U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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OPEN SESSION

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Friday, December 3, 2010
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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 11:12 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, ESQ., General Counsel, OGC

TERESA BROOKS

MARGARET BUTLER

CHRISTOPHER BYRNES

IVY DAVIS

DEMETRIA DEAS

LILLIAN DUNLAP

PAMELA DUNSTON, Chief ASCD

TINA LOUISE MARTIN, Director, Office of Management

ALFREDA GREENE

LATRICE FOSHEE

PETER MINARIK, RPCU

JOHN RATCLIFFE, Chief, Budget and Finance

EILEEN RUDERT

DAVID SNYDER

KIMBERLY TOLHURST

VANESSA WILLIAMSON

AUDREY WRIGHT
COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COULTEN

ALEC DEULL (via telephone)

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD
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CHAIRMAN REYNOLDS: Okay. This meeting will come to order. This is a meeting of the U.S. Civil Rights--Commission on Civil Rights. It's 9:30 a.m., Eastern Standard Time, on December 3rd, 2010.

All commissioners are present. First off, is Commissioner Kirsanow on the line?

COMMISSIONER KIRSANOW: I am.

CHAIRMAN REYNOLDS: All commissioners are present, with the exception of Commissioner Kirsanow--

COMMISSIONER YAKI: It's snowing in Cleveland, Peter?

COMMISSIONER KIRSANOW: Just a few flurries.

CHAIRMAN REYNOLDS: Okay. Commissioners are present at 624 9th St. NW. Everyone is at headquarters, with the exception of Commissioner Kirsanow, who's participating by phone. First item on the agenda is the approval of the agenda.

III. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: I move to approve the agenda. Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Okay. I would like to
make a few amendments to the agenda. The first would involve adding as roman numeral III, to appear before State Advisory Committee issues, which would become numeral IV, an item on management and operations to discuss continuity of operations at the Commission through the impending transition period.

Then, I'd like to amend the--the item on the State Advisory Committee issues to include votes to re-charter the, the Idaho, Alaska, and Louisiana State Advisory Committees.

The packets for those states were distributed with your reading materials and a staff Director sent an email to all Commissioners to notify you that we would consider those today.

I would also like to add for approval the application of the candidate whose material we received yesterday to fill the Louisiana S.A.C. We would take those items up after the approval of the Wisconsin S.A.C. and before the update on the status of the remaining S.A.C. charters. Is there a second?

COMMISSIONER GAZIANO: Second.
CHAIRMAN REYNOLDS: Discussion?
COMMISSIONER GAZIANO: Should we vote on that before further amendments? Because I would like to offer an Amendment to the agenda as well--Okay.
That's fine.

CHAIRMAN REYNOLDS: Okay, okay--let's vote on this crop and then we'll do the second crop.

COMMISSIONER HERIOT: I've got some, too.

CHAIRMAN REYNOLDS: Okay. All those in favor, please say aye. Objections? Abstentions?

COMMISSIONER YAKI: I abstain.

CHAIRMAN REYNOLDS: With the exception of Commissioner Yaki, who abstains, the Commission, the, the Commissioners vote in favor of the motion.

Additional amendments? Commissioner Yaki?

COMMISSIONER YAKI: Yes. I would like to remove from the agenda the eminent domain briefing concept paper. I think that we've already approved in the last meeting two other potential briefings and I think that given, given our budget constraints and the fact that we had in the past year or so, dealt with the fact that we needed to prioritize and, our, our budget.

In terms of how much, how much time we could devote toward briefings and followup, that we are approving essentially a third new briefing, given the fact that the Commission will be changed substantially by January of next year. And I don't think it's a, it's a good use of staff time and
resources to go spinning down a road.

If, if the new Commissioners feel that they would like input as well in terms of how to prioritize what they would like on, on the agenda for the Commission for the, for the coming year.

CHAIRMAN REYNOLDS: Commissioner Thernstrom?

VICE CHAIR THERNSTROM: I, on the question of the eminent domain, I'm in the, that's an issue near and dear to my heart when I've been on the institute for justice Board now for more than ten years.

But I did talk to the President of IJ yesterday about this topic and he said, he said a couple of things, the most important thing of which was, gee, if you would have, have, have this--

COMMISSIONER HERIOT: Point of order. This goes to substance of, of the argument, not to the agenda item.

VICE CHAIR THERNSTROM: Well, I, I, it does go to the question of whether to even discuss it as a, as a--

COMMISSIONER HERIOT: It is a discussion.

VICE CHAIR THERNSTROM: Well--

COMMISSIONER HERIOT: Point of order--
CHAIRMAN REYNOLDS: Let's, let's, vice chair, please continue.

VICE CHAIR THERNSTROM: He said, gee, well if you would have this briefing three or four years ago, would have been a meaningful topic. But at this point, it's not. And wouldn't really further the kind of National debate on eminent domain which he says has really disappeared.

The issue has come and gone for a lot of reasons, including IJ's impact but also because of the economy. He said it's a nonissue by now. And, I, you know, I think, I think we should factor that in in considering whether to, as again, as interested as I've been in this topic.

CHAIRMAN REYNOLDS: Is that your opinion as well?

VICE CHAIR THERNSTROM: Yes. I think--well, I think I hold the same impression as IJ. As, I think, they have been, you know, they brought the Kilo case, they opinion lead National leaders on this issue, and if he says at this point--

CHAIRMAN REYNOLDS: Mic.

VICE CHAIR THERNSTROM: Oh, I'm sorry. And if he says at this point we, he can't think of any way in which the Commission could contribute to further
understanding of this issue or further, you know, pushing it nationally, I, I have to respect that.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Again, to discuss this, at the, feelings, its taken off the agenda, it's taken off the agenda. But a discussion of this is out of order.

VICE CHAIR THERNSTROM: Well, my argument was for taking to off the agenda.

CHAIRMAN REYNOLDS: Any more comments?

COMMISSIONER GAZIANO: I'm not convinced by that, I'd like it on the agenda. But let's vote.

COMMISSIONER HERIOT: Could we have a second for the motion?

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: I'm sorry, what was the motion?

COMMISSIONER YAKI: Second to my, second to my motion to--

VICE CHAIR THERNSTROM: I second it.

CHAIRMAN REYNOLDS: Okay. All those in favor, please say aye. Objections?

COMMISSIONER TAYLOR: Object. No.

COMMISSIONER HERIOT: No.

COMMISSIONER KIRSANOW: No.
COMMISSIONER TAYLOR: No, we just want to, this is a vote to take it off the agenda?

COMMISSIONER GAZIANO: I voted in favor of the motion.

CHAIRMAN REYNOLDS: We have three votes in favor of it, the remaining Commissioners were against it. The item stays on the agenda. Any other amendments? We're closed amendments. Commissioner Gaziano?

COMMISSIONER GAZIANO: I have about three minor housekeeping clarification issues that may receive unanimous consent or may need motions regarding the new black panther report that has now been posted on our website and is being prepared for printing.

I'd like to put a discussion of those items on the agenda. I would suggest in program planning maybe after the discussion of the eminent domain concept paper.

CHAIRMAN REYNOLDS: Okay. Anything else?

COMMISSIONER GAZIANO: That's it. Should we vote on that one separately?

CHAIRMAN REYNOLDS: Okay, I second it. Discussion? All those in favor, please say aye. Opposition?
COMMISSIONER YAKI: No.

COMMISSIONER MELENDEZ: No.

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I am in favor.

CHAIRMAN REYNOLDS: Okay. The motion passes. Commissioners Yaki, Melendez, and Thernstrom voted against the motion. Any other amendments?

COMMISSIONER HERIOT: I've got, I've got a couple here. I would like to amend the agenda to include consideration of the motion to amend the findings and recommendations in the English language report that we did last time.

Some changes were made at the last minute to that, and upon conferring with Commissioner Kirsanow, we've agreed that they weren't quite what we, what we wanted to say.

And so I would like to move to, to include a motion to amend those findings and recommendations. Do you want me to make the other motion at the same time? There's two things I wanted--do you want to attach to something?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: The other would be to amend the agenda to include a discussion of a possible
letter on the Akaka bill to send to members of the Senate.

COMMISSIONER YAKI: Another one?

VICE CHAIR THERNSTROM: Is the Akaka bill still a bill?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: It was reintroduced, a new version, two weeks ago.

COMMISSIONER HERIOT: A new--a very new version was, with quite a bit of new material in it, was reintroduced a couple of weeks ago and the belief is that it is going to be appended to an omnibus spending bill next week or the week after.

CHAIRMAN REYNOLDS: Okay. I second the motion. Additional discussion? All those in favor, please say aye. Those in opposition?

COMMISSIONER YAKI: Oppose.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Aye.

CHAIRMAN REYNOLDS: Okay. We have--oh, vice chair Thernstrom?

VICE CHAIR THERNSTROM: And I'm abstaining.

CHAIRMAN REYNOLDS: One abstention, vice chair Thernstrom. Two votes in opposition, Commissioners Melendez and Yaki. The remaining
Commissioners voted in favor of the motion, the motion passes.

VICE CHAIR THERNSTROM: I mean, this was just a proposal to send a letter?

COMMISSIONER GAZIANO: To discuss sending a letter.

VICE CHAIR THERNSTROM: Discuss sending a letter.

CHAIRMAN REYNOLDS: Okay. On Wednesday, Commissioner Heriot circulated some minor amendments to the recently adopted English language briefing report, findings and recommendations. Commissioner Heriot, would you like to walk us through these proposed amendments?

COMMISSIONER HERIOT: Let me see if I can find them here. Basically, the proposed amendments go through each time we referred to--gosh, I don't have it here--do you have it?

COMMISSIONER GAZIANO: I have it.

COMMISSIONER HERIOT: Okay. Yes. Rather than, than discriminating or harassing or embarrassing, we have for each of those occasions harassing, embarrassing, or excluding employees or applicants for employment. The reason for that is that harassing and embarrassing would be a sub, a subgroup
that comes within discriminating, since the statute only bands discrimination.

We can't talk about, about discriminating or harassing or embarrassing, because harassing and embarrassing can be included as discriminating. And they're illegal only up here, they are a form of discrimination.

I do not believe that any form of discrimination is possible as a result of, of English only. I think we talked, we're talking about here, the kinds of discrimination that might actually come up in connection with English only in the workplace, being harassing, embarrassing, or excluding employees or applicants for employment.

I think it's better this way and it's just the same, it's the same change in three different places, I think.

CHAIRMAN REYNOLDS: Okay. I second it.

Discussion?

COMMISSIONER YAKI: I am totally at a loss here. Is basically Commissioner Heriot saying that if you, if you harass or embarrass someone, it's okay?

COMMISSIONER HERIOT: No. I'm saying that if you harass or embarrass someone, it isn't okay.

COMMISSIONER YAKI: Then why did you take
out the word discrimination?

COMMISSIONER HERIOT: Because discrimination is the overarching category. Because otherwise, it was saying discriminate or harass or, the statute only applies to discrimination.

CHAIRMAN REYNOLDS: And, and this is the, if you recall, there was a discussion at the last meeting, there were some minor changes made, I believe they were offered by Commissioner Kirsanow--

COMMISSIONER HERIOT: Yes. Commissioner Kirsanow was trying to fix a problem that was indeed a problem, but I think the way he fixed it was not helpful.

CHAIRMAN REYNOLDS: Well--

COMMISSIONER YAKI: I think, I think, you know, to the, to the, let me just respond to this. I mean, I think I said it the last, at the last meeting. This idea that we're going to rewrite section 1606.7 to create a, a what I think is a lesser standard for, for people who are filing claims that English only policies discriminate against them on the basis of National origin is, I think, unshown in our record and are very feeble and very thin record.

I think that the idea of what constitutes harassing and embarrassing behavior is very loose, and
I don't understand why we're, we're treading in this territory so cavalierly when we clearly had a hearing that barely touched upon the, this, that particular, that particular section and it's application.

And instead, We're simply using that to sort of go after the way the law is enforced rather than asking questions about what is the law intended to do, which we never really did in, in that hearing that we had.

CHAIRMAN REYNOLDS: Other comments?

VICE CHAIR THERNSTROM: Look, Mr. Chairman, I wasn't here for the last, obviously, for the last meeting, but I--employers who wish to adopt English only rules just for the purpose of harassing or embarrassing employees, well, I, it's a totally opaque statement to me, what, under what, what would be the evidence that an employer would purposefully, intentionally adopt an English only rule for no other reason than harassing or embarrassing employees?

And, and what constitutes embarrassing and harassing? I'm, I'm lost on this. I mean, when English only rules are adopted, they're never for that reason. They're, you know, they're a business judgment, good or bad.

Calling discriminatory or not, but this
seems to me, this is a language that I'm, I'm having
trouble with.

CHAIRMAN REYNOLDS: Other comments? All
right. All those in favor, please say aye.

Abstentions?

COMMISSIONER YAKI: Opposed. I'm opposed.

CHAIRMAN REYNOLDS: Okay. One abstention.

Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I guess I'll
abstain on this since I wasn't here last time. But, as
I say, I can't understand this language.

CHAIRMAN REYNOLDS: And, Commissioner Yaki
opposes. So we have two abstentions, Commissioners
Melendez and Thernstrom. One vote against the motion,
Commissioner Yaki. The remaining Commissioners vote in
favor of the motion. The motion passes. Is there any
other changes, are there any other changes?

COMMISSIONER HERIOT: They're all on this
sheet.

COMMISSIONER GAZIANO: Those were on two--
did we just vote on two? On, both together? Both
findings together?

COMMISSIONER HERIOT: I thought we were
voting on all, all, the same, it's the same change in
three different findings and recs.
II. PROGRAM PLANNING

PANEL 1: APPROVAL OF SCHOOL CHOICE, THE BLAINE AMENDMENT, AND ANTI-CATHOLICISM BRIEFING REPORT

CHAIRMAN REYNOLDS: Okay. Okay. Okay. On November 26th, the staff directed distribute the final draft of the school choice, the Blaine Amendment, an anti-Catholicism briefing report. I move that the Commission approve for publication part A of the draft enforcement report produced by staff and reflecting Commissioner input on school choice, the Blaine amendments, and anti-Catholicism, part A, as distribute in draft form to Commissioner contains a brief overview and summary of the issue and why the Commission chose to conduct this briefing.

A summary of the proceedings consisting of synopses of eight panelist's oral statements during the briefing and a synopsis of the, the question and answer sessions, as well as copies of the panelist's written statements. Under this motion, if the majority of the Commission votes to adopt part A of the briefing report, the Commission will then open discussions on part B.

If part A fails to obtain a majority of votes, the discussion of part B, becomes moot. Is there a second?
COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER GAZIANO: I'm not entirely comfortable with the proposed findings and recommendations for this report. I wasn't on the Commission when this briefing took place, but I do think the testimony is valuable and I'd like other Commissioners input on this.

But I think what I would suggest rather then try to slog through the findings and recommendations individually is that we post the testimony prominently on our website together with the transcript of the hearing and that we not move forward with formal adoption of and publication of this report.

In part because, it's an important issue, but in part because it's somewhat of an old report. Are other Commissioners agreeable with that?

CHAIRMAN REYNOLDS: Vice chair Thernstrom?

