I'd like to introduce Eric Deull. He is a graduate of the University of Michigan and the American University Law School. He has been in
private practice for a number of years, but also
served most recently as a magistrate judge in D.C.
family court, which unfortunately I would not do to my
worst enemy, but he did so serving with distinction
and aplomb until he retired a few years ago.
And I have coaxed him out of retirement,
and here he is.

CHAIRMAN REYNOLDS: Very good. Welcome.

MR. DEULL: Thank you.

CHAIRMAN REYNOLDS: And after spending
time as a magistrate judge here in D.C., I suspect
that you're well suited for the task ahead of you.
Okay. We also have three interns that are
already started working for the Commission. Where is
Christine Miranda?

Very good. She is a second year law
student from American University's Washington College
of Law, who is working the Office of General Counsel.
And where is Aman Sharma?

Very good. He is a second year student at
Ohio State Law School and he is working in the Office
of the Staff Director.

And finally, Ms. Zorn, Kelsey Zorn?

Very good. She is a senior at Reed
College, who is working in the Office of Civil Rights
Evaluation.

Amy Permalik from the University of Chicago's Law School will be starting her internship in the Office of General Counsel on June 22nd, and I assume that she is not new.

Okay. At this point I turn it over to the Staff Director for the Staff Director's report.

IV. REPORT OF THE STAFF DIRECTOR

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

And on the topic of personnel, the Office of the General Counsel recently recruited a full-time secretary, a position that had been vacant for a number of years. The successful applicant was Lillian Dunlap, whose official first day was May 26th, 2009, and I would like to congratulate Lillian and thank her for the service she is providing to the Commission.

CHAIRMAN REYNOLDS: Is she in the room?

Okay. So you wouldn't let her out, eh?

(Laughter.)

STAFF DIRECTOR DANNENFELSER: Holding down the fort.

And on other legal matters, OGC staff attended to a past employment law claim resolved in
2007 as well as a pending EEO claim. The General Counsel sent Commissioners a memo this week pertaining to developments on another case relating to a former employee.

The Office of Civil Rights Evaluation has been dealing, again, with complaints processing, and during this reporting period OCRE received 120 written complaints, two congressional complaints, one walk-in complaint, 28 E-mail complaints, two fax complaints, and 107 telephone complaints, of which 62 were repeat calls. In total staff received and processed 260 complaints during the reporting period.

On the Multi-Ethnic Placement Act briefing report relating to minority children in foster care and adoption, the editor has incorporated the findings and recommendations into the report, and staff worked with the editor to address two additional Staff Director comments.

Also, with respect to the Office of Civil Rights Enforcement, Sock-Foon MacDougall, a social scientist in OCRE who has worked for the Commission since January 2002, is retiring from the Commission to pursue other opportunities, and she'll be leaving on July 1st. And I want to thank Sock-Foon for her service to the Commission and to the federal
government in several other positions and wish her
well in all of her future endeavors.

Within the Office of Management, they have
completed the transparency report for the month of
May, and it has been forwarded to OMB. Staff has also
been working with Citibank to get new credit cards
issued to resolve a billing issue with the card. I
think a couple of Commissioners are familiar that
development.

CHAIRMAN REYNOLDS: Yes, indeed.

STAFF DIRECTOR DANNENFELSER: Hopefully,
that problem is now resolved.

And they have been working on implementing
the new limits on the transit subsidy for staff, also
working on the telephone services. They're in the
early stages of transitioning the agency to the new
GSA telephone contract. They have begun reviewing
inventories, doing cost analysis and reviewing vendors
in preparation for the transition.

Staff attended the first training, GSA
transition coordination training. The training is
necessary to assist ASCD and IT staff in transitioning
to the new telephone contracts for local and long
distance, wireless and Internet services.

Staff will need to attend the second
training session that has been scheduled for late summer outside the D.C. area.

With respect to our Website, the total number of Web visits during the month of April was 37,212, with 18,056 visitors. There were about 1,000 visits from the U.S. government domain. The top ten were Department of Homeland Security, 132; the IRS, 104; Government Printing Office, 101; Department of Health and Human Services, 93; Department of Justice, 49; Department of Transportation, 35; Housing and Urban Development, 28; Veterans Administration, 23; Federal Aviation Administration, 22; and the Equal Employment Opportunity Commission, 19. There were 16 visits from the Executive Office of the President.

The library staff received 80 telephone inquiries. They were completed. They completed 49 simple reference requests and performed 32 research projects of various sizes. An additional 60 research requests were completed utilizing automated search services.

With regard to publications, there were 166 written requests and 185 E-mail requests for publications received during this latest period. Four hundred and ten publications were mailed and 44 different publications were requested. "Getting Uncle
Sam to Enforce your Civil Rights" and a catalogue of publications were the most requested publications, and there are currently 62 requests for publications in process.

Within the Budget and Finance Division, the Office of Management conducted several interviews and selected a contractor to fill in until the Chief of Budget and Finance vacancy is filled. That position was posted on June 3rd and will be open until June 24th. That is the Budget and Finance Chief.

The staff sent employee information to GSA to begin the budget call cycle for the fiscal year 2011 budget. So that's something that the Commission will be dealing with within the next several months.

The staff also worked on and sent out the congressional submission for the 2010 budget. And the staff is also working on reconciling travel card payments that were erroneously charged to the agency's centrally billed credit card.

And a couple of other personnel developments. Within the Office of the Staff Director, I'd like to announce two developments. First is that Regional Program Coordination Chief Chris Byrnes is moving into the role of senior attorney advisor, and Southern Regional Office
Director Peter Menarik has agreed to assume the duties of Acting Chief of RPCU. Peter will continue to serve as Director of the Southern Regional Office and will primarily be based in Atlanta. He is spending a few days in Washington right now and will be traveling to Denver next week to meet with the Director of the Rocky Mountain regional office. He'd be traveling to the other regions as well over the next few months and will provide extra assistance to our western regional office.

I want to thank Chris and Peter for agreeing to serve in these new roles, and I trust that they will help enhance our program planning and regional operations.

And that concludes my report.

CHAIRMAN REYNOLDS: Questions?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here.

How much is the Commission currently under budget for 2009? Are we under budget?

CHAIRMAN REYNOLDS: The projected surplus?

COMMISSIONER MELENDEZ: Two thousand nine, the year we're in now.

STAFF DIRECTOR DANNENFELSER: We currently are developing plans that would allocate most of the
money that we have. We had 340,000 additional. We are about, I believe -- I don't have the latest report. It hasn't arrived yet for this past month, but I believe we're at about 150,000 or so in addition to that 340,000. So in the neighborhood of $500,000, but we do have a number.

Then you have to take into account that we're going to have the special assistants. One, of course, is with us right now, and then we have a couple other applicants that will be going in for the specialist assistant's positions. We are looking at potentially allocating some additional funds beyond what's in our budget for the civil rights conference. We have a number of technological things that we're looking at in terms of computers, upgrading computers and things like that. So I am in the process of finalizing some preparations relating to that money, but I think that once we -- the human capital plan item and so on that's being considered.

So I think that once we do that, we will allocate the money to some very good uses for the Commission.

COMMISSIONER MELENDEZ: On the contractor you mentioned, is that interim assistance until we get the revised --
VICE CHAIR THERNSTROM: Would you speak up? I can't hear.

COMMISSIONER MELENDEZ: Commissioner Melendez here. I was asking whether or not this contractor that they mentioned allocating funding for was an interim step prior to hiring finance -- I think you revised the finance director position to finance something else.

STAFF DIRECTOR DANNENFELSER: Well, let me go back. We had a budget officer who left in January, and so this budget and finance chief is essentially replacing that person, but this position will be at a little bit higher level. That person was a GS-11. We are looking to hire this person at a GS-14 level.

We also had a budget assistant who left about a month ago and this temporary person that I mentioned was hired temporarily to replace that person.

COMMISSIONER MELENDEZ: So the contractor again is who? You said we had a contractor?

COMMISSIONER YAKI: I can't hear.

COMMISSIONER MELENDEZ: You said we had contracted with?

STAFF DIRECTOR DANNENFELSER: Yeah, the person who -- well, since we've had two people leave
in the Budget Office right now we don't have -- we
would not, aside from this temporary person, we would
not have anybody in the budget office that would fall
to the Director of Management, but we did have an
individual who was with us for a couple of years, I
believe who left in January who was a GS-11. So we
have posted a position which is the budget chief
position at a GS-14 level, and that position is open
until June 24th, the application period.

But in the meantime, we did hire a -- we
also had a temporary person leave more recently who
was a temporary or was a -- it was a full-time person,
a non-permanent full-time person that was in the --
serving as a budget assistant. That person left. So
we have hired through an agency. We've hired a
temporary budget assistant. And that person will stay
on at least until the budget chief is hired, perhaps a
little bit longer as that person is transitioning to
his or her new duties.

COMMISSIONER MELENDEZ: Okay. The other
thing, I had asked I think a meeting or so ago about
the SAC overall tracker, status tracker.

