U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC COMMISSION MEETING

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MONDAY, JULY 28, 2008

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The meeting convened via telephone at 10:00 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

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

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
EVELYN BOHOR
DEBRA CARR, Associate Deputy Staff Director, OSD
MALEE CRAFT
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, Admin. Services and Clearinghouse Division
ROBERT LERNER, Assistant Staff Director for OCRE
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
KARA SILVERSTEIN
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD
Roll Call

I. Approval of Agenda

II. State Advisory Committee Issues

A. Arkansas SAC

B. Wisconsin SAC

III. Program Planning

A. DOT Guidance Regarding Disadvantaged Business Enterprise (DBE) Program

B. Discussion of ABA Documents Held By The Department of Education

IV. Management and Operations

A. Feasibility of Hiring Temporary Special Assistants

B. Discussion of FY2008 Spending Options

C. Update on Statutory Report

V. Adjourn
10:07 a.m.

CHAIRMAN REYNOLDS: On the record. Okay. This is Chairman Reynolds. It is approximately 10:08 a.m. EST on July 28, 2008. This is a telephonic meeting of the U.S. Commission on Civil Rights with our Commissioners participating from different locations.

ROLL CALL

CHAIRMAN REYNOLDS: I will call the name of each Commissioner in order to determine if there is a quorum to hold a meeting.

Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I'm here.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Here.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Present.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Here.

CHAIRMAN REYNOLDS: Commissioner Yaki.

(No response.)

CHAIRMAN REYNOLDS: Commissioner Taylor.
COMMISSIONER TAYLOR: Here.

CHAIRMAN REYNOLDS: Is the Staff Director present?

STAFF DIRECTOR DANNENFELSER: Present.

CHAIRMAN REYNOLDS: And is the court reporter on the line?

COURT REPORTER: Yes, Mr. Chair.

CHAIRMAN REYNOLDS: Okay. The meeting will come to order. If a commissioner wants to make a statement or ask a question, please identify yourself first. Whenever it's necessary to take a vote, the following procedure will be followed. I will call out the name of each commissioner. The commissioner should then answer yes, no or abstain. After the voting is finished, I will read out how each of you has voted in order to ensure that the tally is correct.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: The first item is the approval of the agenda. I move that we approve the agenda. Is there a second?

COMMISSIONER HERIOT: Second.

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: That was
Thernstrom seconding.

COMMISSIONER MELENDEZ: Commission Melendez here. On the agenda, could I -- Is it possible to have an update on the statutory report as to where we are since we're going to be voting on it on August 19th and we haven't received a final copy?

CHAIRMAN REYNOLDS: Marty.

STAFF DIRECTOR DANNENFELSER: Yes. Thank you very much. I actually would like to propose that we consider the statutory report at the September 12th meeting rather than the August 19th meeting and what I would propose to be the following time line.

COMMISSIONER MELENDEZ: That's not on the agenda.

CHAIRMAN REYNOLDS: Marty, are you in a position to discuss this if we put it on the agenda?

STAFF DIRECTOR DANNENFELSER: Yes.

CHAIRMAN REYNOLDS: Okay. So we'll just include it under Management and Operations.

STAFF DIRECTOR DANNENFELSER: Okay.

CHAIRMAN REYNOLDS: Update on statutory report. Okay.

VICE CHAIR THERNSTROM: When is the September meeting? Excuse me for asking, but I'm not at my desk.
STAFF DIRECTOR DANNENFELSER: September 12th.

CHAIRMAN REYNOLDS: Commissioner Thernstrom. This is Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes, this is Vice Chair Thernstrom. I'm sorry. I'm not at my desk. Can you tell -- can somebody tell me when the September meeting is?

STAFF DIRECTOR DANNENFELSER: It's September 12th. This is the Staff Director.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Okay. Well, if that's the case, then, folks, vote on the agenda as amended. All those in favor -- I'm sorry. Commissioner Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: I'm sorry. I don't think it's been amended. I believe that all the Staff Director is doing is including that item in his report.

CHAIRMAN REYNOLDS: Okay. Well, then let's vote on the original agenda.

STAFF DIRECTOR DANNENFELSER: But there's not an item for the Staff Director's report on this particular agenda.

VICE CHAIR THERNSTROM: I see. Okay.
STAFF DIRECTOR DANNENFELSER: It's appropriate to either include it under Program Planning or Management and Operation.

VICE CHAIR THERNSTROM: All right. In any case, it goes under either one.

CHAIRMAN REYNOLDS: This is Commissioner Reynolds. I have it under Management and Operation.

STAFF DIRECTOR DANNENFELSER: Okay. Then I guess you want to vote on that on amending the agenda to that effect.

VICE CHAIR THERNSTROM: It doesn't need to be amended then, I believe.

CHAIRMAN REYNOLDS: Okay. Well, then let's vote on the matter of the original agenda. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki?
I'm sorry. Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.


II. STATE ADVISORY COMMITTEE ISSUES

CHAIRMAN REYNOLDS: Okay. Next up is State Advisory Committee issues. I move that the Commission recharter the Arkansas State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based on the recommendations of the Staff Director: Robert Costrell, Jonathan Butcher, Rose Jones, Melissa McJunkins Duke, Julie Greathouse, Andre Guerrero, Terry Hollingsworth, Gary McHenry, Brian Vandiver, Ernestine Weaver and Joseph Wood. I also move that the Commission reappoint Mr. Costrell as the chair of this rechartered Arkansas State Advisory Committee.

All the members will serve as uncompensated government employees and the Commission appreciates the hard work that they will no doubt contribute to this state advisory committee. Under this motion, the Commission authorizes the Staff Director to execute the appropriate pay for the
appointment. Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here. My same question as before as to I had sent a letter into the Staff Director a few weeks back or a month or so ago having to do with the number of organizations that were actually contacted to solicit people for the SAC. Could he comment as to what organizations were contacted on this Arkansas SAC?

CHAIRMAN REYNOLDS: Marty.

STAFF DIRECTOR DANNENFELSER: Yes. There was outreach to the Office of the Governor of Arkansas, to the Arkansas Democratic Party, to a number of other groups that are active around the state. So those were the main ones. Probably not the same range of groups in that particular case as they have been in some other states, but I think that tends to vary from state to state. We did receive three recommendations from the Arkansas Governor's Office and he's the Democratic governor and also the Arkansas Democratic Party gave us a nomination that is one of the people that was nominated for the process. The Arkansas -- Several commissioners have given recommendations as well in that process for Arkansas.
COMMISSIONER MELENDEZ: Okay. The other question, you know, I have a real concern with how these SACs are made up. Also my understanding is that three of the 12 members selected are faculty members of the same department at the University of Arkansas, the Department of Education. I think that's Butcher, Costrell and Stotsky. The question would be why would we do that.

VICE CHAIR THERNSTROM: Stotsky is not on the list.

COMMISSIONER MELENDEZ: Who is not on the list?

VICE CHAIR THERNSTROM: Stotsky is not the list.

STAFF DIRECTOR DANNENFELSER: Stotsky was drawn from the list.

COMMISSIONER MELENDEZ: Okay. But that would be a concern of actually those coming out of the same department.

VICE CHAIR THERNSTROM: Well, there are now two people out of, this is Thernstrom, two people out of the same. Surely, that's not a source of concern, two people.

COMMISSIONER MELENDEZ: I mean, out of the same department in the whole State of Arkansas.
VICE CHAIR THERNSTROM: Yes. That's only two people.

COMMISSIONER MELENDEZ: Okay. It's my concern.

CHAIRMAN REYNOLDS: Any other questions? Comments?

COMMISSIONER MELENDEZ: And there are two members from the same law firm of Cross Gunter & Witherspoon. Is that right?

STAFF DIRECTOR DANNENFELSER: I believe that's correct.

COMMISSIONER MELENDEZ: Okay. It's just my concern as usual of a real narrow selection in a broad state like Arkansas for the record.

CHAIRMAN REYNOLDS: Okay. Well, Commissioner Melendez, one of the important goals that we strive for is ideological diversity and diversity of skill sets. I think that with respect to those two criteria that we're in good shape.

STAFF DIRECTOR DANNENFELSER: We also -- This is the Staff Director. We also have an individual who is a labor and employment attorney who teaches disability law and employment. So disability is another area that we've been wanting to make sure that we have covered with SAC members.
COMMISSIONER YAKI: Which side of the bar
are they on in terms of the employment and disability
law?

CHAIRMAN REYNOLDS: I'm sorry. Who was
speaking?

COMMISSIONER YAKI: Yaki.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: Commissioner Yaki,
we didn't know you had joined us.

STAFF DIRECTOR DANNENFELSER: Well, we
have Ernestine Weaver is the first woman and the first
African American to serve as the District Organizing
Specialist for the AFL-CIO as one of the members.

COMMISSIONER YAKI: That's not what I was
talking -- I was talking about whoever that professor
was.

CHAIRMAN REYNOLDS: I believe that we were
talking about individuals who worked at law firms.