VICE CHAIR THERNSTROM: I definitely am agreeable with that. This is, I mean, it's very telling, this briefing was held before you were even on the Commission. And--

COMMISSIONER GAZIANO: And I've grown old since I've been on the Commission.
VICE CHAIR THERNSTROM: Hey, I've grown, I've grown older. I, I, you know, the age of the, the amount of time lapsed really bothers me as well and I'm perfectly happy with your recommendation. But I would like to add a sentence of explanation saying, this briefing was held on the following date.

So, you know, it's more than three and a half years old--

COMMISSIONER GAZIANO: I assume that would be the, plain somewhere anyway--

VICE CHAIR THERNSTROM: No, it's not, because, because We're not, We're no longer putting these, I believe, the dates of the briefings, briefings is not correct.

COMMISSIONER GAZIANO: My motion was to include somewhere prominently on our website the testimony and the transcript of the briefing--

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER GAZIANO: --which would include the date thereof--

VICE CHAIR THERNSTROM: Okay. We should include the date, fine. That's fine. Okay. I, I am in agreement with this. It's too old--

COMMISSIONER HERIOT: But that's already up, right? The transcript is already up--
COMMISSIONER GAZIANO: The transcript is up and ordered but no one would find it, no one would see that it's--

COMMISSIONER HERIOT: Yes, it's not marked, it needs to be marked by what it is.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: This briefing is so old, we would basically have to burn white pieces of paper in the chimney in order to get people to notice it. So, I, I would, I would, I would, actually, I am speaking in support of Commissioner Gaziano's motion that we just take the testimony, get it out there, and move on.

CHAIRMAN REYNOLDS: Any other comments?

MR. BLACKWOOD: The testimony of statements is something you're talking about, because I wasn't used.

CHAIRMAN REYNOLDS: Okay. Let's be precise. What do we, what are we talking about?

COMMISSIONER GAZIANO: The written statement--

CHAIRMAN REYNOLDS: Testimony, written statements, the hearing--the hearing transcript all together in one nice little link or something.

COMMISSIONER YAKI: Essentially,
essentially part A, right?

COMMISSIONER HERIOT: No, part A is not, not--

COMMISSIONER GAZIANO: There's a little extra summary, but I don't think, know that we need to--

COMMISSIONER HERIOT: Well, wait, part A--part A is the report.

COMMISSIONER YAKI: Forget it. Do it Todd's way.

VICE CHAIR THERNSTROM: I agree.

COMMISSIONER GAZIANO: Boy, I like the sound of that.

CHAIRMAN YAKI: Just remember that, Todd. It's going to be very rare--

VICE CHAIR THERNSTROM: Or, come through with more things that everybody can agree on.

CHAIRMAN REYNOLDS: Before, before any Commissioners decide to change their mind, let's, let's vote. All in favor, please say aye. Any abstentions? Any votes against the motion, as--well, any votes against the motion? The vote is unanimous.

COMMISSIONER YAKI: You should probably send a note to Jennifer Braceras saying, sorry, we'd like you to make a statement but we can't. This is her
briefing.

CHAIRMAN REYNOLDS: Okay. I move that the
next up is the eminent domain briefing concept paper
and scheduling of a briefing.

PANEL 2: APPROVAL OF EMINENT DOMAIN BRIEFING CONCEPT
PAPER AND SCHEDULING OF BRIEFING

CHAIRMAN REYNOLDS: I move that the
Commission approve a concept paper on the civil rights
implications of eminent domain abuse. This proposal
was distributed to Commissioners on Commissioner
Kirsanow's behalf by email this past Wednesday.

As a part of this motion, a briefing on
this topic would be held on the date of March 2011 in
person meeting, which is March 11--March 11th, 2011.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion? Vice chair
Thernstrom.

VICE CHAIR THERNSTROM: Okay, let me go
back to saying a few things more about this. Again,
Commissioner Kirsanow, I am wedded to the topic of
eminent domain. I mean, you know, it's been a huge
topic for the Institute for Justice.

Obviously, they were national leaders on
this issue. But, when the President of IJ tells me
that at this point a U.S. Commission on Civil Rights briefing would not in any way further--I mean, the, the movement is, has really come and gone.

That would not be, it would not be a contribution. I have to take that seriously. He had a couple of other things to say which is that, you know, the, the language of, of the IJ report victimizing the vulnerable is a little bit squishy.

I mean, we've got, yes, in the project areas, 58% minority on average as opposed to 45% in the surrounding community. But, there isn't here a kind of systemic--you, you can't look at the pattern of where eminent domain cases have been brought and argued. These are, this is clearly a case of disparate impact in general on minorities.

So, I've got a little bit of a problem on whether this is quite the topic for this Commission, again, as much as eminent domain cases have bothered me, more than bothered me--appalled me. So, I, I would like us to seriously consider whether this is a topic whose time has come and gone, and whether we shouldn't leave the door open for more profitable hearings in the future where we can have, really can have a National impact.

And, Chip Mellor was saying, again, you're
not going to have any National impact at this point
with this briefing. Too late.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: With due respect to
my friend Chip Mellor, I, I, I, I would be very
surprised if he would say those things. And, and I
may--

VICE CHAIR THERNSTROM: Well, I'm sorry--

COMMISSIONER GAZIANO: Let me, let me--I
didn't interrupt you.

VICE CHAIR THERNSTROM: Okay. But don't
accuse me of lying.

COMMISSIONER GAZIANO: No, I'm not accusing
you of lying, I'm just saying that maybe there's an
issue of interpretation. But I, I'm looking at the
Institute for Justice's website, Castle Coalition.
They are, continue to put out all sorts of very
interesting new--can you get this to reappear here? I
wanted to read one of their, their, their, their, new,
newest, new--new--why can't I--what do these fancy
phones do?

They continue to develop their website,
the Castle Coalition, which is singularly devoted to
this issue. They continue--one of their newest
entries, this new survey shows Americans still opposed
to eminent domain abuse.

    Now, it is possible that Chip Mellor believes that while it's extremely important to him and everyone else present that the Commission has nothing to contribute on that issue. But I think we're in a better position to judge whether the Commission is in a position to help on this issue.

    But I would also note that the briefing paper cites the amicus briefs of the NAACP, and the NAACP seem to be quite concerned that this was an important civil rights issue. And I think we're in a good position to determine whether we still have some bearing on this issue, that IJ and the NAACP and the Heritage Foundation and Ilya Somin and so many other people find very important.

    CHAIRMAN REYNOLDS: Commissioner Yaki?

    COMMISSIONER KIRSANOW: Mr. Chair?

    COMMISSIONER YAKI: I'll, I'll defer, I'll defer to the author. No, I'll defer to Peter.

    CHAIRMAN REYNOLDS: Okay. Pete?

    COMMISSIONER KIRSANOW: Thank you, Commissioner Yaki. I simply wanted to approve what Commissioner Gaziano said. I have a lot of respect for IJ but I do note that eminent domain, untethered from any implications related to this renewed act, is one
of their big concerns.

Now, having said that, is there a discriminatory effect of some of these eminent domain decisions? I don't know that. That's I think what we would like to find out. But there is evidence out there of that effect.

I know there are, Alabama S.A.C. chair thinks this is the biggest issue down there, and he has cited numerous occasions where it appears, where it is discriminatory intent, there was clearly discriminatory impact, of such decisions.

And, I think Commissioner Gaziano cited some scholarly work by others, Somin for example, and others who indicated that, you know, there may be some discriminatory concerns here, and what I think, what we'd like to do is deduce whether or not, deduce evidence as to whether or not that in fact is the case.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki and then Vice Chair Thernstrom.

COMMISSIONER YAKI: Yes, I just wanted to reiterate this point, we are, we have a, we have an agenda on management and operations to deal with the transition to what will be a different, a different Commission in terms of it's, in terms of it's makeup.
In the coming, in the coming weeks, we have issues that we're going to have to deal with probably in the near future regarding budgetary items and the budget for the Commission. I think that, that, this isn't, this is an item that, while I think probably has some merit, deserves to be discussed and debated amongst, with the new members in tow and not to basically be spending our money on briefings for the first three months of the year while these people are playing, are playing catch up.

This basically sets an agenda three months out for folks who are going to be here possibly in two weeks. So I think that, that this is premature. I think that it's unfair to them and to their willingness to be invested and participate in the Commission at a time when we have the opportunity and the ability to wait to move forward.

And, given the holiday season, et cetera, and I think that it, it's unfair, premature, and something that we need to, we need to look at from a total picture regarding our budget for FY 2011, because we're not too sure whether there may not be some retroactive cuts or what have you in whatever spending bills that may be coming down the road.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?
VICE CHAIR THERNSTROM: Number one, I am not in the habit of misrepresenting what other people say to me. I am scrupulous on that account, and so I accurately reported what Chip Mellor said to me, and I, as I always accurately report conversations.

I have no, there's nothing at stake for me in, in not, I am not opposed to holding the briefing. I just am raising legitimate questions, and because I have legitimate questions, I called Chip Mellor to discuss it with him.

Of course there's still a Castle Coalition, of course it's still an issue of, of interest and, in which by the way, has been a, of course, has in many ways put IJ on the, on the map.

And, and a lot of its supporters have, are very appreciative of the national role that IJ has taken here, and I mean, of course, they're not going to kill the Castle Coalition and they shouldn't. But, having said that, I, I mean, my question here is one of priorities, given what I heard from the President of IJ.

Am I opposed to having this briefing? No, I just think, you know, I would agree with Commissioner Yaki, let's put it in the mix down the road because of, of the message I get, got from Chip
Mellor, which is, you know, three years ago, this would have been great. Today, it's, the issue has kind of ground to a halt.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, would you support this if Chip Mellor had given you a different response--

VICE CHAIR THERNSTROM: Absolutely.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes, thank you, Mr. Chairman. My concern also would be, you know, it depends on how much time we have to actually hold this, if this is the first briefing of the new year.

I, I know one of the issues was, how many briefings are we going to have for the whole year. It's not like we're going to have one every month. I'm still, in relationship to the budget, which I would always try and get a handle on, how we're spending, that kind of dictated how many briefings we're going to have, because how much staff, whether or not we would have this briefing in March or April or even June, just depends on how many we're kind of looking at for the year.

And if we are thinking about new Commissioners would actually be in place in January,
you know, maybe they should weigh in to, you know, whether this briefing should go first or something else should arise to take its place. And, I think I'm kind of looking at, you know, all of us having input into what briefings we should push to the forefront.

We all had votes on it, I had certain ones. Everybody here, and then if, then if Commissioner Thernstrom was one of the main advocates on this and she's kind of pulling back away from it, then I'm kind of respecting the, you know, the, the chief advocate on this issue.

And I, I understand others have jumped on to kind of push this forward, but I, I just don't feel--I'd, I'd, I'd like to see some input from new Commissioners. I know that, you know, with my position, I talked to Senator Reid's Office, and they're going to have somebody, maybe in the next couple days, so that person should hopefully be on, right away. So that person hasn't been put in, but what, what briefings we start to see, kind of the, the new year. That's just my opinion. Thank you.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I just wanted to return to why we, We're trying to set up the briefings in the first place. Now, there is a risk that there
will not be a quorum for the next couple of months, and if we are going to have any kind of a meeting, the only kind of meeting we could have would be one where there is no Commission business. I think it makes sense to have these things lined up, and I intend to vote for the motion.

CHAIRMAN REYNOLDS: Commissioner Gaziano, then Commissioner Yaki.

COMMISSIONER GAZIANO: Yes. I want to respond as well to, to a comment Commissioner Yaki made, and he said that this would be a pretty interesting topic but thought that the new Commissioners should past on all this. I don't think we should presume, it's not our place to presume that they would not be interested in this.

When many of us cycled on, there were about two year's worth of briefings on the schedule. They, they probably were not the ones I would have chosen but many of them were quite interesting to me, and it might have been a bigger burden on me to try to figure out the whole universe of civil rights issues and reopen every hearing.

There were some that I--briefing--some that I did want to reopen, but it was actually--

CHAIRMAN REYNOLDS: I, I, was about, I was
about to remind you of some of those conversations--

COMMISSIONER GAZIANO: There was one--but, it took six months, until six months into the, into my service, and I actually appreciated that, that there were some briefings, and I could just study the briefing at issue. So, if Commissioner Yaki is correct that they are so opposed to any of the topics that they want to affirmatively set them aside, that will be the next Commission's prerogative.

But we should neither, we should not assume that they will not find this as interesting as Commissioner Yaki thinks, and we think, and that we should also be mindful of resources and have our staff have something to do.

So, I, I think that the argument that there will be new Commissioners and they will need to get up to speed, cuts in favor of approving a series of topics right now, and, and, and, and, and letting them override that decision if they so choose.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: I'm sort of puzzled by a comment that Commissioner Heriot made, which was, we may not have quorum, so therefore we should have briefings to go forward, because they don't need quorum. I, I just find that to be an astounding waste
of Commission time and resources.

    The fact of the matter is, is that, I, I hate to, I hate to disabuse you of this, of this, but the fact is that we are going to have a brand new Commission seated in the first week of, first week of January. There's not going to be holdovers, there's not going to be danglings until February or March.

    There will be, there will be at least three new Commissioners sitting at this, sitting at this table, come--two, three. I can't, I can't count anymore. Three. Three new Commissioners sitting at this table by January of, of this year.

    And, I believe that they are going to--I just see no point in wasting Commission time and resources chasing something that is probably going to be changed or could be changed. Or, maybe could not be, or maybe it won't be changed. But it still, I don't want us--there, there is plenty for, to do at this Commission.

    We have a serious backlog still of reports that are out there, that need to get put done. We've still got work on S.A.C. issues. The idea that--and, as much as I, am going to say this, and it may sound rather cavalier, I'm also not interested in working our staff to death with make work during the Christmas
holiday season given how hard they've all been working this year to keep up with the tremendous amount of resources and time that we've had to deal with, the New Black Panther fiasco, and apparently it will not be ending depending on what Commissioner Gaziano has coming forward.

So, you know, to me, piling on work and saying, you know, merry Christmas, ho ho ho, We're, we're trying to get all this done before the new people come in, is ridiculous and, you know, all I can say is, that, that, is that this kind of tone is not the kind of tone that I hope we see with the new Commission.

But, the more that some of the old Commission believes that they should simply do what they want to do and set the agenda and, for the new folks, the more it's, it's not going to be as trouble free in the transition as, as one would hope.

CHAIRMAN REYNOLDS: Well, Commissioner Yaki, I assure you that when the new Commissioners arrive, harmony will descend upon this building. There will be a new change in the tone of the Commission.

COMMISSIONER YAKI: It's the holidays. You never know.

VICE CHAIR THERNSTROM: Just one last word,
Jerry, from me, on this. Look, I want to make it crystal clear, eminent domain has been a, a favorite topic of mine over at the Institute for Justice. I've been on that Board, and supporting that topic for ten years.

The Little Pink House, if nobody has, is interested in a book on the Kelo decision, is a delightful read. Kelo, of course, did not involve a minority neighborhood at all, but, so, my, you know, my question here doesn't go to the word, the questions I've raised don't go to the worth of the, of this, of exploring this topic.

But, simply, to the question of looking at the spectrum of, of topics we might be considering down, down the road with the new Commissioner--Commissioners, looking at them with the new Commissioners.

