The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C., at 9:30 a.m., Abigail Thernstrom, Vice Chairman, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chairman
JENNIFER C. BRACERAS, Commissioner
   (via telephone)
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
   (via telephone)
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner
KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

JOHN BLAKELEY
RACHELLE BRACEY
CHRISTOPHER BYRNES
DEBRA CARR, Associate Deputy Staff Director
PAMELA DUNSTON, Chief, Administrative Services
   and Clearing House Division
BARBARA FONTANA
LATRICE FOSHEE
PATRICIA JACKSON, Chief, Budget and Finance
   Division
SETH JAFFE
SOCK-FOON MACDOUGALL
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
EILEEN RUDERT
STAFF PRESENT: (cont'd)

ANGELA ST. HILAIRE
AUDREY WRIGHT
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS
LISA NEUDER
KIMBERLY SCHULD (via telephone)
A-G-E-N-D-A

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VICE CHAIRMAN THERNSTROM: All right. This meeting will come to order. This is a meeting with -- let me see -- four Commissioners present, two participating by phone, Commissioners Braceras and Melendez.

COMMISSIONER YAKI: And one in a pear tree.

VICE CHAIRMAN THERNSTROM: Pardon me?

COMMISSIONER YAKI: And one in a pear tree.

VICE CHAIRMAN THERNSTROM: And one in a pear tree, right.

(Laughter.)

I'm afraid you've just referred to -- I hope you have not just referred to the chair --

COMMISSIONER YAKI: No.

VICE CHAIRMAN THERNSTROM: -- who cannot be here.

COMMISSIONER YAKI: No, not at all.

I. Approval of Agenda

VICE CHAIRMAN THERNSTROM: The first item on the agenda is the approval of the agenda. Before we vote to approve the agenda, could I have a motion
to amend the agenda so as to add an item labeled "Special Assistant for Commissioner Melendez"?

COMMISSIONER YAKI: So moved.

COMMISSIONER KIRSANOW: Second.

COMMISSIONER BRACERAS: Can I make another motion to amend?

VICE CHAIRMAN THERNSTROM: Yes. But can we vote on this one first?

COMMISSIONER BRACERAS: All right.

VICE CHAIRMAN THERNSTROM: All in favor -- any discussion?

(No response.)

All in favor?

(Chorus of ayes.)

It has passed unanimously.

Commissioner Braceras, you want another amendment to the agenda?

COMMISSIONER BRACERAS: Well, yes. If it's possible, I'd like to throw out moving up Items VI and VII, Program Planning and Strategic Planning, before Items IV and V, Staff Director's Report and Management and Operations. I just want to make sure I can still be on the phone, because I have to be off at 11:00 for a meeting out of town.

VICE CHAIRMAN THERNSTROM: I'm happy to
move that. Do I have a second on that?

COMMISSIONER YAKI: Second.

VICE CHAIRMAN THERNSTROM: And any discussion?

(No response.)

All in favor?

(Chorus of ayes.)

Okay. So that's approved. So the order of the agenda is changed, though, Commissioner Braceras, I would say that I think you are needed at this meeting for all items.

COMMISSIONER BRACERAS: I'm sorry. But the reason I couldn't be there personally is I have a conflict at 11:30, so --

VICE CHAIRMAN THERNSTROM: Right. Okay. And we apologize for starting late.

II. Approval of Minutes of February 17, 2006 Meeting

VICE CHAIRMAN THERNSTROM: Second item for approval is minutes of February 17th. Can I get a motion to approve those minutes?

COMMISSIONER KIRSANOW: So moved.

VICE CHAIRMAN THERNSTROM: Seconded?

Somebody second it, please.

COMMISSIONER BRACERAS: Second.
VICE CHAIRMAN THERNSTROM: Any discussion?
(No response.)

All in favor say aye.
(Chorus of ayes.)

Anybody opposed?
(No response.)

The motion is approved unanimously.

III. Announcements

VICE CHAIRMAN THERNSTROM: One announcement only. I'm pleased to announce that March 2006 is Women's History Month. It's a month in which we celebrate the achievements of American women, recognizing their contributions and accomplishments, a recognition in part of how far we have come, even in my lifetime.

Staff Director, you have a report?

STAFF DIRECTOR MARCUS: I do, but I believe the agenda was moved, so that I would speak later.

VICE CHAIRMAN THERNSTROM: Oh, that is correct. Okay.

COMMISSIONER BRACERAS: I think we're ready for Program Planning.

VICE CHAIRMAN THERNSTROM: Right. So we are going, what, immediately to Item VI. We do not
even go through the motion to -- for a Special
Assistant for Commissioner Melendez? Okay.

COMMISSIONER YAKI: Where did we put it on
the agenda when we amended it?

COMMISSIONER BRACERAS: I think it's all
in Management and Operations.

STAFF DIRECTOR MARCUS: Usually that's
where we would put it.

VICE CHAIRMAN THERNSTROM: I am lost.

COMMISSIONER YAKI: I see it. That's
where it says on the motion. Okay.

VICE CHAIRMAN THERNSTROM: I'm sorry. Is
it page 8? So, Jennifer, you want to start with the
question of the Voting Rights Act statutory report?

COMMISSIONER BRACERAS: I want to do all
of the substantive stuff first.

VI. Program Planning

Voting Rights Act Statutory Report

VICE CHAIRMAN THERNSTROM: Fine. Okay.
So item number 1 is the Voting Rights Act statutory
report, a motion to approve the FY06 statutory
enforcement report on the reauthorization of the

Can I have a motion to approve that
report, together with concurring or dissenting
Commissioners' statements received within two weeks of the agency's statutory enforcement -- two weeks of the report? The report was distributed to Commissioners earlier this week. Commissioner Yaki?

First of all, do I have a second on that?

And then, let's go to discussion.

COMMISSIONER YAKI: Yes, I was going to amend the motion.

VICE CHAIRMAN THERNSTROM: Okay.

COMMISSIONER YAKI: I was going to amend the motion that we defer -- we approve -- we defer this item to April -- to the April meeting. I have been reading the various drafts as they come forward. I did not receive the final draft until -- what day is today, Friday? Thursday, because it was sent while I was in transit to Washington.

In it -- in the e-mail that -- well, strike that. It was -- we were informed that changes pertaining to certain reports and comments had been made since the last draft. It is very difficult for me, given the short time period, to be able to fully debate and discuss a report.

And as I requested in an e-mail to my fellow Commissioners, especially for those Commissioners who do not have an assistant, having a
redline available to distinguish between the last prior draft and the final draft, so that we could more easily understand the changes that were made from one draft to the other would be extremely helpful. And I would say that some point we should discuss whether that should be a permanent policy on statutory reports.

But for my -- for my sake right now, I am not prepared to vote on the report, and I would request that a redline be made available to Commissioners subsequent to this meeting, so that before the April meeting we will have ample time to have examined the changes in order for a full and robust discussion to occur.

VICE CHAIRMAN THERNSTROM: Do you have -- Staff Director, do you have any problems with this?

STAFF DIRECTOR MARCUS: Well, there isn't currently a redline version, so I suppose we would have to check to see whether it's possible retroactively to do one. So maybe that's sort of a caveat.

VICE CHAIRMAN THERNSTROM: I mean, is it possible, Commissioner Yaki, to simply take the existing draft -- I'm not -- this is not on the question of whether we have a vote today, but simply
procedurally for you -- take the existing draft, read
the document as is, and comment on it?

COMMISSIONER YAKI: I think that is
possible. I don't think that, given the time period
that, one, I can comment on it now --

VICE CHAIRMAN THERNSTROM: Right.

COMMISSIONER YAKI: -- and, two, much less
have the ability within two weeks to formulate any
additional statements.

VICE CHAIRMAN THERNSTROM: I was
separating that from the question of the timetable.

COMMISSIONER YAKI: Sure. I understand
that. In other words, if -- if -- I mean, it strikes
me -- and maybe this is just because I live in a world
of word processing. It just strikes me as odd that we
wouldn't be able to have a redline. But if we can't,
then that even more goes to the need for further time
for me to review this, because I do want to have a
careful comparison between the penultimate draft and
this draft.

VICE CHAIRMAN THERNSTROM: Well, I am very
sympathetic to the notion of giving Commissioners time
to properly review the draft. Is there any down side
to delaying this a month?

STAFF DIRECTOR MARCUS: I'm not surprised
to hear the motion, because, as Commissioner Yaki points out, there was very little time for Commissioner review. And I also do have to say, Commissioner Yaki, that there are a very large number of changes. It's not minor, so I can particularly understand your comment.

Is there a down side? Well, it is true that Congress is moving quickly, or seems to be moving quickly, on reauthorization. And any time we push back the date there is a possibility that our report will be less useful to Congress in its reauthorization.

It is also true that we specifically streamline the project somewhat in order to get the thing done to make it more likely that will be relevant. There is a possibility that a month's delay would mean the difference between some member of Congress having the ability to use this document for their deliberations or not.

But I certainly haven't heard anything to say for certain that that month would be dispositive, so it may well be that a month from now it will be as relevant as it is today.

VICE CHAIRMAN THERNSTROM: I mean, the Senate has yet to hold hearings on the
reauthorization.

STAFF DIRECTOR MARCUS: That's true. We don't know for sure, but I suspect it will be as relevant a month from now as it is today.

VICE CHAIRMAN THERNSTROM: I think, Commissioner Yaki, that you should propose an alternative -- make an alternative motion here.

COMMISSIONER YAKI: I did.

VICE CHAIRMAN THERNSTROM: Well, do it formally.

COMMISSIONER YAKI: Oh. I would move that this item be deferred to the April agenda for consideration and approval.

COMMISSIONER KIRSANOW: Second.

COMMISSIONER BRACERAS: Second.

COMMISSIONER YAKI: And that, if possible, if a redline draft could -- is possible and practical -- I want to add that word, too -- that it be made available. If not, that's okay, as long as -- but I'd like to know that in fairly short order, so I'm not waiting for something that might not occur.