COMMISSIONER YAKI: Right. Whoever? The
law firm person? Is that the same person you just
talked about, Martin?

STAFF DIRECTOR DANNENFELSER: I'm not sure
which one, which law firm person, was raised.

COMMISSIONER YAKI: You were talking about
you had a law firm person who taught on --
STAFF DIRECTOR DANNENFELSER: Actually no. There were two different people there. I'm sorry.

COMMISSIONER YAKI: Tell me. Does she represent management or does she represent --

STAFF DIRECTOR DANNENFELSER: Okay. The disability person and the labor person are two different people.

COMMISSIONER YAKI: Okay. Disability --

STAFF DIRECTOR DANNENFELSER: One is a labor and employment attorney/adjunct professor at the University of Arkansas, Little Rock Law School. That's Brian Vandiver and Ernestine Weaver is the labor union organizer for AFL-CIO.

COMMISSIONER YAKI: Okay. Does Brian represent plaintiffs or defendants in --

COMMISSIONER HERIOT: Or both? You know, I don't think you can suggest that every lawyer that has a practice with disability law does one side or the other. Frequently, in a plane of law, they do both.

COMMISSIONER YAKI: Well, frequently, someone who practices in a law firm, yes, they do.

CHAIRMAN REYNOLDS: Okay. Let's --

COMMISSIONER YAKI: There are management side firms and there are plaintiff side firms.
CHAIRMAN REYNOLDS: Commissioner Yaki, hold on.

COMMISSIONER YAKI: I would just like to know whether or not --

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: -- he practices more management type --

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: What?

CHAIRMAN REYNOLDS: Commissioner Yaki.

Marty, are you able to answer his question?

STAFF DIRECTOR DANNENFELSER: I don't have --

CHAIRMAN REYNOLDS: If you can't, that's fine.

STAFF DIRECTOR DANNENFELSER: I don't have what side he practices on. I do have a number of things about his background though.

CHAIRMAN REYNOLDS: That's fine. We're not able to answer your question at this time.

COMMISSIONER YAKI: Oh, come on. That's ridiculous. How can you not answer that? How can you not know that question? How can you not know whether he defends --

CHAIRMAN REYNOLDS: Commission Yaki.
COMMISSIONER YAKI: -- companies in suits or not.

CHAIRMAN REYNOLDS: Commissioner Yaki, I don't believe that --

COMMISSIONER YAKI: That's just totally ridiculous, Mr. Chair.

CHAIRMAN REYNOLDS: Commissioner Yaki, you are questioning someone's integrity. Quite frankly, I don't understand why you would do that over this type of issue.

COMMISSIONER YAKI: No, it's not over integrity.

CHAIRMAN REYNOLDS: If you would like the information, we will provide it to you. We cannot provide it to you at this time.

COMMISSIONER YAKI: I was simply wondering which side he practiced on. That's --

CHAIRMAN REYNOLDS: We are aware of your question and we've answered it.

COMMISSIONER YAKI: It's not a question of integrity. Hear me out. It is not a question of integrity. It was a practice question. That's all. When we talk about --

VICE CHAIR THERNSTROM: Commissioner Yaki.

COMMISSIONER YAKI: -- ideological
diversity, I just wanted to know which side he tended to fall in. Did he tend to --

VICE CHAIR THERNSTROM: Commissioner Yaki.

COMMISSIONER YAKI: -- represent people who felt violated under the ABA.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Or did he represent people who --

CHAIRMAN REYNOLDS: Commissioner Yaki, we understand what you want. We are unable to provide you with an answer at this time.

COMMISSIONER YAKI: Well, I find then that the idea that that is an example of ideological diversity a pretty weak argument.

COMMISSIONER KIRSANOW: Kirsanow here. To the extent we can discern your ideology I note that Ms. McJunkins is a Democratic and Mr. Vandiver is a Republican. Now that doesn't necessarily mean that they fall on opposite sides. But I think that's the extent to which we have any indication as to where they stand.

VICE CHAIR THERNSTROM: And I would like to say for the record that I do not think it is appropriate to label the Staff Director's answer to any question as ridiculous. I just don't like that
name-calling on Commission meetings and I would prefer that a commissioner found another way of expressing discontent.

COMMISSIONER YAKI: Well, I did not call the Staff Director ridiculous. I called his answer ridiculous.

CHAIRMAN REYNOLDS: Aren't we splitting hairs?

COMMISSIONER YAKI: Okay. Well, should I say it's incomplete?

CHAIRMAN REYNOLDS: Folks, let's move on. I don't think that there's any additional benefit for continuing this conversation. Any other questions or comments?

COMMISSIONER MELENDEZ: Yes, Commissioner Melendez here. I want to know why did the Staff Director select Mr. Costrell to the chair when there were a couple of returning members, Guerrero and McHenry, and given the fact that Costrell has only lived in Arkansas for less than two years.

STAFF DIRECTOR DANNENFELSER: Well, there were many very good, well qualified people for the SAC and we just felt that his background as an educator which is an important area that we are looking for was very strong and he has a great deal of expertise both
in education and the whole area of standards. So we
thought that he would be very -- a good person to have
there.

VICE CHAIR THERNSTROM: Let me add --

STAFF DIRECTOR DANNENFELSER: There would
have been a number of people, several people, that
would have been good. We had a number of very good
people to choose from.

VICE CHAIR THERNSTROM: Let me add a
sentence on that. Robert Costrell is a first rate
economics who was a professor of economics and I think
somebody with strong economic skills is always well on
the Commission itself and on SACs. We are very lucky
to have people of that quality who decide to devote
uncompensated time to a SAC.

STAFF DIRECTOR DANNENFELSER: And he has a
very strong record as an education reformer who's been
focused on closing achievement gaps which is certainly
an area for resolving disparities by race and other
areas.

CHAIRMAN REYNOLDS: Okay. Any other
comments or questions?

COMMISSIONER MELENDEZ: Just my final
comment. Commissioner Melendez. I don't think there
is any uniformity in how regional directors have a
hand in nominating SAC members and many times the selections appear politicized and don't reach out to the civil rights community, meaning that I gave a list of a number of organizations that should have been contacted, ACL National Office, Asian American Justice Center, the National Congress of American Indians, the National Council of La Raza, National Partnership for Women and Families, National Urban League, National Women's Law Center, Organization of Chinese Americans. You know, the last time we had talked about this, I don't think any of those had been contacted and I think we have a very narrow selection process.

CHAIRMAN REYNOLDS: Commissioner Melendez, why do you believe that none of these organizations have been contacted? I don't believe that we --

COMMISSIONER MELENDEZ: Because I just heard the Staff Director saying that he contacted the Governor's Office and a couple others, but I don't believe he's contacted any of these unless he wants to correct me.

CHAIRMAN REYNOLDS: Well, I don't believe that -- Marty, correct me if I'm wrong. You've provided the names of the organizations that you remembered or was that the complete list?

STAFF DIRECTOR DANNENFELSER: Many of the
groups that Commissioner Melendez mentioned had been contacted over the course of putting together the different SACs. Not every organization is contacted for every state. There is some discretion among the regional directors in the contact and who are the leaders in their particular states. But I did send an email in which I copied Commissioner Melendez I believe on Friday in which I mentioned a number of the organizations on his list that had been contacted over time with various SACs.

COMMISSIONER YAKI: This is Commissioner Yaki. I think that we went through this entire rigamarole and charade of going through this process for selecting the SACs that had within it a checklist of boxes and groups and then now we're hearing about the regional direction of discretion which seems to be contrary to the whole purpose of what that exercise was about. So I'm with Commissioner Melendez. I don't think that's sufficient and I think that violates the policy that we had adopted or quite frankly was rammed through by the majority a few months ago.

CHAIRMAN REYNOLDS: Well, a few comments. This is the Chairman. I suspect that all votes that you don't win you believe to ram through. We try to
have discussions. We try to find middle ground. Sometimes we're successful. Many times we're not.

Now with respect to the procedures that we put in place, those procedures did not squeeze out all discretion from the process. It's not a mechanistic approach. Yes, there are checklists. But that process, the purpose of implementing that process was not to squeeze out all discretion from the process.

COMMISSIONER YAKI: It is a mechanistic approach. That's why we adopted that sigma, alpha, alpha, whatever the heck it was was because we wanted to make it more structured and mechanistic so that there would be less controversy over how and why appointments were made and what process was used --

VICE CHAIR THERNSTROM: You know, Commissioner --

COMMISSIONER YAKI: -- contrary to why we went through this whole thing. If it was a thing of discretion, we could just simply go by the old procedure which is why don't we just see who we get. But that's now what that whole process was about. It was about a formal method of outreach and contact in order to find people for the SACs and giving the regional director the discretion to ignore local chapters of civil rights groups or national
organization for civil rights groups I think it's just wrong.

