The meeting convened at 6:15 p.m. via teleconference, Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, CHAIRMAN
ABIGAIL THERNSTROM, VICE CHAIRMAN
JENNIFER C. BRACERAS, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Attorney Advisor to the Office of the Staff Director and Acting Deputy General Counsel, OGC
PAMELA A. DUNSTON, Chief, Administrative Services and Clearinghouse Division
MAHA JWEIED
EMMA MONROIG, Solicitor/Parliamentarian
EILEEN RUDERT
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD
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CHAIRMAN REYNOLDS: On the record.

Okay. Hello folks. This is Chairman Reynolds. It is 6:15 p.m. Eastern Standard Time on August 2, 2007. We're having a telephonic meeting with all the Commissioners with the exception of Commissioner Melendez participating from different locations.

I will call the name of each Commissioner in order to confirm that there is a quorum to hold the meeting. Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Here.

CHAIRMAN REYNOLDS: Commissioner Braceras.

COMMISSIONER BRACERAS: Here.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: I am here.

CHAIRMAN REYNOLDS: Commissioner Melendez.

(No response.)
CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Here.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Here.

CHAIRMAN REYNOLDS: Is the staff director present?

STAFF DIRECTOR MARCUS: I'm here.

CHAIRMAN REYNOLDS: Is the court reporter on the line? Transcriber, are you on the line?

COURT REPORTER: Yes.

CHAIRMAN REYNOLDS: Very good.

(Off the record discussion.)

CHAIRMAN REYNOLDS: All right. Let's get started. The meeting will come to order. If a Commissioner wants to make a statement, please identify yourself first by name so that transcriber can identify who is talking.

If it is necessary to take a vote, the following procedure will be used. I will call out the name of each Commissioner. The Commissioner should then answer yes, no or
abstain. After the vote is concluded, 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 on the agenda is approval of the agenda. May I have a motion to approve the agenda?

VICE CHAIR THERNSTROM: Abigail Thernstrom so moved. Commissioner Thernstrom so moved.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER KIRSANOW: Kirsanow second.

CHAIRMAN REYNOLDS: Discussion.

(No response.)

CHAIRMAN REYNOLDS: All in favor?

Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Aye.

CHAIRMAN REYNOLDS: Commissioner Braceras?

COMMISSIONER BRACERAS: Aye.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Aye.
CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: And I, Chairman Reynolds, vote in the affirmative also. Okay.

The vote passes unanimously.

II. APPROVAL OF MINUTES OF JULY 13, 2007 MEETING

CHAIRMAN REYNOLDS: The second item on the agenda is the approval of the minutes of the July 13, 2007 meeting. May I have a motion?

VICE CHAIR THERNSTROM: So moved, Thernstrom.

CHAIRMAN REYNOLDS: Is there a second? Thank you, Commissioner Thernstrom. Is there a second?

COMMISSIONER KIRSANOW: Kirsanow second.
CHAIRMAN REYNOLDS: Discussion.
(No response.)

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

VICE CHAIR THERNSTROM: Do we have to do a roll call on each one of these because some of them are going to be unanimous. If they're not unanimous, can do a roll call?

COMMISSIONER YAKI: Without objection.

CHAIRMAN REYNOLDS: Okay. Are there any Commissioners who either object to or want to abstain from this vote?
(No response.)

CHAIRMAN REYNOLDS: Okay. Let the record reflect that this motion passed unanimously.

III. FY 2007 STATUTORY REPORT

CHAIRMAN REYNOLDS: We're up to the Statutory Report. Approval of the Statutory Report for 2007 was on the agenda for the July 13th meeting. At that meeting, the Commission did not vote on the report since additional information provided by the Department of Justice had to be included in the document.
This additional information consists of 26 cases to be reflected in the charts and tables and other changes that have been made to polish the prior draft as shown in slide group.

May I have a motion that the Commission approve for publication chapters one through five and all appendices of the 2007 Statutory Enforcement Report entitled "Becoming Less Separate School Desegregation, Justice Department Enforcement and A Pursuit of Unitary Status" as reflected in the staff's final draft distributed to the Commissioners on July 24, 2007?

VICE CHAIR THERNSTROM: Thernstrom so moved.

