

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

COMMISSION MEETING

+ + + + +

FRIDAY, OCTOBER 12, 2007

+ + + + +

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

PRESENT:

GERALD A. REYNOLDS, CHAIRMAN
 ABIGAIL THERNSTROM, VICE CHAIRMAN
 JENNIFER C. BRACERAS, COMMISSIONER (via telephone)
 GAIL L. HERIOT, COMMISSIONER
 PETER N. KIRSANOW, COMMISSIONER
 ARLAN D. MELENDEZ, COMMISSIONER (via telephone)
 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 + Acting Deputy General
 Counsel, Office of the General Counsel (OGC)
 DEBRA CARR, Esq., Associate Deputy Staff Director,
 Office of the Staff Director (OSD)
 PAMELA A. DUNSTON, Chief, ASCD
 DEREK HORNE (via telephone)
 MAHA JWEIED
 TINALOUISE MARTIN, Director of Management
 SOCK-FOON MACDOUGALL
 EILEEN RUDERT
 KIMBERLY TOLHURST
 AUDREY WRIGHT

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
LISA NEUDER
RICHARD SCHMECHEL
KIMBERLY SCHULD

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

A-G-E-N-D-A

I.	Approval of Agenda	4
II.	Approval of Minutes of September 21, 2007 Meeting	7
III.	Announcements	8
IV.	Staff Director's Report	9
V.	Management and Operations	15
	Strategic Plan.....	16
	Establishment of Briefing and Meeting Schedule of 2008.....	32
	Celebration of Commission's 50th Anniversary.....	38
	Information Quality Guidelines.....	82
	Involvement of Commissioners in Staff Activities (tabled)	
VI.	Program Planning	91
VII.	State Advisory Committee Issues (deleted)	
VIII.	Future Agenda Items (none)	
IX.	Adjournment	154

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

P-R-O-C-E-E-D-I-N-G-S

(9:39 a.m.)

CHAIRMAN REYNOLDS: Good morning. The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights at 624 Ninth Street, N.W., Room 540, Washington, D.C. Commissioner Taylor will not be able to participate in this meeting. Commissioners Braceras and Melendez will participate by telephone. All remaining commissioners are physically present.

I. Approval of Agenda

CHAIRMAN REYNOLDS: The first item on the agenda is the approval of the agenda. May I have a motion to approve the agenda?

VICE CHAIR THERNSTROM: So moved.

COMMISSIONER BRACERAS: So moved.

CHAIRMAN REYNOLDS: Commissioner Melendez, I just need to confirm that you are on the line.

COMMISSIONER MELENDEZ: Yes, I'm here.

CHAIRMAN REYNOLDS: Thank you.

Okay. Discussion?

(No response.)

All in favor, say aye.

(A chorus of ayes.)

CHAIRMAN REYNOLDS: Okay. The motion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 passes unanimously. I move to amend the agenda by
2 deleting the discussion of the item labeled "South
3 Carolina SAC" under the item labeled "State Advisory
4 Committee Issues."

5 Is there a second?

6 COMMISSIONER YAKI: Second.

7 CHAIRMAN REYNOLDS: Discussion?

8 (No response.)

9 All in favor, say aye.

10 (A chorus of ayes.)

11 CHAIRMAN REYNOLDS: The motion passes
12 unanimously.

13 I also move to amend the agenda by
14 deleting discussion of these item labeled "Involvement
15 of Commissioners in Staff Activities."

16 Is there a second?

17 COMMISSIONER YAKI: Second.

18 CHAIRMAN REYNOLDS: Discussion?

19 (No response.)

20 All in favor, please say aye.

21 (A chorus of ayes.)

22 CHAIRMAN REYNOLDS: I move to amend the
23 agenda to add the discussion of a briefing report
24 entitled "Racial Categorization in the 2010 Census"
25 under the item labeled "Program Planning."

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Is there a second?

2 VICE CHAIR THERNSTROM: Second.

3 CHAIRMAN REYNOLDS: Discussion?

4 (No response.)

5 CHAIRMAN REYNOLDS: All in favor, please
6 say aye.

7 (A chorus of ayes.)

8 CHAIRMAN REYNOLDS: The motion passes
9 unanimately.

10 I'm sorry?

11 COMMISSIONER MELENDEZ: I didn't vote for
12 it.

13 CHAIRMAN REYNOLDS: Okay. You voted
14 against it, or did you abstain?

15 COMMISSIONER MELENDEZ: I voted against
16 it.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER YAKI: I have a point of
19 information. I thought that was in the original
20 agenda.

21 CHAIRMAN REYNOLDS: It's not on mine.

22 VICE CHAIR THERNSTROM: It's not on mine.

23 CHAIRMAN REYNOLDS: So, it was already on
24 the agenda?

25 COMMISSIONER YAKI: It's just that when

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Chris sent out the materials for the meeting, included
2 in it was the Census Report, ipso facto I assumed that
3 it was on the agenda.

4 CHAIRMAN REYNOLDS: The agenda that was --

5 VICE CHAIR THERNSTROM: It's a timing
6 question.

7 STAFF DIRECTOR MARCUS: The mail load is
8 sent out just a few days after the agenda is published
9 in the Federal Register, so sometimes there is a small
10 discrepancy based on the passage of time.

11 COMMISSIONER YAKI: I'll join
12 Commissioner Melendez in voting no.

13 CHAIRMAN REYNOLDS: Okay, please let the
14 record reflect that Commissioners Melendez and Yaki
15 voted against the motion. The remaining commissioners
16 voted in favor.

17 The motion passes.

18 **II. Approval of Minutes**

19 CHAIRMAN REYNOLDS: Okay, the second item
20 is the approval of the minutes of the September 21,
21 2007 meeting. May I have a motion?

22 COMMISSIONER MELENDEZ: So moved.

23 CHAIRMAN REYNOLDS: Okay, is there a
24 second?

25 COMMISSIONER BRACERAS: Second.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Discussion?

2 (No response.)

3 CHAIRMAN REYNOLDS: All in favor, please
4 say aye.

5 (A chorus of ayes.)

6 COMMISSIONER YAKI: I'll abstain since I
7 wasn't at the meeting.

8 CHAIRMAN REYNOLDS: Okay, Mr. Yaki
9 abstains, the remaining commissioners voted in favor.
10 The motion carries.

11 **III. Announcements**

12 CHAIRMAN REYNOLDS: Next up are
13 announcements for the month of October. President
14 Bush and Congress have proclaimed the month of October
15 National Disability Employment Awareness Month. This
16 is an opportunity to recognize the contributions and
17 accomplishments of Americans with disabilities and to
18 underscore our nation's commitment to advancing
19 employment opportunities for all our citizens.

20 Landmark reforms, such as the Americans
21 with Disabilities Act of 1990, have helped ensure that
22 individuals with disabilities are better able to
23 engage in productive work and participate fully in the
24 life of the nation.

25 Second announcement has to do with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Thurgood Marshall. October 2nd marked the fortieth
2 anniversary of the day that Thurgood Marshall was
3 sworn in as the first African-American Associate
4 Justice of the U.S. Supreme Court. He served on the
5 court until 1991.

6 Prior to his appointment to the Supreme
7 Court, Marshall served as Chief Counsel for the NAACP.
8 While in that position, he successfully argued the
9 case of *Brown v. Board of Education of Topeka*, in
10 which the Supreme Court ruled that separate but equal
11 public education was unconstitutional.

12 Marshall died of heart failure on January
13 24, 1993.

14 **IV. Staff Director's Report**

15 CHAIRMAN REYNOLDS: At this point, our
16 Staff Director will present his report.

17 STAFF DIRECTOR MARCUS: Thank you, Mr.
18 Chairman. Fiscal year 2007 closed on September 30th.
19 As you all know, we did have remaining funds close to
20 the end of the year as a result of significant
21 attrition, during and prior to the year.

22 Thanks to the diligent efforts of many
23 hard working staff members, we were able to complete
24 many much needed acquisitions prior to the end of the
25 year using these attrition related funds. Some of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 larger purchases included a new telephone system,
2 performance management software, performance
3 improvement services and new furniture for the
4 Commission Meeting conference room. This money was
5 obligated, although, of course, thing will be arriving
6 over the course of many months.

7 With respect to the telephone, you may be
8 aware that the current telephone and voicemail systems
9 were installed in December of 1992, when the agency
10 first moved into the building, and are outdated and
11 very difficult to service. Technicians seldom have
12 knowledge about such outdated systems and it's hard to
13 find parts. Thought our new contract with Verizon,
14 we'll be getting --

15 COMMISSIONER YAKI: It's hard to find Mr.
16 Bell to repair all those parts, right?

17 STAFF DIRECTOR MARCUS: That is exactly
18 right. That is exactly right.

19 Thanks to the new contract with Verizon,
20 we'll have a new system, new headsets. It will be a
21 smaller, more efficient system with new features like
22 caller ID, etcetera, and greater backup data in the
23 event of a power outage.

24 Second, we are purchasing significant new
25 project management software called PPM, Project

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Portfolio Management. The purpose of the software is
2 to allow the agency to improve our ability to manage
3 human and financial resources by tracking the work
4 done by the individual staff and linking them to the
5 strategic and annual plans, as well as agency goals.
6 The software should be able to allow the agency to
7 better track agency-level performance by monitoring
8 goals by progress reports and accomplishments and
9 milestones, while creating materials to better manage
10 and track project performance.

11 We are also in the process of purchasing
12 new -- some new furniture for this conference room,
13 including a new conference table, a new wood
14 conference table to replace this table and some new
15 chairs, including chairs for the commissioners and a
16 couple of smaller tables to go with them for the
17 conference room.

18 COMMISSIONER YAKI: The kind you get at
19 Sharper image with the massage things built in?

20 STAFF DIRECTOR MARCUS: Exactly right.
21 You are exactly right.

22 In addition, we are in a process now to
23 improve various processes at the agency, for which we
24 have contained consulting services. Specifically we
25 have a Lean Six Sigma process to improve the quality

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and efficiency of SAC rechartering and nation report
2 production. In order to assist with that project,
3 we've awarded a contract to Booz Allen Hamilton.

4 They are working now with regional staff
5 to help assess the rechartering process and identify
6 steps in the process where greater efficiency can be
7 achieved. Consultants are also looking for ways to
8 enhance the quality of the work that is done, both on
9 the side of recruiting candidates for the State
10 Advisory Committees and also with respect to national
11 projects.

12 Those are the major purchases but there
13 are a number of other purchases we were able to make
14 as well ranging from computer purchases, such as a
15 number of new laptops to a number of new books for the
16 library.

17 CHAIRMAN REYNOLDS: Questions?

18 COMMISSIONER MELENDEZ: Yes. Commissioner
19 Melendez here. What was the total for all of these
20 purchases and is it within a budget line item, or is
21 this kind of unplanned expenditures?

22 I didn't know we had that much money.

23 STAFF DIRECTOR MARCUS: Yes, I have
24 reported from time to time that we had additional
25 money available as a result of attrition. These are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 not items that we had money for in the budget, these
2 are items that we were able to purchase because we had
3 funds remaining as a result of attrition.

4 Some of the items are expensive, they are
5 of differing amounts. The phone system, it's \$175,000
6 for a complete new phone system and all the handsets.
7 The conference room, the tables were approximately
8 \$25,000, approximately \$10,000 for chairs. I don't
9 know if there are specific items that you are asking
10 about. Some of these are big ticket items that we
11 would not have been able to budget for because they
12 would have been inconsistent with having the full
13 staffing we felt we needed. Of course, during the
14 course of the last year, we were shorthanded in many
15 areas which caused various sorts of challenges for us,
16 but on the other hand it gave us the opportunity to
17 get stuff that we needed.

18 COMMISSIONER KIRSANOW: Mr. Staff
19 Director, how much was left over due to attrition at
20 the end of the fiscal year?

21 STAFF DIRECTOR MARCUS: At the very end of
22 the fiscal year, after purchases were made --

23 COMMISSIONER KIRSANOW: Before purchases.

24 STAFF DIRECTOR MARCUS: Oh, well --

25 COMMISSIONER KIRSANOW: I don't know if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you have that immediately available.

2 STAFF DIRECTOR MARCUS: I don't and it was
3 a different amount at different times, but there were
4 -- we had -- I'll find the data and provide it, but it
5 was a matter of hundreds of thousands of dollars.

6 COMMISSIONER KIRSANOW: Okay.

7 STAFF DIRECTOR MARCUS: Which is why these
8 purchases amount to that.

9 COMMISSIONER KIRSANOW: Okay.

10 CHAIRMAN REYNOLDS: Any additional
11 question? Commissioner Yaki?

12 COMMISSIONER YAKI: Are there any new
13 personnel actions going on?

14 STAFF DIRECTOR MARCUS: There are a number
15 of personnel actions that I've mentioned in the course
16 of the months that are in process. In terms of new
17 ones that have not been mentioned previously, let me
18 think for a moment.

19 COMMISSIONER YAKI: Well, let me be
20 specific. What's the progress on the OCRE position?

21 STAFF DIRECTOR MARCUS: I think we are
22 making good progress and I hope to have a person
23 selected and onboard within a matter of -- within a
24 matter of weeks.

25 VICE CHAIR THERNSTROM: Are the people who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are being considered, do you know that they are
2 available?

3 STAFF DIRECTOR MARCUS: I would say that
4 I'm optimistic that we will be able to have the
5 position filled and filled well fairly quickly.

6 COMMISSIONER YAKI: Is there more than
7 one candidate for that position?

8 STAFF DIRECTOR MARCUS: There have been a
9 number of candidates for that position.

10 COMMISSIONER YAKI: But as of right now
11 is there more than one candidate for the position?

12 STAFF DIRECTOR MARCUS: At this point, I
13 believe I have the person identified whom I would like
14 to have here.

15 COMMISSIONER YAKI: And when will we
16 learn of this person's name and qualifications?

17 STAFF DIRECTOR MARCUS: Well, depending on
18 our discussions with the candidate, I would expect and
19 hope it to be a matter of weeks, if not sooner.

20 CHAIRMAN REYNOLDS: Okay. Questions?

21 (No response.)

22 **V. Management and Operations**

23 CHAIRMAN REYNOLDS: Okay, next up. I move
24 that the Commission adopt the Draft Strategic Plan for
25 2008-2013, distributed -- that was distributed to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 commissioners on October 5, 2007. This draft plan is
2 identical to the draft last distributed to
3 commissioner on April 6, 2007, except that it now
4 extends to 2013. This change is the result of the
5 fact that we are now approving the plan in 2008,
6 rather than 2007.

7 Commission staff sent this draft plan to
8 congressional stakeholders in May 2007 and received no
9 changes to this draft, so at this point we are ready
10 for -- ready to vote on this plan in its final form.

11 By approving the Strategic Plan, we will
12 be able to inform OMB and Congress that our 2009 is
13 based, for the first time in several years, on
14 established agency strategic goals and objections --
15 objectives rather.

16 May I have a second?

17 VICE CHAIR THERNSTROM: Second.

18 CHAIRMAN REYNOLDS: Discussion?

19 COMMISSIONER HERIOT: I have some changes
20 on the document. They are not big. There is one that
21 I insist on, though, and that is on page 8, because
22 this just drives me bananas.

23 Sorry, Ken. This is no personal offense
24 to you, but this sentence about "under the leadership
25 of the new Staff Director, the Commission has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 undertaken the" blah, blah, blah. The staff director
2 does not lead the Commission. So, that has to be
3 changed to "under the leadership of the new staff
4 director, the staff" did something, or "with the
5 assistance of the new staff director, the commission"
6 blah, blah, blah.

7 STAFF DIRECTOR MARCUS: I agree that
8 that's an accurate change.

9 COMMISSIONER HERIOT: I'm happy with
10 either version of that, but not this version. So,
11 whatever makes you happy --

12 CHAIRMAN REYNOLDS: Okay, what was the
13 first --

14 STAFF DIRECTOR MARCUS: Change
15 "Commission" to "staff."

16 COMMISSIONER HERIOT: It's probably that
17 they were really talking about the Commission, so I
18 think it's "with the assistance of the new staff
19 director."

20 CHAIRMAN REYNOLDS: Okay.

21 VICE CHAIR THERNSTROM: That is certainly
22 a change that comes from nice, careful reading.

23 CHAIRMAN REYNOLDS: Any other changes?

24 COMMISSIONER HERIOT: I have lots more,
25 but I will just leave them off. They are not big.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Other comments?
2 Questions?

3 COMMISSIONER MELENDEZ: Commissioner
4 Melendez here.

5 CHAIRMAN REYNOLDS: Yes.

6 COMMISSIONER MELENDEZ: On page 13, at the
7 top, it describes how results towards Goal I,
8 Reshaping the National Conversation on Civil Rights
9 will measured, and one of those ways that it states is
10 eliminating the backlog of the SACs with charters that
11 expired upon or before January 30, 2011. Now I
12 understand it's 2013?

13 I just don't feel that it's acceptable
14 that the agency takes another three years to meet its
15 statutory mandate to maintain all 51 SACs.

16 Again, on page 15, at the top, it
17 describes how results towards Goal II, Strategic
18 Partnerships With Federal Agencies will be measured,
19 and one of the ways it states is "cooperating and
20 coordinating with civil rights enforcement agencies
21 during times of national emergencies, such as
22 significant nature disasters and homeland security
23 emergencies to support the continuity of civil rights
24 protection and enforcement and I just think that that
25 would have been able to have a meaningful response to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 something like Hurricane Katrina or something like
2 that.

3 And then, on page 12, the plan describes
4 how an addition to civil rights -- a conference in
5 2009 the agency will engage in publishing a multi-
6 state report in FY 2009 that utilizes the advisory
7 committees to identify for policy-makers, researchers,
8 public, state and regional civil rights issues and
9 parities.

10 But yet, I believe the Staff Director said
11 that this will just be some type of a survey and not
12 involving original research or input by the SACs, and
13 I just don't think -- it really doesn't do that much
14 as far as the seriousness about SACs.

15 CHAIRMAN REYNOLDS: Okay, well let's start
16 on page 12. Ken, do you want to address his comment?

17 STAFF DIRECTOR MARCUS: Yes. In the ideal
18 world we would have every one of the SACs engaged in
19 meeting and significant fact-finding to determine
20 this. I don't know, though, that we would have the
21 budget or the staffing to realistically think that we
22 would be able to have, for every one of our State
23 Advisory Committees, that sort of in-depth analysis.
24 It sort of -- it would be very nice and it would be
25 great to have that funds.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The intent, I think, of the -- as I
2 understand it, as the commissioners drafted this, was
3 to have the best report we have from the states that
4 have State Advisory Committees. And the way that I
5 believe, fairly confidently, that we should be able to
6 get input from every one of our State Advisory
7 Committees is to do something like a survey, which is
8 to say ask a series of the same questions of every
9 single SAC and every SAC member to get a sense of what
10 they think are the pressing issues.

11 Now, presumably, members of State Advisory
12 Committees will be informed in their responses by all
13 the fact-finding that they are doing and have been
14 done. But it is true that what is envisioned here is
15 not original research by the SACs, to the extent that
16 they choose to do that and we have the funding and the
17 staffing for them to do original fact-finding or
18 research to support their answers, I think that that
19 would be terrific.

20 But my concern is to make sure, since this
21 is in the Strategic Plan that we are committing
22 ourselves to things that are attainable within the
23 levels of funding that we have been receiving.

24 VICE CHAIR THERNSTROM: Commissioner
25 Melendez, do you not think that that would be useful,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what is described here?

2 COMMISSIONER MELENDEZ: Well, I mean, the
3 issue has to do with whether it's more effective
4 putting more money out to the SACs to do their job,
5 but yet we can spend a lot of extra money buying
6 things. That's my main concern.

7 STAFF DIRECTOR MARCUS: Well, I would say
8 that before we purchased these items at the end of the
9 year, one of the first directives I made was to
10 indicate to the regional staff that we had additional
11 money available and that I would encourage SAC travel
12 and I think that that came first. So there was never
13 question of SAC travel being sacrificed in order to
14 make any sort of purchases. But on an ongoing basis,
15 we can't assured of having that sort of money.

16 COMMISSIONER MELENDEZ: Right. And then
17 my other concern on the SACs was that they were able
18 to at least meet twice a year, in face-to-face
19 meetings. Do you remember that discussion?