STAFF DIRECTOR MARCUS: We should be able to figure out fairly soon --

COMMISSIONER YAKI: Okay.

STAFF DIRECTOR MARCUS: -- whether it's
feasible.

COMMISSIONER YAKI: Great.

VICE CHAIRMAN THERNSTROM: Do I have a second on that motion.

COMMISSIONER BRACERAS: I did second it.

VICE CHAIRMAN THERNSTROM: Oh, you did second it, yes. Any further discussion?

COMMISSIONER KIRSANOW: Yes. I would just like to note that I think it might be useful in the future, on a go forward basis, to have redline copies whenever we have changes to any kind of draft reports. It just makes it a lot easier for us. We're not going back and forth.

And I think it would probably expedite discussion and probably yield greater consensus more quickly, because there is always a concern on the part of any Commissioner that they're missing something. And I think it causes them to reserve judgment on something when they don't necessarily have to do so.

VICE CHAIRMAN THERNSTROM: Now, I wonder if there might be an additional part to this motion. That is, that concurring and dissenting statements come in by the next meeting. Would that help in any way?

STAFF DIRECTOR MARCUS: It would help. I
have to say the reason that in the last couple of meetings we've provided for the additional two weeks is -- is on the possibility that the findings and recommendations will change, that it might be that a concurring or dissenting Commissioner will need to know what they're concurring or dissenting to. So that's why we've given additional time before that.

COMMISSIONER YAKI: That's fine. That would be fine, if you just wanted to make it all due the same day.

VICE CHAIRMAN THERNSTROM: Oh. Let us make it -- let us add that to your motion, that concurring or dissenting statements are also due by the next Commission meeting, so that we can really wrap this up at that time.

COMMISSIONER YAKI: I guess the question is: are you going to concur or dissent? It's a prejudgment, but oh well.

VICE CHAIRMAN THERNSTROM: Excuse me?

COMMISSIONER YAKI: Well, in other words, you would have to prejudge what your vote would be on that day.

VICE CHAIRMAN THERNSTROM: You would have to do that. Look, we can --

COMMISSIONER BRACERAS: No. You could
submit a statement of your personal views, and then
decide what to label it after the vote.

(Laughter.)

COMMISSIONER YAKI: Two stamps.

(Laughter.)

VICE CHAIRMAN THERNSTROM: All right.

COMMISSIONER YAKI: That's fine. Not a
problem.

VICE CHAIRMAN THERNSTROM: Let's take a
vote on this. All in favor?

(Chorus of ayes.)

All opposed?

(No response.)

This has passed unanimously. We will look
forward to a final vote on this statutory report next
month.

Anti-Semitism Findings and Recommendations

VICE CHAIRMAN THERNSTROM: Okay. We go
straight to Anti-Semitism Findings and
Recommendations.

You all have a motion in front of you.

This obviously has -- matter has been pending since
the November briefing. We have postponed it now, I
believe, three times. And it is time, in my view
today, to move on this.
Now, Staff Director, do you want to say something on -- where are we on this? We've got now amendments to --

COMMISSIONER BRACERAS: Yes. This is Commissioner Braceras. I just want to make sure that everybody has the same version in front of them, because there was an original version, and then there was a redline version, and there had been some discussion at the last meeting by the Vice Chair that she wanted to go back to the original version.

And I tend to agree with going back to the original version and just tweaking it ever so slightly, in the hopes of satisfying everybody, and sent that to Kat earlier this morning. So I don't know if people have that in front of them or are able to look at it.

STAFF DIRECTOR MARCUS: The people who are in the room should have it in front of them.

COMMISSIONER YAKI: Is this the --

STAFF DIRECTOR MARCUS: Yes.

COMMISSIONER YAKI: -- one that was handed out, not the one in the packet?

STAFF DIRECTOR MARCUS: Well, let me just try to summarize the different versions. There was -- the briefing took place in November. During the
December meeting, an initial set of findings and recommendations were distributed.

Approximately in February, a revised set of findings and recommendations were distributed, together with a redline version showing the difference between the new ones and the initial ones. That same set was redistributed again in advance of this meeting, and then this morning Commissioner Braceras provided this alternative version, which was just circulated a few minutes ago.

COMMISSIONER BRACERAS: So basically, just to summarize, the "Braceras version" is the same as the original version, except that it makes a small, almost grammatical stylistic change to finding number three, and it deletes some language from finding number four, which I know the chair wanted deleted. And then, it adds recommendation number six. So there are three changes to the original document.

I don't think the one -- the edit to finding number three is particularly controversial. The edit to finding number four basically just deletes reference to the OCR in order to avoid basically having to interpret their policy for them. To the extent that there's any ambiguity on their policy, my solution is simply not to reference it, and to move
forward with our own interpretation of the statute.

And then, the final thing, which is recommendation number six, is the recommendation that Congress act to clarify what we believe is already the state of the law.

And if I may just add, I think the only person who may not have a copy of this before them would be Commissioner Melendez. And I don't know if anybody can go and quickly e-mail this version to him, but I believe everybody else should have it.

VICE CHAIRMAN THERNSTROM: If people want to take a minute to look at it, my -- I would like a motion to approve the original -- the original findings and recommendations with the amendments that Commissioner Braceras has proposed here that you have before you. But if people need a minute to look at them --

COMMISSIONER KIRSANOW: Madam Chair?

VICE CHAIRMAN THERNSTROM: Yes.

COMMISSIONER KIRSANOW: I would propose a motion that we continue this until April. Having spoken to --

COMMISSIONER BRACERAS: I'm sorry. Can you speak up? I can't hear you.

COMMISSIONER KIRSANOW: Yes. I would
propose a motion to continue this until April. Having spoken to the Chairman, who is not able to be here today -- he had a death in the family -- he expressed his desire to be involved in any discussion related to the campus anti-Semitism matter. And since he will not be available today, he asked that this be postponed until the next meeting.

VICE CHAIRMAN THERNSTROM: Well, but, Commissioner Kirsanow, his concern is with OCR policy and our response to it. We are -- it seems to me that Commissioner Braceras' solution is simply to eliminate that argument. And, frankly, we have now postponed -- we did this on an expedited basis to get it to the December meeting. There have been three postponements here.

I do think it is extremely important that the Commission -- I know there's a lot of interest on the Hill in this. Extremely important -- it's extremely important that the Commission come out with really what is -- shouldn't be a controversial statement at all, particularly as we are simply -- we are not engaging the question of OCR's policy here, which is -- was the concern of the chair.

COMMISSIONER KIRSANOW: I understand that, but he simply wanted to be involved in the discussion.
I would note that if the Hill is interested in this --
I don't know if there was any pending votes related to
this, and I don't see any down side to waiting as an
accommodation at the explicit request of the chair to
hold this over until April.

VICE CHAIRMAN THERNSTROM: I am opposed to
postponing this a fourth time.

COMMISSIONER MELENDEZ: This is
Commissioner Melendez. I haven't received Ms.
Braceras' changes. Any time you make changes close to
the last minute when we're voting, I think we need to
see those. So I would also support --

COMMISSIONER BRACERAS: It's a very simple
change. If somebody could e-mail it to Commissioner
Melendez now, it is redlined. It's flagged, so you
can look at it very easily. It has the --

STAFF DIRECTOR MARCUS: Excuse me.
Commissioner Melendez, a copy was just faxed to you,
if you're near a fax machine.

COMMISSIONER BRACERAS: The original
document has been in our possession for, as the Vice
Chair noted, several months. And my edits to the
original document are actually quite minor, so I
believe that it's easy to eyeball it and consider it
quickly, you know, assuming that the original
document, which we've all had since December, has been
digested thoroughly by all of us by now.

COMMISSIONER MELENDEZ: Okay. My concern
-- Commissioner Melendez again. As I stated before, I
think that the Commission needs to come to consensus
as to when we all agree, and I don't think that's
totally there today, especially with the chair having
an issue with this. And I think we have to have the
proper respect that we should all be in consensus
before we even vote on this.

COMMISSIONER BRACERAS: Well, consensus is
not something that has been -- you know, there has
been a long history of dissent on this Commission. We
don't all have to sign on to a particular policy. Let
me go to Commissioner Yaki, who is waving his hand
frantically.

COMMISSIONER YAKI: Thank you very much,
Madam Chair. I would just like to know whether or not
the chair -- the chair, in absentia -- and please
communicate my personal sorrow for his loss -- if he
has seen the changes proposed by Commissioner
Braceras, number one.

But, number two, even if -- even if he has
not -- has or has not, if he has expressed a desire to
participate in the discussion given his former
position at the agency -- I mean, I have no problems
with what Commissioner Braceras has done, and I thank
her for her hard work on this in attempting to meet
this deadline.

Obviously, none of us can predict when
events like what has happened to the chair will occur.
And if he has expressed a desire -- a personal wish to
be involved in this debate, I am inclined to give him
that courtesy.

COMMISSIONER BRACERAS: This is Braceras.
May I be heard?

VICE CHAIRMAN THERNSTROM: Yes, of course.

COMMISSIONER BRACERAS: What I would
propose, if it's workable, then, is rather than wait a
full month until the April meeting, would it be
possible to get a copy of this to Gerry, and to vote
on this by poll vote sometime in the next 10 to 14
days? Because as the Vice Chair has noted, this has
been hanging around a long time.

I would very much like for these findings
and recommendations to be useful to Congress if, in
fact, we do approve them. And I think the sooner we
get them out the better. So I'm all for giving the
chair an opportunity to look at the latest draft and
have his vote heard. But if we could do it by poll
vote and not wait until April, I'm hoping that that would satisfy the concerns of everybody.

COMMISSIONER YAKI: Point of information. A poll vote does not allow for debate and discussion. It's simply yes or no on the motion, is that correct?