And, again, weighing whether, whether we can as a Commission at this point contribute something to what has been an important national debate and a National debate that even though IJ lost that case, in a way, it has won, because there have been so many changes in the law in response to the Kelo decision.

And, you know, a process that's, by now, pretty much kind of gone into slow motion, so much has
been done, which I applaud, of course, so, you know, just to clarify.

COMMISSIONER GAZIANO: Let's call the question.

VICE CHAIR THERNSTROM: My, my position here. Of course I, I've been as outraged as all of IJ, the whole IJ Board has been with the abuse of the eminent domain powers. But, you know, so I'm just raising questions about deciding on this briefing at this point.

CHAIRMAN REYNOLDS: Okay. One last question. I hope it's the last question. Mr. Staff Director, in terms of a back load, what is a work load, work load look like in terms of briefing reports that are still in the, the queue?

STAFF DIRECTOR DANNENFELSER: Well, the briefing reports that are still pending are basically the Commissioners statements and the rebuttals by the Commissioners. We have approved the, the wage disparity briefing, so there's work being done to line up speakers on the wage disparity briefing. And also, the school discipline briefing, there's work being done on, on those two topics right now.

And, and, also there's work being done to try to finalize the SACs that are still outstanding,
still need to be rechartered.

    COMMISSIONER YAKI: Point, point of--what happened to the age discrimination briefing?

    STAFF DIRECTOR DANNENFELSER: And, then, of course, the age discrimination and--I'm sorry, yes. Age discrimination is one we still, we need, we need to work on that report.

    VICE CHAIR THERNSTROM: So, in other words, the staff is not out of work.

    STAFF DIRECTOR DANNENFELSER: But we also have the, you know, the pending projects on the sex discrimination in liberal arts college admissions and the Cy Pres issue.

    PANEL 3: UPDATE ON FY 2011 CY PRES ENFORCEMENT REPORT

    CHAIRMAN REYNOLDS: Is OGC, is OGC currently working on any topics? Well, what's, what's, what's on your, what's on your plate?

    VICE CHAIR THERNSTROM: And what other old briefings are still in the--

    MR. BLACKWOOD: Well, Cy Pres--this is David Blackwood--OGC has turned over the information they collected on the Cy Pres to Mr. Burns, maybe we will play a role in that or maybe not. Right now we have no active role. Our main focus is, with regard to the Black Panther and completing that project.
CHAIRMAN REYNOLDS: Anything else?

MR. BLACKWOOD: No.

CHAIRMAN REYNOLDS: Okay. So, one issue that we have to be concerned about also is ensuring that the folks in OGC have some work.

VICE CHAIR THERNSTROM: Well, wait a minute. Would eminent domain fall in that--

COMMISSIONER GAZIANO: I would certainly propose that the General Counsel's Office take on the, this is primarily a legal issue.

VICE CHAIR THERNSTROM: I don't think it is--

COMMISSIONER GAZIANO: I think it is.

VICE CHAIR THERNSTROM: But legal issues--

COMMISSIONER GAZIANO: Call the question, please.

CHAIRMAN REYNOLDS: Okay, let's, let's, let's vote. All those in favor, please say aye.

Objections?

COMMISSIONER YAKI: I object, because we basically, basically going to move to rip this briefing out anyway.

CHAIRMAN REYNOLDS: Commissioner--

Commissioner Melendez?

COMMISSIONER YAKI: Just to let you know
what I'm going to do.

CHAIRMAN REYNOLDS: Okay. I'm not surprised. Commissioner Melendez?

COMMISSIONER MELENDEZ: I'm opposed.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I'm abstaining on this. I mean, I love this topic. I just don't love it at this moment for the Commission.

CHAIRMAN REYNOLDS: Okay. Maybe the love will return at some point. Okay. We have one abstention, two objections. The motion passes. Next up, New Black Panther Party.

COMMISSIONER GAZIANO: A few, few related items. One, I want to ask the Staff Director and general counsel first. I know that we have a version of the report on the website, and I understood there was going to be some links added to it. Has that been done yet, or, what is the schedule for that?

MR. BLACKWOOD: This is the general counsel. We are in the process, and working with an editor, to install those links. We're not going to do it piecemeal, We're going to do it all at once.

COMMISSIONER GAZIANO: That, that makes sense.

MR. BLACKWOOD: But--
COMMISSIONER GAZIANO: I just wondered what the schedule was.

MR. BLACKWOOD: --I, I think it was twenty different items. When We're complete, some of those, We're, we're digging up. Some of them We're going to have to scan and add them to a specific site so we can have them all, all the links in one place. I would say in the next week or so. It's not going to take too much longer.

COMMISSIONER GAZIANO: Okay. Just a, I have a, one matter about the investigation itself, I'll get to later. But let me just stick to the report for now.

We had a discussion last meeting about whether Commissioners whose term are expiring should have the extra time to submit statements and rebuttals and those cycling off didn't want to, didn't think, thought that there was some complications with that and didn't' seek a vote on that.

But I want to know right now whether there is agreement amongst us or if a motion is necessary to allow Commissioners, this would be Commissioner Melendez, Taylor, Reynolds, and Yaki, if he is not reappointed, to join other Commissioner's statements, even if those statements are filed after the date in which their, their term expires, if they voted on the
underlying report. Is there any, any interest or objection in that?

CHAIRMAN REYNOLDS: Please unpack this for me. So you're saying that Commissioner Taylor and I, well, Commissioners Melendez, Taylor, and I--

COMMISSIONER GAZIANO: If I don't get my statement—as a hypothetical—or, let's say you want to join Commissioner Yaki's statement on December 19th, and he files his on December 19th, you could, you could join his statement, and all you would need to say is yes.

CHAIRMAN REYNOLDS: Okay. My, my view is that my, my ability to act in the capacity of a Commissioner ends on my last day, which I believe is the fifth of December.

MR. BLACKWOOD: Correct.

CHAIRMAN REYNOLDS: So, in terms of submitting comments, provided the record is open, I think that that's fine. Anyone in the public can do that. But, to act in the capacity as a Commissioner after my term has expired, to be gentle, I think that, problematic.

COMMISSIONER HERIOT: Well, let me see if I understand this. You're saying that you could file a, a, a, a, a, a statement as a member of the
public, saying, I agree with Commissioner Yaki.

CHAIRMAN REYNOLDS: Submit my statement or send in information--

COMMISSIONER HERIOT: But, you, you, you could say, I agree with Commissioner Yaki, a document like that?

VICE CHAIR THERNSTROM: Well, wait a minute--

CHAIRMAN REYNOLDS: Am I acting in my capacity as a Commissioner at this time?

COMMISSIONER HERIOT: I, I, I, I agree with Commissioner Yaki. Signed, Gerald Reynolds. That's okay, right?

CHAIRMAN REYNOLDS: If I'm acting in the capacity of the Commission then I would say that that's not all right.

COMMISSIONER HERIOT: Yes, but you can do it as Gerald Reynolds, not Chairman.

CHAIRMAN REYNOLDS: I could submit information provided the record is still open. Yes. I would be able to do that.

STAFF DIRECTOR DANNENFELSER: It's not open.

CHAIRMAN REYNOLDS: And--okay. I've been informed that it's not open.
STAFF DIRECTOR DANNENFELSER: I mean, we, it was open for a period of time, but now it's been closed. I mean, Commissioners I guess could vote to reopen it, but at this point it's not open.

COMMISSIONER GAZIANO: I, I--I don't, you know, I think we could extend this, this courtesy and it, and it wouldn't, but if, if certain Commissioners don't want to avail themselves, Commissioner Taylor and Melendez, are you interested in joining statements of follow Commissioners?

CHAIRMAN REYNOLDS: After your term has expired?

COMMISSIONER GAZIANO: You, you can clearly submit one through whatever day it is, I forget when your term is scheduled to expire. I know others are, are, may expire on Sunday.

CHAIRMAN REYNOLDS: Is there, is there any interest in this?

COMMISSIONER MELENDEZ: Not really, from me. I mean, I'm fine with--

CHAIRMAN REYNOLDS: Okay, that's one.

COMMISSIONER TAYLOR: No, and I, I just wouldn't want to be a part of setting that precedent for the institution.

CHAIRMAN REYNOLDS: Okay.
COMMISSIONER GAZIANO: Okay. Well, then I won't, then, then what I might request is a note in lieu of this that Commissioners could not join other, other statements. Is there any objection to that, that explains when terms expire?

CHAIRMAN REYNOLDS: It's, a, a statement saying what?

COMMISSIONER GAZIANO: That certain Commissioners were not, because their term expired, they could not join certain statements.

VICE CHAIR THERNSTROM: Well, they have chosen, just chosen not to even discuss the question of whether they could or not--

COMMISSIONER GAZIANO: No, there, there's a statement that they believe they cannot do so, so why don't we say that in the report?

CHAIRMAN REYNOLDS: In your statement, why don't you just say that Jerry agreed with me--

COMMISSIONER GAZIANO: Fine, I will, and you can't disagree with me. Okay, next, next question. Because the Vice Chair was not present when we adopted part A, the two findings and the recommendation, but is free to, to, I assume she's free to add her own statements, that's a clarification that, that we might want to seek.
But, prior to getting to that issue, it, since we had five Commissioners vote to approve it, it wouldn't affect the actual issuance of the report either way. If she records her vote but, I move at this time to provide the Vice Chair an opportunity to have her position recorded on part A, finding 1A, finding 1B, and the recommendation.

PARTICIPANT: I got to--how can you--

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: From a parliamentary viewpoint, from a procedural standpoint, how you can reopen a vote way after the fact for someone who was a member and did not participate at the time, I don't know. I mean, I suppose--

COMMISSIONER GAZIANO: I could reopen the entire vote. This is something much smaller than that.

COMMISSIONER YAKI: Let me finish. Let me finish. But, if that's the position you want to take, Todd, you know, whatever.

COMMISSIONER HERIOT: I just wanted to say that I seconded the vote, but, I, I'm, I would only do that in a case where it wouldn't affect the outcome. I would oppose opening the vote if the vote could
affect the outcome, but this can't.

It, it just gives, gives--

CHAIRMAN REYNOLDS: Okay. Vice chair

Thernstrom, you were active in this issue. Do you have
any desire to take Todd up on his, on his offer?

VICE CHAIR THERNSTROM: I not only don't
have any desire to take Todd up on his offer, but it
would set a terrible precedent, as Commissioner Heriot
just said. We're now going to have the precedent that,
that votes can be reopened if they won't make any
difference, but if they will make any difference, the
votes can't be reopened, no, for goodness sakes, the
vote was taken. You can't be reopen--that is
procedurally an egregious step for--

COMMISSIONER GAZIANO: We could reopen it
if it would make a difference, too. This is, this is,
what we've done many times before is we've proposed a
letter and left open who was going to join that
letter.

VICE CHAIR THERNSTROM: That is quite
different.

COMMISSIONER GAZIANO: This is, this is,
this is very similar.

CHAIRMAN REYNOLDS: In fact, we, we, we
just, we just did it with the English Only language--
VICE CHAIR THERNSTROM: Yes. No, I think that that is quite different. You have taken a vote, I wasn't here to participate in the vote. And--

CHAIRMAN REYNOLDS: Well, if you don't, if you don't care to, you know--

COMMISSIONER GAZIANO: Let me ask you this--if this motion passes over your objection, would you record your vote, or would not record--

VICE CHAIR THERNSTROM: No, I don't think--

COMMISSIONER GAZIANO: Okay. All right. All right.

VICE CHAIR THERNSTROM: --I'm telling you, I think this procedurally absurd--

COMMISSIONER TAYLOR: This is a motion of accommodation, if it's not necessary--

CHAIRMAN REYNOLDS: Right, right, I thought, you were heavily involved in this discussion--

VICE CHAIR THERNSTROM: Yes, I would like, I would--

CHAIRMAN REYNOLDS: And, and it was my understanding, at least, the way I interpreted the motion, he was offering an accommodation since this was an important issue. And if you choose not to take advantage of that, that's, that's fine.
COMMISSIONER GAZIANO: I'll withdraw, I'll withdraw my motion.

VICE CHAIR THERNSTROM: Let me just further state that of course, I will be submitting a statement along, as other people will, and we will be proceeding in, therefore, the normal fashion.

COMMISSIONER GAZIANO: That's fine. I withdraw my motion. The final item--

VICE CHAIR THERNSTROM: And you knew from the very beginning that I was going to say no to this, so I don't understand what you were doing. But anyway, that's all right. The mystery of Commissioner Gaziano.

COMMISSIONER GAZIANO: I can never predict what you're going to do, Vice Chair Thernstrom. Since you were for it before you were against it. I don't know where you are right now. The, the--

VICE CHAIR THERNSTROM: I don't know what I was for before I was against, but thanks.

COMMISSIONER GAZIANO: But anyway. My last question is, and maybe I should just put it in the form of a motion, that we have continued, we have subpoenas outstanding to the Department of Justice.

We have, you know, various other document requests. There's litigation from Judicial Watch, there may be other litigation, news stories, releases.
I move that whether the current staff Director, future staff Director, acting staff Director, whoever is directing our staff or the general counsel's Office, that, that we continue to receive the relevant materials on this investigation pursuant to our discover updates from judicial watch litigation until the, the Commissioners vote otherwise.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER HERIOT: Second.

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

COMMISSIONER MELENDEZ: I will abstain.

COMMISSIONER YAKI: Abstain.

VICE CHAIR THERNSTROM: And I'm abstaining as well.

CHAIRMAN REYNOLDS: Okay. We have three abstentions, Vice Chair Thernstrom, Commissioners Yaki and Melendez. The remaining Commissioners vote in favor of the motion. The motion passes. Next up is a discussion of the Akaka bill.

CHAIRMAN REYNOLDS: Commissioner Heriot, would you care to--

COMMISSIONER HERIOT: Yes, my understanding is, is, is that there is a very very good chance, in fact, a likelihood, that the new version of the Akaka
bill, which I just printed up the day before yesterday, will be attached to the omnibus spending bill.

I assume that's not a certainty, you know, that's, the information is such that, you know, we can't have certainties. But, that it will be attached and that will then go to a vote sometime in the next week or so.

And, I would like to send a new letter, basically just transmitting our previous letter to members of the Senate and commenting very briefly on, on the procedure and if we have time, I, I, I, and I, I, I'm, I'm not sure that we will have time, on the substance of the changes to that bill.

And, I would move that we act as we have in the past, and that is, write the letter up, and then if we can get a majority to sign onto the letter, to send it out as promptly as we can. I don't think it's going to take long to write this letter.

COMMISSIONER GAZIANO: The, the, the vote approving the letter would be contingent on a majority of Commissioners signing on to such letter, correct?

That's our usual procedure.

COMMISSIONER HERIOT: Yes.

COMMISSIONER TAYLOR: Just, friend,
friendly amendment since we don't have the language of
the letter in front of us, perhaps a notational vote?
That way we can vote when we actually see the language
of the transmittal--

COMMISSIONER GAZIANO: A notational--
COMMISSIONER HERIOT: No, that's--
COMMISSIONER GAZIANO: --vote takes a,
takes unanimous notice and--

COMMISSIONER TAYLOR: Does it, for purposes
of--

COMMISSIONER GAZIANO: What we've done--
what we've done in analogous situations is that it
requires a double majority. A majority now to
authorize a Commission letter, and a majority of
commissioners actually agreeing to the language of the
letter.