20 STAFF DIRECTOR MARCUS: My understanding
21 is that SACs did have twice a year meetings in the
22 past. That stopped before my tenure, though, and my
23 understanding is that that did not mean that there
24 were 51 SACs that would have two meeting per year.
25 Some of those meetings would be a meeting of the -- a

NEAL R. GROSS

COURT REPORTERS AND TIRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regional meeting for every SAC in the region. There's
2 no question that in prior years we had funding for a
3 lot of things that we don't have funding for now.

4 COMMISSIONER MELENDEZ: Or at least once a
5 year.

6 Okay, thank you.

7 CHAIRMAN REYNOLDS: Okay, Mr. Staff
8 Director, the issue that was identified on page 13,
9 the elimination of the backlog of SACs. Would you
10 care to respond?

11 STAFF DIRECTOR MARCUS: Oh, I don't think
12 that there was any intent to change the year 2011 to
13 2013. My hope is to exceed this goal and to over-
14 deliver by chartering the SACs before that date. We
15 have some challenges, though, in terms of attrition,
16 recent loss of regional directors to retirement, and
17 so on and so forth. One of the reasons that I have --
18 that we are involved in this management initiative
19 right now is to try to speed up the process for SAC
20 rechartering in the hopes that we will beat this, but
21 I do think it's important to have reasonable goals
22 here.

23 CHAIRMAN REYNOLDS: Mr. Staff Director --

24 COMMISSIONER KIRSANOW: I just don't
25 understand the question here. Where did the 2013 come

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from?

2 STAFF DIRECTOR MARCUS: Well, my
3 understanding of Commissioner Melendez's question is
4 based on the fact that this Strategic Plan has just
5 been changed to extend out to 2013.

6 COMMISSIONER KIRSANOW: Okay.

7 STAFF DIRECTOR MARCUS: And so I heard him
8 to ask whether by changing the period of the entire
9 plan to 2013, we intended to change the deadline for
10 this particular objective and the answer is no.

11 COMMISSIONER KIRSANOW: Oh, okay, because
12 all I saw here was 2011.

13 CHAIRMAN REYNOLDS: Mr. Staff Director,
14 how long does it take to recharter a SAC?

15 STAFF DIRECTOR MARCUS: I'm not sure that
16 I can even answer that, but I guess I would say that
17 the SACs that we have been rechartering lately have
18 been in process, not just for months, but for well
19 over a year.

20 So it does take a significant amount of
21 time now. I don't have a date on it, but each time we
22 have a package, we work on that statement for well
23 over a year.

24 CHAIRMAN REYNOLDS: I'm not familiar with
25 that process, but it seems -- I'm surprised that it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 takes so long.

2 STAFF DIRECTOR MARCUS: Well, the problem
3 is that there are many of these improvements that are
4 going on simultaneously. It's not as if each one
5 takes that amount of time, but they are being done
6 concurrently, and the staff, while doing these
7 packages is simultaneously trying to have meetings and
8 fulfill their other requirements. And, of course, the
9 regional requirements have now become significantly
10 steeper based on the new rule that our SAC members are
11 special government employees with creates various
12 ethics and paperwork requirements that have the staff
13 time ramifications.

14 VICE CHAIR THERNSTROM: Well, can we
15 expect that in the future it's going to take a year to
16 recharter a SAC or is this a problem of what faced at
17 the start of this round?

18 STAFF DIRECTOR MARCUS: I think it's the
19 latter. Now we have a different sort of challenge
20 than what we'll have in a couple of years. Right now,
21 we have a situation in which the term limits have
22 created a significant number of vacancies in most or
23 all of our SACs. We have some states that have few or
24 no members that are eligible for reappointment, so we
25 need to select 11 to 19 new people.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER YAKI: That's what happens
2 when you purge them all.

3 STAFF DIRECTOR MARCUS: Since --

4 CHAIRMAN REYNOLDS: I was waiting for
5 that. I'm surprised it took you C- what was that?
6 About seven seconds went by.

7 STAFF DIRECTOR MARCUS: Since we have so
8 many new members of the SAC --

9 COMMISSIONER YAKI: It's the FCC delay
10 button. There were some other words that were muted
11 out.

12 STAFF DIRECTOR MARCUS: When the recently
13 chartered SACs are up for rechartering, there will
14 significantly fewer members eligible for -- ineligible
15 for reappointment based on term limits, so I would
16 expect that in future years the rechartering process
17 should become much quicker.

18 COMMISSIONER YAKI: And then, of course,
19 you have people like me who object to some of the
20 appointments on the SACs, which draws it out some
21 more, as well.

22 STAFF DIRECTOR MARCUS: Yes. That is true.

23 CHAIRMAN REYNOLDS: Any other questions on
24 that issue?

25 VICE CHAIR THERNSTROM: But that won't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 happen in the future.

2 COMMISSIONER YAKI: Can I read this
3 person's resume out loud?

4 CHAIRMAN REYNOLDS: Okay, what was the
5 last one?

6 COMMISSIONER MELENDEZ: Page 15.

7 CHAIRMAN REYNOLDS: Yes, second bullet --

8 COMMISSIONER MELENDEZ: National
9 emergencies or something.

10 CHAIRMAN REYNOLDS: Well, I was at the
11 Department of Education on 9/11, and there was
12 coordination between the various civil rights agencies
13 to ensure that we didn't have a backlash again
14 Muslims, Arabs, Persian, so when I read this issue
15 that's the scenario, at least one of the scenarios
16 that came to mind.

17 STAFF DIRECTOR MARCUS: That's one of the
18 things, I understood, was not a staff generated issue.
19 Another issue that came to my mind as I interpret this
20 is that agencies out -- work together to see whether
21 there were best practices for dealing with persons
22 with disabilities after a crisis situation, like
23 Hurricane Katrina. That might be another crosscutting
24 intergovernmental civil rights issue.

25 COMMISSIONER YAKI: There is also the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue of language and access to emergency services.
2 It is actually a pretty big thing. When I was dealing
3 with the earthquake in San Francisco in `89, we sort
4 of had to invent this on the fly because we needed to
5 ensure that disabled individuals -- that the disaster
6 assistance center was wheelchair accessible. The
7 original site picked by the Army, was, of course, up
8 two flights of rickety stairs and we said, "No, you
9 can't do that."

10 We had to make sure there were people on
11 site who could speak Chinese dialects and Spanish in
12 order to answer questions for people seeking to apply
13 for the -- under the Stafford Act.

14 So it's actually quite important and I do
15 know that the Commission did take action after 9/11,
16 to create a hotline dealing with backlash against
17 anyone who might have looked like someone someone
18 wasn't going to like, so I think it is a very viable
19 and important part of what the Commission does, now
20 and in the future.

21 COMMISSIONER MELENDEZ: Okay, sounds fine.
22 I just didn't understand what it was all about. Thank
23 you.

24 VICE CHAIR THERNSTROM: I agree. I hope
25 we do it better than we did with that hotline, though,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but I agree.

2 COMMISSIONER YAKI: Not my hotline.

3 CHAIRMAN KIRSANOW: Was that the hotline
4 that went to the sex services?

5 VICE CHAIR THERNSTROM: Yes.

6 COMMISSIONER HERIOT: What?

7 COMMISSIONER KIRSANOW: We started a
8 hotline for complaints related to 9/11 and apparently
9 it was mistakenly wired into a sex services line.

10 COMMISSIONER YAKI: No?

11 COMMISSIONER BRACERAS: A model of
12 competence.

13 COMMISSIONER YAKI: No?

14 VICE CHAIR THERNSTROM: Yes.

15 COMMISSIONER YAKI: No?

16 VICE CHAIR THERNSTROM: Yes.

17 CHAIRMAN REYNOLDS: Okay. Moving right
18 along, any additional questions?

19 COMMISSIONER YAKI: What's the number
20 again?

21 (Laughter.)

22 CHAIRMAN REYNOLDS: Questions? Comments?

23 VICE CHAIR THERNSTROM: I think this is a
24 very good piece of work and I commend those who put it
25 together.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: All in favor, please
2 say aye.

3 (A chorus of ayes.)

4 COMMISSIONER YAKI: What are we voting on
5 now?

6 VICE CHAIR THERNSTROM: The Strategic
7 Plan.

8 COMMISSIONER YAKI: Have we finished with
9 comments on it?

10 CHAIRMAN REYNOLDS: I just asked for
11 additional comments, and no one said anything.

12 COMMISSIONER YAKI: Oh, I'm sorry. I was
13 drifting off into --

14 VICE CHAIR THERNSTROM: Thinking about
15 that sex line?

16 COMMISSIONER YAKI: I was just thinking,
17 how the heck did that happen?

18 VICE CHAIR THERNSTROM: He was thinking,
19 what was that number? How can I get it?

20 COMMISSIONER YAKI: The question I have
21 about the Strategic Plan, just has to go to -- well,
22 I'm concerned about it but one thing I would ask
23 though, is I'm uncomfortable voting for something if
24 there are other changes that are going to be made,
25 even if it's wordsmithing, without seeing it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 beforehand.

2 CHAIRMAN REYNOLDS: I believe that --

3 COMMISSIONER HERIOT: We've done our
4 wordsmithing.

5 COMMISSIONER YAKI: I thought you said
6 you had a whole bunch more?

7 CHAIRMAN REYNOLDS: But she --

8 COMMISSIONER HERIOT: Well, I've waived
9 them. They were too boring for wordsmithing.

10 COMMISSIONER BRACERAS: Too boring.

11 COMMISSIONER YAKI: Too boring for words.

12 COMMISSIONER KIRSANOW: We only make
13 exciting changes.

14 VICE CHAIR THERNSTROM: Gail, do don't
15 want to, after the meeting, have at it?

16 COMMISSIONER HERIOT: No.

17 CHAIRMAN REYNOLDS: With that
18 understanding, are you comfortable with the document?

19 COMMISSIONER YAKI: No, no, I just want
20 to say that I'm glad that we've gone down this path.
21 The conference on the civil rights was something that
22 I brought up in, I think, my second month on the
23 Commission. I'm glad it's included in this. I think
24 it's a good goal to start raising the issue of what
25 else is out there, what we may not know about, or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what's new and cutting edge. And even though there
2 are some parts of it that probably drive me a little
3 bananas, I'll vote for it.

4 VICE CHAIR THERNSTROM: Well, in terms of
5 the cutting edge issues that are out there, I mean,
6 that seems to be part of the point of the utilizing
7 the SACs, whatever page that was on.

8 COMMISSIONER YAKI: Well, I have more
9 faith in the national conference than I do in the
10 SACs.

11 VICE CHAIR THERNSTROM: Okay, but the SACs
12 certainly can forward information about issues in
13 their states.

14 COMMISSIONER YAKI: True. I just have
15 more confidence in the national conference than I do
16 in the SACs.

17 VICE CHAIR THERNSTROM: They are not
18 mutually exclusive.

19 CHAIRMAN REYNOLDS: Well, no, Michael has
20 some other comments that we will save, I hope, until
21 we can finish up today because I'm interested in the
22 commentary.

23 In any event, if my recollection is right,
24 the motion passed unanimously.

25 COMMISSIONER MELENDEZ: I abstained.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REYNOLDS: Okay. Please let
2 the record reflect that Commissioner Melendez
3 abstained. The remaining commissioners voted in favor
4 of the motion. The motion passes.

5 I move that the Commission adopt the
6 proposed 2008 meeting calendar and briefings schedule,
7 both distributed to commissioners on October 4, 2007.

8 Is there a second?

9 VICE CHAIR THERNSTROM: Second.

10 CHAIRMAN REYNOLDS: Discussion?

11 COMMISSIONER YAKI: We have briefings but
12 we don't have a schedule. I had a question about the
13 June one, since there's an asterisk beside it, I'm
14 wondering if that can be a place holder for the
15 minority to put in a briefing.

16 CHAIRMAN REYNOLDS: I'm sorry?

17 COMMISSIONER YAKI: June 2008.

18 CHAIRMAN REYNOLDS: Right.

19 COMMISSIONER YAKI: There's an asterisk
20 that says it may be moot. I'd be willing to change
21 that but I would like to do it in consultation with
22 Commissioner Melendez, since the number of briefings
23 has now dropped and we earlier had had understanding
24 that the minority on the committee would get at least
25 one or two briefings of its choosing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: I remember one.

2 COMMISSIONER YAKI: No, we had two.

3 CHAIRMAN REYNOLDS: Good try.

4 VICE CHAIR THERNSTROM: Wait a minute, I'm
5 sorry, I'm lost here. Are these briefings -- the
6 topics of briefings, do you regard them as in
7 categories of topics the majority is interested in and
8 topics the minority is interested in?

9 I mean, I would hope --

10 COMMISSIONER YAKI: I'm thinking that --

11 COMMISSIONER BRACERAS: Excuse me --

12 COMMISSIONER YAKI: Sorry.

13 COMMISSIONER BRACERAS: -- if I could just
14 butt in a second. We did sort of talk about how
15 they're standing, not to make a statement that the
16 majority and the minority were interested in
17 completely different topics, but just because of the
18 numbers and the imbalance on the Commission, we wanted
19 to make sure that Commissioner Yaki and Melendez had
20 an opportunity to have topics addressed that were, you
21 know, close to their hearts, and that, you know, not
22 that there would be an ideological difference, per se,
23 but just that we wanted to make sure those individuals
24 --

25 COMMISSIONER YAKI: Exactly, Jennifer.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It was more of a point that the way that the point
2 scoring system was that if Arlan and I voted for one
3 and four of you guys voted for another, we would lose.

4 CHAIRMAN REYNOLDS: That works.

5 COMMISSIONER BRACERAS: I'm just asking
6 for you guys to consider it and make sure --

7 CHAIRMAN REYNOLDS: No, that's fine.

8 COMMISSIONER BRACERAS: -- that the views
9 of Arlan and Michael on what happens with the draft
10 would be accounted for in someway.

11 VICE CHAIR THERNSTROM: And this list
12 doesn't go through the --

13 CHAIRMAN REYNOLDS: We've covered some
14 cool topics.

15 COMMISSIONER YAKI: So, I was just going
16 to say that I would vote to approve, but I would
17 reserve the asterisk on 2008 as possibly something
18 that Commissioner Melendez and I can figure out with
19 enough time for the staff.

20 CHAIRMAN REYNOLDS: Okay. Any other
21 comments?

22 COMMISSIONER YAKI: On the dates
23 themselves, I think we're doing okay.

24 CHAIRMAN REYNOLDS: Commissioner
25 Thernstrom, any questions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: No, I think I'm
2 fine.

3 CHAIRMAN REYNOLDS: Commissioner Braceras?

4 COMMISSIONER BRACERAS: Well, the dates
5 are somewhat irrelevant to me.

6 (Laughter.)

7 CHAIRMAN REYNOLDS: Okay.

8 Well, normally you point out when we screw
9 up by picking the date that's on a holiday.

10 COMMISSIONER BRACERAS: Well, I'll be
11 honest with you, I didn't give it much thought given
12 that, you know, my term ends in December.

13 CHAIRMAN REYNOLDS: Sure.

14 COMMISSIONER BRACERAS: So, I'll pass that
15 mantle to whoever would like to pick it up.

16 CHAIRMAN REYNOLDS: Jennifer, are we going
17 to see you before your term ends?

18 COMMISSIONER BRACERAS: Yes, you are going
19 to see me. You are going to see me in November and in
20 December.

21 COMMISSIONER YAKI: We moved the December
22 specifically for that.

23 COMMISSIONER BRACERAS: Yes.

24 COMMISSIONER YAKI: Because the bakery
25 was open, right? For the cake. For the big cake

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you're making for her, Jerry.

2 COMMISSIONER BRACERAS: I'll be there in
3 November and December.

4 CHAIRPERSON REYNOLDS: Okay. Commissioner
5 Melendez?

6 COMMISSIONER MELENDEZ: Are we always
7 going to have August as a no meeting? I saw that in
8 the June 8th -- the whole schedule is like that. Is
9 there a reason for that?

10 We have so many items, why would we have
11 one month of not meeting?

12 CHAIRMAN REYNOLDS: Well, historically, I
13 believe that's what we've done.

14 VICE CHAIR THERNSTROM: Yes.

15 STAFF DIRECTOR MARCUS: Historically, we
16 haven't scheduled anything for August to allow for
17 such things as staff vacations. For the last few
18 years, while we haven't scheduled anything for August,
19 we have shifted things around as things have popped up
20 over the course of the year. So as a practical,
21 August ended up as a place holder for the last three
22 years.

23 COMMISSIONER YAKI: Traditionally, August
24 is the swampiest time in D.C.

25 COMMISSIONER HERIOT: Can we have the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 option to schedule an August meeting?

2 COMMISSIONER YAKI: Yes, I think we've
3 done that, in fact, the last two years.

4 STAFF DIRECTOR MARCUS: We've done that
5 consistently for the last two years.

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN REYNOLDS: Okay, if there are no
8 other comments or questions --

9 VICE CHAIR THERNSTROM: It's possible that
10 I can't make the May thing, but I can't -- it's not in
11 my calendar yet so --

12 CHAIRMAN REYNOLDS: Okay. All in favor,
13 with the amendment offer by Commissioner Yaki with
14 respect to the June 2008 briefing, with the
15 understanding that Commissioners Yaki and Melendez may
16 offer a substitute for the June 8th briefing, other
17 than that everything remains the same.

18 So, all in favor, please say aye.

19 (A chorus of ayes.)

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER YAKI: A disinterested aye,
22 though, right, Jennifer?

23 COMMISSIONER BRACERAS: No, not a
24 disinterested aye. Just aye.

25 CHAIRMAN REYNOLDS: Okay, the motion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 passes --

2 COMMISSIONER YAKI: But not invested
3 either.

4 COMMISSIONER BRACERAS: Yes.

5 CHAIRMAN REYNOLDS: The motion passes
6 unanimously.

7 Okay, celebration of the Commissions
8 fiftieth anniversary. The Commission is set to
9 celebrate its fiftieth anniversary next, well this
10 January. On January 3, 1958, the six inaugural
11 members of the Commission were sworn in by President
12 Eisenhower and held their first meeting in the West
13 Wing of the White House. The Staff Director has
14 circulated a memorandum to commissioners presenting a
15 few options to celebrate this anniversary.

16 Mr. Staff Director, would you care to walk
17 us through the options?

18 COMMISSIONER YAKI: Point of information.
19 Are any of these six members still with us?

20 VICE CHAIRMAN EYNOLDS: That I don't know.

21 COMMISSIONER KIRSANOW: I'm sorry, what's
22 your question?

23 COMMISSIONER YAKI: The six original --

24 COMMISSIONER HERIOT: Yes, Hesburgh is
25 still alive.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Hesburgh is still
2 alive.

3 STAFF DIRECTOR MARCUS: Yes, he just
4 turned ninety.

5 CHAIRMAN REYNOLDS: In fact, he's
6 scheduled to come to Washington. He's being honored
7 here in D.C.

8 VICE CHAIR THERNSTROM: Where is he
9 located?

10 COMMISSIONER KIRSANOW: Notre Dame, isn't
11 he?

12 CHAIRMAN REYNOLDS: Yes, Notre Dame.

13 COMMISSIONER YAKI: The wheels are
14 turning, but we should think about something involving
15 the remaining --

16 CHAIRMAN REYNOLDS: Assuming that there
17 are others, all of those who are still with us.

18 COMMISSIONER YAKI: Yes.

19 STAFF DIRECTOR MARCUS: Mr. Chairman, the
20 staff has looked at a few different options, primarily
21 based on commissioner input, that could help meet our
22 strategic goals as far as an authoritative national
23 clearinghouse and repository of civil rights data and
24 information. First, Commissioner Heriot proposed that
25 we might have a conference commemorating the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Commission and its work, sometime early in 2008. That
2 could be conducted by Princeton, perhaps working with
3 Georgetown University.

4 COMMISSIONER HERIOT: Princeton could hold
5 this without our permission. They're thinking that
6 they're doing this.

7 STAFF DIRECTOR MARCUS: Very good.
8 Second, the Commission could produce a series of
9 perhaps three to five new brief audio public service
10 announcements, perhaps approximately 15 seconds. And
11 again, this was based on an idea originally from
12 Commissioner Heriot, that would include a brief
13 discussion of a little known, uncontroversial, but
14 important fact about civil rights.

15 Commission staff could research
16 interesting civil rights facts, with input from
17 commissioners, then draft a text of these PSAs for
18 approval by the Commission.

19 The production costs incurred in producing
20 new PSAs would be, we estimate, in the vicinity of
21 \$5,500. If we were to produce more than two or three
22 PSAs, the marginal cost of production would likely
23 increase by about \$150 an hour for additional time
24 spent editing and mixing.

