U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, July 10, 2009

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

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)

ABIGAIL THERNSTROM, Vice Chairman

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (by telephone)

ARLAN D. MELENDEZ, Commissioner (by telephone)

ASHLEY L. TAYLOR, JR., Commissioner

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director (by telephone)
STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
ROBERT LERNER, Asst. Deputy Staff Director
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
EILEEN RUDERT
KIMBERLY TOLHURST

COMMISSIONER ASSISTANTS PRESENT:

ALEC DUELL
TIM FAY
DOMINIQUE LUDVIGSON (by telephone)
ALISON SCHMAUCH
RICHARD SCHMECHEL
KIMBERLY SCHULD
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CHAIRMAN REYNOLDS: Let's get started with the preliminaries.

And someone, please send them an E-mail letting them know that we've started.

Okay. The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights. It is 9:30 Eastern Standard Time on July 10th, 2009. The meeting is being held at 624 Ninth Street, N.W., Room 540, in Washington, D.C.

The following Commissioners are participating by phone. That would be Commissioners Melendez, Kirsanow, and myself. Commissioners Taylor and Thernstrom are not present, but they are on the way, and the remaining Commissioners are participating there at Headquarters.

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

I. APPROVAL OF AGENDA

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

COMMISSIONER GAZIANO: Second, but I have two amendments to propose.

CHAIRMAN REYNOLDS: Yes, there are a
number of amendments. Commissioner Gaziano, Kirsanow, and Yaki have amendments. Let's start with Todd.

COMMISSIONER GAZIANO: My first amendment is to advance consideration of the Virginia SAC somewhere before Program Planning.

CHAIRMAN REYNOLDS: Is that due to the --

COMMISSIONER GAZIANO: Let me just put mine, I suppose, together. Let's just combine them unless someone wants to divide them. My other suggestion is to delete a discussion or approval of the briefing report on Title IX.

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Any discussion?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez.

Why are we changing this? I didn't totally understand.

COMMISSIONER GAZIANO: My reasoning, anyway, is that sometimes we lose a quorum, unfortunately, for rechartering the SACs, and given that's an important statutory duty, I just want to make sure that we take care of that, and there has been some strange press interest in the Virginia SAC
in particular. So we should satisfy the public by taking action.

On briefing report on Title IX, if the majority of Commissioners are eager to take it up, that's fine, but I believe with the press of other business that at least I and maybe some others aren't prepared to take it up today.

I have no reason to think that I have a substantive objective to it one way or the other.

CHAIRMAN REYNOLDS: Okay. Let's take the Virginia SAC issue first. Are there any more --

COMMISSIONER HERIOT: It's one motion, Jerry.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: It's all one motion so that we can get through this more quickly.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any nays?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

COMMISSIONER YAKI: I abstain.

COMMISSIONER MELENDEZ: One abstention, Melendez.
CHAIRMAN REYNOLDS: Okay. Let the record reflect that Commissioner Melendez abstains, and --

COMMISSIONER YAKI: Commissioner Yaki abstains as well.

CHAIRMAN REYNOLDS: Okay. Thank you.

Commissioners Yaki and Melendez abstained, and the remaining Commissioners, with the exception of Vice Chair Thernstrom and Taylor, voted in favor of the motion.

Okay. Commissioner Kirsanow, do you want to talk about your proposed amendment to the agenda?

COMMISSIONER KIRSANOW: Yes. I would simply propose -- and I'm not partial as to where it's placed, but I would suggest right after discussion of the National Civil Rights Conference -- discussion of a draft letter to the legislature in Ohio concerning their directive related to set-asides.

CHAIRMAN REYNOLDS: Okay. Discussion?

COMMISSIONER MELENDEZ: Yes, Commissioner Melendez here.

Has anything been sent out to us pertaining to that topic prior to this discussion?

STAFF DIRECTOR DANNENFELSER: This is the Staff Director.

That letter was included in the materials.
that were sent out prior to the meeting, with the
expectation that it might be added to the agenda.

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

CHAIRMAN REYNOLDS: Okay. All in favor, please say aye.
(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

COMMISSIONER MELENDEZ: Commissioner Melendez votes no. I just don't know enough about the issue.

CHAIRMAN REYNOLDS: Understood.
Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: I abstain.

CHAIRMAN REYNOLDS: Okay. The motion passes.

COMMISSIONER GAZIANO: Mr. Chair, let the record reflect that Commissioners Taylor and Vice Chair Thernstrom have arrived and are in place.

CHAIRMAN REYNOLDS: Okay. Did they vote on this matter?

VICE CHAIR THERNSTROM: No, because I don't know what you're voting on.

CHAIRMAN REYNOLDS: Okay. Next up, Commissioner Yaki.
COMMISSIONER YAKI: What?

CHAIRMAN REYNOLDS: You have an amendment to the agenda?

COMMISSIONER YAKI: Oh, I thought we were -- okay. Kirsanow and I vote.

Yeah, I just wanted to put in the agenda discussion of temporary hiring authority.

CHAIRMAN REYNOLDS: All right. Second.

Discussion?

(No response.)

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

COMMISSIONER KIRSANOW: Where on the agenda?

COMMISSIONER YAKI: Yeah, where on the agenda, Mr. Chairman?

CHAIRMAN REYNOLDS: After discussion of Commissioner Kirsanow's letter, which will be after the discussion of the national conference.

COMMISSIONER HERIOT: Where does the SAC go then?
CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: Where is Virginia SAC now?

CHAIRMAN REYNOLDS: That's up next.

COMMISSIONER GAZIANO: So first.

VICE CHAIR THERNSTROM: Mr. Chairman, is it first?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: You snooze, you lose.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: I was doing very important business.

CHAIRMAN REYNOLDS: Commissioner Gaziano, would you like to lead the discussion regarding the alleged leak?

II. STATE ADVISORY COMMITTEE ISSUES,

VIRGINIA SAC

COMMISSIONER GAZIANO: Oh, yeah, I can explain that, but that could come before or after we approve the slate.

I was contacted, as I understand our Commission staff was, by the story that was published by a Website that had the erroneous story on Hans von Spakovsky last August, and it was seeking confirmation that two on the slate for the Virginia SAC would be
voted on.

I confirmed that we were going to take up the Virginia SAC; that we do not release the name of the slate publicly because there are often changes that are made if we find out that someone is ineligible or withdrawn or to have an intellectually balanced slate. So I was not going to violate our rules by confirming that the two individuals were or were not on any proposed slate.

And then I tried to explain to the reporter, that I would be glad to discuss that and who recommended, that it was part of our public record who recommended different people to these SACs, that it was the Commissioners' responsibility to try to make recommendations to every single SAC, and that I certainly made recommendations to the state SAC that I live and that I used to serve on.

So it bothers me that someone on our payroll or fellow Commissioner thought it necessary -- by the way, the reporter only was aware of these two individuals that someone objected to, without disclosure of the rest of the SAC. It's a SAC that I served on until recently, and as we will see in a few minutes, the slate hasn't changed. It's a very balanced slate, and it includes a lot of people who
are being reappointed or whose nominations are being reappointed.

So I do wish we had some clarification of whether Commissioners and staff should leak to the press non-public information.

CHAIRMAN REYNOLDS: Well, Todd, I think that officially everyone will agree that that should not occur, but Washington being Washington, the probability that we will show self-restraint, discipline -- it's highly unlikely in my view, but your point is well taken.

COMMISSIONER YAKI: I have a point of information.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Mr. Chair?

CHAIRMAN REYNOLDS: Yes. Commissioner Yaki.

COMMISSIONER YAKI: Yes, I just wanted to ask the General Counsel what are the rules concerning whether or not the names on the list are, for lack of a better word, under seal until they come up through the Commission publicly before the vote.

MR. BLACKWOOD: This is David Blackwood for the record.

Certainly under seal is not the analogy I
would use. I was unaware that I would be asked this particular question. So I haven't gone through the rules, but I would say that I'm unaware of any specific rule. It is simply non-public information until it's revealed at the meeting. That's it.

COMMISSIONER YAKI: Okay. I don't understand what you mean by "non-public information."

MR. BLACKWOOD: It's not released to the public.

COMMISSIONER GAZIANO: Is it analogous to a draft report --

COMMISSIONER YAKI: It is -- is it -- I haven't finished yet.

COMMISSIONER GAZIANO: -- that Commissioners are reviewing?

COMMISSIONER YAKI: I haven't finished yet. Is it non-public information simply because we have chosen not to make it public or is there some rule that says it is not to be made available to the public?

Commissioner Gaziano seems to imply that there is some -- there is some malfeasance or law breaking going on, and I would like to know whether or not, in fact, there is any existing rule that says that this particular type of information which we have
chosen, and I didn't even know if we chose or
whatever, not to release this information or not, if
there is an actual prohibition against it within our
rules or under any federal statute that I am unaware
of.

MR. BLACKWOOD: Well, I would be glad to
research the issue. I would note, however, that these
do involve employment issues, which are generally
covered under our CFR as confidential issues. Until
the individuals, my impression would be, they actually
become employees, it would be --

COMMISSIONER YAKI: Wait, wait.

MR. BLACKWOOD: Commissioner Yaki --

COMMISSIONER YAKI: Are they employees?

Are they --

MR. BLACKWOOD: They are special
government employees, SGEs.

COMMISSIONER HERIOT: Even so, that
doesn't make sense to me. You know, there has to be
some way that the public would have input on who was
on the SAC and who isn't on the SAC, and if we can't
talk about it until they've been approved, that can't
be the right rule.

VICE CHAIR THERNSTROM: If people
themselves have been contacted, I mean, it isn't

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really private information. They aren't told, "Don't
tell anybody."

COMMISSIONER YAKI: Right. I mean, I've
never seen any prohibition in any forms that go out
that says, "By the way, do not tell the press. Don't
tell your friends or anything like that."

VICE CHAIR THERNSTROM: Yeah. I mean, you
can't even tell your spouse, by the way.

COMMISSIONER GAZIANO: Mr. Chairman, let
me just give my thoughts on it. I don't think that --
there are two issues here. First of all, the fact
that someone who can reveal their own private salary
and employment history information doesn't mean that
we should be free to reveal such.

But I'm just talking about a workable
practice. The practice -- and this would apply to our
draft report. There have been issues before about
whether a draft report should be made public before we
all vote on it and it becomes final, and I think it
will be unfortunate, and it will interfere with our
deliberative process if proposed slates are made
public for nitpicking before we have a chance to
provide our input to each other and to the staff when
there is a proposed slate.

The opportunity for us to influence a
proposed slate will be interfered with if we as a practice just allow those to be released.

But if that's the view of the majority of the Commissioners, I can live with it. It's one that I -- but certainly I understood that unless our non-public documents are clearly -- there's an exception made for them, that we should keep those matters that are not public not public until there's some sort of release or some sort of vote of the Commission.

CHAIRMAN REYNOLDS: Commissioner Gaziano, you make a good point. It does have -- these premature disclosures have the potential to affect our deliberations, but that was the point of the disclosure. That was the purpose of the disclosure.

It's no mistake that the whole slate of names was not released to the reporter. There are two individuals. They have a public profile, and there are some individuals who don't particularly care to see them serve on the SAC. At least that's my interpretation of what's happened, and as I said before, I wish it weren't the case, but I suspect that even if we had a rule in place leaks would occur.

COMMISSIONER GAZIANO: We've got to enforce our rules.
COMMISSIONER HERIOT: Mr. Chairman --

COMMISSIONER GAZIANO: I would rather we allow this material to be released whenever and always than that we ignore our rule. We've got to have some rules. We've got to have some respect, and we've got to have some common courtesy among Commissioners, special assistants and other employees about whether we're going to keep drafts confidential or not.

So if you don't care if this is -- if a majority doesn't care. I understand, Mr. Chairman, you're agreeing with me that it may interfere with our actually working out compromises.

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER GAZIANO: But if we believe we can't enforce this rule, we ought to change this rule. We ought to at least make it clear that it's a violation of the rule.

COMMISSIONER HERIOT: But we don't know that it is yet.

CHAIRMAN REYNOLDS: Let's let the General Counsel review and our AIs and any other relative rules and see where we stand in terms of whether there's a prohibition in place right now.

COMMISSIONER GAZIANO: Well, again, whether this is a rule, we ought to have -- we don't
necessarily need an AI to have an understanding amongst each other. So whether we need to create a formula, we ought to just discuss this.

COMMISSIONER HERIOT: Well, find out what the rule is first. Let's, you know, have the General Counsel do that. It is not clear at all to me that draft reports and SAC membership should be treated the same. You know, sometimes we may actually want public input on these things.

But at any rate, first up, let's have the General Counsel check into what the rule is, and we'll discuss it at the next meeting.

COMMISSIONER YAKI: This is Commissioner Yaki. I just want to state for the record that regardless of what the rule is or is not, even if there was a rule, I don't see how transparency in our process is nitpicking, to quote my fellow Commissioner. I don't see how public access and input is nitpicking, again to quote my fellow Commissioner.

Certainly on issues such as this that involve appointments to a state entity, that is a creature of the Commission. The fact that people may have some feelings about them and want to express them should not be done -- I just don't think that we should play hide the ball on things such as this.
And, again, I actually agree with Commissioner Heriot that there's a distinction that can be made between -- to lump this into a draft report is, I think, not quite the same, although at some point I also do believe that our reports prior to being approved by the Commission should also be made public for people to comment on as well.

COMMISSIONER GAZIANO: Okay. One final thought, Mr. Chairman, and I hope that -- you know, I might even be persuaded for a public release process, but I do find -- found it interesting that the reporter, while I was trying to get an answer as to whether this was public, I was told by staff, confirmed that it was not public information. So I didn't want to confirm it, but the reporter was trying desperately to get me or someone at the Commission to confirm it.

So the leaker believed it was wrong. The leaker, whoever it was, would not go on the record to -- I asked the reporter, by the way, who revealed this, and the reporter laughed and said, of course, that was confidential.

So there is a sense, whoever leaked this information understood that it was improperly being leaked or at least there was a serious issue as to
whether it was improperly leaked.

But if we want to take this up at another
time, I might be persuaded at releasing the slate. I
just wasn't going to release the names myself when
staff indicates that it was non-public, and I still
think there's a pretty good reason for that.

VICE CHAIR THERNSTROM: Let me say one
last thing here or maybe, Commissioner Yaki, you have
something to say. Well, let me say this one thing
briefly.

The distinction that Commissioner Heriot
made, however, is extreme -- however we resolve the
SAC appointments matter, the distinction that
Commissioner Heriot made between SAC slates and drafts
of reports is extremely important. I mean, I may with
any one subject want to take, let's say, you know, a
part of it, a particular aspect of the data collection
or the argument to somebody I trusted, you know, on an
advisory basis and say, "Look. Does this make sense
to you? Do these data look right to you?" et cetera.

I mean, we can't not use outside
resources.

COMMISSIONER HERIOT: That's very
different from taking it to the press, which is what
Todd is talking about.
VICE CHAIR THERNSTROM: Yes, absolutely, absolutely. Well, I'm just reinforcing your distinction here.

CHAIRMAN REYNOLDS: Commissioner Yaki, do you have a final comment?

COMMISSIONER YAKI: Yeah. I was just going to say that despite the fact that I was not the source of the leak, at the same time it has never been my view that this has been information under lock and key until the time that we brought it forward. So I can assure you that if I had been the one who had done it, I would have done it simply by giving out the information without saying that it was not to be made public.

COMMISSIONER HERIOT: Can I interject something here?

We're off agenda. We never did actually approve the agenda, nor did we approve the minutes. We skipped ahead.

COMMISSIONER GAZIANO: Oh, didn't we have a final vote on the --

COMMISSIONER HERIOT: No, we voted on the amendment to the agenda.

COMMISSIONER GAZIANO: Okay. Well, let's --
COMMISSIONER HERIOT: We actually have to vote on the agenda then. I mean, this --

CHAIRMAN REYNOLDS: Okay. Let's clean it up.

I move that we approve the agenda, as revised, and that the -- well, is there a second?

COMMISSIONER HERIOT: You don't need to do that because there was an original motion to adopt the agenda. We then amended the agenda. All we have to do is vote on the agenda now.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

COMMISSIONER YAKI: Me.

VICE CHAIR THERNSTROM: I abstain because I don't know what the agenda is now.

COMMISSIONER YAKI: Commissioner Yaki abstains.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Well, I think the Chairman put the approval of the SAC and the discussion before the minutes. We can do that, I take
COMMISSIONER HERIOT: Okay, okay.

COMMISSIONER GAZIANO: So let's --

COMMISSIONER YAKI: Point of information.

CHAIRMAN REYNOLDS: Okay. At this point, I'm just --

COMMISSIONER YAKI: Point of information, Mr. Chairman.

CHAIRMAN REYNOLDS: -- just want to take care of the Virginia SAC.

COMMISSIONER YAKI: Point of information, Mr. Chair, on the agenda vote. I did not hear Commissioner Melendez's vote being recorded.

COMMISSIONER MELENDEZ: I abstained.

COMMISSIONER YAKI: Thank you.

CHAIRMAN REYNOLDS: Okay. The Virginia Advisory Committee was last rechartered on June 11th, 2007. A package was sent to each Commissioner recommending an advisory committee of 13 members. Eight previous members are returning, and there are five new appointees. Recommended Advisory Committee members are selected in compliance with State Advisory Committee membership selection guidelines specified in AI 5-9, Section 7, following the lean sigma -- six sigma process approved by the Commissioners in January.
Commission staff reached out to the Commissioners, current SAC members, the entire Virginia Congressional Delegation, Governor Kaine, all Virginia state senators, various mayors, educational institutions, business and labor organizations, civil rights organizations, media, and religious groups.

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

- Linda Chavez
- Angela Ciccolo
- Edmund Cooke
- Hal Due (phonetic)
- Louise Greevis (phonetic)
- Alex Gulotta
- Curt Levey
- Miriam Moore
- Cameron Quinn
- Jeanene Sims
- Ryung Suh -- I apologize for butchering his name.

Hans von Spakovsky. I apologize to Hans
also.

And also Lacy Ward.

Furthermore, the Commission appoints Linda Chavez as Chair of the rechartered State Advisory Committee. These members will serve as uncompensated government employees.

Under this motion the Commission authorizes the Staff Director to execute the appropriate paper work for the appointment.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Question?

COMMISSIONER GAZIANO: And I may have missed one name. Was Cameron Quinn included in that list?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: Okay. Thank you.

VICE CHAIR THERNSTROM: I have a question, Mr. Chairman.

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: Were all of the people, members who are being reappointed, where they all contacted to make sure that they, indeed, want to be reappointed?

COMMISSIONER GAZIANO: I think Peter --
Peter are you on the line?

MR. MINARIK: Yes, I am. Peter Minarik.

CHAIRMAN REYNOLDS: Peter, did you hear the question?

MR. MINARIK: Yes. They were all contacted by the Eastern Regional Office.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Any other questions or comments?

COMMISSIONER MELENDEZ: Yes. My concern on whether some people that wanted to be returned but were denied.

CHAIRMAN REYNOLDS: Peter?

MR. MINARIK: This is Peter Minarik again.

The answer to that question is I was informed by the Director of the Eastern Regional Office that, indeed, one member did indicate the desire to return. According to AI 5-9, Section 7, submitted paper work was considered, and they thought there was a superior candidate, and the candidate was put forth.

COMMISSIONER YAKI: Who was that?

CHAIRMAN REYNOLDS: I hear school children.

VICE CHAIR THERNSTROM: We've got them.
here, Mr. Chairman.

COMMISSIONER YAKI: Who are the
individuals that Mr. Minarik just referenced?

VICE CHAIR THERNSTROM: I think it was
one; is that correct?

COMMISSIONER YAKI: Oh, you say that there
was one?

CHAIRMAN REYNOLDS: Peter?

MR. MINARIK: Peter Minarik.
Yes, one, only one submitted paperwork.

COMMISSIONER YAKI: So I'm asking --

COMMISSIONER HERIOT: Who was that?