COMMISSIONER TAYLOR: That gets us to the
same point.

COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Vice Chair Thernstrom?
VICE CHAIR THERNSTROM: I kind of like to
see proposed legislation before I sign on to--

COMMISSIONER HERIOT: Yes, I would think
the members of the Senate would like to. That's part
of our objection, that this thing is very new. I've
got a copy of it here, but I, if I have a copy of it--but it's long. That's part of the problem. That's part of where--

COMMISSIONER TAYLOR: But I guess the way this motion is structure, all we're voting on now is the opportunity to vote on a letter that will be circulated.

COMMISSIONER HERIOT: Right. Right.

COMMISSIONER GAZIANO: And I assume it will be circulated before Sunday?

COMMISSIONER TAYLOR: That should give us enough time to review the new bill and the letter.

VICE CHAIR THERNSTROM: Somebody would have to summarize what, the difference between the old bill and the new bill for this Commissioner since you just told us it was very long. I mean, I think you--

COMMISSIONER YAKI: OGC should do that, don't you think they need some work to do? Chairman Reynolds?

CHAIRMAN REYNOLDS: Kim--Kim said she'll do it.

VICE CHAIR THERNSTROM: I, I mean, I, do, do you have the strong sense that these letters from us have a, even a tiny impact?

COMMISSIONER HERIOT: Do I?
VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: Yes.

COMMISSIONER YAKI: Good, because in about a week, there will be another letter signed by five members of the Commission going the other way, so let's, do what, continue wasting time and resources. I mean, really, come on, guys.

CHAIRMAN REYNOLDS: Okay. Okay. At this point, I don't believe that what we've had the discussion and we know what we plan to do, and I am glad that you mentioned that, well, you suggested that this letter, in order to have certain members vote up or down on it, it needs to be circulated by Sunday. Okay.

VICE CHAIR THERNSTROM: Well, with, wait a minute. With some explanation of the difference between--

COMMISSIONER GAZIANO: Either you sign onto the letter or not--if you think the letter--

COMMISSIONER YAKI: In other, in other words, in other words, she's treating it like any other member of the Senate. She's decided that, that you can either look at it yourself, or not.

COMMISSIONER GAZIANO: No, it's up to the Commissioner drafting the letter to try to be
persuasive. If the Commissioner drafting the letter is not--

COMMISSIONER YAKI: I seem, I seem to recall that we've had these last minute letters before, where people make, make outrageous claims about legislation that actually, actually do not, actually occur in fact. So I'm think, out of courtesy to, to Commissioner Thernstrom, who I believe would be, you know, a potential vote for you folks, that you would want to go through the trouble of, just seems to be a recurring priority for certain members of this Commission that, that you ask OGC to do a summary of what the old bill was, what the new bill does, so we know whether or not it's simply attaching the old letter has any relevance to it at all, and, yes, I think, I think that's the least you, you could do for someone who is asking for that. Apparently that is too much, too much to ask for and I don't understand why.

VICE CHAIR THERNSTROM: Yes, I mean obviously I am--

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: We could take three weeks to do this if we don't mind if the letter doesn't get out until after the bill is adopted. The whole point here is that the United States Senate has
decided to move very quickly on this, and therefore we have to move very--

COMMISSIONER YAKI: So you'd rather, you would risk the reputation of the Commission at, at sending a letter that talks about provisions that no longer, further, I mean, let's, let's face it. When you guys put out the healthcare reform letter and went after a provision for the bill that was authored by Bill Frist as if it was new and it had been put into law for five years, that got a really good reaction on, in the Senate and on the hill because they were looking at it going, this was Bill Frist's section of the bill, and now all of a sudden you're saying this section that Bill Frist did with a, with a overwhelming majority vote in the Senate, and a bipartisan vote in the house, is somehow unconstitutional, that, that had zero impact. But go ahead, you know, if you want to keep on in your last gasp, do this, be my guest. Make a fool out of yourself.

CHAIRMAN REYNOLDS: Okay. Moving right along.

VICE CHAIR THERNSTROM: Mr. Chairman, I am a potential vote. Commissioner Yaki is perfectly right, I just don't like to sign things that I'm a
little, that I don't know what I'm, really signing here. I need to know the language that--

COMMISSIONER HERIOT: It's on THOMAS.

VICE CHAIR THERNSTROM: --and you had confidence that this letter of--

COMMISSIONER HERIOT: It's on THOMAS.

VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER GAZIANO: The, the, the assumption is--

COMMISSIONER HERIOT: You can't take, I can't take, you know, insert it in your brain. You're going to have to read it yourself.

VICE CHAIR THERNSTROM: No, it's not--

COMMISSIONER GAZIANO: I will make an effort to--

CHAIRMAN REYNOLDS: Wait, wait, wait, wait, wait.

COMMISSIONER GAZIANO: --to see if I can send you the--

CHAIRMAN REYNOLDS: It's publicly available. The assumption is that the Commissioners and or their special assistants will review the publicly available document and decide whether they want to support the letter or not.

COMMISSIONER GAZIANO: For the record, I
will try to see if I can send you some summaries of
the differences--

VICE CHAIR THERNSTROM: Call it
differences.

COMMISSIONER GAZIANO: --the, the, the,
procedure offends me either way. If it is the same as
prior bills, and I don't think it is, then it should
be considered in, then we have the same objections. If
it's different, then it ought to go through regular
order. Either way, I have a concern about the--

VICE CHAIR THERNSTROM: I signed the
previous --

COMMISSIONER GAZIANO: I understand.

VICE CHAIR THERNSTROM: Even though I was
not asked to sign, I sent--I signed it separately,
sending a separate letter.

COMMISSIONER GAZIANO: Either way, I have
an objection to them moving forward in the way that's
proposed. But I think there are some differences and
I will endeavor to, to, to have various--

CHAIRMAN REYNOLDS: Okay, so this is an
attempt to accommodate the concern expressed by the
Vice Chair?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Okay.
VICE CHAIR THERNSTROM: Thank you. A rare moment.

CHAIRMAN REYNOLDS: Okay. Next up, Cy Pres.

COMMISSIONER HERIOT: No, we haven't voted.

COMMISSIONER YAKI: We need to vote.

COMMISSIONER GAZIANO: Vote to authorize the letter.

CHAIRMAN REYNOLDS: Okay. All those in favor, please say aye. Objections.

COMMISSIONER YAKI: No.

COMMISSIONER MELENDEZ: No.

VICE CHAIR THERNSTROM: I don't understand, a vote to authorize a letter, I got to--abstaining. I've got to see what we're--

CHAIRMAN REYNOLDS: Okay. Okay. Okay. Okay. Okay. Okay. Vice Chair Thernstrom, abstain. We have two votes in opposition, Commissioners Melendez and Yaki. The remaining Commissioners voted for the motion, the motion passes. Next up is the, an update on the Cy Pres enforcement report.

CHAIRMAN REYNOLDS: Mr. Byrnes?

MR. BYRNES: I have no update at this time. The subcommittee has not had a chance to meet yet.

CHAIRMAN REYNOLDS: Okay, I like that. That was a quick--next up is a, an update on the briefing
on disparate impact of school discipline policies.

PANEL 4: UPDATE ON STATUS OF BRIEFING ON DISPARATE IMPACT IN SCHOOL DISCIPLINE POLICIES

CHAIRMAN REYNOLDS: Mr. Staff Director?

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman. We have sent letters to 28 different school districts. We have two speakers lined up right now, one of them a high school teacher and another one is a K-through-8 teacher, and we are continuing to reach out to, to other potential speakers.

And, we, we have gotten two responses to the letters, mostly for clarification about what kind of information is being sought, and where, and We're continuing to follow up on that topic.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: To whom are you sending the letters to?

STAFF DIRECTOR DANNENFELSER: We've identify--from the best information we can gather, the school districts where we believe the Department of Education has sent letters and also now we understand that a Division within the Department of Justice may be making inquiries of this nature as well, so we may follow up in those areas.

COMMISSIONER GAZIANO: And is this--
STAFF DIRECTOR DANNENFELSER: And we also sent letters to the Department of Education and we are preparing to send something to the Department of Justice.

COMMISSIONER GAZIANO: And have you mentioned a particular briefing day? Does this the one we're hoping to schedule for January?

STAFF DIRECTOR DANNENFELSER: This, we were looking at February.

COMMISSIONER GAZIANO: February? Okay. Have you mentioned that possible date?

STAFF DIRECTOR DANNENFELSER: Yes.

COMMISSIONER YAKI: And how are you identifying the actual teachers themselves? I mean, it's one thing to identify the school districts, but how, how is it going down to the teacher principal, superintendent, whatever level? How are those choices being made?

STAFF DIRECTOR DANNENFELSER: They're not--not necessarily always in the same districts. In some cases, it's reaching out to teachers in general to discuss how they've dealt with discipline issues in their schools--

COMMISSIONER YAKI: But how do you--

STAFF DIRECTOR DANNENFELSER: --but we are,
we are asking, yes, when we do go to the school districts we are asking about the possibility of teachers in those school districts participating as well. But we are not limiting ourselves--

COMMISSIONER YAKI: How do, how do we find--so, how do we find the one teacher that's, that's on the panel so far?

STAFF DIRECTOR DANNENFELSER: Reaching out to different organizations that are involved in education issues.

COMMISSIONER YAKI: Which organization?

STAFF DIRECTOR DANNENFELSER: I'd have to check with staff on the particular ones--

COMMISSIONER YAKI: You're going to find out? Thanks.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: So, and this may reflect the fact that I haven't been at recent meetings. But, there is a huge literature on school discipline. Are we bringing in scholars?

STAFF DIRECTOR DANNENFELSER: That, that would be some of the people we'd look to bring in, potentially bring in scholars as well.

VICE CHAIR THERNSTROM: I mean, I--

STAFF DIRECTOR DANNENFELSER: People who
have, you know, the big picture, not just necessarily, we do want to look at the school districts in particular. But, people have the kind of broader view would certainly be considered for panelists.

VICE CHAIR THERNSTROM: I, I, I mean, I, this is following up on what Commissioner Yaki, a question he raised. I do feel a little bit of a problem with thinking of any one particular teacher as the voice of teachers.

Or, that teacher's experience as being emblematic. I mean, there is a, there is a, a, there's a problem here in the credibility of the information that any one teacher or principal brings to the table.

STAFF DIRECTOR DANNENFELSER: We're always limited by the number of people, you know, as we surveyed every teacher in the country--

VICE CHAIR THERNSTROM: Yes, no, I understand that, but that, but some topics lend themselves better to, I mean, if we, briefing on HBCUs, it was clear who to bring and they really did speak for the people who had been engaged in a conversation about the future of those institutions.

It's just that I've got problems seeing any one, if I think of all the schools I've visited and the teachers I've talked to about school
discipline, I, I think, I, you got a multiplicity of
voices dealing with a very difficult issue here and--

STAFF DIRECTOR DANNENFELSER: Well, this is
one where the Commission has adopted a concept paper
that is laid out, the anticipated structure of a
briefing, and that's always something that is open to-
-
VICE CHAIR THERNSTROM: All right.

STAFF DIRECTOR DANNENFELSER: --

modifications--

VICE CHAIR THERNSTROM: Yes, well, it is
ture that I, that I wasn't here to raise the
objections when the concept paper was discussed. And,
so--

CHAIRMAN REYNOLDS: Any other comments?

Okay. Next up is an update on the, on sex
discrimination in liberal arts college admissions
project.

PANEL 5: UPDATE ON SEX DISCRIMINATION IN
LIBERAL ARTS COLLEGE ADMISSIONS

CHAIRMAN REYNOLDS: The Acting Assistant
Staff Director for Civil Rights Evaluation, Mr.
Byrnes, please provide us with an update.

MR. BYRNES: Thank you, Mr. Chairman.

Commission staff responded this week to technical
questions that the two local holdout schools had about the latest steps of our analytical protocol. They are still working with us.

We anticipate a response from these two schools very soon. We are getting closer to asking them to conduct a logistic regression analyses, which will be the heart of, of the report.

With respect to the third holdout school, Commission staff has provided a draft of the protocol. The first steps to this third school, and we are still awaiting a response.

CHAIRMAN REYNOLDS: Questions? Comments?
All right. Thank you, Mr.--

COMMISSIONER GAZIANO: Can I raise another matter with those, it may be Mr. Byrnes and, and Mr. Dannenfelser. Where, where are, are you all with preparation for the pay disparity briefing, and is it possible that that will be conducted in January?

MR. BYRNES: We are shooting for January 14th for that briefing. We have received some recommendations for panelists, and we've begun to--

COMMISSIONER GAZIANO: You welcome others?

MR. BYRNES: Certainly. We always welcome any recommendations from the Commissioners on panelists.
But, we are reaching out to this sort of initial slate of panelists we have received to gauge their availability for January 14th, and I will let you know as soon as I can on that.

COMMISSIONER GAZIANO: Thank you. Do they, do they include potential academic economists who have done serious studies of this--

MR. BYRNES: Yes. Yes.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN REYNOLDS: Other questions?

Comments? Okay. Next up is management and operations.

CHAIRMAN REYNOLDS: With, We're about to enter a transition period and it's critical that Commissioners plan for continuity of operations so that the agency can continue the function to ensure continuity of operation at the agency in the event the Staff Director is removed by the President and a new Staff Director is either not appointed and confirmed right away, or fails to receive the majority approval by the Commission.

I move that we amend AI 1-18B Section 2.02 so that it reads as follows. "When the staff Director, Deputy staff Director, or individuals serving as acting Deputy staff Director and the assistant staff Director for the Office, Office of Civil Rights
Evaluation, are absent, the individual serving as the acting assistant staff Director for the Office of Civil Rights Evaluation shall assume the duties and authorities of the Acting Deputy staff Director". Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Okay. The reason that, that this may be necessary. I had a conversation with the General Counsel and we had a, a debate, or disagreement, over whether the current AI was clear enough on this point.

And, at this point, I would ask the General Counsel to come up to the table and, and, in, in your view, in your view, does the, the, the current AI adequately set forth the, the, well, what happens in the event that the Staff Director is removed and for whatever reason we don't have an immediate replacement?

MR. BLACKWOOD: The, the, the problem is that the existing AI, leaves ambiguities about the current situation that we have and that we have no official OCRE, someone who has that position permanently.

We do have someone active as the acting head of OCRE and I urge that that be clarified. I
think it can be said that the AI has the intent that the Acting head of OCRE would take over his staff, acting, well, no one is Acting Staff Director.

But, take over as the person acting, the delegated authority of the Staff Director. So, no issues arise because it would be chaotic if we have no one. Got to be clarified so that the person who is currently acting as the head of OCRE would have the authority to act with the delegated authority of the Staff Director.

CHAIRMAN REYNOLDS: Well, we have, I mean, as it's drafted, the individual serving as acting Deputy Staff Director would assume the authority of the Staff Director.

MR. BLACKWOOD: I think that's where we differed. I thought it, that was your interpretation. My interpretation is, that can be read, but let's take away the ambiguity so there's no question, Staff has somebody they can absolutely look at without challenge.

CHAIRMAN REYNOLDS: But doesn't it, it, it state that? Maybe I'm--oh, I see. I see.