25 COMMISSIONER YAKI: We're talking about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 radio only, right?

2 STAFF DIRECTOR MARCUS: Pardon?

3 COMMISSIONER YAKI: You're talking about
4 radio only for that option?

5 STAFF DIRECTOR MARCUS: This option is
6 radio only, yes.

7 COMMISSIONER YAKI: Okay.

8 STAFF DIRECTOR MARCUS: Production would
9 likely require the agency to undertake some
10 procurement action with respect to securing recording
11 studios, production services and encoding.
12 Distribution costs would likely total another \$8,500,
13 at least, for the distribution, including purchasing
14 of mailing lists, and packaging up and mailing.
15 Although, it's possible that we could form some sort
16 of partnership with a private sector broadcaster
17 assuming that we could do it in a way that clears OGC
18 reviews, to keep the distribution costs down.

19 While we don't yet have appropriations,
20 this is an approach that looks like it could be
21 feasible, consistent with the budget.

22 A third idea that's been raised is for the
23 Commission is to produce a video public service
24 announcement for use on television. The production
25 costs incurred in producing a thirty second video

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 public service announcement have been estimated to be
2 at least \$100,000. Now, we have been advised that
3 there be one or more broadcast network or satellite
4 network that would be willing to help us in
5 distributing the PSA at no charge, so the distribution
6 costs would be at a minimum. If that were not the
7 case, we would have substantial, additional
8 distribution costs.

9 CHAIRMAN REYNOLDS: Mr. Yaki?

10 COMMISSIONER YAKI: What is our ability
11 to use -- to lift the distribution rights? When I
12 negotiated a lot of cable franchises, part of the deal
13 was essentially the creation of a community facility
14 studio that could be used to -- that is used to create
15 community productions, community PSAs, etcetera,
16 etcetera. And there located pretty much in every big
17 franchise city in this county. Probably here as well.
18 New York, Boston, San Francisco, where the cost for
19 producing, you're often using student interns and
20 other kinds of folks who are learning the business. I
21 think that would be a lot lower than \$100,000, and I
22 would think that if you were going to do this in a --

23 Well, let me start over. My idea on this
24 would be to do it similar to that, the radio PSAs.
25 Just have a rotating series if three or four, 15

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 second, 20 second, video PSAs, but you know, if we
2 were able to avail ourselves of the community rate at
3 a lot of these facilities that exist throughout the
4 country, I think the cost would be a lot lower.

5 STAFF DIRECTOR MARCUS: We haven't looked
6 into that. We certainly could. There are facilities
7 like that in the D.C. metropolitan area through the
8 cable stations.

9 COMMISSIONER YAKI: Right.

10 STAFF DIRECTOR MARCUS: The trade off we
11 would have to look at is that if we did not use a high
12 production value professional video production, we
13 would end up with the low level quality and the
14 ramification of that is that the distribution will end
15 up being much more difficult because there are so many
16 more PSAs than there is time to put them in.
17 Generally speaking, the more professional the PSA, the
18 more likely it will get some air time.

19 COMMISSIONER YAKI: Right. Well, then
20 that goes to my next question, which is to what extent
21 are we allowed to partner with people who would do an
22 A-1 job at a substantially reduced fee?

23 I was just thinking of people who I know
24 in the industry, who I've worked with before on videos
25 for unnamed items.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Okay, and I would like
2 to add to Commissioner Yaki's question. Just put a
3 final point on it. What are the legal restraints for
4 our accepting --

5 STAFF DIRECTOR MARCUS: That's a delicate
6 question. I'm going to defer to the General Counsel
7 because we do have a statutory prohibition on
8 receiving uncompensated services. And that is a
9 concern that I would have to that sort of arrangement,
10 but I'll defer to Mr. Blackwood, the General Counsel.

11 MR. BLACKWOOD: Unfortunately, the Staff
12 Director is correct. I looked into the issue of can
13 we receive discounted services or, in some cases,
14 whether we can have somebody volunteer the services.
15 We seem to be blocked in.

16 I've consulted also with other agencies
17 about how they have handled the development of PSAs.
18 In each case I've been told they had to pay full
19 freight.

20 Now, I'll continue to look into that
21 issue. You talked about a community service, we might
22 be able to work out some kind of a deal, but we pretty
23 much prohibited from receiving any kind of free or
24 discounted services.

25 CHAIRMAN REYNOLDS: Well on the production

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 side, if you have a cable access station, and the
2 service is -- is -- the service is open to the public
3 and it's free, would be able to use those services?

4 MR. BLACKWOOD: That's an interesting
5 question. I would assume that if other people are
6 able to get it on a voluntary or free basis, that as
7 long as everybody is treated that way --

8 CHAIRMAN REYNOLDS: Right.

9 MR. BLACKWOOD: -- that we could use the
10 service as well. But what we cannot receive is
11 "free" services from somebody that everybody else has
12 to pay for.

13 COMMISSIONER YAKI: What about, say you
14 can get someone of some stature to narrate it, and
15 this person routinely volunteers his or her voice to
16 these kinds of things, is that something that would be
17 off the charts as well?

18 MR. BLACKWOOD: I think that's open to --
19 that's problematic. I think we have a better chance
20 of that. I don't have a firm opinion on that one. We
21 did have, for example, several celebrity voices in the
22 PSAs that were done several years ago. I would
23 suspect that we did not have to pay full freight for
24 that because -- well, I'm not sure. Again, I would
25 have to probably talk to other agencies to see how

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that was done. I have pretty much nailed down how the
2 production, though. Did that answer your
3 question?

4 CHAIRMAN REYNOLDS: Commissioner
5 Thernstrom?

6 VICE CHAIR THERNSTROM: I have a question
7 from pure ignorance. I'm not totally convinced that
8 the radio spots are, let's say, are terribly effective
9 in communicating the sense of the importance of the
10 Commission and its work. Do we know anything about
11 the tradeoffs in terms of effectiveness of one outlet
12 versus the other.

13 COMMISSIONER HERIOT: Are you talking
14 about radio versus TV or radio versus something else?

15 VICE CHAIR THERNSTROM: Or, for instance,
16 newspaper ads or ads in --

17 COMMISSIONER YAKI: Nobody reads a
18 newspaper ad.

19 VICE CHAIR THERNSTROM: Nobody read the
20 newspaper?

21 CHAIRMAN REYNOLDS: It's done for shock
22 value, and to generate another news story that would
23 be read by the same people who read the newspaper,
24 which is about ten percent of the people who used to
25 read them ten years ago. Right?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: That's correct.
2 Well, whatever, I mean there are a lot of forums on
3 the web which will reach people and I just --

4 COMMISSIONER HERIOT: I think what we have
5 to do is figure out what message we are trying to send
6 them in the first place.

7 VICE CHAIR THERNSTROM: And that's the
8 second question I was going to --

9 COMMISSIONER HERIOT: One possible
10 alternative forum, you know, as far as I'm concerned,
11 would be educational packets to be sent to elementary
12 school students, junior high students, high school
13 students. We have to figure out what it is we're
14 trying to say.

15 VICE CHAIR THERNSTROM: Well, let's --

16 COMMISSIONER HERIOT: Then we have to
17 figure out who we are trying to say it to, then we can
18 figure out --

19 CHAIRMAN REYNOLDS: That would be more
20 expensive.

21 VICE CHAIR THERNSTROM: -- you know,
22 what's the best way to say what we want to say to the
23 people that we want to say it to.

24 VICE CHAIR THERNSTROM: Yes, and that was
25 the second question I was going to ask. What are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 these little know facts about civil rights? I mean
2 are they facts I don't know? Are they facts that the
3 kids don't know at a school, or what are they?

4 COMMISSIONER HERIOT: I was thinking more
5 along the lines of something that a high school
6 student might not know, in which case maybe what we
7 should be doing is --

8 VICE CHAIR THERNSTROM: They don't know
9 anything, so --

10 COMMISSIONER HERIOT: That's -- I'm not
11 talking about stuff that is going to be a big shock to
12 you. Little things that can be communicated in thirty
13 seconds. But maybe the way to go is to think about
14 preparing materials for high school students.

15 VICE CHAIR THERNSTROM: That appeals to me
16 much more, frankly, than --

17 COMMISSIONER KIRSANOW: Maybe the General
18 Counsel addressed this, but I wasn't zeroed in on it,
19 but in terms of receiving uncompensated services, does
20 that also include partnering with other agencies that
21 maybe more flushed with funds than we are.

22 For example, if we are going to do a PSA
23 or let's say we distribute education materials to
24 schools and the U.S. Department of Education assisted
25 us by picked the cost, or a portion of the cost of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 distributing pamphlets to the schools nationwide or in
2 a specific area of the country?

3 MR. BLACKWOOD: Well, we did not look at
4 that question specifically, but I think that's much
5 less problematic, working with them, if we had an MOU
6 with a different agency about who does what, I don't
7 think it matters if they use -- in essence, we used or
8 benefit from the fact that they have a lot more power
9 to, you know, place the adds or produce them.

10 COMMISSIONER KIRSANOW: We may want to
11 explore, either formally or informally based on our
12 contacts with Education and others to see whether or
13 not we can use there good offices in assisting us in
14 doing that. And to Commissioner Heriot's point, I
15 think it's much more effective to do what she is
16 suggesting as opposed to a transitory add on the radio
17 that someone is going to hear for five seconds --

18 VICE CHAIR THERNSTROM: I agree.

19 COMMISSIONER KIRSANOW: -- and then forget
20 about once they get caught in traffic.

21 VICE CHAIR THERNSTROM: Yes.

22 COMMISSIONER KIRSANOW: My personal
23 preference is not obscure items of civil rights but,
24 all of us who have been in high schools know that most
25 high school students and their teachers don't even

NEAL R. GROSS

COURT REPORTERS AND TIRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know the Civil Rights Commission exists. Might not
2 even know what the 1964 Civil Rights Act was about,
3 let alone the `57 Civil Rights Act. Maybe we have
4 some, you know, just basic, fundamental components of
5 civil rights that we distribute to high school
6 students or middle school students.

7 I'm agnostic, you know, I'm not wedded to
8 that. I'm just throwing that out.

9 VICE CHAIR THERNSTROM: I agree with that.

10 CHAIRMAN REYNOLDS: What's the format?
11 Does anyone have a format in mind? What are we
12 talking about, a pamphlet, I heard. Anything else?

13 COMMISSIONER YAKI: Well I think if you
14 want to make it so that you're not busting the bank,
15 you basically create a downloadable PDF that you can
16 send out to schools and the teachers can download for
17 free a distribute that way, but otherwise, when you
18 start talking about pamphlets, you're talking a lot of
19 money. There are a lot of schools.

20 VICE CHAIR THERNSTROM: Well, but if we
21 did it that way there are all sorts of --

22 COMMISSIONER YAKI: The web is how you
23 get them.

24 VICE CHAIR THERNSTROM: Right. There are
25 all sorts of courses in school or lessons built into

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 their lesson plans, little units on civil rights of
2 one sort or another, I'm sure teachers would be
3 delighted to have this kind of material.

4 COMMISSIONER YAKI: What I'm saying is
5 that if you develop sort of a one week or two week
6 civil rights curricula, I would say that the tough
7 part is going to be developing it. I think the easy
8 part would be to market it basically through our own
9 website and through cooperation with DOE and other
10 people in terms of getting it out to teachers so that
11 they can just download it and go off with it.

12 VICE CHAIR THERNSTROM: Well, I'm in total
13 agreement with Commissioner Kirsanow, five second
14 spots on the radio don't really do anything for me,
15 but this does, because it reaches not only the
16 students but the teachers.

17 COMMISSIONER KIRSANOW: Should we develop
18 a curriculum or should it be something more --

19 COMMISSIONER BRACERAS: Whoa, whoa, whoa,
20 whoa. Let me just butt in. There are a ton of civil
21 rights things, curriculum materials out there, and
22 some of them are fabulous and some of them are not so
23 great. I'm sure -- well, I'm not sure that we could
24 add value in that arena, but even if we could, as a
25 parent, my challenge has always been getting schools

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to even use them because there's a real reluctance to
2 teach American history and civics in a lot of ways.
3 You may find that hard to believe but it's true.

4 So I don't think the Commission, you know,
5 that's biting off more than we can chew, first in
6 terms of our ability to add value and our ability to
7 actually have it used.

8 VICE CHAIR THERNSTROM: Well, Jennifer, is
9 there any sense, I mean, I understand what she's
10 saying, but is there -- do you have any sense of kind
11 of holes in the material that is already available to
12 school that they are or are not using?

13 COMMISSIONER BRACERAS: Well again, you
14 know, I said the biggest problem is that it's not
15 being taught. More, I think, at the high school level
16 than at the elementary school level. The elementary
17 school level, and I've done a bit of research on this,
18 as far as what's taught in our state and in other
19 states about civil rights, and a great many places
20 they don't even -- I mean, you'd be surprised, the
21 kids get the day off for Martin Luther King Day and
22 they don't even know who he is. They just think it's
23 another day to go skiing or something.

24 So, I've thought a lot about this, you
25 know there is a lot out there, I think convincing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 school administrators that it's an important part of
2 the curriculum is the first battle and I don't know
3 that we have a role to play in that or -- I'm not
4 sure if we do or not, I mean it's something that I
5 certainly work on personally. I don't know where you
6 want to go with the sort of huge undertaking. And a
7 valuable one, but --

8 COMMISSIONER HERIOT: Jennifer, I'm
9 actually surprised at what you're saying because, you
10 know, I don't have children that I have direct contact
11 with on this issue, but you know my friends' children
12 seem to be studying civil rights a lot in school, and
13 if you're correct and their situation is special, then
14 I actually think that this is worth a briefing.

15 You know, what are schools teaching? What
16 is the typical civil rights curriculum in elementary
17 and junior high school? That's something that we
18 ought to study and have a briefing, I mean, it worries
19 me that there are students up in Massachusetts who
20 don't know why they have Martin Luther King Day off.

21 COMMISSIONER BRACERAS: A lot of kids
22 don't, but you know what, I think that's a very good
23 point, I mean, I don't know how other people feel
24 about that but to me education, civil rights, and
25 remembering the past, you know, it's all intertwined.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And, you know, if kids don't know about
2 the civil rights movement then we're lost, what can I
3 say. So, you know, as I said, there's more of it
4 going on at the high school level, but I find that
5 what is taught at the high school level tends to be ad
6 hoc and contemporary with very little emphasis on the
7 history of the movement, and the victories that have
8 been achieved.

9 Most of the courses look at current issues
10 and problems, without that greater context, so I think
11 it's a very big problem. I think a briefing about it
12 could be fascinating.

13 VICE CHAIR THERNSTROM: But Jennifer, why
14 is it, what you are saying, and it squares with my own
15 experience of it as well, about the A) historicism of
16 the whole approach to contemporary race related and
17 ethnicity related issues, why doesn't that speak to
18 the Commission, in fact, trying to disseminate
19 materials which put the contemporary questions in some
20 sort of historical context?

21 COMMISSIONER BRACERAS: You know, I do
22 think the Commission could play a role in advocating
23 for civil rights education. That would be extremely
24 valuable, but I think the first step might be -- I
25 don't think we can create the curriculum because,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 first of all, in some ways that's outside of our
2 abilities, both in terms of budget and skill set and
3 other things, but also because there are so many out
4 there.

5 I mean, so maybe, in other words, maybe
6 the role we can play is the same role that David
7 McCullough plays, for example, in advocating for
8 history education. And without specifically saying --
9 telling them what books they need to assign and what
10 lessons they need to teach, we should just be out
11 there pointing out the fact that not enough is being
12 taught and that it should be integrated into the
13 curriculum at a very young level.

14 You know, first grade is not too early to
15 talk about Martin Luther King Day. Or to talk about
16 the Civil War, or to talk about, you know, the Civil
17 Rights Act of 1964. You know, you don't get into
18 statutory details, obviously, with first graders, but
19 it's not too early to start talking about those things
20 and so, I think we should certainly be advocates for
21 it, I just don't know that we can develop it and write
22 it.

23 CHAIRMAN REYNOLDS: Okay, I think that
24 this is a very good suggestion, but it is slightly off
25 the mark in that we have a fiftieth anniversary and we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have to come up with some product and so, Jennifer, is
2 it your position that the product that was offered is
3 inappropriate or something that we should not do?

4 VICE CHAIR THERNSTROM: Or alternatively,
5 what should we do?

6 COMMISSIONER BRACERAS: I was responding
7 to Pete Kirsanow's suggestion of passing out
8 curriculum.

9 COMMISSIONER KIRSANOW: Right, it was my
10 suggestion. I just said, do we write a curriculum or
11 do we -- my idea was that we should do something much
12 less ambitious than that and keep focused on what the
13 whole purpose of this is and that is too commemorate
14 the fiftieth anniversary.

15 And second, how do we, in a cost effective
16 fashion, communicate the fact that it's the fiftieth
17 anniversary and also all that goes along with that in
18 terms of what the Commission has been responsible for
19 in terms of moving the civil rights debate along.

20 COMMISSIONER YAKI: I think the nail that
21 Peter just hit on the head is the Commission.
22 Obviously, I think -- I think Jennifer is right. I
23 think attempting a civil rights curriculum is way
24 beyond our ken. I also think that PBS did a
25 magnificent documentary on the civil rights movement,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 "Eyes on the Prize." That's out there, that can be a
2 standard teaching fodder.

3 But in terms of the Commission itself, I
4 think there's a distinct and narrow focus that maybe,
5 if we think about it, we can find some way to target
6 it, whether it's out of school, whether it's whatever.

7 But I think that's how we should keep the focus.
8 Because if we expand --

9 COMMISSIONER BRACERAS: I agree with that.
10 But I have a separate aside, since the conversation
11 has sort of gone down this path. I mean I do think if
12 the Commission goes forward that one way it can be
13 relevant and be really valuable in our society would
14 be to somehow find a way to advocate for civil rights
15 education. Whether that would be through testimony,
16 before boards of education, or briefings, or putting
17 out ads. I think that could be -- I'd never thought
18 about that before, but it seems to me that could be a
19 valuable and completely non-partisan way for us to all
20 come together as people who care about these issues
21 and be relevant.

22 CHAIRMAN REYNOLDS: Commissioner Heriot?

23 COMMISSIONER HERIOT: I agree that could be
24 our 50th anniversary project, advocating for civil
25 rights education. And one of the mechanisms that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 could use would be to come up with a test with
2 questions to administer in cooperation with the
3 Department of Education to a randomly selected group
4 of classes at different levels around the country.

5 And then publish -- I think we could get a
6 lot of publicity for the issue to say okay, we've
7 administered this test and we've discovered that
8 students don't know X, and they don't know Y, and they
9 don't know Z. They do know this, they do know that,
10 but they don't know this.

11 COMMISSIONER BRACERAS: I would be
12 interested. I think that that's fabulous. I would be
13 interested in knowing if perhaps that may already have
14 been done. Because there are these national history
15 assessments that every once in a while you read, you
16 know, the vast majority of twelfth graders can't tell
17 you half century the Civil War took place in, right?
18 So there are -- you do see those sometimes.

19 COMMISSIONER HERIOT: I'd like to see our
20 own test, because I think there are a range of
21 questions that I think we'd be interested in, and I
22 suspect that not all of them have been tested.

23 COMMISSIONER BRACERAS: Right, no, I think
24 that's right. That would be a fascinating project.

25 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: Well, I like this
2 discussion a lot and the way it's going. And I think
3 that we need some time to talk about it further,
4 obviously. Just to tie it in with an experience of my
5 own, very briefly, when my husband and I published
6 "America in Black and White" in 1997, and the first
7 third of the book is really on the history up to the
8 sixties.

9 An astonishing number of adults -- forget
10 about schoolchildren -- an astonishing number of
11 adults said to us -- educated, highly educated adults
12 -- we did not understand what the south was like
13 before -- we didn't understand what the Jim Crow south
14 was like. We didn't know, we thought this was some
15 kind of whine about how horrible the old days were.
16 So there is just massive ignorance -- basic history
17 of this country. And the landscape of American
18 Apartheid, and how far we've come since then, and so
19 forth.

20 I'd like to figure out a way of playing an
21 educative role. That's the bottom line. I think we
22 need to continue this conversation.

23 COMMISSIONER BRACERAS: No, I do too. And
24 I think Gail's suggestion is the perfect first step.
25 Because before we or anybody else starts advocating

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about what needs to be done, we need some sort of
2 objective assessment of the level of the problem. And
3 if we could -- if we could produce something like
4 that, that would generate some headlines, and focus
5 the spotlight on an issue and then the Commission
6 could develop some sort of plan of where to take those
7 -- you know, what to do about those -- what the
8 Commission could do about those.