VICE CHAIR THERNSTROM: Commissioner Yaki, can I say something here? This is Thernstrom. Look. It seems to me that by one definition you are asking for a very mechanistic process. You have a very narrow spectrum of groups that you have adopted in your view that have labels of civil rights on them and you say we should be choosing everybody from those groups. I mean, that is the mechanistic --

COMMISSIONER YAKI: Not at all.

VICE CHAIR THERNSTROM: That is a mechanistic process.

COMMISSIONER YAKI: Not at all. I'm simply saying if our outreach process does not include those groups, then we are -- then I think the legitimacy of the selection process is at stake. I'm not saying nor do I expect that someone from each of those groups will be nominated and/or selected to be on the SAC. But the mere fact that we don't -- we give the regional directors apparently discretion to not consult them at all I think undermines the legitimacy of the process and certainly is contrary to the spirit of what was presented to us in that presentation by whoever it was, Booz Allen and their
$300,000 contract, last year.

COMMISSIONER KIRSANOW: Kirsanow here. I have a question for Staff Director. Given that regional directors seemingly have discretion, is that discretion a function of their peculiarized knowledge of the state insofar as, for example, in Ohio and I'm just giving this as an example, not that it's actually fact, but there may be a given organization. Let's say it's National Council of La Raza that doesn't have a chapter or may not have a large presence or is known not to have much depth and would be either futile or it would be futile to even ask them. Is that the discretion that you're talking about?

STAFF DIRECTOR DANNENFELSER: Yes, they have to do this within the parameters of the Administrative Instruction 5-9 and, within Section 7 of that Administrative Instruction, it lays out a number of the type background that people should be looking for. They should be diverse committees that should include people like educators, lawyers, business and labor leaders, social scientists, individuals who had demonstrated in the civil rights issues of color and race and so on. But there is not a mention of particular groups that are supposed to be sought out, but certainly the groups that are
mentioned are among those that one should consider in reaching out to a broad range of different organizations.

COMMISSIONER KIRSANOW: Kirsanow here again. I concur with Commissioner Yaki that we should, and I think this was the discussion that we had, reach out to as many groups as possible. Having said that, there are scores of groups that could arguably call themselves civil rights and sometimes it makes sense to contact them. In a large state such as California, I would suspect that most of those groups have a significant presence. In other states, even in my home state of Ohio which is not a small state, many of the groups that I just heard mentioned aren't known to have a significant presence or a presence at all and that might also be true for Arkansas. I don't know that to be the fact.

But if that's the discretion that we're talking about, that you don't kind of mechanistically go through each organization even if you know that it's unlikely to yield any prospects, then I wouldn't have a problem with that. If it isn't the case, I guess the discretion is one that if calculated to yield the desired result, that is, an ideological imbalance which I don't see here from this list, but
if that's the case, I would oppose that and I think that we should instruct everybody, all regional directors, that they have to go through a fairly rigorous process in order to yield as a diverse sample as possible for candidates for the SACs.

COMMISSIONER MELENDEZ: This is Commissioner Melendez. Rightly so, I agree with what Commissioner Yaki said was that we weren't asking that, yes, we select these people because we know that's an improbable situation. But what we were asking was that they at least be contacted.

The email coming from Staff Director to me which I just found, he went into the history about some states that we're not talking about today like the liaisons to the Arapaho and Shoshone tribes pertaining to Wyoming. So I wasn't really asking about what we had already gone through in the past because we had already discussed those when those SACs were up for nomination and to make that final decision. I was asking about the SACs we're talking about today. So it was kind of a mishmash of history of the past. But I wanted to -- At each SAC, I want to know exactly have we contacted each of those organizations or at least make it kind of look good that we've done that. So that was my question.
CHAIRMAN REYNOLDS: This is Chairman Reynolds. Commissioner Melendez, are you stating that there are certain organizations that should be asked automatically.

COMMISSIONER MELENDEZ: What I'm saying is that if there is none like Commissioner Kirsanow. If there's no La Raza in states which I agree that could happen then just state that. Say, "We wanted to let you know there is no organization in this state and that would be good enough for me."

CHAIRMAN REYNOLDS: Well, let me back up. Are you saying that we are violating our rules with the methods that we're using?

COMMISSIONER MELENDEZ: I think we're not broad enough in reaching out to a lot of the organizations I stated. That's all I'm saying. Hear a little more.

COMMISSIONER YAKI: I have a point of information. This is Commissioner Yaki.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: To the Staff Director. I just wanted to know if the Staff Director was aware of the Booz Allen report recommendation and checklist that was adopted by the Commission earlier this year.

No, I should say it was at the end of last fiscal
year.

STAFF DIRECTOR DANNENFELSER: This is the Staff Director. Yes, I am.

COMMISSIONER YAKI: Did you review those checklists, that checklist and procedure, in determining whether or not the regional directors had followed the procedures outlined?

STAFF DIRECTOR DANNENFELSER: I had asked the head of RPCU to do that and to advise me accordingly.

COMMISSIONER YAKI: Well, and did that person report back? Did we have a written report as to whether or not those were followed?

STAFF DIRECTOR DANNENFELSER: He reported back in the context of the State Advisory Committee membership guidelines on AI 5-9.

COMMISSIONER YAKI: Because I have to tell you. It just doesn't seem as if those were followed. I recall this presentation acutely because I couldn't believe we had spent $300,000 on it. But it just doesn't seem that those steps were taken were followed in the processes. I mean, I know they weren't because certain groups weren't contacted or even consulted. They weren't.

CHAIRMAN REYNOLDS: This is Chairman --
COMMISSIONER YAKI: I find that very disturbing that we spent hundreds of thousands of dollars on this report.

CHAIRMAN REYNOLDS: Commissioner Yaki, it's not clear to me what -- Commissioner Yaki, is there a specific provision or rule that you believe was violated?

COMMISSIONER YAKI: Yes. As I recall the chart and going down through the list, there was a checklist for contact with national organizations and examples of those were listed in and apparently that was not followed.

COMMISSIONER HERIOT: Is that apparent? It's not apparent to me.

COMMISSIONER KIRSANOW: Yes, I didn't hear that. I heard that some organizations were not contacted or couldn't be contacted.

CHAIRMAN REYNOLDS: And some were.

COMMISSIONER KIRSANOW: And that was largely a result of regional director discretion. The basis of that discretion is unclear how they exercised it that is, but they may have in good faith exercised discretion because an organization didn't exist in that state or that organization perhaps was contacted and didn't respond. I don't know that I could lead to
the conclusion that --

COMMISSIONER YAKI: I don't know that I could lead to the conclusion that there is good faith discretion utilized in the process based on apparently the inability to enumerate exactly which groups were or were not contacted.

COMMISSIONER GAZIANO: Do we even know whether all of the applications were received after this wonderful Sigma Six Program was adopted? That was before my time, but I imagine it takes months and months to assess this.

CHAIRMAN REYNOLDS: That's Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

STAFF DIRECTOR DANNENFELSER: This is the Staff Director. I'm not sure on the timing on when individually they were received.

COMMISSIONER YAKI: Commissioner Gaziano, this is Commissioner Yaki. I do know that there was a bit of a hurry to adopt them specifically for the SACs precisely because they did not want to unduly delay the selection process and this was adopted I think, I believe, prior to the end of the fiscal year last year.

COMMISSIONER GAZIANO: That may be. I'm
not sure what significance that has. It's always the case that we're trying to recharter the SACs.

CHAIRMAN REYNOLDS: One at a time, folks.

VICE CHAIR THERNSTROM: We're not only out of time. Mr. Chair, if there is a larger issue here and we cannot vote on the -- It seems to me that we should vote on these two SAC recommendations. But if there is a larger issue, we should put it on the August agenda if Commissioners Yaki and Melendez really believe they have not been properly heard on this.

CHAIRMAN REYNOLDS: This is Chairman Reynolds. Vice Chair Thernstrom, I agree with you. Commissioners Yaki and Melendez, if you have specific issues with respect to how we go about -- If you believe that we have violated our rules with respect to the selection of folks for SAC, please ask that the Staff Director put it on the agenda for the August meeting.

COMMISSIONER YAKI: We'll ask him now.

VICE CHAIR THERNSTROM: All right. Fine. Let's put it on the agenda for the August meeting. We're all agreed I'm sure.

CHAIRMAN REYNOLDS: Okay. Time to vote.
VICE CHAIR THERNSTROM: Yes.
CHAIRMAN REYNOLDS: Commissioner Gaziano?
COMMISSIONER GAZIANO: Yes.
CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.
CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: No.
CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: No.
CHAIRMAN REYNOLDS: Commissioner Taylor?
COMMISSIONER TAYLOR: Yes.
CHAIRMAN REYNOLDS: Okay. Commissioners voting in favor of the motion are Commissioners, Thernstrom, Gaziano, Kirsanow, Heriot, Taylor and Reynolds. Commissioners Melendez and Yaki voted against the motion. The motion passes.

