U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC COMMISSION MEETING

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THURSDAY, AUGUST 16, 2007

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The Commission convened via teleconference at 5:00 p.m., Gerald a. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
GAIL 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
MONICA KIBLER
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD
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CHAIRMAN REYNOLDS: This is Chairman Reynolds. It is 5:00 p.m. Eastern Standard Time on August 16th, 2007. We're having a telephonic meeting with commissioners participating from different locations. I will call the names of each commissioner in order to determine if there is a quorum to hold a meeting.

Vice Chair Thernstrom?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Braceras?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIRMAN REYNOLDS: Commissioner Taylor?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER YAKI: Oh, he was on mute.
He was getting off an airplane. So he may be walking through the thingamajig right now.

CHAIRMAN REYNOLDS: Okay. We have, let's see -- Staff Director, Mr. Staff Director, how many commissioners do we need for a quorum?

STAFF DIRECTOR MARCUS: I believe that when Commissioner Taylor comes back online, we will have a quorum. At this point we have four, and we need one more.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Is that right? We need more than half?

STAFF DIRECTOR MARCUS: Five.

COMMISSIONER HERIOT: Five. Okay.

CHAIRMAN REYNOLDS: All right. Is the operator still on the line?

TELEPHONE OPERATOR: Yes, I am.

CHAIRMAN REYNOLDS: Please take us off until Commissioner Taylor is on the line.

TELEPHONE OPERATOR: Okay. I will transfer you back.

CHAIRMAN REYNOLDS: Thank you.

TELEPHONE OPERATOR: You're welcome.

(Whereupon, the foregoing matter went off the record at 5:01 p.m. and went back on the record at
5:07 p.m.)

CHAIRMAN REYNOLDS: Okay. We are back. I am going to go through the roll call once again to confirm that we have a quorum. Vice Chair Thernstrom?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Braceras?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Here.

CHAIRMAN REYNOLDS: Commissioner Yaki?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER HERIOT: Oh, boy.

TELEPHONE OPERATOR: He is online. He may just have us on mute.

CHAIRMAN REYNOLDS: Oh, but --

PARTICIPANT: We need to verify.

CHAIRMAN REYNOLDS: Right.

(Pause.)

CHAIRMAN REYNOLDS: Okay. Everyone hit your mute button. I'm going to try to reach
Commissioner Yaki.

COMMISSIONER YAKI: Why?

CHAIRMAN REYNOLDS: Oh, Commissioner Yaki?

Commissioner Yaki?

COMMISSIONER YAKI: All right. I jumped off. My other line rang. So I'm sorry. I thought you guys were still on hold.

CHAIRMAN REYNOLDS: Okay. We have five commissioners on the line. So we have a quorum. Is the staff director present?

STAFF DIRECTOR MARCUS: I'm here, Mr. Chairman.

CHAIRMAN REYNOLDS: Is the court reporter on the line?

PARTICIPANT: Neal Gross?

THE COURT REPORTER: I am here, Mr. Chairman. If I could ask that when people speak --

CHAIRMAN REYNOLDS: If a commissioner wants to make a statement, please identify yourself first.

Whenever it is 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 has concluded, I will read aloud the votes...
to ensure that the tally is correct.

I. Approval of Agenda

The first item on the agenda is the approval of the agenda. I move that we approve the agenda.

COMMISSIONER HERIOT: I have a motion on that.

CHAIRMAN REYNOLDS: Yes, Commissioner Heriot?

COMMISSIONER HERIOT: I have a motion that we table the consideration of the state advisory committee issues. That is item 5 on the agenda.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER KIRSANOW: Kirsanow. Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER HERIOT: I've got some suggestions I would like to make. And there is not enough time to make it in the meeting. And I think we can handle this next week at our regular meeting.

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

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot, it's your vote. I assume you --

COMMISSIONER HERIOT: Yes. I vote yes.
CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: And I support it also.

The vote passes unanimously.

II. Approval of Minutes of August 2 Meeting

CHAIRMAN REYNOLDS: Okay. Next up is the approval of the minutes of the August 2nd, 2007 meeting. May I have a motion?