9 CHAIRMAN REYNOLDS: Okay. This has been a
10 good discussion. But in terms of action items, I
11 guess I'll try to start with what I believe is the
12 easiest issue. Is there agreement to have David
13 Blackwood look into the legality of -- to accept
14 services offered by production companies.

15 COMMISSIONER YAKI: I would -- I would
16 instead suggest that perhaps in the grand fashion of
17 the Commission that we instead go to a subcommittee --
18 appoint a subcommittee on this.

19 CHAIRMAN REYNOLDS: Do you really want to
20 do this, Michael?

21 COMMISSIONER YAKI: Absolutely --

22 CHAIRMAN REYNOLDS: -- the anniversary
23 around the corner, and in terms of efficiency,
24 juggling schedules -- you know, if we're going to have
25 product ready before the end of the year, I'm not sure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that that's the most efficient vehicle.

2 COMMISSIONER HERIOT: Do we have that much
3 interest in a radio or TV spot anyway?

4 CHAIRMAN REYNOLDS: Quite frankly, the PSA
5 for television, I think that there are a lot of
6 complexities involved in it. And as Commissioner
7 Thernstrom has pointed out, I'm not sure what the
8 impact is going to be.

9 COMMISSIONER BRACERAS: But I think a
10 survey would have a big impact, and what if -- I mean.

11 VICE CHAIR THERNSTROM: A survey -- that's
12 a separate question.

13 COMMISSIONER BRACERAS: But does it have to
14 be separate? I mean --

15 VICE CHAIR THERNSTROM: Well, we can't do
16 it over the radio.

17 COMMISSIONER BRACERAS: We don't think
18 that.

19 VICE CHAIR THERNSTROM: Well, we're talking
20 about radio spots right now.

21 COMMISSIONER BRACERAS: Right, but what I'm
22 suggesting is, maybe we scrap that idea, because of
23 expense and complexity, and switch gears, and
24 participate in the conference, do a survey, bring the
25 results of the survey to the conference, you know,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 write op-eds about it. I mean, all of that is free
2 media, basically. The survey would cost, to some
3 extent, but the publicity it would generate about
4 civil rights, about the Commission, about the history
5 of the Commission, would be free.

6 COMMISSIONER KIRSANOW: I think in terms of
7 action items, the question is, what does the survey
8 look like and who prepares it, how is it distributed,
9 and with whose assistance, such as DOE -- I think that
10 implicates general counsel taking a look at the
11 legality of -- and I would be surprised if we couldn't
12 partner with DOE to do this.

13 And clearly the survey is not going to be
14 scientific, but will nonetheless give us some data
15 that we can point to in terms of op-eds and everything
16 else as to where certain deficiencies are with respect
17 to civil rights education in the country.

18 VICE CHAIR THERNSTROM: On the table right
19 now is what question?

20 CHAIRMAN REYNOLDS: We're trying to --

21 VICE CHAIR THERNSTROM: No, no, but I
22 thought you had a specific question. I thought you
23 were on the radio spots.

24 COMMISSIONER BRACERAS: Well, if it's a
25 question about whether or not to move forward with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 paid media, then I'm inclined at this point to vote
2 no. Because I think that in participating in a
3 conference, we can generate free media that the people
4 who care about this stuff will pay more attention to
5 than somebody sitting in traffic listening to talk
6 radio or listening to sports radio.

7 VICE CHAIR THERNSTROM: Right.

8 COMMISSIONER BRACERAS: -- paid media and
9 to take another approach.

10 VICE CHAIR THERNSTROM: I thought the only
11 question on the table was the paid media at the
12 moment.

13 CHAIRMAN REYNOLDS: That's the one I
14 brought up first, but I was getting to the other
15 issues. So options two and three, if I understand
16 what's transpired, we're going to jettison those
17 options, we're going to go with option one, and then
18 we're going to add this idea --

19 COMMISSIONER YAKI: What? Excuse me?
20 What's option one?

21 CHAIRMAN REYNOLDS: The Princeton
22 Conference.

23 COMMISSIONER YAKI: I object to that.

24 COMMISSIONER BRACERAS: And why do you
25 object to it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER YAKI: Do you really want me
2 to talk about why I object to it?

3 COMMISSIONER BRACERAS: Yes I do.

4 VICE CHAIR THERNSTROM: Yes.

5 COMMISSIONER YAKI: You know, I just think
6 that the person in question --

7 COMMISSIONER BRACERAS: The person in
8 question being?

9 COMMISSIONER YAKI: The professor at
10 Princeton.

11 CHAIRMAN REYNOLDS: Which one?

12 COMMISSIONER YAKI: Robert George. I have
13 some severe problems with having a conference hosted
14 at Princeton under his auspices.

15 COMMISSIONER BRACERAS: Well why -- I mean,
16 I would disagree. But given that you feel that way, I
17 mean, is there a way --

18 COMMISSIONER YAKI: Let me put it another
19 way. Because of his views on certain segments of the
20 American population, I doubt I would participate in
21 such an endeavor.

22 COMMISSIONER BRACERAS: Well --

23 CHAIRMAN REYNOLDS: What is so odious about
24 his views?

25 COMMISSIONER YAKI: I'm not going to get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 into it right now. All you have to do is go to his
2 Website and read. It's right there.

3 COMMISSIONER BRACERAS: Can I be heard
4 please? It seems to me -- well, number one, as Gail
5 said, Princeton can do whatever they want. The
6 question is whether the Commission takes a formal
7 role, or whether individual commissioners can stay
8 informally, which is their choice. But you know, the
9 best conferences are those that are balanced and do
10 have people with strong views on various sides of
11 issues. So to the extent that you're suggesting that
12 somebody with Professor George's views not participate
13 at all, then --

14 COMMISSIONER YAKI: No, I'm not saying that
15 at all. I'm saying for that to be the host entity, I
16 would prefer --

17 COMMISSIONER HERIOT: It's actually going
18 to be co-sponsored by Georgetown University and it's
19 going to be held here. It's going to be held here in
20 DC.

21 COMMISSIONER YAKI: Well that's not what I
22 read. That's not what was in the item.

23 COMMISSIONER HERIOT: Does that change your
24 view? Does that give you a higher level of comfort?

25 COMMISSIONER YAKI: I don't know. I have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to look at it. Since it wasn't in the agenda packet,
2 and I did my research based on the agenda packet, I
3 would need to look at it --

4 VICE CHAIR THERNSTROM: What is the
5 Tocqueville Center?

6 COMMISSIONER HERIOT: I'm not familiar
7 with them.

8 COMMISSIONER BRACERAS: Where is the
9 documentation about this agenda item, by the way?

10 CHAIRMAN REYNOLDS: Was that distributed?

11 COMMISSIONER YAKI: It's in the motions
12 part.

13 STAFF DIRECTOR MARCUS: There was a memo
14 that was circulated on this item.

15 COMMISSIONER YAKI: It was an email,
16 Jennifer. It wasn't in any of the formal agenda
17 materials.

18 COMMISSIONER BRACERAS: I've followed the
19 discussion. I'm just wondering if there's a specific
20 list to which people are referring, that you have in
21 front of you.

22 STAFF DIRECTOR MARCUS: We're referring to
23 a list that was provided in an email dated October 10,
24 2007 at 10:03 a.m.

25 VICE CHAIR THERNSTROM: Let me ask a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 question here. Professor George is obviously a former
2 member of the US Commission on Civil Rights. Who
3 would be setting the agenda and deciding on who was
4 invited to such a conference? It seems to me your
5 comment assumes that he would be.

6 COMMISSIONER YAKI: Well my comment was
7 based on the fact that the email said it would be held
8 at Princeton under the auspices of blah blah blah,
9 with Professor Robert George, who is part of the
10 leadership of that particular school within Princeton.

11 VICE CHAIR THERNSTROM: Right, but --

12 COMMISSIONER YAKI: Having read Mr.
13 George's views on certain things --

14 VICE CHAIR THERNSTROM: Well, look, at the
15 end of the day, the question is, is Robert George in
16 charge of this event, or are we? And I would hope the
17 answer is we are.

18 COMMISSIONER HERIOT: Oh, I think that's
19 incorrect. I think this is a program that the
20 Medicine Center, in cooperation with the Tocqueville
21 Center, is putting on about the anniversary. I don't
22 think it's our program.

23 VICE CHAIR THERNSTROM: I see. All right.

24 COMMISSIONER YAKI: See, that's what I
25 didn't understand --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: I did not
2 understand that. I thought --

3 COMMISSIONER BRACERAS: -- the question is,
4 at what level does the Commission want to formally
5 participate, right?

6 COMMISSIONER HERIOT: I think we would
7 participate as individuals. There's no need for the
8 Commission to --

9 VICE CHAIR THERNSTROM: Wait a minute.
10 Gail, didn't we start out with a different vision of
11 the Commission, in fact hosting some kind of --

12 COMMISSIONER YAKI: That's what the email
13 said.

14 CHAIRMAN REYNOLDS: I thought we were going
15 to co-host the event.

16 COMMISSIONER HERIOT: I'm certain they
17 would be happy for us to co-host. I'm certain they'd
18 also be happy, you know, not to.

19 COMMISSIONER BRACERAS: So I guess to
20 answer your --

21 VICE CHAIR THERNSTROM: This doesn't come
22 out of our budget.

23 COMMISSIONER BRACERAS: But to respond to
24 Commissioner Yaki's concern, if the Commission were
25 co-hosting and Michael Yaki had, say, an input, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 could work with Robert George and others to help shape
2 this --

3 COMMISSIONER YAKI: I work with you,
4 Jennifer, so that's a start.

5 COMMISSIONER BRACERAS: That's my point.
6 If we were supported in that way -- if we were to join
7 them as full partners --

8 STAFF DIRECTOR MARCUS: I would have to say
9 there may be legal ramifications --

10 COMMISSIONER YAKI: Right.

11 STAFF DIRECTOR MARCUS: If we were to try
12 to co-host something and they would pay for it. We
13 would have to look into it, but it would certainly
14 raise questions.

15 VICE CHAIR THERNSTROM: So that's an
16 uncompensated contribution to the Commission, is what
17 you're saying.

18 STAFF DIRECTOR MARCUS: At first blush, it
19 sounds like those issues are --

20 COMMISSIONER BRACERAS: Well, what I think
21 makes most sense is to let the outside groups put on
22 their conference they're going to put on,
23 commissioners can participate as individuals, and it
24 would be my hope that commissioners from both sides of
25 the ideological, political aisle would participate, in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 order to give a fuller, more fleshed out view of
2 things. But getting back to what we said before, I
3 would scrap the paid advertising, and you know, go
4 back to the drawing board and try to think of some
5 good survey things.

6 VICE CHAIR THERNSTROM: Well, I'm unhappy
7 with the idea that the Commission itself is not doing
8 anything to celebrate the anniversary, but instead is,
9 in effect, contracting out the celebration.

10 COMMISSIONER YAKI: Outsourcing?

11 VICE CHAIR THERNSTROM: Outsourcing. To,
12 you know, groups that some of us may be more or less
13 comfortable with. I'm not happy with that. I mean
14 this should be a united celebration of the
15 Commission's work.

16 CHAIRMAN REYNOLDS: Okay. Let's recap for
17 a moment.

18 COMMISSIONER MELENDEZ: This is
19 Commissioner Melendez, I have a question.

20 CHAIRMAN REYNOLDS: Yes, Commissioner
21 Melendez?

22 COMMISSIONER MELENDEZ: Since the
23 Commission anniversary, or the Commission started at
24 the White House, are they kind of involved in the
25 publicity of this anniversary, or --?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
2 did you look into this as a possibility?

3 COMMISSIONER KIRSANOW: Yes, I did consult
4 with folks at the White House. I have not heard back
5 from them. I don't know where it stands. I've tried
6 to follow up but have not gotten any definitive word
7 back.

8 CHAIRMAN REYNOLDS: Okay. So we had looked
9 into the possibility of having some -- having a
10 ceremony at the White House, Commissioner Melendez.
11 But we haven't gotten any reactions from the White
12 House at this point. Okay. Are we in agreement that
13 options two and three are off the table? Two being
14 the radio ads, and option three being the PSAs that
15 would be distributed by a telecommunication company?

16 VICE CHAIR THERNSTROM: Yes, those are off
17 the table, and I would say that option one -- we've
18 got to discuss this at much greater length. I am not
19 willing to go along with an anniversary celebration in
20 which we are not united as a Commission behind.

21 COMMISSIONER HERIOT: Well whether you want
22 it as an anniversary celebration, it's not a question
23 of us being united behind it. That's their academic
24 conference that concerns the Commission.

25 VICE CHAIR THERNSTROM: Well, they can have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 an academic conference. We don't have any control
2 over that. But then, if that's what ends up
3 happening, I do think we as a Commission need to find
4 a way of celebrating the anniversary.

5 CHAIRMAN REYNOLDS: Commissioner Yaki, do
6 you have any suggestions?

7 COMMISSIONER YAKI: Other than cake?

8 CHAIRMAN REYNOLDS: In addition to cake.

9 VICE CHAIR THERNSTROM: What kind of cake?
10 Are we going to argue about that?

11 COMMISSIONER YAKI: Not at all. I'm very
12 agnostic about cake, as long as it's cake.

13 COMMISSIONER KIRSANOW: I think we've
14 solved this problem.

15 COMMISSIONER YAKI: I think that -- I think
16 there's three options. One is, I think we should
17 aggressively pursue a White House strategy. Somewhat
18 because it was a Republican president fifty years ago
19 who put this together. And I think that there is
20 something to be said about having that symmetry fifty
21 years later. Secondly, I think that the idea that of
22 the celebration that Commissioner Thernstrom talks
23 about is something that I originally had thought would
24 sort of be the galvanizing point for the national
25 conference, but now that's pushed back to '09, if I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 correct, right?

2 STAFF DIRECTOR MARCUS: I believe the
3 conference has always been scheduled for `09.

4 COMMISSIONER YAKI: I know, but when I
5 first started this idea, I was hooking it to the
6 fiftieth anniversary.

7 STAFF DIRECTOR MARCUS: We should probably
8 find a way of hooking it in, as a -- perhaps as a year
9 celebration.

10 COMMISSIONER YAKI: I think that -- I mean
11 you can either do this symbolically or you can do this
12 substantive. I think the symbolic would be a White
13 House gathering of all the existing, living
14 commissioners and staff directors or whoever, you
15 know, to gather -- to just look at that, and maybe
16 through that, develop a one day symposia retrospective
17 of the work the Commission has done over the years. I
18 mean, that would be, I think, the most ideal thing,
19 because that's how it all started.

20 I mean, it really started with that great,
21 big, wonderful `61 report that I've read top to bottom
22 and am just amazed by. That to me is really what I
23 would do. I would try and put it together in just one
24 corner, very simple thing. Low key. It could be a
25 stage, and you could have round tables with just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 selected commissioners from the decades talking about
2 what they did and how they think it's changed people's
3 lives.

4 CHAIRMAN REYNOLDS: Okay. So Commissioner
5 Kirsanow, would you follow up with the folks at the
6 White House and see if we can get them to focus on
7 this issue?

8 COMMISSIONER KIRSANOW: I'll do that, and
9 actually, that was -- what Commissioner Yaki just
10 described is precisely what was being contemplated.
11 When I get back to my office, hopefully later this
12 afternoon, I'll see if I can make some contact, if
13 not, by sometime next week.

14 CHAIRMAN REYNOLDS: Okay, that was a part
15 of what you just discussed. The other piece being the
16 symposium. Ken, could you have some folks try to
17 reduce what we've been discussing to paper?

18 COMMISSIONER YAKI: But I think -- and just
19 adding to that -- that's also a great idea. If we
20 could develop even just a simple, ten question test.
21 Because I think about much time we could steal from
22 teachers. But I can imagine each one of us has pretty
23 good contacts with our own education systems, and
24 could probably ask three or four history teachers to
25 do some random tests. It wouldn't be scientific, it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wouldn't be whatever. But it'd be from our own areas.
2 I would come from the San Francisco -- you would come
3 from St. Louis, Gail from San Diego, Peter from
4 Cleveland, you from wherever you are now.

5 VICE CHAIR THERNSTROM: My contacts are all
6 back in Massachusetts, obviously.

7 COMMISSIONER YAKI: But it would just be
8 interesting to --

9 VICE CHAIR THERNSTROM: Get Jay Leno to go
10 out on the street late at night.

11 COMMISSIONER YAKI: No, that would not be -
12 -

13 VICE CHAIR THERNSTROM: I'm not serious,
14 folks.

15 COMMISSIONER YAKI: Because when he asks
16 those questions, it's just freaking embarrassing. You
17 know, when he asks do they know who Martin Luther
18 King, Junior is. "Uh, no." Or they'll give some
19 really --

20 VICE CHAIR THERNSTROM: "Didn't he have
21 something to do with World War Two?"

22 COMMISSIONER YAKI: "Does he know Jay Z,"
23 and that kind of stuff.

24 COMMISSIONER HERIOT: I think we could
25 adopt this as our fiftieth anniversary project, so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that we say, "Okay, this is our project." I'm sort of
2 behind on what the national conference is. I remember
3 that I've spoken to some of you about having an
4 anniversary, you know, hearing, maybe held on Capitol
5 Hill, and somebody told me that's kind of like our
6 national conference idea. Tell me what the national
7 conference idea is.

8 CHAIRMAN REYNOLDS: Okay. Before we go
9 down that road, I want to tie this up. The four
10 things that we are going to do. The survey, we're
11 going to try to a have a ceremony at the White House,
12 we're going to have a one-day symposium, and
13 commissioners in their individual capacities would be
14 free to participate in the event co-sponsored by
15 Princeton and Georgetown.

16 COMMISSIONER BRACERAS: And what's the one-
17 day symposium?

18 CHAIRMAN REYNOLDS: That was just discussed
19 by Commissioner Yaki.

20 COMMISSIONER YAKI: That was something that
21 the White House could convene, just sort of a round
22 table of --

23 COMMISSIONER BRACERAS: Oh, so that's in
24 conjunction with the White House meeting.

25 COMMISSIONER YAKI: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: Yes, I would assume
2 the White House is going to want to do one thing and
3 not two things.

4 COMMISSIONER BRACERAS: Yes, that's what
5 I'm getting at.

6 VICE CHAIR THERNSTROM: I would assume that
7 the White House is going to want to do something very
8 limited.

9 CHAIRMAN REYNOLDS: Yes, I agree. I think
10 that they want to do just a ceremony and get us out of
11 there.

12 COMMISSIONER KIRSANOW: I think it would be
13 something that would be held in the East Room.
14 Possibly all living commissioners would at least be
15 invited. There might be a few words by the President
16 or his designee. Maybe prepare to across the hall for
17 some hor dourves.

18 COMMISSIONER BRACERAS: I mean, that
19 combined with the survey results would generate a lot
20 of publicity.

21 COMMISSIONER HERIOT: It's not going to be
22 at the same time. The first one will be at the White
23 House's convenience, and it might be rather soon, I
24 would think.

25 VICE CHAIR THERNSTROM: And the White House

NEAL R. GROSS

COURT REPORTERS AND TIRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 events of this sort in the past, commemorating, for
2 instance, the `64 act, did not get a lot of publicity.

3 COMMISSIONER HERIOT: And remember we've
4 got several anniversaries. We've got the anniversary
5 of the date, which is like in fifteen minutes,
6 unfortunately. We've got the anniversary of the date
7 that Eisenhower trotted out his nominees for the
8 Commission. And that's November.

9 CHAIRMAN REYNOLDS: November 15th, wasn't
10 it?

11 COMMISSIONER HERIOT: something like that.
12 And then there's the anniversary of the first
13 Commission meeting, and that's January. And that's
14 why we can call all of 2008 -- that's our anniversary
15 year. And everything we do could be, you know,
16 related to this, could be our anniversary project, of
17 ensuring civil rights literacy among young Americans.

18 CHAIRMAN REYNOLDS: Okay. So those are the
19 issues. We have a consensus. And you wanted further
20 discussion on the conference that will be held in
21 2009.

22 COMMISSIONER HERIOT: Just tell me what the
23 national conference is so that I can figure out how
24 that fits in with what I want to do.