VICE CHAIR THERNSTROM: I'm sorry. I
can't hear again.

COMMISSIONER MELENDEZ: Is my microphone
1 on?

2 COMMISSIONER YAKI: I can't hear anything either.

3 COMMISSIONER MELENDEZ: This microphone is not.

4 CHAIRMAN REYNOLDS: Who can provide us with some technical assistance.

5 COMMISSIONER MELENDEZ: Can you hear me now?

6 COMMISSIONER YAKI: No.

7 COMMISSIONER GAZIANO: You're so soft spoken.

8 COMMISSIONER MELENDEZ: Okay.

9 COMMISSIONER GAZIANO: I think you just need to speak up.

10 COMMISSIONER MELENDEZ: I had asked on the status --

11 COMMISSIONER YAKI: I can't hear you either, Todd.

12 (Laughter.)

13 COMMISSIONER GAZIANO: That's convenient.

14 COMMISSIONER YAKI: Of course, that's how I mainly choose to hear you anyway. So we're set.

15 COMMISSIONER MELENDEZ: Okay. This is Commissioner Melendez.
I had asked also from the Staff Director on the SAC overall status tracker which shows the status of the rechartering of all the SACs, and basically it would give us a total picture as to what the hold-ups are on rechartering the SACs in general. So I haven't heard any response back on that request which I made a couple of weeks ago.

STAFF DIRECTOR DANNENFELSER: We have been in the Staff Director's report on a monthly basis giving state-by-state updates on where the SACs are, but I will compile something that shows which SACs are chartered, which SACs are unchartered and when we expect to move forward on those, and then some other ones that are chartered, when they'll be expiring. We can provide a list, a chart that will show that information.

COMMISSIONER MELENDEZ: Okay, and also, Commissioner Melendez here again. We needed a specific date when we expect that the backlog briefing reports are going to be ready for Commissioner review.

CHAIRMAN REYNOLDS: A specific date?

COMMISSIONER MELENDEZ: Or some idea as to what we're looking at here.

CHAIRMAN REYNOLDS: Okay.
COMMISSIONER MELENDEZ: As to how far backlogged we are.

CHAIRMAN REYNOLDS: Well, I would suggest at the next business meeting we put that on as an agenda item.

STAFF DIRECTOR DANNENFELSER: Yeah, I mean, we have one additional report that is ready that I mentioned in my report, was the Multi-Ethnic Placement Act. I have not sent that out. I think the Commissioners are currently reviewing the statutory report and a few other briefing reports, and I wasn't sure whether that would overload people at the current time.

CHAIRMAN REYNOLDS: It would.

STAFF DIRECTOR DANNENFELSER: But there are several others that are in process towards completion.

COMMISSIONER GAZIANO: And my request at the last meeting was that it would be helpful to get a more detailed description of what each of the pending ones were so that we might be able to provide our own direction as to whether some should be expedited, some should be put ahead of others.

So I suppose if we're going to take up that issue in July, it would be helpful to have
something like that in advance.

STAFF DIRECTOR DANNENFELSER: Okay.

COMMISSIONER MELENDEZ: My last question is are we going to be able to hire a director for a western region office. I've been asking that for about a year.

STAFF DIRECTOR DANNENFELSER: Well, we don't have that position budgeted in our fiscal year 2010 budget, but that is something that Peter Minarik is going to pay special attention to. That is going to be the one region that he is going to provide the most hands on assistance to, and I know he and I have both spoken in the last few days to the secretary in the western regional office, and she is very enthusiastic about the prospect of Peter coming out there very soon to work with her and also providing assistance to her over the phone and so on over the next few months.

So that's our hope, that we can get more of the SACs chartered in the western region. He is actually also planning to work with her to get several meetings scheduled within some of the states in the western region.

COMMISSIONER MELENDEZ: That's all I have.

CHAIRMAN REYNOLDS: Okay. You mentioned
an error in billing. We were erroneously billed. Did
I understand?

STAFF DIRECTOR DANNENFELSER: Well, the
bills went to the Commission central billing account
as opposed to the individual Commissioners. So I
think they just have to do some record keeping to
straighten that out, but that is part of the reason
for the new credit cards as well, I believe.

CHAIRMAN REYNOLDS: So is the effect that
we haven't received bills from the individual
Commissioners, that there's an outstanding debt out
there and that the invoice hasn't reached us? Is that
the case?

STAFF DIRECTOR DANNENFELSER: I'll have to
check on that technical question relating to that, and
I can probably let you know early next week, Monday
hopefully.

CHAIRMAN REYNOLDS: Okay. Please do
because it would affect all of our credit scores.

Any other questions?

STAFF DIRECTOR DANNENFELSER: Well, I
don't think it would have been charged to you
individually if it went to the central billing
account.

CHAIRMAN REYNOLDS: So it was paid?
Staff Director Dannenfelser: I believe so. Tina is shaking her head yes. It was paid.

Chairman Reynolds: Oh, okay. Great. No problem.

Okay. Unless there are additional questions, we'll move on to an update on the 2009 statutory report.

V. UPDATE ON 2009 STATUTORY REPORT

Staff Director Dannenfelser: Thank you, Mr. Chairman.

At this point I'd like to turn to the General Counsel, David Blackwood, who will provide us with an update on the statutory report.

Mr. Blackwood: As the Commissioners know, the latest draft was issued approximately two weeks ago with a deadline of June 29th for the feedback. Earlier this week we met with special assistants to review the report generally and explain why various editorial decisions get feedback from the special assistants and just explain where we were in the process.

Obviously it is a draft. It is nowhere near completion. There are a variety of steps that need to be taken. I spelled that out in the memo that was issued with the report.
That said, one thing I anticipate some time early next week is to issue a revised time line. We're aware that the deadlines have been extended due to the fact that the report has taken longer to process than we originally contemplated.

I will say that the contemplated, contemplated vote date would be August 14th, probably by telephone, but that still remains to be agreed upon. So hopefully early next week we will be issuing a revised --

VICE CHAIR THERNSTROM: I'm sorry. I couldn't hear that date.

MR. BLACKWOOD: August 14th.

VICE CHAIR THERNSTROM: August 14th, what happens on August 14th?

MR. BLACKWOOD: That would probably be a vote on the statutory report, probably by telephone, but it remains to be seen. Obviously you all will need to comment on the time line when you receive it.

CHAIRMAN REYNOLDS: Okay, and --

VICE CHAIR THERNSTROM: And do you know that we are all available on August 14th?

MR. BLACKWOOD: Not at all. That's why I'm telling you the proposed date.

CHAIRMAN REYNOLDS: Right. It's a
suggestion, Abby.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: And also I think that we would be better served by having a substantive discussion about the statutory report in person.

VICE CHAIR THERNSTROM: I agree.

CHAIRMAN REYNOLDS: But in any event, we will wait until we get your recommended time line.

MR. BLACKWOOD: Okay.

COMMISSIONER HERIOT: Well, we're going to need to schedule this.

COMMISSIONER YAKI: I just want to put out there that most of August I am not going to be available for an in-person meeting.

CHAIRMAN REYNOLDS: Okay. Commissioner Heriot.

COMMISSIONER HERIOT: We need to schedule this soon.

VICE CHAIR THERNSTROM: I can't hear you.

COMMISSIONER HERIOT: We need to schedule this soon because it gets harder and harder to schedule. I mean, already we've got one commissioner saying that it's going to be difficult to be available for in-person. You know, one person can call in.

That's no problem, but I think we should have a face-
to-face meeting.

COMMISSIONER YAKI: I'm glad you think it's no problem, but I don't think it's no problem.

VICE CHAIR THERNSTROM: Well, are you going to be able to call in, Commissioner Yaki?

COMMISSIONER YAKI: I can call in, but I prefer to be there in person.

VICE CHAIR THERNSTROM: Yeah. No, I prefer you to be there in person as well. So what are --

COMMISSIONER HERIOT: -- schedule now because it just --

VICE CHAIR THERNSTROM: When is it possible? I mean, when do you become unavailable and when do you become available again?

COMMISSIONER YAKI: I think I become available starting that week all the way through Labor Day. My work schedule has changed substantially. So I have to take advantage of different time break, and that time break I have already bought tickets for family members, and I'm basically going to be away.

VICE CHAIR THERNSTROM: So starting -- I'm looking at a calendar -- starting -- are you talking about the 14th, starting --

COMMISSIONER HERIOT: Bear in mind the
academic schedule gears up about then. So that's when I become unavailable.

VICE CHAIR THERNSTROM: Okay, but, Commissioner Yaki, are you talking about starting the 10th you're unavailable or just --

COMMISSIONER YAKI: I'm taking a look at my calendar now. Yes, starting the week of the 10th.

VICE CHAIR THERNSTROM: You are unavailable until after Labor Day.

COMMISSIONER YAKI: Right.

VICE CHAIR THERNSTROM: Labor Day is very late this year. All right. Well, I mean, we should -- normally one day --

COMMISSIONER YAKI: Whatever happens, I just wanted to put that out there.

