
PRESENT:

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

KENNETH L. MARCUS, STAFF DIRECTOR

DAVID BLACKWOOD, GENERAL COUNSEL
Staff Present:

DAVID BLACKWOOD, GENERAL COUNSEL
MARGARET BUTLER
TERESA BROOKS
CHRISTOPHER BYRNES, ATTORNEY ADVISOR TO THE OSD
& ACTING DEPUTY GENERAL COUNSEL, OGC
RANITA CARTER
PAMELA A. DUNSTON, CHIEF, ASCD
LATRICE FOSHEE
KEVIN GOLDEN
MAHA JWEIED
MONICA J. KIBLER
SOCK-FOON MacDOUGALL
TINALOUISE MARTIN
EMMA MONROIG, SOLICITOR/PARLIAMENTARIAN
EILEEN RUDERT
KARA SILVERSTEIN
KIMBERLY TOLHURST

Commissioner Assistants Present:

DOMINIQUE LUDVIGSON
LISA NEUDER
RICHARD SCHMECHEL
KIM SCHULD
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Closed Session
Adjourn
Good morning. This meeting will come to order. This is the meeting of the U.S. Commission on Civil Rights at 624 9th Street, N.W., Room 540, Washington, D.C. All the commissioners are physically present except for Commissioner Yaki who is participating by telephone. This morning we have a meeting that deals with many important matters including the approval of the 2007 Statutory Report amongst other issues.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: The first item on the agenda is approval of the agenda. Is there a second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here. I would like to include in the agenda some discussion of some personnel issues with the staff director, whether that ends up in closed session, an update on some of the just hiring practices and some of the things, update on some of those issues we talked about last time.
CHAIRMAN REYNOLDS: Is this primarily about the email that we distributed by a former employee?

COMMISSIONER MELENDEZ: Yes. To certain set, part of the discussion would be that.

CHAIRMAN REYNOLDS: Okay. Comments? Concerns?

COMMISSIONER YAKI: I second that.

CHAIRMAN REYNOLDS: Okay. All in favor of this motion as amended by Commissioner Melendez please say aye.

(Chorus of ayes.)

COMMISSIONER BRACERAS: I'm sorry. Where would it fall? Before the agenda items?

CHAIRMAN REYNOLDS: Actually --

COMMISSIONER MELENDEZ: After the Staff Director's report, I guess.

CHAIRMAN REYNOLDS: Actually since this would require us to go into closed session, I would suggest that we put it at the end so that we don't have -- I assume that there are members from public. They wouldn't have to leave and then come back. So we put this item after the discussion on State Advisory Committees, well, actually, after Future Agenda Items, assuming that we have any.
COMMISSIONER MELENDEZ: Okay. I have one more motion. The other thing is that I received actually the last three re-charters of New Jersey, South Carolina and Vermont really late. I actually go them Tuesday night and I flew out Wednesday. Actually, there was too many of those to carry and even review. I was asking to table the last three that were given based on the fact that we haven't had time to really review those. We really had, I think, three already slated for agenda that I have reviewed, but these last three, just didn't give me ample time to even look at them.

CHAIRMAN REYNOLDS: If you don't mind, I would like to handle your first motion first.

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: So the motion that's on the table is -- Well, actually, the amended motion is on the table. Any additional discussion required for that issue?

(No response.)

CHAIRMAN REYNOLDS: All in favor say aye?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?
(No response.)

CHAIRMAN REYNOLDS: The motion passes unanimously and for this second motion, is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER BRACERAS: Which of the -- I'm sorry. Tell me again which are the three.

COMMISSIONER MELENDEZ: The last three we received in that last FedEx was New Jersey --

CHAIRMAN REYNOLDS: Vermont.

COMMISSIONER BRACERAS: -- them all together.

COMMISSIONER MELENDEZ: South Carolina and Vermont. Those were given to use really late. I actually flew out here Wednesday and I got them Tuesday night.

CHAIRMAN REYNOLDS: Okay. Bear with me.

(Off the record discussion.)

CHAIRMAN REYNOLDS: Okay. Discussion? How do folks feel about this?

COMMISSIONER BRACERAS: I had them in time to look over them and my assistant actually was able to go through them and outline more specifically and
in summary form what was in them. But I have not objection to tabling those three.

CHAIRMAN REYNOLDS: Is it three or two?

I'm sorry.

COMMISSIONER MELENDEZ: There's three, New Jersey, Vermont and South Carolina.

COMMISSIONER HERIOT: How may does leave for us to do?

CHAIRMAN REYNOLDS: Three.

COMMISSIONER MELENDEZ: I believe there are six that would be on for re-charter.

COMMISSIONER HERIOT: There are six.

COMMISSIONER MELENDEZ: So we would just be re-chartering three or talking about three today instead of six.

COMMISSIONER HERIOT: None of the others have to be tabled by anybody else?

COMMISSIONER MELENDEZ: Right.

COMMISSIONER BRACERAS: For any other reason?

COMMISSIONER MELENDEZ: No. The others, I think, are all right.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: Hawaii and the other two, Pennsylvania and I forgot the other one.
COMMISSIONER BRACERAS: That's fine. I don't care, but I don't know how the others feel.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion carries unanimously.

Okay. I move that we amend the agenda to delete discussion of the subitem labeled 2009 Budget under Section V, Management and Operations. As you're aware, staff continues to work on the budget and a draft has not been circulated for our review. Under those circumstances, it's clear that we need more time. But in addition to that though, in order to get our budget done in a timely fashion, we would need to have a teleconference to vote on the motion. So in addition to tabling it, I think that we need to also pick a date when we could get together on the phone to --
COMMISSIONER HERIOT: Could we do Vermont, South Carolina and New Jersey then to move these things along?

COMMISSIONER BRACERAS: That's a great idea.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: We need to separate the motions, table and decide on a separate date.

CHAIRMAN REYNOLDS: Okay. All right. So the first part. All in favor of tabling the motion please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: The motion passes unanimously. I also move that we establish a date to have a teleconference to move on the budget as well as the SACs that we tabled at this meeting. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?
COMMISSIONER MELENDEZ: Yes. Discussion.

We haven't even received -- You're talking about 2009 budget?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: We haven't even received the budget yet.

PARTICIPANT: We will.

COMMISSIONER MELENDEZ: Okay. So you're going to send that to us relatively soon?

CHAIRMAN REYNOLDS: Yes. When do you think it will be sent out?

STAFF DIRECTOR MARCUS: It should be within the next few business days.

CHAIRMAN REYNOLDS: So early next week.

STAFF DIRECTOR MARCUS: Early to mid next week.

CHAIRMAN REYNOLDS: Okay. So we can look at our calendars and see what's available.

STAFF DIRECTOR MARCUS: I have received communications from some commissioners indicating available dates from within our suggestions and so far the only two dates that everyone would be available would be the 30th and the 31st, although those two days --

COMMISSIONER HERIOT: That one --
STAFF DIRECTOR MARCUS: But I think you indicated that there were some times within those two dates.

COMMISSIONER HERIOT: Yes, but I don't know what times right now.

STAFF DIRECTOR MARCUS: So there is no date other than --

COMMISSIONER BRACERAS: I'm not available either of those two days.

VICE-CHAIR THERNSTROM: And it may be problematic for me.

COMMISSIONER BRACERAS: I'm out of pocket all day both of those days.

COMMISSIONER KIRSANOW: And I don't like those two days.

(Laughter.)

STAFF DIRECTOR MARCUS: So there is no other date that has not been objected to by at least one commissioner.

CHAIRMAN REYNOLDS: Did we offer dates out to August?

STAFF DIRECTOR MARCUS: Up to August 8th, yes.

COMMISSIONER MELENDEZ: I guess the question I have is trying to get too many things
approved on a conference call is rather difficult. If you just have the charters themselves, that would take some time and I think that the 2009 budget is a real important document based on some of the positions that haven't been filled and all this discussion we're going to have on the personnel. So I think that a discussion on the 2009 budget would be better done at the next general meeting that we have because I think it's an important issue to really look at.

CHAIRMAN REYNOLDS: There's no doubt that it's better to do have these discussion face-to-face. However, we have some deadlines that we need to meet, I believe.

STAFF DIRECTOR MARCUS: We have a September deadline for our budget. Even if we were to have it in the August meeting which is not currently scheduled for a general business meeting, I think that there is little chance that we would make that date. As it is, if we were to have the teleconference at the end of July or early August, it would be tight squeeze and we might be little late. But if we had -- Considering that our next gathering is in, as I recall, fairly late August –

COMMISSIONER HERIOT: It's the 24\textsuperscript{th}. 
STAFF DIRECTOR MARCUS: It would be mean we would certainly be late on the budget.

VICE-CHAIR THERNSTROM: What are the consequences of being late on the budget?

STAFF DIRECTOR MARCUS: Well, there are no specific penalties and the fact that is prior to 2004 the agency was frequency late on the budget and in one year did not submit a budget whatsoever. It certainly gave the agency a bad reputation with OMB and was not helpful --

CHAIRMAN REYNOLDS: We should strive to --

VICE-CHAIR THERNSTROM: Yes, that's not very good.

CHAIRMAN REYNOLDS: We should strive to meet the deadline.

STAFF DIRECTOR MARCUS: I was going to say Lord have mercy.

VICE-CHAIR THERNSTROM: Nobody is suggesting that we not have a budget to go on. That's not even a question. My question is how bad is it if in the spirit of Commissioner Melendez's question whether we do our discussion until we don't have to conduct it on a teleconference basis.
STAFF DIRECTOR MARCUS: I don't think I can assess it. It just will make us look a little bit worse in front of OMB.

COMMISSIONER MELENDEZ: My only point is all of us are limited on conference calls and a lot of times, I don't think we have time to get on a conference call for talking about re-charters plus talk about a budget. Unless you're going to stay on a conference call for a couple hours, I think it's not adequate time to do that.

COMMISSIONER HERIOT: And I object to all this. I think that we've put off far too many things. We should have far more conference calls and we should be doing a lot more business than what we're doing right now. Things get delayed. We have just delayed consideration of these SACs out of a courtesy to you, Commissioner Melendez, and I think, in the spirit of getting things done, we need to schedule a date and do it.

VICE-CHAIR THERNSTROM: Well, are we scheduling a date as well to take up the questions of the SACs that we charter?

COMMISSIONER BRACERAS: I think the most important thing is to get a date and then we can discuss what we're going to fill the time with. I
mean, the bottom line is we may not find the time when every commissioner can participate, but that's also true of our business meetings and our briefings.

VICE-CHAIR THERNSTROM: True.

COMMISSIONER BRACERAS: And they are scheduled and the people who can come, come and the people who can't don't.

VICE-CHAIR THERNSTROM: There is one difference.

COMMISSIONER YAKI: Or some can make it by teleconference.

COMMISSIONER BRACERAS: Or sometimes not at all. I mean, I had to miss Omaha all together because of a competing commitment that I had.

COMMISSIONER YAKI: As we were told many times, Omaha wasn't really needed.

COMMISSIONER BRACERAS: But you get my point. The point is it's more important to schedule a time when the majority of commissioners can be present and if I'm not one of them, so be it. It's more important as Commissioner Heriot said to move the business and the agenda forward.

COMMISSIONER YAKI: I would object to that. I would say that it's important to ensure that
as much as possible every commissioner is available because --

COMMISSIONER BRACERAS: Then it's important that they make themselves available.

COMMISSIONER YAKI: Given the fact then that there are only two Democrats on the Commission having a majority only rule for when we need to schedule a teleconference, I think, is inappropriate.

CHAIRMAN REYNOLDS: That hasn't occurred and we are charged with making reasonable efforts to accommodate everyone's schedule and I think that in the past we've gone beyond that and as a result, we have gotten -- We have a backlog of work as a result. But in any event --

COMMISSIONER YAKI: I would really object again to that characterization because we can't find time to meet that is why we have a backlog of work. I think that, for example, the statutory report issues have nothing whatsoever to do with whether or not we can get our own schedules together and everything to do with whether or not internally we were able to meet any of those schedules.

CHAIRMAN REYNOLDS: Commissioner Yaki, I don't think that we are pointing fingers at any particular commissioner, but I think that --
COMMISSIONER YAKI: I'm just saying that - - I'm just saying I don't think you can keep saying that it's the fault of the commissioners not being available for the fact that we can or cannot get work done when a lot of these problems that we have deal with the fact that we can't make our deadlines internally.

CHAIRMAN REYNOLDS: Okay. Well, we have a difference of opinion. But in any event, why we don't consult our calendars to see if there's a date where we can all discuss these issues together and have a sense of harmony.

VICE-CHAIR THERNSTROM: Mr. Chairman, there is one difference between having a calendar which we've committed ourselves and if some of us can't meet it, you know, can't come to a meeting at the last moment, so be it. But I do think it's important when we're scheduling a teleconference that we really do our best to make sure everybody can come if that's possible.

CHAIRMAN REYNOLDS: Okay. Let's see if we can meet that high standard. Okay?

COMMISSIONER MELENDEZ: Just one other comment. I think that when we were scheduling what we call these business meetings because we didn't have a
briefing. You know, there were a couple that we scheduled for the whole year. So those should be the primary meetings where we talk about budget and all these other things that are on the agenda so we're not competing with a briefing that we have limited time. So it's day like today that we should be actually talking about the budget. We'd more time talking about all these different things. So it's not really the fault of the commissioners.

When we schedule -- There are a couple of days throughout the year that we want the staff and staff to have this budget ready and everything else. So it's kind of not put on us. Basically, we came out here, traveled out here, to deal with business and now all this stuff is tabled to telephone calls when we should just stayed home and did a telephone call for this meeting also. That's my concern.

CHAIRMAN REYNOLDS: Not all of us is as wise as Commissioner Yaki. But you raise a good point. The budget is an important matter and it is preferable to do -- well, to have all of our conversations face-to-face. Ken, I see you. Do you have something to say?

STAFF DIRECTOR MARCUS: If you care to -- I mean, the only thing I would add is we do have a
full slate of information that the commissioners could be deliberating on this morning. I think that between the statutory report, the six state advisory committee reports that were made available it could certainly take all morning. So I think part of the concern is that we had made an immense amount of material available for the commissioners and if everyone were prepared, we certainly could spend all morning looking at that.

CHAIRMAN REYNOLDS: Let's refer to our calendars to see if we could select a date where we can all be present.

COMMISSIONER BRACERAS: I can do any Monday, Wednesday or Thursday at any time including into the evening if that's more convenient to our West Coast colleagues except for the last week of July. That week I can do evenings only. I'm in meetings all day where I won't have time to cut out and take a call for more than five minutes.

VICE-CHAIR THERNSTROM: Is there something wrong with the evenings? They appeal to me a great deal.

CHAIRMAN REYNOLDS: I have no objection and I suspect that it will be better for the folks on the West Coast.
COMMISSIONER YAKI: It depends on what time you're talking about because it three hours and --

CHAIRMAN REYNOLDS: Okay. How does the --

COMMISSIONER BRACERAS: There are inconveniences for all of us, but I'm willing to overcome them and meet whenever other than that week of July which again if the majority prefers that week, that's my problem, nobody else's.

CHAIRMAN REYNOLDS: Okay. August 6th at say -- Pick a time someone.

COMMISSIONER MELENDEZ: Noon.

CHAIRMAN REYNOLDS: August 6th, does the date work?

COMMISSIONER BRACERAS: What day of the week is it?

CHAIRMAN REYNOLDS: That's a Monday.

COMMISSIONER HERIOT: Monday. Any one of those 24 hours I am available.

COMMISSIONER MELENDEZ: Noon.


VICE-CHAIR THERNSTROM: Noon what?

Pacific time?
CHAIRMAN REYNOLDS: Okay. That's 3:00 p.m. for you, 11:00 a.m. for me. Commissioner Yaki?

COMMISSIONER YAKI: I'm looking at my calendar. The 6th, I'm out of pocket that day.

CHAIRMAN REYNOLDS: I'm sorry.

COMMISSIONER YAKI: I'm out of pocket on the 6th.

CHAIRMAN REYNOLDS: Okay. Strike one. The 13th?

COMMISSIONER KIRSANOW: Available.

COMMISSIONER BRACERAS: Sorry. I don't have my calendar with me. What day of the week is it?

VICE-CHAIR THERNSTROM: Monday.

CHAIRMAN REYNOLDS: I'm just going through Mondays now.

COMMISSIONER BRACERAS: Yes, fine.

STAFF DIRECTOR MARCUS: I'm not available on the 13th.

CHAIRMAN REYNOLDS: Okay.

PARTICIPANT: What about Wednesday?

CHAIRMAN REYNOLDS: The 8th, Wednesday.

COMMISSIONER KIRSANOW: Available.

VICE-CHAIR THERNSTROM: Wait. What did you just say, Jennifer? You're available Mondays and what?
CHAIRMAN REYNOLDS: Wednesdays.

COMMISSIONER BRACERAS: Mondays, Wednesdays and Thursdays any hour of the day.

VICE-CHAIR THERNSTROM: I don't think I can make it on the 8th, but I have no idea.

COMMISSIONER KIRSANOW: Available.

CHAIRMAN REYNOLDS: The 9th?

COMMISSIONER BRACERAS: Available.

VICE-CHAIR THERNSTROM: I may be moving on the 8th and 9th. I don't know.