25 CHAIRMAN REYNOLDS: Mr. Staff Director?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 STAFF DIRECTOR MARCUS: Sure. There's a
2 brief description on page twelve of the strategic
3 plan, and it's short, so I'll just read it from the
4 third full paragraph. The Commission is planning to
5 hold a national conference which endeavors to be a
6 significant convening of scholars, practitioners,
7 policy makers, and issue specialists, addressing broad
8 civil rights themes. The Commission will seek to draw
9 at least one hundred civil rights practitioners,
10 experts, and others to the conference.

11 In addition to broad discussions of civil
12 rights, sessions will be held on discrete topics drawn
13 from the responses of the SACs and pending matters
14 before Congress. The conference will result in a
15 report of findings entitled civil rights priorities
16 for the 21st century.

17 COMMISSIONER HERIOT: Yes, I've read that.
18 But that's the whole plan at this point?

19 CHAIRMAN REYNOLDS: That's about it.

20 STAFF DIRECTOR MARCUS: There's been things
21 that have been agreed to beyond that. I think at a
22 staff level we are working up various alternatives to
23 how to flesh this out.

24 CHAIRMAN REYNOLDS: We just have a concept
25 right now.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: Okay. So that's
2 2009.

3 STAFF DIRECTOR MARCUS: Yes.

4 COMMISSIONER HERIOT: Okay. My idea that's
5 sort of overlapping was to have a hearing/briefing,
6 whatever it should be called -- I don't know -- that
7 simply is more elaborate than usual. Where we simply
8 hear from civil rights leaders, have them talk to us
9 for fifteen minutes each, perhaps, on their vision of
10 civil rights in the next half century, or civil rights
11 in the 21st century, and hold that as our anniversary
12 event in January. Someplace where it would look nice
13 and we could say nice things about the anniversary.

14 STAFF DIRECTOR MARCUS: I'm sorry, how is
15 that different than the national conference?

16 COMMISSIONER HERIOT: It's smaller.

17 COMMISSIONER BRACERAS: It's smaller and
18 more streamlined, but very similar.

19 STAFF DIRECTOR MARCUS: And of course, the
20 extent to which the 2009 conference is larger will
21 depend on the appropriations that we get. So it could
22 end up being large scale, or it could be something
23 somewhat similar to what you just described.

24 COMMISSIONER HERIOT: Yes, I'm just
25 thinking that we ought to have some event that is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 anniversary event, that occurs in 2008.

2 CHAIRMAN REYNOLDS: Comments?

3 STAFF DIRECTOR MARCUS: Maybe I missed
4 something, but Commissioner Yaki had the idea for the
5 symposium involving commissioners. In the event that
6 the White House is not interested in doing that,
7 perhaps that's the sort of thing that we could do that
8 would be very different from the conference.

9 COMMISSIONER YAKI: Yes, I like that.

10 CHAIRMAN REYNOLDS: Well, but your idea was
11 to have past commissioners and other folks involved
12 with the Commission coming and talking about their
13 experience, versus what Commissioner Heriot's brought
14 up, where people come in and talk about what civil
15 rights should be in the 21st century. One is
16 essentially looking at what's been done in the past,
17 and the other one is looking at what should be done
18 going forward. So I don't see them as
19 interchangeable.

20 COMMISSIONER YAKI: Well, I think in terms
21 of happy, I think the formal would lend itself to a
22 non-controversial day in which people from the past
23 could have an opportunity to talk about -- I think
24 that the forward is really what the national
25 conference is really more about. And what we fight

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about every day.

2 COMMISSIONER KIRSANOW: Despite that, the
3 symposium of former commissioners would necessarily
4 have some of them talking about what they expect civil
5 rights to look like in the next fifty years. But it
6 wouldn't be the focus of it.

7 CHAIRMAN REYNOLDS: Okay. Ken, please have
8 someone try to get this down in writing. We've
9 discussed various ideas, and I think it would be
10 useful if we all could actually -- you know, if we had
11 a document that we could read and edit.

12 STAFF DIRECTOR MARCUS: I'd be happy to.

13 CHAIRMAN REYNOLDS: Okay.

14 COMMISSIONER HERIOT: This may be the sort
15 of thing we could schedule a teleconference on.

16 CHAIRMAN REYNOLDS: Okay, next up, I move
17 that the Commission adopt the revised information
18 quality guidelines distributed to commissioners on
19 August 16th, 2007, and again on October 4th, 2007.
20 Approval of this motion will also authorize the staff
21 director to send the information quality guidelines to
22 the federal register for final notice and publication.

23 These guidelines were distributed for
24 consideration at the August 24th, 2007 business
25 meeting, at which commissioners tabled them until this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 meeting at Commissioner Yaki's request. Is there a
2 second?

3 COMMISSIONER KIRSANOW: Second.

4 CHAIRMAN REYNOLDS: Discussion?

5 COMMISSIONER MELENDEZ: Have there been
6 some changes to this document, and has it been fully
7 reviewed by the general counsel?

8 CHAIRMAN REYNOLDS: Okay. Have we altered
9 the document since the last meeting?

10 STAFF DIRECTOR MARCUS: There have been no
11 changes since the last meeting, which was the meeting
12 at which this document was tabled. However, there
13 were changes made since the prior time at which the
14 Commission reviewed and voted on the document. And
15 the changes that have been made since that point
16 should be indicated in the red-lining through the
17 document. Generally speaking, the changes were made
18 as a result of OMB review.

19 OMB raised certain questions about whether
20 our guidelines were fully compliant and consistent
21 with federal policies. And so we've made just a few
22 changes to comply with that. I don't think that OMB's
23 comments have any ramifications with respect to A.I.
24 1-6.

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER YAKI: Thank you, Mr. Chair.
2 Has there been some change in the -- what qualifies
3 for OGC review?

4 STAFF DIRECTOR MARCUS: I believe that is
5 right. I'm going to have to find it, but I believe
6 that there is a change for OGC review, and it would
7 relate to testimony before Congress. Let me try to
8 flip through this.

9 COMMISSIONER YAKI: I was trying to find
10 it, and it's so --

11 STAFF DIRECTOR MARCUS: Yes. I do recall
12 that there is testimony before Congress that would be
13 sponsored by the Commission, thank you, and that would
14 now require OGC review.

15 COMMISSIONER YAKI: Those are exemptions.

16 STAFF DIRECTOR MARCUS: Is Mr. Horn on the
17 line?

18 MR. HORNE: I am.

19 STAFF DIRECTOR MARCUS: Is there a page
20 number that you can refer us to? Oh, is it on page
21 ten?

22 MR. HORNE: It's section four, page ten.

23 STAFF DIRECTOR MARCUS: Okay. Page ten --
24 On section Roman numeral four, subsection 1G, we had
25 previously provided that testimony or comments of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Commission officials before courts and administrative
2 bodies, Congress, or the media, would not apply here
3 and would -- and because they would not be defined as
4 information, the review would not be required. OMB
5 objected to that, indicating that there are some cases
6 in which Commission testimony before Congress is
7 information of the sort that should be covered by
8 information quality guidelines.

9 So the new language indicates that
10 testimony of Commission officials before courts,
11 administrative bodies, Congress, or the media, is not
12 covered information, unless the testimony contains new
13 substantive information not previously disseminated.
14 However, this information, testified to before
15 Congress, would apply to testimony that is sponsored
16 by the agency.

17 In other words, it refers to information
18 that the agency, as the agency, is providing, as
19 opposed to information that an individual commissioner
20 is providing based on his opinion or her opinion.

21 COMMISSIONER YAKI: Why isn't that made
22 more clear?

23 STAFF DIRECTOR MARCUS: Well, I think it is
24 in here. Mr. Horne, is there a particular page that I
25 can point to?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. HORNE: Well, sure, it's the beginning
2 of section four, number one. It's the scope and
3 applicability of the guidelines is information and
4 dissemination. And dissemination is defined in 4.03.
5 Which means Commission sponsors distribution of
6 information. Now what dissemination does not cover --
7 OMB released guidelines in 2002, February, that
8 address exactly what it means when an agency responds
9 with information. And that means either -- we've
10 either directed a third party to disseminate the
11 information, we are initiating the dissemination of
12 the information, or we have the authority to review
13 and approve the information before release.

14 COMMISSIONER YAKI: So my half-cocked
15 opinions aren't covered?

16 MR. HORNE: That's correct.

17 STAFF DIRECTOR MARCUS: Okay.

18 CHAIRMAN REYNOLDS: You're free to share
19 them with the world.

20 COMMISSIONER YAKI: That's all I care
21 about.

22 CHAIRMAN REYNOLDS: Commissioner Melendez,
23 do you have any additional questions?

24 COMMISSIONER MELENDEZ: Yes, going to page
25 number seven, the document says that administrative

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 instruction 1-6, national project development and
2 implementation at section 15, provides that the staff
3 director will appoint members of an editorial policy
4 board to release nation reports to determine the
5 adequacy and accuracy of the substantial information
6 in the draft document. However, per Chairman
7 Reynolds' motion in April, the staff director no
8 longer has to do an editorial review for briefing
9 reports. So the guidelines appear to be not correct.

10 CHAIRMAN REYNOLDS: I'm sorry.

11 STAFF DIRECTOR MARCUS: I think that
12 Commissioner Melendez is referring to the old
13 controversy as to whether A.I. 1-6 previously imposed
14 editorial review board review requirements on
15 briefing reports or not. And I believe, as I recall,
16 it was Commissioner Melendez's view that the
17 requirement did apply, and the view of other
18 commissioners that it did not apply. A few months
19 ago, there was a vote on this issue and it was
20 determined that it would not apply, except as the
21 staff director on a case by case basis determined that
22 it would be necessary.

23 So if I heard Commissioner Melendez's
24 comment correctly, he's indicating that he thinks that
25 there has been a change in the A.I. 1-6, in the sense

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that our current policy is not consistent with his
2 understanding of the former policy. Is that it, did I
3 understand that correctly?

4 COMMISSIONER MELENDEZ: Right. I guess the
5 question is -- did Chairman Reynolds make a motion in
6 April saying that staff director no longer has to do
7 an editorial review board briefing report.

8 STAFF DIRECTOR MARCUS: No, I don't believe
9 there was ever such a motion that referred to "no
10 longer required." As I recall, the motion was to what
11 the require would be going forward. Whether such a
12 requirement existed in past times, as I recall, was an
13 issue as to which there was disagreement among the
14 commissioners. So this would be a change only if one
15 accepts certain of the historical views of the prior
16 version of A.I. 1-6 that were not adopted by the
17 Commission a few months ago.

18 CHAIRMAN REYNOLDS: Okay, Commissioner
19 Melendez, that address your --

20 COMMISSIONER MELENDEZ: I just wanted to
21 raise the question.

22 CHAIRMAN REYNOLDS: Okay. Questions?
23 Concerns? Commissioner Thernstrom? All right.

24 STAFF DIRECTOR MARCUS: Commissioner
25 Melendez, I would ask that when you speak, you try to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be a little louder. I know that the court reporter
2 has been having some difficulty. May I ask the court
3 reporter whether she's been able to catch his most
4 recent comments. Commissioner Melendez, would you
5 like to repeat what you've just said for the benefit
6 of the court reporter?

7 COMMISSIONER MELENDEZ: Yes, my main
8 concern was that I thought that Chairman Reynolds'
9 motion in April required that the staff director no
10 longer had to do an editorial review or briefing
11 report, so in essence, the guidelines as written are
12 currently not right.

13 CHAIRMAN REYNOLDS: Okay.

14 STAFF DIRECTOR MARCUS: Just so I
15 understand, there may be disagreement among the
16 commissioners as to whether there was in fact a
17 change. The term "no longer" was not in the motion a
18 few months ago, and I don't believe that there is any
19 reference to briefing reports here in this document,
20 and I would read it as being consistent with the
21 historical understanding that national reports within
22 the meeting of this AI did not apply to briefing
23 reports.

24 But if Commissioner Melendez is suggesting
25 that we need some sort of clarification in this -- I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 not sure if I understand.

2 COMMISSIONER MELENDEZ: Yes, I would.

3 CHAIRMAN REYNOLDS: Well, isn't this an
4 issue that we've debated on several occasions, whether
5 --

6 VICE CHAIR THERNSTROM: Yes, it is.

7 STAFF DIRECTOR MARCUS: Yes.

8 COMMISSIONER MELENDEZ: I'm just stating my
9 concern.

10 CHAIRMAN REYNOLDS: Okay. You've been duly
11 recorded. Next up. I guess we'll have to wait until
12 Mr. Yaki returns for the vote.

13 VICE CHAIR THERNSTROM: I think we should
14 go ahead with the vote. He's on the phone, so we
15 don't know how long he'll take. Or we'll come back to
16 the vote. But we shouldn't just sit here until he
17 gets off the phone.

18 CHAIRMAN REYNOLDS: Okay. All in favor of
19 the motion, please say aye.

20 (Chorus of ayes)

21 CHAIRMAN REYNOLDS: Commissioner Melendez?

22 COMMISSIONER MELENDEZ: Opposed.

23 CHAIRMAN REYNOLDS: Okay. Please let the
24 record reflect that Commissioner Yaki did not vote,
25 Commissioner Melendez voted against the motion, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the remaining commissioners voted in favor. The
2 motion passes.

3 COMMISSIONER YAKI: No? Yes? Abstain?

4 VICE CHAIR THERNSTROM: We just voted, and
5 you voted yes.

6 **VI. Program Planning**

7 CHAIRMAN REYNOLDS: Okay. One amendment to
8 the agenda that I forgot to make was a consideration
9 of the proposed debate on race and intelligence. Due
10 to the fact that we've run out of time, and also, I
11 think, that it would be inappropriate to move the
12 briefing that we had scheduled in November. I move
13 that we table discussion on that issue.

14 COMMISSIONER YAKI: Second.

15 CHAIRMAN REYNOLDS: Discussion? All in
16 favor, please say aye.

17 (Chorus of ayes)

18 CHAIRMAN REYNOLDS: The motion passes
19 unanimously.

20 Okay. I move that the Commission approve
21 for publication along with any concurring and
22 dissenting statements submitted by any commissioner by
23 October 26th, 2007, part A of the report produced by
24 staff and reflecting commissioner and panelist input
25 on the briefing the Commission held on April 7th, 2006

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on racial categorization in the 2010 census, part A as
2 distributed in draft form to commissioners on October
3 4th, 2007, contains the following.

4 A brief overview and summary of the issue
5 and why the Commission chose to conduct this briefing,
6 a summary of the proceedings, and consisting of a
7 synopses of the panelists' oral statements during the
8 briefing, and a synopsis of the question and answer
9 sessions, and copies of the panelists' written
10 statements. Under this motion, if a majority of the
11 Commission votes to adopt part A of the briefing
12 report, the Commission will then open discussion on
13 part B. If part A fails to obtain a majority of
14 votes, the discussion of part B becomes moot. Is
15 there a second?

16 VICE CHAIR THERNSTROM: Second.

17 CHAIRMAN REYNOLDS: Okay, discussion?
18 Nothing?

19 COMMISSIONER HERIOT: We're talking about
20 the body of the report now?

21 CHAIRMAN REYNOLDS: The body of the report.

22 COMMISSIONER HERIOT: One thing is that we
23 consistently refer to Ward Connerly as Dr. Connerly.
24 I am unaware of a doctorate that --

25 VICE CHAIR THERNSTROM: No, he doesn't have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a doctorate.

2 CHAIRMAN REYNOLDS: Okay. I assume that
3 there are no objections to making that correction.
4 Mr. Yaki?

5 VICE CHAIR THERNSTROM: I didn't even
6 notice that.

7 COMMISSIONER YAKI: I was just wondering if
8 he was claiming a new mantle.

9 COMMISSIONER HERIOT: There's also a typo
10 in footnote three.

11 VICE CHAIR THERNSTROM: Oh, yes.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER HERIOT: Did we get that?

14 CHAIRMAN REYNOLDS: Anything else?

15 COMMISSIONER BRACERAS: In the summary?
16 Got everything up to page --

17 COMMISSIONER HERIOT: Up at footnote 68. I
18 don't have page numbers on this. Vice Chair
19 Thernstrom stated that a religious question is a
20 testable proposition. I wasn't sure whether that was
21 a proper summary of whatever it is that -- because it
22 doesn't make any sense to me. On the very bottom of
23 the page, it's the page that has footnotes 58 through
24 68.

25 VICE CHAIR THERNSTROM: Okay. I skimmed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this yesterday, and you obviously did a better job
2 reading it than I did.

3 CHAIRMAN REYNOLDS: Okay, Dr. Thernstrom,
4 is that an accurate --

5 VICE CHAIR THERNSTROM: I'm just looking.
6 I'm trying to find that.

7 COMMISSIONER HERIOT: I think what happened
8 is, the paragraph says, "returning to the issue of a
9 religious question, Commissioner Yaki posited that the
10 non-response rate would go up considerably if
11 questions on religion were included in the census, and
12 that religious briefs are so intrinsically personal
13 that problems would arise if people were forced to
14 reply to such questions. Vice Chair --"

15 VICE CHAIR THERNSTROM: I see it. I would
16 actually like to see the original transcript there.

17 COMMISSIONER HERIOT: Yes, I suspected what
18 you said was whether the non-response rate would go up
19 is a testable proposition.

20 VICE CHAIR THERNSTROM: Right, right. I
21 would like to see the transcript. I don't like that
22 sentence. Nobody else is going to be able to
23 translate it either. I have no idea what it says as
24 it stands.

25 CHAIRMAN REYNOLDS: Okay. And going to --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 flip over to the page that has footnotes 25 through
2 31, the last full paragraph, fourth line down at the
3 end of the sentence. It currently reads, "And thus
4 that any." I think we need to lose the word "that."

5 VICE CHAIR THERNSTROM: Right. And I see
6 that sometimes Ward Connerly is Mr. Connerly.

7 COMMISSIONER BRACERAS: Can I just make small
8 point?

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER BRACERAS: The first page of
11 the executive summary, "The following people offered
12 their expertise on one, two, three." Under number
13 two, shouldn't that say the usefulness of alternate
14 categories? There's just something about the
15 construction of that phrase that bothers me.

16 CHAIRMAN REYNOLDS: I'm sorry, where's the
17 language located?

18 COMMISSIONER BRACERAS: It's in the
19 executive summary, number two. It lists sort of three
20 things that the panelists opined on.

21 CHAIRMAN REYNOLDS: Got you.

22 COMMISSIONER BRACERAS: And number two says
23 "the usefulness of alternatives or no racial
24 categories." That's just, I don't know. That
25 construction seems a little awkward to me. I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know if anybody has any other ideas, but number one
2 says the usefulness of current racial categories.
3 Maybe number two should say the possibility -- I'm
4 just thinking out loud. Proposed alternate? Forget
5 the usefulness of it, I guess, and just say
6 alternative racial categories. I don't know, maybe
7 somebody can play with that. It's just awkward to me.

8 CHAIRMAN REYNOLDS: Okay.

9 VICE CHAIR THERNSTROM: I don't like
10 usefulness as a word. I think that's the beginning of
11 the problem, in not only one, but two as well.

12 COMMISSIONER BRACERAS: Yes. That's
13 exactly what I'm saying.

14 VICE CHAIR THERNSTROM: I mean, you want --
15 degree to which current racial categories in the 2010
16 census are useful. But usefulness is a terrible word.

17 COMMISSIONER BRACERAS: Should we just say
18 utility?

19 VICE CHAIR THERNSTROM: No. You could say
20 legitimacy.

21 COMMISSIONER BRACERAS: Legitimacy.

22 COMMISSIONER HERIOT: That has a different
23 meaning.

24 VICE CHAIR THERNSTROM: It has a different
25 meaning, but it is what we're talking about, really.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: It's not the only
2 thing that's being discussed.

3 COMMISSIONER BRACERAS: Accuracy?

4 COMMISSIONER HERIOT: That's not the only
5 thing either.

6 COMMISSIONER BRACERAS: Well how about not
7 having a word like that at all? And just saying they
8 offered their expertise on one, current racial
9 categories in the 2010 census. Two, proposed
10 alternative categories for the 2010 census.

11 CHAIRMAN REYNOLDS: That works. At least
12 for me. Okay.

13 COMMISSIONER BRACERAS: All right, so they
14 opined on the current racial categories and proposed
15 alternatives.

16 VICE CHAIR THERNSTROM: I don't like
17 opined.

18 COMMISSIONER BRACERAS: No, it doesn't say
19 opined. I'm just --

20 VICE CHAIR THERNSTROM: Right.

21 COMMISSIONER BRACERAS: They offered their
22 expertise on one, the current racial categories in the
23 2010 census; two --

24 VICE CHAIR THERNSTROM: Alternative or no
25 racial categories. Good. We don't need the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 usefulness in either case. Just cut it.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER BRACERAS: That doesn't
4 completely solve my problem. Part of what bothers me
5 is alternative or no.

