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
TODD F. GAZIANO, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER (via telephone)
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
TERESA BROOKS
MARGARET BUTLER
CHRISTOPHER BYRNES, Chief, Regional Programs Coordination Unit
IVY DAVIS, Director, Eastern Regional Office
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
ALFREDA GREENE
MAHA JWEIED
ROBERT LERNER, Assistant Staff Director for OCRE

STAFF PRESENT (CONTINUED):
SOCK-FOON MacDOUGALL, Acting Chief, Public Affairs Unit
TINALOUISE MARTIN, Director, Office of Management
LENORE OSTROWSKY
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
KIMBERLY SCHULD
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CHAIRMAN REYNOLDS: I want to get started. Okay, here we go. The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights, starting a little after 9:30 a.m. on November 7, 2008. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C. Commissioner Kirsanow will be participating by phone. Commissioner Yaki, I believe is in route. The other Commissioners are present.

Pete, please confirm that you're on the line.

COMMISSIONER KIRSANOW: Present.

CHAIRMAN REYNOLDS: Very good.

CHAIRMAN REYNOLDS: Okay, the first item on the agenda is the approval of the agenda.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: Is there a motion to approve the agenda?

COMMISSIONER TAYLOR: So moved.

CHAIRMAN REYNOLDS: Second, please?

COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: If we just say no, can we all just go home?
(Laughter.)

CHAIRMAN REYNOLDS: That's an interesting question.

Discussion? Ashley, I thought you had an item that you wanted to --

COMMISSIONER TAYLOR: That was with respect to the minutes.

CHAIRMAN REYNOLDS: Oh, okay. That's right, the minutes.

Okay, well, I would like to postpone discussion of the policy for Commissioner rebuttals to concurring and dissenting statements.

I thought I was going to have to send somebody out to look for you.

Please let the record reflect that Commissioner Yaki is with us. Since he is here, rather than delve into the usual Commission business, instead I would like to talk about the fact that we had an election. Regardless of where you are politically, I think that we can all recognize and appreciate the historical and cultural significance of the election.

In 1965, when we were enacting the Voting Rights Act, we were in the process of dismantling a racial cast system. Forty-three years later, we find
ourselves, Americans have elected a black man as its President. This is huge.

Now that's a historical piece, where we've been, where we've come, where we are. But there's also a cultural piece, one that just amazes me. When I turn on the television and I see these black families crying and talking about how they're telling their children that they can do anything they want to do and what amazes me is that all these centuries black families have believed that there were limits on what they can do. And for most of the century, it was an accurate statement. But after the '60s, after the '70s, and the '80s, there were new opportunities that made themselves available because of the civil rights revolution, yet this doubt, this collective doubt that existed with black communities was still there and became in my view a self-fulfilling prophecy.

If you don't believe that you can win the fight, then you probably are right. And so the cultural significance of this race, one of the important issues is for the first time this collective doubt, blacks are questioning this collective doubt themselves. They're challenging this notion that there are limits on what they can do and that is a sea change, a welcome sea change.
So in any event those are my few words on the matter. I open up the floor for anyone else who would like to make a comment.

Commissioner Yaki, I was waiting for you. I suspect that you have a thing or two to say.

COMMISSIONER YAKI: Thank you very much, Chairman Reynolds, and as I share many of your same sentiments. It seems amazing that 50 years ago when this Commission was formed, it was formed simply to provide the enactment of basic rights afforded African-Americans in this country that had been promised following Reconstruction, but never realized.

It's even more amazing that two generations after the assassination of Dr. Martin Luther King, that we have come to a place where we have elected a man, an African-American, who did so by winning the majority of the popular vote of this country in record turnout. And it's a testament, I believe, to the work done by those who preceded us on this Commission, by millions of Americans who marched in the streets, who sat down at lunch counters, and who road buses, and it's a testament to the faith of the American people today that a man whose name is Barack Obama could be the person that they checked in the ballot box on Tuesday, November 4th.
I think it's amazing. I think it's wonderful. But I would say this and that is it is an important milestone and achievement that cannot and will not be diminished by time. It signifies many things great and wonderful about these United States and the promise of the more perfect union sought by our founders over 200 years ago. But I still believe that we still continue to search for that more perfect Union and to that end our Commission still serves a purpose in fulfilling that. But as that perhaps the only somber note that I would say I just -- someone who lived overseas so much of my life, who understood what that glorious shining city on the hill called America meant to so much of the world, for me it was personally gratifying to see the reaction from millions upon millions of people overseas with the hope and the knowledge that the America that they care about that was an example to them and inspiration to their people is back and for all those millions of Americans here who believe in hope, believe in change, that we are indeed on the road.

And I do want to say this as a personal note to my fellow Commissioners. As you know, I worked very hard in my spare time on behalf of President-elect Obama and I did so with the full
feeling that what he stood for was not about left or right. It was not about liberal, conservative. It was about working together, collectively, finding common ground and moving forward. And that is certainly the spirit in which I intend to continue working with Members of the Commission. So thank you very much.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Well, I said some of this -- I'll second obviously what I heard from the Chairman and Commissioner Yaki. And I had some of this in a little very short piece in the National View on line yesterday, but this is a thrilling election no matter what color you are. Barack Obama got a higher white vote than any presidential elected President since LBJ in 1964. He did better among every racial and ethnic group since that year. Well, since the last election. I can't tell you -- obviously my politics in many ways differ from his, but I can't tell you the degree to which I also celebrate this election. And I hope that one of the messages that will be taken from it is will be to aspiring black politicians in the future, wade into multi-racial and majority white constituencies and run as you can win because there has been too much reluctance on the part...
of potential black elected officials to think we can't win, except in safe black districts. It is not true at the highest level of our government.

   It has been shown that American politics is now politically integrated and it can be true at every level of American government. And so it's again, it was a very thrilling day. As many differences as I will have with the policy of President Obama.

   CHAIRMAN REYNOLDS: Commissioner Gaziano?

   COMMISSIONER GAZIANO: I'm glad to associate myself with all the previous remarks with a few minor exceptions, but I don't need to point those out.

   Particularly the point that you, Mr. Chairman, made about how wonderful this is that it may overcome the doubt industry that surrounds certain minority groups that they can't achieve in America. And my own sort of personal family story which I hope to write down some time, I've always been a firm believer that despite the latent racism that still exists, America has always been a land that you can overcome that, but certainly since the landmark legislation that you noted.

   And when Barack Obama was nominated, I
couldn't understand the stories that said that his
race would be a significant impediment to him and I
always suspected that the opposite was true. And I
can't wait for the statistics that help establish
that. There are silly stories throughout this
campaign and there will continue to be silly stories
that certain racists out there did not vote for him,
Barack Obama, our President-elect, because he was
black, but surely there are also some equally silly
stories that any person who supported McCain must have
done so because they are racist. And there's an
example of that kind of silly story in today's
Washington Post, an assumption that they quote and
prominently do.

So to the extent that this is a wonderful
teaching moment, we need to try to draw all the
lessons and we can perhaps in our collective and
individual capacities try to augment the wonderful
message that this teaches. And it goes both ways,
that there was also a sharp etiological divide and
that support for one or the other candidates was or
was not based on racism, but the much more important
lesson is the one that the three Commissioners before
me identified to the extent that it helps break the
grip of doubt. This is a wonderful and marvelous
CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: As long as we're piling on, I have something to say too. Another reason to celebrate this election that has nothing to do with race, in the last couple of presidential elections, there's been a trend that I find at least a little bit troubling. John McCain is a very fine man. He is also the son and grandson of an Admiral. President Bush is a very fine man. But he's also the son of a former President. Senator Gore, very fine man, son of a Senator. And John Kerry, the husband of a very, very, very wealthy woman. President-Elect Obama doesn't have a background like that, quite apart from race. And I find that a reason to celebrate in itself.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes, I'll just make a short comment. I think Michael's, and everyone here has said quite a bit. I think it is -- I was very surprised, as a Native American, and I think we can identify really with many of the discrimination and all those different things that have happened in this country. And the only thing I can say is -- Senator McCain has done a lot for Native Americans in
Arizona, within that sphere, and being a Vietnam Veteran also, I can identify with his contributions to this country also. But I think this election was bigger than that. I think when you talk about Native Americans also with tears in their eyes, there was something there that was larger than the politics of conservative or liberal and I think that's what we're celebrating today is an historical event and the challenges that we have today is to bring this country forward in unity and to work together. And that's the message President-Elect Obama has brought to America is that we have tremendous challenges and we're going to have to really work together to try to overcome all the things that we face in this coming year and into the future. So I just wanted to say that and come -- I'm real proud of this country on what has happened.

CHAIRMAN REYNOLDS: Commissioner Taylor, anything from you?

COMMISSIONER TAYLOR: I'm not going to go on too long. I hope that all of the political instructional guides now are being pulled out and the chapters related to the quote Bradley effect are being ripped out and thrown away forever because clearly, there was no Bradley effect. Indeed, it may have been quite the opposite.
I think that in my view, the election may have the most profound effect on the modeling of the African-American family in the African-American community. I anticipate that that will have the most lasting impact on my community and I hope that is what happens. So I was given a piece of paper yesterday by someone who was not really politically active and it had a picture not just of President-Elect Obama, but his entire family around the Presidential Seal with a picture of the White House. And the symbolism of an African-American family, an intact family, is very strong and I am thrilled that that is going to be the picture that is going to be the model in our community for the next four years. I just think that's going to have a profound impact.

VICE CHAIR THERNSTROM: Can I say just one more thing?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: I just want to give you, because I had a thought yesterday myself on the question of the Bradley effect and something that Commissioner Gaziano referred to. Just two percent of Americans told pollsters that race was the single most important factor in casting their ballots and was in that group Barack Obama garnered 58 percent of the
votes, so exactly as you said, quite the opposite from the Bradley effect.

Look, as a number of people have said, America -- President-Elect Obama is to be celebrated. America is to be celebrated. We have really turned a corner here. It's wonderful.

CHAIRMAN REYNOLDS: Okay, Commissioner Kirsanow, would you like to make a comment?