COMMISSIONER HERIOT: I did notice the first line said it was the monthly meeting, and it was actually the second meeting of that month, wasn't it, or -- I don't have it in front of me now since I managed to drop it.

CHAIRMAN REYNOLDS: Okay. Ken, what we're talking about is the minutes of the August 2nd meeting. Is that correct or no?

STAFF DIRECTOR MARCUS: Yes, that's right.

It was the first meeting of the month, but Commissioner Heriot does have a point in that it was not the official monthly meeting.

COMMISSIONER HERIOT: Why don't we just strike that word?

STAFF DIRECTOR MARCUS: Yes.
CHAIRMAN REYNOLDS: Okay. So the motion is for the approval of the minutes of the August 2nd meeting.

COMMISSIONER HERIOT: With the word stricken.

CHAIRMAN REYNOLDS: Yes. Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

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

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIRMAN REYNOLDS: The motion passes unanimously.

Next up is --

COMMISSIONER YAKI: I didn't hear your vote.

CHAIRMAN REYNOLDS: I'm sorry?
COMMISSIONER YAKI: I didn't hear your vote.

CHAIRMAN REYNOLDS: Oh, I vote in favor of it. It passed unanimously.

III. Management and Operations, 2009 Budget

CHAIRMAN REYNOLDS: Next up is the 2009 budget. A few weeks ago you were provided with a summary of the Commission's fiscal year 2009 budget estimate.

As you know, the Commission is asking for a little over 11 million bucks, which is a $2 million increase over what the Appropriations Committee approved in 2008. Mr. Staff Director, would you please explain this recommended increase?

STAFF DIRECTOR MARCUS: Certainly, Mr. Chairman. The increase is attributable to a couple of important items on the draft five-year strategic plan, the most important of which for budgetary purposes are the proposed national civil rights conference, which is part of the strategic objective dealing with developing the national dialogue on civil rights. And the second relates to the strategic objective of reinvigorating the state advisory committees.

We have included in this budget both a little over $100,000 for a fairly ambitious national
conference on civil rights as well as various
increases dealing with regional travel to accommodate
state advisory committee meetings and a number of new
hires, most of which would relate to regional work in
the state advisory committees. They would include,
for instance, a handful of civil rights analysts as
well as administrative assistants and others to deal
with that work.

Some of the other important items deal
with new software and technology for the agency,
accommodating the expanded services that we are now
receiving from GSA for accounting, replacements for
computers and printers. Those are the main areas of
increase.

And I would be happy to discuss any of
them in greater detail. And, of course, we have
anticipated cost-of-living increases and other
inflation that is also measured in.

CHAIRMAN REYNOLDS: Okay. At this point
is there a motion to approve submission of an $11
million fiscal year 2009 budget estimate to the Office
of Management and Budget?

COMMISSIONER KIRSANOW: Kirsanow. So
moved.

CHAIRMAN REYNOLDS: Is there a second?
COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: I have one question on the discussion period, if you don't mind.

CHAIRMAN REYNOLDS: Oh, not at all.

COMMISSIONER KIRSANOW: Mr. Staff Director, did the budget include salaries? I don't have it in front of me right now, and I am having difficulty calling it up on my computer. Did it include salaries or how many special assistants did it include salaries for?

STAFF DIRECTOR MARCUS: I believe it included salaries for the same number of special assistants that are currently on board.

COMMISSIONER KIRSANOW: And how many commissioner salaries did it anticipate?

STAFF DIRECTOR MARCUS: Eight. Oh, is it seven or eight?

PARTICIPANT: Eight commissioners.

STAFF DIRECTOR MARCUS: Eight. Eight commissioner salaries. So that if we had to pay fewer than eight commissioner salaries, of course, we would
have a savings.

    COMMISSIONER KIRSANOW: Okay. Thank you.

    That's all I want to know.

    COMMISSIONER YAKI: I have a question that

--

    CHAIRMAN REYNOLDS: Commissioner Melendez?

    COMMISSIONER YAKI: This is Commissioner

Yaki.