6 VICE CHAIR THERNSTROM: Yes.

7 COMMISSIONER BRACERAS: Alternative
8 categories?

9 VICE CHAIR THERNSTROM: Alternative or the
10 elimination of --

11 COMMISSIONER BRACERAS: Okay, alternative
12 categories or the elimination.

13 COMMISSIONER HERIOT: How about doing one,
14 two, three, instead of one, two on this? And then
15 just move the numbers. So the first one is
16 alternative racial categories, and the third is the
17 elimination of racial categories.

18 COMMISSIONER BRACERAS: Yes. I would say
19 proposed elimination. And proposed alternatives,
20 right?

21 VICE CHAIR THERNSTROM: Right.

22 COMMISSIONER BRACERAS: So they offered
23 their expertise on one, current racial categories in
24 the 2010 census. Two, proposed alternative racial
25 categories in the 2010 census. Three, proposed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 elimination of racial categories in the 2010 census.
2 And four, the legal and policy implications of blah,
3 blah, blah.

4 VICE CHAIR THERNSTROM: Okay.

5 COMMISSIONER BRACERAS: So there are now
6 four things -- four numbered items. Does that work
7 for everybody?

8 VICE CHAIR THERNSTROM: Or you could have
9 just the alteration in all of them. Back to three.
10 Either one.

11 CHAIRMAN REYNOLDS: Okay.

12 COMMISSIONER BRACERAS: I do think -- I
13 agree with Gail that it should be broken up, because
14 those are two separate things. One is recommending
15 changes to current categories, the other one is
16 eliminating categories.

17 VICE CHAIR THERNSTROM: That's fine.

18 COMMISSIONER BRACERAS: I think it was
19 grammatically awkward to me because they were
20 together.

21 CHAIRMAN REYNOLDS: Okay, if we're finished
22 there, please flip to the page that has footnotes 32
23 through 39. Second paragraph, fourth line, the
24 language that's somewhat awkward -- it reads, "And
25 cease the withholding of the multiracial box as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 imposing categorization on individuals." I believe it
2 should say "imposing a category on individuals," or
3 some other phrase to make it read a little better.

4 VICE CHAIR THERNSTROM: It's an awful
5 sentence.

6 COMMISSIONER HERIOT: Yes, that's an awful
7 sentence, top to bottom.

8 VICE CHAIR THERNSTROM: Yes.

9 CHAIRMAN REYNOLDS: Okay, would someone
10 like to author a fix? If the one that I put on the
11 table is not sufficient.

12 COMMISSIONER YAKI: Well, the question is
13 if it's verbatim from the speaker, do we have a
14 problem?

15 CHAIRMAN REYNOLDS: Well, if it's a quote,
16 then it should remain as is, in my view. I didn't
17 believe that this was -- I thought that this was a
18 summary.

19 COMMISSIONER YAKI: I hope so.

20 VICE CHAIR THERNSTROM: What you're really
21 saying there is that eliminating the option of a
22 multiracial box violates an individual -- has the
23 potential to violate an individual's sense of self-
24 identity.

25 COMMISSIONER HERIOT: I also wonder whether

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 he actually did say that he thought it was pre-
2 eminent.

3 COMMISSIONER BRACERAS: I have a quick
4 question. Are these summaries reviewed by the
5 panelists themselves?

6 VICE CHAIR THERNSTROM: They used to be,
7 always.

8 STAFF DIRECTOR MARCUS: The summaries are
9 not, typically reviewed.

10 VICE CHAIR THERNSTROM: Well, they really
11 should be.

12 COMMISSIONER YAKI: I thought they were. I
13 always thought they were.

14 STAFF DIRECTOR MARCUS: The transcript is
15 reviewed.

16 COMMISSIONER BRACERAS: The transcript is
17 reviewed, but just out of curiosity, because my
18 assumption had always been that they were reviewed by
19 the panel.

20 COMMISSIONER YAKI: In fact, I remember
21 asking one panelist on one item whether he or she had
22 reviewed their summary, and they said they had and
23 offered corrections. And so I presumed that that is
24 how it has followed since then.

25 COMMISSIONER HERIOT: I have no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 recollection of seeing a summary when I testified
2 here.

3 COMMISSIONER BRACERAS: That raises another
4 question that I'm just sort of curious about, which
5 is, have any panelists ever -- after we've published a
6 report -- complained about the way their testimony was
7 described?

8 COMMISSIONER YAKI: Yes.

9 VICE CHAIR THERNSTROM: And I've certainly
10 seen summaries that I've thought, "gee, I assume this
11 person has the opportunity to alter this summary,
12 because it certainly doesn't do the person justice."

13 CHAIRMAN REYNOLDS: But I was under the
14 impression that the summary was sent as well. The one
15 person I remember talking to, because I said, does
16 this summary summarize what you said, and she said,
17 "Yes, it did okay. I sent in a few suggestions."

18 COMMISSIONER BRACERAS: I have to say I'm
19 surprised, because I'm not sure why I assumed that
20 they were, but I did assume that they were. And I
21 know if I were a panelist and my testimony was being
22 summarized and I didn't have a chance to eyeball it,
23 that would greatly concern me.

24 VICE CHAIR THERNSTROM: Yes, I agree with
25 that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Okay, so as a change in
2 procedure, I believe we have consensus that summaries
3 of testimony will be shipped along with.

4 STAFF DIRECTOR MARCUS: Well, this raises
5 a broader question which the Commissioner informally
6 raised with me that I think probably is worth
7 considering and I'm not sure whether this is the right
8 time or not, which is the question as to whether it is
9 sufficiently valuable for us to provide summaries of
10 the testimony at all and when it was first raised to
11 me I was a little surprised but it does occur to me
12 that there are certainly arguments on both ends of it.

13 On the one -- I'm sorry.

14 COMMISSIONER BRACERAS: Well, of course,
15 we -- it seems to me a no-brainer that we would
16 summarize the testimony because nobody is going to
17 wade through the actual transcript, let's be
18 realistic.

19 STAFF DIRECTOR MARCUS: Well, I don't
20 thing it's --

21 COMMISSIONER BRACERAS: And --

22 STAFF DIRECTOR MARCUS: The reason that I
23 think it's a no-brainer is that we print the written
24 statement itself.

25 COMMISSIONER HERIOT: Which I think would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 tend to be better than the --

2 STAFF DIRECTOR MARCUS: So the question is
3 whether it is unnecessarily redundant to provide both
4 the written statement and also a summary of the oral
5 statement. Now --

6 COMMISSIONER BRACERAS: Right, but what it
7 does is it distracts the causeway between the
8 Commissioners and the Presenter.

9 STAFF DIRECTOR MARCUS: Well, that's a
10 separate question. The question is not whether we
11 should eliminate the summary of the dialogue that
12 ensues after the oral statements. The question is
13 whether we need to provide both a summary of the
14 witness' oral statement, plus a verbatim of the
15 written statement.

16 COMMISSIONER HERIOT: Especially when you
17 consider the witnesses are basically summarizing their
18 written statement anyway, so then you get a summary of
19 a summary. And it seems to me it's a lot of work for
20 nothing and --

21 COMMISSIONER BRACERAS: Yeah, I agree.
22 Yeah, can't we just do the written statement and then
23 have a summary of --

24 COMMISSIONER HERIOT: Yeah, put those up
25 front. The written statements ought to be privileged

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in the sense that more effort has gone into those.

2 STAFF DIRECTOR MARCUS: I think we --

3 COMMISSIONER HERIOT: They ought to be put
4 first.

5 STAFF DIRECTOR MARCUS: I think we can.
6 Now, just for the purpose of hearing the pros and cons
7 out there, are some witnesses who do give very
8 different oral than written statements.

9 VICE CHAIR THERNSTROM: Yeah.

10 STAFF DIRECTOR MARCUS: And to the extent
11 that that ever happens, the dialogue with the
12 Commissioners can be based on the oral as opposed to
13 the written.

14 COMMISSIONER HERIOT: Yeah.

15 STAFF DIRECTOR MARCUS: There are some
16 times when the summary of the oral does make a
17 difference. On the other hand, that's seems to be a
18 rarity.

19 COMMISSIONER HERIOT: And we've got the
20 transcript of that. Yeah. We've got the transcript
21 of that.

22 STAFF DIRECTOR MARCUS: It seems to be a
23 rarity.

24 VICE CHAIR THERNSTROM: Yes, but we've got
25 a summary of the transcript here, for what we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 already doing but I do think that this summary of the
2 discussion has to be approved by both the witnesses
3 and the Commissioners.

4 CHAIRMAN REYNOLDS: Okay.

5 STAFF DIRECTOR MARCUS: Do we want a
6 consensus or should we not?

7 CHAIRMAN REYNOLDS: But just to be clear,
8 we want to start that with this document as opposed to
9 that rule becoming effective with the next document.

10 VICE CHAIR THERNSTROM: You know, I think
11 if we can, on a very short leash, people should be
12 able to look at what is being said about what they
13 testified.

14 CHAIRMAN REYNOLDS: Mr. Yaki?

15 COMMISSIONER YAKI: If I may add a fact I
16 was going to bring up at the next section, but which
17 may have some impact on whether we apply it to this or
18 not; the report does not indicate, at least it does
19 not seem to indicate nor does it include the fact that
20 the discussions about the panel testing that the
21 census was going to be doing, they talk about it in an
22 April 2006 -- oh, my God it was that long ago -- and
23 but they completed them and they had results and
24 they've been peer reviewed and gone through a number
25 of different steps to the point where the census has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 abandoned some of the statements that it was -- some
2 of the possible conclusions it was making with regard
3 to its testimony.

4 To be specific, on the proposed contract
5 on race and Hispanic origin, some of the panel's panel
6 tested showed quite significant drops in responses for
7 Hispanic, Asian, Native Hawaiian and the Pacific
8 Islander groups such that the three question format
9 test that they were looking at that was eluded to in
10 the testimony and shown in one of the slides was
11 deemed untenable at this point in time by the Census
12 Bureau and I think that's something that probably
13 should be incorporated in the analysis if we're going
14 to because it's otherwise we're really having a very
15 stale report.

16 COMMISSIONER BRACERAS: I agree with that.

17 CHAIRMAN REYNOLDS: Okay, I think that the
18 vote should be tabled. Is there a second?

19 COMMISSIONER YAKI: Second.

20 CHAIRMAN REYNOLDS: Okay, and the idea is
21 that the document will be revised to incorporate the
22 changes that we discussed and in addition to update
23 the report to see if the statements and conclusions
24 reached at the briefing are still supported by the
25 panelists.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER YAKI: Will it would be with
2 the Census Bureau test.

3 CHAIRMAN REYNOLDS: Well --

4 COMMISSIONER YAKI: It might have an
5 impact on what our conclusions would be, yeah.

6 CHAIRMAN REYNOLDS: I see a frown.
7 Commissioner Heriot.

8 COMMISSIONER HERIOT: I'm a little
9 confused here. What is it we're looking to update?

10 CHAIRMAN REYNOLDS: Apparently -- I was
11 absent from this particular meeting, but apparently
12 the Census Bureau were testing certain questions and
13 according to Commissioner Yaki, the response was not
14 good enough and they have since changed their position
15 with respect to come of the statements that they made
16 at the briefing.

17 COMMISSIONER HERIOT: Well, we have that
18 on -- this is not maybe this happened, but this has
19 happened?

20 COMMISSIONER YAKI: Yeah, yeah, yeah, yes.

21 COMMISSIONER HERIOT: Okay, okay. That's
22 fine.

23 CHAIRMAN REYNOLDS: So that and --

24 COMMISSIONER YAKI: This mission was --

25 (Laughter)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: We're already too
2 late to effect the next census, so you know, you're
3 right.

4 CHAIRMAN REYNOLDS: And there is an
5 agreement that the documents should be circulated also
6 to the panelists so they can --

7 COMMISSIONER YAKI: Yes, yes.

8 COMMISSIONER BRACERAS: Well, right.

9 COMMISSIONER YAKI: And I'm sure the
10 Census Bureau guy will look at it and go, "Well, we
11 completed those tests. That should be updated to" --

12 CHAIRMAN REYNOLDS: Yeah.

13 COMMISSIONER YAKI: Right. So I seconded
14 the motion to table.

15 COMMISSIONER HERIOT: Are we tabling the
16 vote? We're not tabling the discussion, though, are
17 we?

18 VICE CHAIR THERNSTROM: Aren't we going to
19 have a discussion on the findings and recommendations?

20 COMMISSIONER HERIOT: Yeah, we need to
21 have a discussion.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER HERIOT: There are things, no
24 matter what they say, what they tell us about, you
25 know, their recent tests, we still need to get a sense

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of what we think about the issue here and the
2 potential recommendations.

3 CHAIRMAN REYNOLDS: Okay, well, if that's
4 the case, then let's discuss the findings and
5 recommendations.

6 COMMISSIONER YAKI: Point of order. I'll
7 talk about it in the thing, apparently because to me,
8 part of the -- how will we proceed with examining the
9 findings and recommendations if we know that one
10 particular part of those findings and recommendations
11 is not at least for now, may be substantially
12 different than what was initially posited during the
13 discussion? It seems that we're --

14 COMMISSIONER HERIOT: There are other
15 reasons for disagreeing with the recommendations and
16 findings that we could take those issues completed off
17 the table or we may have a substantial agreement. I
18 don't know.

19 VICE CHAIR THERNSTROM: Yes, you do.

20 COMMISSIONER HERIOT: I know that I don't
21 agree with you, but I'm sure that we'll be able to
22 come to agreement about the 1790 census regardless of
23 what the Census Bureau wants to do now.

24 VICE CHAIR THERNSTROM: Yes.

25 CHAIRMAN REYNOLDS: Okay, at this point,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 do you want to discuss that issue?

2 COMMISSIONER HERIOT: Have we finished
3 talking about, you know, nits in Part A yet? Does
4 anybody else have any?

5 COMMISSIONER MELENDEZ: Commissioner
6 Melendez. Could we get outside organizations, did
7 they submit public comments on this report and were
8 they included in the report?

9 CHAIRMAN REYNOLDS: Ken?

10 STAFF DIRECTOR MARCUS: I'm sorry, I
11 didn't hear the question.

12 COMMISSIONER MELENDEZ: Commissioner
13 Melendez. I believe outside organizations submitted
14 public comment on this report. However (inaudible)

15 STAFF DIRECTOR MARCUS: Yeah, I'm not
16 aware of any public comments. This is an OGC report
17 and the General Counsel informs we did not receive
18 comments.

19 COMMISSIONER MELENDEZ: Okay, I thought
20 that maybe the Office of Hawaiian Affairs sent
21 something in.

22 STAFF DIRECTOR MARCUS: I think there
23 might be a representative of Office of Hawaiian
24 Affairs indicating they did send something in. We can
25 look for it and if the Office of Hawaiian Affairs,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 perhaps, could resend their comments.

2 COMMISSIONER HERIOT: Did you bring a copy
3 today?

4 CHAIRMAN REYNOLDS: Mr. Metz, any other
5 suggested revisions?

6 COMMISSIONER HERIOT: Just one little note
7 I just checked. Exhibit A to Sharon Lee, select all
8 that applies, I just want to make sure that's the way
9 it was and not that we're not introducing all into it.
10 And then down there further on the page where it says,
11 "Is this person....?" there should be only three dots
12 not four dots, but I'm perfectly happy to put it her
13 way if she gave us four dots.

14 CHAIRMAN REYNOLDS: Okay, so let's just
15 make sure that --

16 VICE CHAIR THERNSTROM: It should be
17 corrected. If she put four dots, it's incorrect, it
18 should be three. It should be corrected because a
19 reader is not going to think she made an error.
20 They're going to think we made an error.

21 CHAIRMAN REYNOLDS: Yeah, that's a good
22 point.

23 COMMISSIONER HERIOT: Okay, let's look
24 through it and correct her errors because there are
25 some.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: I didn't think she
2 made the error. It doesn't matter, it's not going to
3 be read that way and I'm sure she would appreciate it
4 being correct.

5 CHAIRMAN REYNOLDS: Other comments?

6 COMMISSIONER MELENDEZ: Yes, was this
7 report submitted to other organizations like the
8 Census Bureau or the Census Bureau's Race and
9 Ethnicity Advisory Committee for comments?

10 STAFF DIRECTOR MARCUS: I believe it was
11 sent to the Census Bureau as part of the effected
12 agency review. General Counsel has confirmed this.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow?
14 Commissioner Yaki, anything?

15 COMMISSIONER YAKI: No.

16 COMMISSIONER KIRSANOW: No.

17 VICE CHAIR THERNSTROM: No

18 CHAIRMAN REYNOLDS: Commissioner Braceras?

19 COMMISSIONER BRACERAS: No.

20 CHAIRMAN REYNOLDS: Commissioner Heriot,
21 you're still looking?

22 COMMISSIONER HERIOT: I'm up to findings
23 now.

24 CHAIRMAN REYNOLDS: Okay. All right. How
25 about this, I'll just read the findings and we can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 discuss it, we can discuss each of the findings. "The
2 Census Bureau collects information and provides
3 statistics necessary to implement national policy
4 based on specific statutory or programmatic
5 requirements and congressional or judicial mandate."
6 That's Finding Number 1. Any comments?

7 COMMISSIONER HERIOT: We're not voting on
8 this, right?

9 CHAIRMAN REYNOLDS: That's correct.

10 COMMISSIONER HERIOT: Okay.

11 CHAIRMAN REYNOLDS: Okay, Finding Number
12 2; "Today Census Bureau officials view the primary
13 purpose of gathering racial statistics and collecting
14 data to facilitate the enforcement of civil rights
15 laws. Some view a secondary purpose of gathering
16 racial statistics as providing a portrait of society
17 to determine whether progress is being made in the
18 effort to overcome past discrimination."

19 COMMISSIONER YAKI: I think that needs to
20 be rewritten entirely.

21 VICE CHAIR THERNSTROM: I mean, the
22 primary purpose of gathering the census is to have a
23 demographic portrait of America.

24 COMMISSIONER YAKI: Right.

25 VICE CHAIR THERNSTROM: Regardless of what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the policy implications of that --

2 COMMISSIONER YAKI: The policy
3 implications are for the distribution of government
4 programs and benefits. I mean, it's for gathering
5 data on all sorts of things that are relevant to
6 government programs. To say that it's to serve a
7 secondary purpose is to diminish the importance of
8 what these numbers mean to the Federal Government
9 because every agency in the Federal Government relies
10 heavily on the Census Bureau numbers for any number or
11 variety of its programs and I think that you know --

12 COMMISSIONER HERIOT: I also object to the
13 whole concept of that finding. I don't care what the
14 Census Bureau officials view this as, you know. Why
15 are we having a finding of what their view of it is?

16 VICE CHAIR THERNSTROM: But also, I mean,
17 the public policy implications are secondary. The
18 first point of the census is to create a portrait of
19 changing America.

20 COMMISSIONER HERIOT: You know, I don't
21 care. I don't want to say what the Census Bureau
22 things. And I don't even want to say what we think.

23 VICE CHAIR THERNSTROM: Well, but I mean,
24 you know, I mean, there's no doubt that that's why a
25 census began.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER YAKI: Well, since it's in
2 the Constitution.

3 VICE CHAIR THERNSTROM: And it's in the
4 Constitution. It wasn't in order to enable federal
5 agencies to enforce the discrimination law that was
6 originally in the Constitution.

7 COMMISSIONER HERIOT: Yeah, but --

8 VICE CHAIR THERNSTROM: There are --

9 COMMISSIONER HERIOT: They want to be able
10 to know how many electoral votes and how many
11 congressional districts.

12 VICE CHAIR THERNSTROM: But whatever. The
13 first statement to make is the point of the census is
14 to draw a portrait of America.

15 COMMISSIONER HERIOT: No, that sounds like
16 it's sort of artistic.

17 VICE CHAIR THERNSTROM: No.

18 COMMISSIONER HERIOT: I'd like to know how
19 many votes North Carolina would get.

20 COMMISSIONER YAKI: I don't know if it's
21 on purpose but Vice Chair Thernstrom is correct, what
22 it's used for and you actually used words that are
23 actually not inaccurate in that it is a sort of
24 artistic attempt in order to figure out what this
25 country is all about and what makes it tick and how it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 works and what people do and how they do it and where
2 they live and all sorts of things that are --

3 VICE CHAIR THERNSTROM: What I refer to is
4 --

5 COMMISSIONER YAKI: Like who we are and
6 where we -- right.

7 CHAIRMAN REYNOLDS: How about --

8 COMMISSIONER BRACERAS: Where we've been
9 and where we are going.

10 COMMISSIONER YAKI: Exactly.

11 CHAIRMAN REYNOLDS: How about revising
12 that finding so that we talk about -- or we get rid of
13 the notion of a primary and secondary purpose,
14 although if there is a primary purpose in my view,
15 it's the reasons it was embedded in the Constitution.