CHAIRMAN REYNOLDS: Okay. All right.

Folks, let's look at some dates. Let's start with the 14th, with the understanding that it's unlikely that --

COMMISSIONER GAZIANO: The 14th is one day I cannot do it, the 13th and 14th. Most of the rest of August I am probably free.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: And the 14th is an absolute dead no-no for me. That is actually a travel
day.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: I am actually 100 percent unavailable that day.

CHAIRMAN REYNOLDS: Got you. How do you folks feel about the 7th?

COMMISSIONER HERIOT: Hold on.

COMMISSIONER YAKI: I can be in town the 7th.

VICE CHAIR THERNSTROM: The 7th is possible for me.

CHAIRMAN REYNOLDS: We're checking with staff.

STAFF DIRECTOR DANNENFELSER: Well, the main -- I think we may be able to make that work. The main concern is the agency.

MR. BLACKWOOD: If we have to do the 7th, we can do the 7th.

CHAIRMAN REYNOLDS: Okay. Commissioner.

COMMISSIONER GAZIANO: If we're ready for it, I can do it.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: Thank you very much.

I appreciate that.

VICE CHAIR THERNSTROM: So that means
we're having a meeting at the Commission on the 7th.

CHAIRMAN REYNOLDS: Yes, and, Michael, anything for you?

COMMISSIONER YAKI: I knew you would say that, Gerry, and I appreciate that.

CHAIRMAN REYNOLDS: Okay. Were you finished with your report?

MR. BLACKWOOD: Yes.

CHAIRMAN REYNOLDS: Questions?

COMMISSIONER GAZIANO: Yeah, I want to begin, first of all, with some thanks and some general good compliments because particularly for you, David, and the General Counsel staff. For this stage, it's quite readable compared to the similar first draft for some others.

And I do like how you try not to draw or the staff that's drafted it draw grand conclusions beyond our competence, but I do have a few other questions.

The first and simplest is I note in your memo to the Staff Director that you had not incorporated a lot of the testimony from our briefing and the Commissioner exchange, and I think a lot of that ought to be captured. So I encourage you to send
us a revised draft, even before June 29, and not wait.

CHAIRMAN REYNOLDS: And start working on it.

COMMISSIONER GAZIANO: Yeah. Where are you in that? Has that been ongoing?

MR. BLACKWOOD: Yeah. Number one, we have not stopped working on the report.

COMMISSIONER GAZIANO: I assumed so, but.

MR. BLACKWOOD: So I wanted to see what feedback might happen today and also from the special assistants.

I will tell you the transcript, while valuable, we definitely can make cites. People don't unfortunately speak in paragraphs generally. Some do; most don't. So it doesn't lend itself as well to some of the written statements and long quotations.

That said, we can cite to the transcript to support various items.

COMMISSIONER GAZIANO: Yeah, and their written testimony is fine, too. There are certain discussions both in the written testimony that I thought should be captured into the statutory report, and I haven't gone back through to remember all of them, but one I remember, for example. And we had a couple of exchanges with the Commissioners that ought
to reflect more of our thought -- one of which was Liebowitz's analogy of a certain group of drivers who convinced the folks to change the rules of the road, and then there were multiple traffic accidents, and that group said, "Well, we are no more responsible than any other group."

Well, by analogy, his point was if there's a certain type of people who induced lenders to change lending standards in a detrimental way, then that should be captured.

And I did want to comment then on one other matter, and if other Commissioners -- I want to do so so that other Commissioners can chime in. I do think the last appendix on the Boston Fed. study is valuable. It's too technical for most of it to be included into the final report, but I think it should retain -- but I think that some summary of it goes in for the following reasons.

That was a major part of the concept paper that we approved. The plan for it and I think some of the briefings we got from Dr. Lerner, and it certainly is in my interest.

That seems to me to be one of the most important aspects of the staff's and Commission's work that actually relates to the issue of discrimination,
that particular study. And what I would suggest, incorporating back into Chapter 4 and then references be made to the appendix, is the idea that this Boston Fed. study that found discrimination in the Boston area had a tremendous impact, whatever the right adjective is. I'm not suggesting what the right adjective necessarily is, but had a significant impact on public policy makers in the Boston Fed. study itself, criticized law enforcement agencies or civil rights enforcement agencies for their failure, and that that seemed to drive certain other consequences, one of which was the Boston Fed. then issued its changes to its lending manual that lessened the influence of credit scoring, and then HUD finally in its guidelines sort of followed through

And that may be the change in the rules of the road that surely wasn't the only factor. Many of the other things that are discussed in the study are important, but I think that the conclusion of discrimination led to these results, and then I think it's especially relevant to say that the FDIC did its own investigation of the agencies that it was responsible for that the Boston Fed. study covered and found that the study was flawed, completely flawed.

So there's two things that are important
to me about that aspect. One is that it helps explain
how perceptions about racial discrimination may have
led to some of the policy changes.

And number two, it's helpful to know that
those perceptions that led to those policy changes
were, in fact, unsupported. Whether they're false or
not is another matter, but I think that the appendix,
particularly the authority cited in the appendix,
makes a persuasive case that the Boston Fed. study
really was not sufficient to make many of the
conclusions that it did.

But in some ways that may be as important,
more important. I don't know, but there are two
aspects of that that I think could be brought into
Chapter 4. So I wanted to see if other Commissioners
had any other thoughts on that.

But that was the part of the concept paper
and the discussions that we had that seemed to get at
whether attempts to address discrimination -- what
role they played.

CHAIRMAN REYNOLDS: Okay. Commissioner
Melendez.

COMMISSIONER MELENDEZ: Yes. As far as
the overall report concerning mortgage lending to
minorities and the role those policies played in the
current lending crisis was a big part of what we were supposed to be looking into I thought. There are disputes about whether government --

COMMISSIONER YAKI: I'm really losing volume on people right now.

COMMISSIONER MELENDEZ: There are disputes about whether government policies intended to promote minority home ownership backfired and helped create the crisis. So if this is a --

(Commissioner Thernstrom speaking off line.)

COMMISSIONER HERIOT: Abby, you're coming in.

CHAIRMAN REYNOLDS: Abby, you're on. Your personal conversation is being heard.

(Pause in proceedings.)

CHAIRMAN REYNOLDS: Okay. Let's try again.

COMMISSIONER MELENDEZ: But anyway, that was a predatory lending and mortgage fraud. You know, that's a big component of what we were trying to look into I thought. So are we saying that that's still in the body of the report or has it become kind of like a secondary appendix, a slight mention of it? I don't know.
COMMISSIONER YAKI: I need everyone to talk louder. I want to join Commissioner Melendez in expressing my concern about where predatory lending and mortgage fraud has been placed in terms of the report. And I need to hear the response, and I'm not -- the volume is extremely bad right now.

CHAIRMAN REYNOLDS: David, will you respond in a loud voice.

MR. BLACKWOOD: I've never had a problem with volume.

Let me respond to your specific request. The reason the discussion of predatory lending is currently in an appendix is twofold. One, as you mentioned, the main gravamen of the report, the purpose of the report is to examine whether policies meant to increase minority home ownership in some way backfired or were detrimental or were beneficial, and that's the main body of the report.

Predatory lending or the issue of predatory lending is separate from that. It's not one of the policies. It's whether it occurred during the framework.

Now, I will tell you we originally started -- original drafts included predatory lending in the body of the report. Frankly, it did not fit as a
topic because we discussed all of this time about the CRA and also with regard to the HUD lending goals. That doesn't lend all -- let's put it this way. Predatory lending then is a jump. It's a totally different topic. Let's see what has occurred.

Now, we have additional information about predatory lending to put in, but frankly, it was my view, and not frankly; it was also a consensus view of those working on the report. It didn't fit into the body, like the issue --

COMMISSIONER YAKI: I don't understand what you mean by didn't fit in the body because when we talked about this initially and we approved this, we approved it with the concept of, with the idea of the predatory lending practices and mortgage fraud that were being perpetrated upon blacks and Hispanics many of whom were prime candidates and steered into subprime loans, and whether or not it fits into the body of Part 1, why we can't put Part 1 and Part 2 because certainly if black Americans and Latinos were being targeted for fraud and being steered into the wrong types of financial instruments, why that wouldn't be something that we would really care about in terms of our jurisdiction and highlight as part of the main report rather than being stuck into an
appendix is beyond me.
I mean, why you can't Part 1 and Part 2, Section 1 and Section 2; I don't understand why you decided on your own to make the decision to toss it into the appendix.

CHAIRMAN REYNOLDS: Well, Michael, first of all, this is a draft. Overall I agree with the concerns that Commissioner Yaki just expressed. While these issues, the two concepts may require some additional writing to smooth out the transition, I think it's more than doable. I think it is an important issue, and an issue that probably should be in the body of the document.

COMMISSIONER YAKI: Thank you, Mr. Chair. Thank you very much.

CHAIRMAN REYNOLDS: I told you, Michael, I'm here to serve.
But on a serious note, David, could you describe the level of difficulty and the amount of effort required in order to put that section into the body?