COMMISSIONER KIRSANOW: You know, I don't have much to say beyond what's been already said. It's been very eloquent. I would reemphasize what's been said that this is a reflection of what this country is and has become. It has always been the greatest country in the history of the world. We have confirmed that again. It continues to perfect itself. It can never be perfect, but there's no country in the world or the history of the world that could have done what we did just a few days ago. This is a tremendous testament to the power of what we put before us. It gave rise to a treasure of blood or sweat to get to this point. Barack Obama stands on the shoulders of a lot of people, a lot of giants. And what I am going to talk about, talking about hope and change, is that this is at least a moderate step for African-Americans and Italian-Americans, et cetera
generally -- I'd like to get rid of that hyphen. If we can do that and we have justified all the work that has been done in Department of Justice, U.S. Civil Rights Commission, and all the other agencies that we've spent billions of dollars on to make sure that we've got a level playing field.

Having said that, I don't suffer illusions. I am concerned about that 52% figure that was cited by Vice Chair Thernstrom, but, so what, the Civil Rights Commission still has a lot of work to do. The EEOC still has a lot of work to do. There are small pockets of racism in this country. Thankfully very, very small, but nonetheless regardless of how small it's still pernicious. We have things to do in order to make sure that it goes away, but I think it was Commissioner Taylor who indicated, maybe a salient feature of this, the most salutory feature of this is if this is a model for the black family which right now, the failure of the black family, the fact that 70 percent of black youth live in a single-parent household is much more toxic and corrupting of black possibilities for improvement than blatant racism. And I think that that is one of the great accomplishments of the election of President-Elect Obama.
CHAIRMAN REYNOLDS: Okay, all right. Well, thank you, everyone for your comments. Looking at the agenda we were discussing the agenda and I would like to move to table the discussion of this policy for rebuttals to concurring and dissenting statements on National Office Reports.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

All in favor say aye.

(Chorus of ayes.)

Any dissents, any concurrences? The motion passes unanimously.

Okay, next up, the minutes.

II. APPROVAL OF MINUTES

CHAIRMAN REYNOLDS: I move that we approve the minutes of the meeting held on October 17, 2008.

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER TAYLOR: Yes, I'd like to the minutes to be amended to reflect the fact that I joined in person at 9:40. I think I missed the gaveling in of the Commission at 9:35. I think I arrived at 9:40. And there are two instances in which
the minutes indicate that I'm on the phone when I was present. So I'd like the minutes to amended to reflect that fact.

VICE CHAIR THERNSTROM: Nobody noticed you.

CHAIRMAN REYNOLDS: Were you here?

COMMISSIONER TAYLOR: I have a very light footprint.

(Laughter.)

I'm trying to change that.

VICE CHAIR THERNSTROM: We're looking forward to it, Ashley.

CHAIRMAN REYNOLDS: Okay, any other changes that need to be discussed?

Okay, so --

COMMISSIONER MELENDEZ: Just one. My name is spelled wrong.

(Laughter.)

CHAIRMAN REYNOLDS: That's important.

COMMISSIONER MELENDEZ: That's important.

COMMISSIONER GAZIANO: I'd like an investigation to find out who is responsible for that.

(Laughter.)

CHAIRMAN REYNOLDS: Okay, with those two amendments --
COMMISSIONER YAKI: I better check my name.

CHAIRMAN REYNOLDS: We need to correct the spelling of Commissioner Melendez' name and reflect the fact that Commissioner Taylor participated in the meeting in person.

So with those changes, all in favor, please say aye.

(Chorus of ayes.)

Any dissents? Any abstentions? The motion passes unanimously.

Okay, announcements.

III. ANNOUNCEMENTS

CHAIRMAN REYNOLDS: November is National American Indian and Alaska Native Heritage Month. This month is dedicated to recognizing the inter-tribal cultures, events, lifestyles, designs, and achievements of American Indians and Alaska Natives. The U.S. Commission on Civil Rights has marked this observation since 1976, and on behalf of the Commission, I urge all Americans to celebrate National American Indian and Alaska Native Heritage Month by participating in appropriate programs and activities.

Also, November marks the 24th anniversary of Fred Korematsu and Min Yasui --
COMMISSIONER YAKI: Yasui.

CHAIRMAN REYNOLDS: Yasui, and Korematsu, and Gordon Hirabashi --

COMMISSIONER YAKI: Hirabashi. I'm not reading what you have to say about this --

CHAIRMAN REYNOLDS: In any event --

COMMISSIONER YAKI: Kansas City was mispronounced.

CHAIRMAN REYNOLDS: Kansas City? Kansas City -- we need to adjourn this meeting here so we can have a conversation.

(Laughter.)

In any event --

VICE CHAIR THERNSTROM: He doesn't know his geography.

CHAIRMAN REYNOLDS: I will not sit here and take these insults.

COMMISSIONER YAKI: I will simply specific and rather regionally to be the Reynolds effect.

(Laughter.)

CHAIRMAN REYNOLDS: That would be more accurate. In any event, this is the 24th anniversary of the petition that overturned their World War II convictions for violating curfew and the evacuation orders directed at Americans of Japanese descent.
And finally, on November 29, 1975, President Ford signed into law the Education for All Handicapped Children Act, later renamed the Individuals with Disabilities in Education Act. IDEA guarantees that students with disabilities are provided a free appropriately structured public education. This anniversary reminds us of the importance of working together to ensure that all children are provided with educational opportunities that will enable them to reach their full potential.

Next up, Mr. Staff Director.

COMMISSIONER YAKI: Mr. Chairman?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: I just wanted to note that the coram nobis petition of Mssrs. Korematsu, Hirabashi, and Yasui, while vacating their criminal convictions did not have any effect upon the Supreme Court opinion, Korematsu v. United States. It still stands there as, to me, an ugly testament to a standard that was cited by some brief -- I don't know if they were friends of the Court or whoever, but it was cited as a precedent in the moving paper, in the briefing papers regarding the incarceration of individuals at Guantanamo Bay. So to the extent that decision still stains the history of the United States
Supreme Court, the coram nobis decisions vindicated the individual convictions and rights of those three brave individuals, but Korematsu as a decision, unfortunately, still stands.

CHAIRMAN REYNOLDS: I concur. It is a stain and I suspect that my take on that case probably differs from yours, but for me it's just an example of the invidious nature of using racial classifications. The use of racial classifications, there is a reason of why there is a presumption that they're unconstitutional and yes, it may be clear to all of us in that particular case that it was wrong, looking at the facts, but we use racial classifications in other circumstances and during these discussions we have disagreements, but in any event, I agree that decision was a stain.

COMMISSIONER YAKI: As a son of a father who lived in one of those internment camps, it has a special impact upon me.

VICE CHAIR THERNSTROM: I have a question, actually, Commissioner Yaki. It is true, however, isn't it, that the Supreme Court has never cited Korematsu as precedent in one of its subsequent decisions, is that correct? I ask that not knowing the answer. But I thought it was.

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COMMISSIONER YAKI: I believe in terms of the opinion of the Court that is correct. I'll have to check to see whether any of the concurring or dissents had -- but I do know that some of the briefing papers filed with regard to Guantanamo Bay. It did cite Korematsu as a reason for allowing certain actions to occur mainly on the wartime exigency --

VICE CHAIR THERNSTROM: Wartime powers, yes. Well, appalls me also for the record.

CHAIRMAN REYNOLDS: Mr. Staff Director.

IV. STAFF DIRECTOR'S REPORT

MR. DANNENFELSER: Thank you, Mr. Chairman. The Office of General Counsel has begun conducting telephone interviews for their spring 2009 legal interns and OGC also continue to assist in final preparation of the FY2008 statutory report, along with OCR and Office of the Staff Director. And also, OCR, OGC, and the Office of the Staff Director have began the planning process for the FY2009 statutory report.

Preparations are also underway regarding the December briefing on English in the workplace.

OGC received an Equal Employment Opportunity claim filed by a former Commission employee and staff made an appearance on behalf of the

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Commission and began to research laws associated with the former employee's claims.

The Office of Civil Rights Evaluation during this period of September 29th through October 17th, received 122 written complaints, one congressional complaint, zero walk-in complaints, 24 email complaints, 3 facsimile complaints, 102 telephone complaints of which 45 were repeat calls. In total, staff received in the process 252 complaints during this reporting period.

Within the Office of Management, staff completed revisions to the Draft Agency and IT COOP, Continuity of Operations Plan.

In the area of IT services, Nortec started their extended desktop support contract on October 1, 2008 and a junior engineer will be on site every Tuesday and Friday morning to provide assistance to staff here.

Staff completed part one of the Exchange 2007 server update and they also worked on a server problems with Microsoft. Management staff also completed and submitted the FY 2009 FISMA report to OMB by the October 1, 2008 deadline and attended all relevant FISMA training sessions.

Section 508 training has been rescheduled.
until November 14, 2008.

The Library staff received 96 telephone inquiries. They completed 48 simple reference requests of the Form 16 research projects of various sizes. An additional 30 research requests are completed utilizing automated research services.

We received 150 pre-written requests and 30 emails requests for publications during this period; 254 publications were mailed; and 35 different publications were requested.

There were no congressional requests received for publications during this reporting period. "Getting Off the Stand for Enforcement of Civil Rights", "Compilation of Civil Rights Laws", and the "Catalog of Publications" continue to be our most requested publications during this reporting period.

Currently we have 50 requests for publications in the process.

The auditors have completed their field work and the Agency is expecting a draft audit by November 12, 2008. The Budget and Finance Division has dissemination office budgets for FY 2009, taking into account the FY 08 budget level that will be operating under during the continuing resolution.

And the Human Resources Division, all of
their reports that were due to the Office of Personnel Management were submitted in a timely manner.

And the State Advisory Committees are continuing to hold meetings on a variety of topics, many of which were detailed in the Staff Director's Report that was sent to Commissioners on October 30th.

That's my report, Mr. Chairman.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes, one question struck me when I was going over this report and it relates to the number of written requests and email requests for publications to be mailed out. In your summary, you just mentioned that there were no requests from Congress, but I would assume that in these days many more people are downloading Commission's materials. And so I have a few questions with regard to that. The first is, how far back are our reports available in PDF or other form for downloading? Do you know how far back or if they've all been put online?