    CHAIRMAN REYNOLDS: Oh, I'm sorry.

Commissioner Yaki?

    COMMISSIONER YAKI: Why don't we put in

the budget for special assistants for all the

commissioners?

    CHAIRMAN REYNOLDS: Commissioner Heriot?

    COMMISSIONER HERIOT: Yes. I would think

that should be a priority.

    CHAIRMAN REYNOLDS: I think it's a good

idea. Does anyone have any reservations or concerns?

    COMMISSIONER KIRSANOW: It can't hurt to

ask.

    CHAIRMAN REYNOLDS: Ken --

    PARTICIPANT: I'll tell you we're more

likely to get that than a lot of other things we would

be asking for.

    STAFF DIRECTOR MARCUS: I don't see any
reason why not. The increases that we put on were primarily driven by the strategic plan, which is why we didn't put that in in the first place, but I don't see why it would hurt to ask.

CHAIRMAN REYNOLDS: How much time would it take? I'm assuming that turning the document around wouldn't take long.

STAFF DIRECTOR MARCUS: No. I think if the Commission were to approve the budget with additional funds for hiring of eight special assistants, we could fairly easily add that. It would not create any additional time problems.

CHAIRMAN REYNOLDS: Additional questions? Concerns?

COMMISSIONER MELENDEZ: Yes. This is Commissioner Melendez.

As far as the regional offices, as far as the funding, is the rent for all of those regional offices included in the two million or so that is set aside for the regional office line item?

STAFF DIRECTOR MARCUS: I believe it is in that line item. And I see a head being nodded. So unless the Director of Management wants to say something to the contrary, let me take just a look.

(Pause.)
CHAIRMAN REYNOLDS: Ken?

STAFF DIRECTOR MARCUS: Yes? I'm sorry.

Office of Management has just indicated to me that it's in the $1.305 million line item under ASCD for rent, communications, and utilities.

CHAIRMAN REYNOLDS: Mr. Melendez, do you have any other questions or comments?

COMMISSIONER MELENDEZ: Yes. The other thing was, as far as staffing, he says, I believe, new hires for the regional offices. But I'm not sure exactly what new hires we're talking about. I believe on page 2 under the new hire salary, most of those positions are around 45,000, which would indicate that we're basically hiring probably secretarial or administrative staff. Is that the case?

STAFF DIRECTOR MARCUS: The positions would include a civil rights analyst for the Western regional office, a civil rights analyst for the Rocky Mountain regional office, a civil rights analyst for the central regional office, a civil rights analyst for the Midwestern regional office, administrative assistant for the Southern regional office, a writer/editor for the regional program coordination unit.

And now this is another hire that's not
related to the regions is a staff assistant in Budget and Finance Division. These are new hires relative to 2008.

COMMISSIONER HERIOT: Do we need to move to include a budget item for the staff, the special assistants that Michael was talking about?

CHAIRMAN REYNOLDS: Yes. I think that that would be --

COMMISSIONER HERIOT: Should we do that formally?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: Michael, did you want to make that motion?

COMMISSIONER YAKI: So moved.

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: And I support it also.

The motion passes unanimously. Okay. So that was just the addition of funds for assistance. Are there any other comments about the budget?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here. As far as the travel compared for the regions, we only had for 2008 about 15,000. So has it been increased for the 2009?

STAFF DIRECTOR MARCUS: I'm sorry. Commissioner Melendez, are you asking whether the travel for the region has been increased?

COMMISSIONER MELENDEZ: Yes.

STAFF DIRECTOR MARCUS: Yes. And our request is we are requesting a substantial increase in regional travel to approximately the amount of $266,000.

And the reason that it's so large is twofold: first, because there was virtually no money in the budget for 2008. So we have really had to fund virtually all regional travel out of attrition this year, which is not something we would want to plan for.

The second reason is that we would anticipate that we will have a much larger number of
chartered state advisory committees by 2009. Certainly we have a lot more now than we had a year ago, and we certainly hope to continue at this pace. So this is an ambitious travel number which is based on the hope and expectation that we will have a large number of active state advisory committees.