Next up is the rechartering of the Wisconsin State Advisory Committee. I move that the Commission recharter the Wisconsin State Advisory Committee under this motion. The Commission adopts the following individuals to that committee based on the recommendations of the Staff Director: Rebecca Grassl Bradley, Naheed Bleecker, Mark Block, Jeffrey
Cooper, Anneliese Dickman, Maria Gamez, Lee Hansen, Daniel Kelly, Demond Means, Adel Mekraz, Frederick Mohs, Karine Morena-Taxman, Dawn Shelton-Williams. I also move that Commission appoint Ms. Bradley as the chair of the rechartered Wisconsin State Advisory Committee. The members will be uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to prepare any appropriate paperwork. Is there a second?

VICE CHAIR THERNSTROM: Second. This is Thernstrom.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. This is Commissioner Melendez here. Will the Staff Director please say what organizations and individuals were the original source of the members he has nominated?

VICE CHAIR THERNSTROM: I wonder if we can't -- Since we're going to have a whole discussion of this at the August meeting, I wonder if we can not go through the same discussion once again that we just had over Arkansas with respect to Wisconsin and in August we can review the whole process and who's been contacted in the past for what SACs.

COMMISSIONER YAKI: This is Commissioner Yaki. I respect Commissioner Thernstrom's views on
this. However, talking about the entire process and not putting objections on the record for the particular state we believe violated the process is kind of like asking us to close a barn door after the horses have left. So, no, I want to discuss as does Commissioner Melendez the process as it pertains to this state as well unless you wish to postpone it to August when we have a conversation on this.

STAFF DIRECTOR DANNENFELSER: This is the Staff Director. Well, let me talk a little bit about the outreach that was conducted that the Commission staff reached out to the Governor's Office in Wisconsin, the entire Wisconsin congressional delegation, the NAACP, the Urban League, the ACLU, the Wisconsin Policy Research Institute, the Pax Americana Institute, Marquette University, the University of Wisconsin, Medical College of Wisconsin, Brazo Multicultural Marketing and Communications, the Hispanic Business Counsel, the Institute of World Affairs, the Metropolitan Milwaukee Fair Housing Council, Asset Builders of America Inc., the law firm of Gaskey & Ruffles, Quarles & Brady, Rodney L. Covey law office, White Hirshbach Dudek and --

CHAIRMAN REYNOLDS: Excuse me, Mr. Staff Director. How long is your list? It's not clear to
me that this is a good use of time for you to continue.

STAFF DIRECTOR DANNENFELSER: That's the list of outreach.

COMMISSIONER MELENDEZ: That's a little better. This is Commissioner Melendez. Could I ask another questions?

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER MELENDEZ: About the chair, Rebecca Grassl Bradley, can you tell me a little bit about her and why she's best qualified to be the chair of the SAC and why she was nominated over two returning members, Dickman and Gamez?

STAFF DIRECTOR DANNENFELSER: She is someone who has been very active in the Milwaukee area with the Milwaukee Forum which addresses numerous civil rights issues within the city and has been very active in the area of voting rights which is a particular area of interest to the Commission.

CHAIRMAN REYNOLDS: Any other questions?

COMMISSIONER MELENDEZ: Can you tell me about Mr. Block? This is Commissioner Melendez and his demonstrated interest in civil rights?

STAFF DIRECTOR DANNENFELSER: Well, Mr. Block is someone on a personal level faced, dealt with
discrimination with Korean adopted sons who were
growing up in Milwaukee and he's also a former elected
official in Winnebago County, Wisconsin and is someone
who is known to be interested in the application of
voting rights throughout his career.

COMMISSIONER MELENDEZ: One more question.
Most of these applications are from July or August of
2006. Is there -- Were there any additions since
then?

STAFF DIRECTOR DANNENFELSER: We checked
with the regional office on this and there was a
question raised earlier about it, an earlier package,
and we don't really have a recollection of an earlier
package being submitted prior to 2008. So I'm not
clear about all the references to 2006 and prior.

CHAIRMAN REYNOLDS: Okay. Vice Chair
Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Nope.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Okay. The Commissioners voting in favor of this motion are Vice Chair Thernstrom, Commissioners Gaziano, Kirsanow, Heriot, Taylor and Reynolds. Commissioners opposing the motion are Commissioners Melendez and Yaki. Motion passes.

III. PROGRAM PLANNING

CHAIRMAN REYNOLDS: All right. Next up is the Department of Transportation Guidance Regarding Disadvantaged Business Enterprise Program. In its 1995 Adarand decision, the U.S. Supreme Court felt that the Federal programs using racial and ethnic classifications are subject to strict scrutiny. They must serve a compelling government interest and be narrowly tailored to meet that interest.

Under this standard, Federal agencies must seriously consider race neutral alternatives to procurement programs that use racial classification. Under this decision and its progeny, the U.S. Department of Transportation issued revised
regulations governing its Disadvantaged Business Enterprise Program that decentralize administration of the program by delegating implementation to state agencies receiving Federal transportation funds. While the DOT sets the aspirational goal of ten percent participation for minority and disadvantaged firms, states are required to make an individualized determination of a level of Disadvantaged Business Enterprise participation that would be expected absent the effects of discrimination as a goal. The state must meet the maximum feasible portion of its goal through race and sex neutral means before resorting to embrace conscious means.

A number of courts have upheld the facial constitutionally of the regulations but constitutional as applied challenges continue to arise with respect to state and local implementation. The 9th Circuit recently held that — requires local deciding discrimination if the Federal DBE program which the Department of Transportation has delegated for implementation to the state is to survive constitutional analysis under strict scrutiny. The Department of Transportation had issued guidance and applied this rule only in the 9th Circuit.

It is against that background that we
consider for discussion the draft letter that was circulated to Commissioners. I move that the Commission approve the draft letter recommending the Department of Transportation adopt a uniform standard requiring states implementing its DBE program to make local findings of discrimination before using race conscious goals to achieve local DBE participation. I would further authorize the Staff Director to post this letter on the Commission's website. Is there a second?

COMMISSIONER GAZIANO: Second. Todd Gaziano.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here. I believe that we need more legal analysis on this issue. I know that Congress has debated this issue back and forth and I'm not even sure what their position is on the whole issue. So I would like to see more on that and given more time to do an analysis on the legal position of this whole situation.

COMMISSIONER GAZIANO: If I could respond, Mr. Chairman.

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: And you are?
COMMISSIONER GAZIANO: Gaziano.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: I respectfully suggest this is a long overdue letter actually. What's amazing to me is that the United States Government correctly interpreted the applicable Supreme Court law in the Western States Paving decision and it's a decision in that case in the 9th Circuit and then apparently an agency of the Executive branch on its own is engaging in a non-acquiescence policy.

It's quite frankly shocking to me that this occurs when the United States won in the first place, even more so when it got the correct position in the first case and that further study would be very curious. What we need to do is ask the administration to explain what it is that this rogue agency, the Department of Transportation, is doing. Was this approved by the Solicitor General to seek the circuit split to get its own victory overturned in the Supreme Court. So I think this letter is a modest but overdue attempt to seek some clarity.

CHAIRMAN REYNOLDS: And it's also, I guess, this is Chairman Reynolds, important to point out that we sent out in advance some legal background.
So, Commissioner Melendez, could you give me a sense of what additional information you're looking for?

COMMISSIONER MELENDEZ: Well, I know that we have a couple of court cases that you've sent to, I believe, the Commissioners, but I'd still -- Is this an issue that's happening in California or, in particular, is it an issue relating to that?

CHAIRMAN REYNOLDS: The California issue as I understand it has been resolved. The 9th Circuit has spoken and the remaining issue is with respect to the remaining circuits where the court hasn't ruled on this particular issue and the public policy implications that flow from the decisions of the Department of Transportation to deviate from the arguments it made in its 9th Circuit brief.

COMMISSIONER GAZIANO: Gaziano again. The principle, if I may, is if the United States seeks a position on an important Constitutional issue involving civil rights and wins in the 9th Circuit, should a -- By the way, without any real explanation, should one of the rogue agencies of the United States then tell everyone in every other state outside the 9th Circuit you don't need to follow that and that's all this letter asks the Administration to correct, to look into and correct.
CHAIRMAN REYNOLDS: Additional comments?

COMMISSIONER MELENDEZ: Yes. This is Commissioner Melendez. I don't feel comfortable with signing onto the letter. So I'm going to dissent from this letter. Just for the record, I don't want my name on the letter and would ask that my dissenting views be noted in the letter.

CHAIRMAN REYNOLDS: Well, we're not going to put your views in the letter. I mean, we will identify the Commissioners that voted in favor of the letter or have the Commissioners that voted in favor of it be signatory.

COMMISSIONER YAKI: I thought we were supposed to note the vote of the Commission.

CHAIRMAN REYNOLDS: Yes, that's right. We're going to follow our AIs. But I believe that if I understood him correctly, Commissioner Melendez asked that his views be incorporated into the letter.

COMMISSIONER YAKI: No, I think Commissioner Melendez asked the fact that he and I dissent from it be incorporated into the letter which is different than saying what our views are.