STAFF DIRECTOR MARCUS: That's right, Commissioner. Let me distinguish between a telephonic meeting and a poll vote. A poll vote does not allow for a deliberation, and can be held only if the Commissioners -- if no Commissioner objects, whereas a telephonic call could be -- can include deliberations.

COMMISSIONER YAKI: I would -- I think that what I heard from Commissioner Kirsanow, and perhaps he can restate, is that the chair wanted to engage in discussion about it, and a poll vote would not allow that.

I understand you very much -- I sympathize very much, Commissioner Braceras and Vice Chair Thernstrom, with your desire to get this out the door. But I just think that -- that as a courtesy to the chair and to his former office, I would either have a telephonic meeting in the interim or postpone it to the next meeting.

COMMISSIONER BRACERAS: Well, I would be
very much in favor, then, of a telephonic meeting sometime within the next 14 days to discuss solely this issue.

COMMISSIONER TAYLOR: Can I make a suggestion? Since we don't know what the chair's position will be relative to these new changes, can we leave it open, such that we can either be contacted for the poll vote or a telephonic meeting, if a meeting is necessary? There's no need to have a meeting if Gerry reviews this and decides this satisfies his concerns, and we can do it by way of a poll vote.

COMMISSIONER KIRSANOW: Yes. I think Commissioner Yaki and Commissioner Taylor both make good points. I will communicate with the Chairman and ask him if it's feasible to simply do it by poll vote. And if that's the case, then I can relate that as soon as possible at the beginning of next week to the Staff Director, and then we can make the appropriate arrangements for either a poll vote or a telephonic conference if that's what the Commission decides.

COMMISSIONER MELENDEZ: This is Commissioner Melendez. I'm out of the country until the 23rd of March. I think it's a Thursday, the 23rd, I come back to the United States. So I might have a
problem getting --

COMMISSIONER BRACERAS: When do you leave?

COMMISSIONER MELENDEZ: I leave, actually, Sunday to Los Angeles. I'm going to Rome, so I'll be there a couple of weeks.

VICE CHAIRMAN THERNSTROM: Well, is it possible to -- for us to have some indication from you before you leave?

COMMISSIONER MELENDEZ: I think I actually have Virginia Davis over at NC, National Congress. I could talk to her about this. And when I look at this thoroughly, I can -- you can contact her, and she could give you my position, if that's possible.

COMMISSIONER BRACERAS: I don't know if, procedurally, you can vote that way. Certainly, if we did it by poll vote, you can fax in your vote at any time.

COMMISSIONER KIRSANOW: I would just note that the 23rd is less than two weeks from now. I think we could probably wait until Commissioner Melendez returns back from Rome.

COMMISSIONER MELENDEZ: I'll be back on that Friday, the 24th. I'll be in the office on the 24th.

COMMISSIONER BRACERAS: Okay. So why
don't we -- let me put this in a motion. I move that the findings and recommendations on anti-semitism are -- strike that. I move that the Commission conduct a vote on the findings and recommendations related to anti-semitism, either by poll vote or by telephonic meeting, sometime before April 1, 2006.

COMMISSIONER KIRSANOW: Second.

VICE CHAIRMAN THERNSTROM: Any further discussion on this?

(No response.)

COMMISSIONER BRACERAS: We're ready to vote I guess.

VICE CHAIRMAN THERNSTROM: Okay. Let's take a vote. All in favor?

(Chorus of ayes.)

Anybody opposed?

(No response.)

All right. So we can move on.

And, again, I should note that I think that the chair's concerns have been met by the suggestions of Commissioner Braceras here by the amendments to both the recommendations and findings. I hope that that is correct.

We move on.

Minorities in State Foster Care and Adoption
VICE CHAIRMAN THERNSTROM: All right. We are at Minorities in State Foster Care and Adoption. On May 17, 2005, the Commission approved a national project on minority children in state foster care and adoption, later converted to a briefing currently scheduled for February '07. Approved project was based on a concept paper whose scope only extended to minorities in state foster care.

During discussion of the project at the May '05 meeting, the scope of the project was extended to cover minority children in state adoption. However, the extension of the scope was not clarified at that meeting. I had requested a clarification of the scope at the meeting held last month on February 20th, and there is a motion here to clarify the scope of the briefing.

And somebody could read it, or I could read it, but you should have it in front of you. Does somebody want to read this motion?

(No response.)

Has everybody got the language in front of them?

COMMISSIONER KIRSANOW: I don't believe I do.

VICE CHAIRMAN THERNSTROM: It should be
right in your briefing book, right after the material
on anti-semitism.

COMMISSIONER KIRSANOW: I've got it.

VICE CHAIRMAN THERNSTROM: Okay. Does somebody want to make a motion and read the motion into the record?

COMMISSIONER YAKI: Can we waive reading?

VICE CHAIRMAN THERNSTROM: Can we waive reading it? Well, we can --

COMMISSIONER BRACERAS: It would be helpful for me if you read it.

VICE CHAIRMAN THERNSTROM: Okay. Somebody read the motion.

COMMISSIONER BRACERAS: I've looked it over, but if I could hear it --

VICE CHAIRMAN THERNSTROM: Ashley, do I hear a volunteer?

COMMISSIONER YAKI: Yes, he was clearing his throat.

(Laughter.)

It's not American Idol.

(Laughter.)

COMMISSIONER TAYLOR: All right. I move that the expanded scope of the briefing on minority children in state foster care and adoption be
clarified to reflect the following. The Commission will examine the efforts of the Department of Health and Human Services in enforcing the Multi-Ethnic Placement Act with respect to foster care and placement agencies.

As originally enacted in 1994, the Multi-Ethnic Placement Act provided that the placement of children in foster or adoptive homes could not be denied or delayed solely because of the race, color, or national origin of the child, or of the prospective foster or adoptive parents.

However, the Act expressly permitted consideration of the racial, ethnic, or cultural background of the child, and the capacity of the prospective parents to meet the child's needs in these areas when making placement decisions, if such a consideration was one of a number of factors used to determine the best interest of a child.

Furthermore, it required states to undertake efforts to recruit foster and adoptive families that reflect the racial and ethnic diversity of children in need of care. The Act was amended in 1995 to clarify the race -- in 1996 to clarify that race, color, or national origin may be considered only in rare circumstances when making placement decisions.
As amended, the Act states that placement cannot be
denied or delayed because of race, color, or national
origin.

Furthermore, the amendment removed
language that allowed routine consideration of these
factors in assessing both the best interest of the
child and the capacity of prospective foster or
adoptive parents to meet the needs of a child.

An agency making a placement decision that
uses race, color, or national origin would need to
prove to the courts that the decision was justified by
a compelling government interest, and necessary to the
accomplishment of a legitimate stated purpose -- in
this case, the best interest of a child.

Thus, under the law, the "best interest of
a child" is defined on a narrow, case-specific basis,
whereas child welfare agencies have historically
assumed that same race placements are in the best
interest of all children.

VICE CHAIRMAN THERNSTROM: So this is a
motion to clarify the scope of the briefing, so that
it reflects the language that Commissioner Taylor just
read. Do I have a second on that motion?

COMMISSIONER BRACERAS: Second.

VICE CHAIRMAN THERNSTROM: Any discussion
on this?

(No response.)

Hearing none, all in favor?

(Chorus of ayes.)

Opposed?

COMMISSIONER MELENDEZ: Abstention, one.

VICE CHAIRMAN THERNSTROM: Okay. Let the record reflect one abstention. Otherwise, I lost count here, we've got five in favor.

Annual Program Planning

VICE CHAIRMAN THERNSTROM: Okay. Annual Program Planning. Here we've got a motion for briefing on the American Bar Association Standards of Diversity in Law Schools. The concept paper for the briefing on the American Bar Association on the ABA Standards on Diversity in Law Schools was included in the packet of FY07 and FY08 potential projects.

We have included today a motion to conduct this briefing in June of '06 -- that is, this coming June -- because the ABA is set to vote on these proposed standards in its meeting in August. I have written -- I personally have written a letter to Sally Stroop, Assistant Secretary for Post-Secondary Education, expressing my view on the new ABA standards on diversity.
And I'd like a motion to conduct a briefing on the ABA's new standards in this coming June.
So I need a motion to have a briefing on the ABA standards.

We are already at that June meeting going to hear from Professor Richard Sander on racial preferences in law schools. And we will have, obviously, somebody who is a critic of Sander's work. This would mean a second briefing on that same day, but it's obviously on a related topic. And I would think we would have simply two speakers at each briefing.

COMMISSIONER KIRSANOW: Madam Chairman?

VICE CHAIRMAN THERNSTROM: Yes.

COMMISSIONER KIRSANOW: It seems to me that -- could they be -- they are so similar that it would just be one briefing.

VICE CHAIRMAN THERNSTROM: Well --

COMMISSIONER KIRSANOW: That you would have, you know, Professor Sander and whoever the critic is --

VICE CHAIRMAN THERNSTROM: Well, that is a possibility, of course, that we also ask Professor Sander to not only talk about his work but talk about
the ABA standards.

COMMISSIONER KIRSANOW: Right. And whatever impact that might have on his work.

COMMISSIONER TAYLOR: I would concur in that. My sense would be that we would have a more robust discussion if we had all four speakers there at the panel at the same time, and hopefully engaging in significant exchanges, so hat --

VICE CHAIRMAN THERNSTROM: I would think we would want four speakers, however, then, whereas before we had set the Sander up -- briefing up, we had not thought of four speakers. But --

COMMISSIONER BRACERAS: I'm sorry. Do we know who is responding to Sander? Did I miss that?

VICE CHAIRMAN THERNSTROM: No, I don't think we do yet. Do we?

STAFF DIRECTOR MARCUS: No. We did have a few names that were circulated as potential speakers, but we don't yet have a single one that has been selected.

COMMISSIONER BRACERAS: Well, for what it's worth, I like the idea of having four on one panel.