CHAIRMAN REYNOLDS: You tell those folks they're going to have wait. You have a conference to -- You're available?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: I have a court thing that's going to go the 8th and the 9th and 10th.

COMMISSIONER BRACERAS: What dates are your available?

COMMISSIONER YAKI: I was available the 13th.

CHAIRMAN REYNOLDS: Okay. How does your schedule look for the 15th which is a Wednesday?

COMMISSIONER YAKI: No. I'm in negotiations all day.
CHAIRMAN REYNOLDS: What about in the evening?

COMMISSIONER YAKI: It's labor negotiations. So I don't know how long it's going to last.

CHAIRMAN REYNOLDS: I understand. The 16th?

COMMISSIONER YAKI: The 16th, yes.

CHAIRMAN REYNOLDS: Is that a yes?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: All right. Gail?

COMMISSIONER HERIOT: I can't get -- but I can't tell when school starts. But I think we can assume that, yes, I'm available.

CHAIRMAN REYNOLDS: Okay. Ken?

STAFF DIRECTOR MARCUS: Yes, the 16th is fine.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: I can't do it at 11:00 a.m., but I can do it any other time, either earlier than 11:00 a.m. or late in the afternoon.

CHAIRMAN REYNOLDS: Okay. Vice-Chair Thernstrom.

(Off the record discussion in background.)
VICE-CHAIR THERNSTROM: Look. My August schedule is so up in the air that just do it without me.

CHAIRMAN REYNOLDS: Okay.

VICE-CHAIR THERNSTROM: And I hope to be there.

CHAIRMAN REYNOLDS: The date is the 16th. Now times? You had a preference?

COMMISSIONER KIRSANOW: You didn't ask me.

(Laughter.)

COMMISSIONER MELENDEZ: I would say 9:00 a.m. Pacific.

CHAIRMAN REYNOLDS: Okay. That's 11:00 a.m. my time.

VICE-CHAIR THERNSTROM: 12:00 noon Eastern.

STAFF DIRECTOR MARCUS: 12:00 noon our time, yes.

CHAIRMAN REYNOLDS: Hell.

COMMISSIONER KIRSANOW: Or even 8:00 a.m. It doesn't matter. Why is that bad?

CHAIRMAN REYNOLDS: Would doing it later in the day? Would that be possible? How about noon your time?
COMMISSIONER MELENDEZ: Well, it probably would have to be 1:00 p.m. my time Pacific. I have a commitment at 11:00 a.m. that will probably a couple hours Pacific time.

CHAIRMAN REYNOLDS: And you can't go later in the day?

COMMISSIONER MELENDEZ: I can go later in the day, but that's Pacific Time.

VICE-CHAIR THERNSTROM: What time are you suggesting?

COMMISSIONER MELENDEZ: Well, 2:00 p.m. Pacific Time, but that's -- What time is it for you?

COMMISSIONER KIRSANOW: 5:00 p.m.

COMMISSIONER BRACERAS: Perfect.

VICE-CHAIR THERNSTROM: That's fine.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: So the 16th at --

STAFF DIRECTOR MARCUS: 5:00 p.m.

CHAIRMAN REYNOLDS: Did he say 5:00 p.m.?

VICE-CHAIR THERNSTROM: Yes. 5:00 p.m.

Eastern Standard Time.

CHAIRMAN REYNOLDS: Okay. I see. We're making our adjustments.
COMMISSIONER YAKI: We can Jennifer's kids
at the dinner table.

CHAIRMAN REYNOLDS: Okay. So the 16th at
5:00 p.m. Eastern Standard Time. Okay. So I guess we
can vote on this now.

COMMISSIONER KIRSANOW: Eastern Daylight
Time.

(Laughter.)

CHAIRMAN REYNOLDS: All in favor please
say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion carries
unanimously.

Okay. I move that we -- Whoa.

COMMISSIONER BRACERAS: We're now within
the context of the meeting. Is it just the budget or
the budget and the SACs?

COMMISSIONER HERIOT: Have we looked at
this budget before? Are there going to be substantial
changes?

(Off the record discussion.)
CHAIRMAN REYNOLDS: Okay. Are we going to have some discussion? Commissioner Melendez raises a good point that we haven't seen this document before. It is our budget. Do we need to carve out -- Should this time be used exclusively for the budget or should we handle the SAC issues also?

VICE-CHAIR THERNSTROM: It depends on how long the budget discussion is going to take.

CHAIRMAN REYNOLDS: Okay. Well, then how about this? Why don't we proceed --

COMMISSIONER MELENDEZ: Put them all on the agenda.

CHAIRMAN REYNOLDS: Yes, we put everything on the agenda, the discussion of the budget as well as the discussion of the SACs and if it turns out that we run out of time we'll deal with it during the teleconference.

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Any objections to that approach?

COMMISSIONER HERIOT: We could set a backup time for a second teleconference if we need.

VICE-CHAIR THERNSTROM: Well, that's too hard. Why can't we if we run out of time spend a bit of time on August 24th on the leftover business?
CHAIRMAN REYNOLDS: I don't see why not. But then again, I don't know what the agenda is going to look like.

COMMISSIONER YAKI: (Inaudible.)

VICE-CHAIR THERNSTROM: It's a briefing report.

COMMISSIONER YAKI: (Inaudible.)

VICE-CHAIR THERNSTROM: Maybe those who have trouble the proposed membership of the SACs that need re-chartering could give us documents beforehand so we know what the issues are and can expedite the process.

COMMISSIONER YAKI: That would be a nice suggestion but --

CHAIRMAN REYNOLDS: But are you willing to embrace it?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: For tactical reasons, you want to bushwhack us or there are other reasons?

COMMISSIONER YAKI: Mainly time.

CHAIRMAN REYNOLDS: All right. Let's just put everything on the agenda for the 16th and, again, we'll deal with it. If we don't have time, we'll deal with it at that point in time. Okay.
COMMISSIONER HERIOT: It just does seem to me that we chronically run into this problem. Maybe we should routinely have telephone conferences in order to get our business done more rapidly. Things get put off for far too long.

CHAIRMAN REYNOLDS: I agree and, in fact, --

COMMISSIONER YAKI: I think we do do that.

CHAIRMAN REYNOLDS: Well --

COMMISSIONER HERIOT: Then we wouldn't have so much of a problem scheduling this if we knew that every month we were going to have a telephone conference and we scheduled it early on.

VICE-CHAIR THERNSTROM: Yes, exactly.

COMMISSIONER HERIOT: And we wouldn't have these difficulties that we're having today wasting time scheduling a teleconference.

VICE-CHAIR THERNSTROM: Yes, exactly.

CHAIRMAN REYNOLDS: On the teleconference, we could deal with issues that we assume are noncontroversial.

COMMISSIONER HERIOT: Spillovers.

CHAIRMAN REYNOLDS: Deal with the stuff that's easy.
VICE-CHAIR THERNSTROM: There is not such thing that's necessarily easy.

COMMISSIONER HERIOT: There's nothing easy around here. So let's just figure that we'll do hard stuff.

COMMISSIONER YAKI: That's all nice in theory, but, the fact, is that for -- I know that situation involving myself and the Chair where our calendars sometimes come up against clients and things that don't lend themselves to an easy routine of scheduling them up before. It's very difficult to do that.

CHAIRMAN REYNOLDS: It's difficult but --

COMMISSIONER HERIOT: It's better than doing it post hoc. It's better having a date that you can look forward to several months from now.

CHAIRMAN REYNOLDS: And plan around.

COMMISSIONER HERIOT: Yes.

VICE-CHAIR THERNSTROM: And having -- argument against the monthly meetings here. The fact is you have to schedule your clients around these meetings and if we had a predictable date, a predictable series of dates in which we were holding teleconference meetings, they would fall in the same category as our monthly meetings in D.C. They would
be occasions on which clients would have to be scheduled around or else you would have to miss them.

COMMISSIONER YAKI: That may be one issue to deal with, but I have a larger objection, the same view as routinely doing teleconferences, and that has to do with the aspect of transparency and public participation. I just don't think that teleconferences routinely where we push business of, very important business, is something that I find is conducive to that kind of transparency and public participation.

COMMISSIONER HERIOT: Yes, but you're also the one that objects that we have to kick off early on the days that we're here because you need to catch your plane. So you get one or the other. You can't take both those stands.

VICE-CHAIR THERNSTROM: And we are postponing today the re-chartering of three SACs not at the request of any Republican.

CHAIRMAN REYNOLDS: Folks.

COMMISSIONER YAKI: Well, Professor Heriot, perhaps if my schedule were as easy to manipulate as yours -- I have over time perhaps, if you care to read all the transcripts for the past two years, proposed different methods by which to deal
with the folks that the East Coast people, the West Coast people, or at least myself and Commissioner Melendez, I'm not speaking for you, I have to leave a little bit earlier because of family and other types of commitments in the afternoon on Fridays and I have proposed alternatives prior many times to deal with that issue including meeting, doing business on Thursdays, doing the briefings on Fridays, things like that. So it's nice of you to offer these kinds of suggestions, but there's a history behind why it is we do that and why I've taken the position that I have.

CHAIRMAN REYNOLDS: Okay. Very good. Folks, let's focus here. We have a date. We have a time. There is a proposal that we deal with the budget and the SAC issues. There's an understanding that if we run out of time we will deal with that problem at the meeting. All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion carries unanimously.
Okay. I move to delete subitem labeled "Briefing Report on Racial Categorization in the Census" from Section VI, Program Planning. Under this motion, discussion of this report will be tabled to give staff additional time to review Commissioner comments on the draft report that were received before July 5, 2007. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER BRACERAS: Yes. I realize that we're not going to vote on that report today. But is it worth having a discussion at all about the report amongst Commissioners so that we might give input to the staff today? I just throw that out there.

COMMISSIONER YAKI: I was told pretty early on this was going to be pushed off. So I did not prepare anything.

VICE-CHAIR THERNSTROM: Ditto.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: Okay. I have a comment and I guess my question more specifically is would you like my input now or would you prefer in writing? The reason I raise it is because I find it more productive to share my views and hear the views...
of my colleagues face-to-face than to just send an email to Ken and I have no idea what the rest of you are thinking or if I'm off base or what have you. So in terms of any report that we may not actually be loading on today, but that we've received copies of, I simply ask whether this would be an appropriate time to raise questions, concerns, comments if we have them, not the only time and place for doing so, but whether this might be a time and place for doing so or if we should hold back and reserve our comments to send through email, fax or what have you.

CHAIRMAN REYNOLDS: My two cents is that since not all the Commissioners are prepared, the exchange won't be as rich.

COMMISSIONER BRACERAS: But otherwise there will be no exchange.

VICE-CHAIR THERNSTROM: Why can't we remedy that, Jennifer?

CHAIRMAN REYNOLDS: Yes. We can -- My assumption is that we will have a face-to-face conversation where we walk through the various questions and concerns.

COMMISSIONER BRACERAS: All right. That's fine. I'll hold off until that point and in the
meantime, I will send in my comments to the Staff Director.

VICE-CHAIR THERNSTROM: And why can't the Staff Director circulate them so that we can have a bit of an exchange.

COMMISSIONER BRACERAS: Yes. I'm happy to have that done. In the past, that hasn't really been the practice. I mean, if Commissioners -- In other words, I've never received copies of commissioner comments. I've received revised drafts, but I've never seen a memo to the Staff Director from Commissioner Thernstrom, for example, with her comments about a draft. But I'm happy to share my thoughts with my colleagues and I'd be interested in seeing others. That's fine.

COMMISSIONER HERIOT: Is there anything to prevent commissioners from simply copying the other commissioners when they send it to Ken?

COMMISSIONER BRACERAS: No. I don't think so. So I'll do that.

COMMISSIONER KIRSANOW: There is a provision in the United States Code, I believe.

(Laughter.)

(Off the record comments.)
CHAIRMAN REYNOLDS: A real comedian today.

Okay. So any other comments? All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion carries unanimously.

VICE-CHAIR THERNSTROM: I'm -- One more word on that. I do think that there's a real point to what Commissioner Heriot just raised. I mean, I've sent a bunch of comments in to the Staff Director on the statutory report. There is no reason in principle why those couldn't have simply been shared more widely and I think it might be production in general to assume that we're going to do so.

COMMISSIONER HERIOT: I guess, my inclination would be to always copy everybody on these things.

VICE-CHAIR THERNSTROM: Yes, which I didn't.
COMMISSIONER HERIOT: And the commissioners can make their own decision about that. If there's some reason they don't want to, then don't.

II. APPROVAL OF MINUTES OF JUNE 1 MEETING

CHAIRMAN REYNOLDS: All right. The second item is the approval of the minutes for the June 1, 2007 meeting. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Let the record reflect that all the commissioners with the exception of the Chairman voted in favor of this and I abstain since I did not participate in that meeting.

III. ANNOUNCEMENTS

CHAIRMAN REYNOLDS: Announcements. This month marks the 43rd anniversary of the landmark Civil Rights Act of 1964: this legislation board; unequal application of voter registration requirements; discrimination of public accommodations in interstate
commerce; and discrimination in employment on the
basis of race, national origin, sex or religion. All
Commission staff and members of the Commission should
be proud as am I to serve on a commission that helped
put these laws on the books.

Also, in addition to the Civil Rights Act,
this month also marks the 17th anniversary of the
signing of the American With Disabilities Act. Pardon
me.

(Off the record discussion.)

CHAIRMAN REYNOLDS: Seventeen years ago,
the Act was signed in an effort to bring civil rights
to persons with disabilities. The Americans With
Disabilities Act provides for reasonable
accommodations in work situations and standards for
physical accessibility to buildings and public
transportation for people with disabilities. Today we
recognize the impact of this important statute.'

At this point, the Staff will present his
report.

IV. STAFF 'S REPORT

STAFF DIRECTOR MARCUS: Thank you, Mr.
Chairman. I would like to say a few words about the
budget, our interns and upcoming state advisory
committee meetings.
First, with respect to this year's budget as the result of attribution issues with which the Commissioners are aware, we are in a very budgetary posture. We have a very significant amount of money by which we have underspent during the first three-quarters of the year. As a result, I have been able to direct our regional staff that they may conduct as many state advisory committee meetings during the remainder of the year as they are able to without the budget being an impediment.

I've urged staff members to use this time to what training they need to take and we're looking at various purchases that have been considered for awhile that may be ticket items in the lines of communications and technology. But you should know that we are in a very favorable posture with respect to the state of funds at this time in this year.

With respect to next year, of course, starting October 1, we do not yet know where we will be. So far what news we've received from the Hill has been favorable. As you are aware, the President's budget provides approximately $8.7 million for the Commission which would be a reduction from prior years and I'm sorry. That's for 2007. Budget estimate for 2008 is $8.8 million. However, the Senate Committee
recommendation is an even $9 million. So the Senate currently is ready to provide us with a greater amount of money than what the President requested.

The House was engaged in deliberations during the course of this week including yesterday. I've not yet heard a word on that. There is a question, of course, as to whether the President would sign whatever appropriations bill is decided. But at least in terms of the Senate, the figure looks good and we'll keep you posted as it's developed.

COMMISSIONER YAKI: Didn't you hear, Ken, that Congress was going to attach the Iraq troop withdrawal to our budget?

(Laughter.)

CHAIRMAN REYNOLDS: So it looks like continuing resolutions.

STAFF DIRECTOR MARCUS: Very good.

(Laughter.)

STAFF DIRECTOR MARCUS: We will be having a number of state advisory committee meetings over the course of this summer and early fall. I'd like to mention a few of them to you to encourage if you are able to attend any of them, please let me know. Certainly, it would be appreciated as a gesture in the event that any commissioner were available.
On August 8th, the Alabama State Advisory Committee will meet to conduct program planning activities for future civil rights activities and they'll have a number of substantive issues that they'll be discussing in Birmingham. On August 13th, the Mississippi State Advisory Committee will be meeting in Jackson, Mississippi. On August 29th, the Georgia State Advisory Committee will be meeting in Atlanta.

COMMISSIONER KIRSANOW: What date was that again?

STAFF DIRECTOR MARCUS: That's August 29 in Atlanta. The Tennessee State Advisory Committee is looking at a potential meeting on August 6th. There are a number of other potential meetings that would come up later in the summer that are still being discussed by the state advisory committee members.

COMMISSIONER YAKI: A question for the staff director. If we were to attend any of these meetings, we would have to do so on official Commission business or if we went there on our own, would that be constituted as volunteer time which is prohibited? Do we have any interpretation on that? And then are all these meetings teleconference accessible?
STAFF DIRECTOR MARCUS: First, let me say that we are able to provide your transportation officially. So you could do it in your official capacity. If you're asking whether you could voluntarily do it out of your pocket, I think we would have to look into whether that would be a problem or not. I don't think it would be, but I would not want to answer that without looking into that legally.

COMMISSIONER YAKI: I mean, if we went as a commissioner observing that, I would think that would be characterized Commission action and if we did it on our dime, it would be counted as volunteer time. So I think we should get an opinion on that from the Solicitor--

STAFF DIRECTOR MARCUS: If you like opinion on it, I will have an appropriate member of the staff helping in terms of the analysis. Let me say a couple things about it. First, we certainly have a traditional in this agency of commissioners attending state advisory committee meetings in their official capacity. It has been done customarily and without issue or problem and not only that, but it has been very well received.