CHAIRMAN REYNOLDS: Okay. If that's the case, we will include the voting tally.

COMMISSIONER HERIOT: And we will do what
the AIs require.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER YAKI: And I just want to say for the record that I object to the characterization of DOT as a rogue agency. Having followed this process in California as I'm sure Commissioner Heriot has done for quite some time, I would argue that what DOT is doing is fully within the law and expressed by the United States Supreme Court, Commissioner Gaziano's statement notwithstanding, and I believe that moreover if we really wanted a true discussion on this we would have had something more than legal papers that may or may not be reflective of the fully breadth of the discussion and analysis upon which we could base our decision.

But I know that the majority is in a hurry to get this out. Commissioner Melendenz and I will not be able to stop that train from leaving the station. But I would like to say that far from being a rogue agency I believe the DOT is acting responsibly and certainly consistent with what I believe is a greater good expressed in statute and in law regarding economic opportunity for disadvantaged and minority contractors and we disagree on that obviously and disagree on that principle and disagree on the means.
and that would be reflected in the separate letter that Commissioner Melendez and I will send to DOT.

VICE CHAIR THERNSTROM: I don't believe, but I'm not at my desk, we used the term "rogue agency" in the letter. Am I correct on that?

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER GAZIANO: This is Gaziano. That's my word and I stick by it.

VICE CHAIR THERNSTROM: That's what I assumed.

COMMISSIONER GAZIANO: I understand, Commissioner Yaki, that you disagree with apparently the 9th Circuit's position. But I take it that you don't think that there's anything odd that we should raise with the United States, the President, when one agency works at cross purpose with the civil rights' position that the Government is secured.

COMMISSIONER YAKI: But we --

COMMISSIONER HERIOT: Are we ready to call something?

CHAIRMAN REYNOLDS: One at a time.

COMMISSIONER YAKI: We could argue over your characterization of -- over your last characterization. But rather than again to have a philosophical discussion on the separation of powers
and the Executive branch, let's just move on.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes, and let me just add one sentence to that. I would be very unhappy if there were any language that suggested we were trashing an agency as a rogue agency and so forth in the letter. But there is not as I understand it.

CHAIRMAN REYNOLDS: That is correct.

Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Correct as clarified. My personal views go beyond the letter.

COMMISSIONER HERIOT: Is that a yes vote?

COMMISSIONER GAZIANO: Yes vote.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Nope.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes, with one comment. That is I do think this is a modest step and
it's my expectation that this will start the
discussion rather than finishing it. That's why I was
hoping everybody would be in favor of starting this
discussion. I think it's important.

CHAIRMAN REYNOLDS: Okay. Commissioners
Melendez and Yaki voted against the motion.
Commissioners Taylor, Heriot, Kirsanow, Gaziano,
Thernstrom and Reynolds voted in favor of the motion.
It carries.

Next up, during the July 11th meeting, the
Commission amended the agenda to include a proposal by
Commissioner Heriot to discuss the ABA documents held
by the Department of Education in connection with its
pending renewal of the ABA's accreditation authority.
Commissioner Heriot stated her intention to make a
motion that the Commission send a letter to the
Department of Education requesting access to those
documents.

Last Monday, on July 21st, you received
via email a draft letter to the Department of
Education and a copy of a June 20, 2007 letter from
Secretary Spellings to the ABA which is referenced in
the draft letter. The Commission's draft letter
requests access to documents ordered by Secretary
Spellings from the ABA.
I move that the Commission approve the draft letter recommending that the Department of Education grant access to members of the Commission or to Commission personnel to review the ABA documents. This motion would furthermore authorize the Staff Director to post this letter on the Commission's website. Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: And that was Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes, Commissioner Melendez. What is the basis for this unusual document request and assignment of staff time? Is a project being proposed on this matter at some point in the future?

CHAIRMAN REYNOLDS: This is Chairman Reynolds. Why do you believe that it's unusual?

COMMISSIONER MELENDEZ: I'm unsure what the purpose is. And then the other question would be are all of the Commissioners going to receive the documents equitably?

COMMISSIONER HERIOT: Any Commission that wants to go can certainly.
COMMISSIONER MELENDEZ: Then it's nothing they can provide for us, send to us.

COMMISSIONER HERIOT: I don't think we can force the Department of Education to give everybody documents. But anybody -- The purpose of the letter is to give access to everyone, to you, to me, to anyone who is assigned by Marty to go through the documents.

CHAIRMAN REYNOLDS: So basically we would all have the opportunity to review the documents.

Other questions? Comments?

VICE CHAIR THERNSTROM: Have we lost somebody that that hello signified?

CHAIRMAN REYNOLDS: Okay. Let's do a roll call.

Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Opposed.
CHAIRMAN REYNOLDS: Well, no. We're not voting. Just doing a roll call.

COMMISSIONER MELENDEZ: Oh.

CHAIRMAN REYNOLDS: Just to make sure that we haven't lost anyone.

COMMISSIONER YAKI: Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Still here.

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR DANNENFELSER: I'm here.

CHAIRMAN REYNOLDS: Additional questions?

Comments?

(No verbal response.)

Okay. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: No.
CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No, no, no, no, no.

CHAIRMAN REYNOLDS: You only get one no.

COMMISSIONER YAKI: I'll give as many nos as I want.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Taylor votes aye.

CHAIRMAN REYNOLDS: Okay. Commissioners Melendez and Yaki voted no. Commissioners Thernstrom, Gaziano, Kirsanow, Heriot, Taylor and Reynolds voted for the motion. The motion passes.

IV. MANAGEMENT AND OPERATIONS

CHAIRMAN REYNOLDS: Next up is the feasibility of hiring temporary special assistants. During the July 11th meeting, Commissioner Yaki raised a question about the feasibility of using surplus fiscal year 2008 to hire temporary special assistants. These temporary employees would work with Commissioners who are not currently assigned special assistants. They would assist in reviewing and responding to the backlog of briefing reports and their terms would expire at the end of fiscal year 2008 which is September 30, 2008.

The Commissioners agreed to defer discussion of this topic until the staff could conduct
more research on the Commission's options. At this point, I'd like to ask the Staff Director to weigh in as to, the Staff Director and also the General Counsel, to weigh in as to the legality and assuming its legal the options that we have available.

STAFF DIRECTOR DANNENFELSER: This is the Staff Director. One of the analysis was budgetary as well and I conclude that this is something we can do within the budget. There are questions about some of the options and one option seems to be the best of all. But I'm going to for the moment turn this to the General Counsel, David Blackwood, to explain his outreach to OPM and discussion of the legal questions regarding the various options.

MR. BLACKWOOD: Good morning. This is David Blackwood. Per your request and working with Tinalouise Martin, we helped identify several different options and then discussed those with OPM, specifically a Mike Mahoney of the Strategic Human Resources Policy Division. There are a variety of options that we can pursue, but keep in mind this is a slightly unusual situation in that we're talking about a temporary employment for roughly 60 days.

The first option I would call hiring temporary Schedule C appointees and there are two
options within a 30 day temp for a temporary appointment. Both of those have advantages and disadvantages. The advantage being that anybody hired into the authority would have the same power and standing as existing special assistants.

There is a critical problem, however. First with regard to the 30 day temporary authority, we don't seem to fit. There's a two part test that you need. You need both a critical need and it is contemplated that you're hiring someone for long-term employment that they're going strictly through a vetting process. Second is under either the 30-day or the 120-day process, we would still have to go as Schedule C appointees through Office of Presidential Personnel which is several Commissioners have voiced an objection to.

Lastly, there is greater security of Schedule C appointments during a Presidential election year. So in talking to OPM, they indicated if we're looking at a 60-day quick appointment several days or weeks could be tied-up in strictly going through OPM approval. Basically, it's the same thing with the 120-day temporary approval with an added though need for scrutiny because under the 120-day procedure we would have to get certified as an agency with a new
agency head which I think we could easily do since the Staff Director has been recently appointed. But nonetheless that is an addition time period that might be taken up.

The second option is what's called a competitive temporary hiring authority and that would be we would have post the jobs like the normal government jobs. There would have to be competition and there would have to be a selection. The problem with this process is there would be virtually no input by the Commissioners about how or who would be selected by them. The time frame could be relatively short, as little as a week. But again, there would be no input as to who was selected. It would have to follow the normal procedures.

Lastly is the option of hiring consultants and this actually was the first thing that was mentioned as far as having flexibility with a combination of Hiring consultants, how do you hire core professionals (1) to read a statutory report, (2) to catch up on briefing reports? How do we as an agency stay current. This does have a variety of factors. One, we don't have to advertise it. Two, we don't have to go to OPM for pre-approval. Third, we don't have to go to Presidential Personnel. The job
would simply be posted or actually it's not posted. We could identify individuals working with the Commissioners if they have anyone specifically in mind, to identify those individuals and assuming that they fit within the category that we can draft and get with you all's cooperation about we need a specific skill set and to identify an individual who fits that special skill set. The agency could then hire that individual and then the Staff Director could assign that individual to other Commissioners to work with that person.