VICE CHAIRMAN THERNSTROM: Yes, it makes sense to me also. I've been -- that's been in the
back of my mind as well. So it seems to me the motion should read that we modify the briefing that is already scheduled to include a discussion of the ABA diversity standards, and that we have four panelists, all of whom address both questions or are prepared or what -- well, if somebody chooses not to address all four questions, that, of course, is their prerogative. But in any case, one briefing, four panelists. Can I have a second on that?

COMMISSIONER TAYLOR: Second.

VICE CHAIRMAN THERNSTROM: Any further discussion on this?

(No response.)

Let's have a vote. All in favor?

(Chorus of ayes.)

Anybody opposed?

COMMISSIONER YAKI: No. I oppose.

VICE CHAIRMAN THERNSTROM: You oppose.

COMMISSIONER YAKI: I oppose.

VICE CHAIRMAN THERNSTROM: Okay. But you didn't want to discuss it? Fine. Out of the blue he --

COMMISSIONER YAKI: I move not to discuss this.

PARTICIPANT: Second.
(Laughter.)

COMMISSIONER MELENDEZ: Abstention.

VICE CHAIRMAN THERNSTROM: Any abstentions?

COMMISSIONER MELENDEZ: One abstention here.

VICE CHAIRMAN THERNSTROM: Okay. We've got one opposed -- one opposed, one Commissioner abstaining, Commissioner Melendez abstaining, Commissioner Yaki opposing, and we have four Commissioners in favor.

Okay. Motion for briefing or hearing on elementary and secondary school desegregation. I am -- I move to have the staff conduct a briefing or hearing on the elementary and secondary school desegregation -- on elementary and secondary school desegregation in connection with our FY2007 statutory report on October 13, 2006.

The briefing or hearing will be based on the concept paper distributed to Commissioners on Friday, March 3, 2006. Do I have a second on that?

COMMISSIONER YAKI: Second. But I can't discuss it.

(Laughter.)

VICE CHAIRMAN THERNSTROM: Is there any
discussion?

(No response.)

All in favor?

(Chorus of ayes.)

All opposed?

(No response.)

It passes unanimously.

Friday, March 3rd, Office of the Staff Director recommended a process to facilitate discussion and approval of Commission projects for fiscal years 2007 and 2008. This procedure asked Commissioners to rank potential projects in order to streamline the process of developing a slate of potential candidates -- "slate."

Commissioners were asked to send the Office of the Staff Director a list containing up to five of his or her top preferences and potential fiscal year 2008 statutory reports, and up to five of his or her top preferences and potential briefings for '07 and '08, ranking them in order of preference, with one being the highest, two the second highest, and so forth.

By close of business on Wednesday, March 8th, the Office of the Staff Director of the OSD staff would then assign points to each proposal
selected by each Commissioner, weighing them according to how high each Commissioner would place the item on his or her list -- five points for a number one choice, four points for a number two choice, and so forth.

So, in a subsequent e-mail, Commissioners who ranked reports separately for '07 and '08 were asked to advise OSD if they would like Commissioners to consider the '07 picks for '08, and indicate how highly you would rank them relative to your other '08 selections. Otherwise, they would be disregarded when the Office of the Staff Director tabulated the rankings for '08.

As for briefings, this subsequent e-mail asked Commissioners to rank their top five briefings from among our recommendations or your own ideas, and to refrain from dividing their choices between '07 and '08. If Commissioners selected more than five briefings, OSD assigned a half point for each -- for every briefing ranked below five.

To the extent that Commissioners are more enthusiastic about certain projects than others, we can discuss the scheduled briefings for FY07. It is my hope that Commissioners will come up with a list of at least eight potential briefings for '08, at least
three potential briefings for '07. Currently, we have five briefings scheduled for '07 through February.

Finally, the subsequent e-mail reminded Commissioners that briefings they would like to address in '06 would require a separate motion, and would also require bumping a project that was previously approved and scheduled.

There have been new tabulations, evidently, which -- have these been passed around? Does everybody have them?

COMMISSIONER YAKI: New tabulations?

VICE CHAIRMAN THERNSTROM: New tabulations. It has been a very mathematically complicated process. Some ballot boxes have been destroyed.

Does everybody have -- how have people received these new tabulations?

STAFF DIRECTOR MARCUS: This is an e-mail dated Thursday, March 9, at 4:05 p.m.

VICE CHAIRMAN THERNSTROM: Does everybody have this? Commissioner Melendez, do you have this?

COMMISSIONER MELENDEZ: I've got March 9, 1:05 p.m. Is there another one?

COMMISSIONER YAKI: That's --

COMMISSIONER MELENDEZ: That's the same

COMMISSIONER MELENDEZ: Okay.

VICE CHAIRMAN THERNSTROM: It takes somebody in California to figure that out.

(Laughter.)

Okay. So we've got the final results. I don't think I have to read this entire list. Can people stare at it and --

COMMISSIONER YAKI: Question. Point of information. Given that this -- these are fairly important decisions in terms of the planning of the Commission, I would feel much more comfortable if the chair were present for this -- for these rankings. I think not having him present -- because, as it was, these rankings were not meant to be binding, but were to provide the basis for discussion.

And I remember that last time when we did this we actually had a very full, informed discussion that resulted in a lot of consensus being arrived at, including moving things around from one column -- Column A to Column B. And I just think that it's important enough that the chair of this Commission should be involved in that discussion.
So I would -- I would ask that we -- we postpone this to the April meeting to allow the chair the opportunity to participate.

COMMISSIONER KIRSANOW: I would second that.

COMMISSIONER BRACERAS: That's fine. But could we have a few minutes of discussion just to get a sense of the people who are here? No binding votes, but just a brief --

VICE CHAIRMAN THERNSTROM: Yes, I think that would be helpful, a preliminary discussion here.

COMMISSIONER BRACERAS: And I guess I have two questions. And the first is: are there any proposals that any of you have that aren't on this list? And, two, it's more of a procedural question -- the No Child Left Behind Act project I believe was proposed as a briefing, and not as a statutory report, although I voted for it as a statutory report, because I think it could be most effective that way.

But I'm not sure if there is a procedural reason why it cannot be or should not be a statutory report. So I just wanted to ask Staff Director about that, because I just took the liberty of voting for it in Column A when it was proposed in Column B. But I wanted to find out what the procedural situation is on
that.

COMMISSIONER YAKI:  Point of information.

Didn't we also get distributed today two more -- one briefing proposal and one statutory report proposal -- that incorporates part of the No Child Left Behind Act as well?

COMMISSIONER BRACERAS:  I don't believe I received any --

COMMISSIONER YAKI:  That's why I'm saying that it might be better to have the discussion later, because these just were distributed today.

COMMISSIONER BRACERAS:  Well, that's fine. So could somebody briefly just tell me what they are?

COMMISSIONER YAKI:  One is a statutory report proposed on topic. I can't read this without laughing, so I -- let's have someone else read it.

VICE CHAIRMAN THERNSTROM:  One is -- it's called Six Civil Rights Initiatives of the George W. Bush Administration. I suppose that Commissioner Yaki is laughing because he doesn't think that anything qualifies as a civil rights initiative by the Bush administration. Am I correct?

COMMISSIONER YAKI:  I would not argue with that description.

VICE CHAIRMAN THERNSTROM:  Okay.
COMMISSIONER BRACERAS: So that again.

VICE CHAIRMAN THERNSTROM: Commissioner Yaki said this had given him the chuckles, and I simply said I assume it has given him the chuckles because he does not believe the Bush administration has any civil rights initiatives that -- or any initiatives that can legitimately be called civil rights. I'm obviously in disagreement with that, but that's fine.

So that's one statutory report proposal. And what is the other one?

COMMISSIONER YAKI: The educational achievement gap briefing proposal.

COMMISSIONER BRACERAS: I'm sorry. These were circulated by whom?

COMMISSIONER YAKI: I have no idea.

STAFF DIRECTOR MARCUS: Okay. I guess -- let me try to answer a couple of questions. First, Commissioner Braceras, there is no procedural reason why we can't look at No Child Left Behind as either a statutory report or a briefing.

Second, the documents that were just circulated were circulated by staff based on requests for comments from Commissioners. For instance, the one on civil rights initiatives of the Bush
administration was based on some comments received from Commissioner Kirsanow through his special assistant, although I don't know whether Commissioner Kirsanow considers the concept paper to be a fair reflection of his comments, but that's what the intent was.

And the other one I believe --

VICE CHAIRMAN THERNSTROM: The causes of the educational achievement gap -- I believe that was submitted by the chair.

STAFF DIRECTOR MARCUS: Yes. The one on the causes of the educational achievement gap was also a staff effort to reflect comments received from Chairman Reynolds.

COMMISSIONER BRACERAS: To go to the point of procedure, given these new proposals, are we going to be asked to rerank our preferences?

VICE CHAIRMAN THERNSTROM: I think we need to. I also added by the way -- and I don't believe that anybody had a chance to rank it -- I added religious discrimination in K through 12 schools. And the reason it is only five points is because those are my points.

COMMISSIONER YAKI: I never saw that.

VICE CHAIRMAN THERNSTROM: Yes. Nobody
else ever saw that.

    COMMISSIONER BRACERAS: Pay back.

    VICE CHAIRMAN THERNSTROM: Pardon me? It was thrown in there by me.

    COMMISSIONER BRACERAS: Yes. In the same way that --

    VICE CHAIRMAN THERNSTROM: Yes. So I do think that there has to be now a new process of ranking. But I wonder if, once again, as Jennifer suggested, we couldn't have a preliminary discussion, so that we got this list down a little bit.

    COMMISSIONER BRACERAS: Well, I don't think we have to trim it. I just -- I'm just interested in people's views, and maybe it will form my thinking. If we're asked to rerank or vote again, you know, maybe I hadn't thought through some of these ideas with clarity. And maybe if one Commissioner or another feels strongly about a proposal that would help me -- help me make my tabulation.