Just yesterday, one staff member reminisced with me about what a powerful impact was
made by a commissioner who attended an Illinois state advisory committee meeting several years ago and it was discussed quite awhile afterwards. It certainly is appropriate and it's appreciated.

As for voluntary attendance, I can tell you we have looked into the question as to whether members of the state advisory committees can attend state advisory committees voluntarily and without receiving compensation because that issue had come up and the answer was essentially "Yes, but." Yes, but they needed to do it within specific parameters that we had to set up by way of guidance to ensure that their waiver of reimbursement was sufficiently expressed, that it could not lead to a later liability against the Federal Government within various rules regarding potential liability of the Federal Government.

COMMISSIONER YAKI: Okay. It would be helpful then if at the earliest opportunity if you could send out the dates, the times and the location for each of these meetings so that a commissioner who might be interested in attending and then figure out how it would work travel-wise, either personally or officially in the most cost efficient manner possible.
STAFF DIRECTOR MARCUS: We'll be happy to update you on that, sir.

CHAIRMAN REYNOLDS: Okay. Is any commissioner planning to attend a SAC meeting on their own dime and, if so, why would they spend their personal funds when we have sufficient --

COMMISSIONER YAKI: I would like to try them on the official dime. I was just saying that given that we're usually been in posture of penny pinching, I was exploring the other option.

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER YAKI: But just for the record, I would like to attend several of those meetings if possible.

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR MARCUS: And finally, I'd like to say that we are fortunate to have several interns working with the Commission. I think some, but certainly not all, are here right now. They have been providing really a substantial contribution to the agency. Much of the work that we've been able to do has been thanks to the very hard work of our interns.

The Office of the General Counsel currently has four interns and if you are here, please
stand when I mention your name, Lianne Labossiere is a student at Stanford Law School and we're glad to have her and the others. Marie Laughinghouse is a senior at Woodrow Wilson High School. Kristen Manderscheid is a rising sophomore at Duke University and Nagmeh Shariatmadar is a student at University of California Davis School of Law. Is Nagmeh here?

CHAIRMAN REYNOLDS: Yes.

STAFF DIRECTOR MARCUS: Nagmeh Shariatmadar. In the Office of the Staff, we have John Barone from Syracuse Law School and Johanna Flood of the University of San Diego School of Law. At the Office of Civil Rights Evaluation, we have Alexander Babiszewski from the University of Illinois at Chicago and Richard Privado of Cesar Chavez Public Charter School.

The Eastern Regional Office has four interns this summer, Lia Garvin of the University of California at Los Angeles, Stephen Kim at the University of Michigan, Diana Rudd of the University of Maryland and Latasha Whitehead of Woodrow Wilson High School.

At the ASCD Office, we have Arica Boone of Coolidge High School and Michael Whitehead of Roosevelt High. We have a high school student also in
the Library, Rayshon Strom and finally, in our Office of Management, Tyra Hunter of the Margaret Murray Washington High School that's helping us out.

So we thank all of the interns who are voluntarily serving the agency.

CHAIRMAN REYNOLDS: Okay. Let's take a five minute break. Off the record.

(Whereupon, at 10:18 a.m., the above-entitled matter recessed and reconvened at 10:38 a.m. the same day.)

CHAIRMAN REYNOLDS: On the record. Okay. Commissioner Yaki, are you on the line?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay. Bear with me.

V. PROGRAM PLANNING - FY 2007 STATUTORY REPORT

CHAIRMAN REYNOLDS: Okay. I have recently learned that the Department of Justice has provided some additional information that we intend to incorporate into the statutory report and since no one has had an opportunity to look at these changes, we are going to discuss the report. But we will not vote on the report.

The recommendation is that in order to meet our statutory deadline that we have a second
teleconference to vote on the report. So there will
be no vote, but the floor is open for discussion.

COMMISSIONER KIRSANOW: Mr. Chairman, in
addition, the changes consists of what precisely?

CHAIRMAN REYNOLDS: Staff Director Marcus.

STAFF DIRECTOR MARCUS: The changes are
largely of the form discussed in the July 6th memo
which is to say that we'll making technical
corrections to affected agency review as well as
remodeling charts and tables and confirming citations
to the Commission style guidelines.

The significant changes involve ensuring
that all of the data in the most recent, I believe, 26
cases received from the Department of Justice are
incorporated insistenty throughout the document.
They have been incorporated into many of the charts
and much of the text, but there are portions of the
text which do not include those 26 cases. There are
hundreds of other cases that are, but those 26 cases
have been reflected in the charts and tables and text
for some parts, but not all.

VICE-CHAIR THERNSTROM: And is there
anything distinctive about these 26 cases?

STAFF DIRECTOR MARCUS: Yes. They're
recent and the recent cases do have some different
characteristics than the older cases and I think that the difference in the characteristics is already described somewhat in the text and is also reflected in the findings and recommendations. But since they are the newer cases and the newest cases are not just like the older ones. The new cases have some of the different characteristics.

CHAIRMAN REYNOLDS: Okay. One comment, I'd like to thank the staff. I think that this is a very strong document. I think that staff has come up with a lot of information that I have never seen before. So thank you. Good job.

Okay. The floor is open. Does anyone want to discuss the Executive Summary or --

COMMISSIONER BRACERAS: Sure. I'll begin.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: I have a number of comments that are not really substantive. They're more in the way of line edits, but I'd like to suggest them to the staff.

The first comment relates to the first paragraph of the Executive Summary and this is an issue that I noticed throughout the report which has to do with the syntax and the first sentence reads "For almost a century following the end of the Civil
War, areas of the United States suffered under a crippling system of state-sponsored segregation."

There is a sense throughout the document that segregation is something that happens to the United States. The United States suffered as opposed to something that was a policy choice by individual policy makers. So the grammar of that is awkward and I think that somebody should look over the document and try to clean that up where possible.

CHAIRMAN REYNOLDS: To make sure that I understand, are you stating that the United States had a policy that condoned, permitted, slavery, that it --

COMMISSIONER BRACERAS: The United States does not have a policy regarding segregation. Individual communities and states had policies regarding segregation.

CHAIRMAN REYNOLDS: I'm sorry. Yes. Right.

COMMISSIONER BRACERAS: And the point is the United States was not the victim of segregation. African Americans were the victims of segregation, but to say that the United States suffered under a system of segregation is like you're saying some oppressive dictatorship came in from the outside and imposed it
on us. They didn't impose it on us. People chose it. Politicians chose it.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: Wrongly and immorally so, but it's just the --

VICE-CHAIR THERNSTROM: It should be simply experienced a crippling.

COMMISSIONER BRACERAS: I wouldn't even say experienced. Just something more active.

COMMISSIONER KIRSANOW: Yes, it has to be active.

COMMISSIONER BRACERAS: It's not accurate.

COMMISSIONER KIRSANOW: It just didn't happen to us. We did it.

COMMISSIONER BRACERAS: Right.

VICE-CHAIR THERNSTROM: I understand that point.

COMMISSIONER BRACERAS: I would say something to the effect of -- and I don't think we need to belabor the point. I think the staff is perfectly capable of going through the document and rewriting those parts. But something to the effect of "For almost a century following the end of the Civil War, segregation, state sponsored segregation, was commonplace in certain areas of the United States."
VICE-CHAIR THERNSTROM: Why do we say "certain areas"? Why don't we say "the South" and not "was commonplace" but "was pervasive."

COMMISSIONER BRACERAS: Right. Something to that effect.

CHAIRMAN REYNOLDS: California had segregated schools.

VICE-CHAIR THERNSTROM: You did not have the same de jure system as you did in the South in California.

COMMISSIONER BRACERAS: I mean, anyway I think the staff working with the staff director can come up with some language and since we're not voting today, I don't think we need to be precise.

VICE-CHAIR THERNSTROM: Yes.

COMMISSIONER BRACERAS: But I think we can probably all agree that segregation was not something imposed on us from the outside.

VICE-CHAIR THERNSTROM: Right.

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER BRACERAS: And therefore the syntax is wrong.

VICE-CHAIR THERNSTROM: Right.

COMMISSIONER BRACERAS: In the same vein, I have sort of a grammatical problem or I have a
problem with the grammar used to describe the role of
the courts. In the second paragraph of the Executive
Summary, it says "An extraordinary level of Federal
intervention was sanctioned." That sort of not the
worst example of it. I think the worst example of
this comes later in the report. But there's a
constant reference to consent decrees and judicial
intervention as something that just sort of happened
and if you were not a lawyer and you were to read this
report, you might be led to believe that the courts
reached out and decided to address this grave social
problem, when, in fact, lawsuits were filed and there
were remedies that were imposed and the court control
over school systems was part of a remedy and without a
finding of a legal violation, there can be no remedy.
That's the whole point.

So throughout the document, I would very
carefully go over that language and I'll just quickly
go through the findings without going through my
comments on the whole document. I'm just going to
quickly if it's okay, go through the findings and
recommendations and point out some line items that
speak to both of those global concerns.

CHAIRMAN REYNOLDS: Okay.
VICE-CHAIR THERNSTROM: Can I just say one thing on the sentence you just referred to, to address the damage caused by racially separate school systems. It was to address the persistent constitutional violations that those -- that segregation entailed. It wasn't a damage caused by racial and separate school systems as much, although that was present of course, to talk about damage. Nevertheless, the heart of the matter here is the constitutional violation of de jure segregation.

COMMISSIONER BRACERAS: Right.

COMMISSIONER HERIOT: I think there's pervasively that problem through this document that the "process of integration" I thought was probably not the right term there in that last sentence in that second paragraph. It's the court order remedies.

COMMISSIONER BRACERAS: Exactly. That's exactly my point.

COMMISSIONER HERIOT: That are being met with resistance. There's a bond. There's a remedy.

VICE-CHAIR THERNSTROM: Right.

COMMISSIONER BRACERAS: And yes, there's a societal change that went with that and that might have been resisted as well. But that's not what we're talking about here.
VICE-CHAIR THERNSTROM: Right.

COMMISSIONER BRACERAS: In this document.

So anyway, I would ask the staff to go over it carefully with an eye towards those issues and again, it's not a substantive -- I think substantively the report looks excellent, but --

VICE-CHAIR THERNSTROM: But these are substantive issues. They're not simply stylistic that you're bringing up and they're correct.

COMMISSIONER BRACERAS: So I just would like to look if we can at the findings that begin on page 82.

VICE-CHAIR THERNSTROM: Can I make a general comment that's related to what you've just been talking about. When you -- In the paragraphs referring to pre-1954, pre-Brown, we are, in fact, talking about de jure segregation. We are talking about in my view the only legitimate and widely accepted definition of segregation.

As the report goes on, there is a confusion it seems to me between -- And I simply want some kind of note to this effect that we are for convenience sake continuing to use the word "segregation" and "desegregation." But these is an implicit blurring of the line between racial
clustering, racially-identifiable schools and segregated schools. In my view, segregated schools require a segregator.

COMMISSIONER BRACERAS: I would go a step further and ask that where that occurs the language be changed to say "racially-isolated schools" or "racially-identifiable schools" instead of "racially-segregated schools unless we're specifically talking about as you say cases where there are segregators.

VICE-CHAIR THERNSTROM: That's fine with me, but I want some acknowledgment in the report that there's a distinction between de jure segregation and racial clustering, racially-identifiable schools, etc. that simply reflect demographic patterns.

STAFF DIRECTOR MARCUS: Madam Vice Chair, could I ask on page 48, footnote 2, there is a discussion of that.

VICE-CHAIR THERNSTROM: It's too late.

STAFF DIRECTOR MARCUS: I would want to know if we move it forward whether that footnote reflects your concern.

VICE-CHAIR THERNSTROM: Okay. Page 48, footnote 2. Well, that wouldn't -- All other things being equal, I would go with what Commissioner
Braceras just suggested which is really to change the language in the report itself.

COMMISSIONER HERIOT: As long as we're not going to approve this today, it seems like they would probably have time to fiddle with the language a little bit.

VICE-CHAIR THERNSTROM: There is a very good discussion, by the way, in parents involved.

COMMISSIONER BRACERAS: It's the forwarded part of it in that footnote.

VICE-CHAIR THERNSTROM: No, I'm talking about Judge Carlos Baez 9th Circuit dissent.

COMMISSIONER HERIOT: Baez.

COMMISSIONER BRACERAS: Baez.

VICE-CHAIR THERNSTROM: I never knew how you pronounced his name. Thank you. Baez's 9th Circuit dissent in which she has a long discussion at that point and it's worth quoting.

COMMISSIONER BRACERAS: I agree. So just looking at the findings and some of these might seem nitpicky but what can I say. I'm a lawyer. I'm just going to give you my comments. In the first finding, I guess the first suggestion I would make is that that really seems like two findings, not one, and I would separate them after "life" and before "1954."
The second comment I would make about that finding is I would delete the last sentence, "This segregation is both unconstitutional and morally repugnant." That doesn't seem to me to be a finding of fact. That's more of an explanation or a description. I mean, the fact is that the court did what it did in 1954. I think the last sentence is sort of extraneous. So those are two recommendations.

VICE-CHAIR THERNSTROM: Yes, and -- should be changed to "unconstitutional."

COMMISSIONER BRACERAS: Exactly.

VICE-CHAIR THERNSTROM: And by the way, somebody has put a comma outside of the quotation marks.

COMMISSIONER BRACERAS: Yes. That's offending to somebody's eyes.

(Laughter.)

COMMISSIONER BRACERAS: Going back to the first sentence of the finding, again just the grammar, "The parts of the United States operated under harsh state-sponsored schemes." It's not as bad as what I referred to before, but I would simply say I just don't like the term "operated under."
VICE-CHAIR THERNSTROM: And I don't like "parts of the United States." We're not talking about Kansas and Utah here.

COMMISSIONER HERIOT: We are talking about Kansas.

COMMISSIONER BRACERAS: We are talking about Kansas.

(Off the record comments.)

(Laughter.)

COMMISSIONER BRACERAS: But we're not talking about Maine.

VICE-CHAIR THERNSTROM: We're not talking about Maine and Utah. That is really an embarrassing slight.

COMMISSIONER BRACERAS: So I would be more specific and I would sort of change the grammar of that. I'm just trying to remember. Is it in Brown vs. Topeka Board of Education?

STAFF DIRECTOR MARCUS: Yes.

COMMISSIONER BRACERAS: Or is it Board of Education of Topeka?

COMMISSIONER KIRSANOW: Of Topeka.

VICE-CHAIR THERNSTROM: It's Of Topeka.

COMMISSIONER BRACERAS: Yes. And throughout this document, it says "Topeka Board of
Education." So I would cite check and I don't know that I'm right, but please --

(Off the record comments.)

COMMISSIONER KIRSANOW: I think it says Topeka.

VICE-CHAIR THERNSTROM: On the --

COMMISSIONER BRACERAS: So that's what I have on Finding No. 1.

On Finding No. 2, again "Many school districts after Brown especially in the South fell under judicial supervision." They didn't fall under anything. There wasn't an accident. There was a lawsuit and supervision was part of the remedy.

VICE-CHAIR THERNSTROM: It was Brown, et al v. Board of Education of Topeka, et al.

COMMISSIONER BRACERAS: Yes. So that's cited correctly. So again Finding 2, I don't like the term "fell under judicial supervision." Like I said, it wasn't an accident. I'll leave it to the staff to figure out exactly how to phrase it.

VICE-CHAIR THERNSTROM: "Were placed."

COMMISSIONER BRACERAS: "Were placed" is fine.
COMMISSIONER HERIOT: -- there's a wrong and a remedy to make sense here to say, "In order to remedy this constitutional wrong..." blah, blah, blah.

COMMISSIONER BRACERAS: I think it wasn't -- because it wasn't if the Supreme Court acknowledged the constitutional wrong and then lower courts reached out to remedy those situations.

VICE-CHAIR THERNSTROM: Right.

COMMISSIONER BRACERAS: People had to enforce Brown v. Board of Education with a lawsuit. So the whole structure of the sentence is wrong.

VICE-CHAIR THERNSTROM: And after Brown, I mean it took 14 years before you really had in the deep South any desegregation of schools.

COMMISSIONER BRACERAS: I would change it to read something to the effect of "After Brown, litigants brought lawsuits to enforce Brown."

VICE-CHAIR THERNSTROM: Yes, and it isn't vestiges anymore. I mean they just --

COMMISSIONER BRACERAS: It wasn't vestiges. It was out and out segregation.

VICE-CHAIR THERNSTROM: It was out and out segregation until --

COMMISSIONER BRACERAS: It wasn't vestigates.
VICE-CHAIR THERNSTROM: -- Until Green comes along in `68.

COMMISSIONER BRACERAS: Right. So I think the point is made and I'll leave it to the staff to address it.

Okay. No. 3, I would just delete the whole first sentence, "At the time judicial intervention was implemented, the assertion of equal rights by African Americans was met by hostility, oppression and violence." And I would instead say something to the effect of, starting with the second sentence, "In some instances, court orders to integrate met with massive resistance."

And then school districts weren't closed. Schools were closed.

VICE-CHAIR THERNSTROM: Yes.