VICE CHAIR THERNSTROM: Jerry, I don't see. So, whatever was just said, say it out loud.

CHAIRMAN REYNOLDS: Okay. There are two
provisions. The first one reads, when the staff Director is absent, the Deputy staff Director or the individual serving as acting Deputy staff Director--

VICE CHAIR THERNSTROM: Right. Right.

CHAIRMAN REYNOLDS: --shall assume the authority to manage the office of the Staff Director.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: The following, the, the following section does not contain a similar phrase for someone in the acting, if someone was acting as head of OCRE.

VICE CHAIR THERNSTROM: I get it.

CHAIRMAN REYNOLDS: Okay. That's the reason. Discussion? All those in favor please--

COMMISSIONER YAKI: My question was very basic. How does this comport with civil service requirements for any of these specific--specific positions, namely, what, what grade or range do you have to be in order to actually be at the staff Director, even as an acting?

COMMISSIONER YAKI: My question was very basic. How does this comport with civil service requirements for any of these specific--specific positions, namely, what, what grade or range do you have to be in order to actually be at the staff Director, even as an acting?

MR. BLACKWOOD: We addressed this situation, you might recall, when we went through the transition after Staff Director Marcus left. And, I addressed both issues, and got information from OPM,
I worked with Ms. Martin, et cetera, and I have two memoranda that were dated back in 2007 and 2008 that specifically addressing that issue.

Mr. Byrnes in his current position is able to take over temporarily, I believe it's 120 days, plus 120 days. But, presumably, a new staff Director will be named, and this will just be a temporary--

COMMISSIONER YAKI: Can I--could you send me copies of those letters?

MR. BLACKWOOD: Absolutely.

COMMISSIONER YAKI: Thank you.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: And, do you have any indication at this moment that your term of Office is about to end?

MR. BLACKWOOD: President Obama has not contacted me yet, but. We are working under the assumption in some of the comments here today that there will be a transition in the very near term, next several weeks.

VICE CHAIR THERNSTROM: Okay, but that has to do with Commissioners, that has been what the conversation has been about.

CHAIRMAN REYNOLDS: Staff Director is also in play.
MR. BLACKWOOD: The Staff Director and the General Counsel serve at the pleasure of the President.

VICE CHAIR THERNSTROM: Right, but those appointments do not have to be contemporary—simultaneous with the, with the appointment of new commissioners. They are a separate question—

CHAIRMAN REYNOLDS: That's correct.

VICE CHAIR THERNSTROM: --so, we do know that, okay, you've just said, their appointments are in play at this point. I mean, is it possible, this is, I just want to know, is it possible this is a non issue for the next few—

COMMISSIONER GAZIANO: It is possible. It is possible. My suggestion is, we should have probably done this a year ago, if we didn't have a Deputy Staff Director anyway. So, it's always prudent to clarify our order of succession, whether, whether or not it's likely that, to, to come into play.

CHAIRMAN REYNOLDS: Okay. All those in favor, please say aye. Objections?

COMMISSIONER YAKI: I object.

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Oh. Yes. Yes. Yes.
Sorry, I should have asked this and, instead, Mr. Fay just reminded me that I should ask it. I'd like to see the final language that we're going to be voting on here.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: You're just—we are adding the word acting before--

CHAIRMAN REYNOLDS: We're, we're—we want the, the second section, 2.02 through track 2.01, 2.01 has a phrase, Acting Deputy Staff Director. The second phrase would be amended so that we add the phrase, acting--

COMMISSIONER GAZIANO: The assistant staff Director of the--

CHAIRMAN REYNOLDS: Yes, or--

COMMISSIONER GAZIANO: The individual serving as--

CHAIRMAN REYNOLDS: Acting--

COMMISSIONER GAZIANO: --as acting Director of the Office of--

VICE CHAIR THERNSTROM: Okay. Got it, thanks.

CHAIRMAN REYNOLDS: How do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Okay. I'm sorry--okay,
we have one abstention, from Commissioner Melendez.
Commissioner Yaki voted against the measure. Remaining Commissioners voted for it. The motion passes. Next up--

COMMISSIONER YAKI: I have a question.

CHAIRMAN REYNOLDS: Yes?

COMMISSIONER YAKI: Since we're on the, say, was not too sure what exactly was on, comes to management and operations--

COMMISSIONER GAZIANO: I have another item too, before we move on--

CHAIRMAN REYNOLDS: Yes. Yes.

COMMISSIONER GAZIANO: --you should go, Commissioner Yaki, first.

COMMISSIONER YAKI: Well, thank you, since I spoke first. The, the question I have for the staff Director is, I heard, I, I've been led to believe that, that there is some closure of a regional Office that is being done. I just wanted to ask, is it true that the southern regional office is being closed and the person there being transferred to the west coast office? If so, why and--

STAFF DIRECTOR DANNENFELSER: The southern regional Director had, for some period of time, requested that a transfer to the western regional
office. He has been serving as the acting regional Director for the west, so he would then become the Director of the western regional office, but remain the acting Director of the southern regional office.

The, because of the continuing resolution and the fact that the administrative support staff in the southern regional office is, is a temporary employee, we've been advised by a budget officer that we should probably, effectively have to lay that person off for the time being until there's a resolution of the, the budget situation.

So, what the southern regional Director will be continuing to, the acting Director of the southern Region will be continuing to monitor and the plan is that he would be going back down there. He's going to, plans to go to Los Angeles for the next week, but then he would be back in Atlanta for the remainder of December.

COMMISSIONER YAKI: Where--just a question. Where, where right now is the person in question domiciled? Is he domiciled in, in California? Is he domiciled in Atlanta, or elsewhere?

STAFF DIRECTOR DANNENFELSER: He has been domiciled in Atlanta. He intends to change his domicile to Los Angeles.
COMMISSIONER YAKI: So, so we will have no-

STAFF DIRECTOR DANNENFELSER: No, we don't have any expenses. He's doing all of that at his own expense.

COMMISSIONER YAKI: But I'm saying, if he, we will have no office in the southern Region of the United States other than someone who is based in California, acting in, in a way, there will be no more office space, is there going to be office space? Is there going to be any phone, phone machine, anything like that?

STAFF DIRECTOR DANNENFELSER: No, the office will still be--We're still going to have the office, and he, he in fact, he will be back in that office for several weeks in December, and hopefully Congress will resolve this budget issue before they leave in December.

So, hopefully that will become a moot point. But he will, the phone will still be there. He will be monitoring the phone. He will continue to be the Federal official for meetings that take place in the south. So, he's, he's been wearing two hats.

Actually, three hats because he's been the acting head of RPCU as well, so he'll be continuing to
wear the same three hats. He'll just be the official person for the west and the acting person for the south as opposed to the official person for the south and the acting person for the west.

CHAIRMAN REYNOLDS: I would just, I just want to express my, my reservations about anything that looks as if We're, we're closing, closing up shop, figuratively or literally, in Atlanta. I think that that office has been a place that has had historic and continuing importance with regard to civil rights in this country.

I think--I believe that the lack of a, the lack of a continuing presence there is, I think, sending a message that, unintentionally or not, that we may not want to send. I would hope that we do everything we can to ensure that we have a viable functioning Southern Regional Office that does not rely on the travel schedules of someone who's going to be covering a whole bunch of other states on the west coast that require lots of travel and lots of time away.

STAFF DIRECTOR DANNENFELSER: Well, it is possible once this resolution of the budget question, there's also the possibility of hiring, certainly having the secretarial support in the, in the south,
but perhaps hiring someone as the regional Director in the south, if only, perhaps, if only as a temporary assignment, would be a one year appointment and because of the uncertainty about the budget going forward into 2012.

Right now, we are anticipating a 5% cut in the budget for 2012, and as you noted earlier, there is certainly the possibility that Congress will make further cuts in the budget, perhaps even retroactively for 2011, but that remains to be seen.

CHAIRMAN REYNOLDS: I'd just like to say that I share wholeheartedly Commissioner Yaki's concerns. This, I was not aware of these changes. Symbolism has its place, and at times, it's important and this very well may be one of those times. I think that the south needs an office. Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: If we have to choose between the south and California, is there, is there an argument for California rather than the south?

CHAIRMAN REYNOLDS: I can imagine, well, one, we shouldn't choose if we can avoid it.

VICE CHAIR THERNSTROM: Well, but this is really in effect choosing.

COMMISSIONER GAZIANO: Yes. We, the, the,
I can understand the tradeoffs. The south may be more easily served by Washington, D.C. than California. I don't take an opinion. I'm just saying, there seems, there could be arguments made either way.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez, did you--was your hand up earlier?

COMMISSIONER MELENDEZ: Yes. I would like to--

CHAIRMAN REYNOLDS: And then Commissioner Heriot.

COMMISSIONER MELENDEZ: I'm really disgusted with where the budget goes. I always thought that the Commission should actually be updated as to whether or not, what the staffing is on all of these regions, because I always felt that the, all regions are just as important.

So, it's, it's, should have been fully staffed. But, even though making a decision like this, it almost sounds like the people, the Director who's working in eastern, is he the person that decides to go out to California to get some sun.

And it's really not the, it's really not the, it's really not the Commission that kind of looks at where the, where the staffing is needed the most,
and we kind of dictate the budget? Or, who is it?

It almost sounds like it's dictated by the, by the people moving around because they decide to go out to California while they tell the Staff Director and they're gone.

So I always felt that it should be a frank discussion by this Commission to kind of look at the workload and make a decision on it. So, kind of working at the--

STAFF DIRECTOR DANNENFELSER: Let me just say, that the individual cannot unilaterally make the decision and just inform the Staff Director he requested that, and I considered it and approved it. He has gotten that, the west has been an area, I know there's been concern about the lack of a person in the west for a good period of time.

And it's been an area where we've had a number of S.A.C.s that have not been chartered, and now, if we approve Alaska and Idaho today, we will for the first time in a very long time have every single S.A.C. in the western region chartered.

So, I think that this individual deserves credit for being very aggressive in getting that done. He also has every region in the south chartered, so, and the south has been going very actively.
So, he is, he has been wearing these hats and really working on both regions. And I think he'll continue to do that unless there's an opportunity to hire additional staff and perhaps somebody can be full time in both places as the Director.

But that's, of course, a difficulty we've had with the budget and it may be that it's going to become even more challenging with future budget decisions that Congress might be making.

CHAIRMAN REYNOLDS: Commissioner Heriot was next, then Vice Chair Thernstrom.

COMMISSIONER HERIOT: I just wanted to say that, that I am not a big fan of very thinly staffed regional offices. I have thought that the L.A. office given they only had one clerical employee and it probably we were better off closing it down.

But as for Atlanta, I agree that there's a symbolism there and I would think that if we are going to have a regional office, having, keeping the one in Atlanta would be a priority with me.

STAFF DIRECTOR DANNENFELSER: We fully intend for the office to remain. It's then, that person, is the, acting, will be acting as the acting head of the southern region and we do hope that the, the lack of the secretarial support will be as
temporary as possible.

We, we have that as a priority as soon as the budget officer can assure me that we will not be in an anti-deficiency situation, we will try to get that person back on Board in Atlanta.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Well, I, I think Commissioner Melendez spoke—he put his finger on the problem here, and spoke very eloquently. And, I mean, it really, this has got to be an administrative, well thought out administrative decision by us.

And not, kind of a response to an, and not something in accommodation to where somebody wants to live. And, I, I, I do think the symbolism point is very, very important.

STAFF DIRECTOR DANNENFELSER: Well, again, I think there's a sense of a closing office, there's no, no decision to close an office--

VICE CHAIR THERNSTROM: Well, there is knowledge that we're going to, we're heading into budgetary, you know, thin times.

STAFF DIRECTOR DANNENFELSER: Well, the west has nine states, the south has six states. And some of the states in the west are very, very large so you have that presence of a senior person in the west,
seems to make sense.

CHAIRMAN REYNOLDS: I, I, I am loathe to
choose between areas of the country, but I think the
analysis should also include the history of the south.
So, please, Commissioner Yaki.

COMMISSIONER YAKI: I mean, just, just,
from, again, from a symbolic and practical point of
view, yes, we may have an office there. But the fact
that there's no one there 70% of the time I think is
a problem. It, it, that's, that to me is just as
problematic.

I understand, I'm with everyone, how can
we choose one or the other. But, I had always been, in
my own mind, although, although I was not happy about
the fact that we never had a Western Regional
Director, I was happy that we had someone in the
south.

As well, and to take that, to, to change
that equation, given, given, given history, given the
history of this organization, and make that now the
part time place and, and, and not, and, versus the
other. I just, I just have problems.

I came with, articulating, just like the,
the Chair, the Chair is having to record, but I think
it's, it's something about what this organization is
and what it stands for, and the city of Atlanta and all that, all that it means.

VICE CHAIR THERNSTROM: Well, I can, I can articulate it, you know, African Americans may be, the state of America remains, the American dilemma, the wound that has not gotten, has not been healed.

And, there is no other group with a comparable history, and with precisely comparable problems that are so related to that history. And, I, I think that the Atlanta Office is a recognition of that.

CHAIRMAN REYNOLDS: Okay. Where are we, I mean, has this gentleman packed his bags? Because, what I am hearing is a rare instance of unanimity, and I think that we may decide, I may offer to, make a motion to undo this, but before doing so, where, where are we?

STAFF DIRECTOR DANNENFELSER: The plan is for him to report to Los Angeles in the office there this Monday.

CHAIRMAN REYNOLDS: This coming Monday?

STAFF DIRECTOR DANNENFELSER: This Monday. He'd spend a week there but he would then be back--

CHAIRMAN REYNOLDS: Did he terminate his lease in Atlanta?
STAFF DIRECTOR DANNENFELSER: No, no, again, this, I don't, you know, we have not terminated the lease in Atlanta--

CHAIRMAN REYNOLDS: No, no. No, his personal lease.

STAFF DIRECTOR DANNENFELSER: I, I don't know what he's done. But his intention is to move to Los Angeles. Yes, he, he plans to terminate his personal residence in Atlanta, yes.

CHAIRMAN REYNOLDS: So I assume that he has a home, so he has signed another lease, and in, in L.A.--

STAFF DIRECTOR DANNENFELSER: He has, he has housing in the area, I don't know--yes. Yes, I don't--

MR. BLACKWOOD: Can we have this kind of--in the hallway or something? Otherwise, we have to go into closed session.

VICE CHAIR THERNSTROM: I don't understand why this wasn't discussed before he packed his bags.

COMMISSIONER YAKI: Okay--I'd just like to make, I'd like to make a motion that the Chairman, given the sense of the Commission, confer with the staff Director, Director, with the purpose of determining whether or not it's still feasible and
practical to ensure that the Southern Regional Office-
sorry.

I thought, I thought you were, I thought
you were having like, angina or something. I'd like to
make a motion that the Chair, that the Chair of the
Commission in his waning, waning hours, take, take the
sense of this, take the sense of the Commission and
confer with the Staff Director on, on, on our concerns
and, and determine whether it is possible to reverse
the decision and keep the Atlanta, the Southern
Regional Office as the, as the full time position
rather then the--

CHAIRMAN REYNOLDS: Okay, how about this.
I think that we should go into closed session. What I
have to say is not going to take much time, but it is
of a sensitive nature, so all the magic words.

COMMISSIONER YAKI: Question. Is there
anything else in closed session we can add to it so we
don't do it twice?