MR. DANNENFELSER: I'd have to check on that. I believe they go back at least two years, but it's probably longer than that in terms of things that are archived and available through the archives.

COMMISSIONER GAZIANO: I don't know if
other Commissioners are as interested, but I'd be interested in maybe if it's appropriate for a report on that and we might discuss whether to put some others -- it struck me, particularly the other job I have which is a think tank that we measure the number downloads we have of our documents. It seems very important to us and many other organizations to know in this day and age how many we mail out is no longer a very important measure of whether our documents are being read. I would expect that congressional staffers whose boss tell them they want something immediately are not necessarily going to write that it be sent in the mail.

And so the next question, does the Commission -- may have some issues as far as tracking that, but my next question would be is how can we track so that we know the relevance of at least to others of some of our work? I don't know whether it's to turn on the toggle switch that's already on our email, some people don't want to give their cookies away. I don't know what that means, but I know it's something.

(Laughter.)

But most people don't --

COMMISSIONER YAKI: Are we dealing in
euphemisms here?

   (Laughter.)

   Is there something here that the Civil Rights Commission must deal with now?

   COMMISSIONER GAZIANO: I understand there's something, there's a secondary or primary --

   COMMISSIONER YAKI: All right --

   COMMISSIONER GAZIANO: Okay, but the reports, for example, that we've gotten at my think
tank are quite valuable to us. They contract on a
day-by-day basis. You can chart the downloads, but
you can also say what sectors. You could say that
certain of them are from the Executive Branch by the
gov or which are from Capitol Hill. By the way, we
may want -- if we're going to do that, I think it's
very valuable to me. We may want to ensure anonymity,
individual anonymity, individual anonymity, but it
still might be helpful to know how many are from
mail.house.gov or how many are from -- but we might
decide not to do that, but at least I do want to know
how we can measure that in the future, at least the
number of unique visitors to our website. It doesn't
necessarily need to be a monthly edition, but maybe it
should be.

   There's all sorts of unique visitors and
how long they stay on your site, and how many page
visits and there's a wealth of information that I
think might be more relevant today than the number of
reports that we've mailed out.

CHAIRMAN REYNOLDS: Vice Chair Gaziano,
you're not suggesting that perhaps the rumor of the
Heritage Foundation running a beta test of some
Homeland Security software isn't actually being --

COMMISSIONER GAZIANO: No, we just hope
that liberals are downloading our papers and we want
anyone on the Transition Team for the Obama
Administration to download all of our wisdom.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I like,
Commissioner Gaziano's suggestion very, very much and
his concern about the accessibility of the voluminous
records of this Commission over the years. But I am
not so concerned about how many downloads there are or
to put it another way, I don't want us to lose site of
the importance of some of our reports over the years
going all the way back to the beginning of the
Commission, the importance of these reports and the
materials generated to academics, to historians, to
political scientists. They may not come in droves,
but the person who wants to see one of the original
reports, proceeding, for instance, the passage of the
Voting Rights Act, that information is invaluable even
if it's one person, two people, three people, and so
you know --

COMMISSIONER GAZIANO: Absolutely, there's
no way am I suggesting that -- but for example, the
number of edu -- it's just information.

CHAIRMAN REYNOLDS: There's no
disagreement between the two of you.

VICE CHAIR THERNSTROM: No, I just want
everything possible.

COMMISSIONER YAKI: But we haven't
discussed whether they want cookies or not?

VICE CHAIR THERNSTROM: I don't eat
cookies.

CHAIRMAN REYNOLDS: They both make very
good points. If we are to -- if we want to quantify
our relevance, Todd's point is extremely important.
He is right. The mailouts don't necessarily reflect
the amount of information, the amount of requests that
we respond to.

COMMISSIONER TAYLOR: Mr. Chair?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER TAYLOR: If I may, I'd like
to get some information --
MS. SCHULD: I thought that getting our old reports available in digital form was part of our agreement with the Thurgood Marshall Law Library. So maybe that is the avenue. Maybe that's our conduit. And so as part of your looking to how we track and if we track and how many reports, I think that might be built into that agreement.

CHAIRMAN REYNOLDS: Okay, so for the next business meeting, please include in your report an update on this issue.

MR. DANNENFELSER: Will do. Thank you.

CHAIRMAN REYNOLDS: Any other questions? Okay, next up. I move to approve the project outline and discovery plan for FY 2009 statutory report on the possible effect of relaxed lending standards for minorities on the mortgage crisis prepared by staff and distributed to Commissioners on October 30, 2008.

V. PROGRAM PLANNING

1. PROJECT OUTLINE AND DISCOVERY PLAN FOR FY 2009

STATUTORY REPORT

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

CHAIRMAN REYNOLDS: Okay, I have some
discussion. Maybe you can recognize somebody else first.

First of all, I don't really like this title here of this report. We've got a conclusion written into the title, as it were.

And there's no reason even for a reference to minorities. It can simply read -- I'm sorry, I had made a note myself of this and I've lost my own note, but here we go. I've got it.

I don't know why it doesn't read simply "relaxed lending standards and the mortgage crisis."

So we leave out the question of whether it has an effect. We leave out the question of specifically on minorities.

CHAIRMAN REYNOLDS: What's our hook then, looking at our statutory jurisdiction, jurisdictional requirement?

VICE CHAIR THERNSTROM: Commissioner Yaki is very eager to come in on this and I will let him. I have more to say about this.

COMMISSIONER YAKI: I was looking at the title as well and I was not exactly enthralled or overwhelmed. I was wondering if something much simpler that fits into our statutory mandate which would simply be an examination of civil rights issues
with regard to the mortgage crisis or something like that?

VICE CHAIR THERNSTROM: That would be fine with me, too. But I don't like the existing -- that would be fine with me.

CHAIRMAN REYNOLDS: That's fine with me.

Other comments? Are there any violent objections to the proposed amendment? Nonviolent objections?

COMMISSIONER GAZIANO: What was it again, examination --

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Examination of civil rights -- I'm sorry?

CHAIRMAN REYNOLDS: No, please repeat the title that you offered.

COMMISSIONER YAKI: Since I just sort of made it up, examination of civil rights --

CHAIRMAN REYNOLDS: You made it up on the fly?

COMMISSIONER YAKI: Yes.

(Laughter.)

An examination of civil rights issues with regard to the mortgage crisis.

VICE CHAIR THERNSTROM: Or civil rights implications.
COMMISSIONER YAKI: Civil rights implications with regard to the mortgage crisis.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER YAKI: Examination of civil rights implications on the mortgage crisis.

VICE CHAIR THERNSTROM: Okay, then I have a comment.

COMMISSIONER GAZIANO: I like your original better, Commissioner Yaki. Implications suggest that what are the implications on minority of the crisis. I think civil rights issues relate to both causes and effects. So I would prefer the former.

COMMISSIONER YAKI: Let me try this again.

An examination of civil rights issues -- is anyone writing this down?

An examination of civil rights issues --

VICE CHAIR THERNSTROM: With respect to --

COMMISSIONER YAKI: With respect to the mortgage crisis.

VICE CHAIR THERNSTROM: Yes, that fine. Does that work for you, Commissioner Gaziano?

COMMISSIONER GAZIANO: I'm not --

CHAIRMAN REYNOLDS: Okay, next, any other comments?
VICE CHAIR THERNSTROM: Yes, I have a comment.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Okay, I don't know whether this is an appropriate comment now or you want it delayed, but I want to talk about the time table for the 2009 statutory report.

I'm really troubled by the deadlines for the very ambitious deadlines that have been proposed for this report. I think they're completely unrealistic. I mean I--

CHAIRMAN REYNOLDS: Walk us through the dates.

VICE CHAIR THERNSTROM: Okay, so we have a proposed time table here that interrogatories will be issued to various agencies and entities on December 1 and we will receive responses by January 5, 2009.

First, December is a major holiday month, obviously, as well as use-it-or-lose-it leave month for federal employees. Almost no one in the Federal Government will be working more than 10 days during this interval, except for perhaps our new President's Transition Team.

Second, in case anybody has missed it, we have a new Administration moving into town. That will
further delay any responses to our interrogatories. On the assumption that indeed, we will get responses which I hope so and I'd like to make a motion that this path not be held accountable for failure of federal agencies to respond to our interrogatories by January 5.

CHAIRMAN REYNOLDS: Don't you -- wouldn't you rather propose that we revise the dates?

VICE CHAIR THERNSTROM: No, because I think we're going to have -- I'd be happy to revise the date, but I think we really are going to have to go with the flow here a bit and I don't want the staff held accountable for the failure of federal agencies to respond to the interrogatories and date that we set and I don't want their performances being affected.

COMMISSIONER GAZIANO: Will the Vice Chair yield for a question?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER GAZIANO: Just the way I read this, it's January 5th is the date when our staff is directed just to follow up with the agencies. It doesn't -- I don't read the kind of consequences into it or the requirement that agencies -- but in my former civil litigation experience and those -- the current civil litigators in the room can comment. If
you don't, at least, give some 30-day deadline and then try to follow up, then the time always expand.

CHAIRMAN REYNOLDS: Well, what about this? I don't think that there's a disagreement -- everyone agrees that staff should not be held accountable for agencies' failure to respond. Staff's obligation is to get the interrogatories out in a timely fashion. Once that's done --

COMMISSIONER HERIOT: And to follow up.

CHAIRMAN REYNOLDS: Yes, we would expect appropriate follow up, but if for whatever reason the response doesn't -- we don't receive it in a timely fashion, I don't think -- no one would consider --

COMMISSIONER HERIOT: There's nothing in this document that says they must be held accountable for failure of the government to respond.

CHAIRMAN REYNOLDS: Mr. Staff director?

MR. DANNENFELSER: Also, that date, there's bracketed right next to that date is the comment that deadline be met is dependent on agencies' response time, so that is factored in that the agencies may not respond in the optimum timely fashion.

VICE CHAIR THERNSTROM: I'm just sort of concerned that the staff be protected here and also
I'd like to hear from the staff of the restructuring of the time line, that is we elicited, since I think --

CHAIRMAN REYNOLDS: I'm not sure that pushing the dates out after giving it some thought is the way to go. I would much rather struggle with trying to get agencies to hand over the data as opposed to pushing the date back and then trying to get them to hand over the data. But your larger point, I think there's -- everybody agrees with you that staff can't be held accountable for an agency's failure to respond timely.