    COMMISSIONER TAYLOR: Yes. May I? Along those lines, I did not vote for racial profiling the United States Department of Justice remedies, only because I didn't have a sense of where it was going. Could someone who is supportive of that idea provide me with a sense of that, particularly as it relates to
limiting it to DOJ remedies? I just don't --

COMMISSIONER KIRSANOW: I don't know what it means. I didn't propose it.

COMMISSIONER TAYLOR: Okay.

COMMISSIONER KIRSANOW: But it seems to me that it probably is something that relates to an assessment of to what extent DOJ and other affected agencies or responsible agencies have tracked and possibly taken action to prohibit racial profiling, consistent with the directive received from the administration I think it was two years ago. Is that when the anti-profiling statement came out? I don't know. I suspect that's what this would be.

COMMISSIONER TAYLOR: Okay.

VICE CHAIRMAN THERNSTROM: My suggestion about pruning the list a little bit was simply based on the fact that there are a number of potential briefing proposals here that got almost no support -- 1.5 points, 1.1 point, .5, 0.5 points. And it seems to me unless you have a sense that they didn't vote for it because they didn't understand the proposal that we could do a little bit of pruning here and get a little more consensus as a consequence.

COMMISSIONER BRACERAS: That sounds fine with me. We're talking about there's virtually no
support. I don't --

VICE CHAIRMAN THERNSTROM: I was proposing perhaps we should just eliminate the ones at the very bottom.

COMMISSIONER YAKI: There's a couple questions I have about that. One, one of the things that struck me is that there were two separate but also overlapping Title IX topics in this, number one. Number two, I think that some people -- it looks like some people voted for some stuff under reports versus briefings.

For example, if you look at the statutory reports, the FEMA thing has four. Even though it only has one under briefings -- that's what I'm saying, that there's a lot of -- I would rather have a fuller discussion with the chair present, because his leadership was very -- was very useful last time as we started playing with the fact that some votes were here, some votes were in that column, Column A, Column B, we have a couple more things.

While we're doing this, there is one more item that I was thinking -- that I've been thinking about at great length regarding the role of federal agencies, not just regarding to people with disabilities but also in particular looking at --
looking at the federal response of Katrina and civil
civil rights issues that have been implicated there as well.

So I -- what I would suggest is that this
is a good way for people to start and sort of see
where interest lies or may not lie, and then items
that they -- that they do like or don't like, or more
appropriately do like but may want to try and
strengthen a little bit, that within a week -- a
deadline of a week any further ideas be brought
forward and submitted to the Staff Director and to
staff, so that they can be developed and circulated
prior to the next meeting for another round of beauty
contests, and then we can have a nice, robust
discussion in the April meeting.

COMMISSIONER MELENDEZ:  This is Chairman
-- this is Commissioner Melendez.  This is my first
time through this process, and I totally didn't
understand it. The question I had was, you know, if I
came up with something -- a topic that maybe nobody
really knew about, and it wasn't on this list, I asked
myself, well, what are the chances of that getting on
this list? And if it wasn't going to be -- have much
chance of even getting on the list because I might not
be the only one voting for it, I kind of tied it to
something that already had been done.
For example, I looked at the border town issues with Native Americans. That was an issue in the -- I think it was the Rocky Mountain region where their whole state was working on that issue. Then, we had the New Mexico report. You know, so I thought, well, in certain regions of the United States as far as Native Americans we're dealing with that issue. And it was on this list, so I -- I kind of voted for that.

But then, when you said that you had come up with a new initiative, I was thinking, well, what chance would that actually have? So I wasn't really sure exactly how to rank these, you know, on the racial profiling. And I had listed that, too, but I wasn't sure if I knew it affected minorities, so I naturally put it up there, because, you know, a lot of minorities are stopped by police and those type things.

So I was still trying to learn the process, and we hastily kind of put this together in a week. But I'm still not real comfortable with the chances of some of these issues. So I just wanted to just state that.

VICE CHAIRMAN THERNSTROM: Well, Commissioner Melendez, I hope that if you have
additional topics that you would -- you would send them in as well, so that they could be part of the list upon which we vote.

COMMISSIONER YAKI: Well, I already have a motion to push this to April. I would amend that motion to say that any other -- any other proposals by Commissioners be forwarded to the Staff Director no later than one week from -- close of business one week from today, and that the Staff Director then prepare another round of beauty contest votes to occur prior to the April meeting for consideration.

COMMISSIONER BRACERAS: Okay. Can I call the question?

VICE CHAIRMAN THERNSTROM: Yes. Let's take a vote. All in favor?

(Chorus of ayes.)

All opposed?

(No response.)

It passes unanimously.

VII. Strategic Planning

Working Group on Strategic Planning

VICE CHAIRMAN THERNSTROM: Okay. Where are we? We are at -- okay. We are now at Strategic Planning, but I think we need to go back to your -- to the beginning. Is that correct?
COMMISSIONER BRACERAS: No. Strategic planning comes next, and then we go back to the Staff Director's Report.

VICE CHAIRMAN THERNSTROM: Okay. All right. Strategic planning. Well, wait. But, first, a motion on postponing the briefing on historically black colleges and universities, and instead holding a briefing on strategic planning. That is the motion. I don't know whose proposal that is.

COMMISSIONER KIRSANOW: I'm not sure. I see that it's listed under mine. I'll make the motion, and then we can have some discussion related to it, so I can tell you where we stand with respect to strategic planning.

I move that the Commission postpone until April 2007 the briefing previously approved for May 5, 2006, addressing the effectiveness of historically black colleges and universities, and hold instead a briefing on strategic planning on May 5, 2006.

VICE CHAIRMAN THERNSTROM: Could you say something more about what you have in mind in terms of the strategic --

COMMISSIONER BRACERAS: I will second that, and then open it up for --

COMMISSIONER KIRSANOW: Yes. The
second --

VICE CHAIRMAN THERNSTROM: Well, no, I'd like to hear a little bit more about what he has in mind in terms of a briefing on strategic planning.

COMMISSIONER KIRSANOW: The strategic planning group has met by teleconference twice. On that call were Commissioners Braceras, Melendez, Chairman Reynolds, and Staff Director, along with certain members of staff.

We had discussed in general terms various aspects of strategic planning, and staff had prepared for us materials for our review, specifically templates that we might follow from other similarly-situated agencies such as the EEOC, so that we could -- we wouldn't be operating in the dark and we'd have a sense for the direction in which we should go.

They also prepared for us the letters that we had received from at least two affected agencies who reviewed the preliminary strategic plan prepared by staff, as well as letters from oversight commenting upon the drafts of the strategic plan.

We reviewed the comments of oversight with an eye toward what is it that is necessary to revise the current draft, so that it would at least meet, in some respects, the approval of oversight, but at the
same time give us an overarching strategic plan, number one, that has goals and missions of the Commission, but also would have sort of the nuts and bolts under those goals and missions.

In other words, how do we achieve them? What are some of the benchmarks and measures necessary, so that we know, in fact, whether or not we're making progress toward the five-year strategic plan?

The bulk of the discussion surrounded how it is that we arrive at a strategic plan, and a proposal was made -- I think by myself that was -- kind of piggybacked off of something that Commissioner Yaki had said right at the outset of his appointment to the Commission in terms of having a briefing from affected parties or stakeholders that would inform the Commission as to what it is that they perceive the role of the Commission is in 2006 as opposed to when it was originally established in 1957.

And there was some discussion back and forth first about --

VICE CHAIRMAN THERNSTROM: All right. Let's not get into discussion at this moment. All I wanted -- I was hoping for two sentences, the last two that you just gave, that -- so that I understood
exactly what this briefing was.

Commissioner Braceras, you want to second it and have a discussion?

COMMISSIONER BRACERAS: I just want to second it for purposes of moving on to the discussion, yes.

VICE CHAIRMAN THERNSTROM: Okay. It has been seconded. I'm sorry, Commissioner Kirsanow. My request was misunderstood here. Let's pick up this.

COMMISSIONER KIRSANOW: Okay.

VICE CHAIRMAN THERNSTROM: You are now into the discussion business.

COMMISSIONER KIRSANOW: The question is: in such a briefing, what is the scope of the briefing?

There are certain GPRA guidelines, for example, or requirements that require that in preparing a strategic plan the affected agencies seek input from stakeholders. The GPRA statute provides that the affected agency, meaning ourselves, would determine who our stakeholders are. So that's one -- we have to determine who it is -- from whom we receive input in preparing the strategic plan.

More important I think is the discussion surrounding when that input should be received. Some were of -- or at least I was of the opinion that we
should receive that input before we prepare our strategic plan, as GPRA contemplates. There are logistical problems, possible logistical problems inherent in that, and there are certain substantive problems that were raised by I think Commissioner Braceras related to that, and she can speak for herself on that.

And then, there were other alternatives such as, do we do this on an ongoing basis? Do we have briefings at the same time that we prepare our strategic plan? Or do we have briefings after we prepare our strategic plan? Or do we have briefings at all? And then --

COMMISSIONER BRACERAS: Can I quickly be heard? Because I do have to go soon.

COMMISSIONER KIRSANOW: Sure.

VICE CHAIRMAN THERNSTROM: Sure.

COMMISSIONER BRACERAS: And I want to speak specifically to the motion. Number one, I'm not in favor of it for several reasons. First of all, I was very much looking forward to hearing a briefing on historically black colleges and universities. I think that's an important topic. I think it's a topic that the public would benefit from our putting on a briefing on.
But that logistical point aside, I am very much opposed to the idea of having the briefing proposed by Commissioner Kirsanow at this point in time. And the reason is: the mandate of the strategic planning group was for us to develop a strategic plan for the Commission. I think that we, as Commissioners, need to exercise leadership and come to the determination ourselves as to who our stakeholders are, and what it is we want to achieve.

I don't think inviting every Tom, Dick, and Harry in to opine on the state of the Commission and the role of the Commission for the future is going to inform any of us in a useful and streamlined manner.