COMMISSIONER MELENDEZ: Okay. As far as the Office of General Counsel, we have a decrease in that position over 2008?

STAFF DIRECTOR MARCUS: Yes, it is a decrease in that there is one attorney who has left the office. And as between an attorney and a senior secretary, the Office of General Counsel has identified an experienced secretary as being their greatest single need. And so it reflects having a secretary, rather than an attorney, which is significant savings, which we can use for other purposes that are in the budget.

COMMISSIONER MELENDEZ: Okay. Based on the fact that the General Counsel is in charge of the statutory reports, by not rehiring an attorney in this position, does that make it more difficult for us to fulfill our obligations?

STAFF DIRECTOR MARCUS: Well, I guess there are a couple of things to be said to that.
First, the General Counsel is not typically responsible for the statutory reports. That responsibility is usually that of the Office of Civil Rights Evaluation.

This year was an exception in that the Office of General Counsel was primarily responsible with only some support from OCRE. Next year is also something of an exception in the sense that the prisons project will be shared between those two offices.

Part of the reason for this, of course, is that it is taking a little more time than initially anticipated to fill the directorship of the Office of Civil Rights Evaluation.

I would anticipate that by 2009, the primary responsibility for the statutory report would return to the Office of Civil Rights Evaluation. As you might recall, the statutory report for that year deals with fair housing, which is a kind of report which is a little closer to the statutory reports traditionally conducted by OCRE.

Now, having said that, there's no question that it would be more difficult for OGC to conduct its work in 2009 relative to a period, say, a couple or a few years ago because it involves a dwindling staff.
On the other hand, as compared to today, this would, this budget would, reflect an increase in that there will be more staffing as compared to today.

COMMISSIONER MELENDEZ: Okay. Another question from Commissioner Melendez. What does the $109,300 budgeted for contract labor in the ASCD Division cover?

STAFF DIRECTOR MARCUS: I'm sorry. Let me just take a moment to look at that item, Commissioner Melendez.

(Pause.)

STAFF DIRECTOR MARCUS: I believe, Commissioner Melendez, that that line item -- and I'm having OM look at that as we're speaking. I believe that that is a line item in which we would include the event planner, which we would envision having for our national conference.

Now, I should add that this budget projects a relatively ambitious conference for 2009. We are realistic about the prospect that we might get less than what we are asking for.

And so we are trying to project different levels of conference depending upon the amount of money that we get. But in terms of what we are asking for, we're asking for a budget that is significant.
enough that would enable us to hire a professional
planner to assist us with some of the aspects of the
conference.

COMMISSIONER MELENDEZ: One more question.

How much money does this budget set aside for the
briefings and the hearings that we are supposed to be
having in 2009?

COMMISSIONER YAKI: This is Commissioner
Yaki. I want to add to that because I thought the
budget report said only three briefings, report and
the conference. I just didn't know where that fit in
with the projected backlog of briefing desires for
2009.

STAFF DIRECTOR MARCUS: As I recall -- and
others can help me -- the Commission vote during the
Planning Committee meeting was to conduct at least
three briefings during that fiscal year.

Now the commissioners identified a greater
number than three of briefings that they would like to
hold. I think numbers of five and six came up
together with various caveats that were expressed
during the course of the meeting that we might only be
able to do three.

At the time of the planning meeting, it
was my suggestion that if we were to have not only a
statutory report but also a national conference and a report that's based both on the national conference and also on all state advisory committees, that we would need to have a smaller number of briefings than we have had in the past, with three being a number that seemed realistic in light of current national staffing.

So the budget assumes approximately three briefings as well as the national conference and the multi-state SAC report and, of course, the statutory report.

CHAIRMAN REYNOLDS: Additional questions?

COMMISSIONER MELENDEZ: I have just one more question. Why are the Commission's projects a separate column with its own salary and benefit numbers? And does that money cover additional staff?

STAFF DIRECTOR MARCUS: Yes. Commissioners, because of the way that question goes to the nature of the Excel spreadsheet and why it was developed, I think I am going to have to turn to the Director of Management, Tina Martin. Tina, you are online?