COMMISSIONER BRACERAS: So I would say, "In some instances, court orders to integrate met with massive resistance. Some schools were closed to avoid integration or to avoid integrating, or semicolon, whatever. In other cases, Federal troops...."

COMMISSIONER YAKI: Wasn't Prince George's County closed?

COMMISSIONER BRACERAS: The district, you can't close the district. The district is a political
entity. You're closing the operations of the schools. I mean you can't say --

COMMISSIONER HERIOT: The school board still exists.

COMMISSIONER BRACERAS: The school board still exists. You can't say Massachusetts was closed or the United States was closed. You would say the government was shut down or whatever the --

COMMISSIONER YAKI: Then the accurate thing would be the school districts closed the schools rather than integrated them.

COMMISSIONER BRACERAS: Correct.

VICE-CHAIR THERNSTROM: Correct.

COMMISSIONER BRACERAS: Yes. Even better because the whole "were closed," who were the mysterious people who were closing them? I mean, there were people on the school board who were racists. Let's just say it. So just to read it again, "In some instances, court orders to integrate met with massive resistance."

COMMISSIONER YAKI: I think it's important to add there was resistance included more than just we don't want it to happen. There were consequences to integration that included violent measures, including shooting, bombing, what have you.
VICE-CHAIR THERNSTROM: That was the reference in the first sentence and that fact could be incorporated into the second one.

COMMISSIONER BRACERAS: Yes. My objection to it, Michael, was not the content but the grammar. And I wanted it to be clear that the hostility, opposition and violence were in response to court orders to integrate.

VICE-CHAIR THERNSTROM: So, Michael, what about massive resistance which included --

COMMISSIONER BRACERAS: Including violence.

VICE-CHAIR THERNSTROM: -- included violence.

COMMISSIONER YAKI: That's fine.

COMMISSIONER BRACERAS: Or something to that effect. So then, for example --

COMMISSIONER YAKI: I got your theme and we can wordsmith that.

VICE-CHAIR THERNSTROM: All right. But somebody on the staff has to wordsmith this.

COMMISSIONER BRACERAS: And again, school districts weren't closed. Schools were closed by school board members.
COMMISSIONER YAKI: I think we're missing a 3A here, aren't we?

VICE-CHAIR THERNSTROM: I don't see a 3A.

COMMISSIONER YAKI: That's what I'm saying. Of course, there's not a 3A. That's what I'm saying. We're missing a 3A. I think just as you're going through this in chronological order I think that -- just in the interest of self-promotion, should talk about the creation of the Commission and what its role was with regards -- because it was post Civil Rights Act and because it was to look at these types of issues.

VICE-CHAIR THERNSTROM: All right. That's a good idea.

CHAIRMAN REYNOLDS: I think it's a good idea. However, I just want to make sure that there is something in the record. I don't know if we've discussed it. It's a fact, but I know that folks have been sticklers about this type of issue in the past, making sure that whatever finding or recommendation we have is in the record.

COMMISSIONER BRACERAS: All right. The staff can look into that and see if it is or it's appropriate to do.
CHAIRMAN REYNOLDS: Or if it's damned plain, that it's --

COMMISSIONER KIRSANOW: -- articulate judicial notice.

COMMISSIONER HERIOT: Judicial notice of our own existence.

COMMISSIONER KIRSANOW: Yes.

VICE-CHAIR THERNSTROM: And do you know what? This shouldn't be the first time that the role of the Commission is referred to. It could be referred to --

COMMISSIONER BRACERAS: In the Executive Summary.

VICE-CHAIR THERNSTROM: -- in the Executive Summary and we're simply picking up that thread. I think it's a very good idea.

COMMISSIONER YAKI: Thank you.

COMMISSIONER BRACERAS: In No. 4 --

VICE-CHAIR THERNSTROM: It's been your only one in all these months.

(Laughter.)

COMMISSIONER YAKI: I understand that. I need to a report that you actually accepted a moment of deep --

COMMISSIONER KIRSANOW: Deep sorrow.
COMMISSIONER YAKI: Feeling like crying --
(Laughter.)

COMMISSIONER BRACERAS: No. 4, again I wouldn't say "Legislation was adopted." It all seems very mysterious as who adopted. I would just say, "Congress adopted."

VICE-CHAIR THERNSTROM: Do we even need that? "In response, Congress passed the Civil Rights Act of 1964..."

COMMISSIONER BRACERAS: Right.

VICE-CHAIR THERNSTROM: "... and the Elementary and Secondary Education Act of 1965."

COMMISSIONER BRACERAS: Correct. And then No. 5 where it says, I have several comments, but where it says, "while necessary to address past discriminatory practices." Again, they weren't past. They were ongoing discriminatory practices. So I would delete the word "past."

And then in the last sentence, "Many of these court orders have remained in place, even after several decades," I would just say "for several decades." "Even after" is --

VICE-CHAIR THERNSTROM: Wait a minute. We're on six, are we?

CHAIRMAN REYNOLDS: Five.
VICE-CHAIR THERNSTROM: Five.

COMMISSIONER BRACERAS: "Many of these court orders have remained in place for several decades." That's a factual statement. But if you say "Even after several decades" you're adding a tinge of, I think, bias to it because the implication is that they shouldn't remain in place and if it's a factual finding, you know, it shouldn't be embracing that opinion.

VICE-CHAIR THERNSTROM: Well, if you go back to the first one, I seems to me the same point applies to the first sentence. You don't need to say "came at a cost." You can just state the facts.

COMMISSIONER BRACERAS: Yes. That's right.

VICE-CHAIR THERNSTROM: So that you're not making a mental call on violation of federalism, expectations and so forth but simply state the facts that you have a transfer and a legitimate transfer of authority from local school districts to the courts where necessary.

COMMISSIONER BRACERAS: I agree with that.

VICE-CHAIR THERNSTROM: It's too loaded the way it's put.
COMMISSIONER BRACERAS: It's very loaded.

And No. 6 --

VICE-CHAIR THERNSTROM: "Social conditions" is wrong.

COMMISSIONER BRACERAS: Yes.

VICE-CHAIR THERNSTROM: It's racial. The racial facts on the ground, the racial --

CHAIRMAN REYNOLDS: Demographics.

COMMISSIONER BRACERAS: Well, you know what? I was going to recommend deleting that whole sentence because -- Or making two separate findings because the first sentence of that paragraph seems as if it's attempting to address cultural changes in society and the second sentence in that paragraph seems like it's talking about remoteness in time. So I think the point is that today in 2007 things are both different culturally and temporally and they're two separate points.

VICE-CHAIR THERNSTROM: Well, they could be merged into one by simply making the first sentence a reference to a considerable racial change over the decades which is reflected in these numbers.

COMMISSIONER BRACERAS: You know, I would simply say my recommendation would be to delete the first sentence altogether and to have a completely
factual statement that just says, "Of the districts place" --

VICE-CHAIR THERNSTROM: That's fine.

COMMISSIONER BRACERAS: -- "Eighty percent were placed under court order in the '60s, 18 percent in the '70s and one percent in the '80s and '90s."

VICE-CHAIR THERNSTROM: You could.

COMMISSIONER BRACERAS: No one could argue that.

VICE-CHAIR THERNSTROM: Yes, you could have if you wanted to add one sentence saying, "This drop in these numbers reflected changes in racial attitudes and racial practice" or whatever. You could say something about America has changed if you wanted.

COMMISSIONER HERIOT: I would just delete the word "social" because certainly conditions have obviously changed within each case.

VICE-CHAIR THERNSTROM: It's too vague "conditions."

COMMISSIONER BRACERAS: I seriously --

COMMISSIONER HERIOT: It lets the reader know what they should be thinking about here, what kind of conditions.

VICE-CHAIR THERNSTROM: I would prefer a sentence at the end saying, "These numbers reflect
dramatic changes in racial attitudes and the status of blacks over the decades" or something, whatever. If you want to put something in, I would prefer that. Anyway, we can let the staff fiddle. Go on.

COMMISSIONER BRACERAS: I have no strong views. I'm just pointing out that there should be a change.

VICE-CHAIR THERNSTROM: I agree.

COMMISSIONER BRACERAS: And in what direction.

VICE-CHAIR THERNSTROM: I agree.

COMMISSIONER BRACERAS: I'll leave it to the staff.

Okay. No. 7, where it says, "Over this period..." I would define specifically the period that's being referred to and these are the years.

VICE-CHAIR THERNSTROM: And the fact is that it's fairly recent. It is not starting in 1954 if you had massive integration.

COMMISSIONER BRACERAS: Right. And then I think the last sentence is all sort of vague. You know, "The Latino share of public school enrollment has increased dramatically." What does that mean? Do we have data on in that's part of the record that's relevant?
VICE-CHAIR THERNSTROM: Yes and, of course, that's easy to obtain, the data.

COMMISSIONER BRACERAS: Right, and so it's a completely vague sentence and as it is, somewhat meaningless I think.

VICE-CHAIR THERNSTROM: Right. I mean, there can be a specific reference to the portion of Latinos today in urban school systems today versus a few decades ago. I mean, the Los Angeles Unified School District is now over 70 percent Latino. It wasn't two decades ago.

COMMISSIONER YAKI: And in certain areas of the country, the Asian American population has drastically changed.

VICE-CHAIR THERNSTROM: Absolutely.

COMMISSIONER YAKI: The makeup of the school population --

VICE-CHAIR THERNSTROM: Absolutely.

COMMISSIONER BRACERAS: That's right.

VICE-CHAIR THERNSTROM: Absolutely. You have, what, ten percent in California of the school population is now Asian.

COMMISSIONER YAKI: Right, but a lot of it is concentrated in certain areas where they make up 50, 60, 70 percent of the population.
VICE-CHAIR THERNSTROM: Right. Yes, I mean, I think if we're going to say this kind of thing, this kind of vague mushy language doesn't tell the reader anything.

COMMISSIONER YAKI: Yes.

COMMISSIONER BRACERAS: Yes. No. 9, I would delete the first clause. Again, I think it adds bias to it where it says "Despite these decisions, the Department of Justice reported as of 2000 approximately 400 school districts remained under court order." I would just state the facts that "As of 2000, the Justice Department reports that there are approximately 400 school districts under court order" and let the reader draw their conclusions about what that means.

(Several speaking at once.)

COMMISSIONER YAKI: With regard to bias, (Inaudible) I've been concerned about the entire wording of Finding No. 5 as one that we know no supporting evidence as to it's very bias --

VICE-CHAIR THERNSTROM: I would say -- I got distracted by -- Lisa needed to ask me something. Could you repeat what you're saying?

COMMISSIONER YAKI: I was just going on about Jennifer's issue with bias and the first clause
of No. 9 and I was saying that it seemed to me that Finding No. 5 is bias because --

COMMISSIONER BRACERAS: I agree.

COMMISSIONER YAKI: -- no substantive documenting for any of the statements made in that finding.

COMMISSIONER BRACERAS: Right. We did talk about that a little bit. I completely agree with Michael.

VICE-CHAIR THERNSTROM: Yes, I do, too.

COMMISSIONER BRACERAS: And I think there was a suggestion made by the Vice Chair to say something to the effect, something more factual to the effect, that there simply was a transfer of power, a necessary one, from local school boards to the judiciary in order to address the unconstitutional violations.

VICE-CHAIR THERNSTROM: The persistent unconstitutional violations.

COMMISSIONER YAKI: I like that. Okay. Thank you. That's twice we agree on something.

COMMISSIONER BRACERAS: That's right.

COMMISSIONER YAKI: Let's keep that for the record.
COMMISSIONER BRACERAS: Okay. So No. 9, again, I would delete "Despite these decisions" and just state the fact. No. 10.

VICE-CHAIR THERNSTROM: Wait a minute. No. -- Oh, "Despite these decisions." All right.

COMMISSIONER BRACERAS: I would just say, "The Justice Department reports that as of 2000" --

VICE-CHAIR THERNSTROM: Yes.

COMMISSIONER BRACERAS: -- "there were 400 school districts under court order."

No. 10, "Efforts were made" by whom? Who are the mystery people making the efforts? I don't know. Maybe we delete the sentence. Maybe we just restructure it. But we need to say -- If we're going to include it, we need to say who it is that's making the efforts to --

VICE-CHAIR THERNSTROM: Yes. I mean, we can just delete that first sentence.

COMMISSIONER BRACERAS: Yes. I don't think the sentence is necessary.

And then No. 11, I'm not really sure where this comes from. I know that in the literature review there's reference to this, but it's not something in my view that seems appropriate as a finding of fact. I think it's perfectly appropriate in the narrative
because we've decided as a commission not to seek
evidence on this and not to ask districts why they
were choosing not to apply to the courts for a finding
of unity status and therefore since we didn't ask
those empirical questions, I don't think we should
make findings on that. But again, I think it's
perfectly appropriate as part of a narrative citing
the secondary literature. I just don't think it
should be a finding.

VICE-CHAIR THERNSTROM: I second that.

COMMISSIONER BRACERAS: And then in
Finding 14, again, this is just a stylistic grammar
thing. I would just say -- I would delete "for each
of the seven states examined" and I would simply say,
"As of June 2007:" that's all we need to say and then
instead of phrasing each one as "the number of Alabama
school districts that have been declared unitary are
71," I mean, that's very awkward, I would simply say,
"Seventy-one" --

VICE-CHAIR THERNSTROM: So it's
grammatically incorrect "is 71".

COMMISSIONER BRACERAS: Right.

VICE-CHAIR THERNSTROM: The number is 71.
COMMISSIONER BRACERAS: I would simply say "Seventy-one Alabama school districts have been declared unitary."

VICE-CHAIR THERNSTROM: Yes. I do think, Jennifer, just going back to the first, the opening sentence to this that it is useful to remind the reader that we are only looked at seven states.

COMMISSIONER BRACERAS: But it's not for each of the seven states examined because each of these things listed applies only to one state. So it's not true that for each of the seven states there are 71 school districts under court order in Alabama.

VICE-CHAIR THERNSTROM: That's true.

COMMISSIONER BRACERAS: And it makes no sense.

VICE-CHAIR THERNSTROM: Yes. You're absolutely right.

COMMISSIONER BRACERAS: So I would just say -- Or if you want to remind people that we looked at seven states, you could say something to the effect of "Our review" --

VICE-CHAIR THERNSTROM: "Of seven states."

COMMISSIONER BRACERAS: -- "of the documentation of seven states indicates" --
VICE-CHAIR THERNSTROM: -- "the following:"

COMMISSIONER BRACERAS: -- "as of June 2007: 71 Alabama school districts have been declared unitary;"

VICE-CHAIR THERNSTROM: Yes.

COMMISSIONER BRACERAS: -- "53 are still under court order;" --

VICE-CHAIR THERNSTROM: Yes.

COMMISSIONER BRACERAS: -- "seven have never been subject to litigation."

VICE-CHAIR THERNSTROM: Yes, and "19 for other school districts," etc. Absolutely.

COMMISSIONER BRACERAS: Right. And they should all read that way.

VICE-CHAIR THERNSTROM: Yes. And I don't know why the passive voice is used here at all.

COMMISSIONER BRACERAS: Right.

VICE-CHAIR THERNSTROM: As well as in other places.

COMMISSIONER BRACERAS: The passive voice is throughout the document.

VICE-CHAIR THERNSTROM: Right. Exactly.

COMMISSIONER BRACERAS: That's one of the problems.
VICE-CHAIR THERNSTROM: And for anybody going through this, your spell and grammar check will put some kind of green underline or something under passive voices.

COMMISSIONER BRACERAS: All right. In Finding 17 where it says "Larger school districts are more likely to achieve judicial recognition of unity status" I would simply say "to seek and obtain a finding of unity status." And again, the same comments that I've made throughout, I think if the staff just looks at the rest of the findings in the document with an eye towards those comments without me going through every nitpicky single word.

VICE-CHAIR THERNSTROM: You know -- Yes. They're more likely to achieve judicial recognition as if the courts are overlooking other school districts which --

COMMISSIONER BRACERAS: But they're not achieving it. They're seeking it and they either obtain it or they don't.

VICE-CHAIR THERNSTROM: Exactly. So "declared unitary" is the right phrase here. -- "have declared unitary" or "courts have declared unitary" or something.
COMMISSIONER BRACERAS: All right. So moving to the recommendations just so I can stick with sort of the bigger picture things and not be too nitpicky at this point, Recommendation No. 2, the last sentence, it's just totally gratuitous. "It has been over 50 years since the decision of Brown and there is no excuse for school districts that have not long ago addressed de jure discrimination and its effects." I mean, obviously, I don't think it's necessary.

VICE-CHAIR THERNSTROM: Right. Anyway, there is no de jure discrimination.

COMMISSIONER BRACERAS: I think what the recommendation is aimed at is really the first sentence that "The Department of Justice should increase certain efforts." That last part, the last sentence I would recommend deleting.

VICE-CHAIR THERNSTROM: I agree.

COMMISSIONER BRACERAS: Recommendation No. 3, I think is problematic because the sentence again - Well, first of all, the first sentence I would say - Well, forget that. The second sentence I would delete completely. "The Department should provide information on the advantages and disadvantages of remaining under court order."

VICE-CHAIR THERNSTROM: Right.
COMMISSIONER BRACERAS: It shouldn't be a choice. If you're no longer in violation of the law, the court really has no basis to continue to supervise you.