CHAIRMAN REYNOLDS: I--

COMMISSIONER YAKI: Do we need to go into
closed session for anything else, David?

MR. BLACKWOOD: Not that I'm aware of.

COMMISSIONER YAKI: No? Okay. Okay. I move
we go into closed session.
CHAIRMAN REYNOLDS: Second. All in favor, please say aye. Any objections? Any abstentions?

COMMISSIONER HERIOT: I abstain. Abstain.

COMMISSIONER GAZIANO: Abstain. I'm not sure I--

CHAIRMAN REYNOLDS: Okay, we have to abstentions. Commissioners Heriot and Gaziano.

VICE CHAIR THERNSTROM: The Chairman has to ask for closed session. I think we should give it to him.

STAFF DIRECTOR DANNENFELSER: I'd like to add that John Ratcliffe, the budget officer, be in the meeting.

COMMISSIONER GAZIANO: Should special assistants stay, go?

MR. BLACKWOOD: No, they really shouldn't. I mean, this, I, it's you all that's making the decision.


MR. BLACKWOOD: Yes, you could stay. If you feel strongly. We've got to wait until the special assistants leave.

VICE CHAIR THERNSTROM: Who's he waiting for?
COMMISSIONER GAZIANO: John.

(Whereupon, the above entitled matter entered closed session to resume in Open Session at 11:56 a.m.)

CHAIRMAN REYNOLDS: Okay. We are back on the record. Commissioner Yaki?

COMMISSIONER YAKI: Thank you very much, Mr. Chair.

I would like to make a motion that we authorize the Chair to discuss with the Staff Director and General Counsel consistent with the sense of the Commission how we best deal with this situation. It is clear that the sense of the Commission is that we want to keep the Southern regional office open and staffed with a professional staff position. Based upon that sense, we authorize you to use your discretion to work with the Staff Director and the General Counsel to resolve the situation the best way that you see fit.

CHAIRMAN REYNOLDS: Can I offer a friendly amendment?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Something along the lines that I will confer with the Staff Director and the General Counsel and then will be authorized by the
Commission to make the decision.

COMMISSIONER YAKI: Absolutely.
CHAIRMAN REYNOLDS: Okay. Is there a second?

VICE CHAIR THERNSTROM: Second.
CHAIRMAN REYNOLDS: Discussion?
(No response.)
CHAIRMAN REYNOLDS: All in favor please say "Aye." (Whereupon, there was a chorus of "Ayes.")
CHAIRMAN REYNOLDS: Objections?
(No response.)
CHAIRMAN REYNOLDS: Abstentions?
(No response.)
CHAIRMAN REYNOLDS: Moving right along, next up, State Advisory Committees.
COMMISSIONER GAZIANO: I have another operation issue.

CHAIRMAN REYNOLDS: Yes, you are right.
COMMISSIONER GAZIANO: Okay. Our next in-person meeting is January 14. And we have been --
CHAIRMAN REYNOLDS: Is it the 17th or the 14th?
COMMISSIONER GAZIANO: Our next in-person --
CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: -- meeting is
January 14th. And we have been informed by an
informed source that we will have new commissioners at
that time. I don't know whether we will necessarily
have a full quorum of available commissioners on the
telephone meeting, which is scheduled for December
17th. And I know that the convening authority would
be the Vice Chair. And the Vice Chair has expressed
displeasure with telephonic meetings. And I would
suggest that it is particularly inappropriate before
we meet new colleagues to do so.

So I would wonder whether there is
unanimous consent to cancel the December 17th
telephonic meeting.

CHAIRMAN REYNOLDS: I second the motion.

COMMISSIONER HERIOT: Do we have any SACs
that would be coming up at that time?

CHAIRMAN REYNOLDS: Mr. Staff Director?

STAFF DIRECTOR DANNENFELSER: Potentially.

It's not certain. We have a few that need some more
work. I don't think we have any that would be urgent
that we deal with at that time that could not wait
until January.

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Believe it or not, I am going to oppose the motion and say that I would like to keep the flexibility open for that meeting should, in fact, we have new commissioners for the purposes of ensuring adequate orientation, talking to them, et cetera.

They're probably going to be coming in here to get sworn in, to get the lay of the land. And I think even a brief meeting for the purposes of some organization would be useful.

So I, for one, have never been a big fan of telephonic meetings, but in this case, I am going to withdraw my objection in this one instance because I want to at least keep that option open, although I think, in all probability, it won't happen. But in the case that it does and there is a sense from you that they would like to get the ball rolling, I would like to keep that option open.

CHAIRMAN REYNOLDS: Other comments?

VICE CHAIR THERNSTROM: I actually have a question. The process of swearing in, it's not really -- it's only -- tell me the process of bringing in new commissioners. I can't remember.

MS. MARTIN: Well, sometimes the new commissioners come with --
STAFF DIRECTOR DANNENFELSER: Tina, come up and get a microphone.

MS. MARTIN: Sometimes commissioners come with their oath already, someone has already sworn them in, the appointment is by a judge or someone of that sort. If not, the Chair can swear them in. The Staff Director can swear them in. And I can swear them in.

COMMISSIONER YAKI: I got sworn in by Tina.

COMMISSIONER GAZIANO: I don't think the swearing in is the major reason. I just think the first time we do business with new commissioners we ought to deal with them face to face. And given that there is some expense in noticing a meeting, there is some time spent possibly preparing, possibly not, we should just -- it's more prudent to cancel that particular meeting and just look forward to seeing them on January the 14th.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: I think that it is ironic that, all of a sudden, the motion of expense comes up in --

COMMISSIONER GAZIANO: Not so much --

COMMISSIONER YAKI: -- in the statement by
Commissioner Gaziano. I am going to be very blunt about this. I think that the meeting on the 17th should be made available. I think it should be up to the new commissioners if they want to convene at that time.

COMMISSIONER GAZIANO: The Vice Chair would have to convene.

COMMISSIONER YAKI: Well, then it's up to the Vice Chair if they want, if she or he or whoever is designated by the President wants to convene at that time.

COMMISSIONER GAZIANO: No, no. It has to be confirmed. Until we can confirm someone, no one is the Chair.

COMMISSIONER YAKI: I can see it in your heart, Mr. Gaziano, in which case I will say that it is my desire that we have the option to meet in December. And you may choose to cancel it, but I can assure you that we will do everything we can to uncANCEL it and have a meeting in December if we so choose.

So you can go through this motion or exercise and reveal yourself to just simply be someone who wants to push this off as much as possible or you can give --
COMMISSIONER GAZIANO: I am really confused by all of that.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: I just know that --

CHAIRMAN REYNOLDS: Folks, folks, folks, let's --

COMMISSIONER GAZIANO: -- this possibly exists now.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: It does seem to me that there is no harm --

CHAIRMAN REYNOLDS: Well, then help me out.

VICE CHAIR THERNSTROM: Okay. There is no harm in sticking with the 17th at this point. And, as Commissioner Gaziano knows, I don't like telephonic meetings, but we can --

COMMISSIONER GAZIANO: What was the last one you participated in?

CHAIRMAN REYNOLDS: Let her finish. Let her finish.

VICE CHAIR THERNSTROM: But we do have an uncertain picture on our hands here. I would like to have the pieces in place. We can cancel this meeting at any time. I will be happy to answer because I
don't like telephonic meetings. But I think, as a courtesy to incoming people, simply for that reason, we should stick with it in case, for some reason, they want it.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Now I think we have to have the meeting. Once it's set, you can't unilaterally cancel the meeting unless there is some process. This is the point of having a process now when we're all together.

CHAIRMAN REYNOLDS: Whoa. I don't think that's true.

COMMISSIONER YAKI: I would seriously beg to differ given how we have canceled meetings in the past.

CHAIRMAN REYNOLDS: All those in favor please say "Aye."

VICE CHAIR THERNSTROM: In favor of what?

What is the --

CHAIRMAN REYNOLDS: The motion is that we --

COMMISSIONER GAZIANO: It's to cancel the meeting. You may be right that somehow the meeting will be called. I think it's better to cancel now and then --
COMMISSIONER YAKI: I think it costs more to cancel and uncancel than it would be just to cancel.

CHAIRMAN REYNOLDS: Okay. There is not much value left --

COMMISSIONER YAKI: Sorry. Sorry.

CHAIRMAN REYNOLDS: -- in this discussion.

All of those in favor please say "Aye."

VICE CHAIR THERNSTROM: By the way, I would come in, rather than do it telephonically if I go on.

COMMISSIONER GAZIANO: Aye. All those in favor.

COMMISSIONER HERIOT: Aye.

COMMISSIONER YAKI: No.

COMMISSIONER MELENDEZ: No.

COMMISSIONER TAYLOR: Abstain.

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: I will abstain also.

COMMISSIONER GAZIANO: Pete?

COMMISSIONER KIRSANOW: Aye.

CHAIRMAN REYNOLDS: Okay. How many is that? Three?

COMMISSIONER YAKI: A tie. The motion fails.
CHAIRMAN REYNOLDS: One, two, three.

COMMISSIONER YAKI: One, two, three. Two abstentions.

CHAIRMAN REYNOLDS: All right. Motion fails.

COMMISSIONER YAKI: Next item.

III. STATE ADVISORY COMMITTEE ISSUES

- NORTH CAROLINA SAC

CHAIRMAN REYNOLDS: The meeting binder distributed by the Staff Director on November 26 contained a recommended list of candidates for the North Carolina State Advisory Committee.

I move that the Commission recharter the North Carolina State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director: Marian Ackerman, Philip Bazemore, Michael Gerhart, Stephen Greene, Matty Lazo-Chadderton --

COMMISSIONER YAKI: Which state are we doing first again?

CHAIRMAN REYNOLDS: North Carolina.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: -- George Leef, Kevin Leonard, Rick Martinez, Thealeeta Monet, Robert
Numbers, Willie Ratchford, Sarah Taylor, and Olga Wright.

Pursuant to this motion, the Commission appoints Marian Ackerman as the chair of this rechartered North Carolina State Advisory Committee. These members will serve as uncompensated government employees.

Under the 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?
(No response.)
CHAIRMAN REYNOLDS: All those in favor please say "Aye."
(Whereupon, there was a chorus of "Ayes.")
CHAIRMAN REYNOLDS: Abstentions?
(No response.)
CHAIRMAN REYNOLDS: All those who oppose?
(No response.)
CHAIRMAN REYNOLDS: Pete?
COMMISSIONER KIRSANOW: Aye.
CHAIRMAN REYNOLDS: Okay. If I have got this right, we have --
VICE CHAIR THERNSTROM: You didn't abstain?

CHAIRMAN REYNOLDS: No, we don't.

COMMISSIONER YAKI: No, no.

VICE CHAIR THERNSTROM: Oh, sorry.

CHAIRMAN REYNOLDS: I'm sorry. Did you abstain or did you oppose the motion?

COMMISSIONER YAKI: I opposed.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki opposed the motion. The remaining commissioners voted for it. The motion passes.

- VERMONT SAC

CHAIRMAN REYNOLDS: Next up, Vermont. The meeting binder distributed by the Staff Director on November 26 contained a recommended list of candidates for the Vermont State Advisory Committee.

I move that the Commission recharter the State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on recommendations of the Staff Director: Francine Bazluke, John Bloomer, Luther Brown, Ann Hagman Cardinal, Ellen Mercer Fallon, Leslie Ann Holman, Gary Kowalski, Terrance Martin, Marion Milne, Cheryl Mitchell, Tara O'Brien, Curtiss Reed, Eric Sakai, Stefanie Sidortsova, Diane Snelling,
Tracey Tsugawa, and the Right Rev. R. Steward Wood.

Pursuant to this motion, the Commission appoints Curtiss Reed as chair of the rechartered Vermont Advisory Committee. These members will serve as uncompensated government employees.

Under the motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointments. Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: And I move to sever the consideration of Curtiss Reed from the rest of the package, as we have done for other individuals in the past. I understand that he submitted a response to our request at the last meeting that I would like to discuss separately.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: What did you just say?

COMMISSIONER YAKI: What you just said is true. It just happens as a motion. It just happens automatically. You don't need a second on it.

CHAIRMAN REYNOLDS: Okay. So let's vote
on the slate of minus Mr. Reed. All in favor please say -- I'm sorry. Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor please say "Aye."

(Whereupon, there was a chorus of "Ayes.")

COMMISSIONER HERIOT: What does that mean with regard to the chairman?

COMMISSIONER GAZIANO: If we don't approve him, I suppose we need to subsequently approve someone else as chairman --

VICE CHAIR THERNSTROM: That's correct.

COMMISSIONER GAZIANO: -- or add someone in --

VICE CHAIR THERNSTROM: That is correct.

CHAIRMAN REYNOLDS: Okay. All in favor please say "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN REYNOLDS: Any abstentions?

COMMISSIONER GAZIANO: I abstain.

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Let the record reflect that Commissioner Gaziano abstained. The remaining commissioners voted for the slate of candidates.
Next up is Mr. Reed.

VICE CHAIR THERNSTROM: I have a question about the Reed response. It was all about this article that he had written, but maybe it's only me. I don't have a copy of the article. So I don't know what we are talking about here and what he is talking about.

CHAIRMAN REYNOLDS: Does anyone have a copy of the article?

COMMISSIONER GAZIANO: There were two things that were circulated to him for comment. And I believe the Staff Director sent it to all of us.

STAFF DIRECTOR DANNENFELSER: Yes. The link to the article and to the radio interview in question were in the e-mail that I sent to him that was circulated to all commissioners.

VICE CHAIR THERNSTROM: I'm sorry. I somehow missed those links because I stared at this and thought, what is this? Can somebody just tell me what the issue is, then?

CHAIRMAN REYNOLDS: Okay. There were two events, I believe. One was an interview he gave on NPR. And there was discussion about the rechartering of Vermont and other State Advisory Committees. And he -- where is the statement?
He suggests that there was an intent by the Bush administration to curtail civil rights. At least that is how I have interpreted it. And he basically says that -- when the eyes and ears of the states; i.e., the SACs, have been rendered inoperable because they are not rechartered or you have budget restrictions that restrict travel of Washington, D.C. staff or SAC members and the state, is this a part of the evil empire? He says, "I don't want to go there. However, there is a sense of a concerted systematic effort to restrict the activities of the SACs. The source of this is arguable, but the effect has been insufficient with the civil rights abuses and discrimination." That was one of the --

COMMISSIONER YAKI: And the date?


CHAIRMAN REYNOLDS: Right.

COMMISSIONER GAZIANO: One of the things that I thought was odd about that, about that particularly, was the conspiratorial conclusion that because we are not well-funded at this Commission and we don't provide the level of resources that he deems appropriate to his activity on the SAC, that there somehow is a purpose in harming civil rights.

But I had a concern as well regarding an
op. ed. that he titled that he was criticizing the Republican Lieutenant Governor Brian Dubie's Pure Vermont Plan. His op. ed. was titled "Pure Vermont is Pure Invalidation," where he compared the Lieutenant Govern's plan to eugenics laws, Jim Crow, the Khmer Rouge, and Nazi Germany. Those kind of invectives or ad hominem labels are troubling. So that's why I wanted him to respond.