COMMISSIONER YAKI: -- who was that person
and who was the person considered superior to that
person?

MR. MINARIK: I apologize. I'm in Kansas
City. I don't have the exact name in front of me.

CHAIRMAN REYNOLDS: Well, and also I don't
think it's appropriate to have a conversation about
which candidates were superior to others.

COMMISSIONER YAKI: Well, since that
judgment, Mr. Chair, was not made by us, I would like
to know.

CHAIRMAN REYNOLDS: Well, that's fine, but
again, I think that it's wholly inappropriate to say
that Individual X was superior to Individual Y.

COMMISSIONER HERIOT: Yeah, but it has already been said, and it's supposed to be our judgment. So we need to know.

CHAIRMAN REYNOLDS: I have no problem with anyone having the information, but we can do it off line.

VICE CHAIR THERNSTROM: Well, Commissioner Heriot is perfectly right. Commissioner Heriot, I don't think you were heard. Would you -- can you repeat it?

COMMISSIONER HERIOT: I forget what I said.

VICE CHAIR THERNSTROM: You said --

COMMISSIONER HERIOT: This is supposed to be our judgment that's being made here, and so we need to know this information.

COMMISSIONER GAZIANO: If we can go into executive session -- I made some inquiries, and I used to serve on this subcommittee, but I don't think that it would necessarily be appropriate to -- I may or may not be right. I had no other involvement until after the slate was sent out to other commissioners other than making my own recommendation.

COMMISSIONER YAKI: Well, before we do
anything, such as going into executive session, the
question is: does Mr. Minarik have the information
before him in order to do this?

If he does not because he's in Kansas
City, we need to know that.

CHAIRMAN REYNOLDS: Peter, can you answer
the question?

MR. MINARIK: Which question, Mr.
Chairman? Peter Minarik.

CHAIRMAN REYNOLDS: They want to know the
names of the two individuals that we just discussed.

MR. MINARIK: I didn't hear about two
names. Peter Minarik again.

VICE CHAIR THERNSTROM: No, there are --

COMMISSIONER HERIOT: It's the one and one
who's superior to the one.

VICE CHAIR THERNSTROM: The rejected and
the substituted name. That's two names.

MR. MINARIK: Thank you.

I can get that information from the
Eastern Regional Office. It was one person I
understood that submitted a letter -- it's my
understanding, to Ms. Davis in the Eastern Regional
Office. I don't have that information out here in
Kansas City. I can --
COMMISSIONER HERIOT: Can you get on the phone and get it right now and then we'll come back to this later?

COMMISSIONER GAZIANO: I think the back of our hearing room we have an employee who might be able to speak to that, but I am a little concerned about whether we should go into executive session given the --

CHAIRMAN REYNOLDS: Let's push this to the end of the agenda and move on.

COMMISSIONER HERIOT: Well, if she's here, let's not. Let's just do it right now.

VICE CHAIR THERNSTROM: Yeah. But I also have a question.

COMMISSIONER HERIOT: This is the most important thing on our agenda.

VICE CHAIR THERNSTROM: Who is the decision-maker here to substitute one name for the other? Who's ultimately making this decision?

CHAIRMAN REYNOLDS: These decisions are made by generally staff.

COMMISSIONER YAKI: So was it made by Peter or was it made by the Staff Director?

COMMISSIONER GAZIANO: Ultimately -- is the Staff Director on the line today? I know he's --
STAFF DIRECTOR DANNEFELSER: Yes, I am.

COMMISSIONER GAZIANO: Okay. Ultimately I have --

STAFF DIRECTOR DANNEFELSER: I do have the name of the person, but again, I don't believe it would be appropriate in a public session to start talking about an individual person --

COMMISSIONER HERIOT: Well, let's go into executive session right now.

STAFF DIRECTOR DANNEFELSER: -- but I can go into executive session.

VICE CHAIR THERNSTROM: Do you have the name of both?

STAFF DIRECTOR DANNEFELSER: It would be -- it would be helpful probably to have the Eastern Regional Director in that session if we do go into executive session.

COMMISSIONER GAZIANO: I move that we go into executive session now with -

COMMISSIONER YAKI: I have a threshold question before we do that. Point of privilege. So before we go into executive session, to reiterate Commissioner Thernstrom's question, who made the determination that one person should get in over the other? Was it Peter or was it the Staff Director?
I think we can at least have that in
public before we go in --

STAFF DIRECTOR DANNENFELSER: The Eastern
Regional Director made the decision -- made the
recommendation that the individual should not be
reappointed, and I accepted her recommendation.

CHAIRMAN REYNOLDS: Let's be clear, folks.

COMMISSIONER GAZIANO: That's what I
thought.

CHAIRMAN REYNOLDS: These types of
decisions are made all the time, and there is nothing
unusual or sinister about this.

COMMISSIONER HERIOT: Yes, but there's
nothing wrong with us finding out about it either.

CHAIRMAN REYNOLDS: We always have a --
problems.

COMMISSIONER YAKI: I don't think there
was any imputation of anything sinister, Mr. Chair.
We just wanted to know.

COMMISSIONER GAZIANO: Well, I move, with
assistance of our able counsel here, to close a
portion of the meeting pursuant to regulations
implementing the Sunshine Act. I believe I'm seeking
the General Counsel and Solicitor to certify that we
can do so. I believe Exemption 6 applies because we
might -- our discussion might involve disclosing
information of a personal nature where disclosure
might constitute a clearly unwarranted invasion of
personal privacy.

Do you concur?

And let's discuss first who we should
have. We should have the Eastern Regional Director,
the Staff Director, and Peter Minarik.

VICE CHAIR THERNSTROM: Well -- and let me
ask a question. Does the Staff Director have both
names, that is, the person whose application --

COMMISSIONER GAZIANO: I think we will
have all of the decision makers. We will have all of
the decision makers with all of the information.

VICE CHAIR THERNSTROM: No, no, no, but we
need both names.

MR. MINARIK: It's my --

COMMISSIONER GAZIANO: We can find out if
we go into executive session. There may be some other
information, too.

CHAIRMAN REYNOLDS: Let's go into
executive session and have this discussion.

COMMISSIONER GAZIANO: Okay. I call for a
vote on going into executive session.

COMMISSIONER YAKI: Wait, wait, wait.
COMMISSIONER HERIOT: Don't you make a motion?

COMMISSIONER GAZIANO: I did.

COMMISSIONER YAKI: Personal privilege.

Don't we have to excuse -- don't we have to exempt certain individuals who normally would not be privy to executive session?

MR. BLACKWOOD: This is David Blackwood.

Yes, we have to decide now who's going to be in on the call. We also, because this is a telephonic conference, determine who's on the line, and then we're going to have to decide after we've off executive session how these people that have had to get off get back on.

CHAIRMAN REYNOLDS: Folks, this is not an important issue. If we're going to do this, let's do it at the end. It is disruptive. We have people on the line listening, and it will cause procedural problems.

COMMISSIONER HERIOT: Then how are we going to vote on the Virginia SAC?

VICE CHAIR THERNSTROM: We're going to lose people by the end of the meeting. I think we need to do this now. This is -- this is an issue some people care about.
CHAIRMAN REYNOLDS: That's obvious.
Okay. Let's vote. All in favor please say aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: What are we voting on?

COMMISSIONER GAZIANO: I'd like to -- I'd like the --

VICE CHAIR THERNSTROM: To go into executive session?

COMMISSIONER GAZIANO: Yeah, but before we do so can I just ask? I suppose I'd like the General Counsel as well and the -- can you -- and, say, Ivy, Peter and Marty, plus Commissioners. Does anyone have -- so that we're clear on that vote?

MR. BLACKWOOD: That is fine. This is David Blackwood, General Counsel. And the Solicitor and I both agree it should be closed.

I have another issue, talking with Ms. Dunston. We are really going to have a technological problem about how to get people off. Is that correct? And confirming who got off. Because we -- do we have any records?

CHAIRMAN REYNOLDS: If we can't confirm that -- if we can't confirm that this conversation is
limited to the appropriate people, we should not have
the conversation.

VICE CHAIR THERNSTROM: Well, then we
should --

COMMISSIONER HERIOT: Well, who's on the
line that we wouldn't have anyway?

MR. MINARIK: Can we clear the line and
have the approved people call back in?

COMMISSIONER HERIOT: All of the telephone
line people are approved people, aren't they?

COMMISSIONER YAKI: Well, you would assume
so.

COMMISSIONER HERIOT: We've got
Commissioners, Marty, Peter Minarik. Is there anybody
else on the line there?

DOMINIQUE LUDVIGSON: Can you hear me
Gail?

COMMISSIONER GAZIANO: I have a proposed
solution or a partial proposed solution. At most
there may be one or so person we can add to this
Virginia SAC. I think the slate is certainly a very
solid slate. How many is -- what is the total?

STAFF DIRECTOR DANNENFELSER: Thirteen.

COMMISSIONER GAZIANO: Thirteen. What is
the maximum we can put on the SAC?
STAFF DIRECTOR DANNENFELSER: Nineteen.

VICE CHAIR THERNSTROM: All right.

COMMISSIONER GAZIANO: We can potentially add some. Can we vote on the -- I propose we vote on the SAC, we get some input, and at a subsequent meeting if we think it's warranted, we can add one, two, or three people to the SAC.

VICE CHAIR THERNSTROM: Right. I was going to -- this is Vice Chair Thernstrom. I was going to raise the same point. If we had somebody apply to be on the SAC and we've got room on the SAC, we didn't need to substitute. Just include that person.

COMMISSIONER GAZIANO: That may be. There are some -- as I understand, certainly staff on our behalf try to come up with a certain number of balance of political party, of other intellectual factors, and so sometimes I think that they do have to make these calls. I don't know what the factors went into these calls. So I'm interested, too, but I think they do sometimes have to make that kind of a call.

VICE CHAIR THERNSTROM: All right, but this is not exactly. These SACs are not -- you know, we're lucky to have people wanting to serve on them.

COMMISSIONER YAKI: This is Commissioner
Yaki. I have a question for the Staff Director.

STAFF DIRECTOR DANNENFELSER: Yes.

COMMISSIONER YAKI: Would the addition of this person who was -- now, was this person appointed to the SAC two years ago who was not reappointed?

STAFF DIRECTOR DANNENFELSER: Well, yeah, he is an incumbent member.

COMMISSIONER YAKI: Okay.

STAFF DIRECTOR DANNENFELSER: But I'm not sure if he was only on two years ago or if he had been on longer than that. I'd have to confirm that point with the Regional Director.

COMMISSIONER YAKI: This person has been on the SAC before.

COMMISSIONER GAZIANO: Let me just state --

COMMISSIONER YAKI: I'm not yet finished yet, please. So my question is whether or not the addition of this person, who was previously on the SAC, would in your judgment throw off any of the lean six sigma criteria or AIs, whatever in the heck it is, we have with regard to the membership of the Virginia SAC. Because I would say that in the only way that I would support this would be if we just simply allow this individual back on the Commission.
COMMISSIONER GAZIANO: Would the Commissioner yield?

COMMISSIONER YAKI: I will.

COMMISSIONER GAZIANO: I don't know which one individual we're talking about, but I do know since I served on the SAC that there were two conservatives who I assume are Republicans who were previously on it who aren't. Be careful what you ask for. You may get a much -- if you're asking for automatic inclusion, you may end up with two more Republican conservatives. That may very well be.

That's my base of knowledge right now.

COMMISSIONER YAKI: Commissioner Gaziano, I can deal with you. I can deal with another one on the Virginia SAC. It's not a problem.

MR. BLACKWOOD: This is David Blackwood. I just spoke with the Director for ERO, who indicated that in her opinion it would affect the balance.

COMMISSIONER YAKI: Okay. Then we won't do it.

VICE CHAIR THERNSTROM: Which balance? Is it the party balance?

MR. BLACKWOOD: I didn't ask which balance. She just said it would affect the balance.
COMMISSIONER YAKI: Then why don't we just
--

STAFF DIRECTOR DANNENFELSER: Well, this is the Staff Director.

I believe that the SAC is very well balanced with these 13 members. If we were to consider this person who was not reappointed, then we would have to look at that person and consider how that person affected the balance. There would always be the possibility if there was a determination to put that person back on the SAC that we would then want to add a second person in order to maintain the balance. That's something that the Commission could consider.

COMMISSIONER YAKI: Why don't we just do this in the interest of moving this thing along, rather than go into executive session and all of these other rigmaroles? Let's just move ahead with this. Let's have a report by the Staff Director at the next meeting over this contretemps was had about who was picked and who wasn't picked so that we at least understand how this was done.

Because I think I agree with Commissioner Heriot. We're the ones who ultimately put our staff on this. It would be nice to know how it came about internally in some ways because if someone comes and
complains to us one way or another and we are left
with the "I don't know; that's just the list that was
given to us," that's not really sufficient for us as
Commissioners to be able to explain to any member of
the public.

COMMISSIONER GAZIANO: I concur in that.
COMMISSIONER HERIOT: I would also say
that --
CHAIRMAN REYNOLDS: Okay, folks. What are
we entertaining --
COMMISSIONER HERIOT: -- that is
unacceptable to come in here and --
CHAIRMAN REYNOLDS: -- at this point? Are
going to vote on the slate as currently configured?
COMMISSIONER YAKI: We're going to vote on
it.
CHAIRMAN REYNOLDS: I'm sorry?
COMMISSIONER YAKI: This is Commissioner
Yaki saying we're going to vote on it.
COMMISSIONER GAZIANO: I hope we can vote
on it, but I still --
CHAIRMAN REYNOLDS: Okay, fine.
COMMISSIONER GAZIANO: -- But I want -- I
would like the clarification as well.
CHAIRMAN REYNOLDS: Okay. Staff Director,
please provide the requested information.

At this point let's vote. All in favor please say aye.

COMMISSIONER YAKI: Of what?

(Chorus of ayes.)

COMMISSIONER YAKI: Of what?

CHAIRMAN REYNOLDS: Objections?

COMMISSIONER YAKI: I'm sorry. I don't know. What are we voting on? Point of information.

COMMISSIONER GAZIANO: The approval --

CHAIRMAN REYNOLDS: The Virginia SAC.

COMMISSIONER YAKI: Because I was going to -- you have not called for any discussion and say we were discussion process rather than discussing anything in particular.

CHAIRMAN REYNOLDS: I'm sorry. Michael?

COMMISSIONER YAKI: We didn't -- you did not allow substantive discussion. We were only discussing procedural matters up until this point.

CHAIRMAN REYNOLDS: Okay, okay. Very good. Let's continue the discussion.

COMMISSIONER HERIOT: Can I say something?

I still think we should go into executive session and deal with this. I think that we should -- if the idea is that we can never really talk about these cases
unless we go into executive session, then we should always be prepared to go into executive session, and the staff should understand that there's a good chance that's going to happen.

COMMISSIONER YAKI: Well, once we read the names out, that's -- you know, closed, right?

VICE CHAIR THERNSTROM: I am really in agreement with Commissioner Heriot here. I want to go into executive session. I don't want to vote on this slate with limited information. You know, I would prefer to postpone the whole item until the next --

COMMISSIONER HERIOT: I think we should go into executive session now.

VICE CHAIR THERNSTROM: That's fine. I agree. I'm support that.

COMMISSIONER YAKI: Point of information. Now we go back to the problems enunciated by the General Counsel regarding --

VICE CHAIR THERNSTROM: There's nobody on the phone who --

COMMISSIONER HERIOT: All we have to do is to up into Marty's office and do a conference call from there.

CHAIRMAN REYNOLDS: Folks, unless we are sure that only the appropriate people would be on the
line, we should not move forward.

COMMISSIONER GAZIANO: Gail has --

COMMISSIONER HERIOT: Gerry, Gerry, wait.

All we have to do is adjourn from this room, go up to
Marty's room, and we'll get you and Pete and get the
people that we need on the phone up there, and then we
come back.

MR. BLACKWOOD: There's also the matter of
the court reporter.

STAFF DIRECTOR DANNENFELSER: You have to
have the court reporter present even in executive
session.

VICE CHAIR THERNSTROM: Is the conference
bridge operator on the line so that we can --

STAFF DIRECTOR DANNENFELSER: The way to
do that is to clear the line, let everyone call back
in, and only accept the calling back in of people who
are approved to be on the line.

VICE CHAIR THERNSTROM: That's fine with
me. I think this should be cleared up. I think going
ahead with the vote on the SAC now is a mistake
without going into executive session.

COMMISSIONER HERIOT: And putting off the
SAC is also a mistake. So that gives us one choice.

CHAIRMAN REYNOLDS: Okay. Folks, I'm
trying to get a sense of where the consensus is, and what limitations that we have in terms of the fact that we may discuss sensitive information.

Is there a consensus that we should go into executive session?

COMMISSIONER YAKI: No.

Commissioner Yaki has a question for the General Counsel.

Once we read these names out in public, we can talk about them in any way we want, correct?

COMMISSIONER GAZIANO: We can talk about these names. There are certain Commissioners who want to talk about other names, other than the ones that have been read. We're still at that point, I think.

COMMISSIONER YAKI: What other names, other than the --

COMMISSIONER GAZIANO: The other -- the other people who were not on --

COMMISSIONER HERIOT: There are certain --

COMMISSIONER YAKI: I thought we had a consensus that we were going to ask for that to be brought back to us--

COMMISSIONER HERIOT: No.

COMMISSIONER YAKI: -- because there was still room on the Commission to deal with this one way
or another.

COMMISSIONER HERIOT: No.

VICE CHAIR THERNSTROM: I don't think that makes -- I'm sorry. This is Vice Chair Ternstrom.

It doesn't make any sense. I want to look at the SAC as a package, you know, rather than having names dribble back another month.

COMMISSIONER GAZIANO: We've done that with other SACs though, Abby, and we have room, as I say, to try to maintain balance to have one, two or three more, and that seems to give us a fair amount of flexibility on this one.

COMMISSIONER YAKI: Oh, one other point that was raised, Mr. Chair.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: In a previous E-mail around my request for the discussion on temporary hiring authority, it was hinted that that would be an item that might also be eligible for executive session. Rather than go into this thing and do it twice, which would be extremely disruptive, why wouldn't we add that also to the closed session agenda?

VICE CHAIR THERNSTROM: That's fine.

CHAIRMAN REYNOLDS: Well, I think that
both ideas are bad. We are wasting time. This is
disruptive. I mean, the exercise of discretion that
folks are concerned about today have existed since the
beginning of the Commission, and today this is the
first time at least to my knowledge that anyone has
these types of concerns about the minutia of how
people are selected.

I mean, no one is suggesting that anything
untoward has occurred.

COMMISSIONER GAZIANO: That's correct.

COMMISSIONER HERIOT: We don't know that,
Jerry.

COMMISSIONER GAZIANO: I support, though,
our being able to ask the decision makers. I think
that we need to be able to ask the decision makers,
but I don't --

COMMISSIONER HERIOT: We are the decision
makers.

COMMISSIONER GAZIANO: Exactly, but I
don't -- those who have proposed them to us.

COMMISSIONER YAKI: In the immortal words
of the bank president, we are the deciders.

CHAIRMAN REYNOLDS: Isn't this the type of
information that could be handled by sending an E-
mail?
COMMISSIONER GAZIANO: Right, but I do not think that that -- if the majority disagree -- I hear two Commissioners disagree that we can vote on this slate, but if a majority want to consider it as a whole, that's fine, but I think we can vote on this slate and we can add names.

STAFF DIRECTOR DANNENFELSER: This is the Staff Director.

I would sort of like to second Commissioner Gaziano's suggestion and keep open the idea of the executive session, that if at the next meeting there's a desire for an executive session to deal with this, that we have a balanced package and we can add perhaps the individual who was not included and any other individuals who might be recommended --

COMMISSIONER HERIOT: The point is here with these SACs --

STAFF DIRECTOR DANNENFELSER: -- to consider them at the next meeting and then have an executive session --

COMMISSIONER HERIOT: -- it's going to be routine that there will be questions.