COMMISSIONER HERIOT: Gail Heriot, a little motion. I wanted to make a few changes to that document, but I sent my email to everyone. Did you receive that?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: I did not.

COMMISSIONER BRACERAS: I did.

Braceras received it.

COMMISSIONER KIRSANOW: I received
it and second it.

    CHAIRMAN REYNOLDS:  Okay. How about this? Let's walk through those proposed changes.

    VICE CHAIR THERNSTROM:  I will accept them. I don't need to hear them. I'm sure they're fine.

    CHAIRMAN REYNOLDS:  All right. Does anyone object to the changes proposed Commissioner Heriot?

    (No response.)

    CHAIRMAN REYNOLDS:  Any abstentions?

    COMMISSIONER YAKI:  Abstain, Yaki.

    CHAIRMAN REYNOLDS:  Okay. Please let the record reflect that all the participating Commissioners with the exception of Commissioner Yaki supports the motion submitted by Commissioner Heriot.

    COMMISSIONER YAKI:  Yaki wants to clarify that the motion had many multiple subparts. So I was uncomfortable voting for them as a whole, but I will not vote against it either.

    CHAIRMAN REYNOLDS:  Okay. Also
under this motion, concurring and dissenting statements from Commissioners would be due August 22, 2007. Commissioners previously agreed to an August 15th deadline for these statements, but I've been asked whether an additional week would be feasible. Mr. Staff Director, would a one-week extension pose any problems for the staff?

STAFF DIRECTOR MARCUS: No, Mr. Chairman, and I've checked with the Program Office. Considering that we are now going to be distributing this to Congress in electronic form, we will be able to do it even if an additional week is given to Commissioners.

CHAIRMAN REYNOLDS: Okay. On that note, may I have a motion?

COMMISSIONER YAKI: Yaki moves.

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIR THERNSTROM: Second it.

COMMISSIONER KIRSANOW: Kirsanow second.

VICE CHAIR THERNSTROM: All right.

Kirsanow seconded it.

CHAIRMAN REYNOLDS: Discussion?
(No response.)

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

VICE CHAIR THERNSTROM: Let's just -- Let's not have a roll call.

COMMISSIONER YAKI: Objection/no objection.

CHAIRMAN REYNOLDS: Okay. All those who object to the amended motion, please indicate so.

(No response.)

CHAIRMAN REYNOLDS: Commissioner Yaki, are you objecting to the motion?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. All those who abstain?

(No response.)

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: All those voting in favor? Well, actually let the record reflect that the motion passed unanimously.

COMMISSIONER YAKI: Chair Reynolds.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Commissioner
Yaki here. Just for ease of speeding up, I would suggest you use the language "Are there any objections? Hearing none, it passes unanimously."

CHAIRMAN REYNOLDS: Thank you, kind sir. I see you've been studying your Roberts' Rules.

(Laughter.)

CHAIRMAN REYNOLDS: Okay. Next.

(Off the record comment.)

CHAIRMAN REYNOLDS: May I have a motion that the Commission approve for publication Chapter 6 of the 2007 Statutory Enforcement Report as reflected in the staff's final draft distributed to Commissioners on July 24, 2007? This chapter contains the report's findings and recommendations.

VICE CHAIR THERNSTROM: Thernstrom so moved.

COMMISSIONER KIRSANOW: Kirsanow second.

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: Question? A point of information. Commissioner Yaki. I thought under the process we will be voting
separately on the findings and recommendations.

CHAIRMAN REYNOLDS: It's -- Separating on the findings and recommendations.

COMMISSIONER YAKI: That was part of the Braceras rule.

CHAIRMAN REYNOLDS: Mr. Staff Director, correct me, if I'm wrong, but wasn't that for briefing reports?

STAFF DIRECTOR MARCUS: That's correct, Mr. Chairman. That procedure was adopted for briefing reports, but that procedure has not been adopted formally the statutory report.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, is there something specific you would like to discuss?

COMMISSIONER YAKI: No. If it's an all-or-nothing, up-or-down vote, then that will determine how I vote. If we are able to discuss individual findings, I really only have a few clarifications on some of the findings, but if other than that, I don't know how you folks choose to deal with it.
CHAIRMAN REYNOLDS: Okay. What would you like to discuss under the findings?