And, instead of responding in a serious way -- you know, I'm not sure which way I might have voted if he had responded in a more thoughtful way, but his response seems to really confuse First Amendment law to attack us for even asking whether his comments are intemperate, seeming to imply that we would be censoring him if we did not automatically reapprove him, regardless of what hateful speech he said.

I mean, I think his response is more troubling to me than -- I possibly -- you know, I have approved other people who have explained their views. I was glad to support one of Commissioner Yaki's recommended people who attacked me personally when that individual explained themselves. But I think the explanation raises more questions and suggests than suitability to work with others and to represent the
Commission than even the original statement.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Well, I cannot defend everything that anyone says. Who knows what goes on in their minds when they say it? But I will say this. We do have this document in the record. And that is a letter from every member of the SAC urging his reappointment and continued presence as chair. I think that that, given the fact that this comes from everyone in the SAC, not just liberals, not just conservatives, but everyone, speaks to his ability to work well with others.

With regard to the statements that he made, I can only say this. And that is if that were the basis for qualification of everything -- and I do believe that there are obviously some boundaries that can't be crossed, but in the rhetoric that he was speaking to, it was not rhetoric that -- it was perhaps very colorful rhetoric at the very least, but certainly there have been a lot of instances when a lot of us have engaged in extremely colorful rhetoric, both here at the Commission and in writings outside, that would have made anyone -- give anyone pause as to whether or not they had the ability or the temperament to work with other people.
People will have their opinions. People will have their particular expressions. Commissioner Reynolds and I have gone toe to toe on some people I was not too keen on, won some, lost some. That's just the nature of the game.

But I think that, rather than get into any defense of anything that he has said in his personal capacity as an activist in the State of Vermont -- and anybody who knows Vermont -- and I have in-laws in Vermont. I have friends in Vermont. It's a unique state, to say the least.

The fact that you have a letter signed by every member of the SAC commending his stewardship as chair and urging that we keep him on speaks volume to me, to his ability to work well with others, keep everyone's viewpoints at the forefront and not impose his will, no matter what his personal beliefs may or may not be on the operation of the SAC.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Is it correct to say that every other member of the SAC has threatened to resign if we do not reappoint him?

CHAIRMAN REYNOLDS: I believe many have. I'm not sure if each member of the SAC has threatened to resign.
COMMISSIONER HERIOT: Can we clarify that?

STAFF DIRECTOR DANNENFELSER: I believe several have threatened to resign. And, as Commissioner Yaki has pointed out, all have urged that he be reappointed, but not all of them have made explicit statements that they would resign if he was not reappointed but several. I have been told by our person in the Eastern Regional Office that there have been some members who have expressed that sentiment.

COMMISSIONER GAZIANO: Can I assume unless someone wants to challenge me that we all agree his statement of First Amendment is rather bizarre that somehow if we consider his hateful speech and don't reappoint him, that that offends the First Amendment, that he has a First Amendment right to be reappointed? Isn't that a bizarre statement?

VICE CHAIR THERNSTROM: He doesn't have a First Amendment right to be reappointed. I think we can all agree on that.

CHAIRMAN REYNOLDS: Well, it --

COMMISSIONER GAZIANO: The reason it troubles me is it suggests an entitlement to make possibly more outrageous statements were we to reappoint him. If he had said, "All that I wrote I thought about, you know. I retract it. I see how it
might cast unfavorable light on my other position in the Commission," but he is taking this defiant stance that somehow he has a First Amendment right to reappointment. That raises additional concerns.

VICE CHAIR THERNSTROM: But on the other side of the ledger is the fact that the entire SAC, every member, supports the job he has been doing, applauds it.

CHAIRMAN REYNOLDS: Commissioner?

COMMISSIONER HERIOT: Yes. That actually worries me. That makes me want to withdraw my yes vote.

STAFF DIRECTOR DANNENFELSER: I just wanted to clarify that the first issue that came to my attention was about the op. ed. And the Vermont Public Radio interview came up a little bit later. And that was forwarded to my attention a little bit later.

Upon reading the op. ed., I did ask our person in the regional office to contact Mr. Reed and to ask if he would write a letter to the editor of that newspaper where the op. ed. appeared to clarify the statements as they related to Mr. Dubie, associating him with Nazis in the Khmer Rouge and the like. And he declined to write such a letter to the
editor.

CHAIRMAN REYNOLDS: Okay. I thought that we were asking him to contact us and to --

STAFF DIRECTOR DANNENFELSER: Well, that was the step I took before that --

COMMISSIONER GAZIANO: So he has had two opportunities to withdraw that.

CHAIRMAN REYNOLDS: I don't think that we should have asked him to withdraw his statement.

COMMISSIONER GAZIANO: I agree. I agree.

CHAIRMAN REYNOLDS: But for me, I find his statements interesting. It suggests a temperament that may not be suited to work. He may work well with his fellow SAC members, but it's not clear to me that he is going to interact well with folks here in Washington.

And also this notion of threats and this sentiment that he somehow is -- it's unfortunate for him because I was willing to hold my nose and vote for him before I got the e-mails from him where he once again demonstrated, in my view, a lack of judgment. He would have been much better off. At least he would have garnered at least one vote had he just remained quiet.

But, in any event, Vice Chair Thernstrom?
VICE CHAIR THERNSTROM: Can we ask the
Eastern Regional Office what their experience has been
in working with him? Would that be helpful?

CHAIRMAN REYNOLDS: Not to me.

Commissioner Yaki?

COMMISSIONER YAKI: I was concerned about
the statement made by another commissioner that
somehow -- yes. He certainly has no First Amendment
right to be appointed. On the other hand, his
appointment should not be conditioned on prior
restraint as well.

This is something where I think it is very
unique to -- I don't know the person. He's never
contacted me. I've never spoken to him. But I have
received the correspondence from the members of the
SAC who seem to be in agreement on both sides that,
however intemperate his written remarks may have been,
his commitment to the SAC had been admirable and
something that they wish to see continue.

And I think that there are a lot of people
that this Commission has approved who I don't know if
we would even go that far coupled with some of the
statements that they have made and done in public
life, not that that is saying that two wrongs make a
right, but in this case, we do have someone who has
been given a great degree of responsibility and care with regard to a State Advisory Committee, where there is unanimous support for him to be reappointed in as chair. I think that we ought to consider that very, very carefully and not simply impose our own political ideologies with regard to whether or not -- because if that were the case, I probably wouldn't vote for him either.

But does he have a commitment to civil rights? Does he have a commitment to the State Advisory Committee? Does he work well with others? Yes, yes, yes. Does he say things that are colorful?

COMMISSIONER GAZIANO: Offensive.

COMMISSIONER YAKI: But I will tell you this. As per his NPR interview, everything he said on NPR I've said twice over, 5 times over, maybe 20 times over, and during the New Black Panther hearing probably 100 times over. So, you know, if you want to use the NPR in your view, which I --

COMMISSIONER GAZIANO: Not exactly.

COMMISSIONER YAKI: Pardon?

COMMISSIONER GAZIANO: Not exactly.

COMMISSIONER YAKI: Absolutely exactly. Absolutely exactly. From the very beginning on the State Advisory Committees, if you want to know where
he got that perception from, it was from me talking on NPR in 2007 about how the SACs I believe and still are being manipulated, run over, and otherwise packed. And I don't withdraw any statement I have ever made about the SACs.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I just wanted to say that for me I am looking for two things that I am not finding with this candidate for the SAC. One, I look for someone who has a temperament that allows them to deal with complex and difficult issues.

Two, I am looking for someone who actually has some expertise on civil rights. And what I am seeing here in this record -- and I am thinking particularly about the article in the Brattleboro Reformer. I am actually less concerned with the NPR issue.

But, number one, he doesn't understand First Amendment law. That is not a good thing. Number two, even Commissioner Yaki agreed that there are limits. And you haven't reached the limit when you are accusing a candidate for governor of having a program that raises the spectra of Hitler's Aryan nation and the Khmer Rouge. You know, if that's not overkilling, I don't know what is.
CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Well, it is over the top, but it seems to me that the question here is how telling are the views of the other members of that SAC? And do we want the chaos that might ensue if we have to reconstruct that whole SAC?

And I wonder if some compromise would be possible that would be unprecedented, give him a year and not two years? And let's see how the SAC function and how he function.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I just wanted to add it's not clear to me that members of the SAC have any particular knowledge of this guy. They probably have very limited exposure to him.

I think if you want to get a sense of what Curtiss Reed thinks, the easiest way to do it is to look at Curtiss Reed's words and not ask someone who may have only seen --

VICE CHAIR THERNSTROM: Well, how many meetings have they had? And how much work have they done with him?

COMMISSIONER HERIOT: My guess is very little. I don't think SACs meet that often.

VICE CHAIR THERNSTROM: Well, I mean, they
do have a strong opinion here about him. So, you
know, do we take that into account or not?

Is it possible? Does my idea appeal to
anybody of giving him a year, not two, and coming back
again?

COMMISSIONER GAZIANO: I think that we
gave him an opportunity. And what seems to me to --
I can't I think in good conscience vote for him now,
regardless of -- it's not that the views of the other
SAC members are irrelevant. I just don't know what
the basis of them is. I have no idea whether they
have read his op. ed. If they agree with him, I might
vote against some of them. So that's why I abstained.

VICE CHAIR THERNSTROM: It's not so easy
to find SAC --

COMMISSIONER GAZIANO: Let me finish. But
his own sort of defiant, crazy, legally flawed defense
of his action is what troubles me more. And so I
think it's his own actions that have clarified which
way I should vote and I would think have clarified
which way others should vote.

He did not when given another chance
acknowledge that some hateful things, some outrageous,
hateful things he said might affect his duty in the
future. He took the opposite approach, which suggests
that he thinks that if we reconfirmed him on the -- reappoint him on the SAC, he thinks there are no limits.

He disagrees with Commissioner Yaki, it seems to me, that there are any limits to what he might say privately as it affects his job on the SAC. So I think that is enough.

COMMISSIONER YAKI: I move to table the whole Vermont SAC issue, just --

VICE CHAIR THERNSTROM: Well, the rest of the SAC is --

COMMISSIONER YAKI: I want to revisit it. I voted on the prevailing side. So I want to cancel the vote on the Vermont SAC and just kill it because I think that there have been strong sentiments expressed here, some of which I agree with.

I also believe that he did ask for more time to respond. He did not get that time. I think that --

COMMISSIONER HERIOT: He responded.

COMMISSIONER YAKI: He did after --

COMMISSIONER GAZIANO: The combined motion would not be in order. If he --

COMMISSIONER YAKI: Sure it.

COMMISSIONER GAZIANO: If Commissioner
Yaki moved to table, that is a privilege motion. That takes precedence over my motion that we're considering this gentleman.

We have already voted. He can reopen it later. And that is a separate motion. But a tabling motion takes two-thirds.

So the motion before us right now is whether to approve this guy. I call the question and intend to vote no.

CHAIRMAN REYNOLDS: All in favor please say "Aye."

COMMISSIONER HERIOT: Wait. What are we saying "aye" to?

COMMISSIONER GAZIANO: To approve him for the SAC.

COMMISSIONER HERIOT: Tabling I thought was his motion.

COMMISSIONER GAZIANO: If he wants to offer that just on this gentleman, then it needs two-thirds. But otherwise we can't combine it with reopening everything else up at the same time.

So the motion before us right now unless Commissioner Yaki wants to table the motion on Mr. Reed is voting on Mr. Reed.

COMMISSIONER YAKI: No. I was offering a
substitute motion. A substitute motion if you had
bothered to --

COMMISSIONER GAZIANO: You didn't offer --

COMMISSIONER HERIOT: It's not a substitute. It's not --

COMMISSIONER YAKI: I first started with the tabling. Once I get into this --

CHAIRMAN REYNOLDS: Folks, let's make it simple. Let's just vote.

COMMISSIONER YAKI: I want to reconsider the entire Vermont SAC because I do --

COMMISSIONER GAZIANO: You can do so after --

COMMISSIONER HERIOT: The motion is to table this motion.

COMMISSIONER GAZIANO: He has withdrawn that.

COMMISSIONER YAKI: -- about whether or not --

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER YAKI: -- when it happens what happens.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER GAZIANO: To what?

COMMISSIONER YAKI: To reconsider the vote
on the Vermont SAC how --

COMMISSIONER HERIOT: That is not a privilege motion.

COMMISSIONER GAZIANO: That is not a privilege motion.

COMMISSIONER YAKI: It is a substitute.

COMMISSIONER GAZIANO: Okay. Let's vote that one down so we can vote on Mr. Reed.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER HERIOT: I will second that.

It is a motion to substitute.

CHAIRMAN REYNOLDS: A motion to reconsider.

COMMISSIONER HERIOT: A motion to substitute is the only thing that is in order.

VICE CHAIR THERNSTROM: The one thing I want to know is if everybody is going to resign.

CHAIRMAN REYNOLDS: Okay. That issue has been brought up and put on the table. And everyone is aware of the specter of the members resigning. Some of them are en masse. So we --

COMMISSIONER YAKI: Forget it. Let's just vote on this guy. They're going to resign. We're going to have to do this whole process over again.

CHAIRMAN REYNOLDS: Thank you. Thank you.
Okay. All in favor please say "Aye."

COMMISSIONER GAZIANO: We are voting on?

Whether to put him on the SAC?

CHAIRMAN REYNOLDS: That is correct.

COMMISSIONER YAKI: I abstain.

COMMISSIONER MELENDEZ: Abstain. No.

VICE CHAIR THERNSTROM: I am going to abstain. I think it's a total mess.

CHAIRMAN REYNOLDS: All right? No.

COMMISSIONER GAZIANO: No.

COMMISSIONER HERIOT: No.

CHAIRMAN REYNOLDS: Okay. We have --

COMMISSIONER HERIOT: Peter?

CHAIRMAN REYNOLDS: Pete?

COMMISSIONER HERIOT: Pete?

COMMISSIONER KIRSANOW: No.

(Laughter.)

CHAIRMAN REYNOLDS: Okay. So abstention?

Two abstentions?

COMMISSIONER YAKI: Three abstentions.

CHAIRMAN REYNOLDS: That's right. We have three abstentions from Commissioners Melendez, Yaki, Thernstrom. The remaining commissioners voted for.

COMMISSIONER HERIOT: Voted no.

CHAIRMAN REYNOLDS: Voted against. So the
motion falls.

- WISCONSIN SAC

CHAIRMAN REYNOLDS: Next up is Wisconsin.

The meeting binder distributed by the Staff Director on November 26 contained a recommended list of candidates for the Wisconsin State Advisory Committee.

I move that the Commission recharter the Wisconsin State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director: Adel Mekraz, Naheed Bleeker, Jeffrey Cooper, Anneliese Dickman, Maria Gamez, Rebecca Grassl-Bradley, Lee Hansen, Daniel Kelly, Desmond Means, Frederic Mohs, Arthur Pontyen, Dawn Shelton-Williams, and William Tisdale.

Pursuant to the motion, the Commission appoints Adel Mekraz as chair of this rechartered Wisconsin Advisory Committee. These members will serve as uncompensated government employees.

Under the motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?
(No response.)

CHAIRMAN REYNOLDS: All in favor please say "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN REYNOLDS: Objections?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Objections? Any objections?


Abstain.

CHAIRMAN REYNOLDS: Abstentions?

COMMISSIONER YAKI: Abstain.