And so I actually think there are two different questions being asked here. I mean, one is: what is your strategic plan -- excuse me. One question is: what is your strategic plan, given the current statutory mandate that we have? And that is something that I think we're perfectly equipped to do without outside testimony.

Another question is: what role, if any, should the Commission play in the future going forward? And that seems to me to be a separate question which we might want to invite people to do --
give us their advice on, or to -- you know, just might
want to hear from outside sources on that.

That does not answer the immediate
question, which is: what is your current strategic
plan for this year? And I think, you know, Congress
has been waiting for the document, and we need to --
we need to close the deal, put something together. So
I'm not in favor of any type of briefing like this
this spring.

COMMISSIONER KIRSANOW: In response to
Commissioner Braceras, I don't know that there's a
dichotomy between whether or not we put together a
strategic plan -- first of all, the strategic plan is
not for this year. It's for a five-year go-forward
period. Second --

COMMISSIONER BRACERAS: But they want it
this year.

COMMISSIONER KIRSANOW: Well, and I think
that's perfectly doable, although I will admit there's
a logistical problem if we have a briefing in May.
Just putting together the briefing itself causes
problems.

But I will say two things. One is,
putting together a strategic plan for a current
mission is something that oversight and, in fact, some
of the commenting agencies had kind of rebuked us on, saying that, well, wait a minute, you're not looking at something a little bit more overarching.

There have been -- they have contemplated that there have been changes to the nature of civil rights, and yet the Commission has not incorporated those changes or the structural shifts in the civil rights paradigm if you will into a strategic plan.

COMMISSIONER BRACERAS: Yes. But so why is the goal of the briefing to throw open the doors to, you know, every special interest group and every member of the public and say, "What is your vision of civil rights?"

COMMISSIONER KIRSANOW: No, absolutely not.

COMMISSIONER BRACERAS: They are not --

COMMISSIONER KIRSANOW: GPRA, for example, says that this is something we're supposed to do -- seek input from our stakeholders --

COMMISSIONER BRACERAS: That's right. But bear in mind --

COMMISSIONER KIRSANOW: -- and we can determine who --

COMMISSIONER BRACERAS: -- the problem, Pete, because we, as a Commission, have to define our
own stakeholders.

COMMISSIONER KIRSANOW: And that's precisely what GPRA says, and we can do that.

COMMISSIONER BRACERAS: No. No, we can't hold a briefing to figure out who our stakeholders --

COMMISSIONER KIRSANOW: No, you're getting it backwards, with all due respect. GPRA says we define who our stakeholders are, so we can do that amongst ourselves, make a determination, and then those stakeholders are the individuals that we invite to a briefing, not every Tom, Dick, and Harry. I don't think that there should be some kind of free-flowing debate that's out of control. We do want to have something defined --

COMMISSIONER BRACERAS: But here is the problem.

COMMISSIONER KIRSANOW: -- and I think we've got control over it.

COMMISSIONER BRACERAS: Once you define the stakeholders, if you select any special interest group as a stakeholder, the question becomes: why weren't other groups included? So, for example, if the NAACP is defined as a stakeholder, the next question is: why wasn't the National Organization for Women included? Why wasn't this Native American group
COMMISSIONER KIRSANOW: And the answer to that is that GPRA gives us the ability to define who it is we want as stakeholders. And, second --

COMMISSIONER BRACERAS: I understand that, but --

COMMISSIONER KIRSANOW: -- that's a question that's inherent in virtually every briefing. There are a number of people who are interested in almost every subject matter that we have before the Commission, and we make a determination as to who is invited. There are a number of experts on any given topic.

COMMISSIONER BRACERAS: If I have to chop strategically selected stakeholders in the first draft of a strategic plan that did not include special interest groups at all -- in other words, you did not include any special interest groups, you defined our stakeholders more along the lines of other governmental enforcement agencies, because once you define even a single interest group as a stakeholder that is a Pandora's Box, because you are going to inevitably be excluding some minority groups from the stakeholding process.

And once someone is defined as a
stakeholder, we have a legal obligation to include them in our strategic planning process. And I just want to go down that road.

COMMISSIONER KIRSANOW: Commissioner Braceras, I don't think we have an argument here. I think we here will define, preliminary to any kind of a briefing, who it is that we consider to be our stakeholders. They may not include special interest groups if that is what the body here decides. I happen to think that -- and I wouldn't define them as special interest groups.

I happen to think it's healthy, and I also think it's contemplated within the confines of even our current statutory mission, that we've got stakeholders that go beyond agency heads, Congress, the President, to include those who are affected by our fact-finding mission.

COMMISSIONER BRACERAS: The public -- the public at large is affected, but you can't say, you know, African-Americans are affected and Asian-Americans aren't. I mean, you're going to have to include everybody.

COMMISSIONER KIRSANOW: Well, that's very easily done. The Leadership Conference on Civil Rights, for example, purports to represent a number of
COMMISSIONER BRACERAS: Oh, come on. So you're going to say the Leadership Conference on Civil Rights is one of our stakeholders, but the Center for Equal Opportunity isn't?

COMMISSIONER KIRSANOW: We can invite both of them. I think we have to have a balanced debate.

COMMISSIONER BRACERAS: I don't think either of those groups covers the range of minority groups out there and political perspectives out there.

COMMISSIONER KIRSANOW: I don't think it is conceivable that any briefing on any subject will include every single person who is interested in that subject or might even conceivably be defined as a stakeholder. I don't think that it is possible to get, for example, you know, the -- I don't know, someone from some outlying area that may be an extraordinarily discrete minority group and invite them in.

COMMISSIONER BRACERAS: Right.

COMMISSIONER KIRSANOW: What I'm saying is --

COMMISSIONER BRACERAS: That's exactly my point. If this isn't a briefing of stakeholders, then what is the point of doing it before we develop our
strategic plan?

COMMISSIONER KIRSANOW: The point is that we comply with the express mandate of GPRA and also with what oversight --

COMMISSIONER BRACERAS: Well, that's not complying with GPRA. I mean, because you just said they're not necessarily going to be all our stakeholders or that they would necessarily even be stakeholders.

COMMISSIONER KIRSANOW: I think we're really not arguing on this point. I think the charge of the Commission, pursuant to GPRA and oversight, is to, one, define who our stakeholders are. GPRA gives that -- us that authority. And if --

COMMISSIONER BRACERAS: You don't need a briefing to do that.

COMMISSIONER KIRSANOW: -- and if we exclude somebody, then we're going to be criticized, and the Commission is used to criticism.

COMMISSIONER BRACERAS: Right. We don't need a briefing to define our stakeholders. That's my bottom line.

COMMISSIONER KIRSANOW: Well, I've never suggested that, and I think maybe that's the point of the disagreement here, or the confusion. I've never
suggested a briefing to --

COMMISSIONER BRACERAS: Well, I think we need to have our strategic plan in place. We need to identify our stakeholders, and we need to meet with the stakeholders and develop our strategic plan before we have a briefing.

COMMISSIONER KIRSANOW: Commissioner Braceras, let me give you my -- my sense of the chronology that I think is consistent with GPRA. That is, the Commission determines who it is who the stakeholders are. That is done before a briefing.

We invite -- and if we choose to hold a briefing, then we invite those stakeholders to the briefing in advance of the preparation of a strategic plan -- again, as set forth by GPRA and by what oversight has suggested to us, but mainly by GPRA. And that's how all of the other agencies do it, by the way. They don't necessarily have a briefing, but they invite their stakeholders to --

COMMISSIONER BRACERAS: I've never heard of one of them having a briefing.

COMMISSIONER KIRSANOW: Well, they invite -- I'm suggesting that we do so -- you know, think outside the box. And then, we bring them in here, conduct a briefing, and that informs at least part of
our strategic plan. We can accept recommendations, reject recommendations, but I think it would be a healthy briefing to have for a couple of reasons. One, again, it's consistent with GPRA. Two -- or not inconsistent with GPRA.

And two is that we have radically changed the landscape of civil rights, so that putting together a strategic plan based on our model of 1957 is not only something that oversight has told us we need to revisit, but it's something that is, you know, I think inherently the wrong way of going about it. I think we do have to look forward to what civil rights is going to be five years from now, because we have a five-year strategic plan.

Also, keep in mind that every year we are charged with doing updates for our strategic plan.

COMMISSIONER BRACERAS: Right. That's why we need to get this one done.

COMMISSIONER KIRSANOW: And we can do so in a timely fashion. I think we'd better do it the right way as opposed to doing it fast. Oversight --

COMMISSIONER BRACERAS: But the bottom line is I think that we, as individuals and as a Commission, need to exercise some leadership here. And all of us are presumably knowledgeable in the
field of civil rights, or at least some aspect of the field of civil rights. And I think we can bring our own knowledge to bear on this question.

I don't think we need to hear from outside experts to inform us as to what -- what the meaning of civil rights should be five years from now. I think our strategic plan -- our statutory obligation is to develop a strategic plan that helps us perform our mandate under the current statute.

And I think the fundamental question that you would be asking these people to come in and opine on, which is, what is the new paradigm of civil rights, is inherently broad. And you'll inevitably be having panelists come in and speak to their own pet issues, and it would not end up informing anything.

And I guess I would finish by saying that if we really care so much what the so-called stakeholders think who have yet to be defined, can't we just ask them either to submit a written statement for the consideration of the subcommittee that would inform our deliberations? Why do we need to have a briefing?

COMMISSIONER KIRSANOW: Well, we have -- we have already done that, and we've gotten two responses back. And there's nothing that precludes us
from doing so, and I don't think that these are mutually exclusive methods of seeking input from stakeholders. We can do --

COMMISSIONER BRACERAS: I think it's a waste of time and money.

COMMISSIONER KIRSANOW: We can do that, and I -- actually, I think we -- it doesn't cost a whole lot. But I see Commissioner Yaki would like to weigh in.