VICE-CHAIR THERNSTROM: Right. It's not a weighing process to --

COMMISSIONER BRACERAS: I understand the political reality is that it is a weighing process.

VICE-CHAIR THERNSTROM: Well --

COMMISSIONER BRACERAS: Wait. But let me finish.

VICE-CHAIR THERNSTROM: Yes.

COMMISSIONER BRACERAS: The politicians will weigh the pros and cons and make a decision. That's fine. That's political reality. But the notion of the Department of Justice should make a list of pros and cons and advantages and disadvantages as if it's okay by the Department of Justice --

VICE-CHAIR THERNSTROM: Right. That's my point, too.

COMMISSIONER BRACERAS: The Department of Justice shouldn't be political about it. I mean, obviously the politicians are going to be political and that is what it is. But I would delete that entire sentence. I really don't want the Justice
Department providing information on advantages and disadvantages if remaining under court order.

VICE-CHAIR THERNSTROM: And I have a question.

COMMISSIONER BRACERAS: You either need to be under it or you don't.

VICE-CHAIR THERNSTROM: I have a question about the first sentence. Isn't the Justice Department already providing technical assistance policies and procedures? Blah, blah, blah. Would this be a new turn of events? Or is not the Justice Department the Civil Rights Division of the Department of Education?

COMMISSIONER BRACERAS: What is it?

STAFF DIRECTOR MARCUS: Mr. General Counsel.

MR. BLACKWOOD: They do provide some assistance obviously. They consult. As far as the term "technical assistance," my understanding is they do not at this time provide what they call "technical assistance."

VICE-CHAIR THERNSTROM: Which would be what? What is the definition?

COMMISSIONER BRACERAS: Manuals and the like, right?
MR. BLACKWOOD: Correct.

COMMISSIONER BRACERAS: Written guidelines.

VICE-CHAIR THERNSTROM: All right. So you're saying we are not asking for something that's already being done.

MR. BLACKWOOD: That is correct. Now we have met with Justice Department about affected agency review and their responses, we're meeting again next week, I will ask them to address that to see whether they agree with the term.

COMMISSIONER BRACERAS: Okay.

COMMISSIONER TAYLOR: David, question. Do they consider a counseling that they provide now to be assistance, a more third party neutral assistance in that respect rather than assistance to achieve a particular goal?

MR. BLACKWOOD: I would say they would characterize it the latter. But I can follow up on that as well.

COMMISSIONER TAYLOR: Yes, just to determine whether or not what we're recommending is what they're doing now or whether -- When I read this, just my general sense was that they like to be in the position of being considered a neutral combatant.
MR. BLACKWOOD: Correct.

COMMISSIONER TAYLOR: And we're suggesting that they should not be a neutral combatant, that they should side one way or the other and provide formal assistance and help the school district achieve a goal.

VICE-CHAIR THERNSTROM: Yes, but wait a minute. You're providing formal assistance to help a school district comply with the law.

MR. BLACKWOOD: I will say this. The reason that first sentence is directed to small or moderately sized school districts is that, and I guess part of this is anecdotal. But when we communicated with some of these school districts we got the feeling, the direct feedback, that they didn't have any knowledge and they weren't even considering unitary status. It simply wasn't on their radar screen and the thought was maybe they should at least be aware that here are the factors. "Are you inclined or should you be seeking -- Do I qualify for unitary status or not?" Some, especially the very small school districts, it wasn't even on their radar screen.

VICE-CHAIR THERNSTROM: That is probably a reflection of local politics.
COMMISSIONER TAYLOR: I appreciate that. I understand that. And actually, I agree with providing the assistance. My only question is whether it's DOJ or a state agency that's a more appropriate agency you go to for formal assistance to achieve a goal.

MR. BLACKWOOD: Okay.

COMMISSIONER TAYLOR: It's more of a question than anything else, if we're really doing something different.

MR. BLACKWOOD: Okay. I will check on that.

COMMISSIONER BRACERAS: On Recommendation No. 4, I think it can be deleted. To be blunt about it, I think it's kind of a big duh. "School officials should avail themselves with appropriate information to make informed decisions." Shouldn't they always do that?

And again, the whole question of whether or not to seek unitary status, I would think that you're either in violation or you're not. And if you are unitary and you're not longer in violation, we shouldn't be encouraging them not to seek a judicial finding of that. So I might just say "take appropriate steps to meet the standards established by
But again, I'm not sure it's necessary to say that.

VICE-CHAIR THERNSTROM: I agree. Just delete that fourth one.

COMMISSIONER BRACERAS: For now, those are my basic comments that again I think you could look at the whole document with an eye towards those. I don't want to go through every page, but I think that basically -- That's what my issues are.

VICE-CHAIR THERNSTROM: I have one more general comment that I did pass along to the staff which is that we know too little on the basis of this document about the non-litigant districts. Were there never civil rights complaints? What are the characteristics of these districts? What are we looking at and examining in that category and I --

COMMISSIONER BRACERAS: I didn't hear the last thing that you said.

VICE-CHAIR THERNSTROM: What are we looking and examining the category of non-litigant districts? I mean, are these districts that never saw --

COMMISSIONER BRACERAS: I think that that's beyond the scope of this report. But I think it's important.
VICE-CHAIR THERNSTROM: Well, it's a category that's undefined. Yes.

COMMISSIONER BRACERAS: Wait. Let me finish. I think it's important to point out that it is an undefined category and to make recommendations for further research in that area.

VICE-CHAIR THERNSTROM: That's fine.

COMMISSIONER BRACERAS: Because those are questions that aren't going to be answered by this data, but we should point out --

COMMISSIONER YAKI: In fact, in the hearing that we had on the subject, it was pointed out that the inability to look at that dataset could skew the results precisely because sometimes the mere threat of litigation or intervention, whether at the private attorney general or DOJ stage, can cause school districts to change their practices.

COMMISSIONER BRACERAS: Correct.

VICE-CHAIR THERNSTROM: Correct.

COMMISSIONER BRACERAS: And that should be pointed out as well.

VICE-CHAIR THERNSTROM: Yes. So there needs to be some reference to the missing information here.
COMMISSIONER BRACERAS: Right. I think a good role we can play is to have a paragraph on unanswered questions or future research or areas not explored and to be clear about what were not explored.

VICE-CHAIR THERNSTROM: Yes. That would satisfy me.

CHAIRMAN REYNOLDS: Okay. Additional comments? Okay. This was helpful and the staff will rework this document with the changes and the concerns that have been discussed in mind. Okay.

COMMISSIONER YAKI: Mr. Chair?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: I just wanted to point out that in lack of detailed response on my part and probably due to the fact that I am unhappy with the current situation, but more to the point that because --

(Several speaking at once.)

COMMISSIONER YAKI: -- and because I am somewhat skeptical of some of the information or lack of information that was put or not put in the report, I was going to have -- I'm glad that we are able in this report because of the Justice Department information coming in late because I was going to move to do that simply because of the various statutes the
Commission, the course of deadlines that were missed during this process that may or may not have any fault for anyone on the staff just because of volume of information. I'm not going to make any conclusion there, but for me to conduct my own assessment of the data and was taking and is taking longer.

So my reluctance to address objections to particular findings and recommendations at this meeting, it does not mean that I will not have a full play run-down when we go for approval during their teleconference.

VICE-CHAIR THERNSTROM: Could you circulate those to us beforehand so we have a chance to think about what you're saying?

COMMISSIONER YAKI: If I can, I will. Absolutely.

CHAIRMAN REYNOLDS: Okay. I guess at this point we should look at our calendars once again to see when we can schedule a teleconference.

COMMISSIONER MELENDEZ: Mr. Chairman.

COMMISSIONER YAKI: And in addition, we have to give time built into that calendar for dissent.

COMMISSIONER BRACERAS: Well, first, we're just going to write on the report and then there will
be subsequent time to draft a dissent to the approved report.

CHAIRMAN REYNOLDS: Yes, the usual procedure.

VICE-CHAIR THERNSTROM: Yes. Question again for the staff director I can't remember the answer to. When is our final, final deadline for getting something to a printer?

COMMISSIONER KIRSANOW: The end of July.

CHAIRMAN REYNOLDS: The 31st.

VICE-CHAIR THERNSTROM: So that means the dissents have to be written by the end of July?

COMMISSIONER KIRSANOW: No. It's not correct, is it?

CHAIRMAN REYNOLDS: I don't think it's -- That's not feasible.

COMMISSIONER KIRSANOW: But in terms of the logistics --

VICE-CHAIR THERNSTROM: That's not feasible.

COMMISSIONER KIRSANOW: -- getting deduced that may be a problem.

CHAIRMAN REYNOLDS: We can't meet the July 31st deadline and make the changes that we need to make
and to give folks a sufficient amount of time for the dissent.

VICE-CHAIR THERNSTROM: Yes. It's just not doable.

COMMISSIONER BRACERAS: Ken just made a suggestion. I don't know if this is possible to submit an electronic version to Congress and then go to the printer afterwards in order to meet our obligations.

VICE-CHAIR THERNSTROM: Well, the electronic version would not include dissents or would we have --

COMMISSIONER BRACERAS: No. I'm just talking about the two-month backup at the printing office and the distribution backup.

STAFF DIRECTOR MARCUS: I suppose -- We've never done that before, but I suppose we could send all members of Congress a --

COMMISSIONER BRACERAS: A PDF.

STAFF DIRECTOR MARCUS: We can do it in PDF and we can send them how to find it on our website and we can let them know that --

COMMISSIONER BRACERAS: I thought we did that anyway.
COMMISSIONER YAKI: I thought that we were pretty late and we did an electronic report and then the published report came out later.

STAFF DIRECTOR MARCUS: It's true that we did it electronically first and then the published came out later. But it's also true that the published version was distributed to Congress by the end of the fiscal year.

COMMISSIONER KIRSANOW: Does any type of public notice need to be disseminated with respect to the electronic transmission so that the public can access it or would know that it's available on the website?

STAFF DIRECTOR MARCUS: I'm not aware of any such requirement. But we would put it on our website. So it would be available to the public also.

CHAIRMAN REYNOLDS: And we could issue --

COMMISSIONER KIRSANOW: That's true but my question is don't we have to apprise the public of location of that since it's not in hard copy form, that it is on our website. Do we have to put something in the Federal Register?

STAFF DIRECTOR MARCUS: No. It's not a requirement and it's our custom or practice.
COMMISSIONER BRACERAS: So that way we could allow more time for the dissents to be written.

COMMISSIONER KIRSANOW: Does that satisfy our statutory obligation in terms of "publishing"?

CHAIRMAN REYNOLDS: As long as we -- I would argue the answer is yes. As long as we provide them an electronic copy before the deadline, we should be fine.

COMMISSIONER BRACERAS: If courts now accept electronic filings, I see no reason why Congress wouldn't accept an electronic submission. I mean, obviously they would have to check it.

STAFF DIRECTOR MARCUS: We will find out that.

CHAIRMAN REYNOLDS: So long as --

COMMISSIONER TAYLOR: It should be okay.

STAFF DIRECTOR MARCUS: We'll confirm that. There are other context in which we consider electronic transmission to be a form of publication.

COMMISSIONER YAKI: I'm sure we can obtain clarification in relatively easy order.

STAFF DIRECTOR MARCUS: Yes.

CHAIRMAN REYNOLDS: Okay. So we have the plan. Now what we need to do is select some dates. So let's get our calendars.
VICE-CHAIR THERNSTROM: We're talking about July. Is that correct?

CHAIRMAN REYNOLDS: No. Yes.

VICE-CHAIR THERNSTROM: It would have to be.

(Off the record discussion.)

CHAIRMAN REYNOLDS: Okay. I'll throw the 30th out. That's a Monday.

COMMISSIONER BRACERAS: I'm sorry. What did you say?

CHAIRMAN REYNOLDS: Well --

COMMISSIONER KIRSANOW: You may recall that the 30th and 31st got rejected in a previous --

COMMISSIONER HERIOT: Yes. Thirty and 31st and the 1st were not --

COMMISSIONER BRACERAS: If I may. Ken has made another good suggestion, I think, is that maybe we should schedule a conference call for the discussion and then vote notationally so that even if, for example, I can't be on the call to go over the document line by line, I would still have an opportunity to cast a vote.

VICE-CHAIR THERNSTROM: That sounds like a good idea to me.
CHAIRMAN REYNOLDS: Any objections to that approach?

(No response.)

CHAIRMAN REYNOLDS: Mr. Yaki.

COMMISSIONER YAKI: Vote notationally?

COMMISSIONER BRACERAS: Have a meeting where we discuss the document, but then leave the voting open or vote notationally or whatever --

COMMISSIONER KIRSANOW: So everyone can vote.

COMMISSIONER BRACERAS: -- so that even the people who can't be on the discussion call can cast an up or down vote.

COMMISSIONER YAKI: My only concern is that --

COMMISSIONER BRACERAS: We're supposed to vote on each thing.

COMMISSIONER YAKI: -- I like to state my reasons for why I'm voting no on a particular item and notational votes don't allow you to do that.

VICE-CHAIR THERNSTROM: But your dissent will make it perfectly clear why you were doing so. Is that correct?

COMMISSIONER YAKI: My dissent may go into fields different than that on the findings and
recommendations. So not necessarily. I'm just simply -- I just like the idea that in a public record of vote on the statutory report that I would be allowed to make comments as to why or why not I support or do not support.

COMMISSIONER BRACERAS: Okay. That's fine.

CHAIRMAN REYNOLDS: Okay. So, Commissioner Yaki, you are supportive of this approach if you are confident that you'll participate. If we select a date where you can participate, then a notational vote will be fine with you.

COMMISSIONER YAKI: What?

COMMISSIONER KIRSANOW: As long as you are able to voice your objection to any particular vote, you would be okay with other commissioners voting notationally.

COMMISSIONER BRACERAS: What would probably happen is we'd go through each finding and recommendation. There would be votes on each one. But there might also be edits made at that time on those. No, you go through each one and if somebody made an edit to one, then you'd have to vote on the change.

COMMISSIONER YAKI: Right.
COMMISSIONER BRACERAS: And then the whole thing, each one, would be submitted for a notational vote with the new language and then the person who wasn't on the call would have a chance to vote on each item as amended.

COMMISSIONER HERIOT: And could submit a couple sentence explanation the same way they would if they'd been on the conference call.

COMMISSIONER YAKI: So far as I know notational votes don't allow for us to submit statements accompanying our votes. They're pretty much a piece of paper that comes up with yes or no without "by the way attach blankety-blank with blankety-blank."

CHAIRMAN REYNOLDS: Michael --

COMMISSIONER YAKI: And I don't know how that gets in access to the public record. I just need that clarified because even though -- Particularly which I have found out, when last minute edits are made to findings and recommendations after the fact for the final vote, frequently these are edits or recommendations that I may not be particularly fond of and would like to voice my objection to the new changes that were made in response to the discussion. So I just don't see why we just can't --
COMMISSIONER BRACERAS: All right. Let's just find a date then. Then forget my idea. Scratch it. Let's move forward with a date.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, do you want to throw a date out?

COMMISSIONER BRACERAS: Do you know what? Let me just revise something. I had said that the last week of July was not good for me. But if we were to do it in the evening, I think I said before, if we were to do it in the evening Eastern Time, say, any time after 3:00 p.m. Pacific Time, I would be available.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: Or probably any time after 2:00 p.m. Pacific Time.

CHAIRMAN REYNOLDS: With that information, Commissioner Yaki, would you like to throw some dates out?

VICE-CHAIR THERNSTROM: Are you with us?

COMMISSIONER YAKI: Pardon me.

VICE-CHAIR THERNSTROM: Are you with us?

COMMISSIONER YAKI: Yes. I'm in different parts of the house and I'm trying to get ready for a court hearing that's appearing in about five minutes.
VICE-CHAIR THERNSTROM: But you're looking at your calendar.

COMMISSIONER YAKI: No.

VICE-CHAIR THERNSTROM: We were asking --

COMMISSIONER KIRSANOW: -- any dates that you would suggest.

COMMISSIONER YAKI: Within which time frame are we talking about?

VICE-CHAIR THERNSTROM: It has to be July.

COMMISSIONER YAKI: Why does it have to be July if we're going to be doing an e-transmission of the report possibly anyway?

VICE-CHAIR THERNSTROM: Because you want some time to write your dissent, I assume.

COMMISSIONER YAKI: Yes.

VICE-CHAIR THERNSTROM: We're trying to give --

COMMISSIONER BRACERAS: We're trying to give you as much time as possible.

COMMISSIONER YAKI: Well --

COMMISSIONER BRACERAS: Since the substance of the report isn't going to change that much, we might as well vote on it so you can start writing.

(Laughter.)
COMMISSIONER YAKI: I've already started writing.

(Laughter.)

COMMISSIONER BRACERAS: You can tell he's alive.

COMMISSIONER YAKI: I started writing two years ago.

VICE-CHAIR THERNSTROM: I was going to say how many years ago have you started writing.

(Laughter.)

COMMISSIONER YAKI: Okay.

VICE-CHAIR THERNSTROM: In fact, you don't need to see the changes, right?

(Laughter.)

COMMISSIONER KIRSANOW: That's true.