Do you have any other concerns?

VICE CHAIR THERNSTROM: No, and timely, timely means in time for them really to work with the data in a proper way. I mean you know, I think that some very close communication with the staff is going to be required so that there isn't a blame game at the end of the day.

MR. DANNENFELSER: I think the General Counsel would like to make a comment, Mr. Chairman.

CHAIRMAN REYNOLDS: Mr. Blackwood?

MR. BLACKWOOD: With regard to these time lines, we've had problems with the time lines since I arrived here. The 2007 report, we knew from the very
beginning the time line was set against us and we weren't going to be able to comply with it.

Last year we tried to adjust to that and again it was unrealistic. This year, this reflects some of the changes that were adopted through the Lean Six Sigma process.

Part of the problems, I can tell you this year, already are beginning because we're behind. This is really, this is not a one-year process, it's about an 18-month process. Part of the problem was selecting the topic, honing the topic, etcetera.

The way this time line was derived was by backing out. We know we have our end deadline, now let's work backwards.

I can tell you now we're not going to hit all the deadlines. Right now, this is about as tight as we can get it. We think we can hit it if we work extremely hard. We do get the responses.

I don't think we're going to get responses within 30 days. Now we understand that, but we don't have discretion to prepare any time line to arbitrarily put down what we think is going to happen. I'm glad that you pointed out it's probably going to be more than 30 days.

I am somewhat hopeful that in this
particular topic, the publicly available information out there will speed this up.

VICE CHAIR THERNSTROM: HMDA.

MR. BLACKWOOD: Exactly, the HMDA data, Fed studies, HUD studies. To a large extent I think the basic data we need is out there. We just need to get it.

Some of it is not publicly available, but we know they've done it, these analyses. The biggest issue this year, I think, is going to be putting them together and analyzing them.

But working back from our statutory deadline with the assumption that we will hit everything, this is a realistic thing, as realistic as we can get.

What I propose this year to do and would be glad to do is to tell at every business meeting where we are.

VICE CHAIR THERNSTROM: Thank you. That would be great.

MR. BLACKWOOD: Well, on behalf of staff, I would say we like that. We would prefer that to let you all know where we stand. If someone is having trouble getting -- number one, if we find that a certain avenue of research simply doesn't -- is not
panning out or doesn't exist, we would like to tell you that up front. So if there's a feeling among the Commissioners we need to readjust the topic, you all will know that and know that sooner rather than later.

CHAIRMAN REYNOLDS: Well, Mr. Blackwood, thanks for volunteering to give us a monthly update. I think that's a very good idea. That way we won't have surprises. That way we would know -- if we can -- in some cases we can help, but the bottom line is it is better for us to find out that we're having difficulties as the difficulties arise as opposed to getting to the end of the process and finding out it's not going to be ready for X number of weeks or months.

VICE CHAIR THERNSTROM: And I would assume, Mr. Blackwood, that as part of that report, the question is not only how quickly the responses to interrogatories come in, but also whether the staff doing the basic research and writing can meet the deadlines that we have laid out and so that's part of what we need to hear, what the difficulties are.

MR. BLACKWOOD: I will tell you, the biggest change with the Lean Six Sigma processing and what frankly after working the 2007 report, that was very much pushed was that our first draft law is going to be in the nature of an annotated outline. Instead
of wasting time trying to draft something which is not ready to be drafted, here's an outline, this is what we're showing. It's the opportunity for the Commission to correct where we're going. If you don't like where the report is going, that very first step is to give us the guidance that we need, not at the end, but at the beginning of the process, after we've begun to get the data together.

VICE CHAIR THERNSTROM: And that will go to all Commissioners.

MR. BLACKWOOD: Correct.

CHAIRMAN REYNOLDS: Okay, Commissioners Gaziano and then Yaki.

COMMISSIONER GAZIANO: I just want to talk about this, the substance of this. I think it's too ambitious and in light of what --

VICE CHAIR THERNSTROM: The substance of the report?

COMMISSIONER GAZIANO: Yes. It's -- and there's some of it that I think is less important than others. And in meeting the deadlines, by the way, I think it's -- providing that Commission staff has time to do a great job, it's probably more important to keep the initial request deadlines short and that you all bug the agencies as much as possible as early as...
possible to make sure they've received and they're working on the request.

But now to the substance of my concerns, I might not have been clear in the last meeting and I should have followed up with perhaps the Staff Director and the General Counsel in clarifying some of my views, but one of the things I suggested would make me feel a lot more comfortable, at the last meeting, was to know specifically which databases existed. And that's reflected in the minutes of the last meeting. And what that might show and maybe what I wasn't clear about is a clearer statement of the research hypotheses, because there may be more than one, and how those data bases would be tested. And a specific concern I have is there's nothing in the current report that specifically identifies, it's rather general, rather vague, that says there is this database that the Fed maintains. There is something in the concept paper to that effect and here's the test that our social scientists can run on it. Here's the hypothesis. There is this other database that's maintained by FDIC.

Regarding my -- in a minute, I think that there are several -- if we're already a little bit behind, there are several aspects of this that might
not be necessary or probably aren't necessary, two are more narrow and focused examination.

For example, in Sections 2 and 3, there's a lot of overviews of the history and other issues relating to fair housing discrimination. In 3, 3C for example, I don't know what an overview of social science studies on mortgage discrimination entails. I don't know whether there are a thousand social science studies on mortgage discrimination in the last 40 years. I don't know whether this is time bound or not. But collecting the hundreds or thousands might take a staffer a significant amount of time. I don't know what overview means either, but I'm not sure it's necessary if we have a more focused examination.

We already have overviews of the history of fair housing. We already have an overview of mortgage lending statistics and changes in lending statistics. I'm not sure that all of them are necessary, but what is suggested here is a meta analysis of hundreds or thousands of social science studies, that would take, I imagine, any outstanding social scientists months to do and I'm not sure that it's necessary.

What I would like going forward --

CHAIRMAN REYNOLDS: Before you go on, Dr.
Lerner, would you shed some light on this section here, overview of social science studies of mortgage discrimination?

DR. LERNER: Sure.

COMMISSIONER GAZIANO: While he's coming up, let me -- what do we have as a comparative advantage to contribute in this debate? There are dozens and dozens of outstanding scholars already in this field. What we, it seems to me, have a comparative advantage is is we can get data from federal agencies.

VICE CHAIR THERNSTROM: But we do need context.

COMMISSIONER GAZIANO: Some context, surely. But I would rather --

CHAIRMAN REYNOLDS: Let's listen to Dr. Lerner.

COMMISSIONER GAZIANO: Maybe I picked the wrong point. It seems like there's about -- if we pick one or two things that we can do really well that we -- if you let me return to that other point.

DR. LERNER: Okay, let me respond to the Chairman's request. As far as data sources are concerned, I can also talk about the number of studies I've actually done, so looking at that already. Let's
start with data sources first. Some of the data that we would use to sketch the background is publicly available, meaning we can get it almost immediately. We might have to pay a tiny fee for it, it's available to the general public or it's available to scholars, the HMDA data which is the Home Mortgage Disclosure Act data which is a piece of legislation that provides for a great deal of housing and above all mortgage discrimination kinds of information. That's probably available to be used in hearings. It's been available since 1990 and we can actually probably put together a pretty nice package on that. That shouldn't be hard.

There's, of course, census data on housing, too, that's publicly available. Again, it's a matter of downloading it and doing statistical analysis.

COMMISSIONER GAZIANO: Do you have a concern of putting that in the paper? Why was that not in the paper? This database we're going to -- is available. It would tell us this?

DR. LERNER: I thought we actually did, but the idea of doing this was to make this very general and it was -- more of it was in the concept paper, more of it were earlier drafts of this thing. They were excluded for reasons of economy and space.
Yes, I could -- I'd be glad to do that.

CHAIRMAN REYNOLDS: I get the impression that most of the information that we need we can get and we can get the information, start reviewing it, start analyzing it while other folks in your shot and David's shop are bird-dogging the outstanding requests that are pending at agencies. So we won't be in a position where we're sitting just waiting for data to come in. We have a sufficient amount of data, so we can start work.

DR. LERNER: Correct. If I can add one more point to that. One study that Commissioner Gaziano was referring to which was the study the Fed did on the validity of credit score as a means of assessing credit worthiness of individuals, that's a study that was done in 2003 as a response by the FTC and the Fed in response to a request for Congress to evaluate credit scoring. And it's the most comprehensive data that I've been able to find on the subject. It combines in one data set not only credit scores, but also the demographic information of individuals.

I have to add that the credit scores used by mortgage companies and by the credit scoring agencies by law are not allowed to collect race data,
so those -- when you see what is it, TransUnion and Equifax and all those, the data that they have, they have individual data, by the way, they don't release any of that data to anybody by name. There's all kinds of privacy protections. None of that data is related to race. That's, in fact, against the law to do so. So when the Fed did their study, they got data from the Social Security Administration. They got data from these credit agencies, they constructed their own version of the credit scores and that's what they used to do their analysis. And that's the one piece of data in the interrogatories that I'd like to request because that's the one thing that's probably not available to the public and it's one of the things that we would, as a watchdog gate so you have access to that nobody else would.

CHAIRMAN REYNOLDS: Your competitive advantage.

DR. LERNER: Yes, that's what I'm getting to, that's right. This is the one thing, we would probably have access to either they would allow us to have a public version of the data set before perhaps they would be willing to do that, statistical runs for us, using the data in which means the data would stay in their shop. They wouldn't see it, but we would ask
them to do certain kinds of statistical work and they
would send us the output and from the output we could
write what we needed to write. So I believe either
way it would work. We're going to try for the first
as part of the interrogatories.

This is a uniquely valuable piece of data.

I never heard of this thing before we started working
on this study. And because it raises the question of
how are you going to measure the credit worthiness of
people in an objective way?