VICE CHAIRMAN THERNSTROM: Michael, one second, just let me make one remark here. I mean, we know what the vision of the Leadership Conference on Civil Rights is. You only have to get on the website and look at their leadership. I mean, what news are they going to bring to us?

COMMISSIONER KIRSANOW: I'm not going to presume that what is on their website is something that they would repeat here. And, second, I think the purpose of a briefing is not that they simply wrote or just repeat what they have said on their website, but it's to engage in a bit of interaction, so we can ask them questions. If we think that some of the things they say on their website are silly, we can gauge them on that. I think it's healthy and --

VICE CHAIRMAN THERNSTROM: Well, we'll
enlist the --

COMMISSIONER KIRSANOW: -- and I think we are not the gods of civil rights, with all due respect.

VICE CHAIRMAN THERNSTROM: Oh, we're not the gods of civil rights. We certainly are not.

COMMISSIONER KIRSANOW: I also think leadership is not --

VICE CHAIRMAN THERNSTROM: We have access to --

COMMISSIONER KIRSANOW: -- consistent with getting input, balanced input, and I would like Commissioner Yaki to speak.

VICE CHAIRMAN THERNSTROM: All right. But, you know, I have access to plenty of information in terms of what the interest groups believe. I mean, there's not going to be any news brought here. You can write the literature of, you know, interest groups on the right and interest groups on the left in your sleep. You know the arguments. I don't see that we need to have a -- what will amount to a circus here.

Anyway, Commissioner Yaki.

COMMISSIONER YAKI: Well, as someone who once served on a legislative body that was called a circus many times, I have my own views on this. I
think that a couple of things that informed my thoughts listening to the spirited discussion between Commissioner Kirsanow and Commissioner Braceras.

One is that we are approaching the 50th year of our -- of the creation of this Commission. And as much as one might try and characterize Commissioner Kirsanow's proposal as -- well, or try to characterize it in any way possible, I would say that certainly it's a step I think in the direction of saying, you know, who are we now 50 years later? And where are we going?

Secondly, when you think about reauthorization of the statute, why wouldn't we take the leadership in hearing from individuals or organizations who we believe would be useful in sort of defining the next stage of the Civil Rights Commission, as distinct from what their individual organizations believe they are set up for?

We are different -- we are different than the Leadership Conference. We are different than the Committee for Racial Equality -- Equal Opportunity. We are distinctly different. We are mandated by government, by the Congress, created by appointments from the President and from the -- and from the legislative branch.
I think that if you were -- if you were designing a hearing for the reauthorization of this Commission, they would be going through very much the same kind of process that Commissioner Kirsanow is talking about. And I don't see why we wouldn't take the leadership and grab the reigns ourselves in terms of starting to define, you know, who and what we are and should be, and listening to our stakeholders who are out there whose views would be solicited by the committees anyway in a forum that we would -- we would be passive in rather than controlling ourselves.

And I think that in terms of controlling our destiny towards reauthorization in terms of fulfilling the mandate -- mandates of GPRA, as Commissioner Kirsanow has suggested, I am in favor of at least attempting. We may end up with --

COMMISSIONER BRACERAS: But attempting to design a debate about reauthorization is a separate discussion from the one about, what should our strategic plan be that we need to submit now?

COMMISSIONER YAKI: If you -- I would not go so far as to make that distinction, given the kinds of rumblings all of us have heard from the committee of jurisdiction, and what we have gone through in the past year. I think that, you know, you can risk a
circus, but, you know, I think -- I think that we're better than that and can -- and better stage managers than that from all of our different walks of life.

And I think that to me it's -- it's very worthwhile in terms of not sort of presuming, with all due respect, to say that we all have our collective knowledge of civil rights, and collectively we can decide together what our collective strategic plan of the future is going to be when we have reauthorization around the corner.

And I really do believe that they're connected, and I think that taking leadership on this issue in the way that Commissioner Kirsanow is suggesting is something that I find refreshing and worthy of support.

COMMISSIONER BRACERAS: Well, this is the final few things I'm going to say about this. Number one, I'm against it, and I'm going to vote against it.

Number two, should it pass, I want to be perfectly clear that I don't think there's a single special interest group out there, on either the right or the left, that is a stakeholder of ours.

Our stakeholders are the public and other government agencies, and I'm not interested in bringing any interest group in here to tell the United
States Commission on Civil Rights what its platform or agenda should be for the next five to ten years. Not interested in hearing it.

VICE CHAIRMAN THERNSTROM: What is the objection, Commissioner Yaki, to simply soliciting written views from any organization that would like to provide input into the long-run vision of the Commission on civil rights questions?

COMMISSIONER YAKI: I don't have any objection to that. On the other hand, you know, I am deferring to Commissioner Kirsanow on this one.

COMMISSIONER KIRSANOW: Well, I would say that there are significant logistical hurdles to having people come in here for a briefing by May. And in our teleconference the Staff Director outlined those. I think it can be done, but I also don't want to do this simply for the purpose of doing it, going through the exercise. I think if we're going to do it, we should attempt to do it in the most competent way possible.

So when I propose this, I'm not saying this without any reservations. I do have reservations, but they're logistical reservations. I think this is necessary in terms of what's been directed to us by GPRA and by oversight.
By the same token, I think that it's perfectly plausible to do this by seeking or soliciting written input. We did so -- only received two brief letters from stakeholders that I would simply characterize as not necessarily particularly helpful, and I don't think we'll get any more than that. I think it's more likely that people would appear for a live hearing.

Second, I think going to what Commissioner Yaki was talking about, we are at the 50th anniversary of the creation of the Civil Rights Commission. And something that we may want to keep in mind is something that is related to but maybe somewhat distinct from this is having a briefing related to the next half-century of the Civil Rights Commission, if we last anywhere near that long.

But I think having a briefing along these lines -- and I disagree with Commissioner Braceras with all due respect. I do think that our stakeholders go beyond simply Congress and the executive branch.

COMMISSIONER BRACERAS: And the public --

COMMISSIONER KIRSANOW: Well, I think --

COMMISSIONER BRACERAS: But the public isn't represented by an interest group. We all know
COMMISSIONER KIRSANOW: Well, you know, I -- "interest group" is -- can be a loaded term. There are interest groups, and there are groups -- I don't necessarily think that -- I don't necessarily think that the NAACP, for example --

COMMISSIONER BRACERAS: I can't -- I don't know if you're referring to the left or if you're referring to all of those yahoos on the right. I mean, these groups claim to have constituencies. They're not membership organizations. They don't have constituencies.

COMMISSIONER KIRSANOW: But, Commissioner Braceras, we invite individuals here who are members or executive directors of interest groups all the time. Roger Craig is here all the time.

COMMISSIONER BRACERAS: Right, because we are interested in their academic --

COMMISSIONER KIRSANOW: And he doesn't represent anybody but CEO.

COMMISSIONER BRACERAS: Excuse me. We are interested in their view on a particular issue, a substantive issue. We're not asking them for their view on us.

VICE CHAIRMAN THERNSTROM: And defining
people as stakeholders has larger repercussions.

COMMISSIONER BRACERAS: My problem is not in hearing from somebody from the Leadership Conference on Civil Rights. I very much would like to hear from them on certain topics on which they have expertise. I do not want to hear from them on what the mission of the U.S. Civil Rights Commission should be going forward. They certainly don't ask us what their mission should be going forward.

COMMISSIONER KIRSANOW: Let me just say this, and I'll -- I don't want to prolong this too much longer here. But when I talk about stakeholders in my own view, that it goes beyond simply Congress and executive branch, I threw out the Leadership Conference on Civil Rights as an example, and it's not necessarily definitive. Others may have other ideas as to whether or not they should be invited.

But I think that there are stakeholders who are members of the public who we can invite. Some of them I had mentioned on our conference call -- and I know there was objection to this -- maybe former Commissioners. I think there are people out there who can inform this debate credibly. I think it would be a useful exercise. I think, in fact, it is intrinsic to our mission to hear from these people, and I for
one don't see as big a down side as Commissioner Braceras aside from the logistical aspect of this.

COMMISSIONER BRACERAS: It's not that I don't want to do a briefing like this sometime in the future. I just want to focus and streamline the work of the working group, and I don't -- I think it's a big sideshow, and I'd like to call the question.

VICE CHAIRMAN THERNSTROM: All right.

COMMISSIONER MELENDEZ: This is Commissioner Melendez. I just wanted to comment, since everybody is.

(Laughter.)

I just wanted to say, you know, I don't have a problem with some of the group on strategic planning -- listening to people, because ultimately, you know, we can take their comments or leave them, you know, because we're still basically the Commission.

And, you know, the question I had was: does this help us in our strategic planning? If it does, you know, I think it's a good idea to hear what the general public has to say. And, you know, it's -- and I don't want to take an attitude against special interest groups, because there are a lot of them out there. You know, it's like if I took an attitude
against the Republican party. You know, I can't --

COMMISSIONER BRACERAS: I'm not taking an
attitude against them. They do very good work. I
just don't think that their views on what the U.S.
Commission on Civil Rights should do are relevant.
Their views on substantive civil rights topics are
very relevant.

I just want to be clear -- I'm not
attacking them for what they do. I just don't think
that their views are relevant in this case.

COMMISSIONER MELENDEZ: Right. And the
issue I think is, you know, even though they may have
their opinions as to civil rights in general, I'm not
-- I'm kind of differentiating it between them telling
me what to do as a Commissioner. I don't look at it
like that.

I just look at it as, you know, they're
giving me input as to maybe it's the shift of how
civil rights were in 1964 as opposed to as I -- we all
think there's kind of like a shift -- at least I do
when I came on the Commission. It just seems like
things are not the same as they were back in 1964.

COMMISSIONER BRACERAS: Well, that's a
briefing that will take about two months to conduct. I
mean, come on. If you want people to come in and talk
about how things have changed since 1964 --

COMMISSIONER MELENDEZ: Well, I'm not saying that. I'm just saying --

COMMISSIONER BRACERAS: Volumes have been written on that.