(No response.)

CHAIRMAN REYNOLDS: Mr. Staff Director, this is Commissioner Reynolds. Is Ms. Martin on the
line?

STAFF DIRECTOR MARCUS: I'm sorry. We're having difficulty with that. I'm just informed that while it seems that she is on the line, her line appears to be muted by the operator. She appears not to be on the speaking line right now.

And I don't know whether that's something that we can correct at this point. A staff member has just gone to another line to see if they could work on that.

COMMISSIONER MELENDEZ: Okay. Well, also --

STAFF DIRECTOR MARCUS: I'm sorry. But aside from the question of the way that the Excel spreadsheet was set up, Commissioner Melendez, is there some policy aspect to that question? Is there somewhere that the question was leading to that I might be able to address or was it just about why it was set up in the way that it was?

COMMISSIONER MELENDEZ: Well, I think we need to know who the employees will be in each division of the agency in 2009 and, you know, just so it's a little clearer.

STAFF DIRECTOR MARCUS: Okay. Well, perhaps I can help with that. You are trying to find
who the employees will be in the agency?

COMMISSIONER MELENDEZ: Well, yes. That's part of it.

STAFF DIRECTOR MARCUS: If you're trying to figure out what the differences are in positions, the only new position upon which this budget is predicated would be the ones that I listed a little while ago.

Now, those new hires that I listed would amount to approximately $324,000. And, of course, there are some people who would come on board between now and 2009.

For instance, we've spoken earlier about the RPCU chief. And you are aware that there are vacancies that we are filling, for instance, for the directorship of OCRE. And there is an administrative assistant opening that recently developed in ASCD that we will want to fill. And we also have a fairly recent vacancy for a secretary in -- it's somewhere in OM. I want to say it's somewhere in OM that we're going to need to fill.

Beyond that, we do not envision in this budget that we would be eliminating positions, only adding them. And they're the sorts of positions I just mentioned.
Does that answer your question?

COMMISSIONER MELENDEZ: Yes. Thank you.

CHAIRMAN REYNOLDS: Okay. Are there additional questions?

(No response.)

CHAIRMAN REYNOLDS: Okay. Since there are no questions, Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: I'm sorry?

Commissioner Yaki?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Yaki?

(No response.)

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: It's funny. I thought he said, "Yes," but it was so faint that --

COMMISSIONER KIRSANOW: Yes. That's what it sounded like to me, but --

COMMISSIONER HERIOT: Yes but not clear
CHAIRMAN REYNOLDS:  Right. Okay. And --

COMMISSIONER YAKI:  Yes.

CHAIRMAN REYNOLDS:  Commissioner Yaki, you're back.

COMMISSIONER YAKI:  That was a yes.

CHAIRMAN REYNOLDS:  Okay. And I support it also. So with the exception of Commissioner Melendez, who voted against the motion the motion passes unanimously.

COMMISSIONER YAKI:  How did it pass unanimously if Commissioner Melendez voted no?

CHAIRMAN REYNOLDS:  I said with the --

COMMISSIONER HERIOT:  Other than.

CHAIRMAN REYNOLDS:  Okay. You're going to bust my chops now.

COMMISSIONER YAKI:  Except for the five runs scored in the bottom of the ninth inning, he had a shut-out.

CHAIRMAN REYNOLDS:  Your point is a good one.

COMMISSIONER HERIOT:  Did Commissioner Taylor ever join us?

CHAIRMAN REYNOLDS:  No, he did not.

IV. Program Planning
Commissioner Responses to Briefing Reports

CHAIRMAN REYNOLDS: Okay. Next up. The staff director recently circulated the commissioner statements for approving the briefing report on affirmative action in law schools. Those statements included Commissioner Melendez's and Yak’s alternative summaries of the explanations of their opposition votes to each of the approved findings and recommendations. They wish to include these summaries following each finding and recommendation set forth in the briefing report, which was prepared by the staff for publication.