Also that benefits of allowing/putting a cap on how much we could spend and what is contemplated is we would identify the amount that each commissioner or I because you wouldn't be hiring but the agency would spend on each consultant. That would give flexibility among the various appointments to, for example, say knowing that you have a cap and presuming that the cap is the same for each position, I might want to get someone more experience. So I may pay a higher hourly rate, but that person would, of course, have to work less hours. If someone wants to go with someone less experienced or skilled, they might have a lower hourly rate but be able to spend more time. So there would be again that additional
flexibility and that is all I have to report.

STAFF DIRECTOR DANNENFELSER: So I guess
the conclusion of that is that the recommendation that
I would make to the Commissioners is that we explore
the consultant group and it's my understanding that
there are four Commissioners who would be interested
in being eligible for this if this is agreeable to all
Commissioners and that the hourly rate would be
subject to the person's background and their salary
history. This would be part of the standard process
that we would follow in hiring someone that you would
look at their salary history.

The maximum rate would be the top end of
the GS-15 schedule without factoring in locality pay.
My understanding is that that would be in the
neighborhood of $124,000 that the hourly maximum rate
could pay for that particular salary. Of course, the
current Commissioner assistants are GS-13 level. But
again, this will vary perhaps to some extent depending
on the background and salary of the individual. But
as David had pointed out, the number of hours if each
commissioner gets a certain dollar amount that they
can spend over the next two months, then the number of
hours would have some factor related to the hourly
rate of that individual. So that would be something
that each Commissioner would have to take into consideration.

VICE CHAIR THERNSTROM: Now I have a question. Do I understand that there would be -- When the agency hires somebody, there would be an understanding that there was no possibility that that person could be looking forward to working beyond the end of the fiscal year. So this is not a stepping stone to a long-term job.

STAFF DIRECTOR DANNENFELSER: We would have a written agreement with the individual that the employment would end on September 30, 2008 and that there would be a cap on the maximum amount of dollars that that individual could be paid between now and September 30, 2008.

CHAIRMAN REYNOLDS: Other questions?

(No verbal responses.)

Okay. Let me try a different approach. Are there any concerns or objections to going the consultant's route?

COMMISSIONER MELENDEZ: Commissioner Melendez. Are these consultants just supposed to help the Commissioners or they're supposed to do something else besides that?

CHAIRMAN REYNOLDS: They would be assigned
to the Commissioners.

COMMISSIONER MELENDEZ: You're saying that also we're going to be hiring higher than what the assistants now are making?

STAFF DIRECTOR DANNENFELSER: This is the Staff Director. There is some flexibility in how that would be done. That would be again the discretion of the Commissioners. We would be looking for recommendations from those four commissioners as to individuals who would have the appropriate background who they would recommend that we hire to perform these services. So again, that would in some respects be a function of the salary history and the experience of that individual. They would have to take that into consideration.

COMMISSIONER GAZIANO: Mr. Chairman, this is Gaziano. I think that the consultant route has several advantages over any of the other options and I think the flexibility is quite helpful especially when you're just hiring someone on a temporary basis.

My question really to all of the other commissioners is just is this consistent with or would this set a bad precedent? How would this fit in with other consultants that the Commission may also need to hire at the central staff level? I remember Staff
Director telling us at the last meeting. It may make sense to bring in one or two temporary people to help him as well.

STAFF DIRECTOR DANNENFELSER: This is the Staff Director again. We have been able to bring in some temporary people through other types of hiring authorities using temporary employment agencies. We have a writer/editor in the Office of Civil Rights Evaluation and we have an administrative assistant in the Office of General Counsel who is helping to relief the burden on the attorneys in that division. So those were hired through employment agencies. But that would be outside of the consultant route.

Now in the past, Congress has had a cap on the amount that our agency could spend on consultants and it was $50,000 and it was in place for a good number of years. It was lifted. It ended after 2005. So it's not technically in place right now. But given the history of that, we felt that it would be a good idea to look at that as the ceiling that we would pursue in terms of consultants. The total amount would be the $50,000.

COMMISSIONER GAZIANO: Is that per individual you mean?

STAFF DIRECTOR DANNENFELSER: That would
be total for the agency.

COMMISSIONER GAZIANO: For the agency. So 50 divided by four?

STAFF DIRECTOR DANNENFELSER: Yes. So again, that would be $12,500. Just as a way of example, if a consultant was paid at a $50 an hour rate, that person could work 250 hours between now and September 30\textsuperscript{th} and meet that $12,500 level.

VICE CHAIR THERNSTROM: I'm sorry. I know you've answered this before, this is Thernstrom, but I don't remember the answer. So how are we going to identify these people?

STAFF DIRECTOR DANNENFELSER: We're encouraging the Commissioners to make recommendations as to individuals that they think would be appropriate since the goal here is to help the Commissioners to do their part in this process of completing the statutory report which we do have a deadline on that coincides with this. It's the deadline for the statutory report is September 30\textsuperscript{th} and the hiring process that we have in mind runs to September 30\textsuperscript{th}. But we also have backlog with the briefing report. So these individuals could assist the Commissioners in reviewing both the statutory report and the briefing report and making recommendations to them on how they...
might respond to those reports both in how they might
evote on those reports and any changes to the findings
and recommendations or any other changes to the report
or the body of the report that they would recommend.
So they could assist the Commissioners in that way.

They would have to be hired through the
Office of the Staff Director. But it would be my
intention to then assign those individuals to assist
individual commissioners in fulfilling those
responsibilities.

COMMISSIONER YAKI: This is Commissioner
Yaki. I have some questions and some serious concerns
about this. One, I am not entirely comfortable with
the idea that I am not the hiring entity for purposes
of the discretion of being able to say this person is
working or not working, (2) for confidentiality
purposes and (3) for whatever selection criteria we
might be bound by if we go through some process
through the Staff Director's office. Could you
illuminate to me as to whether or not this is
something that would have to be noticed, bid for or
whatever because I'm not too sure exactly how loose
the consultant hiring process is versus the special
assistant process which is essentially you find
someone who you want to work with, you submit that
name, and let's put it this way. This is how it usually is without the budget issue that we've had. You submit a name. They get hired. They're at your discretion and your pleasure for the purposes of their continuing ability to work or not and I just want to know what the legal differences are in terms of selection, retention and confidentiality between what you're proposing and with the idea that Commissioner Gaziano and I had which was special assistants whose positions simply expired at the end of the fiscal year.

VICE CHAIR THERNSTROM: Can I just add a question? I think those are legitimate questions and can I just add one to while you're in the midst of answering them? I get the sinking feeling that this is going to set some kind of precedent we're not going to like down the road. So if you could just add that to Commissioner Yaki's questions which again I think are the right questions.

STAFF DIRECTOR DANNENFELSER: Yes. This is the Staff Director. It's a not a Schedule C position and therefore it does not have the same confidentiality issues. It would be more narrow than the range of duties that a Schedule C Commissioner's Assistant would perform. We would justify it on the
basis of the legal requirement relating to the statutory report and also the need of the Commission to resolve the backlog of the briefing reports.

So it's not synonymous probably from a commissioner's perspective. It's not an ideal solution, but we have some very serious obstacles in going through the 30-day or the 120-day Schedule C options. So those would probably result in us not being able to get the process off the ground at all between now and September 30th or if we did, it would be so late in the process that commissioners would not be able to get much benefit out of it.

So this seems like the best thing overall. Again, it's not an ideal thing for the commissioners, but a person would have to meet certain standards in terms of background. We would have to be able to justify that this person's background is related to the work we do. If you have someone who's an expert carpenter, for instance, that would be a very praiseworthy individual. But if that person didn't also have some background that related to the kind of work we did here, that probably wouldn't be a fit that we could justify.

So I think that we have to show that the person has a certain level of educational and
professional background that would justify. You know, we'd have to have to résumé. We'd have to see some salary history. But for the most part it's a process that could be done pretty expeditiously.

COMMISSIONER YAKI: I'm not worried about qualifications. I'm worried about the confidentiality provisions. That to me really causes me some concern and, in terms of the timing issue, that's exactly why I wanted to have this resolved at the last meeting rather than drag it out to, you know, keep on dragging it out week by week by week because then the clocks just keeps on ticking.

VICE CHAIR THERNSTROM: Let me just -- The question of what kind of precedent this might set was not answered. But also as I understand it on the terms of the confidentiality, is it correct to say that these people will all be working on paper for the Staff Director, on paper, not for the individual commissioners?

CHAIRMAN REYNOLDS: This is Chairman Reynolds. Technically, the current special assistants work for the agency. The hiring authority is the agency and the consultants would be hired on the same basis. Now is that right, Marty?

STAFF DIRECTOR DANNENFELSER: Well, they
would not be Schedule C employees.

CHAIRMAN REYNOLDS: I understand that, but in terms of the hiring authority.