One of the problems with mortgage lending
over the many, many years, is of course, well, a lot
of problems, but one of them is -- it's based on some
fairly loose and casual assumptions. I think that's
one of the reasons, for example, the practice of
redlining which was not that uncommon not that long
ago. Persistent redlining in the collective sense is
simply not writing mortgages for particular areas or
particular neighborhoods. The process itself began in
the 1930s, ironically, with the Federal Government,
actually doing that, but presumably, informally, and
by law elsewhere such a thing occurred, but the name
actually comes from the Federal Housing Authority.
It's kind of an irony about this particular ideal of
measure. But so there was legislation to prevent
that. The Equal Credit Opportunity Act and the Fair Housing Act, as well as the Community Reinvestment Act are all designed to deal with that.

COMMISSIONER GAZIANO: Let me go back to my --

VICE CHAIR THERNSTROM: Wait a minute, there was a question you posed he hasn't yet gotten to.

COMMISSIONER GAZIANO: I was making a statement, please let me just go back --

CHAIRMAN REYNOLDS: Hold on folks. The question that was on the table you wanted a description of what was entailed with this overview of social science studies of mortgage --

COMMISSIONER GAZIANO: I haven't heard that yet, but no -- I haven't heard that yet, but what I wanted to say is one of the problems with this smorgasbord description we have that existed in the last year's statutory report is it creates expectations among different Commissioners. We had comments of Commissioners in the Religious Liberty in Prisons that the concept paper promised we were going to examine the faith-based this and it wasn't done and that was just a crying shame or a sin or a violation of our rules. If we're really going to do a focused
study, then that's what we need to vote on. If we're going to imply that we're going to do ten things, we're either setting ourselves up for failure when we later limit it or we --

CHAIRMAN REYNOLDS: Well, Todd, how about this -- the understanding is is that this is a framework that will be refined and developed as the data comes in. We can't say -- we can't discuss what the amount of precision that you're talking about until we have data. We don't know what we'll be able to get.

COMMISSIONER GAZIANO: This plan covers a lot more than data. Let me get back to that, but because Dr. Lerner spoke about the data set, that's not identified in what we're voting on, but I also don't -- I think we should vote on what the research hypotheses that are going to be tested on, so that will be a follow-up question I'd have to Dr. Lerner that I think should be presented to us. How is that data set going to be tested and in what ways will it satisfy Commissioner Yaki that we're asking alternative questions? Because the same data set might answer more than one hypotheses, so I think that that's the kind of thing that the Commissioners should be concentrating on so that we know whether someone
else's plan for the data is one that we think is compelling.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I just want to point out that what I see coming from both these documents here for the upcoming report is another train wreck. And I'm very, very pessimistic at this point. This is not specific enough. This is another grand authorization just to sort of go out there and find something and with the religious liberties statutory report what we got I think was extremely disappointing and I predict we're going to get something very similar this time unless we get more specificity.

I think we need a much more -- a much tighter control over the report as it unfolds over the next year. And I can't vote for this at this point. I need more specificity.

VICE CHAIR THERNSTROM: Can I hear from Dr. Lerner the rest of what he was going to say and perhaps a response to Commissioner Heriot as well.

CHAIRMAN REYNOLDS: Well, actually, Commissioner Yaki was next in the queue. No? Okay.

VICE CHAIR THERNSTROM: I just want to hear -- we interrupted him --

DR. LERNER: Well, one question I'm not
sure I remember exactly the question --

VICE CHAIR THERNSTROM: The question was kind of the framework, one of the questions that Commissioner Gaziano raised was whether there was a manageable literature on the history of this topic on the previous scholarship on the top, but whether it was possible to do a kind of useful summary for us. And now there's the additional question of whether we're headed into a train wreck all together because we're setting ourselves up for something that's not management. The person I trust in responding to this is -- you're it. You and the General Counsel, Mr. Blackwood are mostly responsible and I'd like to hear from the two of you.

MR. BLACKWOOD: Well, if I could --

DR. LERNER: Go ahead, David, and then I'll --

MR. BLACKWOOD: If I could first -- if we already had the data sets identified, we'd list them. Part of the reason this is a more general document, so you understand is we don't know the exact data sets. I mean Bob mentioned one study. There are a variety of studies. There are stacks of studies. If I could identify specifically right now what those were, we could do that. That's why I propose to, in
essence, report periodically to let you know what we're finding.

Part of the problem with the religious report issue last year was there was an assumption that there was a data set of information out there with the Bureau of Prisons that didn't exist. Now maybe at some point we should have come back and said we need to revisit this whole topic or the data set. But at this stage of the game, given what the time we've had, we cannot and did not want to create the parameters of the data set because we don't know what they are yet.

COMMISSIONER GAZIANO: What's the research hypothesis then that we're going to be searching for data sets? I don't see any statement of the research hypothesis that you're going to use to test.

MR. BLACKWOOD: There is no single hypothesis.

DR. LERNER: The format of these proposals and these documents don't, in fact, we follow -- I follow them in writing this not the project, not the procedure I would use if I were writing my own book, but the documents that the Commission had previously used, the concept paper, the discovered plan of the statutory report outline or the chapter outline. And
in those, they have a general problem that they're looking at. They don't necessarily have specific hypotheses to test. That's the way those documents have read. That's the way they're read in the 2007 report. That's the way they read for the 2008 report and I believe, David, you can correct me and I'm wrong.

MR. BLACKWOOD: I wasn't clear enough last meeting and so I take my share of blame for not being clear, but I'll state it again, that's what I wanted you all to help us to develop so that we could vote on it. I think that work needs to be done first.

CHAIRMAN REYNOLDS: Well, Todd, you're bringing up a different issue here.

COMMISSIONER GAZIANO: The problems we had last time were caused because the direction to staff was too general and it created expectations --

CHAIRMAN REYNOLDS: Todd, you are asking us to adopt a methodology that we've never used before and it's not clear to me that it would be appropriate. This is not hard core social science that we're doing here. We have social scientists that we use to help us inform our views on public policies as they relate to civil rights, but we are not a pure research shop here. And if we were, then they wouldn't -- the
Commission wouldn't be Commissioners.

COMMISSIONER GAZIANO: We can always refine the research hypothesis, but it seems most appropriate to me that the Commissioners approve the general one or two or three research hypotheses and then based on the recommendations, the social scientists' views, I also -- let me go back to one of my other questions again. We set ourselves when the concept -- or not the concept paper and the discovery plan said we were going to do 20 things in this religious liberty paper. Now we have Commissioners and their concurrences and dissents decrying the staff that we didn't to subpart B(2)(4). And we've got a lot of these in the current plan.

Let me just -- the reason you came up -- how many social science studies on mortgage discrimination are there?

DR. LERNER: Well, there are not --

COMMISSIONER GAZIANO: What do you think?

DR. LERNER: Well, there are not thousands. There are many. They're many a dozen.

COMMISSIONER GAZIANO: Goes does that apply in the last 10 years?

DR. LERNER: Yes, although ones of sufficient quality that are notorieties that are worth
COMMISSIONER GAZIANO: That's a lot of caveats. I would have probably preferred that those caveats be put in there, but to what effect? What would we review the social science literature?

If it's related to the question we're looking at, that's important. If it's unrelated to the question that we're examining, I'm not sure why that's necessary.

CHAIRMAN REYNOLDS: We can't get there until we review the literature. Is that right?

COMMISSIONER GAZIANO: We should have a focus first. Then we should decide what literature is relevant to it.

VICE CHAIR THERNSTROM: I'm not sure that that's correct. Dr. Lerner?

DR. LERNER: We do have a kind of a focus on the literature. We're looking at all fair housing issues.

We're not looking at all equal credit issues. We're focusing on one particular issue which is mortgage discrimination, or mortgage lending discrimination depending on how you want to phrase it.

And there are a number of very important studies that have been done, one of those studies that...
was cited in one of the earlier documents. I believe it was in the concept paper, that was in the American lead article, the American Economic Review in 1996, that was a study out of a Boston Fed that purported to study this kind of discrimination. And that's probably the leading publication and that was the real initiation of this entire -- it's called the literature on the subject.

Of course, that also provoked also controversy and so on and so forth because in fact, it reached for so many controversial conclusions and it's methodology was challenged. Nonetheless, that's really the founding study of all this. What may have happened 50 years ago is essentially irrelevant because of social science methodology and theories have improved so much that it's basically history. I guess in the pejorative sense. There aren't that many studies of mortgage credit discrimination of which I am aware.

I don't have a list. I haven't done a full inventory at this point. There are not thousands and not hundreds. Fifty, I think, is a generous numerous. My guess is that the answer is more like 20 or even less. So to get back to your other comment --

COMMISSIONER GAZIANO: That's very
helpful, by the way. That's not the kind of specificity in the --

DR. LERNER: Right, but I wasn't asked to provide that, so I didn't. I'm sorry, Commissioner Gaziano, I respond as people see fit, but also we have that kind of specificity was not -- let me, in defense of my colleagues, that was not built into the previous concept paper discovery plan, statutory report --

COMMISSIONER GAZIANO: Several of us asked for it this time.

DR. LERNER: Okay, well, then in that case then we have to take that -- if that's going to be the way B we can see if that has to be taken as direction or not. The Commissioners have to decide that. We can't decide that.

COMMISSIONER GAZIANO: Mr. Staff Director, can you comment?

MR. DANNENFELSER: Well, I would just direct Commissioners to the second paragraph in the discovery plan and I think that that is pretty succinct description of where we want to go and what you might turn that first sentence into a hypothesis.

The Commission said why 2009 statutory enforcement would address the role of relaxed lending standings for minorities under current mortgage
crisis. I turn that sentence into a question and look at it in the same way and then it goes from there to the Reinvestment Act and so on, but it's more related to mortgage lending. All studies related to mortgage lending, so there is a focus there.

There are many other areas of housing discrimination --

DR. LERNER: All this broadens this, rather than narrows it. This project will examine the enforcement of the Community Reinvestment Act. That's huge. And what aspect of it, I don't know, as well as efforts to enforce federal statutes against discrimination in mortgage lending and credit as exemplified by the relevant provisions of the Fair Housing Act and Equal Credit Opportunity Act. That's huge. That's anything.

It will also seek to examine the role of the credit scores in mortgage lending decisions -- something a little more focused on that would have been helpful. This seems -- the rest of this as -- this seems to almost broaden that first sentence rather than limit it.