STAFF DIRECTOR DANNENFELSER: -- to explain why that person was not included.

COMMISSIONER HERIOT: You know, this issue
is going to come up over and over again. You know, this is a decision the Commission has to make, and therefore, the Commission has to be prepared to go in executive session on these matters on a routine basis. We cannot have a rule that says that we never can go into executive session for SACs. It has got to be something that the staff is prepared to handle every time.

COMMISSIONER GAZIANO: I agree, but because the issue that relates to the executive session is whether we should add a person, I don't think we need to necessarily do it at this session.

CHAIRMAN REYNOLDS: Okay, folks. Let's -- we've entertained a number of proposals. One is that we vote on the slate, and then we add names insuring that there's balance by the next business meeting. Well, I move that we adopt that approach. Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Okay. All objections.

(No response.)

CHAIRMAN REYNOLDS: Abstentions.
COMMISSIONER MELENDEZ: I abstain.

COMMISSIONER HERIOT: I abstain.

COMMISSIONER YAKI: I abstain.

COMMISSIONER MELENDEZ: Melendez.

CHAIRMAN REYNOLDS: I'm sorry.

COMMISSIONER MELENDEZ: Melendez abstains.

COMMISSIONER HERIOT: Heriot abstains.

COMMISSIONER YAKI: Yaki abstains.

VICE CHAIR THERNSTROM: Thernstrom abstains.

COMMISSIONER HERIOT: But it was an unnecessary motion anyway.

CHAIRMAN REYNOLDS: Okay, and --

COMMISSIONER HERIOT: You can just go ahead and do what you're going to do.

CHAIRMAN REYNOLDS: Hold on.

COMMISSIONER GAZIANO: Yeah, he was seeking to know where his majority was.

COMMISSIONER TAYLOR: We can just call the question on the SAC.

COMMISSIONER HERIOT: Yeah.

COMMISSIONER GAZIANO: Okay. After discussion, now Commissioner Yaki may want to express his thoughts on the slate that we're going to vote on.

COMMISSIONER YAKI: I have a question.
Was there a majority?

COMMISSIONER HERIOT: No.

COMMISSIONER GAZIANO: A majority of those voting, yes.

COMMISSIONER YAKI: Of those voting?

CHAIRMAN REYNOLDS: It's a tie.

COMMISSIONER GAZIANO: A majority of those voting.

VICE CHAIR THERNSTROM: No, it's not.

COMMISSIONER HERIOT: There were no no votes. There were no no votes at all.

COMMISSIONER YAKI: Oh, then I'd move to reconsider.

PARTICIPANT: You can't. You abstained.

COMMISSIONER YAKI: That was an abstention. It wasn't a no.

COMMISSIONER GAZIANO: You can't vote to reconsider when you abstain.

CHAIRMAN REYNOLDS: Okay. So we have four abstentions and four in favor. The motion passes.

VICE CHAIR THERNSTROM: I don't think we had four in favor even.

CHAIRMAN REYNOLDS: Okay. Commissioner Kirsanow, how did you vote?

COMMISSIONER KIRSANOW: Aye.
CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Aye.

COMMISSIONER HERIOT: You've got it. The motion passed.

COMMISSIONER GAZIANO: The motion passed.

Okay. Let's have discussion on the slate and let's vote on it.

CHAIRMAN REYNOLDS: Okay. Discussion.

(No response.)

CHAIRMAN REYNOLDS: Hearing none, all in favor please say aye.

COMMISSIONER HERIOT: Oh, no, wait.

COMMISSIONER YAKI: Commissioner Yaki is putting his microphone on.

VICE CHAIR THERNSTROM: There is discussion.

COMMISSIONER YAKI: I have some serious reservations about some of the individuals being appointed to the Virginia SAC. I think it probably goes without saying that -- well, first of all, in order to protect all of us, why don't we first read off the names so that then we know they are in the public.
COMMISSIONER GAZIANO: We've done so.

COMMISSIONER HERIOT: That's been done.

COMMISSIONER YAKI: Have we mentioned all of the names?

COMMISSIONER HERIOT: Yes.

COMMISSIONER GAZIANO: Yes.

COMMISSIONER HERIOT: Gerry did it.

COMMISSIONER YAKI: I have serious reservations about the appointments of Hans von Spakovsky and Cameron Quinn. First of all, apart from anything on their ideological viewpoints, which is really in some ways immaterial but really not so, they are in many ways the exact same person, given that their background in terms of -- is very similar. They both served at the same position within the DOJ Civil Rights Division, and I think that there's a redundancy between the two in terms of that kind of experience when it comes to the kind of balance and differing strengths that one is supposed to bring to the Commission.

But in particular, I've just got to tell you that I just have serious problems with Mr. von Spakovsky being appointed to this. I have read his writings. I believe that in my opinion -- and I am certain there will be disagreement on this -- but I
just do not believe him to be someone qualified to be on the Virginia SAC, who will work well with the other members there, given the writings that he has done recently that I've been privy to look at, and I will be voting against his confirmation.

CHAIRMAN REYNOLDS: Two quick questions. Mr. Staff Director, did you state earlier that overall the proposed slate was balanced?

Marty, are you still on the line?

(No response.)

COMMISSIONER TAYLOR: He's in executive session.

COMMISSIONER GAZIANO: Mr. Chair, may I respond on the merit of the SAC?

CHAIRMAN REYNOLDS: Well, I have another question, and actually the question is directed at you, Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Mr. Gaziano, overall, do you share many of the first principles expressed by Hans?

COMMISSIONER GAZIANO: Yes. He is a colleague of mine at the Heritage Foundation, in fact, and I am very pleased with his writing of late, although I certainly don't agree with him on
I wanted to comment on the slate as a whole, too, since I did formerly serve on this SAC. I would say not only are each of the individuals that I know of -- I don't know some of the new folks, but I will also admit since it's a matter, I think, a matter of our public record, that I recommended Hans and Cameron Quinn for inclusion because I think they are exceedingly and obviously well fit to serve on the SAC.

But I also want to say I really enjoyed the strong and constructive liberal SAC members that I used to serve on who are being reappointed. I think that there are no wallflowers on this Virginia SAC slate that I am aware of. It may be because I know it I'm biased, and it is my home state, but there are some very strong and constructive liberals, libertarians, conservatives from a variety of racial, ethnic and religious backgrounds. It's a SAC slate I'm very proud to vote for.

CHAIRMAN REYNOLDS: Commissioner Yaki, you said something that suggested that Hans would not work well with the other Commissioners. Would you care to expand on that?

COMMISSIONER YAKI: No. I said what I
wanted to say.

CHAIRMAN REYNOLDS: Yes. I'm just trying to get some additional information to weigh the strength of your argument. If he can't conduct himself in a civil manner, that's a consideration that we should take into account.

COMMISSIONER YAKI: I did not necessarily say he would conduct himself in an uncivil manner. I simply said that the viewpoints that he advocates in his latest writings are ones that I find to be alienating and extreme in my point of view, and which might not lend itself to a well functioning body, but that is my opinion.

CHAIRMAN REYNOLDS: You may be right since a number of the Commissioners share his views, and looking at how we get along, you may very well be right.

COMMISSIONER YAKI: Just going by experience, Mr. Chair.

COMMISSIONER HERIOT: Mr. Chairman. Mr. Chairman, can I comment just for a second?

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER HERIOT: Number one, if you're concerned about --

VICE CHAIR THERNSTROM: You have to
identify yourself.

COMMISSIONER HERIOT: I'm still Gail.

Number one, on Mr. van Spakovsky's temperament, I've always found him to be extremely polite when speaking to people of differing views.

Second, a lot of the criticism that Mr. van Spakovsky has had over the years has been for the stand he has taken on voting rights issues, particularly voter ID issues, and it's worth pointing out that the Supreme Court has essentially agreed with Mr. van Spakovsky and not with those who have criticized him.

CHAIRMAN REYNOLDS: So in other words, his offensive views are the law of the land as defined by the Supreme Court.

COMMISSIONER HERIOT: That's my understanding.

COMMISSIONER GAZIANO: And they have the support of the great majority of the American people for voter ID.

At this point rather than explain my support for Hans, I submitted a statement for the record. I believe it was in our September business meeting. I think that stands to reflect why I think his views are certainly very helpful and worthy.
I would also add that the Chair -- am I correct that Linda Chavez is being appointed again to chair this SAC?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: That is correct.

COMMISSIONER GAZIANO: I think she, as a former Staff Director, is a -- leads the SAC in a wonderful and constructive way, and I would be surprised if she did not think that this was a wonderful SAC to work with.

VICE CHAIR THERNSTROM: And I have one more comment on this. This is Vice Chair Thernstrom.

I mean, if it is -- I assume by balanced is meant that there is ideological diversity, that it is not skewed in one political direction or another, and so, you know, I would not be in the position -- I wouldn't even think of objecting to somebody whose views on the left I strongly disagreed with.

I mean, I don't -- I'm puzzled by objecting to Hans on the ground that his views are not one's own, and I would like further clarification, Commissioner Yaki, on this because we all celebrate diversity of opinions, I hope, on these bodies.

COMMISSIONER YAKI: Commissioner Thernstrom.
VICE CHAIR THERNSTROM: Yes. I mean, isn't he within a range of acceptable opinion?

COMMISSIONER YAKI: The questions go to issues that go far beyond what his ideological viewpoints may be, what his writings may be. It includes criticisms of his conduct when he was at the Justice Department, which go into a whole different set of issues.

VICE CHAIR THERNSTROM: I don't think any of us are aware of those.

COMMISSIONER YAKI: Well, I mean, I have statements from Senator Kennedy and --

VICE CHAIR THERNSTROM: Yeah, I know, but when we're voting.

COMMISSIONER YAKI: -- others on this issue. So those to me, all in all, give me pause. It is, indeed, one thing to say to have a diversity of ideological viewpoints. I have no objection to that. I think that you have some of that already here with the presence of former Staff Director Chavez and others. Certainly you have it in other SACs as well.

But I will just be honest with you in saying that I just have concerns about this individual that in the totality make me uncomfortable with having our imprimatur on his appointment to a body that is an
officially sanctioned part of the United States Commission on Civil Rights.

That is the basis of my objection. It is a totality analysis. It is not simply because he's like, over here, although some of his wording has been rather interesting of late, but that aside, because all of our wording does go one way or the other, but in the totality, in looking at his record at DOJ and review his statements by people who dealt with him other than myself, I have reservations. I have concerns about this individual being part of who we are now, but that is me, and there is --

VICE CHAIR THERNSTROM: Well, it's also a record that probably --

COMMISSIONER GAZIANO: Mr. Chair, I --

VICE CHAIR THERNSTROM: -- none of the rest of us know, or at least I don't.

COMMISSIONER GAZIANO: Mr. Chair, this is Commissioner Gaziano.

Since I would have preferred Commissioner Yaki to not -- I'm not casting aspersion on him -- to just respect his general statement -- and I didn't necessarily want to say more, except since he alluded to some matters, I believe that any of the false ethical charges that were raised against Hans have
been completely cleared up and he has been exonerated, and my statement of last September, I think, should reflect that I think he has only served honorably and served our country well.

I don't want to have to go into more detail on that. I think it's fine that we just registered our --

COMMISSIONER YAKI: Well, I just want to assure Commissioner Gaziano that I was not referring to any ethical issues in terms of the criticism that was raised by his performance at that agency. This was substantive, done through the committee hearing process, a public view with public statements made by --

COMMISSIONER GAZIANO: I understand, and there were responses to those of the committee that I think completely exonerated --

COMMISSIONER YAKI: Well, then we disagree.

COMMISSIONER GAZIANO: -- Mr. van Spakovsky's behavior.

COMMISSIONER TAYLOR: Mr. Chairman, I'm going to vote for the slate for a number of reasons. First of all, to your question, Marty did indicate we were having a discussion about going into executive
session, that he did view this to be a balanced slate. So I wanted to bring that issue back up because it's important, and it's consistent with my review of the resumes. I don't know all of these individuals personally, but on paper it does appear to be a balanced slate, and that view is confirmed by Marty's statement this morning.

I don't know Hans personally. I've met him a couple of times, but while I know he is a controversial figure in some quarters, he has done nothing in my view to disqualify himself from an appointment of this nature, and he can make a meaningful contribution based on everything I have seen.

I do know Cameron Quinn personally. I have worked with her. She is a recognized expert in state election laws, and she has been recognized as an expert in cases on such issues, particularly as they pertain to protecting the rights of minorities and ensuring that a process is fair with respect to carrying out election.

So I can speak to her personally that she is someone who is respected in legal communities in Virginia, and I know she will make a meaningful contribution as well.
But, again, I tend to be one who asks whether someone has done something to disqualify themselves. I don't think Hans has done that, and I respect to the right of Commissioners, certainly, to look at the totality of his record and disagree, and that's why we all have a vote.

So with that I am done.

COMMISSIONER GAZIANO: Can we call the question?

CHAIRMAN REYNOLDS: Yes, indeed.

COMMISSIONER YAKI: I move to --

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

COMMISSIONER YAKI: Wait just a second -- move to sever. That's a privileged motion.

CHAIRMAN REYNOLDS: Sorry?

COMMISSIONER YAKI: Mr. Chairman,

Commissioner Yaki.

I move to sever Mr. van Spakovsky's name for a separate vote.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER YAKI: It doesn't need a second, Mr. Chair.

CHAIRMAN REYNOLDS: Okay. Discussion?

(No response.)
CHAIRMAN REYNOLDS: Okay. All in favor of Commissioner Yaki's motion please say aye.

COMMISSIONER GAZIANO: What is your motion to sever, just Hans?

COMMISSIONER YAKI: Yes.

VICE CHAIR THERNSTROM: No.

COMMISSIONER YAKI: And it's a privilege motion. It's automatic on any main motion that if you wish to sever one individual from a package under Robert's Rules.

COMMISSIONER GAZIANO: I don't know that that's right.

COMMISSIONER YAKI: It is right.

COMMISSIONER GAZIANO: I don't know that it's right, but let's just allow the separate vote. I don't care.

COMMISSIONER HERIOT: Well, on the severing.

COMMISSIONER TAYLOR: Why don't you Google that under Robert's Rules?

VICE CHAIR THERNSTROM: Now, wait a minute. Is it right or not?

COMMISSIONER TAYLOR: Google it.

COMMISSIONER GAZIANO: Let's not. Let's not.
COMMISSIONER TAYLOR: Give him the vote.

COMMISSIONER GAZIANO: Let's not argue about it.

COMMISSIONER YAKI: Just for the record, this did happen in some of the early SAC votes in 2000 and whatever it was when --

COMMISSIONER GAZIANO: My only question is whether it's automatic or whether we vote, but let's sever it.

COMMISSIONER YAKI: Okay.

COMMISSIONER GAZIANO: Let's give Commissioner Yaki his separate vote.

COMMISSIONER HERIOT: To vote on whether to sever or to --

COMMISSIONER YAKI: No, now to vote on --

COMMISSIONER TAYLOR: Just let him.

COMMISSIONER YAKI: -- to vote on the balance of appointments and then Mr. van Spakovsky.

COMMISSIONER GAZIANO: I move that we vote on the slate that Chairman read minus Mr. van Spakovsky first.

COMMISSIONER YAKI: I'll second that.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: Well, I mean, I think it's important to vote for a whole slate, the
slate as a package, and --

COMMISSIONER TAYLOR: We will.

COMMISSIONER GAZIANO: Okay. I vote that

we --

COMMISSIONER HERIOT: You vote or you

move?

COMMISSIONER GAZIANO: I move that we vote
to approve Hans in the slate, but on that first.

VICE CHAIR THERNSTROM: I will second

that. So we are voting on the entire package first.

COMMISSIONER GAZIANO: To include Hans in

the slate that we will eventually vote on.

VICE CHAIR THERNSTROM: Okay. I second

that.

COMMISSIONER YAKI: Let's vote.

CHAIRMAN REYNOLDS: All in favor please

say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: No.

COMMISSIONER MELENDEZ: Opposed.

Melendez.

CHAIRMAN REYNOLDS: I'm sorry. Who

objected?

COMMISSIONER YAKI: Yaki and Melendez.
COMMISSIONER MELENDEZ: Melendez. I voted no.

CHAIRMAN REYNOLDS: And Commissioner Yaki?

COMMISSIONER YAKI: I voted now.

VICE CHAIR THERNSTROM: Two nays.

CHAIRMAN REYNOLDS: Yeah, the motion passes.

Okay. So now we're going to have the vote.

COMMISSIONER GAZIANO: I now move to approve the entire slate with Mr. van Spakovsky.

COMMISSIONER YAKI: I'd like to note for the record that if we had done it my way, I would have actually probably voted for the balance of the slate, but now since he has been re-added back to the slate I'll be voting no.

CHAIRMAN REYNOLDS: Okay. Time to vote. Well, was there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Is there any need for discussion?

Okay. All in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: No.
COMMISSIONER MELENDEZ: No. Melendez.

CHAIRMAN REYNOLDS: Okay. We have two noes.

Okay. Very good.

COMMISSIONER HERIOT: I abstained.

CHAIRMAN REYNOLDS: Okay. So we have one abstention, two noes. And the abstention is from Commissioner Heriot.

COMMISSIONER HERIOT: Yes, and it's based not on any view of the people who have been nominated here, all of whom seem very good to me, but on the basis of not having had the executive session to be able to discuss how this was arrived at, and I will abstain from any SAC where we don't have the opportunity to discuss things.

Also I don't understand why we could have a discussion about Hans van Spakovsky without having a - - without an executive session, and you know, needed an executive session for the others. I don't understand that at all.

CHAIRMAN REYNOLDS: Okay. Next up is the Civil Rights Conference.

IV. PROGRAM PLANNING

(a) NATIONAL CIVIL RIGHTS CONFERENCE

CHAIRMAN REYNOLDS: Everyone has received
the draft proposal, which is titled "A New Era" -- "Defining Civil Rights in the 21st Century."

VICE CHAIR THERNSTROM: Mr. Chairman, have we approved the minutes of June 12th yet?

CHAIRMAN REYNOLDS: No, but that's fine. We're going out of order.

VICE CHAIR THERNSTROM: No, I think that is the next item in order. This is a little ridiculous.

CHAIRMAN REYNOLDS: Well, most of what has transpired has been ridiculous. So just add this to the list.

Okay. Everyone has received a draft of the proposal titled "A New" --

VICE CHAIR THERNSTROM: Wait a minute. When are we going to approve the minutes?

CHAIRMAN REYNOLDS: Yes, we are, but I'm going to finish what I started here.

Okay. The proposal consists of the following elements: a conference overview of the conference's relationship to the Commission's statutory mission and strategic plan; proposed subject matter of the panels, as well as recommended panelists and moderators; a discussion of two leading venues for the conference; discussion of budget options; a
proposed conference schedule; and suggested conference attendees or invitees.

The tentative date for the conference is September 24th. The two possible venues that are available on that date are the National Press Club and the National Transportation Safety Board's Conference Center.

On pages 11, 12 and 13 of the proposal you'll find a discussion of the advantages and disadvantages of each venue. A larger number of speakers have been suggested for each panel than are necessary, and we'll add additional names. I assume that we'll add additional names once we open up the discussion.

At this point I open up the floor for discussion.

COMMISSIONER HERIOT: Mr. Chairman, I think this is going to be a great conference. I hope we can pull it off on the schedule that you're shooting for.

VICE CHAIR THERNSTROM: Mr. Chairman, I would like some review on your part of how this document was arrived at, who was consulted. I mean, this is a -- obviously, this Commission is not a one person show, and to the best of my knowledge, at
least, I wasn't consulted at any point to the best of my knowledge.

This was not a collaborative effort, and I'd like kind of a history and an explanation.

CHAIRMAN REYNOLDS: An explanation of what?