COMMISSIONER TAYLOR: Abstain.

CHAIRMAN REYNOLDS: I'm sorry. Commissioner Melendez, how did you vote?

COMMISSIONER MELENDEZ: I voted for it.

CHAIRMAN REYNOLDS: Okay. Vice Chair Ternstrom?

VICE CHAIR TERNSTROM: I abstain.

CHAIRMAN REYNOLDS: Me, too.

COMMISSIONER GAZIANO: Yes. I said yes.

CHAIRMAN REYNOLDS: Okay. We have three abstentions: Commissioners Taylor, Vice Chair Ternstrom, and who was the third? Commissioner Yaki.

The motion passes.
- ALASKA SAC

CHAIRMAN REYNOLDS: Next up is the Alaska State Advisory Committee. Once again, the binder was distributed by the Staff Director on November 26. It contained a recommended list of candidates for the Alaska State Advisory Committee.

I move that the Commission recharter the Alaska State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director: Robin Bronen, Dalee Dorough, Judith Kleinfeld, Cecelia LaCara, Guadalupe Marroquin, Alice Massie, Gerald McBeath, Elizabeth Medicine Crow, Gerald McBeath, Kara Moriarty, Denise Morris, Rynnevia Moss, and Melvin Williams.

Pursuant to the motion, the Commission appoints Kara Moriarty as chair of this rechartered Alaska Advisory Committee. These members will serve as uncompensated government employees.

Under the motion, the Commission authorizes the Staff Director to execute the appropriate paperwork. Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion? Yes?

COMMISSIONER MELENDEZ: Yes. There is
really an imbalance as far as -- I guess they couldn't
find any men up there in Alaska.

(Laughter.)

COMMISSIONER MELENDEZ: Usually it's the
other ways around, --

VICE CHAIR THERNSTROM: I was going to
say.

COMMISSIONER MELENDEZ: -- not enough
women, but this time I guess maybe they haven't done
an adequate job of --

COMMISSIONER GAZIANO: Maybe men up there
in Alaska need to just --

CHAIRMAN REYNOLDS: Okay, folks. Mr.
Staff Director, are you in a position to describe the
outreach?

STAFF DIRECTOR DANNENFELSER: I would just
say that there are some states where we have more men
and some states where we have more women and this
balance in a different direction this time.

CHAIRMAN REYNOLDS: I'm just trying to
make sure that we just didn't go to organizations,
women's organizations. I'm looking for you to say
assuming it's true that you use our usual outreach and
you tasked the next part of the line and went to
various organizations.
VICE CHAIR THERNSTROM: And the men were sensible enough to say no.

STAFF DIRECTOR DANNENFELSER: That is correct. And the memo does outline the outreach.

(Laughter.)

CHAIRMAN REYNOLDS: Okay. This is getting ugly. Okay. Your concern is duly noted. You have your response. Any other comments?

(No response.)

CHAIRMAN REYNOLDS: All in favor please say "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN REYNOLDS: Objections?

COMMISSIONER MELENDEZ: Abstain.

COMMISSIONER YAKI: Abstain.

VICE CHAIR THERNSTROM: Abstain.

CHAIRMAN REYNOLDS: Okay. Pete?

COMMISSIONER KIRSANOW: Aye.

CHAIRMAN REYNOLDS: Okay. Three abstentions: Commissioners Yaki, Melendez, and Thernstrom. The motion passes.

- IDAHO SAC

CHAIRMAN REYNOLDS: Next up is the Idaho State Advisory Committee. Once again, the binder distributed by the Staff Director on November 26
contained a recommended list of candidates for the Idaho State Advisory Committee.

I move that the Commission recharter the Idaho State Advisory Committee. Under the motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director: James Annest, Leslie Bock, Richard Cummings, Louise Dixey, Maurice Ellsworth, Martha Kawakami, Marshall Mend, Gladys Montoya, Stephen Smith, Perry Swisher, Rudolph Wilson, and Scott Yenor.

Pursuant to the motion, the Commission appoints Mr. Wilson as the chair of the newly rechartered Idaho Advisory Committee. The members will serve as uncompensated government employees.

And, as usual, the Commission authorizes the Staff Director to execute the appropriate paperwork.

CHAIRMAN REYNOLDS: Is there a second?
COMMISSIONER GAZIANO: Second.
CHAIRMAN REYNOLDS: Discussion?
(No response.)
CHAIRMAN REYNOLDS: All in favor please say "Aye."
(Whereupon, there was a chorus of "Ayes.")
CHAIRMAN REYNOLDS: Objections?
(No response.)

CHAIRMAN REYNOLDS: Abstentions?

Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes. I vote yes.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I'll vote yes on this.

CHAIRMAN REYNOLDS: Okay. We have one abstention: Commissioner Yaki.

(Pause.)

CHAIRMAN REYNOLDS: Why don't you put that on the side for the moment? Let me get through Louisiana first.

- LOUISIANA SAC

CHAIRMAN REYNOLDS: Okay. Louisiana is up next. We need to add one member to the Louisiana SAC.

The Staff Director recently informed us that a member of the Louisiana SAC resigned, bringing the number of the SAC members to ten, which is below the statutory minimum. Accordingly, the Staff Director has recommended the appointment of Loyola College of Law Professor James Viator.

I move to appoint Mr. Viator to the Louisiana SAC. Is there a second?

COMMISSIONER GAZIANO: Second.
COMMISSIONER HERIOT: Wait, wait. We are voting on the whole SAC or just --

CHAIRMAN REYNOLDS: It's already --

COMMISSIONER GAZIANO: It's fallen below the statutory level.

COMMISSIONER HERIOT: Oh, okay.

COMMISSIONER GAZIANO: We're just adding Professor --

COMMISSIONER HERIOT: No wonder I can't find it in the book here. Okay.

CHAIRMAN REYNOLDS: Okay. Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor please say "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Any abstentions other than Commissioner Yaki's?

COMMISSIONER MELENDEZ: Abstain.

VICE CHAIR THERNSTROM: I will vote yes on this.

CHAIRMAN REYNOLDS: Pete?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Okay. We have two
abstentions: Commissioners Yaki and Melendez. The motion carries.

- WISCONSIN SAC, PART II

CHAIRMAN REYNOLDS: Next up, Wisconsin.

(Pause.)

CHAIRMAN REYNOLDS: We did Idaho. Yes. Okay. All right. With respect to Wisconsin before we finish up, there is an issue. There is an individual, Mark Block. There are some issues raised about some of his activities. Since he is already on the SAC and I believe entitled to reappointment, I think that we should extend the same courtesy that we have extended to other --

COMMISSIONER YAKI: I'm sorry. How does that relate to Curtiss Reed?

CHAIRMAN REYNOLDS: Okay. I've been corrected. He's not entitled to reappointment, but he is --

COMMISSIONER GAZIANO: Entitled to respond. That's what I was getting ready to say.

CHAIRMAN REYNOLDS: Right.

COMMISSIONER YAKI: Did he respond?

CHAIRMAN REYNOLDS: No. So what we are going to do, we're going to move ahead with a slate of candidates that does not include him. And legal
people can take it up in the future.

COMMISSIONER GAZIANO: We've got an additional person.

CHAIRMAN REYNOLDS: For Wisconsin, we've got an additional person: Thomas Powers. I neglected to read his name. So I move that --

COMMISSIONER HERIOT: Where is his resume?

STAFF DIRECTOR DANNENFELSER: It was sent around by e-mail.

COMMISSIONER GAZIANO: It was sent around by e-mail.

COMMISSIONER YAKI: If we move on --

COMMISSIONER GAZIANO: I second your motion to add him to the Wisconsin.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: No. Go ahead. Vote.

CHAIRMAN REYNOLDS: All in favor please say "Aye."

(Whereupon, there was a chorus of "Ayes.")

COMMISSIONER YAKI: Abstain. I abstain.

CHAIRMAN REYNOLDS: Okay. Any other abstentions?

COMMISSIONER MELENDEZ: Abstain.

VICE CHAIR THERNSTROM: I abstain.

CHAIRMAN REYNOLDS: Okay. We have three
abstentions: Ternstrom, Melendez, and Yaki.

Next up is an update of --

COMMISSIONER YAKI: Excuse me?

CHAIRMAN REYNOLDS: Yes?

COMMISSIONER YAKI: Four? I didn't see.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Are you sure?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Positive?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: How many --

CHAIRMAN REYNOLDS: Yes, I am. Yes, yes, yes.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

COMMISSIONER YAKI: There you go.

- UPDATE ON STATUS OF REMAINING SACs TO RECHARTER

CHAIRMAN REYNOLDS: All right. Next up, update on the status of remaining SACs that need to be rechartered.

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

We have received SAC packages for North Dakota, Illinois, and Minnesota. We're still going to
probably try to do some additional recruitment for those particular SACs.

I am expecting to receive a package for the Montana SAC next week. And we'll see what kind of shape that is in. I have also been told that I will be receiving SACs for Delaware and Rhode Island. Those have missed the deadlines that I was promised, but I hope to receive them shortly.

And we also have West Virginia and New York that remain to be chartered. And those may take a couple of more months to have packages ready for consideration.

CHAIRMAN REYNOLDS: Any questions or comments?

VICE CHAIR THERNSTROM: Did we just lose Pete? I heard a --

COMMISSIONER KIRSANOW: Here.

VICE CHAIR THERNSTROM: Yes.

IV. APPROVAL OF MINUTES OF NOVEMBER 19 MEETING

CHAIRMAN REYNOLDS: Okay. Next up is the approval of the November 19th meeting minutes. They were distributed by the Staff Director on December 1st.

I move that the minutes be approved. Is there a second?
COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All those in favor please say "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes unanimously.

V. ANNOUNCEMENTS

CHAIRMAN REYNOLDS: Okay. Under "Announcements," as most of you know, Dr. Glenn Thurow died recently. He was the Chair of the Oregon SAC. And it is with genuine sadness that the Commission notes his passing.

He was appointed to that position in June 2010. Prior to that appointment, Dr. Thurow had served the Commission as a member of the Texas Advisory Committee.

Dr. Thurow was an expert in the subjects of equality, justice, and the Constitution, and for more than four decades a professor of political
science. He instructed and guided the research of thousands of students on these issues. Before his retirement to Oregon in 2009, he was a professor of politics at the University of Dallas in Texas.

Dr. Thurow was a renowned scholar on civil rights. He made contributions critical to the understanding of what makes people willing to protect the rights of others as well as the history of the attempts to strengthen and extend the civil rights, both in this country and in other parts of the world.

Dr. Thurow had an extensive and impressive record of public service. The Commission has lost a valuable resource while the country has lost a dedicated public servant. We extend our deepest sympathy to his family along with our heartfelt gratitude to Dr. Thurow for his generous contributions to the Commission and to the advancements of civil rights in this country.

Next, 55 years ago on December 1st, 1955, Rosa Parks boarded a bus in Montgomery, Alabama, refused to sit in the segregated rear of the bus, and was arrested. Her acts brought a boycott of public transportation by the civil rights community, led by a young Rev. Martin Luther King.

The boycott lasted over a year and ended
with the U.S. Supreme Court decision striking down the
Montgomery, Alabama segregation law as
unconstitutional.

I would also like to add that the history
of that boycott is far more complex than my statements
suggest. There was far more strategy. This just
didn't happen. Ms. Parks was involved with the civil
rights community. And this was a piece of a grand
strategy and some hard-nosed thinking. And we all
enjoy the results today.

VICE CHAIR THERNSTROM: And she was very
well-trained. I'm very glad you added that because I
was going to add it.

CHAIRMAN REYNOLDS: December also marks
the anniversary of the ratification of the 13th
amendment in 1865, making slavery and involuntary
servitude unconstitutional.

Well, folks, this is my last Commission
meeting. It has been a very interesting journey. I
value the memories and the time that I have spent on
the Commission, but it is a good time for me to leave
so we can have some fresh blood. I suspect that
Commissioner Yaki will appreciate that.

In any event --

COMMISSIONER TAYLOR: Before you gavel --
CHAIRMAN REYNOLDS: Yes? Could you give some --

COMMISSIONER TAYLOR: Sorry. Go ahead.

COMMISSIONER MELENDEZ: First of all, since I have been here on the Commission, it's been a rewarding experience. And it's --

CHAIRMAN REYNOLDS: I'm sorry. Okay. Yes, yes. I'm not the only one going off.

(Laughter.)

CHAIRMAN REYNOLDS: I apologize.

COMMISSIONER MELENDEZ: I just want to thank the Commissioner staff, Audrey and all of our staff here. I think they work really hard. And I also thank the special assistants, all of you that have worked and really helped us out as commissioners. You know, I wish you the best as you continue into the new year. And I wish you a great holiday season, too. So thank you very much.

VICE CHAIR THERNSTROM: And thank you for playing the role that you have on the Commission. It has been a privilege to know you and to have you here.

CHAIRMAN REYNOLDS: Yes, indeed. Commissioner Melendez, you have no idea how I appreciate how you have conducted yourself here.

(Laughter.)
CHAIRMAN REYNOLDS: I mean, you are a gentleman. You disagree without being disagreeable. And, under different circumstances, I would -- I look forward to working with you again but not with these jokers.

(Laughter.)

CHAIRMAN REYNOLDS: And, finally, I was also remiss by not mentioning my special assistant, Dominique. She has been just absolutely fantastic. She has kept my life at the Commission in order and worked hard to prevent me from walking over cliffs. On some days, she has been successful. And others, I have insisted on walking over the cliff, but I appreciate her efforts.

COMMISSIONER TAYLOR: I have truly appreciated my experience and the time here on the Commission. And I want to thank the staff, first of all. You all do a tremendous job collectively under very difficult circumstances.

I want to thank my fellow commissioners for dealing with me personally and my schedule as I tried to balance this Commission with the private practice of law. I know it has been frustrating at times. And, again, for that I thank you for bearing with me.
I want to thank Kim, my special assistant. She is remarkable in many respects. And she is underpaid, has always been, and is just critical. And her talents are many.

Finally, let me say something about the sometimes contentious nature of our meetings and this group. In many ways, it is good in this respect.

CHAIRMAN REYNOLDS: Oh, please explain.

COMMISSIONER TAYLOR: It is a --

(Laughter.)

COMMISSIONER TAYLOR: It is a reflection of the complex nature of civil rights in today's society. It's not as simple as it once was. There is no simple right answer. And these are more difficult and nuanced questions. There are often two sides to an issue. And, having eliminated illegal, obvious state-sponsored, government-sanctioned and forced discrimination --

CHAIRMAN REYNOLDS: In the main.

COMMISSIONER TAYLOR: -- we are now faced with more difficult issues. And it will cause more tensions in groups like this and not less because in many cases, you can have two opposing philosophies from people who are focused on the same goal.

And, as someone reminded me at our civil
rights conference, Martin Luther King apparently was fond of saying that there are many paths to the ocean. The question is whether or not we are all trying to get to the ocean.

So with that, I will close and say thank you.

VICE CHAIR THERNSTROM: Nicely said.

CHAIRMAN REYNOLDS: Meeting adjourned.

(Applause.)

(Whereupon, the foregoing matter was concluded at 12:27 p.m.)
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In the matter of: Meeting

Before: US Commission on Civil Rights

Date: 12-03-10

Place: Washington, DC

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