DR. LERNER: Mr. Chairman, may I respond?

CHAIRMAN REYNOLDS: Yes.

DR. LERNER: Commissioner Gaziano, I
think in fact the focus is fairly narrow. Please allow me to differ from your opinion.

On the Community Reinvestment Act, it's a very specific piece of legislation that was adopted in 1977 to deal with the problem of redlining as the Congress sought at that time.

It's gone through a number of changes in its enforcement regime, as it were and we would be focusing on one primary part of it which is mortgage lending or mortgage credit discrimination. The Community Reinvestment Act covers lending of all sorts and we're not going to look at those other sorts.

Similarly, while the Fair Housing Act and Equal Opportunity Act are very broad acts, we have no intentions of looking at all of those. The Commission, by the way, in the past, has done so, especially with the Fair Housing Act. As far as I'm aware, they've never studied the Equal Credit Opportunity Act.

We're only looking at mortgage credit discrimination. That's the focus. That's a statutory focus because the federal agencies that are relevant which is high Justice and the five financial regulatory agencies all have jurisdiction over it. That's part of this as an enforcement report. And
that's part of what we were proposing, if I may be so bold to study, how are they enforcing it. How are they seeing these laws.

Now, I'm sorry, Mr. Chairman --

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes, just on this one note, just for the record, I know that Treasury just released a whole list of state banks that they just did the SRA analysis for and that data just became available.

Number two, I think in terms of publicly available documents, etcetera, there have been I think one, if not two, congressional hearings on this issue. That the one thing that did disturb me about the statement of scope is that banks subject to the CRA were by and large not the culprits involved in the -- in this. And I'm just wondering are we chasing the wrong -- chasing the wrong dragon here in terms of where the real impact to Latin and African-American home owners in the subprime market which is what I'm really more concerned about, occurred. Because that occurred in institutions that are not subject to CRA.

CHAIRMAN REYNOLDS: Dr. Lerner?

DR. LERNER: I think that's true at one level. But the argument that I would make and this is
Commissioner Gaziano wanted a hypothesis. I would argue that the selection of relaxed lending standards was initiated by the CRA, not so much in this original incarnation in 1977, but in fact, in the amendments that occurred in the late 1980s, I don't remember the name, I don't have the exact legislative, piece of legislation that changed it and the regulations adopted ultimately by the Clinton Administration in 1995 which imposed a three-fold test on institutions that had to comply with the community reinvestment act. And if -- if we could just focus on that without considering the mortgage crisis itself because that would by itself a worthy thing to study.

However, the other thing that happened in the Federal Government at that time was the 1992 Act that empower HUD to regulate Fannie Mae and Freddie Mac.

And to impose upon them fair low and middle-income housing goals that had to be met in order for them to satisfy their regulators at that time at HUD. The regulatory agency recently has been moved to the FHA, FHFA, which is the Federal Housing Finance Agency. But nonetheless, what oversight there was was done at HUD under FHEO which as I understand it, I mean talking formally to some people over there,
in fact, we had a pretty stringent requirement about
Freddie and Fannie's buying up of mortgages that were
issued in response to community reinvestment actions.

Not it's that larger action that I would
hypothesize, again, you want to hypothesis about -- to
hypothesize I can't say I can prove it certainly, that
in fact helped trigger, not alone, but the mortgage
crisis. I would never -- would never make the claim
that this Community Reinvestment Act itself did that.

It doesn't have the scope to do that.

CHAIRMAN REYNOLDS: There's some possible
interplay, as I read the literature.

DR. LERNER: Yes, there's the interplay
between that, between Freddie and Fannie, they play
very important roles. And by the way, because there
are -- first of all, the regulation of Freddie and
Fannie is a Federal Government responsibility, first
in HUD and now in the Federal Housing Finance Agency.
That's something we can directly look at in a way
that other academics and nobody else can because we
have access to that.

Freddie and Fannie themselves are very, as
government-sponsored agencies are very strange animals
and again, I would guess other people could study
those, but we can, if this point is adopted would sent
them interrogatories to find out well exactly what did you do because I have got all kinds of newspaper clippings about Freddie and Fannie, especially Fannie, where then President Franklin Raines was boasting about how many trillions of dollars they made available in low-income mortgages. I can send people the clippings from the New York Times and elsewhere. So if those boasts are, in fact, true they played quite a substantial role in the financial fluctuations that we've seen now.

So I guess that's my answer to you. My implicit hypothesis is yes, there was a snowballing effect and that contributed to the mortgage crisis. That's the explicit hypothesis. It may be false. Not everybody -- I started to read the literature on the more think tank activist literature on both sides of the issue and it's clear that not everybody would agree with that and that's why it's a hypothesis to be tested rather than a conclusion to be assumed. I think that's, to me, the guiding framework. And if it turns that it's not so, we are required anyway to evaluate the performance of a federal agency in dealing with discrimination legislation and equal credit opportunity and fair housing. Every Community Reinvestment Act are all legitimate subjects and
important subjects the Commission is studying as part of their enforcement, its enforcement responsibilities, in my opinion at least.

COMMISSIONER GAZIANO: Mr. Chairman, let me make two possible minor amendments that may go far to make me a little more comfortable with where we are, given the right direction.

First, on page three of the -- what do we call the document that's memorandum for --

MR. DANNENFELSER: Project outline.

COMMISSIONER GAZIANO: Project outline. On the top of page three, specifically the report may include the following items subject to further Commission direction, so that we're not implying it will include all these things. I think this is all too much. I don't want to slow the project down, but I think there are several items. Another example, by the way broadly describe the history and interplay of laws and policies designed to eliminate discrimination. If we decide we're really focusing on some small -- I don't know that we need to broadly describe the history and interplay of all the laws and policies designed to eliminate discrimination.

MR. DANNENFELSER: Do you want to say succinctly or --
VICE CHAIR THERNSTROM: That can be three sentences you realize.

COMMISSIONER GAZIANO: I don't know how you broadly -- but in any event, can we modify the report may include some of the following subject to --

CHAIRMAN REYNOLDS: Any objections?

VICE CHAIR THERNSTROM: Wait a minute, what does it say now instead of may?

COMMISSIONER TAYLOR: It says will address.

COMMISSIONER GAZIANO: So that we don't have any expectations created that it's going to contain --

VICE CHAIR THERNSTROM: May address --

COMMISSIONER GAZIANO: May address some of the following, okay?

CHAIRMAN REYNOLDS: And you had a second one?

MR. DANNENFELSER: Well, the broadly --

COMMISSIONER GAZIANO: No, that was just an example. That's just an example of what I -- that -- I don't know how to put this, that this is -- the description is amended to the extent that our discussion today has focused the specified -- what it is that the Commission staff is going to try to
develop and bring to us for further refinement.

CHAIRMAN REYNOLDS: So, Todd, this
document is a document that is subject to revision.
We'll have monthly updates from the General Counsel
and as information comes in and as we refine our
ideas, this document will reflect where the Commission
is.

COMMISSIONER GAZIANO: And I suppose it's
understood if we vote on it today that it is already
limited by the discussion we've had, now that --

VICE CHAIR THERNSTROM: It's only limited
in the sense that we are getting these reports. We are
open to revising this and I would like reports from
both the General Counsel and Dr. Lerner because they
have two different roles in this project and I found
the information from both of them immensely useful
this morning.

COMMISSIONER GAZIANO: I think I got some
of the answers that I was looking for today and I
think that does -- if it amends this, if it's
understood to amend this, maybe I can vote for it. If
it's just an explanation of what they meant, but that
they can go completely some other direction as they
see fit, then I might not feel comfortable.

CHAIRMAN REYNOLDS: Here's my
understanding and I don't know if it's shared by the folks around the table, but it's my understanding that this is a framework document subject to revision by the Commissioners. We will have monthly updates on where we are and we will have multiple opportunities to change this document. That's my understanding.

VICE CHAIR THERNSTROM: It's mine, too.

CHAIRMAN REYNOLDS: Commissioner Heriot was up next.

COMMISSIONER HERIOT: A couple of things I wanted to say. First of all, if we're going to have monthly updates, they have to be real updates. That is, they have to actually convey information and not just broad generalities. For example, I had expected to see the interrogatories that we were going to be asking other government agencies in this document and it wasn't here and I was disappointed. I can't do anything with broad generalities. There were a lot of things in the religious liberties report that had we see a long time earlier we might have been able to do something about. But we were not able to do anything about it until the very end to the point where the report has some very serious flaws in it and had we known what was going on earlier, we might have been able to help.
So I would expect to see not another flimsy document with a couple of things about how golly, we're going to study something to do with housing, but I want to see the actual interrogatories. I want to know why we're asking things in particular. I want to what questions we're looking at and I really am very dissatisfied so far. I feel that the religious liberties report was a disaster and I don't want to see another disaster.

MR. BLACKWOOD: If that is accepted, the time line has to be totally changed, because what we have found is this kind of review of interrogatories or anything else needs -- doesn't happen instantaneously, so time would have to built in.

DR. LERNER: Mr. Chairman, I'd like to just address Commissioner Heriot's point. I do, in fact, have such a list, but it's -- I haven't shared it yet with anybody. But I have a list of the relevant legislation, the relevant data. It's not in any of these documents. The relevant agencies to whom interrogatories would have to be sent. The Staff Director hasn't seen it yet, so I'm kind of reluctant to share it, but I'll do whatever the Commissioners want. We are developing that specificity. As far as the interrogatories themselves, that I don't have yet,
but I have a pretty good idea of what we're going to be asking for, based on that document which is based on these three documents.

I would agree completely, specificity is critical and we're not going to -- otherwise, we're going to get lost in the swamps of all the material that's available on this subject. We're not looking alt housing discrimination, only mortgage credit discrimination. My staff has reminded me, make sure you tell them that. I said okay, I've told them that. Because they too are very, very concerned about specificity and I agree with that. But yes, I'm fairly close to that. I have a document. As I said, the Staff Director hasn't seen it yet, so I'm reluctant to say any more about it.

CHAIRMAN REYNOLDS: Okay, the General Counsel brings up a good point.

Commissioner Heriot, give us a description of the type of involvement you have in mind because it equals time.