VICE CHAIR THERNSTROM: Well, I mean, normally in putting together a conference involving the whole Commission and an important project like this, the normal thing I would expect was from the very outset for this to be a collaborative process in which there was a Commission-wide discussion on day one and a continuing discussion, and instead this has been developed behind closed doors and with a very late look on the part of -- I mean that in itself troubles me -- but and a very late look on the part of appointed Commissioners whose, you know, job it is to work together on such projects -- a very late look at what has been handed to us as the work of only the Chairman and his assistant.

And I would like some kind of discussion of why this was done this way and what the history is here.

CHAIRMAN REYNOLDS: The history is that in 2007 there was a working group that was convened to
put together a conduct paper. Some preliminary work was done. I took at look at what was produced. It would not -- let's back up.

The sponsor of this idea, it belongs, I supposed, to both Commissioner Kirsanow and me. I took a look at the initial document. It was not capturing the idea that I had when I had made this recommendation along with Pete.

I with the able assistance of -- undertook the task of creating a concept paper. This shouldn't be new to anyone since this has been discussed on the record in the past. This is not unprecedented. It was done as recently as the recent health care briefing. That conference was based on a concept paper that was prepared by a Commissioner.

There's no prohibition against it, and I guess I'm curious as to how you were or anyone else was disadvantaged by this approach. In all instances Commissioners receive a concept paper. Ordinarily it's done by the staff, but there are times when it is not. In each case Commissioners have an opportunity to debate, to revise, to make suggestions, and I don't see how that process has been altered, and I don't see -- and I would like to hear how you were disadvantaged.
VICE CHAIR THERNSTROM: Well, I think the entire Commission has not been well served by this process, and the opportunity to debate should have occurred on day one, not on -- not at this point. This is a very late stage, but I would have liked at each stage -- and briefings are different than this kind of conference.

I'm sorry. I interrupted Commissioner Yaki.

COMMISSIONER YAKI: No, no. I'm at a little bit of a loss with the statement that you just made, Mr. Chairman. Are you saying that this concept paper was distributed prior to this at some other meetings that we're unaware of?

CHAIRMAN REYNOLDS: No, I did not say that.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: What I said was that the fact that I was putting together the content paper was discussed on the record at previous meetings.

COMMISSIONER YAKI: Well, I would just like to go on record as stating that I had stated both on the record and in meetings, including with the Staff Director, the idea that if, indeed, we were going to be going down the pathway of a national
conference proposal, it would probably be wise to ensure that the minority was included in those initial discussions simply because this is -- and I think it is borne out by the scope that you have put together here in terms of insuring that this was an effort of the Commission as a whole rather than, as Commissioner Thernstrom has pointed out, an effort by you and perhaps -- Commissioner Kirsanow, this is not to, this is not to --

CHAIRMAN REYNOLDS: Whether the document reflects the views of a single Commissioner, and that would be me, or whether it reflects the overall sense of the Commission, that is yet to be determined. If we can have a discussion of the document, we can determine whether the document that I put together reflect the expectation of the Commissioners as a whole.

COMMISSIONER MELENDEZ: Mr. Chairman.

COMMISSIONER YAKI: With all due respect, Mr. Chairman, the fact that you have already picked some dates in September, this being July, we're having one meeting in August, does not really lend itself to the kind of knife sharpening that needs to be done in terms --

CHAIRMAN REYNOLDS: Commissioner Yaki,
everything in the document is up for debate, including the date.

COMMISSIONER YAKI: Mr. Chairman.

CHAIRMAN REYNOLDS: Yes

COMMISSIONER GAZIANO: On the procedural issue, I would like to speak to the, I think, strength and merits of having the conference as the document is outlined a little later, but I'm not sure I understand some of the procedural arguments. As I understood, the Commission was committed to this national conference before I was a member a year and a half ago. Commissioners have been aware that you were going to propose a concept paper, and I thank you and any staff that helped you with it.

I've helped put on a lot of conferences. This is an ambitious one, but it's an important one, but 12 weeks or whatever, 11 weeks, however many, is not too fast, but if we need updates along the way, I was going to propose maybe we get updates, you know, at different stages every few weeks, but I certainly don't see why there's any problem with proposing it at this time for September 24th, nor, I think, you should be -- you and your staff should be thanked for checking out proposed dates, coming out with concrete proposals of venues.
I support the National Press Club venue for a variety of reasons that I'll discuss in a few minutes, but I really am at a loss for --

COMMISSIONER KIRSANOW: Mr. Chairman.

COMMISSIONER GAZIANO: Mr. Chairman.

COMMISSIONER YAKI: -- for how this could have been done differently other than we can always do things a little bit differently.

COMMISSIONER TAYLOR: Mr. Chairman, can I ask a couple of questions? This is Commissioner Taylor.

CHAIRMAN REYNOLDS: I believe Commissioner Kirsanow was ahead of you.

COMMISSIONER KIRSANOW: Thank you, Mr. Chairman.

I would adopt the statements made by Commissioner Gaziano also. This was something that we've been talking about for more than two years now. It was part of strategic planning. We've had several votes on the concept of this, the fact that the Chairman and whatever it would take to draft the concept paper, I think, is something that should be commended. It's one of the better concept papers I've seen on a very ambitious topic, admittedly ambitious and aggressive in terms of its time frame.
But, frankly, the Commission regularly receives information, documents, reports, proposals, concept papers, in a time frame that is aggressive or somewhat ambitious or some would say late, and we nonetheless can go forward. Everyone to my knowledge was aware that we were doing this. Everyone to my knowledge was aware that, unfortunately for his sake, the Chairman decided to undertake drafting the concept paper, and it's not unusual for a Commissioner to draft a concept paper.

I think Commissioner Taylor drafted the concept paper on health care disparities, if I'm not mistaken, and I can't recall a time -- and maybe I'm remiss for having done so -- I can't recall a time in which I've collaborated with other commissioners in fashioning a concept paper. So that's not unusual.

I think the only thing that separates this from other concept papers is, number one, the scale of the project, admittedly large, and how good the concept paper is.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Mr. Chairman, a single question all to you: is everything in this concept paper from your perspective open for debate and discussing -- timing, panelists, issues, et
cetera? Is it all up for discussion?

CHAIRMAN REYNOLDS: Correct.

COMMISSIONER TAYLOR: I mean, and with all due respect, you know, you are a member of the Commission who has put a concept paper on the table, and frankly, if folks want to pick it apart, let's pick it apart. If folks don't think we can do it in this time frame, I mean, let's consult the staff and ask.

But I don't think we should spend a lot of time, candidly, discussing how we got here and who shot John. Let's deal with it as it presents itself.

My second proposal, frankly, would be that, Mr. Chair, that as we discuss this, my sense that when the subcommittee was created a couple of years ago, it included Commissioner Yaki, that he be formally assigned, if he would agree to do so, to work with you on this going forward.

CHAIRMAN REYNOLDS: At this point everyone is.

VICE CHAIR THERNSTROM: Well, but, Commissioner, Mr. Chairman, I just don't understand why Commissioner Yaki wasn't working with you from the beginning on this, I mean, so that every Commissioner had ownership of this enormous project.
COMMISSIONER GAZIANO: We have now.

COMMISSIONER HERIOT: That's what we're here for. We're now supposed to get ownership. We're all working on this now.

VICE CHAIR THERNSTROM: It's very, very late.

COMMISSIONER YAKI: No.

COMMISSIONER HERIOT: It's being done exactly the way it should be done.

COMMISSIONER YAKI: This is -- this is -- this is Commissioner Yaki.

Let's think about this in its real context. This is something that -- and I'm going to be the first to say this because I remember saying this in one of my first days, meetings on this Commission, which was the idea of having a conference to redefine the issues of civil rights for the 21st Century. I think I said that three years ago, four years ago. How long have I been on this thing?

VICE CHAIR THERNSTROM: We've all been here too long.

COMMISSIONER YAKI: We've all been here too long.

So in some ways I take ownership of this idea. The problem, though, that I see is that this is
something that is of a magnitude different than a briefing. It is a quantum magnitude difference, of a quantum magnitude difference than a briefing. It is in some ways equal to, if not superior to, the process that we would need to go through for a national report, which, as we all know, has been a many multi-month process just to figure out what the stated goals and objectives were going to be to get that done.

We received this a week ago. It is July. This proposal is done for September. We have one meeting in August to deal with this. Quite frankly, between last Thursday or whatever it was when I received this binder and now, I went through this, but obviously there has been a lot of work done by Commissioner -- by the Chair, and to your credit, Mr. Chair, it reflects a large amount of work and time and effort, including I know that your special assistant was very active in that.

Now, you know, I'll say this once, which is one of the reasons why I have been agitating for a special assistant for such a long time, was to be able to essentially compete on an even playing field in resources to deal with situations such as this. If I had been able, and even without one, if I had been
able to, and it's suggested -- again, I suggested this last year to the Staff Director -- that given the nature and scope of this meeting, given the fact that there would be a desire to make this as inclusive as possible and to ensure, more importantly, the attendance of those who have in the past years or so lost faith in the U.S. Commission on Civil Rights, it would probably be a strategically smart and politically wise move to ensure that this move forward in lock-step as much as possible in a bipartisan manner.

That has not happened, and it has not happened. It's late in the day. You're asking us now to take this entire thing and, okay, yes, sure, it's on the table. Rewrite the whole thing, whatever it is that you want us to do, but it is a little late in the day, given the fact that it is, as I said, July. This is sketched for August. We only have one meeting between and --

COMMISSIONER GAZIANO: We have two.

COMMISSIONER YAKI: -- then --

COMMISSIONER GAZIANO: We have a meeting scheduled for September.

COMMISSIONER YAKI: Commissioner Gaziano, would you please not interrupt me?
The point of this and the importance of what I am saying is that as of right now, at this point in time, I cannot support this. I will not support this. I had asked to be part of this. I had begged to be part of this process. This had been on the agenda twice before and been removed at the request of the Chair because it was not ready, what have you.

During those times I reiterate again to the Staff Directors and others a serious concern about how this was going forward in a non-bipartisan manner. So you know, you're asking me to close the barn door after all the animals have left, and I just don't know if I'm willing to do it at this point, Mr. Chair, with all due respect to the work that you did and the effort that you and Dominique put into this. The fact that it did not go forward in the bipartisan manner that I thought we were going to gives me grave concerns, and at this point in time, I'm not prepared to support this, much less start taking ownership of it and making changes to it.

CHAIRMAN REYNOLDS: Very good. Any comments on substantive manners?

COMMISSIONER KIRSANOW: The only comment I have, Mr. Chair -- this is Kirsanow -- is the timing
of it. I understand that we're going to try to get this done within this fiscal year. If we can do it, I'm all in favor of it, but it is something that is considerably ambitious from a timing standpoint, and I'd like to hear if the Staff Director is still on and anyone else, whether or not this is feasible within the time frame that we're looking at.

VICE CHAIR THERNSTROM: And this is Vice Chair Thernstrom.

I have not had a chance to go through the substance of this in the way that I need to do, and so I can't comment on that, but I'm sure I'll have lots of comments on it. In terms of the dates that are floating around, I mean, there has been a rumor mill in this building. The dates that are floating around, I believe they conflict with a conference on Lincoln that I'm out of town. I would have to check. I thought that the date that you were talking about was the 26th. You now said the 24th. I would need to doubt check on the Lincoln conference.

But in any case, I'm not prepared today to have a line by line, substantive discussion of the document that has come to us so very late.

COMMISSIONER GAZIANO: Mr. Chairman, I'd like to address the timing issue in response
particularly to Commissioner Kirsanow. I certainly think that 10 or 11 weeks or however many it is is ambitious, but certainly doable, and again, I thank the Chair for checking on available dates in this fiscal year, since that's what our Commission plan required us to do.

If we don't set an ambitious date, and we just kick the can down the road, we'll have this same issue over and over and over again, but there's a way, I think, to deal with that. I think that if a majority of the Commission supports the idea and wants to try to meet our goals, which ought to be important to all of us, our strategic plan ought to be, then I think we need to put the effort that's necessary to try to make it happen in the next few weeks. There's a lot of stuff we can do off the line as far as polishing the suggestions, the concept paper the Chairman has made, and we can get to those as well.

But as far as -- I'd like the date to be September 24th. That's my preference. I don't see why if the Commission and its staff can't make that date.

If we later find out that we, you know, need to move that by a month or so, we ought to then pick another date certain, but we don't need to make a
final decision on that, except to move forward.

CHAIRMAN REYNOLDS: Okay. Commissioner Gaziano and Kirsanow, the date was selected because that's the date that those two venues were available. So we didn't just pull the date out of a hat.

COMMISSIONER GAZIANO: Of course.

CHAIRMAN REYNOLDS: Also, I think that Commissioner Kirsanow raises -- well, first, yes, this is an ambitious undertaking, and whether this is feasible, I believe that it is, but right now we have to continue digging into this, provided that there's a consensus that this is something that we should do, especially in light of the commitment we made in the strategic plan.

But I propose that we also have every two weeks or so an update, just providing information to Commissioners that would essentially provide progress reports on how we're doing, and if at some point in time we conclude that it's not feasible within the time frame, then we would have to revisit the issue of a date.

COMMISSIONER KIRSANOW: Mr. Chair, I think that's a good idea. My only concern with respect to the ambitious nature of this -- I'm all in favor of doing ambitious things frankly, and I think this is an
important matter. Commissioner Yaki is right. I remember specifically having a conversation with Commissioner Yaki prior to the beginning of the Commission meeting. This was about three years ago, about the merits of doing precisely this type of conference. I think it's well overdue.

I simply suggest that in my mind the major concern is nailing down the participants as quickly as possible.

CHAIRMAN REYNOLDS: Right.

COMMISSIONER KIRSANOW: I think with more than two months' notice that's doable. I would suggest that we begin making phone calls now. Even if the slate of speakers is changed or amended by recommendation of other Commissioners, I think we nonetheless should begin with the current slate now, and then if we amend it, we amend it, but I think that's the most important thing in my mind in order to make this thing go.

Otherwise, I think I agree with Commissioner Gaziano. This is doable.

COMMISSIONER HERIOT: I agree with Commissioner Kirsanow. This is Heriot here. The main thing here is getting these speakers nailed down, and if it's not going to work, we'll figure that out.
really rapidly because we'll get a lot of people that can't do it. But if we start inviting people now, we can do this. You know, we've got a good chance.

COMMISSIONER GAZIANO: I was going to suggest that we invite the Attorney General to give him a prominent place since he has said that America is shy about talking about race, that we ask him to expand upon his remarks, and that then some of our panels can comment on his remarks.

VICE CHAIR THERNSTROM: Two things. One, I don't understand what happens in this kind of rushed process with all the other work that is on the plate of the staff here at the Commission. We've got --

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, if you'd like, I'll take care of it.

VICE CHAIR THERNSTROM: What do you mean you'll take care of it? You're going to get the briefing reports out the door? Are you going to get the statutory report up and running?

I mean there is a great deal of other --

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, I'm talking about the work involved in pulling this together, the conference.

VICE CHAIR THERNSTROM: Well, look. Again, I don't think this should have been a one
person show from the beginning, and to have it continue to be so doesn't seem to me a very good idea.

I also --

CHAIRMAN REYNOLDS: I can lick stamps just as well as anyone else.

COMMISSIONER KIRSANOW: Mr. Chairman, I'll volunteer to assist also so that it's not just a one person show. I'm sure others would assist also.

COMMISSIONER HERIOT: yeah, I'd be happy to help.

CHAIRMAN REYNOLDS: There you go.

COMMISSIONER GAZIANO: Ditto.

VICE CHAIR THERNSTROM: All right.

COMMISSIONER HERIOT: Yeah, we can do this. Just, you know, elbow grease.

VICE CHAIR THERNSTROM: Well, the other thing is, you're going to invite people when the Commission as a whole has not agreed on the slate of people to be invited?

COMMISSIONER MELENDEZ: I have a question. Commissioner Melendez.

Is this a one-day conference? I think if it is, it's going to be real difficult. I've been on some panels where it was an hour long and, you know, half the people didn't even get a chance to even speak
or they were very limited, and it didn't really accomplish anything.

So I don't know how we're going to try to do this in one day is one of my concerns.

CHAIRMAN REYNOLDS: Okay. Is that a suggestion that this be a two-day event?

COMMISSIONER MELENDEZ: I would think it -- I don't think you can do it in one day is my opinion, based on some of my involvement in being part of panels and where we had an hour for certain topics.

And the other issue is I think we're supposed to be trying to get information of where people think that civil rights should be going, basically trying to put them in a certain topic where these people that are invited to the panel kind of speak on certain boxed-in areas, where they should be free to speak a little more openly on where they think civil rights should be going.

And then the other thing, it seems like we're kind of narrow on just talking about race and ethnicity when we should be talking about maybe gender and religion and age, disability, national origin, some of the other mandates that we have. So does this conference seem to kind of leave those parts out?

CHAIRMAN REYNOLDS: Each of the panels --
well, first of all, thank you for the suggestion, and
if you have recommendations on individuals and
particular topics that you would like to see
addressed, please phone me or send your comments by
E-mail.

COMMISSIONER GAZIANO:  Maybe to make the
work a little bit more manageable, could I suggest
that we try to discuss first which Commissioners might
have a primary responsibility for which panels, and
then they will focus perhaps on that panel’s speakers,
circulating it to other Commissioners, of course, but
that might be a way of dividing up the work to make
sure that we move expeditiously.

VICE CHAIR THERNSTROM:  I have to repeat,
Mr. Chairman.  I don't think -- but I am not positive
since I was misinformed as to the date.  I believe
that I am out of town on a two-day Lincoln conference,
but that may be incorrect because I had thought that
the recommended date was the 26th, but I don't have my
calendar with me.

CHAIRMAN REYNOLDS:  Okay.  Let us know
once you confirm.

Commissioner Gaziano, I think that's an
excellent idea.  I will volunteer to handle Panel 1.
Are there any other volunteers?
COMMISSIONER MELENDEZ: Mr. Chairman, I have a question. It seems, you know, the date of September 20 -- this is Commissioner Melendez -- the 24th or whenever, that is very -- it's already July. We have one month to August, and then September is right upon us. Are there any options of delaying this further into the future?

CHAIRMAN REYNOLDS: It is an option, but I think that this is doable. It's going to take quite a bit of work, but if we reach the point where it's clear that it's not feasible to put together this conference within the time frame, then at that point, I think that you're right. The date should be revisited.

COMMISSIONER GAZIANO: Mr. Chair, can I ask the budget, a budget sort of question on that? I imagine we can find money for this in next fiscal budget, but we can't carry forward money from this year's budget for this, can we?

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER GAZIANO: So if we've set aside some money for it this year, and we're nearing the end of the year, that's going to create an issue, won't it?

CHAIRMAN REYNOLDS: We would possibly hand
money back to the Treasury.

COMMISSIONER GAZIANO: Or hire special assistants is my -- but I think we can do that, too. I know Commissioner Yaki is going to support me in that.

VICE CHAIR THERNSTROM: Mr. Chair, I just looked at the calendar here. I don't have my person calendar with me, but I just looked at the calendar and saw the 24th was the Thursday. I believe that is the date I cannot make. I can't make the 24th or 25th, I believe.

CHAIRMAN REYNOLDS: Well, again, will you confirm and let's revisit this conversation after you confirm that that is, indeed, true?

VICE CHAIR THERNSTROM: I will. I have to get to my calendar.

COMMISSIONER GAZIANO: And one of the things I would suggest is if we're signing or we're nearing a contract with, let's say, the National Press Club, which I -- let me explain why I support that. They can serve lunch during the conference, whether it's going to be one day or two day. It's a high profile, all of the other reasons that you identified in your concept paper, but if we're negotiating with them, why don't we negotiate a sort of tentative date,
whatever it is, the 23rd, 24th, and with an option
with certain notice to bump it by a month or two?

CHAIRMAN REYNOLDS: Well, we have placed a
hold on the date. So if the 24th works, we've already
reserved the space there.

COMMISSIONER GAZIANO: I'm just saying if
we --

CHAIRMAN REYNOLDS: I haven't discussed
with Dominique whether we reserved an option to select
other dates.