COMMISSIONER YAKI: On finding 10, I just wanted a question of clarification to the staff. Are these percentages based on our survey or the DOJ information?

STAFF DIRECTOR MARCUS: Commissioner Yaki, I'll turn to OJC on that.

MR. BLACKWOOD: Commissioner Yaki, this is David Blackwood. Commission Yaki, we reconciled our figures with those from DOJ.

COMMISSIONER YAKI: Okay. So in -- Let's me take a look. Okay. Great. Next on same for finding number 16. It talks about -- Are we talking again about the Commission-surveyed districts or DOJ or did you reconcile the two on that one?

MR. BLACKWOOD: This is again David Blackwood. On 16, that is strictly our information based on the information we collected from the districts.

COMMISSIONER YAKI: Could I amend 16 to state that "less than one-quarter of the districts" insert "surveyed by the Commission,"? I just wanted to make that
VICE CHAIR THERNSTROM: Let me just interrupt a second. I'm getting off. I'll be back on my cell in a few minutes.

CHAIRMAN REYNOLDS: Okay. I'm sorry. Commissioner Yaki, could you give me the language again and let me know where it should be inserted?

COMMISSIONER YAKI: "Less than a quarter of the districts" then insert "surveyed by the Commission remaining under court order" blah, blah, blah. So between "districts" and "remaining" insert the phrase "surveyed by the Commission." I just want to make sure we have our data versus the reconciled data versus DOJ data.

CHAIRMAN REYNOLDS: Okay.

Comments?

COMMISSIONER MELENDEZ: Mr. Chairman, I just wanted to let you know Commissioner Melendez is on the line now. I just got on.

CHAIRMAN REYNOLDS: Very good.

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: Does anyone
have any comments regarding the proposed amendment to finding 16?

(No response.)

CHAIRMAN REYNOLDS: Okay. Does anyone object?

(No response.)

CHAIRMAN REYNOLDS: All right. Well, hearing no objection, then this proposed change passes unanimously.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: This is Gail Heriot. Finding number three we need to change President Johnson to President Eisenhower. That's simply error.

CHAIRMAN REYNOLDS: And I trust that we won't have any discussion over this issue.

(Laughter.)

VICE CHAIR THERNSTROM: All right. I'm back, everybody.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, anything else?

COMMISSIONER YAKI: We just changed President Johnson to President Thernstrom,
Abby, while you were away.

(Laughter.)

COMMISSIONER YAKI: Mr. Chair, Commissioner Yaki again. Same question just for accuracy sake, both findings 19, 20 and 21 refer to -- use the word "district." I just want to have the same clarification whether those are Commission-surveyed district, DOJ information or reconciled info.

CHAIRMAN REYNOLDS: Mr. Blackwood?

MR. BLACKWOOD: I'm sorry. Which number was that?

COMMISSIONER YAKI: Nineteen, 20 and 21 all use the word "district." But I just want to clarify whether in the data that was analyzed for these districts, was it Commission-surveyed, was it DOJ or was it a reconciliation?

MR. BLACKWOOD: Both 20 and 21, this is Blackwood again, are reconciled information.

COMMISSIONER YAKI: Okay. And 19?

MR. BLACKWOOD: Nineteen as well, yes.

COMMISSIONER YAKI: Okay. That's
all I wanted to know. On finding 22, I wanted to make -- I had a question for the -- on "nonlegal factors" and whether to insert something along the lines of "when factors such as a size of a district student population are considered." I'm just not too sure what we mean by "nonlegal factors" and whether we're giving undue importance or non-importance to whether legal factors versus nonlegal and I don't know exactly what we meant by that.

CHAIRMAN REYNOLDS: Well, Commission Yaki -- First, does anyone have a comment?

STAFF DIRECTOR MARCUS: Mr. Chairman, this is the Staff Director. I think if the word "nonlegal" were replaced with the word "other" which I think is essentially Commissioner Yaki's proposal, the meaning really wouldn't change because the notion is that factors other than unitary status are what's involved.

COMMISSIONER YAKI: That would be fine with me.

CHAIRMAN REYNOLDS: Any concerns

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from other Commissioners?