COMMISSIONER HERIOT: Like, for example, all I can do is refer back to the religious liberty report because I don't have enough to go on here to say now I can't -- I can't tell from this because it's a report on credit discrimination. That, to me, is
not a narrow topic at all. That is a huge topic.

And with the religious liberties, if I had
what the structure of the research that was being done
on our -- out of the LEXIS database, had I learned
about that a year earlier, things would have been
really very different, because I think that part of
our research got us very little useful information.

CHAIRMAN REYNOLDS: I'm trying to get a
sense of whether the approach that you have in mind
fits comfortably within the timeline that we've set
out.

COMMISSIONER HERIOT: That's what I've
been saying about go narrow, look for some tiny little
issue within this, something that we actually can
handle within a year.

VICE CHAIR THERNSTROM: It's premature to
do that. It really is. Let us let this process go
forward --

COMMISSIONER HERIOT: It will be a train
wreck.

VICE CHAIR THERNSTROM: And we can --

COMMISSIONER HERIOT: It will be an
absolute train wreck.

COMMISSIONER GAZIANO: One example that
Gail mentioned is whether Commissioners should review
interrogatories who want to review interrogatories. And it may or may not affect the timeline in a significant way. I certainly concede General Counsel's point of the timeline, but I think whether we need to take a formal vote on it or not, some of us may see some problems or offer some advice on the interrogatories.

COMMISSIONER YAKI: Well, if I might.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Just --

CHAIRMAN REYNOLDS: I'm looking for wisdom.

(Laughter.)

COMMISSIONER YAKI: Wisdom, I don't know -- three and a half hours of sleep for six months, probably not there right now.

CHAIRMAN REYNOLDS: All right, give it your best shot.

COMMISSIONER YAKI: I would say this. I think the concern I have overall about the report is about the time lines because certainly I would suspect that some of the interrogatories are going to some agencies whose priority right now is not answering our questions, but figuring out how to bail out the economy, whether it's FDIC, whether it's Treasury,
whether it's -- we're talking about people for whom their major task is to figure out what to do with the $700 billion, how to get it out into the marketplace. I mean there are certainly agencies that have some responsibility and oversight over what happened that we need to ask questions to and they're the ones right now trying to bail the country out of the financial mess that we're in right now.

That is my major concern. So when you add on to that the timelines of reviewing the interrogatories, etcetera, I mean there may be some merit to that and I also understand what it means in terms of the timeline. These would have to be something that would have to be done rather quickly and I think nonbinding. I think that we could offer comments, but ultimately in the discretion of either the Chair, in consultation with the Staff Director, or whoever, what suggestions be offered may or may not be incorporated in order to meet the deadline. I would hate to see that slow it down, because otherwise you get into back and forth, back and forth and back and forth.

CHAIRMAN REYNOLDS: That was the wisdom I was looking for. Thank you very much.

VICE CHAIR THERNSTROM: Mr. Chairman?
CHAIRMAN REYNOLDS: Staff Director, then
Vice Chair --

MR. DANNENFELSER: I would tend to agree
with Commissioner Yaki's point there. I think that we
can, as we develop these interrogatories, we can send
out the drafts to the Commissioners and then invite
feedback. Right now, we are looking at a December 1
timeframe to try to get those interrogatories out and
as General Counsel noted earlier, we are already
several months behind where we ideally would be in
terms of starting this process. So there is concern
about that and people have noted also you're up
against the holidays in December and the New Year and
the transition and all kinds of things, not to mention
the points that Commissioner Yaki made about getting
the money out the door and so on. So we have lots of
hurdles that we'll have to deal with, but I think if
we do it in the framework that you just described,
that we -- as they come available, that we send them
out to the Commissioners and then invite feedback and
then I would -- the idea of consulting with the
Chairman and going forward from there, I think that
would be a good way to try to resolve these competing
concerns.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.
VICE CHAIR THERNSTROM: Kim Schuld has just informed me, I didn't know that, that in our AIs, that our AI specify Commissioners have a chance to look at the interrogatories before they go out. Is that your understanding too, Mr. Staff Director?

MR. DANNENFELSER: I'm not aware of the particulars on that point. Maybe the General Counsel --

CHAIRMAN REYNOLDS: We'll pass the hot potato to the General Counsel.

(Laughter.)

MR. BLACKWOOD: Last year, I don't know whether the interrogatories went out to the Commissioners or not.

COMMISSIONER HERIOT: I never saw them.

DR. LERNER: They did not as far as I'm aware. Excuse me, I'm sorry.

CHAIRMAN REYNOLDS: Okay, folks, we have a set of AIs that govern how we do business and when we proceed and whatever activities someone should have the responsibility for looking at the AIs and confirming that we are acting in accordance with the AIs.

VICE CHAIR THERNSTROM: And we will do so.

CHAIRMAN REYNOLDS: Yes, but it's just
somewhat of a concern that someone doesn't know the answer.

COMMISSIONER GAZIANO: And that we didn't do so last year.

CHAIRMAN REYNOLDS: Right, so bottom line is if the AIs require us to distribute the interrogatories before they go out, then that is what we shall do, unless we change the AI.

COMMISSIONER GAZIANO: I would hope we would do it whether the AIs are clear on that or not, but I don't mind Commissioner Yaki's suggestion that the time table be honored in this regard, that they be advisory. I delegate my share of authority to the chair to work with the Staff Director and General Counsel on that. I don't know that we need to take a vote on every -- that might have been ideal, so we'll think about that for next year.

CHAIRMAN REYNOLDS: Okay, folks, where are we?

VICE CHAIR THERNSTROM: We need to take a vote on this.

COMMISSIONER GAZIANO: Okay. Before I vote, I want to know the content of -- I would like this document refined and revised by the next meeting to take some of these -- to reflect some of the
discussion we've had from General Counsel and Dr. Lerner and to hopefully pair down some of the overly broad and what I see as unreasonable --

CHAIRMAN REYNOLDS: Okay, how about this? Dr. Lerner, Mr. Blackwood, Mr. Staff Director, please work on this document so that it reflects these --

MR. BLACKWOOD: The problem with these conversations is I haven't heard from six of the Commissioners about whether this should be broadened or this should be narrowed.

CHAIRMAN REYNOLDS: No, no, no, where you've heard consensus, that is where the changes should occur. For example, Todd's recommendation that that phrase will address be softened so that it's may address. Language in there, making it clear that this document shall be revised by the Commission.

COMMISSIONER GAZIANO: I'd like to hear from the other Commissioners too, actually, whether they --

CHAIRMAN REYNOLDS: Hold on, Commissioner Heriot's up next.

COMMISSIONER HERIOT: It just -- I can understand the notion of gosh, we're not really sure what the report is going to look like in the end, but
my guess is -- not guess, I'm pretty sure that if we do something as broad as what this suggests at this point we are going to produce a document that I won't vote for. That it will have flaws in it that will not allow me to vote for it and I will be much tougher next year than I was this past year. I figured in the end we had to get something out, but I'm not going to vote for another report that's even remotely like that.

So what I would suggest is that we have a number of hypotheses as Todd has called them, things that we might task, things that may pan out to be -- any one of them may turn to be the whole report, but we are going to look at the following questions. I want them narrow enough to where I think we actually have a prayer at turning out a report based on those hypotheses and it may be that some of them won't pan out and we'll just throw those out, but if we have five or six of them, some narrow pursuit in this area, we can report back on.

CHAIRMAN REYNOLDS: Okay, a few comments. Any Commissioner, if they want to vote against the report, that's their prerogative. You can vote for it. You can vote against it.

COMMISSIONER HERIOT: I know. That's what
I said.

CHAIRMAN REYNOLDS: Well, we all know it, and you've said it several times during this meeting. We're trying to work through this and this is difficult because we have different approaches, different methodologies and different expectations taking a hard line this early in the process, I don't think is helpful. So that's one comment.

COMMISSIONER HERIOT: It's better than having to vote against it at the end and not having told people.

VICE CHAIR THERNSTROM: We're not going to be in the same boat we were last time. We are going to have these reports regularly.

CHAIRMAN REYNOLDS: You'll have regular updates. We understand that this is subject to change. We now -- now we are sure now that the interrogatories will not go out until the Commissioners review them. This is not last year. This is -- I understand the feelings surrounding the process that we used. We didn't do a good job, but to assume that this is going to land in the same place as the others despite the fact that we are making changes to the process.

COMMISSIONER HERIOT: Well, I think we're
making those changes precisely because we're raising a
fuss today.

VICE CHAIR THERNSTROM: Okay, but we are
making changes. Is it possible to have a vote?

COMMISSIONER GAZIANO: I'd like to ask
Commissioner Yaki a question first. On page two of
the whatever we call it, the memorandum, the last
phrase of the last sentence of that page says "and
will examine any evidence" -- well, actually second to
last sentence, "and will examine any evidence that
minority homeowners in particular have been unfairly
targeted by any lender or lending policy."

I think that was added at your request, if
I remember from the last meeting. Do you still care
about that issue?

CHAIRMAN REYNOLDS: I can answer that.
Yes.

(Laughter.)

COMMISSIONER GAZIANO: Is that accurate?
COMMISSIONER YAKI: I defer to the wisdom
of the chair.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: So what I would
like and then as an example of what Commissioner
Heriot was talking about, the hypothesis is how are we

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going to test that? What evidence are we going to try
to obtain to test that particular question which is
different from some of the others, all worthy, but if
we're committing today that we're -- that's one of the
issues we're going to test, I'd like to know how,
whether -- and whether we're serious about that. I
hope we are.

CHAIRMAN REYNOLDS: A legitimate question
posed by Commissioner Gaziano. I'm sure you have an
answer.

COMMISSIONER GAZIANO: No, he -- I'm
asking whether he still cares. I'd like the hear from
the staff how they are going to test that. And if
not, that's going to be difficult and we ought to
debate that at the next meeting.

CHAIRMAN REYNOLDS: Well, how about this,
there's some issues that don't lend themselves to
being tested, but that doesn't mean that these issues
aren't worthy of discussion.

COMMISSIONER GAZIANO: And I want to know
how we will examine any evidence. That implies we're
going to try to collect the evidence.