COMMISSIONER GAZIANO: Sure. Well, all I
meant is, if at some point they want a deposit, and
they may want a deposit, we ought to be --

CHAIRMAN REYNOLDS: They did not require a
deposit.

COMMISSIONER GAZIANO: Okay. Very good.

COMMISSIONER HERIOT: You had mentioned a
minute ago, Mr. Chairman, that you were willing to be
the first mover on Panel 1. I just wanted to say I'd
be happy to be active especially on Panel 4.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: Mr. Chairman.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER TAYLOR: In many ways as I
look through this concept paper -- someone made this
comment earlier -- I really viewed, frankly, the participants as the key. If you just ask Shelby Steele and Professor Gates for their available dates, to me that's the key. We can fill in the details later. I think they're two critical people who would be more than willing, I think, to present competing viewpoints and ideas, and frankly, you know, the draw will not be the Civil Rights Commission. It will be the individuals that we persuade to attend.

COMMISSIONER HERIOT: You're hurting our feelings.

COMMISSIONER TAYLOR: So, again, I'm less concerned about contracts and --

MS. LUDVIGSON: I have to put a deposit down because there are other groups that want it.

COMMISSIONER TAYLOR: No, I mean, I understand the practical realities. It's just I think we'll know fairly quickly if the folks we need can attend. This is the type of conference where, you know, a poor man's version of Shelby Steele will not suffice.

COMMISSIONER GAZIANO: yeah, but there are a few others, I think, like Shelby, not many.

COMMISSIONER TAYLOR: There's just not many of them. That's all.
COMMISSIONER GAZIANO: But there's a few of them. So if Shelby can't --

COMMISSIONER TAYLOR: You've got to call him.

COMMISSIONER HERIOT: Yeah, but that's key, getting the right people here.

COMMISSIONER TAYLOR: That's all. To me that's what all of this is about.

COMMISSIONER GAZIANO: True, but it's also helpful, in my somewhat more frequent than I want experience planning a conference, that having a date focuses the mind and --

COMMISSIONER TAYLOR: I don't disagree.

COMMISSIONER GAZIANO: -- you sometimes get them to move their things and you can -- because just asking people when they're available and then trying to merge them is --

COMMISSIONER TAYLOR: I don't disagree.

COMMISSIONER GAZIANO: -- an ongoing venue -- it's very difficult.

COMMISSIONER TAYLOR: I don't disagree at all.

COMMISSIONER GAZIANO: It's very difficult. I don't want to take someone else's pride and joy. There's several panels that I'm interested
in. The nonprofits in Panel 3, I suppose I have some knowledge of, but I would be glad to take another panel.

CHAIRMAN REYNOLDS: Todd, why don't we work on Panel 3 together. We could split the work.

COMMISSIONER GAZIANO: And it says I'm to work with Commissioner Yaki. I'm happy to do so.

COMMISSIONER YAKI: Commissioner Yaki is not participating.

COMMISSIONER GAZIANO: What do other Commissioners think about inviting the Attorney General?

VICE CHAIR THERNSTROM: Well, wait a minute.

COMMISSIONER KIRSANOW: Kirsanow here. I think that's a good idea.

VICE CHAIR THERNSTROM: Let us stop.

COMMISSIONER KIRSANOW: I don't know if he will attend, but I think he should be extended an invitation since it was the focus of his first big speech as Attorney General, and this is, you know, the discussion on civil rights, as Commissioner Yaki had indicated years ago that we need to have.

My quick math says we have 76 days in which to get this done. That's about 11 weeks. Those
of us who are in law firms know that we can put on panels maybe not quite as ambitious as this, but almost, with people from diverse areas of the country with very, very full agendas and get it done, and we've been able to do it here, and I know that others have been able to do it. It's just a function of committing to do it right now.

A number of us, by the way, I think should, in fact, get involved in this as we have volunteered because I would get the suggested panelists here, and a number of them are people that I know. And putting aside whether or not they've got conflicts, if they don't have conflicts, I would use my good offices to try to convince them that this is something that really needs their A game.

So I would suggest others who have got other friends on this list do the same.

VICE CHAIR THERNSTROM: Mr. Chairman, I have a question here. We have just heard again from Commissioner Yaki that he is not participating. Is it not a little sobering to you the idea that we may be going forward with a conference when it's not a bipartisan conference?

CHAIRMAN REYNOLDS: Any Commissioner is free to participate or not. The conference --
whether a broad spectrum of views are represented will be determined by the panelists that we ultimately select. If a particular individual chooses not to participate, I respect that individual's choice.

VICE CHAIR THERNSTROM: Well, it's not simply a question of effect. It's a question of any kind of legitimacy and importance of this conference - - if it's not a bipartisan one when this is a bipartisan Commission.

CHAIRMAN REYNOLDS: The Commission is not -- the question about the Commission is: did we put together a panel that reflects a single point of view. I haven't heard anyone make that accusation yet, but there's still time. Again, if someone wants to, again, absent themselves from participation, you know, it's unfortunate, but it's not my fault.

COMMISSIONER KIRSANOW: Kirsanow here.

I'm looking at --

COMMISSIONER YAKI: Mr. Chairman, this is Commissioner Yaki.

COMMISSIONER KIRSANOW: -- the calendar, and I don't --

COMMISSIONER YAKI: It is most certainly your fault that I was not consulted during this entire proceeding.
COMMISSIONER GAZIANO: Could we have one Commissioner talk at a time.

VICE CHAIR THERNSTROM: We have to have one Commissioner talk at a time.

COMMISSIONER HERIOT: And in a civil --

COMMISSIONER YAKI: This is a civil tone.

VICE CHAIR THERNSTROM: You have to choose between who can talk, Mr. Chairman --

COMMISSIONER GAZIANO: It most certainly isn't.

COMMISSIONER YAKI: It certainly was.

VICE CHAIR THERNSTROM: -- but we had two Commissioners talking at the same time, and I could not follow it.

CHAIRMAN REYNOLDS: -- I hear some family background noise.

COMMISSIONER YAKI: I think Commissioner Kirsanow was speaking first.

CHAIRMAN REYNOLDS: Okay. Commissioner Kirsanow, were you finished making your comments?

COMMISSIONER KIRSANOW: Yeah, I'm simply saying that it appears to be in terms of, if you're going to assign, you know, viewpoints to people and where they stand, many of these people's views are fairly well known, and from that perspective, I would
think that at least numerically it seems to be balanced, and I'm not saying this is necessarily the final list.

You know, I hope that if these invitations are extended to these individuals, that we get participation from many, if not all, of them, and I do strongly believe that many people, if not most of them, will participate because this is the opportunity to have the discussion that the Attorney General had been talking about.

If we're going to have a discussion about race, if we are not cowards in formulation of the Attorney General, then people should participate. If they're not going to participate, then, you know, I have -- that's their determination, as you said, Mr. Commissioners. If these panelists don't want to show up, then they're going to have to consult with the Attorney General as to what the appropriate appellation will be.

COMMISSIONER YAKI: Mr. Chair, this is Commissioner Yaki.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Could you read back the last statement that the Chair said?

CHAIRMAN REYNOLDS: I'm sorry. I didn't
COMMISSIONER YAKI: I'm asking that the court reporter, prior to Commissioner Kirsanow and I talking over each other --

CHAIRMAN REYNOLDS: Commissioner Yaki, please speak into the mic.

COMMISSIONER YAKI: I am speaking into the mic.

(Whereupon, the record was read.)

CHAIRMAN REYNOLDS: Commissioner Yaki, I'm having difficulty understanding it.

COMMISSIONER YAKI: Well, that's not unusual given the circumstances here today.

Can you hear me now, Mr. Chair?

CHAIRMAN REYNOLDS: Yes, yes.

VICE CHAIR THERNSTROM: It was the statement to which you were beginning to object from the Chair that you had been involved from the outset in planning this, something like that.

COMMISSIONER YAKI: No, no, no, no. I think it was about choosing, not -- I mean, the fact is that I was not involved in this, and, I'll state again for the record, despite repeated attempts to ensure that this went forward in a bipartisan manner, -- the reason, and I think that we can posture all we
want, but we can already see from statements by another Commissioner that now this has become a dare game, as in, well, if you decide not to talk to us about this, it's obvious that you're a coward.

That's clearly not what we're talking about. We're talking about whether or not this Commission in a bipartisan manner moves forward and hosts a national conference on these important issues in a way that wholly and fully addresses them, and, I might add, what bothers me probably the most -- well, no, there are many things that bother me about not being included in any of the planning, thought or otherwise behind this -- is that left vague and out there is what becomes of this. What is it that this conference is designed to achieve in terms of a written document by the Commission?

Because I can assure you that the fact that my participation was not solicited or included in this planning, given -- and this is no secret -- given my dissatisfaction with how briefings have been held and reported on, much less national reports and such -- that a topic of this magnitude and this importance, which has within it a throw-away line that the Commission will be producing findings and recommendations -- quite frankly, absent my
participation in this planning development and understanding what all that means sends chills down my spine in terms of exactly what will come of this.

So I don't think it needs to be said, but I will say it anyway: that with regard to the civil rights community that I work with, there's great skepticism. There is great -- there's a jaundiced eye toward anything that we do or produce.

I have said this before in private meetings off line. I have said it in public. I make no bones about it. Now we are asking many of these people from these same groups to come forward to a conference, the outcome of which they are not aware of, nor of which I have been a part of, and trust that this outcome will be fair.

I'm not saying that it won't be, but certainly the fact that there's a distinct lack of bipartisan nature to the development of this makes that a difficult question to answer. So when a Commissioner says, well, people choose not -- it -- and use the word "cowards" or whatever other words that he was using, that's not the point.

The point is one of whether or not there was confidence that this Commission will take this information and treat it in a manner that, quite
frankly, many folks in the civil rights community that I work with have not seen for the past few years. That was the whole point of why I wanted to be involved early, because perhaps we could overcome that skepticism. Perhaps we could overcome those issues involving the perceptions that are out there regarding this Commission.

That is why I was so concerned as this process moved forward, Mr. Chair, about what was going on, and instead I did not even know that this was at this kind of stage. I assumed at some point when we had it on the agenda for discussion, it would be for discussion about a broader participation and working amongst Commissioners to make this happen. I did not expect to receive a week ago a full-blown baked pie of which I had no participation in whatsoever.

CHAIRMAN REYNOLDS: Commissioner Yaki, I guess we'll need to consult the transcripts because the fact that I was drafting it and drafting it alone, I think that that was perfectly clear from the statements. I apologize for failing to get it done sooner on the record, during at least one meeting. I don't think anyone was entertaining the notion that staff was putting together the document or that we were going to use some other procedure.

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On that particular point, you know, I guess I'm somewhat surprised that when this issue was discussed, and that issue being the fact that I was putting the document together, that no one raised their hand when this issue was discussed at previous Commission meetings.

COMMISSIONER KIRSANOW: Mr. Chair, this is Kirsanow.

I knew that you were putting this together, and again, I'll have to check the transcripts, but I presume everybody knew you were putting it together. I didn't, frankly, volunteer to assist you because I had other things to do. I suppose others could have had input had they chosen to do so because it seems to me everyone was on notice that you were doing this.

It's not as if you were excluding people. It was not as if you were saying to everyone, "I'm the only one who's going to do this. No input required or no input wanted." I'm, frankly, bewildered.

Second point, with respect to Commissioner Yaki's statement about cowards, I didn't call anyone a coward. I'm not suggesting anyone is a coward. I do note, though, that statement was used by somebody. This is an opportunity for us to show that we are not
cowards when it comes to discussions of race.

I firmly reject the suggestion by the Attorney General that we are a nation of cowards when it comes to race. It seems to me we've been trying to talk about race. We talk about race all the time, but every time we want to have a principal discussion of it, some of us get shouted down.

In addition, in the past we have had panels, when I was not a member of the majority, where on occasion those who were conservative or perceived to be conservative would come into what they perceived to be a hostile environment. They nonetheless came. I can't recall a single person who at that point had, as Commissioner Yaki indicates, some concerns about that particular iteration or management of the Commission, not showing up because of that fact. They all thought that the subject matter upon which they were going to testify was important enough that, however they were treated or they thought they were going to be treated, merited, nonetheless, their testimony.

In this particular case, I suspect that there are those who in good faith, in the traditional civil rights community, who have concerns about the management of this Commission. So be it. I'm not
going to argue with them about that. But if this issue is important enough to them that they've devoted their lives to it, the mere fact that Jerry Reynolds is Chair or the bald guy with the moustache happens to be on the Commission, too, is going to deter them -- I can't believe that's going to happen. I do not accept that at all.

I say we go forward with this. I think your plan to make this kind of a work in progress to check on the progress of this on a bi-weekly or even a weekly basis to see whether it can get done is a smart thing. It could be that logistically we can't do it in 76 days. For the life of me, I can't understand why. Here in the private sector we do this repeatedly and do it well, and I am certain with the caliber of individuals we've got at the Commission, with the caliber of the Commissioners we have, with the importance of this particular subject, we will get it done if we have the desire to do so.

COMMISSIONER GAZIANO: Mr. Chair, I want to associate myself with the remarks of Commissioner Kirsanow as far as its doability. I probably have put on, organized more conferences than most of the rest of my colleagues in the past 10 years, and I'll be glad to lend my support in various ways.
But I would ask if fellow Commissioners who aren't going to vote for this don't want to lend a lot of effort to it -- I'm disappointed, but I ask them now -- I ask them now to tell us substantively how they would have done it differently, and if they don't want to make this better, if they don't want to make the Commission better in their mind, anyway, then that will be apparent.

But I'd like to hear right now what substantively any Commissioner who opposes this going forward would do differently.

VICE CHAIR THERNSTROM: Can you say substantively and procedurally? I mean --

COMMISSIONER GAZIANO: Substantively. We're discussing the procedure. The procedure seems rather open. I want to know what different panels, what different topics --

VICE CHAIR THERNSTROM: No, no, wait a minute.

COMMISSIONER GAZIANO: -- what different speakers.

VICE CHAIR THERNSTROM: But I --

COMMISSIONER GAZIANO: I want to know what -- I understand and respect -- at least I think I understand some of your procedural objections --
VICE CHAIR THERNSTROM: But they're --

COMMISSIONER GAZIANO: -- and others, and others, but what I'd like to hear now is -- and we can work through those, I think -- Commissioner Yaki said that, you know, he wished he were involved earlier. I'm sure that's often the case, but I'd like to know now what he thinks about this concept paper isn't a good idea or how it can be improved.

COMMISSIONER YAKI: Commissioner Gaziano, this has been a product of several months of work. I've had less than a week to look at it. There are any number of different issues that I wish to go into. I think Commissioner Melendez spoke about some of them, but the fact of the matter is that it is about process as much as it is about substance. It's not simply the end justifies the means.

This is a question of whether or not going forward in this development in an iterative process that I wish that -- and you know, whatever you want to say about whether you reported that you were working on this or not, the fact is that what exactly you were working on with regard to the conference was never really said with great specificity. And I will repeat: I made it very clear from day one that I thought it would be important for me to be involved.
That is not my job at that point to continue knocking on a door that doesn't get opened, and you know, you can argue that all you want, Mr. Chair, and point to whoever, point in a transcript that you may have said, "Well, I'm doing it," blah, blah, blah, blah, blah. The fact of the matter is that there's a signal difference between, I'm working on this too, -- oh, by the way, I'm actually pulling together what the nature of each panel is going to be, et cetera, et cetera, et cetera, and not going into what I had hoped would be a much more bipartisan process.

Because certainly you more than anyone else and certainly I would hope the members of the Commission would understand the skepticism that is out there. And yes, you know, Commissioner Kirsanow can say, "Well, it's so important. How can they not participate?"

Well, I can tell you for a fact, and I think it is no secret, that there have been some briefings in the past before this Commission where it was difficult to find certain witnesses to appear who one would think would likely be wanting to appear before us to testify because they were not confident in the outcome.
I remember specifically on more than one, more than two, more than three -- multiple occasions where the decline ratio from groups based here in Washington, D.C. was exceedingly high. That did not simply come because they had a conflict. I can tell you that. I can tell you that for a fact.

So I think the substance is -- I think the procedure is part and parcel --

CHAIRMAN REYNOLDS: Hold on. Someone turn their phone off.

VICE CHAIR THERNSTROM: I'm going to answer it, not turn it off. I will go out of the room.

COMMISSIONER YAKI: So I am just saying, once again, the procedure --

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: I appreciate -- could I just follow up a little?

I appreciate Commissioner Melendez's suggestions. I would encourage any Commissioner who has similar concerns and is willing to send an E-mail to all of us -- I intend to do so -- send an E-mail with how this can be polished, if that's your view, improved. I'm not sure that I quite understand why your disappointment over the process means that you
won't tell us at all how you think it should be improved, but I --

COMMISSIONER YAKI: I just got the document last week, Commissioner. It's a little difficult -- it's a very dense document. It has a number of different people on it with regard to a different -- with a point of view of what the panels are going to be.

Rearranging an entire panel topic is not something that I'm just prepared to say willy-nilly, "Oh, I really think it should be this or that."

But I will say this. There is a distinct omission. When I talked about a national civil rights conference, I talked about it globally. I talked about the issues. I talked about not just the issues of race. I talk about it in issues of gender, sexual orientation, disability. That's what I was talking about.

COMMISSIONER GAZIANO: And I think there's room within this proposal to include those, and I thank you and Commissioner Melendez for raising those thoughts.

COMMISSIONER YAKI: Well, I'm very glad that you thank me, but the fact is that this is something that from the very beginning to me was
supposed to be what this was all about. It somehow
 got routed a different way, and that's what I mean by
 not being involved in this process to begin with
 because now if you were to include those, if you do
 those, how you would do it, how you would stage it --
 I remember even talking about this with Commissioner
 Taylor at a meeting, about the fact that we may not
 know, and some of these groups may not know or be
 representatives of everything that we may want to
 discuss and bring up in terms of how these issues play
 out.

 I mean, part of the - everyone, good or
 bad, left or right, conservative or liberal, comes at
 it from some point and from a certain perspective, and
 whether they would like to see --

 COMMISSIONER GAZIANO: What in the heck is
 going on?

 THE REPORTER: We are losing the record.

 CHAIRMAN REYNOLDS: Excuse me. Marty, is
 that background noise coming from your end?

 STAFF DIRECTOR DANNENFELSER: It is. Yes,
 I've been trying to cover up, move around to get away
 from it.

 CHAIRMAN REYNOLDS: Do you have a mute
 button on your phones?
STAFF DIRECTOR DANNENFELSER: No, I don't. Unfortunately the palm of my hand is my mute button, unfortunately.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: This is Commissioner Melendez.

I have one more comment. You know, I have to agree with what Commissioner Yaki is saying about if we could have done it over. You know, we have to tie this to the strategic plan in some way because I know that the strategic plan says that we're supposed to convene the conference, but attract 100 civil rights practitioners, expert, and it says we're supposed to issue a report based on the findings of the conference entitled "Civil Rights Priorities for the 21st Century" and then further enforce -- see our strategic plan identify six civil rights issues and research topics appropriate for incorporation into the Commission's programmatic planning cycles for 2010 through 2012, and identify the civil rights issues and research topics that could lay the foundation for updating the Commission's strategic plan in 2011, and also, (e) identify where the Commission's powers and mission need to be expanded to respond to emergency challenge and publish these by 2011.
And I think what Commissioner Yaki is saying is, as we started out in the very beginning, you really have to tie, you know, the different panels or the discussion topics to what we have said here. Right now, we're kind of like -- I'm not sure if it's tied to that, you know, and then it's almost as if we're just trying to rearrange panels and speakers, and so I can see how we're really in disarray in how we are proceeding.

If it were up to me, I would postpone this until 2010 if possible, the next year, and do it right. So just for the record, I just think that I'm not really supportive in the manner. I just don't think we're going to be able to do an adequate job.