VICE CHAIR THERNSTROM: Yes. Hold on a second. I'm just -- I don't have the page open anymore in front of me. But it was one of the findings referred to the fact that judges have no particular expertise in the area of education, whatever finding that was.

COMMISSIONER YAKI: Is this Abby?

VICE CHAIR THERNSTROM: Yes. I'm sorry. This is Abigail Thernstrom.

COMMISSIONER YAKI: The last phrase, I was going to get to that. The last phrase of number nine says "Judicial supervision, however, subordinated local educators to unelected authority without any expertise..."

VICE CHAIR THERNSTROM: Yes, I thought that was kind of a gratuitous political comment there, you know, there are many areas in which judges don't have particular expertise. I don't think it was relevant to -- I didn't think it was necessary to the findings.

COMMISSIONER YAKI: Moreover, I was going to point out that many of those judges
in a lot of situations appointed special masters who did.

VICE CHAIR THERNSTROM: Well, that's correct. But instead of modifying it saying "many judges" why not leave the whole thing out? What does that sentence add?

CHAIRMAN REYNOLDS: This is Chairman Reynolds. I'm with you up to a point. I think the allocation of power and the distribution of responsibilities shifted and I think that the first piece of the sentence, that's the point for discussing the fact that judicial supervision subordinated local educators.

COMMISSIONER YAKI: I mean, if you just want to say that, this is Commissioner Yaki, I would be okay with that. But I would be the first to jump in to say that many of our elected, local school board officials who have very little expertise in education.

VICE CHAIR THERNSTROM: Exactly.

CHAIRMAN REYNOLDS: That's a very good point.

VICE CHAIR THERNSTROM: Exactly. I was one of them when I was on the state board.
(Laughter.)

CHAIRMAN REYNOLDS: Okay. Well, how about this? How about deleting the phrase "without any expertise in education" and just placing a period after "authority"?

VICE CHAIR THERNSTROM: How does it then read? I'm sorry. It's not right in front of me.

CHAIRMAN REYNOLDS: It would read "Judicial supervision, however, subordinated local educators to an unelected authority."

COMMISSIONER HERIOT: I like that.

COMMISSIONER BRACERAS: Fine.

COMMISSIONER YAKI: Commissioner Yaki here. Ms. Thernstrom, I'm wondering if you might object to the same thing I'm having here which is are we subordinating local educators or are we subordinating local school boards. I mean --

VICE CHAIR THERNSTROM: School authorities.

COMMISSIONER BRACERAS: Right.

VICE CHAIR THERNSTROM: I don't know. They wrap themselves in the mantle of educators.
COMMISSIONER BRACERAS: They may be educators, but they may not be experts. But they are educators.

VICE CHAIR THERNSTROM: They are part of the educational system.

CHAIRMAN REYNOLDS: Okay. So do we more or less have a consensus here?

COMMISSIONER YAKI: No. I'll just object.

VICE CHAIR THERNSTROM: Wait a minute. Commissioner Yaki, this is Thernstrom. Commissioner Yaki, how would you like it worded? I think you had a perfectly good wording before.

COMMISSIONER YAKI: "Subordinated local school authorities to an unelected authority." That's fine. But I think the word "educators" is way too broad.

VICE CHAIR THERNSTROM: I am fine with Commissioner Yaki's change.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, please state your revised language again.

COMMISSIONER YAKI: Commissioner Yaki here. Strike the word "educators" and
replace it with "local school authority."

CHAIRMAN REYNOLDS: Okay. That works for me. This is Chairman Reynolds. Any other comments?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: In the whole blah, blah. On finding 27, I just wanted to specify the decade time frame in finding 27. I believe you're talking from the '90s to like 2004 or 2005. But can we specify what that decade time frame is?

MR. BLACKWOOD: This is David Blackwood. Yes. We could take the reference used in the report itself and just replace it for decade time frame or specify it. I'm just trying to think how I would do that.

CHAIRMAN REYNOLDS: Commissioner Yaki, are you comfortable with just allowing the staff director and -- well, the Office of the Staff Director to come up some language.

COMMISSIONER YAKI: Sure, as long as it's not the same decade as President Johnson. Excuse me.
(Laughter.)

VICE CHAIR THERNSTROM: I thought it was President Thernstrom.