MR. BLACKWOOD: We live to serve. We can move it in.

CHAIRMAN REYNOLDS: That's a damned good answer.
MR. BLACKWOOD: I'm hoping. It can be done. My movement of that, as I have moved other topics into the appendix, is an editorial decision and it's subjective. So we can move it in.

CHAIRMAN REYNOLDS: There's nothing wrong with your initial decisions. You are exercising your judgment. The issue was not hidden. We all received the documents, and the process is working. At least two Commissioners voiced concern about the placement of that section, and so, you know, to the extent that the impression was created that you did something wrong, I disagree.

MR. BLACKWOOD: I will say there have been some proposals made when we met with the special assistants about restructuring the report, which would include moving predatory lending into the body. We are looking at that. I will certainly take into consideration what has been said here today.

CHAIRMAN REYNOLDS: Other questions?

COMMISSIONER HERIOT: Could I just weigh in as well on this?

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER HERIOT: My instinct also is that predatory lending goes as well in the body as some of the other chapters that are in the body at
So I don't think it's correct that this part of the report uniquely belongs in the --

COMMISSIONER YAKI: I can't hear.

COMMISSIONER HERIOT: -- in the appendix.

CHAIRMAN REYNOLDS: She -- she --

COMMISSIONER HERIOT: I actually thought that Chapter 2 --

CHAIRMAN REYNOLDS: She's agreeing with you.

COMMISSIONER HERIOT: Yeah, I'm agreeing with you. So hush.

It seems to me that, you know, it is possible to move it to the body. It's also possible to move some things that are currently in the body into the appendices, but right now the report doesn't hang together very well, and I don't see why there's something unique about the predatory lending section that means it should go in the appendix and not in the body.

There are other things in the appendices that maybe should go in the body of the report as well.

CHAIRMAN REYNOLDS: All right. Unless there are other comments or questions.
MR. BLACKWOOD:  Well, I have a request of the Commissioners.

CHAIRMAN REYNOLDS:  Sure.

MR. BLACKWOOD:  Which is feedback on one particular issue.  We deliberately did not put in any findings and recs. in this draft.  I would like some feedback from you all whether in the next draft you would like staff, as opposed to you all, to submit findings and recs.

CHAIRMAN REYNOLDS:  I am comfortable with staff making recommendations.  The Commissioners are -- each Commissioner is well within his or her power to offer up alternatives --

MR. BLACKWOOD:  All right.  Then I would also ask though if someone does have alternatives that they submit them.  We can show different alternatives in the body so when it comes time to vote as opposed to an editorial review we can say pick A or B on this.  You all -- let's put it this way.  You all will have more alternatives to draw from, including ones that you have drafted yourselves.

CHAIRMAN REYNOLDS:  Okay.  I think that you folks are doing the day-to-day on this issue, and I think that you have a sense of where the consensus is around --
COMMISSIONER HERIOT: I'm not sure that's correct.

CHAIRMAN REYNOLDS: Okay. Well, we will find out, and we will have the opportunity to make revisions and substitutions to whatever is put in front of us.

MR. BLACKWOOD: Thank you.

CHAIRMAN REYNOLDS: Any other questions?

COMMISSIONER GAZIANO: Just when you -- I know when you will circulate the next schedule that we'll see this, but in part because there will be some other things incorporated, we've made some suggestions; I think we all want an opportunity to the extent that that's still possible in the amount of time we have to comment as much as we can.

So do you have -- first of all, just confirm. I hope the answer is yes, that there will be a second, at least a second opportunity for Commissioners to provide comments, but that we -- that you would encourage us to continue to bring comments as new versions come to us.

MR. BLACKWOOD: One, I do hope to issue another draft. You all have another two weeks, and I was going to hold off until after that period, till I got more substantive comments. That's why I tried to
outline in the memo the types of things that we're
trying to do.

Now, you all have given me some different
changes and I can start working on those, but I didn't
want to start adding things until I figured out where
the blocks would be. I can't say when the next
version would be. I'm not sure we'd have another one
that would address everybody's concerns in the next
two weeks, which is when your comments are due, but
certainly I envision another version that addressed
the changes today that you all would have another
opportunity to make comments on before the vote.

STAFF DIRECTOR DANNENFELSER: It would
have to be a pretty short comment period.

MR. BLACKWOOD: It would have to be short
and, frankly, this isn't contemplated by the sigma
process, but I do think based on what I've heard here
today and given the types of changes we're going to
make it makes sense to at least send out a version in
a quick way so you all can make more comments.

CHAIRMAN REYNOLDS: Okay. Next up,
Commissioner Melendez has submitted a number of
motions concerning the operations of the Commission.
We will consider four of the eight at this meeting.
Here is Commissioner Melendez's motion.
VI. MANAGEMENT AND OPERATIONS,

A. MOTION REGARDING EVALUATION OF STAFF

DIRECTOR'S PERFORMANCE

CHAIRMAN REYNOLDS: He moves that the Staff Director be required to undergo an annual performance review comparable to those required of other SES personnel by an external panel of SES personnel who will report the results directly to Commissioners in writing.

I second the motion.

Discussion? Commissioner Melendez, would you like to walk us through this?

COMMISSIONER MELENDEZ: Yes. The goal here is to give the Commissioners an objective review of the Staff Director's annual work performance, and details of how that could be done are negotiable. Nothing prohibits the Commission from requiring this kind of review.

This will hopefully create more accountability for performance in the Staff Director's office and throughout the agency.

As with any employee, where work goals are not being met, there needs to be an objective look at whether the failure is because of a lack of resources or individual performance. So basically it just gives
us more accountability.

And basically whether or not there's an alternative to actually having a senior executive, you know, personnel, but I think there needs to be some discussion as to, you know, some measurement of how not necessary Marty in general, but any Staff Director that we have in the future, of how we see how they're performing basically.

CHAIRMAN REYNOLDS: Commissioner Melendez, I would like to offer a friendly amendment. I think that the thrust of the motion is a good one. The Staff Director needs to be accountable just like any other person on staff, but the mechanics of your proposal are cause for concern.

I would suggest that the Chair evaluate the Staff Director using some criteria that would be distributed and discussed amongst the Commissioners beforehand as opposed to having an external panel do this.

VICE CHAIR THERNSTROM: Mr. Chairman.

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: I thought the beauty of this motion and its strength lay in having an outside group without an agenda of its own tied to the Commission do the evaluation, and I would be very
strongly opposed to having putting in place a rule that it is the Chair who does the evaluating.

CHAIRMAN REYNOLDS: Well, we have a history on this issue. The recommendations that Commissioner Yaki put on the table have been tried in the past --

STAFF DIRECTOR DANNENFELSER: Commissioner Melendez.

CHAIRMAN REYNOLDS: I'm sorry?

STAFF DIRECTOR DANNENFELSER: Commissioner Melendez. You said Yaki.

CHAIRMAN REYNOLDS: Oh, I'm sorry.

COMMISSIONER YAKI: Excuse me?

CHAIRMAN REYNOLDS: I misspoke and blamed you for something.

In any event (pause) --

VICE CHAIR THERNSTROM: Is there something being said I should be able to hear?

CHAIRMAN REYNOLDS: No. I'm sorry. I'm just reading something.

Okay. Here are my initial thoughts to your concern, Vice Chair Thernstrom. First of all, I think that it's -- I don't -- an outside panel will not work with Marty on a regular basis or any other Staff Director on a regular basis, and I think it
would be extremely difficult for an SES panel to provide an accurate assessment of the strengths and weaknesses of the Staff Director being that far removed. Essentially once or twice a year they will meet, and they would attempt to assess what's gone on over the previous six months.

VICE CHAIR THERNSTROM: Well, it depends on what the criteria will be and whether they're able to assess it. I mean, the Chair may be able to assess probably the Staff Director's performance; maybe not, and we, of course, are going to have various Chairs probably in the future. This makes me nervous.

COMMISSIONER GAZIANO: Mr. Chair, may I?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: I certainly think some sort of review is a good idea, Commissioner Melendez. I have some different concerns with or additional concerns with someone outside our Commission doing the reviewing.

The first is I would have some concerns even if we knew some neutral, platonic, brilliant guardians could be selected, but the selection process itself is a little hard to figure out and a little hard to necessarily put my necessary trust in.

The second is that we as Commissioners are
responsible for such oversight, and I maybe want to suggest a friendly amendment to the friendly amendment, and that is that the Chairman takes the lead. I hate to ask you to do this, but with a certain type of consultation with other Commissioners.

CHAIRMAN REYNOLDS: Well, that was contemplated by my friendly amendment, the idea of having some written objectives that would be circulated for comment.

But also one other piece. I mentioned before that this proposal has been tried and hasn't worked out so well. Our institutional memory -- Ms. Martin, would you care to?

MS. MARTIN: I'm sorry. I didn't hear the question.

CHAIRMAN REYNOLDS: This idea of having an SES panel to rate the Staff Director. We have experienced -- we have attempted this in the past?