Because then also, if we were to contact speakers like today and tell them in the spring of next year, "Mark this on your calendar," that we want you to be there -- when we contact people with a month in advance or even two months, you know, many times they grab other commitments and they can't make it. If it were me, I would have said, let them know in the spring that we need you here. Mark it on your calendar now. Then you were guaranteed to get all of the different participants, but I just think even that small aspect of getting all of these speakers is a
challenge.

So my position would be to put this off if possible until next year and do it right.

COMMISSIONER GAZIANO: The -- the --

CHAIRMAN REYNOLDS: Hold it.

Commissioner Melendez, you said something that gives me the impression that you believe that all of the individuals, all of the recommended individuals, will participate. I don't know if that's your assumption, but the proposal states that the panels will be made up of four to five people. It's not going to be all of the individuals that we have listed in the proposal.

COMMISSIONER GAZIANO: The proposal also suggests that the participants will submit research papers possibly after. You know, Commissioner Heriot can speak to this because there's a lot of different ways academic conferences are organized, but sometimes there's a sort of working speech that's given or working paper that's presented, and then a polished paper is delivered, and that the proceedings of the conference would be potentially made available.

So it does seem like the framework that the Chairman has outlined can include many of the points that you read from our strategic plan.
COMMISSIONER MELENDEZ: Have we already contacted any of these people or no?

CHAIRMAN REYNOLDS: I've had conversations with some of the individuals.

VICE CHAIR THERNSTROM: Could you tell us who?

CHAIRMAN REYNOLDS: Ted Shaw, Deborah Dickerson, Bill -- hold on -- Bill Stephany, and I'm sure that there's a few more of the folks here that I have discussed the -- at least at a high level I've had discussions with those individuals and maybe one or two more.

COMMISSIONER TAYLOR: Mr. Chairman.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER TAYLOR: I think a conference of this nature is something we should do. The value for me, however, is a little bit different than what we have outlined in our strategic plan -- finding the recommendations, contingents, for me personally do not hold a lot of value, and I do think it will provide certain people with an explanation as to why they will not participate if we, as the conservative members of the Commission, quote, control the pen.

And so I would be inclined in terms of trying to improve this product, I would be inclined to
not go in that direction at all with respect to findings and recommendations. To me that's not the value of this type of national discussion. The discussion in and of itself is the value, and getting the discussion out in the public domain.

I do want a Mary Frances Berry. I want to give her a podium. I want to give her an opportunity to say her piece, and I don't want her to be fearful that it will be summarized, mischaracterized in conclusions and findings. And then I want somebody to give a competing view on the same stage. To me that is the value, and so I would want us to give some thought to doing something like this without tying it to a final work product that would include us, again, controlling the pen in terms of drawing conclusions.

But I want to give the people in the traditional civil rights community a platform to air their views and have a competing point of view without anyone fearing that their views would be mischaracterized, summarized inaccurately. I think that's the value of this type of conference.

COMMISSIONER GAZIANO: Without us coming to findings and conclusions, would you oppose letting scholarly speakers like Shelby Steele and others submit papers for publication?
COMMISSIONER TAYLOR: I have no objection to people submitting papers, but, again, the value of something like a discussion -- I won't use the term "debate" because I think it will be a discussion -- between Steele and Gates is in and of itself valuable.

COMMISSIONER GAZIANO: Sure. And we should videotape this. C-SPAN hopefully would cover some or all of it, and we would put it on YouTube whether we --

COMMISSIONER TAYLOR: To me that --

COMMISSIONER GAZIANO: -- covers it or not.

COMMISSIONER TAYLOR: And I don't think we need -- my view is -- Mr. Chairman, I don't know if it may and if so I apologize. I hope it doesn't deviate too much from what you have in mind, but the value in what you proposed is to have a public discussion about these important issues. Again, that's my view. It's not so much, frankly, a working document that very few people read. It's the fact that we provide a platform to have these issues aired nationally, and that's what I hope we can do, and I want people to come.

Frankly, the best substantive suggestion I've heard would be to invite the Attorney General. I'd like -- Mr. Chairman, you would obviously begin...
the program, but I would like him to be the first
speaker for purposes of simply setting the stage, for
him to expand upon his comments, and I want him to
come into an environment that's not a debate about his
comments. I'd just like him to set the stage, and
then he can leave or stay, but feel comfortable that
it's not an ambush. It's not a trap, but it is a way
to get the discussion started, and no one is going to
mischaracterize anyone's remarks.

So, again, Mr. Chair, it may be a
different direction than you had in mind, but that's a
value I see in a conference of this nature, not our
written work product afterwards.

COMMISSIONER YAKI: And, Mr. Chair, this
is Commissioner Yaki. That's exactly the discussion
that I had before we got interrupted by the background
noise. I was about to say that that was exactly the
discussion that I had with Commissioner Taylor about
three years ago. I remember sitting down and saying:
it's a place for people to come and talk and not to
draw conclusions, but to lay out the issues, lay out
the challenges from different perspectives on the
issue of what are civil rights for the 21st century.

And which is why, you know, the omission
of the whole spectrum is one that I find troubling.
Could that be fixed? Yes, but I think that Commissioner Taylor hit it right on the head, and I had said that earlier, that there is deep suspicion about what would be done with the results of this conference -- and if, indeed, there is to be no result of this conference other than the conference itself, a dialogue itself being an opportunity for people to come forward and use a national forum and use the Commission for what it was and always has been intended to be.

I have much more comfort in that, but that was what I would have talked to you about if we had been invited into the party a little bit earlier, so that we could work through these types of issues and, you know -- much, much credit to Commissioner Taylor for bringing this up because it is --

CHAIRMAN REYNOLDS: Well, --

COMMISSIONER YAKI: -- very important.

COMMISSIONER TAYLOR: Mr. Chairman, let me ask you a question before you go on because it's -- and let's do something which I guess a governmental body should never do. Let's have an open and frank discussion on the record.

Is the issue of findings and recommendations from your perspective critical? I
mean, is that --

CHAIRMAN REYNOLDS: Well, I was about to respond to your recommendation. I don't have a problem with the approach that you just outlined. So I don't know if you, you know, require more discussion on the point, but if there is a consensus -- well, first of all, I will support your recommendation, and I would hope that we can reach a consensus on this issue.

COMMISSIONER HERIOT: Mr. Chairman.

COMMISSIONER KIRSANOW: Kirsanow here.

I read the proposal, and what Commissioner Taylor proposed, which I concur with, is I think what the concept paper, in fact, even states, that panels will submit research papers, will publish those. We're going to be discharging our clearing house function. There's the possibility of findings and recommendations, but you know, we don't have to do them.

I think I agree with -- I mean, I know that I concur with Commissioner Taylor that this is an opportunity to have a discussion. I concur. I want to give Mary Frances Berry a platform. She's had it for a long time, but I want to see what she has had to say more recently. Lani Guinier, Gwen Lowery, Harvey...
Mansfield, Stephan Thernstrom -- let's get some of the best minds and the most diverse thinkers and start the discussion that the Attorney General says we should be having.

And, frankly, this doesn't require, in my estimation, having gone through the concept paper a couple of times now, which is only seven pages long, frankly, this is not -- I think you did a very good job here, but it's not a magnum opus in terms of trying to digest this and come up with suggestions as to how to improve it or change it.

In my estimation, based on the current concept, this is something that really requires a good ability to dial the phone and not much else -- not much else -- making logistical arrangements in terms of flight arrangements, but if you get in touch with these people now or anyone else that any other Commissioners want to recommend, then this thing can go forward.

And as Commissioner Gaziano said, they can present something before the hearing if they wish to do so, but a more polished product afterwards.

COMMISSIONER HERIOT: Yeah, I would recommend giving them quite some time afterwards to get quite a polished product.
I also agree with Commissioner Taylor that, you know, I'm perfectly happy to not have findings and recommendations here because I think we're talking about a subject that is sufficiently broad, and we're talking about it in a level of abstraction such that I'm not certain that findings and recommendations would have been all that useful anyway.

I would like individual Commissioners to have the ability to put statements in whatever written product is published. You know, maybe they would be writing articles of their own or maybe commenting on the article, but I think that's something that would be useful. But then each of us could do that in our individual capacity as Commissioners.

COMMISSIONER GAZIANO: Yeah, and if possible -- and this may not be possible -- but I have a slight preference that when you're moderating a panel, that's not necessarily the appropriate point to make -- time to make point -- but that the Commissioners other than the Chairman also might have an opportunity to provide some statements on one or more of these panels or separately, like members of Congress do as far as opening statements.

COMMISSIONER HERIOT: We're also dealing
with some very high powered people here, and I wouldn't feel all that good about, you know, having an ultimate conclusion about what some of these witnesses have to say. Let them speak for themselves, and if they are persuasive to the American people, then they are.

CHAIRMAN REYNOLDS: Is there any Commissioner who feels that we should have findings of fact and recommendations?

(No response.)

CHAIRMAN REYNOLDS: Okay. Sounds like that issue is settled.

COMMISSIONER TAYLOR: Would it be fair then to characterize, as Commissioner Kirsanow said, that for purposes of gathering information and producing anything, we would be effectively exercising our clearing house functions with respect to the material produced and nothing more? So that we're all characterizing our function the same way, and by clearing house, it means we're gathering information, providing electronic platform for people.

COMMISSIONER GAZIANO: Right. We might not publish something that's slanderous, but we wouldn't exercise --

COMMISSIONER TAYLOR: Right.
COMMISSIONER GAZIANO: -- a substantive, heavy, substantive editorial control. We might give them some space limits or something.

COMMISSIONER TAYLOR: Right. Space limits, but nothing where we change the content of what they submit.

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER HERIOT: You're comfortable with the notion of there being Commissioner statements?

COMMISSIONER TAYLOR: Oh, I think we have an inherent right to do that at all times, but I think it's more important for purposes, again, of, you know -- if I were the Attorney General receiving an invitation like we're going to extend to him, that would be important to me, and it would be important to me to know that I'm not in a debate in that context. I'm there to give an opening statement and give you my thoughts and wish the group the best as they proceed with the discussion for the rest of the day. That would be important.

And I think that's the way we can have a credible opportunity of getting him to come.

VICE CHAIR THERNSTROM: Mr. Chairman, I have a question. Commissioner Melendez suggested that
he would be much more comfortable with a longer planning time and having a conference in some time in 2010. If, in fact, it doesn't look as if this is going to come together with the quality that you hoped for for September -- I still regard that as ridiculously soon -- would you be open to Commissioner Melendez's suggestion that we have this conference, but not as early as we expected?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER KIRSANOW: Kirsanow here.

Having said that, Mr. Chairman, I will say that I agree with Commissioner Gaziano that we should really move toward doing it in September. The longer -- and I concur also with Commissioner Melendez. I understand that, you know, we want to put together a quality project. My concern is that it's human nature and happened in my realm that when you put something off, you start to lose traction.

I really do think this is imminently doable, provided that we get on the stick right now. It's a matter of making phone calls and getting people here.

CHAIRMAN REYNOLDS: Well, Pete, I agree with everything you just said, and I stated earlier that we are going to work towards the date. At any
point in time that we feel that we cannot put on a
quality conference, then we would have to revisit the
date.

COMMISSIONER KIRSANOW: Right.

CHAIRMAN REYNOLDS: Now, after having said
that though, I am fairly confident that this is
achievable, especially with the number of
Commissioners that have volunteered to do the heavy
lifting.

COMMISSIONER KIRSANOW: Kirsanow here. I
would suggest we may want to, maybe off line by E-mail
or maybe in a separate conference call, assign or pick
priorities in terms of Commissioners who can get in
touch with these people or how we're going to assign
those kinds of functions. Maybe staff will take a
certain number of them. Those of us with
relationships with others can do so.

I think given that this is an ongoing
project or a work in process, maybe the other
Commissioners can suggest other names or suggest that
some of the names that are on here should be deleted
or there should be substitutions, what have you.

But I think, at least at first blush, this
is an impressive group of names. Whether we get them
all or just a few of them is, you know, -- we'll see
what happens with that, but again, the urgency of this is starting to make the phone calls as quickly as possible.

We can start to flesh this out fairly rapidly if we begin doing so at the beginning of next week.

COMMISSIONER GAZIANO: Some instruction, I think, does need to come from Marty, Gerry, with input from Dominique, who should be on maternity leave taking care of her baby, but I think is listening in.

CHAIRMAN REYNOLDS: She is.

COMMISSIONER GAZIANO: On just a few of the logistic things.

I move that we concentrate on the National Press Club. Is there any objection?

VICE CHAIR THERNSTROM: Well, I object because I don't think I can make the date. That's the --

COMMISSIONER GAZIANO: Well, the National Press Club is the venue, and that we then confirm the date.

COMMISSIONER YAKI: We already have a date.

CHAIRMAN REYNOLDS: And also, Todd, let me --
COMMISSIONER GAZIANO: We might shift it.

CHAIRMAN REYNOLDS: -- revisit a comment that I made earlier about the deposit. It turns out that I was wrong. We will be required to make a deposit. Now, we have a hold on it, but within the next week or so we will have to make a decision to whether we are going to use the National Press Club, and if so we'll have to make a deposit.

COMMISSIONER GAZIANO: I suspect so, but that's why I mentioned that they asked for flexibility up front as far as when you could release it and carry forward the money.

And by the way, without doing it completely above board, it might even be required that we expend the money this fiscal year for a conference that isn't going to take place until next fiscal year. So there's a lot of interesting issues like that probably that need to be worked through.

COMMISSIONER YAKI: Before we start ordering placemats, can I ask a question? This is Commissioner Yaki.

There are two different themes running through -- well, I see two different themes running through this discussion. One is Commissioner Kirsanow's issue about confronting the question of
race. The other is the title of this document, which is a little broader than that, which is defining civil rights in the 21st Century.

Again, I raise the point raised by Commissioner Melendez and myself, which is that where this tends to be a little light is in the issues of gender, sexual orientation and disability. Even within that, within sub-groups -- for example, within as a sub-issue within the Latino community there could be the issue of citizenship and immigration. There could be within this -- I'm sorry. There are people on the phone right now.

So my question is where are we. I'm still not clear where we are going with this, and they are two totally different. If you are truly talking about redefining civil rights in the 21st Century, we have to address the issues of gender, disability and sexual orientation.

COMMISSIONER KIRSANOW: Kirsanow here.

I agree with Commissioner Yaki. Our charge is to address matters related to discrimination on the basis of race, sex, age, color, national origin, so on and so forth. I am hopeful that we will have a panel, and I would look to everybody here, including Commissioner Yaki, to recommend names that
would include discussions of those issues, either --
maybe more than one panel, maybe a panel dealing with
gender issues and another panel dealing with
disability discrimination issues -- although I can
see how, you know, some of the panels in the current
construct of this paper would naturally lead to that
because we are talking about civil rights in the 21st
Century, a new vision for it.

I suspect many of the people currently on
the panel will address these issues, but I do think it
makes good sense to have a discrete panel dealing --
or panels -- dealing with some of these other issues,
and I would welcome a motion to do that.

COMMISSIONER YAKI: I noticed,
Commissioner Kirsanow, that you left off sexual
orientation.

COMMISSIONER KIRSANOW: Whatever. I mean,
you know, there's a whole list of things, and frankly,
I can't even keep them all in mind at the same time.

COMMISSIONER GAZIANO: As long as we're
allowed to take up some related issues that aren't in
our statutory jurisdiction. So we need to be a little
careful about that, but otherwise I wouldn't mind.

COMMISSIONER HERIOT: Well, particularly
in Panel 4, where we're talking about what the
Commission should be.

COMMISSIONER GAZIANO: Sure. That's fine.

COMMISSIONER HERIOT: We can talk about, you know all of these things, even things that are not exactly --

COMMISSIONER GAZIANO: Well, we have the prohibition from even thinking about a certain topic that I probably shouldn't mention because I would violate the law.

COMMISSIONER HERIOT: Then we won't think about it, but I don't think that's the one that --

COMMISSIONER GAZIANO: We have the prohibition if I say the word.

COMMISSIONER HERIOT: Yes, that Commissioner Yaki is talking about.

COMMISSIONER GAZIANO: Okay.

COMMISSIONER KIRSANOW: Well, you know, Kirsanow here.

That one prohibition deals with abortion - - is a statutory prohibition. And if we're going to be talking about what the new Civil Rights Commission should be, should there be that prohibition? I think that's something worthy of discussion.

COMMISSIONER GAZIANO: You're dancing on a dangerous line there, but --
COMMISSIONER KIRSANOW: Just like all the other things that are worthy of discussion.

COMMISSIONER GAZIANO: Maybe we can get a statutory exemption about it.

COMMISSIONER KIRSANOW: Right. I'm not holding my breath.

COMMISSIONER HERIOT: At any rate, you know, we can accommodate the need to talk to things other than race here, I think, pretty easily. That's not going to be a problem.

Mr. Chairman.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: Do you need a motion? Are we good just to have this conversation?

CHAIRMAN REYNOLDS: I'm sorry. Are you referring to a discussion of abortion?

COMMISSIONER HERIOT: Do you need a motion at this point, you know, to carry on? I'd be happy to move, you know, that --

COMMISSIONER GAZIANO: That we proceed according to all of the discussion that's preceded.

COMMISSIONER HERIOT: Yeah, that you be authorized to act.

CHAIRMAN REYNOLDS: Okay. Let's do it.

Commissioner Heriot, may I please have a motion?
COMMISSIONER HERIOT: Well, let's see if this is what you want. I move that the Chairman be authorized to proceed under the plan in the draft concept paper, as modified by our conversations today, to see whether you can, you know, get the speakers so that we can make the date as proposed.

CHAIRMAN REYNOLDS: I second it.

Discussion.

COMMISSIONER YAKI: This is Commissioner Yaki.

I have no idea what in the heck that motion means.

COMMISSIONER HERIOT: That -- that --

COMMISSIONER YAKI: I mean, I --

COMMISSIONER HERIOT: Here's what it means. It means that the Chairman is authorized to invite speakers as discussed in the concept paper.

COMMISSIONER GAZIANO: Or to delegate others to invite.

COMMISSIONER HERIOT: Or to delegate that authority to other members of the Commission or to the Special Assistants or to the staff members, and also that he be authorized to proceed with the National Press Club or to delegate that authority to the staff.

COMMISSIONER YAKI: And what about the
issues that were brought up by myself and Commissioner Melendez regarding the --

CHAIRMAN REYNOLDS: It would be taken into consideration.

COMMISSIONER HERIOT: You know, making sure that those comments --

COMMISSIONER YAKI: What does "taken into consideration" mean, Mr. Chair?

CHAIRMAN REYNOLDS: That means that, as I understand the motion, that I would be charged with taking into account all of the issues that have been discussed during this meeting, including the concerns which I share, expressed by Commissioner Melendez and some of yours, as well as the other Commissioners.

COMMISSIONER YAKI: With all due respect, Mr. Chair, that's a little fuzzy.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: I mean, you know --

CHAIRMAN REYNOLDS: I'm not in a position to tell you what the final product is going to look like.

COMMISSIONER HERIOT: That's always true of our briefings, too. There's nothing remarkable about this. We never have them set in stone.

COMMISSIONER YAKI: But don't get me
started about the magical process that results in briefings, but at least are we -- does this motion include the confirmation that there will be no findings and recommendations to this conference?

COMMISSIONER HERIOT: I think there's a consensus on that.

CHAIRMAN REYNOLDS: I don't think that it's needed, but if that would provide you a sufficient comfort to participate in the process, I can get behind that.

COMMISSIONER YAKI: No, what would provide me sufficient comfort to participate in the process is to be participating in the process to begin with, but I'm wanting to know because this will be important in terms of what people ask me afterwards with regard to whether or not there is a definitive statement about whether there will be findings and recommendations or not.

I think it should be part of the motion. I think it is in your interest to have that as part of the motion.

COMMISSIONER HERIOT: I'm happy to put it in.

CHAIRMAN REYNOLDS: Well, I don't have any concerns about putting in the motion, but,
Commissioner Yaki, do want to point out that you are participating in this process.