16 COMMISSIONER YAKI: It was to give
17 California more electoral votes than anybody else.

18 CHAIRMAN REYNOLDS: But in any event, is
19 there agreement that we should take another tact.

20 COMMISSIONER YAKI: Yes.

21 VICE CHAIR THERNSTROM: Yes.

22 CHAIRMAN REYNOLDS: At this point, I would
23 like to -- I had two additional findings that I'd like
24 to offer. The first is, "It would mean statistical
25 proportionality does not necessarily mean the absence

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of discrimination."

2 COMMISSIONER HERIOT: Wait, let's go back
3 here.

4 VICE CHAIR THERNSTROM: Yeah, wait a
5 minute.

6 COMMISSIONER HERIOT: I'm still upset
7 about the portrait thing. I would not be willing to
8 say something that the purpose of the census -- I'm
9 willing to say the census is a portrait, but I'm not
10 going to tout, going to vote in favor of something
11 that says the purpose of it is.

12 VICE CHAIR THERNSTROM: Well, it's in the
13 Constitution.

14 COMMISSIONER HERIOT: It's in the
15 Constitution in order to determine how many --

16 VICE CHAIR THERNSTROM: Okay, but it had a
17 secondary -- it has had a secondary --

18 COMMISSIONER HERIOT: It's not our job to
19 make a statement like that. It's just -- it's a
20 statement that's unnecessarily tendentious. Just say
21 it is a portrait.

22 COMMISSIONER YAKI: Well, to the extent
23 that, you know, your recommendations that say the
24 Census Bureau shouldn't be in the business of
25 gathering racial statistics whatsoever, not saying

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that you would do that but someone -- one of our
2 people did do that, then yeah, we are saying that what
3 we think the Census Bureau should or should not be
4 doing in terms of how it gathers data, what it -- what
5 data it gathers and what it's used for. So --

6 COMMISSIONER KIRSANOW: It's lost by
7 adopting Commissioner Heriot's approach by saying
8 that's what it's used for, one of the things that it's
9 used for.

10 COMMISSIONER HERIOT: I just asked what it
11 is. It's a portrait. It's also some other things but
12 it's far to say it is a portrait. It's the same
13 purpose, then you have to ask whose purpose.

14 CHAIRMAN REYNOLDS: Is there something
15 with that approach that --

16 COMMISSIONER YAKI: No, I have no
17 objection to saying that the census as originally
18 conceived was a method of apportioning electors.

19 COMMISSIONER HERIOT: We don't need to say
20 that. We don't need to say that. We don't need to
21 say that.

22 COMMISSIONER YAKI: I think we need to say
23 something because what the census is now, what it has
24 become, how it has been used by -- used as a means of
25 policy by the government is something you just can't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 deny.

2 VICE CHAIR THERNSTROM: Okay, but the
3 census has provided -- okay, a simple declaratory
4 sentence, "The census has provided a portrait of
5 changing America --

6 COMMISSIONER HERIOT: Yeah, well, that's
7 less strong than what I'm willing to vote for. I'm
8 willing to say it is a portrait. But I don't like the
9 word "purpose", because that then --

10 VICE CHAIR THERNSTROM: All right, that's
11 okay.

12 COMMISSIONER HERIOT: -- whose purpose are
13 we talking about, whose purpose counts here?

14 CHAIRMAN REYNOLDS: Commissioner
15 Thernstrom offered up a revision that deletes --

16 VICE CHAIR THERNSTROM: Purpose, it
17 deletes purpose.

18 COMMISSIONER HERIOT: I thought my version
19 you'd like even better to say it is a portrait.

20 VICE CHAIR THERNSTROM: That's what I just
21 said.

22 CHAIRMAN REYNOLDS: Okay, wait a minute.

23 VICE CHAIR THERNSTROM: I just added a
24 couple of words, changing C- you know, the changing
25 demography of America, but whatever.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Okay, so in the next
2 round we will have --

3 COMMISSIONER YAKI: Amber waves of grain.

4 CHAIRMAN REYNOLDS: We will try to reduce
5 this agreement to writing. Okay.

6 VICE CHAIR THERNSTROM: But wait a minute,
7 before -- can we talk about what's here and then you
8 add your two --

9 CHAIRMAN REYNOLDS: Okay.

10 VICE CHAIR THERNSTROM: -- additional
11 findings? So I've got a problem with the -- the
12 second bullet point here, "The 14th Amendment mandated
13 the counting of the" --

14 COMMISSIONER HERIOT: Wait, have we gotten
15 that far down yet?

16 CHAIRMAN REYNOLDS: Yeah.

17 COMMISSIONER HERIOT: Okay.

18 COMMISSIONER YAKI: We lost somebody.

19 COMMISSIONER HERIOT: Are you still here?

20 COMMISSIONER BRACERAS: Here.

21 CHAIRMAN REYNOLDS: Commissioner Melendez?

22 COMMISSIONER MELENDEZ: Here.

23 CHAIRMAN REYNOLDS: Oh, okay. It must
24 have been Derek?

25 CHAIRMAN REYNOLDS: Derek?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: Okay, so we're on
2 Number 3?

3 CHAIRMAN REYNOLDS: Yeah, "The treatment
4 of race in the census has evolved over its" --

5 COMMISSIONER HERIOT: Okay. Number 1 is a
6 false statement. It is not true that the 1790 census
7 recognized three racial categories; White, Black and
8 Indian. It only recognized White. There was free
9 Whites. There were free non-Whites and there were
10 slaves. And there's nothing about the racial
11 composition of any category except for free Whites.
12 So I would just delete it. Who cares what the 1790
13 census did?

14 Or you could say the 1790 census
15 recognized the category of free Whites, the category
16 of non-free Whites and the category of slaves.

17 VICE CHAIR THERNSTROM: Well, since we do
18 have -- we do have some historical statements in
19 bullet points --

20 CHAIRMAN REYNOLDS: This is a matter of
21 evolution, so start from the beginning.

22 VICE CHAIR THERNSTROM: Yeah, just so we
23 have a correct version of the 1790.

24 COMMISSIONER HERIOT: Yeah.

25 COMMISSIONER YAKI: Do we believe in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 evolution here?

2 CHAIRMAN REYNOLDS: That's good. Okay,
3 Commissioner Heriot, what's your --

4 COMMISSIONER HERIOT: What's my fix?

5 CHAIRMAN REYNOLDS: Yeah.

6 COMMISSIONER HERIOT: In 1790, the census
7 divided the population into the category of free
8 Whites -- that can't be right -- free White persons,
9 free non-White persons and slaves. And you can add,
10 I think, if you want it, that the category of free
11 non-White persons would have included free Blacks and
12 free Indians who paid taxes but not Indians who did
13 not pay taxes.

14 COMMISSIONER KIRSANOW: I don't think
15 that's necessary.

16 CHAIRMAN REYNOLDS: Any objection to that
17 fix? Okay. The next bullet point reads, "The 14th
18 Amendment mandated the counting of, quote `the whole
19 number of persons', close quote. This change resulted
20 in making the census a true count of every person".
21 Vice Chair Thernstrom?

22 VICE CHAIR THERNSTROM: Well, to begin
23 with the change itself doesn't make any sense. It's a
24 true count of every person, not quite. It excluded
25 the Indians not taxed. But in the second place, what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is this, "The 14th Amendment mandated the counting of
2 the whole number of persons"? I mean, what the 14th
3 Amendment says is all persons born and naturalized in
4 the United States and subject to the jurisdiction
5 thereof, of citizens of the United States and of the
6 State wherein they reside". I just don't know where
7 that comes from, that --

8 COMMISSIONER BRACERAS: Yeah, I have a
9 problem with that as well. It doesn't seem to be
10 precise.

11 COMMISSIONER KIRSANOW: Wasn't there a --
12 I'm trying to remember. There was a Supreme Court
13 case that I think is an extrapolation of that.

14 COMMISSIONER YAKI: Yeah.

15 COMMISSIONER KIRSANOW: I think that's
16 where the court -- I remember this from constitutional
17 law 30 years ago but it will come to me.

18 VICE CHAIR THERNSTROM: It wasn't the 14th
19 Amendment in any -- I didn't know that case, but it
20 wasn't the 14th Amendment that made any difference.
21 The three-fifths clause was null and void by the 13th
22 Amendment and so it's the 13th Amendment that really
23 made a difference.

24 COMMISSIONER KIRSANOW: Well, actually,
25 it's the Supreme Court interpreting the 14th Amendment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: Okay, but it is
2 the 13th Amendment abolishing the three-fifths clause
3 in effect that changed the counting of Americans, not
4 the 14th. I mean, the abolition of slavery and
5 therefore, the three-fifths --

6 COMMISSIONER YAKI: Why don't we just send
7 this section back to be rewritten?

8 COMMISSIONER KIRSANOW: Yeah, I think so,
9 it needs to be because I'm -- I don't know that that's
10 historically accurate and so we're going to have to be
11 more precise about this.

12 VICE CHAIR THERNSTROM: Which part? I
13 mean, is the -- once you get rid of the --

14 COMMISSIONER KIRSANOW: Whether it's the
15 14th Amendment or the 13th Amendment, I think the whole
16 counting of persons is taken from -- and I wish I
17 could remember the name of the case. It was an 1890's
18 or something Supreme Court case.

19 VICE CHAIR THERNSTROM: Okay, look once
20 you abolish slavery, then former slaves become whole
21 persons.

22 COMMISSIONER HERIOT: No, the census
23 always counted slaves as whole persons. It's the --
24 for tabulating how many congressional districts you
25 get. So it's wasn't the --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: Okay, okay, yeah,
2 yeah, you're right, you're right, you're right.

3 COMMISSIONER HERIOT: So in that sense,
4 this is false.

5 COMMISSIONER KIRSANOW: And that's what
6 needs to go back to be written.

7 CHAIRMAN REYNOLDS: Okay, so is everyone
8 comfortable with --

9 VICE CHAIR THERNSTROM: With that rewrite?

10 CHAIRMAN REYNOLDS: Yeah, permitting staff
11 to go over this, rub it, revise it, circulate it?
12 Hearing no objections. Okay, Number 4, "Prior to
13 implementing any change in its census forms, the
14 Census Bureau evaluates the proposed change and" --

15 COMMISSIONER HERIOT: We have another
16 bullet point.

17 CHAIRMAN REYNOLDS: Oh, I thought we were
18 sending this whole --

19 COMMISSIONER HERIOT: Yeah, but the
20 problem is not on the -- they can fix it. I just have
21 a minor quibble with the third one, that 1890 in terms
22 of verb tense. "By 1890 several new race
23 classifications" --

24 VICE CHAIR THERNSTROM: Had emerged.

25 COMMISSIONER HERIOT: -- "had emerged",

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because in fact, they didn't occur in 1890. They
2 occurred earlier than that.

3 VICE CHAIR THERNSTROM: Right.

4 COMMISSIONER HERIOT: Because of the
5 Chinese.

6 CHAIRMAN REYNOLDS: Okay. Anything else
7 with that bullet?

8 COMMISSIONER YAKI: You say the Chinese
9 race emerged about what?

10 COMMISSIONER BRACERAS: (Inaudible)

11 COMMISSIONER YAKI: About 100,000 years.

12 VICE CHAIR THERNSTROM: And I don't know
13 why century and 20th century is -- century is
14 capitalized, it shouldn't be.

15 CHAIRMAN REYNOLDS: Jennifer, Commissioner
16 Braceras, were you about to make a comment?

17 COMMISSIONER BRACERAS: I was just
18 commenting on the tense used had emerged.

19 VICE CHAIR THERNSTROM: It's had emerged,
20 by 1890 had emerged.

21 COMMISSIONER HERIOT: Because they added
22 the Chinese.

23 COMMISSIONER BRACERAS: Yeah, by
24 categories emerged?

25 COMMISSIONER HERIOT: Well, you might

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 quibble using the words entirely but the right verb
2 tense would be had emerged.

3 VICE CHAIR THERNSTROM: But Jennifer is
4 right, "classifications emerged".

5 COMMISSIONER YAKI: They were utilized or
6 they --

7 COMMISSIONER BRACERAS: Yeah.

8 COMMISSIONER HERIOT: Had been adopted,
9 had been adopted.

10 COMMISSIONER YAKI: Right.

11 COMMISSIONER BRACERAS: Yes, adopted. I
12 frequently have this problem with some of the writing
13 in our reports is that inanimate objects and
14 categories and things are constantly being described
15 as --

16 CHAIRMAN REYNOLDS: As doing stuff.

17 COMMISSIONER BRACERAS: As doing things,
18 and I just -- and are we going to be mindful of that?

19 COMMISSIONER HERIOT: Right, yeah, you're
20 probably right.

21 CHAIRMAN REYNOLDS: Okay, next bullet,
22 "Throughout the 20th century, racial" --

23 VICE CHAIR THERNSTROM: Have been created,
24 you could say, "The racial classifications have been
25 created" whatever. You're right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: "Throughout the 20th
2 century racial classification continued to evolve to
3 include Philippine --

4 COMMISSIONER YAKI: Classifications were
5 adopted to --

6 VICE CHAIR THERNSTROM: New racial
7 classifications were adopted to is much better.

8 COMMISSIONER YAKI: Yeah.

9 CHAIRMAN REYNOLDS: Okay. "In 1970 a
10 separate question for Hispanic origin was added to the
11 long form and thereafter became part of the short form
12 census".

13 VICE CHAIR THERNSTROM: That's fine.

14 CHAIRMAN REYNOLDS: Okay. Four, "Prior to
15 implementing any change in its census forms, the
16 Census Bureau evaluates that proposed change by
17 performing a comprehensive" --

18 VICE CHAIR THERNSTROM: Why do we need
19 census forms, Census Bureau? "Any change in its forms
20 the Census Bureau evaluates". We don't need census
21 twice.

22 CHAIRMAN REYNOLDS: Okay. "The Census
23 Bureau evaluates the proposed change by performing a
24 comprehensive and time intensive series of surveys and
25 tests runs. For this reason it is no longer feasible

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for the Census Bureau to complete the necessary
2 evaluation and time to implement any changes involving
3 the classification of race and ethnicity for the 2010
4 census".

5 VICE CHAIR THERNSTROM: It seems to me it
6 would be better to say "involving the race and
7 ethnicity classifications", plural.

8 CHAIRMAN REYNOLDS: Other comments for
9 Number 4? Number 5, "The census began including a
10 question on Hispanic origin in 1970. The current
11 structure which recognizes only two ethnic groups,
12 Hispanic and non-Hispanic, derives from the 1997
13 revisions to the Office of Management and Budget
14 Statistical Policy Directive Number 15".

15 VICE CHAIR THERNSTROM: 15.

16 COMMISSIONER HERIOT: It's a little low on
17 that and there's no space between budget and OMB and
18 there needs to be.

19 CHAIRMAN REYNOLDS: "That directive has
20 been criticized as misleading on the grounds that it;
21 A, creates one amorphous non-Hispanic group that, in
22 fact, comprises of ethnicities and B, ignores the fact
23 that researchers and academics regularly place
24 Hispanics in a discrete racial category rather than
25 classify Hispanic as an ethnicity."

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: Go on, Jennifer,
2 you were about to say something.

3 COMMISSIONER BRACERAS: Well, I agree that
4 it has been criticized from both those perspectives.
5 I'm not sure that gives a complete picture of the
6 various critiques of that category and my other
7 problem with that finding of fact is that it doesn't -
8 - it has the -- it has the critiques about noting that
9 there are people who think it's fine the way it is.

10 COMMISSIONER YAKI: Well, without noting
11 the reasons why people think it's fine the way it is.

12 COMMISSIONER BRACERAS: Say it again.

13 COMMISSIONER YAKI: Without noting the
14 reasons why people think it's fine the way it is,
15 because this thoroughly says others have been
16 supportive.

17 COMMISSIONER BRACERAS: Exactly.

18 COMMISSIONER YAKI: Yeah.

19 COMMISSIONER BRACERAS: It says they have
20 been supportive, but yeah, what does that mean?

21 VICE CHAIR THERNSTROM: And would you say
22 the hundreds of ethnicities, comprises hundreds of
23 ethnicities is correct? I mean, I would prefer to
24 have something, many ethnicities. I think hundreds
25 we're -- we probably can't count hundreds.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: Hundreds for non-
2 Hispanics, isn't it? This isn't hundreds Hispanics,
3 it's hundred non-Hispanics.

4 VICE CHAIR THERNSTROM: Oh, I see, I see.
5 Yes, okay. Sorry about that.

6 COMMISSIONER BRACERAS: It's been
7 criticized as misleading on two grounds.

8 VICE CHAIR THERNSTROM: Yeah, yeah, I'm
9 misreading it as Hispanics comprise hundreds but yeah,
10 okay, sorry.

11 COMMISSIONER BRACERAS: Well, in any
12 event, I tried to articulate this before but I'm a
13 little uncomfortable with the whole approach that this
14 report takes towards Hispanics, both in the findings
15 of fact and in the recommendations. I think it's
16 extremely complicated. I don't think that the
17 briefing focused specifically on that issue but to the
18 extent we're going to talk about it, our discussion of
19 it is, I would say, inadequate at best.

20 COMMISSIONER YAKI: I would agree with
21 Jennifer. As I saw how much of this was starting to
22 focus on that, I realized we had very little actual
23 discussion about this at the briefing itself.

24 VICE CHAIR THERNSTROM: Well, Jennifer, it
25 certainly is a huge issue for those who think about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the accuracy and the utility of the census, that
2 you've got these two -- only two ethnic groups,
3 Hispanic and non-Hispanic.

4 COMMISSIONER BRACERAS: That's fine and
5 right, I agree with you, that is an issue. But I
6 mean, I don't even know where to start with this,
7 because I think it is so complex. I think it is so
8 complex the way we categorize Hispanics in this
9 country and I think, you know, to the extent that the
10 census is, as you said before, what did you call it,
11 paints a picture?

12 VICE CHAIR THERNSTROM: Portrait of
13 America.

14 COMMISSIONER BRACERAS: A portrait of
15 America, I think it's important to include Hispanics
16 in that portrait in the original version of this
17 report which I think -- well, the original version of
18 this report recommended including Hispanic as a
19 discrete category, Black, White and Hispanic. This
20 version of the report has gone a completely opposite
21 direction and recommended basically not categorizing
22 Hispanics at all and asking some more of this open-
23 ended question where some people would put, for
24 example, Puerto Rican, other people would put Latino,
25 others would put Hispanic, others would put Spanish

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and all these people might mean the exact same thing.

2 In fact, they could all be members of the
3 same family, so the two versions of the report that
4 we've received have made completely opposite
5 recommendations. And neither of those
6 recommendations, in my view, are necessarily good ones
7 and certainly they would need to be brushed out and
8 explained and justified with much greater detail than
9 they are here. And I just -- as the only Latino
10 member of this Commission, I think I can say with some
11 accuracy that neither of the formulations that have
12 been presented would meet with great applause in the
13 community.

14 CHAIRMAN REYNOLDS: And why is that, just
15 so I can hear the specific objections, at least some
16 of them.

17 COMMISSIONER BRACERAS: For which, where
18 do you want me to start?

19 CHAIRMAN REYNOLDS: I guess let's just
20 start with the first recommendation in the current
21 draft.

22 COMMISSIONER BRACERAS: In the current
23 draft or in the original draft?

24 CHAIRMAN REYNOLDS: The current draft.

25 COMMISSIONER BRACERAS: Well, the current

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 draft is the easy objection, but, I mean, the
2 objection is that different people from the same
3 family might self-describe themselves -- scratch that.

4 Different people from the same family
5 could use different words to describe themselves and
6 mean the exact same thing and therefore, it would be
7 less accurate and more confusing than what we have
8 now, right? I mean, some stats, that this was
9 obviously, swept out at the briefing a little bit.
10 Some stats all racial and ethnic categories are
11 artificial or socially constructed or whatever you
12 want to call them.