MS. MARTIN: We have talked about putting the Staff Director on a performance plan, but it never came to fruition. So we've never had to contact a panel or anything because the elements were never created for the Staff Director.

CHAIRMAN REYNOLDS: So do you know the reason why you didn't move forward?
MS. MARTIN: It would have --

MR. BLACKWOOD: This is David Blackwood.

When --

COMMISSIONER YAKI: Can't hear.

MR. BLACKWOOD: This is David Blackwood.

When I heard the motion come up, I looked at it again at our statute, and I've also raised it in front of the small agency General Counsel group. No administrative head of agency gets rated. You all have supervision as a corporate body. You can demand information from the Staff Director and determine his performance, his or her performance as you wish. But I was not able to determine any other agency in which the head of the agency, the administrative head was rated.

Part of that -- let me throw in a subpart.

The purpose of rating is to determine awards and benefits. Mr. Dannenfelser or any other Staff Director is not eligible for such. So frankly, it serves no purpose other than, I guess, a third party review of how the Staff Director is doing.

But you all already have the power to evaluate.

COMMISSIONER HERIOT: Can I add something here? It's not just that we have the power. We have
the responsibility. You know, this is something that
we really, really ought to do, and you can't kick it
to somebody else. Ultimately it just comes back to
us.

If an SES panel came to a decision that
wasn't one that the rest of us would endorse, you
know, it's ultimately going to be our decision whether
or not this is, you know, a good Staff Director or a
bad Staff Director or a terrific Staff Director or
whatever.

COMMISSIONER GAZIANO: Yeah, and related
to my concern about the selection criteria and of an
outside, such a review of an outside group has as much
potential to mislead and create just headaches for
those of us on the Commission as they do to inform,
and this is, again, a responsibility I think we have
and one that we ought not to dilute with some sort of
outside process.

COMMISSIONER YAKI: May I ask a basic
question?

CHAIRMAN REYNOLDS: Hold on, Michael. The
Solicitor is about to --

MS. MONROIG: I just wanted to mention
that part of the history was that some years back we
had a career SES who was appointed as Staff Director,
and that situation does not occur in the case of our present Staff Director, and it was during that time that there was some discussion because of the fact that it was a career SES and certain evaluations -- it was during the time of Ms. Mary Matthews -- there was a discussion of it, but I concur with the General Counsel that it's just not appropriate for the head of an agency to get an appraisal.

He is the head of the agency, above the Commissioners as far as administrative matters are concerned.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER HERIOT: No, the Commission is the Commission. All power is invested by the statute in the Commission. The Staff Director has delegated power from the Commission, but that still leads us to the same conclusion. It would be inappropriate for us to shirk our responsibility here.

CHAIRMAN REYNOLDS: Commissioner Yaki, you were about to say something?

COMMISSIONER YAKI: Yeah, I just have a very basic question. No matter who does the evaluation, what becomes of that? You know, I don't know what our authority is beyond that. Is it just simply to say, well, the average is? Does that matter
ever?

And I'm not (unintelligible) this to Marty, but say, you know, you had someone who, you know, clearly was just off the chart and you did this evaluation. Well, what is the remedy?

CHAIRMAN REYNOLDS: Well, let me ease into an answer. I think that everyone needs -- well, it's just good practice to have a regular performance appraisal so that an individual will know, you know, what they're doing right and what they're doing wrong. Folks need an opportunity to improve, assuming that there is a significant deficiency, and it's difficult to --

COMMISSIONER HERIOT: Or even if there's not. Improving is always good.

CHAIRMAN REYNOLDS: Well, I'm just dealing with my personal directions on HR issues, but you're right.

But, Michael, I think you raise a very good point. I don't think that it -- the Staff Director position is in some respects unique. I don't know if it would be appropriate, and I doubt if it would be appropriate, for example, if the Staff Director's performance in a different context would warrant putting the person on a, you know, some type
of improvement plan. You know, if it reaches a point
where it -- if it reaches a point where the
performance is unacceptable and, I guess, depending on
the political affiliation of the President and the
configuration of the Commission, under certain
circumstances you could go to the White House and seek
another -- well, to seek a replacement.

But you do raise a good question, but for
me I don't anticipate having a problem, a severe
problem for me. The benefit of going forward with
this good recommendation is to give good feedback and
to set expectations on the front end and to provide
feedback at regular periods.

So --

COMMISSIONER MELENDEZ: This is
Commissioner Melendez again.

Wouldn't we design some criteria or, you
know, benchmarks of certain areas of what the person
is supposed to do? I mean, the financial accounting
and reporting, the budget; it would be including all
of the reports that we have, and we're trying to meet
timely deadlines on all of these things. So you'd
have different categories where you would be
physically evaluating based on that, and I'm sure our
HR could come up with some type of the most important
components of what the Staff Director is supposed to
be meeting because time and time again I know I've
been asking these questions, having to do with the
budget, and even my motions that come after this are
going to address some of these same issues having to
deal with accountability.

And again, it's not saying -- it's really
determining whether or not it's performance or whether
or not it's something else, whether it's lack of
funding or something. We should have some idea.

CHAIRMAN REYNOLDS: Or interference from
the Chair.

COMMISSIONER MELENDEZ: Otherwise if you
decide to do something later, they'll say, "Well, what
do you have down in writing? Anything or are you guys
just kind of coming up collectively with your
assumptions that you've kind of discussed in the back
room somewhere that you don't like the Staff
Director?"

But at least you'd have something that
kind of gives at least the Chairman and whether or not
it ended up being a three-panel one, the Chairman and
one independent and the other party as a three-tiered
evaluation, you know, might be an idea, too. So I
don't know.
CHAIRMAN REYNOLDS: Okay. Well, I guess that brings us full circle. I offered a friendly amendment. How do you feel?

COMMISSIONER MELENDEZ: Well, if we were going to go, I guess from my position it would be like a three-panel person working with yourself, one from either Michael or myself and one independent or -- and it would be three people.

And it's not we would just go off, but whatever criteria sheet you design, we evaluate our special assistants. They have a sheet that we fill out and we turn backed in. You know what I mean? So it's really kind of set as to what we're marking.

VICE CHAIR THERNSTROM: Mr. Chairman.

COMMISSIONER HERIOT: I'm a little confused here. We're talking about having a set of criteria that are just bureaucratic. I don't think those tend to be very helpful in evaluating candidates for anything. I think they tend to just -- you know, what if we made up a list of how to evaluate a President? You know, we can't --

CHAIRMAN REYNOLDS: Well, there are certain things that are easy. Stuff --

COMMISSIONER HERIOT: It's easy enough for you just to say, "Look. I would like everyone on the
Commission to comment at least on the following issues," one, two, three, four, five, and then we as individuals can then give our comments to you.

CHAIRMAN REYNOLDS: Well, what I was thinking about, things that are in the -- our objectives, stuff that we submit to Congress, stuff that we're committing, that we've made a commitment to achieve. One easy one is getting the statutory report done on time.

COMMISSIONER HERIOT: Yeah, but I think --

VICE CHAIR THERNSTROM: Mr. Chairman.

COMMISSIONER HERIOT: -- that's a really long, bureaucratic process about what are the appropriate criteria. Shoot us four or five that you think we should comment on, plus what else, you know, we choose to comment on.

You know, if we want to comment on Marty's ties, then we're being really silly. I love your tie, by the way, Marty.

CHAIRMAN REYNOLDS: Yeah, but I don't.

(Laughter.)

COMMISSIONER HERIOT: You're a hard one on ties.

STAFF DIRECTOR DANNENFELSER: Commissioner Melendez will be the tie breaking vote.
(Laughter.)

MR. BLACKWOOD: This is David Blackwood.

I just wanted to address Commissioner Yaki's question. The evaluation, for whatever reason, and taking into consideration the Staff Directors will come and go under various parties, the evaluation will have absolutely no effect, no legal effect of any kind.

CHAIRMAN REYNOLDS: Right, legal effect.

MR. BLACKWOOD: The Chair hit the nail on the head. If the Commission makes a decision that the Staff Director is not doing his job, they can go to the White House to ask his or her removal.

COMMISSIONER GAZIANO: I hope we can persuade him --

MR. BLACKWOOD: You already have that power.

COMMISSIONER GAZIANO: -- other ways, too.

Yes.

MR. BLACKWOOD: You already have that power. That's my point.

COMMISSIONER GAZIANO: Yeah, we're talking about kind of putting it on our own schedule.