CHAIRMAN REYNOLDS: It's implied it's
collected evidence. There are several reports we
already have.
COMMISSIONER GAZIANO: I'd just like that specificity to know -- I hope we do take that question as seriously as we're taking the other potential questions. Some of them may or may not pan out within our expertise and I hope we as Commissioners are willing to help focus the statutory report as we go forward and say yes, we'd like more energy put in these two hypotheticals or hypotheses because they seem to be panning out. What more can we do on this one? We can abandon the other one. So that as we're going forward, we're trying to say what we're really interested in. So the final report is something that we're all really proud of.

CHAIRMAN REYNOLDS: Mr. Staff Director, then we vote.

MR. DANNENFELSER: One of the things we're planning in the context here is to have a briefing that would help inform the statutory report hopefully in February and one of the things we could do was regarding predatory lending, for instance, as we can look for panelists who have done research in that area to come to us and present their findings --

COMMISSIONER TAYLOR: Or competing panelists --

MR. DANNENFELSER: Or competing panelists
on the issue of predatory lending and certainly on the
whole question of minority lending that that was
delineated here in the discovery plan.

And we would welcome recommendations from
the Commissioners as to who some of those panelists
might be. Ashley has one.

COMMISSIONER TAYLOR: Is this our only
briefing in the first quarter or the second quarter,
rather? It is.

We haven't voted on it yet. That's part
of our recommended plan.

CHAIRMAN REYNOLDS: That's fine.

COMMISSIONER TAYLOR: We don't have one
for the second quarter at this point.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: That will be it.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: And I guess as a
general comment, I agree with all of the comments made
today and --

CHAIRMAN REYNOLDS: How could you?

COMMISSIONER TAYLOR: Well, because what

CHAIRMAN REYNOLDS: He wasn't listening.

(Laughter.)
COMMISSIONER TAYLOR: What I thought I heard was that we need to further refine what we have before us and so what I would say is that the mistake I think we made in the past as a body is that we did not actively manage that process of refining the statutory report.

CHAIRMAN REYNOLDS: It was saying praise the Lord --

COMMISSIONER TAYLOR: We put it on auto pilot. And what we're saying this time is that we're not going to put it on auto pilot.

CHAIRMAN REYNOLDS: More involvement --

COMMISSIONER TAYLOR: Every month we come back and we burn away what appears to be illusory or something we can't get our arms around. And so the reports we receive from the staff next month will help us decide what we need to jettison, what we need to focus on, what we can't do and so this gives us a starting point, but the burden is on us at our meetings, I think, to set aside an hour, hour and a half, if necessary, to further refine so that nearer the process we have something we can all be proud of.

So by that I agree with everyone.

CHAIRMAN REYNOLDS: Okay. All right, all in favor, please say aye.
(Ayes.)

Dissents? Abstentions?

COMMISSIONER YAKI: I abstain.

COMMISSIONER HERIOT: I abstain.

CHAIRMAN REYNOLDS: Okay, let the record reflect that Commissioners Yaki and Heriot abstained.

Pete?

COMMISSIONER KIRSANOW: I said aye.

CHAIRMAN REYNOLDS: Okay, very good.

Commissioners Yaki and Heriot abstain. The motion passes.

Next up, okay, I move to recharter the Illinois State Advisory Committee.

VI. STATE ADVISORY COMMITTEE ISSUES

1. Recharter of the Illinois State Advisory Committee

CHAIRMAN REYNOLDS: Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director: Barbara Abrajano, Nancy Andrade, David Baker, Martin Castro, Sunny Chico, Yvonne Coleman, Louis Goldstein, Sandra Jackson, Reverend Kantzavelos, Herbert Martin, John Mauck, Kamran Memon, Gordon Quinn, Cynthia Shawamreh, Betsy Shuman-Moore, Anthony Sisneros, Lee Walker and Farhan Younus.
I also move that the Commission appoint Martin Castro as Chair of the rechartered Illinois State Advisory Committee. These members will serve as uncompensated government employees, and the Commission appreciates the hard work they will no doubt contribute to this State Advisory Committee. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork -- fellow, gals, whisper quietly -- the Commission authorizes the Staff Director --

VICE CHAIR THERNSTROM: I don't being mind called a fellow.

CHAIRMAN REYNOLDS: There was a gal in there too -- authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

VICE CHAIR THERNSTROM: Second.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections? Any abstentions?

I also move that the Commission recharter the Minnesota State Advisory Committee. Under this motion, the Commission appoints the following
individually to that Committee based on the recommendation of the Staff Director: Robert Battle, Lester Collins, Kenneth Doyle, JoAnn Enos, John Gilbertson, Kirk Kolbo, Velma Korbel, Teresa Nelson, Shamus O'Meara, Jeremiah Reedy, Craig Taylor, Neva Walker, Lawrence Wohl, Michael Yang.

I also move that the Commission appoint Mr. O'Meara as chair of the newly rechartered Minnesota State Advisory Committee. These members will also serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment.

Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER MELENDEZ: Hang on a second. My understanding, there were six returning people from the last that were up for reappointment, but we only recommended four. My question was about the two that wanted to be reappointed, but for some reason we said that we don't need them any more. I'm not sure - - I read that six wanted to come back, but only four were actually reappointed or recommended for reappointment.
CHAIRMAN REYNOLDS: Mr. Staff Director?

MR. DANNENFELSER: In general, when we looked at some members that we had, we felt that we were a little bit light on members with academic expertise and social science research, statistical analysis, and technical writing skills, so the Commission staff undertook additional recruitment for these qualities and just felt that by reaching out and bringing in some of these new members we would broaden the scope of the Commission in keeping with the AI and the Lean Six Sigma process. So it was not a negative about those two individuals, but we just felt that there were some other areas of expertise that we needed to bring to bear that were not there or with those particular members, as far as -- so we didn't reach out to further approval of those two.

CHAIRMAN REYNOLDS: Question?

COMMISSIONER MELENDEZ: Could you comment on the chair, who that was and something about his civil rights background?

CHAIRMAN REYNOLDS: That would be --

MR. DANNENFELSER: Shamus O'Meara. He's the chair of the Minnesota Governor's Council on Developmental Disabilities. He's also an education lawyer with Johnson & Condon and a board member of the
Minnesota Disability Justice Foundation. This is an area that we've been asked to take a stronger role in the area of disabilities and it was felt that to have someone with this kind of background would be a good thing to have as chair at one of our Advisory Committees.

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER MELENDEZ: Just a question.
CHAIRMAN REYNOLDS: Sure.
COMMISSIONER MELENDEZ: I looked at returning people -- John Gilbertson, he was basically along the same lines of disability experience, similar to the chair? Is that right?

MR. DANNENFELSER: I believe there's some overlap there. I don't believe it's quite as specialized as Mr. O'Meara is in the area of disabilities, but that was an area that he had a broader reach in terms of the Affirmative Action Committee --

CHAIRMAN REYNOLDS: This is Gilbertson?

MR. DANNENFELSER: Gilbertson, yes, so he did have some that overlapped into this area, but I believe that Mr. O'Meara had more specialized background in that area.

COMMISSIONER MELENDEZ: The other
question, as far as I know, some of the applicants
didn't really check the box on political affiliations.

Is that okay to do or are we trying to balance this
out? Two of them, Velma Korbel didn't check party
affiliation and Craig Taylor didn't either. I was
just wondering is that something we really don't care
about or --

CHAIRMAN REYNOLDS: Well, I would be
loathe to have that as a requirement. If someone
feels that they don't want to reveal their party
affiliation, although I do understand the concern that
this information is needed in order to ensure that
there is a fair amount of diversity in terms of
political affiliation.

COMMISSIONER YAKI: Sure, but we can do
that checking ourselves, can't we? It's very simple
to get -- it's a public record under the Voter
Registration Act to determine whether or not someone
has registered as a Democrat, Independent, or
Republican.

COMMISSIONER GAZIANO: For states that
require such disclosure, some states don't.

CHAIRMAN REYNOLDS: Well, I would suggest
that we -- unless this is a trend, and I don't believe
it is, if this is a one-off issue, I say that we just
continue with our current approach, but if this becomes a trend, we'll revisit the issue.

COMMISSIONER YAKI: I actually have a statement to make on that which is it seems that some of the recommendations of certain individuals were the ones who deliberately did not check their affiliations, so I would --

CHAIRMAN REYNOLDS: A conspiracy?

COMMISSIONER YAKI: I'm just making a point. So like I'm going to vote no on this, so let's just get the vote over with.

CHAIRMAN REYNOLDS: Okay, let's give him 40 seconds or so.

MR. DANNENFELSER: Mr. Chairman, on that point, there are four Republicans, four Democrats, four Independents, in terms of the political affiliation of people on the Committee, stated political affiliations. We did go back to these two individuals and requested -- you might note too that Velma Korbel declined to identify her religion, which is also at times a sensitive personal subject of people. So I would associate myself with the comment the Chairman made that if this was a trend, it certainly would not be something that we would want to do because it is important in terms of the political
balance of the Committee. It is something we strive
to do is have political balance.

CHAIRMAN REYNOLDS: Not balance.

MR. DANNENFELSER: Political diversity,
right, but we did feel that these people -- Velma
Korbel is Commissioner of Minnesota Department of
Human Rights, YWCA, Minneapolis, and so she's had a
lot of different involvements in the area of human
rights, so we did make the judgment that she was
someone who would add value to the Committee. But as
a matter of general practice, it is important for us
to get that kind of political affiliation.

CHAIRMAN REYNOLDS: Okay, folks, let's
vote.

All in favor, please say aye.

(Ayes.)

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Abstentions?

VICE CHAIR THERNSTROM: I'm changing mine
to an abstention since I paid no attention to that.

CHAIRMAN REYNOLDS: Okay, the ayes have
it. Okay, future agenda items.

VII. FUTURE AGENDA ITEMS

CHAIRMAN REYNOLDS: Okay, I move that we
adjourn.
VIII. ADJOURN

CHAIRMAN REYNOLDS: Second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Are you going to object?

COMMISSIONER YAKI: Absolutely not.

CHAIRMAN REYNOLDS: All in favor, please say aye.

Okay, folks. See you next trip.

(Whereupon, the above-entitled matter was concluded at 11:31 a.m.)