COMMISSIONER YAKI: That's right. I'm sorry, Madame President. I went into the wrong time zone.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: What about other recommendations? Commissioner Yaki, do you have any concerns?

COMMISSIONER YAKI: Well, yes, I have concerns, but I have a feeling that they are philosophical rather than grammatical.

VICE CHAIR THERNSTROM: So I assume those -- This is Commissioner Thernstrom, I assume those concerns will be fully explored in your consenting statement.

COMMISSIONER YAKI: Yes, and that's why I would not waste time on grammatical versus philosophical issue. So as for the clarifications, I have brought them all up and I appreciate the indulgence of the Commission.

CHAIRMAN REYNOLDS: Okay. Any other comments?

COMMISSIONER YAKI: By the way,
Commissioner Yaki here. Commissioner Melendez, I asked the question early on and was told that unlike briefing reports for the statutory report we do not take separate votes on the findings and recommendations and it is up and down on the report as a whole.

STAFF DIRECTOR MARCUS: Commissioner Yaki, if I may try to restate what I gave earlier. What I said is that the policy adopted a couple of months ago requiring us to vote separately for each finding and recommendation has not been adopted by the Commission with respect to statutory reports. So the Commission could, of course, if it chose go separately for each finding or recommendation. That's up to the Commission. But that has not been its custom and practice and it is not a policy that's been adopted.

COMMISSIONER BRACERAS: If I could interrupt, maybe I'm in error here, but it was my recollection that for statutory reports there was to be at least two votes, one on the document, the supporting documentation and the literature view and all that stuff and a
second vote on the chapter of findings and recommendations.

STAFF DIRECTOR MARCUS: I think that's how the motions were structured for this one, yes.

VICE CHAIR THERNSTROM: That is how they were structured.

STAFF DIRECTOR MARCUS: That's right.

COMMISSIONER BRACERAS: But does that mean although we're in the future if I would love to see individual votes and discussion on each one, my understanding is that the motion that's currently structured is consistent with the policy adopted for statutory reports.

COMMISSIONER YAKI: This is Commissioner Yaki here. I will do this even though it sounds like it will be futile. But I will make a motion that we vote separately on each finding and recommendation and I can preface that by saying that there are the number of actual findings and recommendations that I will take out for an individual vote are probably maybe four or five but that
should be --

VICE CHAIR THERNSTROM: Four or five in both? Commissioner Thernstrom here. Four or five in both categories altogether?

COMMISSIONER YAKI: Four or five. Maybe less. I just have to go over my notes one more time because the clarifications that I was seeking were pretty much taken care of beyond there was just some findings and recommendations that I had an issue with. But I think they're confined to less than five.

COMMISSIONER HERIOT: All together or in each category?

COMMISSIONER YAKI: I said together.

COMMISSIONER HERIOT: Together.

VICE CHAIR THERNSTROM: Commissioner Thernstrom here. I'm a little confused in that I thought we took care of, in terms of the findings, your concerns.

COMMISSIONER YAKI: No. There was -- Well, there was one finding that I doubt my changes will be met with universal acclaim. So I'd rather serve the "why-bother" approach which I don't want to get into a messy debate
and start parsing out words. So on one finding, I just simply skipped over my proposed changes and as for recommendations, I think there's really only maybe one or two at the most that I have that I have issue with.

CHAIRMAN REYNOLDS: Okay. This is Chairman Reynolds. Commissioner Yaki, please identify the findings that you would object to.

COMMISSIONER YAKI: I have a finding -- I object to the finding 25 and I have an objection to finding 25.

VICE CHAIR THERNSTROM: Commissioner Thernstrom here. And is that because you are looking at the data differently or you have different definitions of racial concentration such that you draw different conclusions?

COMMISSIONER YAKI: No, it's more along the lines that -- Again, I draw a different conclusion based upon the absence of additional data. In other words, my problem with 25 deals with time period for the look-back and that looking at this time period, then we conclude that the results suggest and
I think that it's a little bit stronger than I would want to say about the data that we're looking at. I would say that the results merit further exploration into the possibility or something, but I'm not sure if I would go as far to say the implication is or the results suggest that blah, blah, blah. That's my --

VICE CHAIR THERNSTROM: Thernstrom here. What if we were to add a sentence, "However, there are different ways of looking at these data and a question merits further exploration." There's something to register your sense that this shouldn't be regarded the last word. I would be fine with that.