MR. BLACKWOOD: This is David Blackwood. As far as the hiring authority, it would be agency. However, once the authority has been granted by the Commission, an individual commissioner is shown as the direct supervisor of the appointees.

CHAIRMAN REYNOLDS: Okay. Could we in the agreement with consultants take care of the confidentiality issue?

MR. BLACKWOOD: This is David Blackwood again. I mean, this is one of the issues that we looked at and it is a drawback. I mean, it could only be in essence an informal agreement that, for example, if Commissioner Yaki wanted to pursue a specific individual. We would draft the requirements as flexible as possible. So (1) anyone reviewing it would not have an objection, but (2) you would give him the discretion to hire the individual and frankly it would be a matter of trust that you're not going to require him to disclose anything, his communications with Commissioner Yaki.

STAFF DIRECTOR DANNENFELSER: And again, we are looking at the recommendations coming from the
Commissioners. So, in Commissioner Yaki's case, we would be looking for him to recommend an individual. So I think the question would be a matter of trust that he has in that individual. But it is not again synonymous with the Schedule C Commissioner's Assistant, but we think it's the best option that's available under the circumstances.

VICE CHAIR THERNSTROM: Can I ask Commissioner Yaki a question? Given the fact that you're talking about here a very short time period, would such an assistant be of sufficient benefit to you so that --

COMMISSIONER YAKI: The short answer, Commissioner Thernstrom, is yes. I can barely -- I barely have the time right now to focus even on the statutory report, my comments on that, much less the dissent I would like to write with regard to the last report which is due on Friday. I mean, I am just utterly buried and drowning in terms of work and having someone for the reports that got approved, coming out the door, what have you, is going to be very useful to me in the next six weeks or so. I mean, I'm deadly serious. I really need -- I've been asking for this help for the better part of the year and really, really asking for it for like the last
five or six months and if I can get someone even for
the last two months, I'd be pretty happy.

VICE CHAIR THERNSTROM: So you feel you
can find somebody who in effect is you in terms of
reviewing.

COMMISSIONER YAKI: I don't know how that
would sit with the rest of the Commission but yes.

(Laughter.)

VICE CHAIR THERNSTROM: All right. No.

COMMISSIONER GAZIANO: A Mini Yaki. That
would be interesting.

VICE CHAIR THERNSTROM: I was just
curious.

COMMISSIONER GAZIANO: This is Todd again.
Michael, I appreciate your confidentiality questions.
You know, I have some other questions along those
lines, but the reason we couldn't vote last time is
because we didn't understand the legal authorities for
the other options. It still sounds like I'm not 100
percent sure we have authority to make temporary hires
in that capacity, but it also sounds like assuming the
majority of the Commissioners thought we did.

But it's unclear how long that would take.
So if you're -- it seems like we have to choose
between less optimal options. Which of these two give
you more or greater confidence that you'll have someone to help you?

COMMISSIONER YAKI: Well, I mean two things. I just wanted to make sure there wasn't anything abnormally weird about the confidentiality or other provisions that would deal with this. I'm fully confident that the person who I would select would be utterly loyal to me and utterly opposed to anything that the majority would do at the Commission.

(Laughter.)

Just teasing. But I mean, if this is the way to go, I'm willing to do it just so long as there is an understanding that with regard to confidentiality that the Staff Director will not and, in this instance, will not use their authority to attempt to glean information about what the heck I'm doing from the hire.

STAFF DIRECTOR DANNENFELSER: I would --

VICE CHAIR THERNSTROM: Nobody wants that information, Michael.

STAFF DIRECTOR DANNENFELSER: I would just count on the individual commissioner to assure me that the person is performing the work that they've been assigned to do and that will be really the extent of it. But again, at the front end of it, we will have
to be able to satisfy the criteria that this person is someone who has a reasonable professional background that we could justify hiring the person and then that person would have to provide us probably with some kind of pay stub or something that would indicate that they have a salary history that would justify the hourly rate that we would be paying them. But these are just pretty much ministerial functions that normally take place in the hiring process.

CHAIRMAN REYNOLDS: Okay. This is Chairman Reynolds. Unless I've gotten this wrong, there seems to be a consensus that the way to go is -- Of the three options that were presented, the consultant route is the way to go. Is there any objection? Did I get that wrong?

(No verbal response.)

Okay. I will interpret that silence to mean that folks agree with everything I say. Do we need a formal vote on this issue?

COMMISSIONER YAKI: I would think so.

CHAIRMAN REYNOLDS: Okay. If that's the case, I move that we direct the Staff Director to hire consultants who will be assigned to those commissioners that don't have a special assistant and that these individuals would work up to September 30th.
and that the salary, whatever the pay scale is, would
have to be justified by their skill set. Is there a
second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Do we need to have any
more discussion?

(No verbal response.)

Okay. If that's the case, Commissioner
Thernstrom?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I abstain.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Abstain.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Okay. We have two
abstentions, Commissioners Kirsanow and Heriot.

Commissioners Thernstrom, Gaziano, Melendez, Yaki,
Taylor and Reynolds voted in favor of it. The motion --

COMMISSIONER YAKI: Say wait a minute. Am I on the prevailing side of a vote?

CHAIRMAN REYNOLDS: Yes, it does happen from time to time.

COMMISSIONER YAKI: I wonder if I should just abstain on principle.

COMMISSIONER HERIOT: Can I just state for the record that I did not abstain because I don't want people to have these special assistants. I tend to favor that idea. I'm just feel like I haven't thoroughly digested what the ramifications of the spurious choice between the consultants and the Schedule C impact. So it just made me nervous. I'm in favor of people having special assistants.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: You know what? Mr. Chairman, I want to change mine to an abstention simply because I have not gotten an answer to my nervousness about precedence down the road by doing this. I am nervous about this. So I'm changing to an abstention. You still have the votes I assume.

CHAIRMAN REYNOLDS: Yes. Barely.

Okay. Let's get off this topic before I
get another abstention.

COMMISSIONER GAZIANO: I was going to say motion reconsider.

CHAIRMAN REYNOLDS: Okay. Next up, Marty, please walk us through our spending options for 2008.

STAFF DIRECTOR DANNENFELSER: Thank you. Thank you, Mr. Chairman.

As we previously discussed, the Commission expects to have surplus funds from the FY 2008 budget and I have polled our managers regarding items that they believe would be helpful to their departments so that the Commission can better accomplish its mission and a number of the major items that have been recommended is a Microsoft Project Professional 2007 which would cost about $15,000 and this would enable staff to track the progress of briefing reports and other projects. It's not a web-based application, but documents could be viewed on the server like currently using our S drive.

We're also proposing expanded external IT support in the amount of $65,000. Right now, the Commission uses an external provider to support agency IT services such as software and hardware installation and maintenance and customer service requests by staff and this current agreement provides about five hours
per week of onsite IT support and this expanded amount
of resources would enable us to have 15 hours of
onsite support per week and would also increase the
amount of time the provider is available for offsite
work. It would hopefully decrease service response
time and support development of long-term IT
improvement investment plans.

VICE CHAIR THERNSTROM: Folks, you have a
quorum if I jump off. I'm really out of time here.
So if the Chair does not object, I'm going to put it
in everybody else's capable hands.

CHAIRMAN REYNOLDS: Okay. Thank you, Vice
Chair Thernstrom.

VICE CHAIR THERNSTROM: Thank you.

STAFF DIRECTOR DANNENFELSER: We've also
received a proposal to explore Decision Point software
which would cost a little more than $10,000 and this
would allow us to improve our compliance with Federal
procurement regulations by automating basic
procurement actions from bid solicitation and
evaluation through the award of contracts.

We've also been asked to explore the
possibility of using Monster.com QuickHire software
and piggybacking with another agency that already has
that software. If we were to purchase that software
by ourselves, it could cost about $78,000 which we
don't believe can be justified given the small staff
that we have and the limited amount of hires. But we
are exploring whether we could establish a memorandum
of understanding with another agency which we could be
able to piggyback on that agency at a cost of
approximately $20,000 which would seem to be more
justifiable.

There is also a proposal for Microsoft
Document Sharing which is --

COMMISSIONER HERIOT: What would we get
for that $20,000?

STAFF DIRECTOR DANNENFELSER: It would
help us automate our staffing process.

COMMISSIONER HERIOT: Meaning what?

STAFF DIRECTOR DANNENFELSER: We'll turn
that to Tina to explain it.

COMMISSIONER YAKI: Robots. We're hiring
robots.

MS. MARTIN: Basically what we do now with
our hiring process is we manually go through each
application and then we send out letters to each
applicant letting them know what's the status of their
application is. If we get more than five
applications, we have to form a panel within the
Commission in order to evaluate each of the applications which is pretty tough to do because we don't have a lot of people that have time to sit down on these panels. Sometimes it takes more than a day or two to even go through as many applications. Sometimes we get 100 applications for one job.

So this will automate the process. It would evaluate all of the applications. It would spit out four. It would spit out a certificate that would go to the selecting official and then all the selecting official would have to do is interview and select them.