COMMISSIONER YAKI: I am participating in this process now, Mr. Chair, simply because I'm dissatisfied and deeply disturbed by how this has been going on. So what -- if raising objections is participating in the process, then so be it, but I still reserve -- have serious reservations about what you mean by taking into consideration issues of gender, disability and sexual orientation in the planning of this conference unless you plan to change the title.

You know, that's apparently your discretion, the ball that you've been running with. I don't know, frankly, and part of me doesn't care because, again, despite my entreaties, I was not invited to the table.

But I need to know, and I think it's going to be very important for you to put on the record as a vote that there's going to be no report issued that will contain findings, recommendations or conclusions of the Commission.

CHAIRMAN REYNOLDS: If that's important to you, I can support it.

COMMISSIONER KIRSANOW: So can I.
COMMISSIONER HERIOT: I just want to state for the record that I didn't receive this proposal any sooner than Commissioner Yaki did. There seems to be some suggestion here that he got shut out of the process.

COMMISSIONER YAKI: Except I got it later.

COMMISSIONER HERIOT: If he was shut out of the process, so was I.

COMMISSIONER YAKI: Well, perhaps you didn't ask to be in the process three years ago like I did. Perhaps you didn't reiterate that a year ago. Perhaps you didn't reiterate --

COMMISSIONER HERIOT: I've always wanted to be involved in the process.

COMMISSIONER YAKI: -- that months ago.

COMMISSIONER HERIOT: That's incorrect.

COMMISSIONER YAKI: Well, the fact is that, for better or worse, Commissioner Melendez and I represent the Democrats on this Commission. We represent the minority on this Commission. We represent a whole different constituency on the outside of this Commission. So the fact, that despite those requests, we were shut out is significant, and you can say all you want, "Well, I got it a week ago. What's the problem?" You know that's not how the game
is played, Commissioner Heriot. You know that's not how the game --

CHAIRMAN REYNOLDS: The way the game has been played --

COMMISSIONER HERIOT: Wait a minute.

CHAIRMAN REYNOLDS: -- is the Commission is --

COMMISSIONER HERIOT: It may come as a shock to Commissioner Yaki, but we all got--

CHAIRMAN REYNOLDS: -- that you have been allowed to have the conversations that you're having now under previous configurations of the Commission.

COMMISSIONER YAKI: Well, let's not go back in ancient history, Mr. Chair, but --

CHAIRMAN REYNOLDS: Well, I would like to go back to ancient history.

COMMISSIONER YAKI: -- you know from the very beginning, Mr. Chairman --

COMMISSIONER KIRSANOW: This is Kirsanow.

One of the people I want on one of these panels is going to be the Chairperson of the previous Commission, and we'll see precisely what she thinks in terms of how the Commission should move forward. There are members of this Commission who clearly remember how business was conducted. I am here to
tell you -- and you can go through the transcripts from 2001 to the present to see how Commission business was conducted. It is a bright line --

COMMISSIONER YAKI: Well, I'm sorry --

COMMISSIONER KIRSANOW: -- in favor of the minority these days as opposed to what it was in the past.

COMMISSIONER YAKI: Well, I'm sorry that you feel like an abused child in the situation.

COMMISSIONER KIRSANOW: It's a perfect -- no, but you know what? That's Washington. We are a majority.

COMMISSIONER YAKI: But the fact of the matter is --

COMMISSIONER KIRSANOW: I have absolutely no problem including any panelists, and I would urge Commissioner Yaki and Commissioner Melendez to recommend panelists, to recommend substitutions, to recommend deletions, to recommend every panel. I have heard nothing from any other Commissioners thus far disagreeing with any of that.

It is impossible sometimes to agree with you, Commissioner Yaki.

COMMISSIONER YAKI: Commissioner Kirsanow, perhaps we should revisit history. When I first came
on the Commission, one of the first things I did was
got appointed to the subcommittee that worked on
revising the rules and AIs to make this place work
better than what you referred to as "the other days."
I worked on that in a bipartisan manner with
Commissioner Braceras, amongst others. Through the
first year and a half, we tended to work along those
ways. We formed subcommittees. We did this together.
We participated.

That has changed. I don't know why it has
changed, but it has changed, and I was a perfectly
willing participant in the beginning to work in a
bipartisan manner, to understanding the concerns that
you raised and other people had raised during that
time period. So don't start preaching to me about
that kind of behavior, Commissioner Kirsanow, because
I was on the -- people who worked in this Commission
to try and change the rules and make it fairer and
make it more bipartisan. You supported it as well,
and I worked with you, in fact, on one of the
subcommittees involving some of the finance issues.

I was hoping that would be the same kind
of process for something this important and this
significant for the Commission. That did not happen.
That was my surprise. That was my disappointment.
That was, in fact, my anger, that, despite asking for that early on, talking about this, in fact, bringing this initially up with Commissioner Taylor three years ago, that it never happened.

So part --

COMMISSIONER KIRSANOW: Commissioner Yaki, again, I'm perplexed. If this is the process you wanted to have, there's nothing at least to my knowledge that prohibited you or anyone else from suggesting that we have a subcommittee, just like the Finance Subcommittee, Strategic Planning Subcommittee, the AI Subcommittee, all the other subcommittees, to draft this concept paper or to work along with this.

COMMISSIONER YAKI: With all due respect --

COMMISSIONER KIRSANOW: I had an opportunity to work with Commissioner Reynolds had I chosen to do so. I chose not to do so. I am absolutely certain that if you, Commissioner Heriot or anyone else had gone to Commissioner Reynolds and said, "I know you're working on this concept paper. I know it's heavy lifting. Let me assist you," -- I'm bewildered as to precisely what it is you were excluded from doing.

COMMISSIONER YAKI: Commissioner Kirsanow,
then you --

CHAIRMAN REYNOLDS: Folks.

COMMISSIONER YAKI: -- were not privy to

the conversations that I had.

CHAIRMAN REYNOLDS: We had this debate

earlier. We're just going over old ground. At this

point I think that we have a game plan. I believe

that there's a motion pending. I believe that

Commissioner Yaki asked whether the motion contained

the understanding that there would be no findings of

fact and recommendations.

I believe that there is agreement that the

motion does contain that understanding. So at this

point, folks, let's vote. All in favor say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections.

COMMISSIONER YAKI: I object.

VICE CHAIR THERNSTROM: I'm sorry. My

burglar alarm went off in my house, and therefore I

haven't been part. I don't even know what we're

voting on at this point. I'm sorry for having to

leave the room.

CHAIRMAN REYNOLDS: Okay. So I'll treat

that as an abstention. Commissioner Melendez?

COMMISSIONER MELENDEZ: Abstain, too. I'm
not real convinced on this.

CHAIRMAN REYNOLDS: I understand. Okay.

The motion passes.

The next item on the agenda is a discussion of a letter that was drafted by Commissioner Kirsanow.

COMMISSIONER GAZIANO: Should we go back to approve the minutes or not?

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Should we is what I'm asking. It doesn't matter. I don't care. Just pointing out we haven't been there yet.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Let's go to the letter.

CHAIRMAN REYNOLDS: Okay. I move that we approve the June 12th, 2009 minutes.

II. APPROVAL OF MINUTES OF JUNE 12, 2009 MEETING

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor, please say aye.
(Chorus of ayes.)

COMMISSIONER YAKI: Discussion. The vote recorded on the letter does not gibe with the letter that was sent to the Washington Times, if you read it very carefully.

CHAIRMAN REYNOLDS: Commissioner Yaki, which document are you referring to when you said have you read it very carefully?

COMMISSIONER YAKI: You're talking about the minutes, right? The very last issue in the minutes had to do with the number five -- Justice Department, had a vote of five to one.

CHAIRMAN REYNOLDS: I show four-zero.

COMMISSIONER YAKI: I do not believe it was five to one. That's why I wanted to correct that.

CHAIRMAN REYNOLDS: I was under the impression that it was four to zero with Commissioner Yaki being -- the vote, and we had, I believe, one abstention.

COMMISSIONER KIRSANOW: That's correct.

COMMISSIONER GAZIANO: Okay. Let's correct then.

CHAIRMAN REYNOLDS: Okay. Well, Mr. Staff Director, please revisit that factual issue. I agree with Commissioner Yaki. I believe that that tally is
incorrect.

STAFF DIRECTOR DANNENFELSER: The vote was four in favor and one abstention.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: I move to have the minutes reflect that correction.

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: I second it. All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Okay. Now, as modified, let's vote on the minutes from June 12th. All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objection?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes.

Next up is a discussion of a letter drafted by Commissioner Kirsanow.

IV. PROGRAM PLANNING

(b) DRAFT LETTER TO OHIO LEGISLATURE

RE SET-ASIDES

CHAIRMAN REYNOLDS: Pete, are you ready to
discuss your letter?

COMMISSIONER KIRSANOW: I am. It's very brief. This is a letter that will go to the Ohio State Legislature in response to a proposed bill that would require minority set-asides for colleges and universities. The bill is, frankly, perplexing because the Ohio Supreme Court, Federal District Court have all already ruled that these kinds of programs are unconstitutional, and we're simply advising them of that fact.

There's the Drabik case, there's the Buddie case, and in fact, in the Buddie case these individuals who would engage in such set-asides at the community college level, the college level, whatever you have, would be subject to personal liability. In other words, their sovereign immunity would be forfeited as a result. That should be their attention, but apparently the state legislature forgot about that.

So it's simply a letter that advises them of the fact that there is significant problems related to this proposed bill.

CHAIRMAN REYNOLDS: Response?

COMMISSIONER GAZIANO: A very good letter, but could we leave the final language open for a day
just for some very minor wordsmithing, or would that
create a problem?

COMMISSIONER KIRSANOW: I have no problem
with that, Commissioner.

COMMISSIONER GAZIANO: I'd like to vote on
the basic substance of it. I think it's a very good
letter.

CHAIRMAN REYNOLDS: Additional comments,
questions?

COMMISSIONER MELENDEZ: Commissioner
Melendez.

I'd like to ask the General Counsel whether
or not any letters like this need quality guidelines
review.

MR. BLACKWOOD: This is David Blackwood.

And the answer is no.

COMMISSIONER MELENDEZ: Okay. So we're
saying that, what, that statements to public officials
that cite specific legal cases and draw legal
conclusions about the meaning and applicability of
those cases don't require that?

MR. BLACKWOOD: In this format of a letter
by the Commission, that is correct.

COMMISSIONER MELENDEZ: Okay, all right.

Just for the record.
CHAIRMAN REYNOLDS: Additional questions, comments?

(No response.)

CHAIRMAN REYNOLDS: Hearing none, all in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER MELENDEZ: Opposed.

Melendez.

COMMISSIONER YAKI: In the absence of the facts, I'm going to vote no.

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: Okay. Let the record reflect that Commissioners Yaki and Melendez voted against the motion. The remaining Commissioners voted in favor. The motion passes.

Next up is discussion of the use of a temporary hiring authority.

IV. PROGRAM PLANNING

(c) DISCUSSION OF TEMPORARY HIRING AUTHORITY

CHAIRMAN REYNOLDS: Commissioner Yaki, this is your issue. Would like to frame the issue?

COMMISSIONER YAKI: Just a question to the Staff Director. When I --
VICE CHAIR THERNSTROM: Is he still one?

COMMISSIONER YAKI: Is he still on?

STAFF DIRECTOR DANNENFELSER: Yeah, I'm on here. Hopefully my signal will hold.

CHAIRMAN REYNOLDS: And also, if we get into sensitive territory, we'll have to go into executive session.

COMMISSIONER YAKI: It was just a question about -- well, actually the General Counsel will actually be a part of it -- when I had initially put in for my special assistant, Alec, I understood that there might be some wait and review time and had asked if we could use temporary hiring authority to get him started right away so that I could utilize his skills on some dissents that were coming up. I made this request in writing and verbally to the Staff Director.

The response I got back was that they had gone to the appropriate people and had been shot down.

I subsequently learned that someone had been hired using temporary hiring authority, another person whose name had been in submission for a special assistant position, and had just wondered why my case seemed to be different than that of the other person.

And that's basically it.

CHAIRMAN REYNOLDS: Okay. Who would like
VICE CHAIR THERNSTROM: Is the Staff Director not on?

STAFF DIRECTOR DANNENFELSER: No, I'm on the line. I wasn't sure that Commissioner Yaki posed the question to me or to the General Counsel.

COMMISSIONER YAKI: Well, it's to either. Your initial reply to me stated that it was on the advice of the General Counsel, which I don't -- well, I mean --

STAFF DIRECTOR DANNENFELSER: Let me try to explain it. There are two temporary hiring authorities, one of which we did approach the White House about, and they advised us not to use that temporary hiring authority.

The other hiring authority, I checked with the General Counsel and the Director of Management about, and they both advised against using it because of the experience that we have had in the past with an individual who had been put forward for a special assistant position but then was turned down by the White House.

CHAIRMAN REYNOLDS: In addition to that, that individual at the time had a pending piece of litigation. Is that right?
STAFF DIRECTOR DANNENFELSER: Yes. Well, he had a pending appeal right that we were waiting to see if he was going to exercise it.

COMMISSIONER YAKI: I understand, you know, you don't want to take any action that would prejudice your case, but I had two questions, to follow up. One is, is his case now finally, totally, completely over. There's no other right of appeal, no other court of jurisdiction that you can go to?

MR. BLACKWOOD: He has filed a claim in the U.S. District Court. I sent a memo around a while ago.

COMMISSIONER YAKI: Right.

MR. BLACKWOOD: It is pending. It is heading towards staleness, but it is still alive.

COMMISSIONER YAKI: So I guess my question then is why would the hiring of Alec have been prejudicial in that proceeding but not the hiring of the other person?

I mean, I'm happy that they got the temporary hiring authority. I just want to know why, if it didn't work because of a legal case in my case and that legal case is still pending, why it didn't affect that one.

MR. BLACKWOOD: All I can answer is that
there are -- it wasn't that that authority did not exist legally. The question was prudentially whether it should be exercised.

COMMISSIONER YAKI: Yeah, I know, but if the person still has a case and that case was in place at this time and that time, why was this time, my time, not hired and the other one was? That's all I'm asking.

CHAIRMAN REYNOLDS: David, was that the same piece of litigation pending? What does this -- the case that you just referred to, what did that file -- after the decision was made, there was a subsequent appeal that was -- wasn't there an appeal that would extinguish?

MR. BLACKWOOD: No, here's what the sequence was. We knew that a decision had been rendered by the MSPB, and we were waiting for the appeal time.

There are two appeals. Normally you would get notice. We did not get any notice that the gentleman had pursued this alternative. So there was a time when we thought the time period -- in fact, I think I sent a memo around or an E-mail to everyone -- the appeal time has expired.

What we subsequently learned is, without
providing us notice, he had pursued a route through the U.S. District Court. I don't think it will be successful, but that's a different issue. At the time we did not know he had done that.

CHAIRMAN REYNOLDS: So at the time we thought that the time period for an appeal had expired?

MR. BLACKWOOD: That is -- well, as of what date? It all depends on what date. There was a time period where he had pursued this, and we did not know that.

COMMISSIONER YAKI: So what you're saying is that basically you then made a decision, based on the fact that appeal had not yet been finalized, to advise not to use special hiring authority for Alec, but then after that time period was over, unbeknownst to you, this other action had been filed, but in the absence of that knowledge, you then authorized the temporary hiring authority for this other person.

MR. BLACKWOOD: No, I'm not saying that at all.

COMMISSIONER YAKI: Okay. Then I --

COMMISSIONER GAZIANO: May I be recognized, Mr. Chairman?

VICE CHAIR THERNSTROM: No, I would like...
to hear what -- because I heard it the same way as Commissioner Yaki did.

CHAIRMAN REYNOLDS: Commissioner Gaziano, proceed.

COMMISSIONER GAZIANO: I just want to --

VICE CHAIR THERNSTROM: Well, you won't let David Blackwood clarify this?

CHAIRMAN REYNOLDS: Commissioner Gaziano, proceed.

COMMISSIONER GAZIANO: He can. I just want to say how this decision has adversely affected me, too. I was disappointed to hear that Commissioner -- that the decision was made not to extend the temporary hiring authority to Commissioner Yaki especially without at least pinging other Commissioners on this. It affects us all.

I have had a special assistant pending now for about 33 days. I don't want anyone to think I'm hiding behind the log. When I was -- TinaLouise Martin is out this week, so I couldn't verify the exact number of days.

I -- when I asked for the temporary, I was now told there may have been some change. I'm not sure I entirely agree with it, or I don't entirely agree with the decision that was made, but I did not
press my case for a temporary until the period of time has expired, similar to what other Commissioners have had to wait for their special assistant, but I will at this point show my interest in that I will be asking the Staff Director on Monday, which will be about 35 days, as best I can tell, to execute the temporary hiring authority for my special assistant to bring my special assistant on the payroll pending -- I also have some concerns that with regard to me, PPO review may not be entirely appropriate except perhaps to check a criminal background check, if that's what's going on, but I don't think it's appropriate to have to wait any longer for an assistant.

COMMISSIONER YAKI: But now my question --

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I just didn't understand as Commissioner Yaki didn't. I didn't understand the General Counsel's response. I just wanted clarification of it.

MR. BLACKWOOD: Well, number one, that in my mind had nothing to do with why there is a difference in treatment between your special assistant and others. I continue to have -- I am the wrong person to ask.

COMMISSIONER YAKI: But there is now a

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case in the District Court, regardless of whether it may be stale or not. The fact is that this kind of action could be seen -- I'm just understanding -- it would be seen as -- my doing this would have been prejudicial to the appeal case. To a new case it's not seen as prejudicial?

MR. BLACKWOOD: Well, you're assuming that my advice was that there should be a difference in treatment.

COMMISSIONER YAKI: Oh, in that case, I guess I have to kick this upstairs then because what I'm hearing is that the General Counsel asked for the same treatment and a discretionary decision was made. Was that made by you, Mr. Staff Director, to override the General Counsel's recommendation?

MR. BLACKWOOD: That's not the way to phrase it.

STAFF DIRECTOR DANNENFELSER: Well, I don't know that I would characterize it as overriding his recommendation.

CHAIRMAN REYNOLDS: Well, there was a sensitivity around some pending litigation, and I believe that the initial decision, the decision -- well, the response that you received, Commissioner Yaki, was grounded in this sensitivity around pending
litigation. Once I got involved in this issue, I did not share their view. There is nothing in the statutes or our rules that would prevent the use of this authority. I don't believe that the case has much merit, and I had a different assessment as to what the risk was in terms of using this authority. So my strong recommendation was that the subsequent case be treated differently.

COMMISSIONER YAKI: Okay. So I just wanted to confirm that I was, indeed, treated differently. That's all I wanted to hear.

COMMISSIONER GAZIANO: And it is possible, Commissioner Yaki, that some of us on the Commission as Commissioners are being treated differently by the White House, which may or may not be true, but regardless of that, I hope fellow Commissioners will agree that there is no reason that the Staff Director ought not to hire my special assistant on a temporary basis while we wait further final approvals.

COMMISSIONER YAKI: I have no objection to that, as you would know.

COMMISSIONER GAZIANO: Thank you.

COMMISSIONER YAKI: That satisfies my inquiry.

VICE CHAIR THERNSTROM: And just to put my
two cents in here, Mr. Chairman, this is obviously
Vice Chair Thernstrom. I don't understand, and this
is related to something that Commissioner Gaziano said
before -- I don't understand when we're trying to
switch one special assistant from one Commissioner to
another, which is what has previously happened here,
why this required White House approval. I mean, we've
already done this with a previous special assistant.

It wasn't quite the same facts, but
almost. I mean, there's something -- pardon me?

COMMISSIONER HERIOT: I think it was
pretty much the same facts. (Speaking from an unmiced
location.)

VICE CHAIR THERNSTROM: Exactly.