COMMISSIONER YAKI: I need to see the changes. I need to know which particular brand of evil I'm combating. Okay. So next week, the next two weeks are out. I'm going to travel most of those two weeks. So now I'm looking at the -- I can do the afternoon or evening of the 30th or the afternoon or evening of the 31st.

COMMISSIONER BRACERAS: The 30th is Thursday.

VICE-CHAIR THERNSTROM: No, it's a Monday.
COMMISSIONER YAKI: Monday.

COMMISSIONER BRACERAS: That's right. The 30th is a Monday. So if we did it after 2:00 p.m. Yaki time.

COMMISSIONER HERIOT: Those are the two days I can't do it.

COMMISSIONER BRACERAS: You can't. Okay.

COMMISSIONER HERIOT: Those are the only two days that I can't do it.

COMMISSIONER BRACERAS: And the only two days that he can do it.

VICE-CHAIR THERNSTROM: Commissioner Yaki, those are the only two days that Commissioner Heriot can't do it. Come up with a third one.

COMMISSIONER YAKI: Amazing how I could pick those two days. You can't do that day.

COMMISSIONER BRACERAS: What about Wednesday or Thursday of that week after 2:00 p.m.?

COMMISSIONER YAKI: That's going into the first week of August. I thought we're supposed to go into August.

COMMISSIONER BRACERAS: It's one week though. I mean, it's a bridge week.

COMMISSIONER YAKI: Wednesday is okay.
COMMISSIONER BRACERAS: The 1st, August 1st.

COMMISSIONER YAKI: Yes.

COMMISSIONER BRACERAS: Wednesday, August 1st what --

COMMISSIONER HERIOT: I'm still gone.

COMMISSIONER BRACERAS: You're gone?

COMMISSIONER HERIOT: That's my -- Those were the three days I can't do it.

COMMISSIONER BRACERAS: I'm sorry. I thought it was July. That's August.

CHAIRMAN REYNOLDS: Okay. How about the 2nd, Michael?

COMMISSIONER YAKI: The 2nd is okay.

VICE-CHAIR THERNSTROM: And the previous week is no good for you.

COMMISSIONER YAKI: The previous week I am on trial all week.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez.

COMMISSIONER MELENDEZ: That's fine.

CHAIRMAN REYNOLDS: Mr. Taylor.

COMMISSIONER TAYLOR: It has to be just afternoon. I'm traveling in the morning, but I'm back --
COMMISSIONER HERIOT: Yes, I'm traveling in the morning.

CHAIRMAN REYNOLDS: So afternoon of the 2nd?

COMMISSIONER TAYLOR: Eastern time.

CHAIRMAN REYNOLDS: 3:00 p.m. California time.

COMMISSIONER YAKI: That would be good. I won't have lunch. So I'll be grouchy. That will be good.

COMMISSIONER TAYLOR: 3:00 p.m. California time.

COMMISSIONER KIRSANOW: How will we discern the difference?

COMMISSIONER TAYLOR: 6:00 p.m. Eastern Time.

CHAIRMAN REYNOLDS: Yes. Okay.

COMMISSIONER BRACERAS: Thursday, August 2nd, 6:00 p.m. Eastern Time.

COMMISSIONER YAKI: With all this extra money, you can do a teleconference at Citronelle.

COMMISSIONER BRACERAS: At what?

COMMISSIONER YAKI: Citronelle, a restaurant in Georgetown. Anyway.
COMMISSIONER TAYLOR: Chik Fil A is the only one I know.

VICE-CHAIR THERNSTROM: I will say you are uniquely knowledgeable about expensive restaurants in Washington.

COMMISSIONER YAKI: Pretty much everywhere.

CHAIRMAN REYNOLDS: So that would get us the dissents would be due two weeks after that meeting. That puts us -- Where does that put us?

STAFF DIRECTOR MARCUS: August 15 which is a Wednesday.

CHAIRMAN REYNOLDS: Yes. So the dissents would be due on the 15th of August. Are we settled?

COMMISSIONER HERIOT: That's dissents and concurrences I assume.

CHAIRMAN REYNOLDS: Yes. I'm sorry.

COMMISSIONER BRACERAS: Whatever they're called.

COMMISSIONER HERIOT: Statements.

COMMISSIONER BRACERAS: All Commissioners statements.

V. PROGRAM PLANNING - UPDATE: BRIEFING ON

MINORITIES IN FOSTER CARE AND ADOPTION
CHAIRMAN REYNOLDS: All right. Moving right along, we are about to receive an update on the proposed briefing on minorities in foster case and adoption from the Staff.

STAFF DIRECTOR MARCUS: Thank you, Mr. Chairman. That is the briefing that's currently planned for August. I know there's been some sentiment about whether we should have a briefing in August or not. But on the assumption that we would be, we are trying to develop a panel of experts who will be balanced on both questions, both sides of the question of the appropriateness of a transracial adoption in the NEPA statute. The groups that we've reached out to include the Department of Health and Human Services, the North American Council on Adoptable Children, the National Association of Black Social Workers, the National Council for Adoption, Professor Rita Simon and the Children's Defense Fund as well as the Child Welfare League of America. Not all of these are available, but some of these groups are available and we are interested to see if there are further ideas. One commissioners suggested Professor Randall Kennedy and we will see if he is available for it as well.

CHAIRMAN REYNOLDS: Commissioner Braceras.
COMMISSIONER BRACERAS: Yes, two things. One, I was going to just suggest Professor Randall Kennedy who as many of you know is a professor at Harvard Law School and one of the foremost experts on this topic. I believe he testified in front of Congress on this topic and is written widely on it. He has written on occasion with Professor Elizabeth Bartholet who is also from the Harvard Law School on this topic. So she might be a possibility as well. But Randy Kennedy, I think, would be my first choice for this panel for a variety of reasons.

That being said, I think I would recommend maybe postponing this briefing because it seems like we will have -- Will we have the census report to discuss at this time?

STAFF DIRECTOR MARCUS: We will have the census report.

COMMISSIONER BRACERAS: And it seems like we have a large number of business matters and as I've repeatedly said, I think it's important to close out the briefings we've done and issue those reports before moving along and sort of accruing a larger and larger stockpile of things we haven't gotten out the door.
But I'm very interested in this topic and I really want to see it go forward. If there's any wiggle room though, I think maybe we should postpone.

CHAIRMAN REYNOLDS: Commissioner Thernstrom.

VICE-CHAIR THERNSTROM: Yes, I would like to make a formal motion to that effect. We're just much too behind and we keep having these briefings without the reports being issued in a timely fashion. I'm also extremely interested in the topic, but I think we should postpone it and I so move.

CHAIRMAN REYNOLDS: I'll second.

COMMISSIONER BRACERAS: Can somebody refresh me as to what we have on tap for September, October, November, December? I just don't have my calendar with me.

STAFF DIRECTOR MAMRcus: I believe September is a business meeting.

COMMISSIONER HERIOT: Yes.

COMMISSIONER BRACERAS: What, Michael?

COMMISSIONER YAKI: Pretty packed with briefings around that time.

STAFF DIRECTOR MARCUS: It's every other month. So I believe September and November are
business meetings and that October and December are briefings.

VICE-CHAIR THERNSTROM: But if we turn August into a business meeting, then presumably we might be able to turn September into the briefing.

COMMISSIONER BRACERAS: Correct. That's what I would recommend.

STAFF DIRECTOR MARCUS: We could just shift everything back a month.

COMMISSIONER TAYLOR: Yes.

COMMISSIONER HERIOT: (Inaudible.)

STAFF DIRECTOR MARCUS: I can't think of any problem with simply shifting everything back a month.

COMMISSIONER HERIOT: No, just flip them.

STAFF DIRECTOR MARCUS: I'm sorry. Flipping?

COMMISSIONER HERIOT: Flipping September with October or instead August rather than pushing everything back.

CHAIRMAN REYNOLDS: Business meeting in August and briefing in September.

STAFF DIRECTOR MARCUS: I guess we could. That would mean that we would be going a few months without a business meeting. So that would be the only
question of whether we would have a substantial amount of business backing up in the fall.

VICE-CHAIR THERNSTROM: But wait a minute. We now have August business meeting and October business meeting. Is that correct?

COMMISSIONER MELENDEZ: I have a question about -- Isn't October the Border Town Discrimination briefing scheduled?

STAFF DIRECTOR MARCUS: Okay.

CHAIRMAN REYNOLDS: I believe so.

COMMISSIONER BRACERAS: Yes, and I don't think anybody is suggesting changing that.

STAFF DIRECTOR MARCUS: Yes. October is Discrimination Against Native Americans and Border Towns. December is Minorities and Special Education. So if we pushed Minority Children in Foster Care and Adoption to September, we would have back-to-back briefings in September and October which means that we would not have a business meeting.

COMMISSIONER BRACERAS: That's okay. I mean, in my view, that's okay. I think it's more important to clear out some of the backlog now before we go further.

CHAIRMAN REYNOLDS: And I guess it will depend on if a pressing issue, business issue,
presents itself and at that time, we'll have the flexibility. Yes, we can deal with it.

VICE-CHAIR THERNSTROM: We can't go so many months without a business meeting.

COMMISSIONER BRACERAS: Well, we did for five years on this Commission. This is all new as of this year. The fact that we're getting these business meetings at all regardless of what order.

COMMISSIONER HERIOT: We can still do business after a briefing.

COMMISSIONER YAKI: I still think we should do some business meetings on Thursdays, but that's my own opinion.

CHAIRMAN REYNOLDS: No, I share it. I think that's --

COMMISSIONER BRACERAS: I'm for that.

COMMISSIONER HERIOT: I'm for that.

VICE-CHAIR THERNSTROM: I'm for that.

COMMISSIONER BRACERAS: Who is not for that?

COMMISSIONER HERIOT: Briefings on Fridays, business meetings on Thursdays.

CHAIRMAN REYNOLDS: Kirsanow.

VICE-CHAIR THERNSTROM: Michael, this is the 3rd thing we agree on today.
COMMISSIONER YAKI: If one more, then the apocalypses will come. The -- will have risen. The third seal will be broken.

COMMISSIONER KIRSANOW: You're making me nervous now.

CHAIRMAN REYNOLDS: So we're going to flip in sort of pushing the calendar back and if need be, we will have business meetings on Thursdays.

VICE-CHAIR THERNSTROM: Yes.

COMMISSIONER BRACERAS: Yes.

CHAIRMAN REYNOLDS: Okay. All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any in opposition?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: Motion passes unanimously.

COMMISSIONER BRACERAS: Also, I think you'll have better luck getting speakers in September than August when everyone is on vacation.

CHAIRMAN REYNOLDS: Yes. Good point.

STAFF DIRECTOR MARCUS: I guess the one thing I would say is that there is a potential that there would be a number of interesting speakers and I
would be interested to know if there is an objection
to having more than the usual four and the possibility
of having two panels rather than one if it worked out
that way.

COMMISSIONER BRACERAS: If it's balanced,
that's okay with me.

STAFF DIRECTOR MARCUS: Okay. If there
are no objections --

COMMISSIONER YAKI: If we could do that
with a business meeting on Thursday so they're not
wasting their time and at 9:30 a.m. hit the ground
running.

STAFF DIRECTOR MARCUS: And we appreciate
the flexibility.

VICE-CHAIR THERNSTROM: And the Thursday
business meetings I assume would not be in the
morning, but in the afternoon.

COMMISSIONER BRACERAS: Yes.

CHAIRMAN REYNOLDS: Okay. And I would
like to remind the Commissioners that in addition to
Jennifer if you have any recommendations for folks who
will be good on the panel please just send that
information to Ken.

VICE-CHAIR THERNSTROM: Just one comment
on that. I would think, Jennifer, that if Randy
Kennedy cannot do it, that we should try very hard to get Bartholet.

COMMISSIONER BRACERAS: I think just having Harvard Law School sort of raises the profile.

VICE-CHAIR THERNSTROM: I'm just saying she is the substitute for him.

COMMISSIONER BRACERAS: Right. Absolutely.

VICE-CHAIR THERNSTROM: If we cannot get him.

COMMISSIONER BRACERAS: Right and --

COMMISSIONER YAKI: This thing about Harvard Law School, I don't get it.

(Off the record comments.)

CHAIRMAN REYNOLDS: Okay. Next up State Advisory Committee Issues. I move that the Commission re-charter the Hawaii State Advisory Committee under this motion. The Commission appoints the following individuals to that committee.

COMMISSIONER HERIOT: Wait a minute.

COMMISSIONER BRACERAS: Wait.

COMMISSIONER HERIOT: Hold on. We never did the briefing report on HBCUs.

CHAIRMAN REYNOLDS: That was --

COMMISSIONER BRACERAS: We neither tabled
VICE-CHAIR THERNSTROM: We tabled that.

COMMISSIONER HERIOT: No, we tabled the census one.

COMMISSIONER KIRSANOW: There was no motion to do the HBCUs.

VICE-CHAIR THERNSTROM: I thought we earlier tabled that.

COMMISSIONER KIRSANOW: No, we didn't.

COMMISSIONER HERIOT: Because I had some things I wanted to say about that and we were doing census consent.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Do you want me to move --

CHAIRMAN REYNOLDS: No.

COMMISSIONER BRACERAS: Well, we have to take a vote one way or the other. We can't just --

VICE-CHAIR THERNSTROM: I thought we had at the outset of the meeting.

CHAIRMAN REYNOLDS: How about this? Let's vote to table a vote on it and just open it for discussions.

VICE-CHAIR THERNSTROM: Okay. That's fine.
COMMISSIONER HERIOT: What I wanted to do was to move to include a few additional studies.

CHAIRMAN REYNOLDS: Okay. I'm sorry. I forget about that. Okay. I move that we table the vote on the HBCU briefing report, but we open it up for discussion. Is there a second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes unanimously.

COMMISSIONER YAKI: Discussion, discussion. Sorry. I haven't eaten a freakin' thing.

COMMISSIONER KIRSANOW: Your freakin' thing.

COMMISSIONER YAKI: My freakin' thing, yes. Technology. There are like three different mute buttons and I'm using one versus the other and I'm punching them and wondering what's going on. Anyway, I would support it. I would support the motion to the
extent that discussion is limited. It does not take the place of further discussion particularly if further studies are being added because it was made clear early on that if it was going to be tabled. I'm not 100 percent prepared to do a full discussion on this report. So if there are discussions I would vote for it only on the reservation that additional discussion would be permitted at the time that we take a vote on it.

COMMISSIONER BRACERAS: Agreed.

COMMISSIONER HERIOT: That's fine.

COMMISSIONER YAKI: Okay.

VICE-CHAIR THERNSTROM: That's fine.

COMMISSIONER HERIOT: Yes. I just wasn't at the briefing and I read through the report and I thought of a couple of studies that I thought probably ought to go into the report and I just wanted to -- academic studies --

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER HERIOT: -- that I think would be useful to put in there. And I also thought that some of these studies are interesting in themselves and perhaps more interesting than the testimony that I saw and might be made part of the report. I don't know what sort of copyrights there
might be there, but that made sense to me anyway to put them into the report.

CHAIRMAN REYNOLDS: Okay. How about this? I guess we will wait until the reports are distributed. We'll take a look at them and we'll see how we want to incorporate these reports into the document, either the usual way or just --

COMMISSIONER HERIOT: Yes, I can just sort of get hard copy of documents and give them to whoever should receive them and then we can figure out what to do with them after everyone sees them and then allow time for comments and that.

COMMISSIONER BRACERAS: And we've tabled this until when? Is this something that we would try to address in August?

(Off the record discussion.)

(Pause.)

CHAIRMAN REYNOLDS: I suggest that we place this on the agenda for August, the August meeting.

COMMISSIONER BRACERAS: So right now, we are poised to discuss at the August meeting the census report and HBCUs.

CHAIRMAN REYNOLDS: Yes.
VICE-CHAIR THERNSTROM: And also the question of SACs that we've postponed. Is that not correct?

COMMISSIONER KIRSANOW: I think that's right.

COMMISSIONER HERIOT: The SACs are going to be on the teleconference, aren't they?

CHAIRMAN REYNOLDS: That's right.

VICE-CHAIR THERNSTROM: That's right.

Okay.

COMMISSIONER BRACERAS: So in August, we'll be discussing two reports.

VICE-CHAIR THERNSTROM: That's good.

COMMISSIONER KIRSANOW: And any additional business too.

COMMISSIONER HERIOT: And I wouldn't be surprised if the statutory report doesn't have certain aspects of it.

VICE-CHAIR THERNSTROM: And I would say that if other people have material that they wanted to add in addition to Commissioner Heriot's material that we should be looking at that as well. I think some meat on the bones of this report is necessary or additional meat.
CHAIRMAN REYNOLDS: Okay. Any other comments about the HBCU report.

**VI. STATE ADVISORY COMMITTEE ISSUES - HAWAII**

CHAIRMAN REYNOLDS: If that's the case, then we are up to the State Advisory Committees Issues. I move that the Commission re-charter the Hawaii State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based on the recommendations of the Staff Director: Michael Lilly as Chair, Amy Agbayani, Robert Alm, Kheng See Ang, Daphne Barbe-Wooten, Jennifer Benck, William Burgess, Vernon Char, Linda Colburn, Michelle Fujimori, Rubellite Johnson, James Kuroiwa, Thomas MacDonald, Kelahoa Pisciotta, I apologize for mangling folks names, also Paul Sullivan, Wayne Tanna and Jackie Young.