VICE CHAIR THERNSTROM: Folks, I turned the phone off by mistake. Look. When I dropped out,
1 I mean, one of the things that was bothering me,
2 getting reports done on time, for instance. Well,
3 whose fault is it that we haven't gotten reports done
4 on time? Is it the Staff Director's or is it the
5 fault of the Commissioners?
6 This whole thing seems to me fraught with
7 problems. I don't like it, in a word.
8 CHAIRMAN REYNOLDS: Okay. So back to you,
9 Commissioner Melendez. Now, your idea of having a
10 committee, I don't like. I think that Marty's job is
11 hard enough just dealing with me and to subject him to
12 more Commissioners is problematic.
13 So I offer my friendly amendment again
14 with the --
15 COMMISSIONER HERIOT: So each individual
16 Commissioners is free to call Marty and say, you know,
17 "Why do you think that this happened this way?"
18 VICE CHAIR THERNSTROM: Well, exactly.
19 COMMISSIONER HERIOT: That's true now, and
20 it would be true under this evaluation, but I like the
21 idea of individually assessing and shooting you our
22 assessments.
23 CHAIRMAN REYNOLDS: Folks with --
24 COMMISSIONER HERIOT: And you can take
25 them for what they're worth.
CHAIRMAN REYNOLDS: Okay. I think that that approach is fine.

VICE CHAIR THERNSTROM: So say it again.

So it's the status quo, you know. We've got problems; call Marty up. "I've got a problem, Marty."

COMMISSIONER HERIOT: Yeah, but under the status quo we also are free to tell Gerry what we think, and this was just --

VICE CHAIR THERNSTROM: Well, we're free now to say what we think. I'm free to call Gerry up and say --

COMMISSIONER HERIOT: Then you're free to vote yes on this.

VICE CHAIR THERNSTROM: -- I'm unhappy.

COMMISSIONER HERIOT: Well, we're not coercing anyone to do it. We're just saying we're now going to have a system where members of the Commission can shoot Gerry their evaluation. That's always been the case. We've always been free to do that. Now we're going to make it something that we think might be useful to do all at one time so that Gerry can get the --

VICE CHAIR THERNSTROM: Well, I'm unhappy about that. I just don't want this formalized. Most people on the Commission are not around the Commission
very much. I would not like us to be evaluating his performance. The things we do know are not necessarily in his hands, and this whole thing seems to me -- and if I were a --

(Simultaneous conversation.)

VICE CHAIR THERNSTROM: -- I would think this is a terrible job for the additional reason that we have this process.

CHAIRMAN REYNOLDS: Okay. Well, Vice Chair Thernstrom, I understand your concerns and objections. I have one quibble with you. The Staff Director is in charge and responsible for the stuff that happens on this side of the house.

VICE CHAIR THERNSTROM: He can't help it if the Commissioners don't come through with the things they are supposed to be doing.

CHAIRMAN REYNOLDS: That's not his side of the house. So I agree with you.

COMMISSIONER MELENDEZ: Okay. So the real question is on your amendment that you would do an evaluation. You would end up having -- I guess you'd do it on some type of criteria sheet that you draw up similar to special assistants, those type things. So if you pick four areas of criteria, one was financial accountability, getting the budget in on time, submit
it to Congress, all those different things you put in there; would you send that to us so that we know, that we could call you and say, "Look, Gerry. Here's my big complaint about the financial accountability" --

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: -- which would weigh in and you would consider that --

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: -- and make you -- force you -- you would just say, "Here's Commissioner" -- you get enough complaints as the financial reporting, then you might mark him low. I don't know.

CHAIRMAN REYNOLDS: I would exercise --

COMMISSIONER MELENDEZ: I'm just saying --

CHAIRMAN REYNOLDS: -- my judgment. You may think it's excellent or --

COMMISSIONER MELENDEZ: But just to have something in place, I would go along with your amendment right now because I don't think we're going to get anywhere passing anything unless we kind of go in that direction.

CHAIRMAN REYNOLDS: Okay. All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?
VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: Vice Chair Thernstrom voted against the motion. The motion as amended, the motion passes.

Next up. Bear with me.

VI. MAINTENANCE AND OPERATIONS

B. MOTION REGARDING STAFF DIRECTOR'S PROVISION OF QUARTERLY FINANCIAL REPORTS

CHAIRMAN REYNOLDS: Here's Commissioner Melendez's second motion. "The Staff Director will be directed to provide Commissioners with a detailed quarterly report on the agency's financial expenditures, to include expenditures on all current projects and contracting services of all kind."

I second the motion.

You're on.

COMMISSIONER MELENDEZ: Okay. Again, the Staff Director already has a duty per AI 3-25.02(b) to keep Commissioners informed of changes in agency finances and budget that have implication for Commission program activities and goals. This attempts to regularize reporting such changes. This shouldn't take, you know, too much staff work.
Let's see. We have such a tight budget and so many needs that it's important for Commissioners to know when money is piling up because of vacancy or other changes, and it is important that this be a detailed report also, you know, so that we kind of really know.

We saw early on some of the discussion on the report how things are moving around, and I'm kind of wondering, you know. I didn't catch all of it and I'd have to go back and talk to Marty about what he said about the movement of that contract and all these interim people, and then I'm still concerned about the western region, and I'm still concerned about money piling up because in the past, you know, the next thing you know somebody tells us at a meeting, well, we bought a whole bunch of furniture, and we're kind of going, "Well, thanks for telling us after the fact."

So I'm just saying on reporting accountability, I think it needs to be improved, and I think most of us would agree with that because it comes up all the time, at least by myself.

CHAIRMAN REYNOLDS: Okay. I have another friendly amendment, and that would be that the following financial information would be provided on a
quarterly basis. It would be the Transparency Act report on agency procurement and contracting, the project cost report of agency expenditures on all current projects, and the status of funds report on the agency's plan versus actual expenditures.

COMMISSIONER GAZIANO: Can you explain what that means?

CHAIRMAN REYNOLDS: No. Marty.

(Laughter.)

STAFF DIRECTOR DANNENFELSER: These are three reports that the Commission regularly provides, and we received from the General Services Administration, which is our current external accounting services provider, status of funds report, and we did provide that up through March. The Commission has received that as well as the project cost report, and we did provide the Transparency Act report.

The Transparency Act report is something that is submitted to OMB, and it lists the procurements of $3,000 or more and who those procurements are to, and that's something that is actually done on a monthly basis, and we could provide that as part of a quarterly reporting process. We could compile that information from the three months
into a quarterly report, but we can also produce these project cost reports and the status of funds reports on a quarterly basis as well.

I think the main point here would be that when we're asking for information that we know exactly what we're talking about, and this specifies the language in Commissioner Melendez's proposal is somewhat open ended and may not be entirely clear on when you say services of all kinds, will that get into very minute types of purchases and financial transactions.

COMMISSIONER MELENDEZ: I think you have to make a judgment call as to what you think that the Commission would really want to know about. I mean, we receive a copy of quarterly statements that have been short reports, and they tell the net obligations and also the available funds, but I think we need details on those a little more than we've been getting.

CHAIRMAN REYNOLDS: Well, and I think that that's accomplished because in addition to the status of funds reports, we would have the private cost report along with the Transparency Act report.

Is that an acceptable friendly amendment?

COMMISSIONER MELENDEZ: Sure.
CHAIRMAN REYNOLDS: All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes unanimously. No?

Abby? Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: How do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

Commissioner Kirsanow?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Taylor?

Commissioner Taylor?

(No response.)

CHAIRMAN REYNOLDS: Okay. Let the record reflect that Commissioners Kirsanow and Taylor did not vote on the matter. The motion passes unanimously.

VICE CHAIR THERNSTROM: And, Mr. Chairman,

I need to get off this phone Unfortunately, but I --

CHAIRMAN REYNOLDS: I have you for six
more minutes

VICE CHAIR THERNSTROM: All right. I'll stay for six more minutes.

CHAIRMAN REYNOLDS: Well, that's what you offered up, and you're trying to shortchange me now. Okay.

VICE CHAIR THERNSTROM: All right. Six more minutes. You've got it.

CHAIRMAN REYNOLDS: Thank you.

This is Commissioner Melendez's third motion.

VI. MANAGEMENT AND OPERATIONS

C. MOTION REGARDING COMMISSION PREPARATION OF PUBLIC SERVICE ANNOUNCEMENT

CHAIRMAN REYNOLDS: Which would be he moves that the Staff Director be directed to prepare possible topics and cost estimates for a new public education project and a new public service announcement that will be presented to Commissioners within two months.

I second it.

Commissioner Melendez.

COMMISSIONER MELENDEZ: This is a statutory duty. The Commission statute says that the Commission shall prepare public service announcements
and advertising campaigns to discourage discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability or national origin, or in the administrative of justice.

And so I just think that it's our obligation to have at least one per year.

CHAIRMAN REYNOLDS: Okay, and so basically you're asking for the Staff Director to prepare topics for discussion.

COMMISSIONER MELENDEZ: Right, and it could even relate to the health disparities or something to do with, you know, a campaign to do something along the health lines, but I think we should be able to send some ideas into you relatively shortly as to what we think that would be and do something along those lines.

CHAIRMAN REYNOLDS: Mr. Staff Director, is there any reason why we couldn't have topics and cost estimates within two months?

COMMISSIONER GAZIANO: Could I ask a friendly amendment?