COMMISSIONER HERIOT: I would just like to
point out that Ken Marcus, the previous Staff
Director, requested such a transfer. He thought that
was something that --

VICE CHAIR THERNSTROM: I mean, I still
want and I still think it makes sense, for Tim Fay to
be transferred to me, and I don't know why that can't
be an internal process.

STAFF DIRECTOR DANNENFELSER: Well, this
is the Staff Director. The Schedule C appointments --
any actions relating to the Schedule C appointees
requires White House approval

VICE CHAIR THERNSTROM: Again, there --
whatever. We'll continue. It's water under the
bridge, I guess.

CHAIRMAN REYNOLDS: Okay. Let's go.

COMMISSIONER MELENDEZ: Melendez here.

I have a question.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: I'm not sure what
you're talking about. Are you saying there's a new
person on board right now that is already hired?

STAFF DIRECTOR DANNENFELSER: There's a
temporary hire with the Commission's temporary hiring
authority. The person is still pending as
presidential personnel for the more permanent
appointment as a special assistant.

COMMISSIONER MELENDEZ: Oh, so do you know
who that is? Have we been introduced --

STAFF DIRECTOR DANNENFELSER: Yes.

COMMISSIONER MELENDEZ: -- to the person
or what?

STAFF DIRECTOR DANNENFELSER: I know there
were several E-mails during the past week that
mentioned the person's name.

COMMISSIONER MELENDEZ: It's kind of top
secret.

(Laughter.)

STAFF DIRECTOR DANNENFELSER: I noted you were copied on several of those E-mails --

COMMISSIONER GAZIANO: If you were here you could --

STAFF DIRECTOR DANNENFELSER: -- originated with your special assistant, I believe.

COMMISSIONER GAZIANO: He's sitting behind Gail and I.

CHAIRMAN REYNOLDS: Has the new hire been introduced?

STAFF DIRECTOR DANNENFELSER: Well, it's a temporary hire. So I don't know that we've made any introduction at this point. That's a judgment call on your part, Mr. Chairman.

CHAIRMAN REYNOLDS: All right. Judging from the tone of your voice, I'm sure that you disapprove, but what the hell? You've disagreed with me before, and you'll disagree with me in the past.

Will someone please introduce our temporary hire?

COMMISSIONER HERIOT: I have my new special assistant on a temporary basis here. I think she's actually been introduced to everybody in the
room here, almost everybody, but it's Alison Schmauch, and here she is.

VICE CHAIR THERNSTROM: May I correct you?

I mean -- well, okay. Never mind.

CHAIRMAN REYNOLDS: Well, Alison, welcome aboard. I hope you have thick skin.

COMMISSIONER HERIOT: Yeah. Alison will be working for both Abby and for me, as Tim works for both Abby and for me, but Tim does most of the work for Abby, and Alison does most of her work for me right now. That could change, but that's the way it is right now.

CHAIRMAN REYNOLDS: All right. Next up is the status of the 2009 statutory report.

IV. PROGRAM PLANNING

(d) UPDATE ON STATUS OF 2009 STATUTORY REPORT

CHAIRMAN REYNOLDS: On June 2nd, the Staff Director sent the Commissioners a memorandum prepared by the General Counsel concerning changes made to the draft statutory report for 2009. I'd just like to say that I'd like to commend the Office of the General Counsel and the other staff folks and special assistants, the Commissioners who have contributed to the document. I think that it is looking mighty fine.

At this point will the General Counsel
provide an update?

MR. BLACKWOOD: Thank you.

This is David Blackwood.

I appreciate the comments we have already received. I would remind everyone that comments from the Commissioners are due this Sunday, not close of business, but by midnight. I would appreciate any comments sooner rather than later, and some have already actually submitted comments.

Affected agency review is also coming in at the same time. We have received several statements. In fact, last night we got feedback from the Department of Justice. By Monday we're supposed to get affected agency review also from some of the larger entities that we have dealt with, including the Fed. and HUD.

So far of the three agencies that we have gotten kick-back from, there have only been small modifications, terms of art, things like that. We have not had any major changes.

That said, we are waiting for those reports. I made the decision, and I in retrospect should have put it in writing, that until we got the affected agency review it did not make sense to send out findings and recs. I hope to do that by next
week, but with the comments that we're going to get from you all and with the various governmental agencies, I thought it made sense to make sure that we had a more final product and know what it said, including possibly getting different figures for this year, which could affect the report, especially with regard to, say, foreclosures because, as we all know, the foreclosure trends are telling, but we have not received those for the latest year.

Most importantly, too, is GAO, we were informed, is issuing a similar report by the middle of next week, on the 15th. The report is not the same as ours, but it does have overlap. Some of the agencies reported to us that they were having difficulty completing their affected agency review for us because they were also doing it for GAO at the same time.

I have met or talked with GAO, and the report is similar in that it looks at various enforcement issues, but it is not as broad as ours, nor does it directly address the mortgage crisis.

That said, GAO and I agreed that we would swap our reports as soon as they are issued. So I hope to have their report by Wednesday and hopefully can incorporate that to the degree that we are able to by the next draft that goes out, which should be the
final draft.

And that is where things stand.

CHAIRMAN REYNOLDS: David, would you discuss the probability of completing your work in sufficient time for us to vote on it within the fiscal year?

MR. BLACKWOOD: Yes.

CHAIRMAN REYNOLDS: Are we on track basically?

MR. BLACKWOOD: We are on track. It's going to be tight, but it's always tight. The vote is scheduled for August 7th, or basically an editorial session as well. So you will have up until that time and at that date to change or suggest modifications or moving text or whatever.

If I can get out the findings and recs. by next week, that will allow you all three weeks to look at our findings and recs. You are certainly -- at any time, I would suggest, if you want to submit draft findings and recs., we will either include those directly or show those as alternatives, but I want to allow as much time as possible for you to see our draft of the findings and recs. because that is always usually the most or the matter of largest interest.

We are on schedule to complete it and have
you at least three weeks of time to review it before the vote.

CHAIRMAN REYNOLDS: Additional questions?

COMMISSIONER MELENDEZ: Commissioner Melendez here.

I still have a concern that we still haven't collected enough information on the efforts of the federal enforcement agencies to stop discriminatory mortgage lending practices. Do we have enough information from the Department of Justice, Civil Rights Division, and I think one of the interrogatories that we're waiting for?

MR. BLACKWOOD: In fact, I got them last night.

Let's be clear. DOJ and other entities provided a great deal of information before they completed their interrogatories. The only process left with DOJ was, will you formally agree that what you submitted was all the information we had.

I received that information last night. Frankly, I did not have a chance to go through it. There was some additional information, but like I said, I haven't reviewed it. I'd say at this stage we are not likely to be in a position, other than the GAO report, to include additional information from any
If I thought some additional information is critical to the report though, I would allow it or I would inform you that additional time might be necessary if that information wasn't included in the report.

COMMISSIONER MELENDEZ: Okay. My concern is whether or not, you know, the federal enforcement efforts are effective or not. So I think that's a big part of what this report should say. So I'll just leave it at that.

COMMISSIONER GAZIANO: Mr. Chair.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: Gaziano for the record.

I predicted at the last meeting that my extended family vacation might prevent me to read it before this meeting, and I was correct in that, but I did skim it, and I just want to raise one matter, and I spoke to the General Counsel just for a few minutes before our meeting began to get clarification from other Commissioners.

I do see that the appendix on the Boston Fed. has been -- study has been rewritten, and I will read it with some more care in the next few days. But
I thought at the last meeting I had also asked that, in addition to the specific criticisms of the Boston Fed. Study, that it be discussed in the text of the statutory report.

I don't think that staff was able to do that in the time that was allowed before it was shared with, again, you all. I didn't get it until a few days ago when I returned, and I would ask that that still be done. I intend to try to get my comments in on Sunday, but I also appreciate the General Counsel observation that, although we should meet these deadlines to help them work as efficiently as they can, that I'm glad that he and others are open to our further comment until we have a final draft to review.

I think there was general agreement. We moved other parts of the appendix into the text, and that seems to have been done. I think there was agreement at the last meeting that there would be a discussion of both the Boston Fed. study, the Boston Fed.'s lending standards into the text, and whether that, in fact, may have been an influence in the HUD's lending standards.

So unless there's any objection, I'd like to see that done in the next edition.

CHAIRMAN REYNOLDS: Mr. Blackwood, is your
recollection of what the consensus was at the last
meeting the same as Commissioner Gaziano?

MR. BLACKWOOD: It was roughly along the
lines of what Commissioner Gaziano said. I think more
along the lines of, he made that request, there was no
response. I should have taken that since there was no
objection to do it. We can certainly do that.

COMMISSIONER GAZIANO: Sure. I'll be glad
to -- thank you for working with me further on that.

CHAIRMAN REYNOLDS: Additional comments?
(No response.)

CHAIRMAN REYNOLDS: Okay. Next up is the
discussion of the 2010 statutory report.

IV. PROGRAM PLANNING
(e) DISCUSSION OF 2010 STATUTORY REPORT

CHAIRMAN REYNOLDS: The Commission has
conducted program planning activities for 2010. The
Commission staff and State Advisory Committee members
submitted project recommendations and concepts to the
staff director for the statutory report, briefing
reports and clearing house reports. Concept
suggestions were also sought from external groups as
appropriate, including both governmental and
non-governmental organizations.

The Staff Director sent a memo to
Commissioners on June 29th with the following statutory reports topic for consideration. The first thing, federal and state enforcement of hate crimes laws; race neutral alternative to achieving diversity, and higher education; federal monitoring of discrimination against Native Americans in border towns; enforcement of Section 203 of the Voting Rights Act with respect to Native Americans; implementation of Individuals with Disabilities and Education Act; effectiveness of state civil rights agencies; employment discrimination on the basis of age and in the context of the economic crisis; and finally, minority youth and juvenile justice systems.

The Commissioners were asked to send additional suggestions by July 2nd, and the Staff Director sent these additional suggestions to Commissioners on the same date.

Vice Chair Thernstrom suggested a report that would examine the importance of Title VII and police, fire, and municipal employment following the Supreme Court's decision in the Ricci v. DeStefano case.

Commissioner Melendez has suggested a report on funding, staffing, and work load levels of federal agencies' civil rights enforcement in 2010.

I move that we discuss these topics. Is there a
second?

VICE CHAIR THERNSTROM: Second.

COMMISSIONER GAZIANO: It is already on the agenda.

COMMISSIONER HERIOT: It's already on the agenda.

COMMISSIONER GAZIANO: I don't think we need to vote, but could I be recognized, Mr. Chairman, to discuss?

CHAIRMAN REYNOLDS: Of course.

COMMISSIONER GAZIANO: I think that obviously this discussion may be helpful just as a procedural matter, that we could possibly narrow down a few and then Commissioners, special assistants and staff can work on one, two, three or whatever competing concept papers for our August meeting.

One of the ones that I want to research further is a variation on Vice Chair Thernstrom's topic. I have already spoken to her a little bit. So she can correct me if I'm wrong, but the friendly amendment part to her recommendation is that our statutory report needs to examine a federal enforcement, and that the federal enforcement hook to the topic she suggested would be EEOC, and in particular, I'm interested in researching for the
fellow Commissioners the effect that their guideline -- that the Supreme Court had no reason to question. The Supreme Court found that even with the existence of these guidelines -- believe that there would be a disparate impact. I think that it may be worthy of looking a little further at EEOC enforcement, particularly under the EEOC guidelines.

The other point that I may or may not raise, and I'd like other Commissioner input on just to develop as an option, is whether we should also look at the extent to which EEOC guidelines on disparate impact and their other enforcement affects private employers as well as public employers, and I don't have a strong feeling on what my thought is on that, but I'd propose to research that, and offer some suggestions, but I'd appreciate some feedback one way or the other if Commissioners have a feeling on that.

VICE CHAIR THERNSTROM: Mr. Chairman.
CHAIRMAN REYNOLDS: Vice Chair Thernstrom.
VICE CHAIR THERNSTROM: Yeah, I just want to say that Commissioner Gaziano and I have already discussed this, and I do regard it as a friendly amendment, and I accept it as such.
CHAIRMAN REYNOLDS: And I think that it's an excellent topic, the original and both -- and also
the proposal as amended.

COMMISSIONER GAZIANO: If we're going to focus on that, if that's one of the ones we want to consider, I'll commit to circulating that as much before the next meeting as I can, one week at least, but do Commissioners have a thought right now, a reaction whether we should look at EEOC's enforcement or the effect of its guidelines on just public employers like police and fire, or should we examine the effect on private employers who might want to have employment testing?

I think this topic, by the way, is going to get a lot of attention next week at the Sotomayor hearings, and that's not in itself a reason to study this topic, but I think the opinion of the Supreme Court left a lot of questions unanswered where we can provide a lot of help.

VICE CHAIR THERNSTROM: I agree on that. A lot of questions unanswered left by Justice Kennedy.

COMMISSIONER HERIOT: Mr. Chairman.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: I just wanted to add, first of all, if we were to do such a topic, I very much believe we need to have a very narrow aspect of this, and we have to have in our proposal exactly
what we're going to study and not simply, you know, a broad look at this topic.

I'd also like to add to the list here the topic that I think I mentioned last year about sex discrimination and higher education, and the impact that Title IX has had there, and I would like to do a write-up of that as a possible topic for a statutory report.

I'd also like to do a write-up of the hate crimes proposal as, again, a possible one. Now, I could also have those ready in August, and you know, if they don't get picked, maybe they can put into a briefing.

CHAIRMAN REYNOLDS: It sounds good.

Other comments?

COMMISSIONER YAKI: Mr. Chair, Commissioner Yaki.

I have actually two topics in mind, but I'll have them ready for the August meeting as well.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: Mr. Chairman, this is Vice Chair Thernstrom again.

I do agree with Commissioner Heriot that we have to do something manageable, and so with Commissioner Gaziano, with, I hope, a little input
from me, we'll shape something manageable.

COMMISSIONER GAZIANO: We will try. I might convince myself it's not, but I want to try to see if --

VICE CHAIR THERNSTROM: Well, let's try anyway. I agree with that.

COMMISSIONER HERIOT: The metaphor I like is the cookbook. You know, we want a recipe. We want it step by step. Here's what we're going to do.

VICE CHAIR THERNSTROM: Well, but you know, that is difficult to do until the point at which we know what kind of information is going to be available. For instance, if we were to try to get into the question of the private sector, you know, we'd have to spend some time finding --

COMMISSIONER HERIOT: Yeah, but that's why I'm not in favor of doing anything that requires that we spend, you know, many weeks of time trying to figure out what's out there and then finding out that the data out there isn't what we expect it to be. You know, I think that's been a problem in the past. I think it's a problem with the current statutory report, and that's why I think it's important to do it as a cookbook.

VICE CHAIR THERNSTROM: Well, let us
proceed. Commissioner Gaziano will proceed, and we'll see what we come up with.

CHAIRMAN REYNOLDS: Agreed.

Commissioners, in the past we have made selections where at the end of the day there has been -- when the issue is finally presented, there seems to have been an evaporation of support, and I think that that was due in part to the failure of most of it to give a long, hard look at the write-ups of the various recommendations.

I would urge all of us to look at this hard and to, you know, just give some thought to the various recommendations so that we don't find ourselves in a position, you know, at the end of the year, expressing regrets at the topic that was selected.

COMMISSIONER GAZIANO: Mr. Chairman, I'd like to ask Commissioner Yaki, if he doesn't mind -- if he's not prepared at this point to mention the topics to us, I understand. That's fine. But if it is possible, Commissioner Yaki, to let us know beforehand -- the reason I mentioned my interest is to get your input and to get everyone's input on, right now, your initial reactions.

If you don't have them today, by the way,
send me an E-mail tonight, tomorrow, next week, two weeks, but if you could share with us some of your ideas we might be able to help you modify a topic that we can all agree on.

Thanks.

CHAIRMAN REYNOLDS: Okay. Next up is the briefing report on Title IX. I have had --

COMMISSIONER HERIOT: We struck that.

COMMISSIONER GAZIANO: We struck that from the agenda.

CHAIRMAN REYNOLDS: Okay. Well, then, folks, we are -- one other matter. I don't know if you have been following this in the press, but there was a situation in Philadelphia where some minority kids were disinvited from using a pool. The organization is called Creative Steps Day Camp, and this issue has been discussed in the newspapers, and I would like to have the Office of the Staff Director monitor that situation and to report back to us on what the facts are and how this issue is developing.

COMMISSIONER GAZIANO: That reminds me. Mr. Staff Director, are you on the line?

STAFF DIRECTOR DANNENFELSER: I am, yes.

COMMISSIONER GAZIANO: Is the Washington Times correct that the DOJ has -- you can update us --
as of today are you aware that the Department of Justice has answered our letter giving us answers to our questions on the dismissal of the new Black Panther lawsuit?

STAFF DIRECTOR DANNENFELSER: I have not seen a response to that letter yet.

COMMISSIONER GAZIANO: I would ask that you make serious efforts to get them to respond and to report back to us in two weeks, if there is a response or if there is not a response, because then I would propose at that two-week interval that we then be able to consider what we want to propose at our next August meeting to pursue the matter on our own.

I mean, it's really their job, of course, to engage in these law enforcement activities and to explain to the public what they've done, if there's these obvious serious questions of race. But if they won't help us, I still think that we need to pursue the matter and perhaps call witnesses and consider what our next step is to fulfill our duty and our obligation.

So can you --

STAFF DIRECTOR DANNENFELSER: Okay. Well, we'll look out for any response, and if we don't get one soon, we will follow up with them.
COMMISSIONER GAZIANO: Okay, and you'll let us know in two weeks' time?

STAFF DIRECTOR DANNENFELSER: Yes.

COMMISSIONER GAZIANO: Thank you.

CHAIRMAN REYNOLDS: Okay, folks. That's it.

VICE CHAIR THERNSTROM: Motion to adjourn.

COMMISSIONER TAYLOR: Pete, this --

CHAIRMAN REYNOLDS: Question?

Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes, one thing.

Next meeting in August? I wasn't sure.

CHAIRMAN REYNOLDS: August 7th, I believe.

VICE CHAIR THERNSTROM: August 7th, yes.

COMMISSIONER TAYLOR: Pete?

STAFF DIRECTOR DANNENFELSER: Mr. Chairman, I know we have had some discussion about the possibility of having an interim meeting before August 7th to possibly consider some State Advisory Committee packages. Is that something --

CHAIRMAN REYNOLDS: yes. How many packages will be completed over the next, say, two to three weeks?

STAFF DIRECTOR DANNENFELSER: It looks like it could be as many as five that will be ready, that could be ready within two weeks.
CHAIRMAN REYNOLDS: Okay. How about this?
That we just circulate some dates to have a quick
teleconference with the only issues that would be
discussed would be the rechartering of the SACs and
would also include an update on where we are with the
conference.

COMMISSIONER TAYLOR: Makes sense.

Pete.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER TAYLOR: I have given some
revisions on the Ohio letter that you will be
receiving soon. So - -

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: Thank you.

I have one question, Mr. Chair, of the
Staff Director if he's still on, and that is that we
had asked for certain documentation related to
requests to various agencies. I'm wondering if there
has been any update on that.

STAFF DIRECTOR DANNENFELSER: Yes. We
have received several responses, and we're in the
process of following up with a few other agencies, but
I can get you more detailed response. I did send a
response about a week or a week and a half ago.

COMMISSIONER KIRSANOW: I got that. Thank
you very much.

STAFF DIRECTOR DANNENFELSER: But I will give you an update beyond that.

COMMISSIONER HERIOT: Are we going to get that update at the next meeting or sooner than that?

STAFF DIRECTOR DANNENFELSER: We should be able to get something before that. Certainly if we have a meeting in the next two weeks or so I should be able to have an update by then.

COMMISSIONER HERIOT: Yeah, I'd certainly like to get it as soon as possible.

CHAIRMAN REYNOLDS: Any other business?

(No response.)

CHAIRMAN REYNOLDS: All right. Thank you folks.

(Whereupon, at 12:59 p.m., the Board meeting was concluded.)