Under this motion, the Commission appoints Michael A. Lilly as Chairman as the newly re-chartered Hawaii State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?
COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here. I have some discussion on this issue. First of all, in the memorandum of the re-charter, it says that four of the five previous SAC members were interested for reappointment but only three were recommended and I think some of these people were historically on the committee before. So I was just wondering why not all of them were actually reappointed since their terms didn't expire.

STAFF DIRECTOR MARCUS: Yes, Commissioner, it's my understanding that of the five there were two others. One of them did not respond to our request and there was one whom I am not recommending based on my conversation with them because it was my conclusion that there were other potential members who could bring to bear a greater degree of information and value to the committee.

COMMISSIONER MELENDEZ: How long was that person on the committee before, the one you're not recommending?

STAFF DIRECTOR MARCUS: I don't recall. He was one of the Republicans. We can check. It hadn't been a very short period of time.

COMMISSIONER MELENDEZ: The other thing is did we get recommendations from other groups like the
Office of Hawaiian Affairs. It's my understanding they submitted a number of names and nobody off of that list actually was appointed.

STAFF DIRECTOR MARCUS: We received a very large number of recommendations from different groups. In fact, in my experience, we got far more recommendations from outsiders for the Hawaii SAC than for any of our other SACs and it's possible that we received substantially more for the Hawaii SAC than for everything put together. It was a very large volume and some of the people who were recommended to us were put on.

For instances, we got a recommendation from Senator Akaka who is in the packet and whom I'm recommending. There was another person recommended who was identified by Senator Inouye and I'm recommending that person. Also Representative Hirono had a person that was identified and I'm recommending that person. And also as I recall there were people identified by, and perhaps staff can correct me if I'm wrong, the Hawaii State Chapter of the NAACP, the Hawaii Disability Rights Center and the Grass Roots Institute who are in the charter package. If we were to include everyone who was recommended from all of the different groups we would end up having a
COMMISSIONER MELENDEZ: Okay. Could you tell me a little bit about Michael Lilly who you recommended as chair because many times, I personally always look for somebody that's been on the commission prior, one of the remaining board members to maybe you consider for chair. But this Mr. Lilly, I've never heard of or didn't really seem to have a lot of experience as to becoming a chair. Why was he chosen to be the chair?

STAFF DIRECTOR MARCUS: Michael Lilly was the Attorney General of Hawaii. We're really delighted that we have in this group some very distinguished people with a very strong background within the state and he was the Attorney General for the State of Hawaii. He also, I believe, was a Deputy Attorney General. He is a partner at a law firm within Hawaii. I believe it's called Ning, Lui and Jones and he does a substantial amount of civil rights and employment litigation currently. Having someone of that stature I think will help strengthen the credibility of the committee.

COMMISSIONER MELENDEZ: I guess the other issue or my concern is that because the issue in
Hawaii on the issue that came in front of this commission on the recognition of the Native Hawaiians, I think that what the Commission is charged with is trying to basically have balanced point of views as far as who sits on this committee as we look at that whole issue and what I find in looking at many of these people that are pointed to this committee or the proposed people that many of them have taken a real strong opposition against the Akaka bill, for example, but yet, I think there's, I'm not sure how many, eight or nine people that, even I think there are two or three that have actually mentioned the issue in their application to sit on the committee. Then if you look at the backgrounds of some of the other people, the other five or six people, they actually are basically against the Akaka bill. But when you look at the remaining people, you don't really find a position as far as supporting the Akaka bill. My main concern is that you have eight that are basically adamantly against the Akaka bill. You have the other eight people that really haven't taken a support position or anything. So you have no idea what those people are thinking. It's just my concern that it's really -- That's not the only issue I'm dealing with, but it just seems like it's a focal issue and there's a lot
of people on here that basically are kind of biased in
that position of this issue.

COMMISSIONER BRACERAS: I think I would
disagree. It seems from looking through the materials
that there are at least four people who are strong
advocates of the Akaka bill and maybe there are even
more. But I think there certainly are people on here
who will support it.

STAFF DIRECTOR MARCUS: It is my sense
that there are a number of people who support the
Akaka bill. That's not something that I asked all
members, but I would expect there to be a
substantially greater balance on that issue now than
there has been in the past and certainly people on
both sides and again, there are people here who were
recommended by Senator Akaka, Senator Inouye and
others who are supportive of the legislation.

COMMISSIONER MELENDEZ: So is there a
total of 16? Is that what you're saying?

STAFF DIRECTOR MARCUS: I believe it's 17.

COMMISSIONER MELENDEZ: So in your
opinion, you think it's pretty well balanced on that
issue.
COMMISSIONER BRACERAS: I don't think the Senator Akaka is going to be recommending people who are against his bill, do you?

COMMISSIONER MELENDEZ: I don't know. I'm just asking a question. Do we think it's balanced? I know there are a few people that you can presume that support the Akaka bill. I'm just saying do we think it's pretty well balanced that there's eight and eight.

CHAIRMAN REYNOLDS: Overall, I'm confident that the slate of candidates, their views represent the full spectrum of thought and policy positions. We have some folks who are passionately against the Akaka bill and others who are passionately for it. I'm sure that the debate will not be one-sided if that issue is debated within the SAC.

COMMISSIONER YAKI: I would disagree. I think that based on what Charles has said, in light of the members who were appointed that a majority of the members have already expressed outwardly a view against the Akaka bill. I'm just wondering why we would choose to have a committee that was already stacked publicly against the Akaka bill?

CHAIRMAN REYNOLDS: Well, Michael, we were -- The point that I made is that the full range of
views will be represented. You're making a different point. You will presume that this committee was put together primarily to have a majority of individuals who will be against the Akaka bill. That is not the case.

COMMISSIONER YAKI: That's exactly what I'm saying.

CHAIRMAN REYNOLDS: Yes, and I am disagreeing with your assertion.

COMMISSIONER YAKI: The numbers count and I think the numbers don't lie. I mean, we say we're always worry about this or that, but to me, there are no coincidences in politics when it comes to selecting people on the committee and when a clear majority have outwardly and publicly expressed their opposition to a position, I think that is not a coincidence that if it's a majority that has been selected.

CHAIRMAN REYNOLDS: Well, it's not a coincidence that we selected individuals who support it and there's not a coincidence that we selected people who oppose it. We believe that it's important that that SAC have a vigorous debate over the issue and the slate of candidates that are on the table right now ensures that we will have that vigorous
debate. It is not one-sided. It is not how it was in the past.

COMMISSIONER MELENDEZ: Okay.

Commissioner --

COMMISSIONER YAKI: It is not reflective of the general population of Hawaii. It is not reflective of the fact that there is a small band of people who are opposed to this and not get equal representation. The committee does not reflect the statewide view of the Akaka bill--

COMMISSIONER HERIOT: I've seen the polls. I say it does.

CHAIRMAN REYNOLDS: Actually, if we are just counting noses, we probably should add more people who opposed the Akaka bill. As Gail pointed out, there are a number of polls that show that a majority of Native Hawaiians oppose the Akaka bill.

COMMISSIONER HERIOT: Hawaiians.

CHAIRMAN REYNOLDS: What did I say?

COMMISSIONER HERIOT: Native Hawaiians.

COMMISSIONER YAKI: Those aren't all the recent polls I've seen. I'll have to take a look at them.
COMMISSIONER HERIOT: I published it in an article in the San Diego Union Tribune I think it was last year. You can check it.

COMMISSIONER YAKI: As I don't usually read that periodical, perhaps you can --

COMMISSIONER HERIOT: You probably can get it on the internet.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: I have a couple other questions.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: As far as the individual appointments. Referring to Jennifer Benck, B-E-N-C-K, when I looked at her application, basically I don't see that she has demonstrated an experience in civil rights adequate for this appointment or activism in civil rights issues. The only thing that she's done is that she worked for Mr. Burgess in reading this and we all know pretty much where he stands as he testified here as far as in opposition to the Native Hawaiian position. So I'm just saying the only thing I see about her is that she's an understudy to Mr. Burgess and I'm not sure why we would consider her as far as on this advisory committee.
CHAIRMAN REYNOLDS: Just briefly looking at her application, she spent some time working for a judge. She spent some time working at the Department of Justice. Apparently, she's a member of the Hawaii Chapter of the ACLU. She is, and I didn't know this, but apparently she's been involved in the debate over the Akaka bill.

COMMISSIONER HERIOT: She's also been active in child abuse issues.

COMMISSIONER MELENDEZ: The other point that I had a question about was James Kuroiwa. I'm not sure how to pronounce that. But my concern about Mr. James Kuroiwa is that he's made some really, I guess, really taken a challenging stance as far as what he says in his application. He says that "The leadership of the Native Hawaiians is not doing the Hawaiians justice." So he's already pretty biased on what he thinks of Native Hawaiians. He also says --

COMMISSIONER BRACERAS: But I think he is Native Hawaiian.

COMMISSIONER MELENDEZ: But what he also says is that --

COMMISSIONER BRACERAS: He's not biased on what he thinks of Native Hawaiians. He's biased on what he thinks of the leadership which he apparently
feels doesn't speak for him which is a legitimate position for a member of an ethnic group's take.

COMMISSIONER MELENDEZ: Okay.

COMMISSIONER HERIOT: And that's not biased to have an opinion.

VICE-CHAIR THERNSTROM: Yes. It's not biased to have an opinion. It's biased to the fact that people have opinions of people we are in general putting on SACs.

COMMISSIONER HERIOT: But the last thing we would want is somebody with no opinion on these things and that's a person that's out to lunch.

COMMISSIONER MELENDEZ: But the other part of this is he also says that he strongly opposes same sex marriages and provides special rights to homosexuals and says MSB medical and scientific replicated results that concludes that one is born homosexual and that it is not a choice. He takes really strong views.

VICE-CHAIR THERNSTROM: Do you take no strong views in life on matters that are controversial?

COMMISSIONER MELENDEZ: The other thing I'm saying is that it sounds like he is real prejudice against other people.
VICE-CHAIR THERNSTROM: It sounds like he has some strong views which many people hold. I don't happen to hold them myself, but I mean, what's wrong with strong views. You hold them. I hold them. Everybody at this table holds them and everybody we would want to be on a SAC has views strongly held.

CHAIRMAN REYNOLDS: Some of them we agree with. Some of them we don't. But I think that it's imperative that we have a full spectrum of debate, that all the voices are represented at the table.

COMMISSIONER MELENDEZ: My only concern is that would be his willingness to consider different points of view. He obviously knows his views of these issues and this is the Commission on Civil Rights. It's not like we're some --

VICE-CHAIR THERNSTROM: You could make that charge about any of us. I can make it about you. You can make it about me. It's -- I mean, people who are educated on these issues generally have points of view.

COMMISSIONER MELENDEZ: So that's my -- You know, those two and then the other thing is that with Mr. Lilly since I believe that the chair has an tremendous influence in issues, I still don't know where he stands since it seems to be that everybody
has taken a position on the Akaka bill which is Mr. Lilly's position?

VICE-CHAIR THERNSTROM: Is that a litmus test?

COMMISSIONER MELENDEZ: I'm just asking. I mean, we're talking about positions on this issue which is a major issue. It seems to be within this that will probably come up in this discussion as to why. So I'm just saying what's your position on Mr. Lilly since you probably have talked to him on that issue.

STAFF DIRECTOR MARCUS: As a general rule, I did not ask any of the candidates their position on that bill. It is my sense from things that people volunteered to me that there are a number of people who passionately support it and a number who passionately oppose it and I do not have any reason to believe that the representatives that you've made about the membership are correct. If some of the things that you have said are true, it's not known to me and I'm not sure what your source is.

With respect to Mr. Lilly, I'm not sure. I believe that he opposes the Akaka bill, but I don't think I know that for a fact because I didn't specifically ask him. And so I suppose I would want
to leave myself room to make a correction in the event that he says otherwise. But it is my belief that he is opposed and that many of the others are in support.

COMMISSIONER MELENDEZ: Okay. All right. Thank you.

COMMISSIONER BRACERAS: I just want to say I stand corrected that Mr. Kuroiwa appears to be Japanese although raised by Native Hawaiians. So I believe I misspoke before.

CHAIRMAN REYNOLDS: Okay. All in favor.

COMMISSIONER YAKI: I would just like to state for the record that I was reading the polls referred to by Professor Heriot and I think that the methodology of those polls -- the cleaner question then asked by the poll were present in the bulletin for the position of the Akaka bill --

COMMISSIONER HERIOT: Okay. Noted and logged.

COMMISSIONER YAKI: So I'll let you know.

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

(Chorus of ayes.)

COMMISSIONER YAKI: I move to severe Bill Burgess from the Hawaii State Advisory.
COMMISSIONER HERIOT: You're a little late on that, aren't you?

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, this is a somewhat awkward point to make that motion.

COMMISSIONER YAKI: I move to sever which is a privileged motion which does not require a second.

COMMISSIONER BRACERAS: But we were just voting.

COMMISSIONER HERIOT: We've already voted.

COMMISSIONER KIRSANOW: The vote has been conducted.

COMMISSIONER YAKI: When did you vote?

COMMISSIONER BRACERAS: Thirty seconds ago.

CHAIRMAN REYNOLDS: Hold it.

VICE-CHAIR THERNSTROM: There was a vote already?

(Laughter.)

(Off the record discussion.)

STAFF DIRECTOR MARCUS: Several people said aye. Nobody said nay. We're in the middle of the vote.

COMMISSIONER HERIOT: I completed my vote.
CHAIRMAN REYNOLDS: I see your point now.

Michael, the argument is that you were about 30 seconds late since some of the commissioners have already voted.

VICE-CHAIR THERNSTROM: It's not going to be anything worse in the outcome.

COMMISSIONER YAKI: I'm making a motion.

COMMISSIONER HERIOT: We really ought not be calling for motions in the middle of a vote.

CHAIRMAN REYNOLDS: Okay. All in favor of Commissioner Yaki's motion.


VICE-CHAIR THERNSTROM: There is a vote. You can't have suddenly a new motion.

COMMISSIONER YAKI: Here's the issue. The issue is that when your speaker is -- it hard for me to cut through going through the vote and I'm trying to get your attention. It's hard to do so on the phone.

(Off the record discussion.)

COMMISSIONER YAKI: When you're rolling through that vote, I started saying, "Hello. Hello. Wait. Wait. Wait." You had rolled through the vote before I could express what it was that I was trying to say. It's one of the crazy features of how these
speaker phones, these conference call phones tend to work. Sometimes depending on who is speaking or what mike is on, I can't get through.

So if you choose to stand on the fact that I was attempting to get through but could not because the volume was dominated by everyone else on the phone, I'm talking at the same time about getting the vote through, then please be my guest. But apparently there have been times when we have because other people have referred back, we have either redone the vote or refashioned the vote because someone missed it for five seconds because of the way these particular phones work. If you choose to stand on your ceremony and do it, so be it. But you do whatever you do. I'm just telling you the facts of how these phone systems tend to work.

CHAIRMAN REYNOLDS: Okay. Folks, options?

COMMISSIONER TAYLOR: Vote on his motion.

COMMISSIONER HERIOT: Right.

VICE-CHAIR THERNSTROM: Okay. We were in the middle of voting on another motion. I just want to know procedurally. I want to follow correct procedure here. So how is the fact that we were in the middle of voting already undone?
CHAIRMAN REYNOLDS: Okay. Let's call the parliamentarian. Emma, would you please give us some guidance here?

PARLIAMENTARIAN MONROIG: I think that you were already voting. So that the time has passed to making amendments to the vote.

CHAIRMAN REYNOLDS: Okay. All right. Michael.

COMMISSIONER TAYLOR: Listen. I vote on the prevailing side. Let's do it again. Can I get a second?

(Off the record comment.)

VICE-CHAIR THERNSTROM: Wait a minute.

COMMISSIONER HERIOT: I don't think you really can do anything other than take the no votes now. You can then make a motion which then has to be carried. It's not going to be one of those motions --

COMMISSIONER TAYLOR: No. That's why I'm making -- Right.

VICE-CHAIR THERNSTROM: We have to finish this vote and I just said --

COMMISSIONER TAYLOR: Okay. We finish the vote. Go ahead.

COMMISSIONER KIRSANOW: No, we haven't finished the vote. There was no --
CHAIRMAN REYNOLDS: Any objections?
(No response.)
CHAIRMAN REYNOLDS: Anyone in opposition?
COMMISSIONER MELENDEZ: I am.
CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Yes.
CHAIRMAN REYNOLDS: Do you oppose this motion?
COMMISSIONER YAKI: Which motion?
VICE-CHAIR THERNSTROM: Commissioner Yaki, we are trying to -- The Parliamentarian has just told us we have to go through this vote. It was already begun. We will then deal with --
COMMISSIONER HERIOT: You can make a motion to reconsider.
(Several speaking at once.)
COMMISSIONER MELENDEZ: Restate the motion. Maybe he's not clear what we're voting on.
VICE-CHAIR THERNSTROM: We are voting on accepting this SAC. You can then move after we have had this vote to reconsider.
COMMISSIONER YAKI: I can't move to reconsider because I won't be on the prevailing side.
COMMISSIONER TAYLOR: That's why I was saying I would be on the prevailing side and I'll make
the motion and you can second it. That's what I was saying.