13 However, I do believe you need to give
14 people some choices because we do have a socially
15 constructed society and if you don't give people some
16 defined choices, the answers will be so far all over
17 the map as to be useless in terms of quantifying data
18 and looking at patterns and trends. It will become
19 useless. So while I have no objection to allowing
20 people put other and describe if they feel that the
21 categories given to them are insufficient, or allow
22 people to check more than one category to reflect the
23 fact that, you know, many of us in this country are of
24 mixed race and we don't want people to have to choose
25 one race over another, I understand all those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concerns.

2 I think that having an open-ended question
3 is a recipe for disaster and anyway, I'm sorry, this
4 is completely an inarticulate rant, but I think you
5 get my point, that you know, you could take my family
6 and have five different answers; Spanish, Puerto
7 Rican, Latino, Hispanic, Caribbean, and how would you
8 know that those people were all from the same ethnic
9 group?

10 VICE CHAIR THERNSTROM: Well, you wouldn't
11 have a Latino category because that's again, the
12 umbrella Hispanic. Look --

13 COMMISSIONER BRACERAS: No, no, no, no,
14 that's wrong. If you allow people to write whatever
15 they want, believe me they will come up with things
16 you haven't even heard of.

17 VICE CHAIR THERNSTROM: All right, but --

18 COMMISSIONER BRACERAS: They will come up
19 with Spanglish. They will invent words.

20 VICE CHAIR THERNSTROM: All right, but all
21 of those categories can be aggregated if you want to
22 know the total number of people who identify
23 themselves in one way or another as Hispanic, you just
24 do a little addition. I mean, the point --

25 COMMISSIONER BRACERAS: Then ask us to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 check that box.

2 VICE CHAIR THERNSTROM: Well, but the
3 point is to get away from these -- get away entirely
4 from racial categories and go to ancestor categories
5 instead of perpetuating --

6 COMMISSIONER BRACERAS: But that's a
7 different (inaudible) and I'm not sure that we agree
8 on that 100 percent, but if we're going to go strictly
9 to ethnic categories --

10 VICE CHAIR THERNSTROM: No, ancestor
11 categories.

12 COMMISSIONER BRACERAS: Fine, if we're
13 going to go to ancestor categories, there still needs
14 to be categories. In other words, what is your
15 ancestry open-ended with no choices is not accessible
16 because of the wildly diversion answers you're going
17 to get from people who mean the exact same thing.

18 VICE CHAIR THERNSTROM: And instead we
19 stuff people into boxes that are very questionable.

20 COMMISSIONER BRACERAS: Yes.

21 CHAIRMAN REYNOLDS: Okay, okay.

22 COMMISSIONER BRACERAS: No, this is about
23 the --

24 COMMISSIONER YAKI: You're about to get
25 some --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER BRACERAS: No, but just let
2 me finish. I've talked about this before. All
3 categories are artificial. Some people will argue
4 that gender is a background and not a category.
5 Should we start putting on the census, what's your
6 gender and let people choose their points on the
7 spectrum. No, we ask people to fit themselves into a
8 category. Now --

9 VICE CHAIR THERNSTROM: It is meaningful
10 to know that somebody is Puerto Rican and not Cuban.

11 COMMISSIONER BRACERAS: That's fine.

12 VICE CHAIR THERNSTROM: It is meaningful
13 to know somebody is Jamaican and not West African.

14 COMMISSIONER BRACERAS: Yes, I think where
15 we disagree is that I agree with you that a greater
16 level of specificity is good. I agree with that.
17 Where I disagree with you is allowing it to be open-
18 ended and not having consistency in the way -- in the
19 kinds of usage. We need to give people choices but we
20 also need to give them an opportunity to say, "I don't
21 fit any of the choices you've given me, here's what I
22 call myself", that's fine. But we can't just say,
23 "What are you", and leave it open.

24 CHAIRMAN REYNOLDS: Okay, Commissioner
25 Yaki?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER YAKI: I mean, I agree with
2 Commissioner Braceras 100 percent and I think I'm --
3 as the only Asian American member of the Commission,
4 for the Asian American community, the desire to have
5 more boxes on the census has been actually a struggle
6 for the past 30 years. It's not that we want to be
7 forced into a box, it's the fact that no one
8 recognizes that there actually -- for years that Asian
9 is not this monolithic category with specific and very
10 unique cultural and racial backgrounds and cultures.

11 I would say that like Jennifer, if you
12 would ask any of my family that my sister's family who
13 lives in Hawaii, she is, as I am, one-half Chinese,
14 3/8 Japanese and possibly 1/8 Hawaiian. She married
15 someone who is full blood Chinese, but then if you ask
16 her kids what they identify themselves as in some
17 open-ended question, you're going to get three
18 different answers from her kids and I know that
19 because I kind of asked them one time what they were.
20 They're Hawaiians.

21 VICE CHAIR THERNSTROM: That's an
22 incorrect response though.

23 COMMISSIONER YAKI: Well, I'll tell you
24 why it would become an incorrect response, when you
25 look, for example, at -- and this is why ultimately it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can't -- for the Asian community, the reason may be
2 different from the Hispanic community. For the Asian
3 community when you look at the distinct differences in
4 education, in income, poverty levels, views in the
5 country, et cetera, there are vast differences between
6 the different nationalities of Asian immigrants who
7 have come to this country.

8 When you then get into even more discrete
9 categories, say Native Hawaiians where programs, the
10 Hawaiian Homelands Commission, other programs run by
11 the Federal Government, the potential for what we call
12 and have called for years the undercount in answers of
13 categories, has enormous impact on how programs are to
14 be treated and administered for these different races.
15 And I think that it just -- I hold with Jennifer which
16 is if at some point someone wants to put other and I
17 remember for the 1970 census, I put other, because
18 they did not have -- I said, I am Chinese, I'm
19 Japanese, I'm Hawaiian. I am not one category.

20 I probably screwed up my statistics, but
21 now I realize that I probably shouldn't have done that
22 but instead we advocated through '80 and through '90
23 for putting more boxes and being able to do multiple
24 checks in the different boxes so people could
25 understand where people come from.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER BRACERAS: I think where we
2 all agree, it seems to me where Commissioner
3 Thernstrom and Yaki and I all agree is it's our desire
4 to be more precise and more specific and more accurate
5 but that doesn't mean disregarding culturally accepted
6 categories. Right? Because the fact of the matter
7 is, you know, you can say that being Asian is a false
8 construct or that Hispanic is a false construct but
9 there are certain cultural similarities amongst
10 Hispanic groups as there are cultural differences, and
11 it's important to understand both the similarities and
12 the differences and not to look fully at one or the
13 other.

14 So to lump everybody together as Hispanic
15 is incomplete but to ignore the fact that people from
16 the Dominican Republic and Cuba and Puerto Rico and
17 Mexico might have shared political interests or shared
18 cultural patterns or other things like that, would
19 also be to lose sight of half the picture.

20 COMMISSIONER YAKI: And Jennifer, just for
21 you to know, that the Census Bureau when it started
22 testing the more -- the less boxing questions versus
23 the control question, finds that the deviation between
24 the control group, more boxes and the new group, less
25 boxes, more open-ended, that the accuracy of the count

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dropped significantly to the point where there was a
2 10-point deviation in the uncontrolled group and then
3 20 points in another. It's --

4 COMMISSIONER BRACERAS: Of course there
5 were and you want to know what, you want to know how
6 many people just put American, gazillions, and maybe
7 that's something to watch because frankly, the concern
8 really among some conservatives, myself partially
9 included, it's not this portion of America, the
10 concern is what's done with the data, what's done with
11 the boxes. You know, whether certain groups are given
12 privileges in society that other groups are not given
13 on the basis of these social constructs. That's the
14 real concern, and one that I, you know, in some
15 measures share.

16 But let's address the real concern because
17 I want to have an accurate demographic picture of this
18 country. I want to have a rich and fully fleshed out
19 demographic picture of this country and you know, what
20 politicians do with that information is not really my
21 problem right now in terms of this report. That's a
22 topic for another day.

23 VICE CHAIR THERNSTROM: But Jennifer,
24 that's one real concern, but the second real concern
25 that I would articulate is that public policy,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 including census categorizations, deliver messages.
2 These umbrella categories tell people how to think of
3 themselves. They tell American citizens how to think
4 of the demographic fabric of America and in my view,
5 they perpetuate unfortunate stay to the goal
6 categories.

7 COMMISSIONER BRACERAS: I don't think so
8 at all, because do you know what, if people do not
9 view themselves in ethnic terms, they're not going to
10 check those boxes.

11 VICE CHAIR THERNSTROM: They are
12 encouraged to think of themselves within boxes. Those
13 boxes --

14 COMMISSIONER BRACERAS: Well, do you know,
15 I guess that's where I part company with most
16 conservatives because what I say to that is, so what?
17 What's wrong with that? What's wrong with -- you
18 know, what's wrong with my kids thinking of themselves
19 as ethnically Hispanic?

20 VICE CHAIR THERNSTROM: But that is not --

21 COMMISSIONER BRACERAS: What's wrong with
22 my neighbor's kids thinking of themselves at
23 ethnically Irish and rushing off to their Irish step
24 dancing classes?

25 VICE CHAIR THERNSTROM: If that is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 first identity they choose for themselves, that's
2 fine, but many people I would hope, would have a more
3 complex view of themselves and that wouldn't be the
4 top of that list.

5 COMMISSIONER BRACERAS: They have a
6 complex view of themselves which is why they should be
7 able to check multiple boxes, which is why somebody
8 should be able to check Black and Native American and
9 Mexican if that's what they are?

10 VICE CHAIR THERNSTROM: So much --

11 COMMISSIONER BRACERAS: You should be able
12 to -- I agree with you that people shouldn't be forced
13 into boxes in the sense that they shouldn't be forced
14 to choose one portion of their identify over another
15 and so if they are mixed race, they should be able to
16 check all aspects of their identity. But that doesn't
17 mean no aspects of their identity.

18 VICE CHAIR THERNSTROM: No, but we're
19 perpetuating -- to me these boxes are most
20 unfortunate. We're perpetuating -- this is a much
21 longer conversation than I can have and other people
22 have their hands raised.

23 COMMISSIONER BRACERAS: Okay, I'm sorry.

24 CHAIRMAN REYNOLDS: Commissioner Yaki.

25 COMMISSIONER YAKI: It's precisely because

NEAL R. GROSS

COURT REPORTERS AND TIRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we're having this long conversation about a report
2 that's 16 months old and data that's stale that I'm
3 going to say this with all seriousness, which is, is
4 this a report at this point in time worth the
5 Commission's time and effort to salvage or we have
6 other reports in the hopper that we need to go
7 through, we have other priorities that need to get
8 done and why should we be wasting our new fiscal year
9 on trying to fix what looks like a pretty bad tire on
10 the car. Maybe we should just buy a new tire and get
11 a move on.

12 COMMISSIONER BRACERAS: The bottom line is
13 I'll be gone in two months and you won't have to worry
14 about my vote. But to the extent that this is going
15 to be decided before I leave, I will tell you now that
16 I will never vote to support a report that -- hello?

17 COMMISSIONER YAKI: Yeah, we're listening
18 with baited breath, Jennifer.

19 COMMISSIONER BRACERAS: Sorry, I heard a
20 click.

21 (Laughter)

22 COMMISSIONER YAKI: No, that was Jerry
23 tapping on the gavel.

24 COMMISSIONER BRACERAS: I will never vote
25 to support a report that either moves Hispanic into

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the racial category and doesn't take account of the
2 fact that Hispanics come in all races and for the most
3 part Hispanics are a mixed race.

4 VICE CHAIR THERNSTROM: They can check
5 more than one box or not a race at all.

6 COMMISSIONER BRACERAS: Let me -- the
7 first document I got on this report made a
8 recommendation that Hispanic be moved to a equal
9 category with Black and Whites.

10 VICE CHAIR THERNSTROM: But they're free
11 to check more than one box.

12 COMMISSIONER BRACERAS: I will never
13 support a report that says that. On the other hand, I
14 will also never support a report that seeks to
15 eliminate racial categories. We had this discussion
16 when we talked -- years ago, when we had a briefing on
17 racial privacy and I will not support that. I am with
18 the conservatives in their effort to make sure that
19 racial categories aren't misused but I am not with the
20 conservatives in their effort to say that race is
21 irrelevant or to eliminate sociological or demographic
22 studies or celebrations of race and ethnicity, and I
23 will never support that either. So --

24 VICE CHAIR THERNSTROM: Ancestor category
25 is -- I mean, I don't know why --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: If somebody asked me
2 my ancestry, I'd say I'm Velma Vanna's (phonetic)
3 granddaughter. I wouldn't even know what you're
4 asking.

5 VICE CHAIR THERNSTROM: Well, there would
6 be examples given on the census form.

7 COMMISSIONER YAKI: If anybody asked me my
8 ancestry, I'd know exactly what they're asking and
9 that's the difference. So --

10 CHAIRMAN REYNOLDS: Okay, but you put the
11 question on the table that I think --

12 COMMISSIONER YAKI: Yes.

13 CHAIRMAN REYNOLDS: -- deserves our
14 attention. I do believe that there is merit. I'm not
15 sure which way I would vote.

16 VICE CHAIR THERNSTROM: Wait a minute,
17 we're going to explore a report?

18 CHAIRMAN REYNOLDS: I think there's merit
19 to -- no, not to my knowledge.

20 VICE CHAIR THERNSTROM: The whole reason
21 we had and there's no record of it?

22 COMMISSIONER BRACERAS: There doesn't seem
23 to be a consensus from this Commission on a
24 recommendation.

25 COMMISSIONER HERIOT: Well, I'm not --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because I'm basically on your side.

2 COMMISSIONER KIRSANOW: I don't know that
3 we require a consensus. We've got the ability to vote
4 on certain recommendations and have one line dissents
5 or explanations for why someone disagrees.

6 VICE CHAIR THERNSTROM: Or we have
7 findings and recommendations.

8 COMMISSIONER HERIOT: How about a
9 recommendation it's very innocuous and have everybody
10 say, "Here's what I would do"?

11 VICE CHAIR THERNSTROM: Or something, I
12 mean --

13 COMMISSIONER YAKI: We're beating an
14 effective dead horse.

15 CHAIRMAN REYNOLDS: This horse is not
16 dead, that's the problem. This horse is going in all
17 sorts of directions.

18 COMMISSIONER HERIOT: Have recommendations
19 that are fairly stark, you know, nothing big, on how
20 people submit their own statements.

21 VICE CHAIR THERNSTROM: Or eliminate the
22 findings and recommendations. We can't eliminate the
23 entire --

24 COMMISSIONER YAKI: No, actually I wasn't
25 -- well, the -- I mean, to me if you wanted to put out

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 -- get the summaries checked by the guys, put out the
2 statements and do the original low level briefing
3 report. Here are the issues, these are the things
4 that are out there. People are talking about it, this
5 is what we looked at, very good, goodbye, because I
6 think if we go to the next step we're going to be
7 wasting a lot of time.

8 CHAIRMAN REYNOLDS: The steps you're
9 referring to are the recommendations?

10 COMMISSIONER MELENDEZ: Mr. Chairman, this
11 is Commissioner Melendez. I support a no
12 recommendation. I have to get to another appointment,
13 so I'm going to sign off. So I'll see you the next
14 time.

15 VICE CHAIR THERNSTROM: All right, we'll
16 we're not going to conclude this today anyway, so
17 don't worry about it. In fact, we may be discussing
18 this in --

19 COMMISSIONER YAKI: During the National
20 Conference.

21 (All speaking and laughing at once.)

22 STAFF DIRECTOR MARCUS: I have to say I'm
23 not clear at this point, between now and the next
24 meeting whether the directive is to make the various
25 changes --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: Don't feel bad, no
2 one is at this point.

3 COMMISSIONER HERIOT: I think all of it
4 needs to be --

5 STAFF DIRECTOR MARCUS: Why don't you hold
6 off because we may not be doing a report at all.

7 VICE CHAIR THERNSTROM: No, we've got to
8 do some sort of report.

9 (All speaking at one time.)

10 COMMISSIONER KIRSANOW: I would do a
11 report and I would do findings and recommendations,
12 too.

13 COMMISSIONER HERIOT: We can get a
14 majority behind something. I mean, the thing is I
15 think what's more important is for each person to sort
16 of put their little vision of this is what it ought to
17 be and try to be persuasive.

18 VICE CHAIR THERNSTROM: Whatever, do
19 something but we shouldn't trash all these people's
20 testimony.

21 COMMISSIONER YAKI: No, I didn't say you
22 should do that.

23 CHAIRMAN REYNOLDS: I thought that's what
24 you were --

25 COMMISSIONER YAKI: No, no, I'm just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 saying essentially go to the original briefing report
2 which was summary of the testimony and the discussion,
3 the statements of the panelists and our charts and --

4 COMMISSIONER HERIOT: I bet we can get a
5 majority behind some fairly small things, like, you
6 know, something that expands non-White ethnicity.

7 COMMISSIONER YAKI: But the 14th Amendment
8 really does make -- (Laughter)

9 CHAIRMAN REYNOLDS: Okay, so we're going
10 to rework the recommendations. We are going to lower
11 our expectations apparently.

12 VICE CHAIR THERNSTROM: Why can't we do
13 what Gail suggested, everybody submit what they would
14 like to see in these findings and recommendations?

15 CHAIRMAN REYNOLDS: But I heard two
16 things. On the one hand, everyone submit their
17 recommendations and we vote, and the other is that we
18 get some non-controversial issues that's something
19 that we can reach a consensus on.

20 COMMISSIONER HERIOT: I think step one, we
21 all kind of try to create bullet point recommendations
22 that we think we might be able to get a majority
23 behind. And so let's look at our e-mails to each
24 other and --

25 VICE CHAIR THERNSTROM: Why can't we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 resubmit what we want said?

2 COMMISSIONER HERIOT: That's fine. But,
3 you know, ultimately, I think we are not all going to
4 agree and it's going to -- that the real work is going
5 to be carried by individual commissioner statements.

6 COMMISSIONER BRACERAS: Yeah, that's fine.
7 I mean, just so you know where I'm coming from, I
8 think the problem with the current categorization is
9 that other ethnic groups do not have the opportunity
10 on that form of the census to write down the -- so
11 you're either all non-Hispanic or you're Hispanic.
12 That's my problem with it.

13 My problem is not at all with how the
14 Hispanic category is treated in terms of having an
15 opportunity to check it and check a race if you'd like
16 to do so. That's fine with me. So I don't want to
17 change how they treat Hispanic, other than maybe be
18 more specific and allow people to identify their
19 ancestry within Hispanic and to allow more ancestral
20 groups to be counted, but I do not want to change the
21 rules where they put those categories. I'm very firm
22 on that.

23 COMMISSIONER YAKI: Okay, Mr. Chairman,
24 take it away.

25 CHAIRMAN REYNOLDS: Okay, people just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 submit your recommendations and we will take -- we
2 will fight over these issues, discuss these issues at
3 a later date.

4 Commissioner Kirsanow this morning pointed
5 out -- well, we -- this debate has been underway for a
6 long time. Here are debates like this that take place
7 within census. There is a debate that took place when
8 I was at the Department of Education. The concept of
9 race and ethnicity is -- it's fluid and by God, there
10 are differences of opinion on what constitute a race
11 and so --

12 COMMISSIONER KIRSANOW: I'm offended,
13 there's not a category for Klingon Americans.

14 VICE CHAIR THERNSTROM: For what?

15 COMMISSIONER KIRSANOW: Klingon Americans.

16 COMMISSIONER YAKI: Kleons.

17 VICE CHAIR THERNSTROM: Let's get out of
18 here.

19 CHAIRMAN REYNOLDS: We've got more to do
20 though. Where are we at?

21 COMMISSIONER YAKI: We did everything
22 else.

23 CHAIRMAN REYNOLDS: Did we do everything
24 else?

25 COMMISSIONER YAKI: We did everything

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 else.

2 CHAIRMAN REYNOLDS: Except involvement of
3 Commissioners in -- yeah, we tabled that. Okay,
4 folks, it's been fun.

5 VICE CHAIR THERNSTROM: Did we do agenda
6 items?

7 CHAIRMAN REYNOLDS: I'm afraid to open up
8 that door.

9 COMMISSIONER YAKI: One quick question.

10 CHAIRMAN REYNOLDS: Yes.

11 COMMISSIONER YAKI: Any further -- well,
12 never mind. I'll say it off line. Let's go.

13 CHAIRMAN REYNOLDS: All right, folks, I'll
14 see you next month.

15 (Whereupon, at 12:39 p.m. the above-
16 entitled matter concluded.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701