These commissioner-proposed embedded dissents have raised several concerns of other commissioners. The concerns included whether it is proper to provide a summary of the views of the dissenters without also providing a summary of the views of all of the other commissioners, whether it was appropriate to publish statements of the grounds of dissent after each finding and recommendation as well as at the end of the report, and whether we should provide the dissenting commissioners' own formulation of the reasons for their dissent, as opposed to a staff summary of these reasons.

In other to address these issues, I would
like to move that to the extent that commissioners want to provide a finding-by-finding and recommendation-by-recommendation statement for the basis of their dissent or an explanation of their concurrence, they may do so, but it would be included in their dissent or concurrence.

Under this motion, this finding-by-finding and recommendation-by-recommendation explanation of concurrences and dissents would take the place of the explanations included after each finding and recommendation in the main body of the report.

Is there a second?

COMMISSIONER HERIOT: I will second that.

You know, I think there are a lot of ways to do this. It's just what I object to right now is these are supposed to be non-argumentative findings and recommendations. And then the only argument is the argument against them.

You know, we have either got to let people have both, you know, the arguments in favor and the arguments against, together or we've got to take them and put them somewhere else. I mean, I am open to other ideas on how to do this.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: This is Commissioner
Yaki. I mean, I thought we were just following the procedure that we had voted on earlier. I didn't realize it would cause such a fuss.

CHAIRMAN REYNOLDS: Well, I believe that the expectation -- and, you know, the expectation was that the staff would make a good faith effort to summarize, briefly summarize, the objection.

COMMISSIONER HERIOT: That's asking them to do a lot, you know, to crawl into all of our minds here. You know, we all can do it better ourselves. And it's just a question of where it should be placed.

CHAIRMAN REYNOLDS: So as a basis for discussion, though, what do you think of the idea of allowing this but as putting it with the dissent or concurrence?

COMMISSIONER HERIOT: I think that's fine just to let people write it themselves and put it in their dissent and concurrence. And it might even encourage, you know, more concurrences, which I think we could, you know, use more of.

CHAIRMAN REYNOLDS: Any other comments?

(No response.)

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

COMMISSIONER YAKI: Point of information.
CHAIRMAN REYNOLDS: Yes, Commissioner Yaki?

COMMISSIONER YAKI: When you have a quorum, is it simply a majority of those voting to approve it?

COMMISSIONER HERIOT: You mean how does an abstention count?

COMMISSIONER YAKI: No. Is it majority of those voting or majority of the body? That's all I'm asking.

COMMISSIONER HERIOT: Oh. It's the majority of those voting. But don't take my word for it because I could make a mistake.

CHAIRMAN REYNOLDS: Mr. Staff Director?

STAFF DIRECTOR MARCUS: Commissioner Heriot is correct. It's the majority of those who are voting.

COMMISSIONER YAKI: Well, in that case, bye.

CHAIRMAN REYNOLDS: Okay. We were just denied a quorum.

COMMISSIONER HERIOT: Well, let's keep on until we can get Ashley back, then.

CHAIRMAN REYNOLDS: Okay. Let's hit our mute buttons and track down Mr. Taylor.
COMMISSIONER HERIOT: You might want to work on Abby and Jennifer, too. Actually, once you have a quorum, I think you still have a quorum unless somebody notes its absence.

CHAIRMAN REYNOLDS: Well, I believe I just did.

COMMISSIONER HERIOT: I think it may be that you have to officially.

CHAIRMAN REYNOLDS: Mr. Staff Director?

STAFF DIRECTOR MARCUS: It's my understanding -- and we could go to the parliamentarian -- that if a member of the quorum notes his departure and that departure leads to a loss of a quorum, then there is no quorum anymore. Madam Parliamentarian?

THE PARLIAMENTARIAN: That's correct.

COMMISSIONER HERIOT: Okay. So just his act of saying, "I'm leaving." But that wasn't my understanding of how these things work, but fine. Can we find Jennifer or Abby or Ashley?

COMMISSIONER MELENDEZ: I also have another meeting at 3:00 o'clock our time, which is about 20 minutes. So either hopefully somebody comes on the line or we can put this on next Friday's.