CHAIRMAN REYNOLDS: Commissioner Yaki, would you be -- This is Chairman Reynolds. Would you be satisfied with that amendment?

COMMISSIONER YAKI: I'm trying to think of how -- of a way that I would put it. I would start off by qualifying by saying "For looking at the difference of integration from the data" -- Now again, a question to Mr. Blackwood. Is this reconciled data, is this
Commission data, or is this DOJ data that we're talking about?

MR. BLACKWOOD: This is reconciled data.

COMMISSIONER YAKI: Okay.

MR. BLACKWOOD: And Commissioner, I would just address one of the matters that you raised about additional decade. The problem was the way the focus of the report was to address Dow and Freeman and its effects and that's why we're looking at it from the '90s.

COMMISSIONER YAKI: I understand. But then we sort of go to talk about the conclusion that "fears of substantial increase in levels of racial concentration are unfounded" I'm not as sanguine about how unfounded those concerns are and I think that at least in some research that I have done independently suggest that depending on (a) what datasets you're looking at and (b) some of the time frames that you're talking about in terms of impacts when it comes to the racial concentration issue that may not be as -- it may not suggest quite the level of passivity of impact that this would suggest
and I appreciate what Commissioner Thernstrom has offered and I'm just trying to think that if there was a statement along her lines that said "However, depending" -- I can't quite think of it right now but "Depending on" -- Well, why don't we skip over that for a minute while I think about it.

VICE CHAIR THERNSTROM: All right. This is Commissioner Thernstrom back. Let me just say one thing about that. Part of the problem here it seems to me is that the degree to which -- You can talk about -- You can try to achieve the impact of achieving unitary status out of the data, but part of what's going on is demographic change and so when you say "I'm not so sanguine" it seems to me one of the things you're saying or part of the picture you have in your head is of urban districts there are increasingly majority/minority and in fact in which there are very few whites with continuing Latino immigration and so forth. And so --

COMMISSIONER YAKI: Commissioner, I think you're partially correct. I think that -- I mean I'm not saying you're partially
incorrect either. But in terms of what you're pointing out in terms of my difficulty, it's not even the expansion of the time frame back. It's also the projection of the time frame forward where I'm not sure we can make those kinds of suggestions based upon some of the changes that are occurring now. Post Seattle and Louisville, I have concerns about that.

So, therefore, my concerns about backsliding and isolation in some ways project forward and I'm not too sure of the data frozen in time that can adequately predict what may happen in the next four or five or ten years down the road.

VICE CHAIR THERNSTROM: Right.

COMMISSIONER YAKI: So to sort of say looking at the data that the fears of this or that may be unfounded might be true for the current time period maybe not be true a few years down the road.

VICE CHAIR THERNSTROM: Well, will not be true if you have the demographic change I'm suggesting, but that won't be backsliding. That will be a reflection of the racial and ethnic mix in the districts.
COMMISSIONER YAKI: Right. True. But you're assuming that will all be based on immigration or demographic changes and I'm not --

VICE CHAIR THERNSTROM: No.

COMMISSIONER YAKI: Well, maybe -- I'm sorry if I mischaracterized. But regardless of that point, I am still not entirely convinced that it won't happen on its own accord regardless of the other impact factors.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Commissioner Yaki, this is Chairman Reynolds. This is not a very strong statement. It's couched as a suggestion and I guess I would have a clearer understanding of the intensity of your concern if it were a stronger statement and, in fact, we could make it even -- I mean to address your concern we can even change the phrase "are unfounded" to "may be unfounded."

COMMISSIONER HERIOT: Or "at this point in time unfounded."

CHAIRMAN REYNOLDS: So does the proposed additional sentence along with the
changes to, the other changes, the ones offered by Commissioner Heriot and myself, does that provide you with a higher comfort level?

VICE CHAIR THERNSTROM: Commissioner Yaki, let me, Thernstrom here, pose the question slightly differently.

COMMISSIONER YAKI: Yes.