COMMISSIONER HERIOT: How many hires do we do in a given year?

MS. MARTIN: We haven't hired any this year because we've been on a hiring freeze. The year before Mr. Marcus left, maybe we had about 10 and 12 hires.

STAFF DIRECTOR DANNENFELSER: Any other questions on that particular topic?

(No verbal response.)

Okay. Let me -- I was mentioning the Microsoft Document Sharing which would cost about $55,000. This works electronically. It stores Word files in a searchable database and would help support
compliance with National Archives records management requirements and similarly there would be -- There was a proposal for an email archiving system at a cost of $35,000 that again would support compliance with National Archives records management requirements.

Our Strategic Plan Goal IV calls for the creation of a Firstgov USA type website and this is supposed to be online by FY2010. However, implementation will take about two years. So this might be an opportunity to use these funds to get that process going and that would be about a $75,000 item. So that's a significant expenditure, but again it is part of our strategic plan.

There was a proposal for Epsco Social Science Index with full text which was $7350. This is an online service that provides full text of social science journals and it's more comprehensive and easier to access than our current resources.

There was a proposal for Retirement Calculation Software. This would be a $5,000 item that would allow Human Resources Division to compute retirement estimates, prepare retirement packages and complete forms, compute and individual's high three salaries which is part of the mechanism for determining their retirement benefit, their annuity.
There's another proposal for Empower software in the amount of about $6,000. This is an Oracle-based human capital management system that has the ability to automate the common administrative tasks associated with HR management and reduce internal operation costs.

We're also proposing to replace two printers. That would cost a total of $2,000. We have two printers currently. They are each more than two years old and one of the printers would be in the office of the Staff Director and the other would support the Commissioners' assistants on the sixth and seventh floors, both the Commissioners’ assistants on the sixth floor and the Staff Director on the seventh. One of these printers has actually been out of service for almost a month.

There's also a proposal for a new copier that would cost about $10,000. The current copier is more than ten years old and often malfunctions under the stress of the existing work load.

There's a proposal for COOP which is the Continuity Of Operations Plan that we're required to participate in. They have what are known as Emergency Go Bags and supplies for the people who are designated as essential personnel. You have to have these bags.
ready for them to deploy to a remote location.

And consistent with a recommendation a couple of Commissioners made to me after the last meeting, we're looking into wireless routers at the cost of $1800 and this would allow the press and Commissioners access to wireless network connection which they can't do currently. So this would enable Commissioners to have laptops for instance in the meeting room and to be able to access those laptops during the meetings which they're not currently able to do and this is not something that's in our FY'09 budget. So this would be an opportunity to use these funds in that way.

There's also a proposal to enhance a printer maintenance contract. That would be about $5,000. We have data removal immediate sanitization in the amount of $4,000 and this is a FISMA related item that is required to be installed by October of 2010.

We're also proposing to purchase services through Congressional Quarterly for what's known as online budget tracker. This is an online subscription that provides detailed and timely access to budget actions as they occur in Congress and would allow us to develop specific type of email alerts that would be a particular interest to us and would allow us access
to some searchable databases and that would be $3,400.

There's also a proposal for budget accounting and finance software that would be about $30,000. It would allow the Commission's budget personnel to automate internal tracking and monitoring of non-salary related financial transactions. It would provide faster access to data including the status of purchase requests, purchase orders and travel documents and improves the ability to reconcile financial information and reports that are generated by GSA.

And a couple of other smaller items, there is smaller costs, one for $700 is a scanner that would allow the library to scan certain documents that might be in PDF form.

CHAIRMAN REYNOLDS: Excuse me, Marty. This is Chairman Reynolds. Did you cover the big ticket items?

STAFF DIRECTOR DANNENFELSER: Yes. So that's really it. There was one other item for a conference table that would be several hundred dollars. But the big ticket items would probably be the external IT support that's $65,000, the Microsoft Document Sharing $55,000, the Firstgov USA type website would be $75,000. So those are among the
bigger items.

CHAIRMAN REYNOLDS: Questions?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here. My feeling is that I think that we have something like $450,000 to spend, estimate, in the next 60 days. I still contend that with -- We can have all these enhancements and all these different programs and computer systems. But if we don't have the manpower, I think that we're going to continually have these -- If we don't have a handle on our finances, we're always going to have this surplus at the end of the year of a half of million dollars and, as I said before, I think Tina does an outstanding job. But I just don't think that any person, I don't care how many enhancements you have and computerization that's going to be able to do both jobs of keeping us on track with finances, in tracking that, and also doing the human personnel job also. That's always been my real contention that I think that if we were to put money into one of those two positions I think that it would help us into alleviating these backed up surpluses at the end of the year.

Because if we sit in this position next year at this time with another surplus, then what I'm
saying is probably going to come true that we should have put more manpower in to operate all these enhancements that you're talking about. So for the record, that's my strong feeling on our weakness in the Civil Rights Commission office.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, this is Chairman Reynolds. I share some of your concerns, but I want to point out that the funds that we're spending this year -- Well, to do the things that you recommended and I agree that we need to hire some people, we have to make sure that we have a reoccurring stream of funds and while we have money at the end of this year for various reasons, we can't make a hire and incur a permanent obligation if the money that's available we only have it for a year.

But as a general proposition though, I agree with what you said and I think that next year we have to give a harder look at shoring up the agency.

COMMISSIONER MELENDEZ: Okay. Thank you.

CHAIRMAN REYNOLDS: Okay. Marty, would you like to provide us with an update on the statutory report?

STAFF DIRECTOR DANNENFELSER: Yes. Thank you, Mr. Chairman.

There have been a number of concerns. I
know Commissioner Melendez said in an email last night with his comments on the statutory report and other commissioners have echoed the same concern that the earlier drafts of the report were not as comprehensive as what they would have expected. So there are some concerns about what was available to review at the two review points so far and also some substantive concerns have been raised about legal analysis and the breadth of the report.

I think the report generally reflects the outline that the Commissioners adopted. But I think there is some concern that perhaps in looking at it as it come to fruition that perhaps it's too broad, that perhaps we should have been more narrowly focused.

So given the comments that have come in and some major changes that we're making to the report as a result of the comments that have been coming in from the Commissioners, I believe it would be appropriate to have the Commissioners get an opportunity to have another look at the report after these changes are made to have another review. And what I propose is that tonight is the deadline in the current run for submitting comments. What I would like to do is to resubmit to the Commissioners after we incorporate these comments, resubmit the report by
August 8th and then ask for the Commissioners to then submit comments on August 22nd. We in turn would incorporate those comments and send the report back, the final report, back to the Commissioners on August 29th and that the Commission would then vote at its September 12th meeting.

One thing that I would ask is normally we've had I guess two weeks on the back end for the Commissioners to submit their comments. What I would like to do is to limit that to one week so that we would get their comments by the 19th of September and what has happened is the schedule that we have right now envisioned that the Commissioners would get their final report one week before they vote. What I'm proposing is that they get the report two weeks before they vote, but that their comments come in, final comments, one week after voting. So you still have a total of three weeks from the time that the Commissioners would be sent the final report to the point that they'd have to submit their comments.

But given the deadlines we're against that would then still provide us with an opportunity to get the report over to GPO at the beginning of the following week and then have them print that in a CD for us. It would then be submitted to Congress by the
30th of September. We would then subsequently have printed copies made and those would be available to the public and members of Congress who would actually want printed copies as well. That would be my proposal for consideration by the Commissioners.

CHAIRMAN REYNOLDS: Okay. Any other comments?

(No verbal response.)

Well, that concludes the items that are listed on the agenda. Unless --

COMMISSIONER YAKI: Chairman Reynolds, Commissioner Yaki.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: I'd like to severe off the $75,000 Microsoft whatever the heck it was for just a question. Are we buying support for that as well and is our staff currently trained to handle that software or is training part of the purchase?

CHAIRMAN REYNOLDS: Staff Director.

STAFF DIRECTOR DANNENFELSER: Are you talking about the Firstgov website, Commissioner?

COMMISSIONER YAKI: Whatever that $75,000 Microsoft progress, whatever it was, software you were talking about. That big ticket software buy.

STAFF DIRECTOR DANNENFELSER: I'm going to
ask our Associate Deputy Director, Debra Carr, to address that question.

MS. CARR: The Microsoft Project is only a $15,000 investment. Included in that $15,000 investment would be staff training. So some training comes with the software.

The $75,000 that you mentioned was not a software package. It's a creation of a new site. Some what like the site we did for the anti-Semitism campaign. You would link all the Commission sites and it would be handled by our IT staff plus GPO.

COMMISSIONER YAKI: Okay.

VI. ADJOURN

CHAIRMAN REYNOLDS: Okay. Unless there are other questions or other issues that need to be discussed, we can adjourn the meeting. All right, folks, thank you, and I'll see you at the next meeting. Off the record.

(Whereupon, at 11:45 a.m., the above-entitled matter was concluded.)