CHAIRMAN REYNOLDS: Folks, I have Ashley
on the other line. Will somebody provide me with the call-in information?

COMMISSIONER HERIOT: We have got it?

CHAIRMAN REYNOLDS: Ken, do you have the call-in information handy?

TELEPHONE OPERATOR: 1-(800) 597-7623 --

CHAIRMAN REYNOLDS: I'm sorry? Seven six?

STAFF DIRECTOR MARCUS: Let me say it. 1-(800) 597-7623. This is the staff director.

CHAIRMAN REYNOLDS: Okay. And the code? Is there a code? Mr. Staff Director, is there a code?

STAFF DIRECTOR MARCUS: I'm sorry. We may have just given you the wrong number. And the person who definitely has the right number has run out of the room a few minutes ago to try and reach Commissioner Taylor. We have got another person going to reach that person and get a new number for you.

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR MARCUS: The number that I just gave you might have been the public listen-only number, as opposed to the speak number.

CHAIRMAN REYNOLDS: Well, when you get the information, please have someone call Commissioner Taylor on his cell phone and provide him with both the number and the code.
STAFF DIRECTOR MARCUS: We will do that, certainly.

TELEPHONE OPERATOR: Commissioner Reynolds?

TELEPHONE OPERATOR: Mr. Reynolds?

CHAIRMAN REYNOLDS: Yes?

TELEPHONE OPERATOR: That is actually the correct dial-in number. All she has to do is state that she will be a speaker, and we will open her line.

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR MARCUS: Operator, of course, you will expect that he will identify himself as Ashley Taylor in order for you to do that.

TELEPHONE OPERATOR: Okay. That's fine. That's fine. I will go ahead and step away so I can pick that line up for you.

(Pause.)

COMMISSIONER MELENDEZ: I have to get going also. So, unfortunately, I have to leave the quorum at this point. Commissioner Melendez.

CHAIRMAN REYNOLDS: Okay. You can't hang on for ten minutes?

COMMISSIONER MELENDEZ: I've got to be across town, and it's --

COMMISSIONER HERIOT: You're making a
mistake, Arlan.

COMMISSIONER MELENDEZ: I am?

COMMISSIONER HERIOT: Yes. You're not doing what's in your interest.

TELEPHONE OPERATOR: Commissioner Taylor is on.

COMMISSIONER TAYLOR: I'm on.

CHAIRMAN REYNOLDS: Okay. We have a quorum.

COMMISSIONER HERIOT: Let's vote.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Against.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Help me out on the motion.

CHAIRMAN REYNOLDS: Okay. It's a motion.

This is the issue regarding dissents, --

COMMISSIONER TAYLOR: Okay.

CHAIRMAN REYNOLDS: -- whether they should be included in the body of the document or in the back
along with the dissents and concurrences. The motion is for that type of commentary to be placed in the dissent and concurrence.

COMMISSIONER TAYLOR: Are you all there?

COMMISSIONER HERIOT: Yes.

COMMISSIONER TAYLOR: Okay. I hate to do this, but is there a two-sentence summary of the argument?

COMMISSIONER HERIOT: Yes. Right now we have only the reason to be against as the findings and recommendations written with the findings and recommendations. So if we want to be fair, we have to put in also the reasons to be for it.

COMMISSIONER TAYLOR: Right.

COMMISSIONER HERIOT: And, therefore, the easiest thing to do at this point is to put them in the concurrences and dissent because otherwise --

COMMISSIONER YAKI: This is Commissioner Yaki. The whole point of why we did this in the first place is because it was to give the minority a chance to disagree with the findings on a point-by-point basis, which is a basis for our votes in briefings to allow vote by vote.

COMMISSIONER HERIOT: Which is fine. The only problem is the findings and recommendations are
not argumentative.

COMMISSIONER YAKI: I'm sorry, Commissioner Heriot. I believe I was talking, and you weren't here during the debate. So if you would just give me the pleasure of --

COMMISSIONER HERIOT: You were the person who already left the quorum, Mr. Yaki.

CHAIRMAN REYNOLDS: Hold on. Commissioner Yaki, first, I'm surprised that you are on the line.