VICE CHAIR THERNSTROM: Is there any wording of this particular finding that doesn't completely tear it up that you would be comfortable with? Is there any tweaking of this finding or --

COMMISSIONER YAKI: Well --

COMMISSIONER BRACERAS: Let me put it another way. Is there any particular tweaking of this finding that Commissioner Yaki will be comfortable with and which will enable him to vote in favor of the report?

VICE CHAIR THERNSTROM: Or in favor of the findings at least, not the recommendations?

COMMISSIONER YAKI: We're not voting on the findings. So --

VICE CHAIR THERNSTROM: Wait a
minute. Aren't we voting on the findings?
No. I'm sorry. I thought we were.

COMMISSIONER YAKI: And that's why
I didn't want to -- And partly this discussion
is why out of courtesy to everyone's time I
didn't want to get into too much of this
because I think that --

COMMISSIONER BRACERAS: Hello?

COMMISSIONER YAKI: --
understanding. "The results may suggest that
fears" da-da-da-da-duh "could be" -- I mean I
don't know. If you want to know what I would
like and then we'll just sort of -- Let's just
take it from there and then move on because
again I don't want to waste a lot of people's
time here.

COMMISSIONER BRACERAS: Yes, I
actually need to hang up in about 60 seconds.

VICE CHAIR THERNSTROM: And I think
Commissioner Braceras asked the right question
actually. Even if we tweak it, you are still
going to vote against the findings and
recommendations.

COMMISSIONER BRACERAS: In which
case, if the majority is satisfied with it, I
proposed we leave it as is.

COMMISSIONER YAKI: Which is exactly why I didn't want to bring it up.

COMMISSIONER BRACERAS: In which case, can I call the question?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay. It's time to vote. Those Commissioners who object please indicate so.

COMMISSIONER YAKI: This is to the report as a whole. Correct? This is Commissioner Yaki. Objecting to the report as a whole as amended?

STAFF DIRECTOR MARCUS: This is to Chapter 6 as a whole.

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: I object.

COMMISSIONER MELENDEZ: I do, too. Mr. Melendez.

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

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

STAFF DIRECTOR MARCUS: I'm sorry, Mr. Chairman. Just because of Commissioner Braceras' prior comment can we confirm that Commissioner Braceras was still on the line.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: I am on the phone and I vote in favor of Chapter 6.

CHAIRMAN REYNOLDS: Thank you.

VICE CHAIR THERNSTROM: And can we quickly have a vote before she gets off on the findings and recommendations?

CHAIRMAN REYNOLDS: Yes. Okay. Next up, I move that --

COMMISSIONER BRACERAS: Didn't we just vote on Chapter 6?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: Yes, I thought Chapter 6 includes the findings and recommendations.

VICE CHAIR THERNSTROM: Yes. I'm sorry.

COMMISSIONER BRACERAS: So now we just need to vote on the rest. Right?
COMMISSIONER HERIOT: We did that.

COMMISSIONER BRACERAS: We did that. So are we done then?

COMMISSIONER YAKI: We did the rest.

IV. FUTURE AGENDA ITEMS

CHAIRMAN REYNOLDS: One last thing. According to the vote taken on the, well, at the July 13th meeting, the Commission will hold a telephonic meeting at 5:00 p.m. on August 16, 2007. At that meeting, we will discuss the 2009 budget and, if sufficient time remains, we will also discuss the tabled recharters for New Jersey, South Carolina and Vermont.

COMMISSIONER YAKI: What time?

CHAIRMAN REYNOLDS: 5:00 p.m., I assume that's Eastern Standard Time. Ken, is that right?

STAFF DIRECTOR MARCUS: Yes, Mr. Chairman. Eastern.

COMMISSIONER YAKI: Daylight time.

(Laughter.)

VICE CHAIR THERNSTROM: Mr. Chairman, I cannot. That's the day I move. I
can't do it.

CHAIRMAN REYNOLDS: Vice Chairman Thernstrom, I am surprised that you did not take this opportunity to get out of your responsibilities vis à vis the move.

(Laughter.)

V. ADJOURN

CHAIRMAN REYNOLDS: But in any event, folks, the meeting is adjourned. Off the record.

(Whereupon, at 6:59 p.m., the above-entitled matter was concluded.)