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER GAZIANO: The only thing I -- I would like the cost estimates to be zero. That's my
only friendly amendment. This sounds like a great idea and we should be fulfilling our traditional statutory goal here, but at least I think -- and I'll recognize Commissioner Heriot who I understand used to do a lot of public service announcements -- but we should be able to do this without a lot of cost, especially when we're under funded in so many other areas.

CHAIRMAN REYNOLDS: Well, I think that our obligation under the statute is tempered by how much money we have in the till. We're not going to have any expensive productions.

Commissioner Heriot.

COMMISSIONER HERIOT: I used to do a constitutional minute for the largest AM radio station in San Diego, you know, just doing one little minute blurbs, and it was really -- you know, they wanted these things. They were not going to charge us or charge me to run them, and we ought to be able to come up with something that's really quite inexpensive and yet quite useful with one minute slots for radio, and I think we could do a good job on that, and I've written hundreds of these.

CHAIRMAN REYNOLDS: Okay. Mr. Staff Director, any impediments to providing topics and cost
estimates within two months?

STAFF DIRECTOR DANNENFELSER: Well, one of the things that has been discussed in terms of the strategic plan was to have some consultation with some other agencies on potentially doing something in concert with those other agencies so that if there was any of that type of process, that's something that might take a little bit longer. We actually have had some discussions in the fairly recent past with some agencies about some joint initiatives.

So if we were to do that, that would be another matter. It's a question of whether Commissioners would rather do something internally or whether they believe we should do something in concert with another agency.

CHAIRMAN REYNOLDS: Well, I guess I repeat the question. Whether you consult with other folks, whether you decide to look at opportunities that just involve the Commission or you choose to look into opportunities to partner with other agencies, my question is can all of this get done within two months.

STAFF DIRECTOR DANNENFELSER: It can in terms of producing some topics. It wouldn't be -- as I understand the amendment it's not asking to produce
a concrete plan. This is topics and costs.

CHAIRMAN REYNOLDS: That's my understanding.

STAFF DIRECTOR DANNENFELSER: Potential topics and then what the cost is.

CHAIRMAN REYNOLDS: Commissioner Melendez, did I get it right?

COMMISSIONER MELENDEZ: Yes, leading up to getting something done.

CHAIRMAN REYNOLDS: Sure, sure.

COMMISSIONER GAZIANO: I just wonder what the costs would be that -- I'm trying to lighten your load, and I'm not sure what the cost would be if we're just discussing topics and we think that -- but you've heard my piece. I wouldn't go into a whole lot of effort getting ranges of, you know, Hollywood production.

CHAIRMAN REYNOLDS: Right, right.

COMMISSIONER GAZIANO: I wouldn't spend a lot of time on that.

CHAIRMAN REYNOLDS: yeah.

COMMISSIONER GAZIANO: What would a program be? What would a program be? How would we develop a program?

CHAIRMAN REYNOLDS: Within the budget that
we have.

STAFF DIRECTOR DANNENFELSER: Well, then there's also issues of distribution. That's another question as to once you produce the product, how do you distribute it. How do you promote it and distribute it? There's a question do you use outside people to help you do that and at what cost.

CHAIRMAN REYNOLDS: Okay. Well, these --

(Simultaneous conversation.)

COMMISSIONER HERIOT: Well, what's the message and then we can determine how it is to be distributed.

COMMISSIONER MELENDEZ: What were the costs on the last one we did? Just kind of ball park

CHAIRMAN REYNOLDS: When's the last time we --

COMMISSIONER MELENDEZ: Was it the anti-

Semitism one?

STAFF DIRECTOR DANNENFELSER: I'm not sure. I mean, I've heard. We've had different estimates that people have provided, staff has provided. One figure that's been provided would be, you know, $40,000, but that involves a number of different -- reaching out to professional companies and so on in the development and production and that
sort of thing.

COMMISSIONER GAZIANO: Jerry is going to be the voice of the Commission.

CHAIRMAN REYNOLDS: We can't spend a lot of money. We're just not in a position to spend --

COMMISSIONER HERIOT: Think of the message first.

CHAIRMAN REYNOLDS: Right. I agree.

COMMISSIONER HERIOT: This notion of talking about the extras, think of content first and then go from there.

STAFF DIRECTOR DANNENFELSER: Well, if the Commissioners are going to recommend some content as well. That certainly would be welcome.

CHAIRMAN REYNOLDS: Gail has hundreds of ideas.

COMMISSIONER HERIOT: I may have one.

CHAIRMAN REYNOLDS: Okay. All in favor please say aye.

(Chorus of ayes.)

COMMISSIONER HERIOT: Can I ask will we get something reported back to us within two months?

CHAIRMAN REYNOLDS: Within two months, topics and estimates of cost.

Any objections?

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202-234-4433

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202-234-4433

1 (No response.)

2 CHAIRMAN REYNOLDS: Any abstentions?

3 (No response.)

4 CHAIRMAN REYNOLDS: Vice Chair Ternstrom, how do you vote?

5 VICE CHAIR THERNSTROM: Yes. Well, aye.

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

7 (No response.)

8 CHAIRMAN REYNOLDS: Commissioner Taylor.

9 (No response.)

10 CHAIRMAN REYNOLDS: Again, please let the record reflect that Commissioners Taylor and Kirsanow did not vote. The motion passes unanimously.

11 VICE CHAIR THERNSTROM: And this is my swan song.

12 CHAIRMAN REYNOLDS: Okay. I got an extra minute out of you.

13 VICE CHAIR THERNSTROM: Thank you very much.

14 CHAIRMAN REYNOLDS: Thank you.

15 VICE CHAIR THERNSTROM: Bye-bye.

16 CHAIRMAN REYNOLDS: Okay. The next motion.

17 VI. MANAGEMENT AND OPERATIONS

18 D. MOTION REGARDING REVIEW AND STANDARDIZATION
OF AGENCY REGULATIONS, ADMINISTRATION INSTRUCTIONS

AND OTHER PRACTICES

CHAIRMAN REYNOLDS: Commissioner Melendez moves that the General Counsel be directed to conduct a review of agency published regulations, internal administrative instructions, uncodified Commission policies set by vote, and current practice, and recommend to the Commission any changes to eliminate conflicts, clarify and update materials.

I second the motion.

The floor is yours.

COMMISSIONER MELENDEZ: Do we still have a quorum?

CHAIRMAN REYNOLDS: Yeah, there's four of us.

COMMISSIONER MELENDEZ: We need five.

CHAIRMAN REYNOLDS: Okay. Good catch.

COMMISSIONER GAZIANO: You can always assume the quorum when we've got potential people on the phone.

CHAIRMAN REYNOLDS: Hello? Who joined us?

COMMISSIONER KIRSANOW: Kirsanow here.

CHAIRMAN REYNOLDS: Very good. Excellent.

Thank you, Pete. Thank you, Mr. Quorum.

Okay. I will read this back into the
Commissioner Melendez moves that the General Counsel be directed to conduct a review of the agency's published regulations, internal administrative instructions, uncodified Commission policies set by vote, and current practice, and recommend to the Commission any changes to eliminate conflicts, clarify and update materials.

I second the motion.

Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes. The Commission's published regulations in certain instances no longer reflect the structure of the current Commission or its administrative instructions. For example, the agency's published regulations continue to refer to the Office of Deputy Staff Director, while the agency's administrative instruction 1-2 states that entire office has been eliminated.

This motion would not make any changes. It just requires a careful review by the Office of General Counsel in getting the recommendation for ways to update the regulations and AIs to better reflect policies already approved by Commissioners.

If the General Counsel finds provisions in
the AIs and regulations where the practice has changed but there has been no vote to change the policies, they should bring those to the attention of the commissioners. If while reviewing the regulations and the A.I.s, the general counsel comes up with other recommendations for ways to update and approve the agency procedures the Commission would like to hear those too. Also, the regulations, for example appear to have conflicting language about what constitutes a quorum. Then newest policy on determining commissioner’s party affiliation has never been codified in the A.I.s or elsewhere and the newest policy on briefing report procedures of the thirty day response to commissioner’s statements on reports and other recent policies which procedures are required for briefing reports and which discretionary have never been codified into A.I.s or elsewhere.

The newest policy on collecting civil rights information from administrative agencies -- I believe that was Commissioner Kirsanow's motion a few months ago -- has never been codified into AIs or elsewhere, and the newest ethics policy that full-time employees seek approval for outside employment has not been published in the Federal Register as a regulation.
The changes to statutory report time lines following adoption of the Lean 6 sigma analysis by outside consultants have not been codified into AIs.

So there's a number of them. There's some work we have to do, and I'd just like our staff to work on that basically.

CHAIRMAN REYNOLDS: I would recommend that -- I would ask that we table this vote. I think that you bring up some very good issues. I want to have some conversations with General Counsel.

This is a huge undertaking, and it needs to be done, and I'm just thinking about the slip and folds and the employment cases that the office deals with, as well as the work that the Office of the General Counsel provides in terms of the substantive work, in terms of our briefings.

So I want to have a conversation with him, and then I'd like to have a conversation with you. Would you mind if we dealt with this at a future meeting?