COMMISSIONER YAKI: I came back in because Commissioner Melendez asked me to come back on. But I don't know if Commissioner Melendez is still here or not.

COMMISSIONER HERIOT: He's already voted.

CHAIRMAN REYNOLDS: The discussion portion is closed. We are in the process of voting.

COMMISSIONER TAYLOR: Well, let me just by way of --

COMMISSIONER YAKI: Commissioner Heriot was doing the discussion portion. So she reopened it. So I felt a need to come in.

CHAIRMAN REYNOLDS: The discussion portion you elected --

COMMISSIONER YAKI: I mean, this is --

CHAIRMAN REYNOLDS: -- to get off the line
during that --

COMMISSIONER YAKI: -- unanimously. This

was put forth by Commissioner Braceras as a way of

ensuring that all viewpoints are expressed in these

briefing reports. And now because some people don't

like it or because they don't like the fact that it

muddies the reports that people actually disagree with

it within the body of the report itself, now we're

going to repeal it? This is This is ridiculous.

COMMISSIONER HERIOT: We're just trying to

let --

COMMISSIONER YAKI: Guys --

CHAIRMAN REYNOLDS: But, Commissioner

Yaki, your ability to include language --

COMMISSIONER YAKI: Then why bother with

voting on the findings point by point when you can

just disagree with the individual ones that you don't

like in the dissent? That doesn't track. That's not

why we did it.

COMMISSIONER HERIOT: You're still going
to have the fact that you dissented some particular

finding or recommendation. That's noted.

COMMISSIONER YAKI: That's not the point.

The point is that we allowed -- the reason why we did

it was to distinguish why we would vote yes on some,
no on others because we --

COMMISSIONER HERIOT: Are you arguing that only those who dissent should have the right to do this --

COMMISSIONER YAKI: -- vote of these particular issues. Now, I'm sorry. I guess you don't like the way it looks. You don't like the fact that someone is going to put in a statement below there "Commissioners Yaki and Melendez disagree with this idiotic finding." Well, tough luck. That's what we voted on. And now, you know, you're going to --

CHAIRMAN REYNOLDS: No one is denying you --

COMMISSIONER YAKI: -- about it. And don't say, "Well, we have to do it this way" or "this way." Just say you don't like the way it looks. It doesn't look as pretty to your friends who are trying to wave it around to their friends.

CHAIRMAN REYNOLDS: No one is taking away your ability to express your support or your disagreement.

COMMISSIONER YAKI: Bit by bit, Mr. Chair, over the past three months, that has not been the case.

CHAIRMAN REYNOLDS: Would you like to give
me an example of what has occurred over these last --

COMMISSIONER YAKI: I will put it to you in a nice little polite letter, Mr. Chairman. But for right now, this is just ridiculous. I vote no. Make sure that Ashley votes yes because that's what you want him to do. And let's move on with this.

CHAIRMAN REYNOLDS: Okay. Well, thank you for rejoining us.

Mr. Taylor, how do you vote?

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: And I also vote in favor. Please let the record reflect that Commissioners Melendez and Yaki voted against it and that the remaining commissioners, Commissioners Taylor, Heriot, Kirsanow, and Reynolds, voted in favor of it. The motion passes.

V. State Advisory Committee Issues

We have tabled the vote on the state advisory committees, the ones that were scheduled, New Jersey --

COMMISSIONER YAKI: Reconsider that vote?

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER YAKI: I move to reconsider that vote.

CHAIRMAN REYNOLDS: Is there a second?
COMMISSIONER HERIOT: Can a person who voted no move to reconsider?

COMMISSIONER YAKI: I voted yes.

CHAIRMAN REYNOLDS: He voted in favor of it. Is there a second?

COMMISSIONER YAKI: Check your log better next time.

CHAIRMAN REYNOLDS: Is there a second?

(No response.)

CHAIRMAN REYNOLDS: Since there is no second, we will not reconsider it. That is all that we have on the agenda today. This teleconference is adjourned.

(Whereupon, the foregoing matter was concluded at 5:47 p.m.)