COMMISSIONER HERIOT: That will do it.

CHAIRMAN REYNOLDS: Is that satisfactory?

COMMISSIONER HERIOT: It doesn't matter.

COMMISSIONER KIRSANOW: Just do it.

CHAIRMAN REYNOLDS: Commissioner Yaki, what's your -- How do you vote? Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: How do you vote?

COMMISSIONER YAKI: About what?

CHAIRMAN REYNOLDS: About the proposed --

Well, the state of candidates for the Hawaii SAC.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Is that a no?

COMMISSIONER YAKI: I think it's a no.

COMMISSIONER HERIOT: No. Okay.

CHAIRMAN REYNOLDS: Okay. All right. So please let the record reflect that Commissioners Melendez and Yaki voted against the motion. The remaining commissioners voted in support of it. The motion carries.

COMMISSIONER TAYLOR: I move to reconsider having been on the prevailing side.

CHAIRMAN REYNOLDS: Is there a second?
Commissioner Yaki, this is your opportunity.

Commissioner Yaki: I move to sever William Burgess from the State Advisory Committee for a separate vote.

Vice-Chair Ternstrom: Second.

Chairman Reynolds: Discussion.

Commissioner Yaki: Yes. I think that William Burgess as he testified before us testified in ways that were not completely truthful. I believe that he distorted facts. I would also move that we disapprove his nomination to the Hawaii SAC.

Chairman Reynolds: I'm sorry --

Commissioner Heriot: I think we have to vote on the motion to reconsider than to vote on for him to make that motion. But you can make your argument now as to the reason that we should reconsider.

Commissioner Yaki: We did the reconsideration which is why the Chair was asking me.

Commissioner Heriot: No, we haven't done the reconsideration vote. We have a motion to reconsider now and arguing why we should reconsider.
You can argue that we need to have this separate vote on Burgess.

CHAIRMAN REYNOLDS: There was a second. There was a motion for reconsideration.

(Several speaking at once.)

COMMISSIONER YAKI: Part of the problem is doing over the phone and the part of the fact is that I can't get there because I had another problem I had to deal with is the fact that things get garbled in the transmission especially when more than one person is talking. I could not determine whether or not the chair had said that the motion for reconsideration had passed and then we had a further motion, especially when you ask me when I'm not part of the motion for reconsideration.

But if we're talking about the motion for reconsideration, Professor Heriot, then I think that we need to reconsider this because we need to consider whether or not William Burgess is worthy of sitting on the State Advisory Commission given the fact that even though he was a panelist at our hearing. One of the reasons why we stripped the statement of facts and findings from the Hawaiian statutory report was because much of what he said simply did not comport with any truth as is known by the history books and I
think a person of that caliber shouldn't be on the state advisory committee. Hence the need to reconsider this vote so we can sever him for a separate vote and for removal from the SAC.

CHAIRMAN REYNOLDS: Do you have anything else to add?

COMMISSIONER YAKI: Not that I know of.

CHAIRMAN REYNOLDS: Do you have anything to add on the merits?

COMMISSIONER YAKI: We're not on the merits. We're talking about a motion for reconsideration.

CHAIRMAN REYNOLDS: Mr. Melendez.

COMMISSIONER MELENDEZ: I agree with Commissioner Yaki. I think we need to remove Mr. Burgess.

COMMISSIONER KIRSANOW: I'm curious as to what specific inaccurate or untruthful statements he made during the hearing.

COMMISSIONER YAKI: I would say that the references to the -- one thing that I would add; that there were several statements made with regard to the reports issued by the U.S. Government regarding their findings regarding the overthrowing of Queen Lili'uokalani and I believe that if I recall correctly
he was -- He kept on citing this so-called, I can't remember what it was, Stanford or some other kind of report that most historians find to be incredible at best in terms of its captured rendition of what was going on or wasn't going on during the time of the overthrow of Queen Lili-uokalani.

CHAIRMAN REYNOLDS: Is that your sole basis for wanting him off the -- for not including him on the SAC?

COMMISSIONER YAKI: Since we're not going to knock someone off because of the political viewpoints, I think that integrity is certainly something that I would have concerns about.

CHAIRMAN REYNOLDS: Well, it's not been demonstrated, at least, to my satisfaction that he has intentionally misstated any facts and --

COMMISSIONER YAKI: Then I would ask that we hold his approval until next meeting at which time I will present to you a document I believe were his misstatements of fact at the time.

CHAIRMAN REYNOLDS: Any other comments?

(No response.)

CHAIRMAN REYNOLDS: Okay. At this point, let's vote. All in favor of the motion -- Which motion are we talking about now?
COMMISSIONER HERIOT: We have to vote on the motion to reconsider.

CHAIRMAN REYNOLDS: Okay. All those in favor of the motion to reconsider please say aye.

(One aye.)

CHAIRMAN REYNOLDS: All voting against it?

(Chorus of nays.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: Let the record reflect that --

COMMISSIONER HERIOT: Jennifer Braceras has stepped out for a moment. So she did not vote.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: And I'm going to abstain having made the motion. I don't want to vote against it. So I'll just abstain.

CHAIRMAN REYNOLDS: Let the record reflect that Commissioners Yaki and Melendez voted in favor of the motion. Commissioner Kirsanow, Vice Chair Thernstrom and the Chairman voted against and Commissioner Heriot voted against it and let the record reflect that Commissioner Braceras was absent from the vote.
VICE-CHAIR THERNSTROM: She could add her vote at this point.

COMMISSIONER TAYLOR: And Taylor abstains.

VICE-CHAIR THERNSTROM: The question is --

(Off the record comments.)

CHAIRMAN REYNOLDS: Okay. And Commissioner Taylor abstained. So on to Indiana.

COMMISSIONER YAKI: Mr. Chair.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Before we move to Indiana, (1) I'm going to ask that on the agenda for August that I be allowed to make a presentation on the SAC membership; (2) I would like to be put on the agenda that I be appointed to the California SAC.

CHAIRMAN REYNOLDS: I'm sorry. Please repeat your statement.

COMMISSIONER YAKI: I would like a discussion on the August agenda of the criteria for SAC membership (1) and (2) I would like to be put on the agenda, a motion for myself to be appointed to the California State Advisory Committee.

CHAIRMAN REYNOLDS: Okay. The second issue, I don't think you need a motion for that. The first, do you want to discuss SAC issues in general? Do you want to revisit the vote that we just had?
COMMISSIONER YAKI: I just want to talk about SAC membership criteria in general.

VICE-CHAIR THERNSTROM: But you, in addition, as a separate matter want to be on the California SAC.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, just make a motion to amend the agenda at the next meeting and we'll deal with it then.

COMMISSIONER YAKI: We haven't put the agenda together. So why should I make a motion to amend the agenda? I'm asking that I be made a part of the agenda.

COMMISSIONER BRACERAS: Just take it under advisement and move on.

COMMISSIONER YAKI: We've not set the agenda for August yet.

CHAIRMAN REYNOLDS: Well, actually, we --

COMMISSIONER BRACERAS: Take it under advisement. Move on.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, I'll take it under advisement and I will get back to you.

VI. STATE ADVISORY COMMITTEE ISSUES - INDIANA SAC

CHAIRMAN REYNOLDS: Okay. I move to re-charter the Indiana State Advisory Committee. Under
this motion, the Commission appoints the following individuals to that committee based on the recommendations of the Staff: Paula Parker-Sawyers, Teri Cardwell, Paul Chase, Elizabeth Cierznick, Stephanie DeKemper, Christopher Douglas, Susan Fuldaeur, David Hoffman, Jeffery Kimmell, Tony Kirkland, Patti O'Callaghan and Caprisheus Oliver. Out of this motion, the Commission appoints Paula Parker-Sawyers as the Chairperson of the newly re-chartered Indiana State Advisory Committee. These members will serve as uncompensated government employees.

Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

VICE-CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. I have discussion. Commissioner Melendez here.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: My understanding is there is only two people that were reappointed from the old advisory board. Is that right?
STAFF DIRECTOR MARCUS: I believe that's correct.

COMMISSIONER MELENDEZ: Okay. Elizabeth Cierznick, I don't find a lot of demonstrated interest in civil rights in her application also and could you explain why she was actually put on the board?

STAFF DIRECTOR MARCUS: Let me look at her paperwork.

(Off the record discussion.)

COMMISSIONER MELENDEZ: She may not have a complete application also. We're looking through it and it looks like there may be a page or two missing or is that it?

STAFF DIRECTOR MARCUS: Ms. Cierznick is an experienced attorney. She also does lobbying work and is apparently knowledgeable about the state and local government within that state. She has a legal background as a summa cum laude graduate of Indiana University School of Law. She has particular expertise involving education issues. For instance, she has represented Indianapolis Public School District, the largest public school district in the state. She also has significant involvement within the community including with the Urban Mission YMCA,
the Girl Scouts and other organizations within the state.

COMMISSIONER YAKI: That means, of course, she would recuse herself from petty any school related issues that Ms. Cierznick would consider.

COMMISSIONER BRACERAS: Do the schools recuse themselves?

COMMISSIONER YAKI: She represents them for pay. She represents the school district and other clients. I assume that any client which she represents for pay that could be an issue before the SAC she would have to recuse herself.

COMMISSIONER BRACERAS: But that would also have to be true of people for the NAACP or other groups would have to recuse themselves on issues that those interest groups opine on because if they work for them and are paid by them they should recuse themselves.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: These decisions should be made on a case by case decision. We need to have a concrete set of facts before us before we decide, before the SAC decides, when a recusal is appropriate.

COMMISSIONER TAYLOR: And we are seeking to reappoint the chair. Right?
STAFF DIRECTOR MARCUS: The chair as I recall is term limited and we are seeking to name as chair a person who has previously served as a member of the committee.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes. Christopher Douglas, can you tell me about him? I don't see a lot of experience there also.

STAFF DIRECTOR MARCUS: Mr. Douglas does have significant civil rights experience as I understand it involving civil rights within the State of Indiana. He was involved in advocating on behalf of either hate crimes or related legislation within the legislature. He was particularly concerned as I understand it with gay and lesbian rights during that discussion but has been more broadly active in the community. He --

COMMISSIONER BRACERAS: He founded the Rainbow Chamber of Commerce as well as the Indiana Log Cabin Republicans. Is that good enough?

STAFF DIRECTOR MARCUS: He also is the founding steering committee member of the Interfaith Coalition on Nondiscrimination and I believe he has additional civil rights background beyond what's here.
He was a policy director of Justice, Inc. which is a civil rights organization within the State of Indiana.

COMMISSIONER MELENDEZ: Okay. And the last one, Caprisheus Oliver.

COMMISSIONER KIRSANOW: She was just added arbitrarily.

COMMISSIONER HERIOT: We liked her name.

(Laughter.)

COMMISSIONER BRACERAS: It was capricious decision.

STAFF DIRECTOR MARCUS: I can't say that I have a -- I can't say that I recall speaking with her or have much in-depth recollection. She does describe her participation in the National Association of Black Social Workers and other work with social workers and --

CHAIRMAN REYNOLDS: She's worked with the disability community.

STAFF DIRECTOR MARCUS: That's right.

CHAIRMAN REYNOLDS: Also she has been involved with the Indianapolis Public School System.

STAFF DIRECTOR MARCUS: She's involved with people including young people diagnosed with mental health issues and has other knowledge and involvement dealing with mental disability including
schizophrenia and especially dealing with youth with schizophrenia or dual diagnoses.

COMMISSIONER MELENDEZ: Kind of weak to me, but anyway --

COMMISSIONER BRACERAS: How so?

COMMISSIONER MELENDEZ: Well, I don't know. Because I was looking more for civil rights experience. Some people are --

COMMISSIONER BRACERAS: Disability rights aren't civil rights to you because that --

COMMISSIONER MELENDEZ: Some people work as social workers and all those. That's their occupation but not necessarily that they're civil rights advocates.

COMMISSIONER BRACERAS: I got the impression she was a disability rights advocate.

VICE-CHAIR THERNSTROM: Also there is a problem here of what you would call an advocate and I would call an advocate. You probably would not call me an advocate. I would call me an advocate. So we're getting into kind of semantic problems here.

COMMISSIONER YAKI: I'd call you a zealot, Abby.

VICE-CHAIR THERNSTROM: I'll take that as a compliment, Commissioner Yaki.
COMMISSIONER YAKI: You should.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any abstentions?

Objections?

(Two opposed.)

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

VI. STATE ADVISORY COMMITTEE ISSUE—PENNSYLVANIA SAC

CHAIRMAN REYNOLDS: Next up we have -- I move to re-charter the Pennsylvania State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based on the recommendations of the Staff Director: James Frazier, Richard Bockol, Imja Park Choi, Craig Hymowitz, Steven Irwin, David Porter, Faye Ritter, William Rothman, Anthony Stevens-Arrouo, Connie Tarr and Cameil Williams.

Under this motion, the Commission appoints James Frazier as the chairperson of the newly re-chartered Pennsylvania State Advisory Committee. These members will serve as uncompensated government
employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: This is Pennsylvania?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: Right. The only -- David Porter doesn't look like he has a lot of civil rights advocacy even though he's had a couple of cases, occasional cases, but that's about it.

STAFF DIRECTOR MARCUS: Mr. Porter is an experienced attorney who as I recall has --

COMMISSIONER KIRSANOW: Which firm was he in? Buchanan Ingersoll.

STAFF DIRECTOR MARCUS: Buchanan Ingersoll, yes.

COMMISSIONER KIRSANOW: I know Mr. Porter and actually debated with him. He's done considerable amount of work with respect to 14th Amendment cases, school or I'm sorry. Collegiate level affirmative action cases. He -- My understanding is --
COMMISSIONER YAKI: Could you get closer to your microphone because I can't hear you.

COMMISSIONER KIRSANOW: He's done as I recall considerable amount of litigation with respect to 14th Amendment cases. If I'm not mistaken, if I recall this correctly and my recollection is I debated him a few years ago and if his bio is as I presume, he also clerked for Judge Rehnquist.

COMMISSIONER YAKI: Someone is rattling papers and I cannot hear a word that you're saying.

STAFF DIRECTOR MARCUS: He clerked for Judge Smith.

COMMISSIONER KIRSANOW: Okay. He's with Buchanan Ingersoll. Correct?

STAFF DIRECTOR MARCUS: That's correct.

COMMISSIONER KIRSANOW: I'm pretty sure this is the guy I'm talking about. I'm not sure if he left that off, but I understood him to have considerable civil rights experience.

STAFF DIRECTOR MARCUS: Yes. He handled civil rights cases from both the plaintiffs and defendants cases as well as election law matters and Commissioner Kirsanow is correct that his litigation has included 4th Amendment issues.
COMMISSIONER BRACERAS: Fourteenth he said.

COMMISSIONER YAKI: Fourteenth.

STAFF DIRECTOR MARCUS: Fourteenth, I meant to say.

CHAIRMAN REYNOLDS: And he's also part-time at the Justice Department on a voting rights act project.

COMMISSIONER YAKI: Which one?

CHAIRMAN REYNOLDS: That I don't know.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: The last one is Faye Ritter. Even though it says that she was a member of the NAACP until 1989. It doesn't appear that she's done anything, any activity, in the last 18 years.

STAFF DIRECTOR MARCUS: I believe she's a member of the Hispanic Forum as well as National Association of Women in Business and National Conference for Christians and Jews where she serves on the board of directors. So she has continued to do work in issues that are related to the committee.

COMMISSIONER MELENDEZ: Okay. That's all I had.
CHAIRMAN REYNOLDS: Okay. All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any abstentions?

(One abstention.)

CHAIRMAN REYNOLDS: I'm sorry. Commissioner Yaki, you abstained?

COMMISSIONER YAKI: I'm voting no.

CHAIRMAN REYNOLDS: Okay. And --

COMMISSIONER MELENDEZ: Yes, I'll vote no.

CHAIRMAN REYNOLDS: Okay. Please let the record reflect that Commissioners Yaki and Melendez voted against the motion. The remaining commissioners voted for it. The motion passes.

At this point, we will go into the closed portion of the meeting. So I would ask anyone who is not an employee of the Commission to please leave the room.

(Off the record discussion.)

STAFF DIRECTOR MARCUS: I believe that there is a motion that will be made in public for the record.

COMMISSIONER BRACERAS: This is an Executive session.

CHAIRMAN REYNOLDS: Off the record.
(Whereupon, at 12:40 p.m., the above-entitled matter recessed to reconvene at 1:12 p.m. the same day.)

CHAIRMAN REYNOLDS: On the record.

If there are not further questions or comments, pursuant to 45 CFR 702.54, the Staff Director within one working day of this vote, one business day of this vote, shall make publicly available in a place easily accessible to the public a written copy of this vote reflecting the vote of each commissioner. Okay. Am I done? We can adjourn this meeting.

COMMISSIONER KIRSANOW: Let's go on the record. I just want to correct the record with respect to the question that Mr. Melendez raised with David Porter of the Pennsylvania SAC. I did debate him, not that that disqualifies him, but I was mistaken as to the person who did that. He actually set up the debate.

CHAIRMAN REYNOLDS: Okay. All right, folks. We're done. Off the record.

(Whereupon, at 1:13 p.m., the above-entitled matter was concluded.)