COMMISSIONER HERIOT: Can I just add my two cents?

I agree with Arlan this needs to be done.

CHAIRMAN REYNOLDS: Yes, yes.

COMMISSIONER HERIOT: Our AIs are a mess.
CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: Crazy, and they really need overall overhaul.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: And it needs to be really well thought out.

CHAIRMAN REYNOLDS: I have no objections substantively with the proposal. It's the mechanics.

COMMISSIONER GAZIANO: I'm fourthing, but I'm also seconding your motion to table because I think it's such a big, huge undertaking that we shouldn't just release the General Counsel to do it all, whether it's a minor thing or big thing -- exactly.

CHAIRMAN REYNOLDS: He can't.

COMMISSIONER GAZIANO: I'm trying to -- we ought to give more focused direction before the General Counsel --

CHAIRMAN REYNOLDS: I'm looking out there, looking at the attorneys and they're crying.

COMMISSIONER GAZIANO: No.

CHAIRMAN REYNOLDS: You can stop crying.

I hope that Commissioner Melendez would be agreeable.

Is that okay?

COMMISSIONER MELENDEZ: yes.
CHAIRMAN REYNOLDS: Great. Thank you.

Next up, SACs.

COMMISSIONER GAZIANO: Well, I think we have Pete's letter.

CHAIRMAN REYNOLDS: Oh, oh, oh. Pete, are you on the phone?

COMMISSIONER GAZIANO: Get Pete again.

CHAIRMAN REYNOLDS: Find the mute button.

COMMISSIONER KIRSANOW: I'm here. I've got it.

COMMISSIONER GAZIANO: Your letter.

VII. LETTER TO CIVIL RIGHTS DIVISION

COMMISSIONER HERIOT: Move it.

COMMISSIONER GAZIANO: Move it.

CHAIRMAN REYNOLDS: Yeah, we have basically 26 minutes left.

COMMISSIONER HERIOT: No, we don't. We don't. I have a flight.

CHAIRMAN REYNOLDS: Okay. How much time do you have?

COMMISSIONER HERIOT: I've got two minutes. So let's --

CHAIRMAN REYNOLDS: Two minutes. Okay. Pete.

COMMISSIONER KIRSANOW: Yeah, am I on?
COMMISSIONER KIRSANOW: Yeah, I move that we send the letter which should been distributed to all Commissioners today. I think the letter is self-explanatory, regarding the dismissal of the complaint in a case of alleged voter-related threat in Philadelphia, consistent with previous Commission inquiries to DOJ that we've made, most recently the inquiry that's referenced in the footnote pertaining to our inquiry to then Attorney General Gonzalez regarding the allegations that intimidating correspondence was being sent to Spanish surnamed voters in Orange County.

And the purpose of the letter is consistent with our oversight authority, is to seek some form of transparency regarding DOJ's rationale for the dismissal of these allegations, given DOJ's own allegations which were fairly striking in the YouTube video that supports the allegations.

You know, it could be that as a matter of prosecutorial discretion the rationale that DOJ provides to us could be perfectly sensible, but I would like to hear what the rationale is.

CHAIRMAN REYNOLDS: Do we need to discuss this?
COMMISSIONER HERIOT: We need a second. I second it.

CHAIRMAN REYNOLDS: Oh, I seconded it.

COMMISSIONER HERIOT: Oh, did you?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: The only comment I had was I was a little hesitant to say that we're saying this was a great disappointment because we're supposed to be giving them a chance to respond first.

CHAIRMAN REYNOLDS: Do you have a friendly amendment?

COMMISSIONER HERIOT: Friendly amendment to sort of strike the "great disappointment" part and say that we are baffled.

COMMISSIONER KIRSANOW: That sounds fine.

CHAIRMAN REYNOLDS: Do we have additional?

COMMISSIONER GAZIANO: I think this is important, and depending on the answer, I think if it's complete and satisfactory, I hope that we can all be convinced, but if not, then we may need to look further, but thank you, Commissioner Kirsanow, for bringing this to our attention, and I think it's important that we send something off because as far as I know, no one has been able to get the Justice Department to explain itself yet.
CHAIRMAN REYNOLDS: Okay. At this point, all in favor please say aye to the revised motion.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

COMMISSIONER MELENDEZ: One abstain.

CHAIRMAN REYNOLDS: Commissioner Melendez abstains. Commissioner Yaki, are you on the line?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Taylor?

(No response.)

CHAIRMAN REYNOLDS: The remaining Commissioners voted in favor of the motion. The motion passes.

Folks, folks have planes to catch, but there's --

COMMISSIONER HERIOT: Can I call the SACs?

CHAIRMAN REYNOLDS: Okay.

VIII. STATE ADVISORY COMMITTEE ISSUES

CHAIRMAN REYNOLDS: I move that the Commission recharter the California State Advisory Committee. Under this motion, the Commission appoints the following individuals for that committee based on the recommendations of the Staff Director:

Luis A. Alejo
1. James Bolton
2. Sharon Browne
3. Jack Citrin
4. Marc Dollinger
5. John Dodd
6. Percy Duran
7. Thomas Gray
8. Gail Heriot
9. Joe Hicks
10. Lance Izumi
11. Manuel Klausner
12. Sanford Lakoff
13. Karen Joy Lugo
14. Leonard Mitchell
15. Velma Montoya
16. Matthew Rosenthal
17. Maimon --

COMMISSIONER HERIOT: Maimon.

CHAIRMAN REYNOLDS: Maimon Schwarzschild.

Furthermore, the Commission appoints Ms. Montoya as the Chair of the rechartered State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the State Director to execute the appropriate paperwork for the appointment.
Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Okay. Discussion?

COMMISSIONER MELENDEZ: Yes.

COMMISSIONER HERIOT: Let me just say that I had declined to be chairman this time around because I'm too darn busy.

COMMISSIONER MELENDEZ: Yeah, just a question here, and I'm sure Gail will do a great job on the state SAC, but did we ever determine whether or not Commissioners on this Commission could actually participate on state SACs?

COMMISSIONER GAZIANO: Yes.

COMMISSIONER MELENDEZ: Has it been -- have we had Commissioners in the past that --

CHAIRMAN REYNOLDS: The last discussion that we had I would be -- well, Commissioner Heriot was already on the Commission. I saw no reason --

COMMISSIONER HERIOT: I was on the SAC.

CHAIRMAN REYNOLDS: I'm sorry. I'm sorry. That's an important distinction.

She was already on the SAC, and I did not think -- and this is my personal view, a view that I expressed when we discussed this originally -- that we had -- I don't believe that we had any reasons to ask
her to step down.

Now, as a policy though, if she had not been on the California SAC, if she had been Commissioner first and asked to be on the Commission, I would vote against it, but looking at the circumstances, looking at how this unfolded, I see no reason not to have her on.

COMMISSIONER HERIOT: As a person on the Commission, if somebody wanted to be on the SAC, in my view, I would vote in favor of it.

CHAIRMAN REYNOLDS: We have different views.

COMMISSIONER GAZIANO: And just to remind you, we all can sit ex officio on any of these and we should, and I have increased my participation in the Virginia SAC since I resigned my official seat, and I hoped that my seat could be filled by someone else, but I continue to participate and will do so in all SACs.

COMMISSIONER HERIOT: It's not just -- yeah, it's not just in our local SAC.

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER HERIOT: We need to participate as Commissioners in any SAC.

CHAIRMAN REYNOLDS: That's correct.
COMMISSIONER MELENDEZ: All right. Again, it was just our different personal philosophies on that.

CHAIRMAN REYNOLDS: Well, yeah. I mean we have different views on this. A different comfort level.

Okay. All in favor please say --

STAFF DIRECTOR DANNENFELSER: I'm sorry.

Go ahead.

CHAIRMAN REYNOLDS: All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER MELENDEZ: Abstain, Melendez.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Next SAC.

CHAIRMAN REYNOLDS: Commissioner Melendez abstains. The remaining Commissioners vote in favor of it.

Okay. Next is --

COMMISSIONER MELENDEZ: I'd like to make a motion to pass the New Hampshire SAC. I've already read it and it seems okay.

COMMISSIONER HERIOT: Second.

COMMISSIONER GAZIANO: Second.
(Laughter.)

CHAIRMAN REYNOLDS: Second. All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

COMMISSIONER HERIOT: I am not going to miss my plane.

CHAIRMAN REYNOLDS: The passes unanimously.

Thanks, folks. I want to set up a teleconference. We need to have a discussion about August and meeting. We need to continue to flesh out some issues.

STAFF DIRECTOR DANNENFELSER: Are we going to do August 7th? Did people agree to that date?

CHAIRMAN REYNOLDS: I hope so. I hope so.

COMMISSIONER GAZIANO: I believe we can, but we need to see the rest of the schedule.

CHAIRMAN REYNOLDS: Oh, yes, and there will be another telephone call some time in June to discuss the national conference.

(Whereupon, at 3:15 p.m., the Commission meeting was concluded.)