COMMISSIONER MELENDEZ: I'm just saying that, you know, I don't have a problem listening to people. I'm not a closed-minded person that is totally in control of --

COMMISSIONER BRACERAS: Are you suggesting I am?

COMMISSIONER MELENDEZ: No. I'm just saying I'm not, you know, that I have a --

VICE CHAIRMAN THERNSTROM: Well, none of us are, Commissioner Melendez.

COMMISSIONER MELENDEZ: You know, so I --

COMMISSIONER BRACERAS: Well, the question has been called.

VICE CHAIRMAN THERNSTROM: No, wait a minute. Commissioner Ashley has had his hand up. Commissioner Ashley? Taylor.

(Laughter.)

COMMISSIONER YAKI: Point of order. Calling for a question prior to two-thirds vote of those -- of those present. So, you know --
VICE CHAIRMAN THERNSTROM: Well, we have not finished this.

COMMISSIONER BRACERAS: Well, I have to
leave in about four minutes, so --

COMMISSIONER TAYLOR: I will make my comments very brief. My sense is that the time we have for briefings is very precious. My sense is that I don't think inviting these groups for the purposes of informing the strategic planning group is the best use of our time relative to the briefing.

I think we should do it by way of written submissions. I think there will be a time for us to invite a lot of folks in. But relative to our briefing time, I don't think this is a good use of it.

COMMISSIONER KIRSANOW: Well, if I could ask Commissioner Ashley --

(Laughter.)

VICE CHAIRMAN THERNSTROM: I apologize. I meant to say Ashley, and I threw in a Commissioner before it.

COMMISSIONER KIRSANOW: I don't want to be sloppy with our scope or our terms here. As I laid out, the way GPRA contemplates this is I think we're kind of presuming that a briefing would necessarily include "special interests." I think as a preliminary
step we have to determine who it is we're inviting, and those may only include, for example, if we invited folks from Congress or their designated representatives, or somebody from the executive branch.

And let me just say that if the Commission decides that the best use of time, to which I'm very sensitive, is by written submission I'm completely comfortable with that. I don't have a problem with that. I simply would say that I think it is very useful to have a live debate on matters that will inform our strategic plan. And I don't think it would take that long.

I don't think it would be a sideshow. But, you know, I -- I am simply interested in using the best possible procedure, informing the establishment of our strategic plan, consistent with GPRA goals, consistent with Oversight. And, remember now, Oversight has kicked this thing back to us already. They've said, you know, "Your first stab at this didn't work." So I'm more concerned about getting it right than getting it fast, but I'd like to do both if we can.

VICE CHAIRMAN THERNSTROM: Well, if -- look, the motion is altered. If we can come to some
consensus that we can solicit views in the form of written statements, we do not, then, have to postpone the briefing on historically black colleges and universities, a briefing that I also am extremely interested in. And if we --

COMMISSIONER BRACERAS: I'd like to vote on the motion as written. And if somebody has a substantive motion to do something different, request written testimony or what have you, then let them make that motion. But I'd like to vote on the motion as written.

COMMISSIONER KIRSANOW: Well, first of all, I didn't propose -- I didn't write that motion. I was simply repeating it -- something that was written, but --

VICE CHAIRMAN THERNSTROM: Well, Jennifer, what is the down side to altering -- amending the motion, so that we go ahead with the briefing on historically black colleges and universities, and, in the meantime, we solicit written --

COMMISSIONER BRACERAS: From whom?

VICE CHAIRMAN THERNSTROM: Pardon me?

COMMISSIONER BRACERAS: Solicit written testimony from whom?

VICE CHAIRMAN THERNSTROM: Well --
COMMISSIONER BRACERAS: We need to decide that.

COMMISSIONER KIRSANOW: Can I propose this? I would make a motion, first, that we determine whether or not we have a briefing versus seeking any other kind of input. Second is the timing of such briefing. Is it something that occurs in May, if, in fact, we agree on a briefing? Or is it something that occurs at some other time, and maybe morphs into something bigger or different as a result of it not being truly informative of the strategic plan?

COMMISSIONER BRACERAS: No, I don't want to do that, because if I have to vote on whether or not to have a briefing at all, first and foremost, then I'm going to have to vote no. I'd rather just vote on whether or not to do it this spring, and we can revisit the topic later. And you may convince me that it's worth doing later on, but I do not think it's worth doing now. And if I have to vote on the whole thing, I'm going to vote no.

VICE CHAIRMAN THERNSTROM: All right. I'm calling the question on the motion as it exists, which is to postpone the briefing on historically black colleges and universities, and, instead, hold a briefing on strategic planning. And that is in May.
That would be in May. To continue to -- to stick with our current plans of holding the briefing on the HBUCs.

COMMISSIONER BRACERAS: So read the motion, because it --

VICE CHAIRMAN THERNSTROM: The motion is: I move the Commission postpone until April '07 the briefing prepared -- previously approved for May 5, 2006, addressing the effectiveness of historically black colleges and universities and hold, instead, a briefing on strategic planning on May 5, 2006.

So this is simply a question of whether we postpone and substitute. Postpone the briefing on historically black colleges and universities and substitute a briefing on strategic planning. We can take up later the question of whether we have a briefing on strategic planning and what that briefing looks like.

COMMISSIONER BRACERAS: I need to vote. I've got to go. I'm sorry. I've got to be out of town in 15 minutes.

VICE CHAIRMAN THERNSTROM: All right. Let's have a vote on it. Can we call the question? All in favor?

(Chorus of ayes.)
Roll call?

COMMISSIONER KIRSANOW: Kirsanow, aye.

VICE CHAIRMAN THERNSTROM: Nay.

COMMISSIONER YAKI: Yaki, aye.

COMMISSIONER MELENDEZ: Melendez, aye.

COMMISSIONER TAYLOR: Nay.

VICE CHAIRMAN THERNSTROM: What do we have there? Three and three. The motion fails. the motion fails.

COMMISSIONER BRACERAS: Did Commissioner Melendez just get off the call?

COMMISSIONER MELENDEZ: No, I'm still on.

COMMISSIONER BRACERAS: Oh, okay. I thought I heard you say good-bye.

COMMISSIONER MELENDEZ: No, no. I said aye.

VICE CHAIRMAN THERNSTROM: All right. The motion fails. So we are not postponing the briefing on the historically black universities and colleges. That will take place, as previously approved, in May.

Commissioner Braceras, have you got something -- anything more you want to say?

COMMISSIONER BRACERAS: I have nothing to say. I think that the strategic planning working group should continue to revise the document, and if
somebody wants to propose having a briefing on this topic in the fall, then a contact paper should be drawn up, and it should be a narrowly-tailored document, so we're all very clear on the focus of such a briefing, and we can have a discussion about that instead of a vague, nebulous idea.

COMMISSIONER TAYLOR: Is it the view of the strategic planning working group that we are obligated as a matter of statutory obligation, that is, to have a briefing?

COMMISSIONER KIRSANOW: No.

COMMISSIONER TAYLOR: Okay.

COMMISSIONER KIRSANOW: In fact, GPRA doesn't say we have to have a briefing.

COMMISSIONER TAYLOR: Just input.

COMMISSIONER KIRSANOW: It says we have to have input.

COMMISSIONER TAYLOR: Right. Okay.

COMMISSIONER KIRSANOW: It leaves it to us to --

COMMISSIONER BRACERAS: Right. But first we need to figure out who we think our stakeholders are. We need to define them, and then we need to ask for input.

COMMISSIONER TAYLOR: And then, we need to
decide whether or not the input takes the form of a briefing or written testimony.

COMMISSIONER BRACERAS: I'm willing to consider the idea of a briefing once we, as a Commission, define our stakeholders privately.

VICE CHAIRMAN THERNSTROM: Okay. We're -- this issue has been resolved, and, Commissioner Braceras, you can hang up.

COMMISSIONER BRACERAS: Sorry.

VICE CHAIRMAN THERNSTROM: That's okay.

COMMISSIONER BRACERAS: I'm now 20 late for my meeting. Okay. Bye.

VICE CHAIRMAN THERNSTROM: Thank you very much for staying.

COMMISSIONER BRACERAS: Yes, bye.

IV. Staff Director's Report

VICE CHAIRMAN THERNSTROM: Okay. I believe that we are back now to the Staff Director's report.

STAFF DIRECTOR MARCUS: Thank you, Madam Vice Chair. Just a few points.

First, Commissioners may recall that for next month the briefing topic is the census, and specifically the minorities in the census. I'm happy to say that Census Bureau Director Charles Kincannon
has agreed to address the Commission during the briefing, as have Professor Kenneth Pruitt of Columbia University, and Professor Sharon Lee of Cortland State University.

Invitations remain outstanding to Mr. Peter Scarey of The Brookings Institution, Mr. Ward Connerly of the American Civil Rights Institute, and Ms. Katherine Wallman, Chief Statistician at OMB's Statistical and Science Policy Branch.

I also wanted to bring to the attention of the Commission that we have begun conversations with the Government Printing Office and the University of Maryland's Thurgood Marshall Law Library about the possibility that the University of Maryland's Thurgood Marshall Law Library would serve as an alternative official repository for electronic official U.S. Commission on Civil Rights documents.

This would take place as a part of an existing GPO program. They have been in conversations with the University of Maryland about doing this. Under the proposed notion, if we were to do this, no money would change hands. Thurgood Marshall Law Library already maintains a collection of the official work of the U.S. Commission on Civil Rights. So it would not be a significant change in that respect, but
they would receive official recognition from the Government Printing Office.

In the event that we were to enter into a memorandum of understanding with the Government Printing Office and the University of Maryland on this topic, it occurs to me that we would likely need to ensure that the holdings of the University of Maryland would comport with approved U.S. Commission on Civil Rights policies.

For instance, the Commission has, within the last -- a little over a year approved a policy regarding the way in which we oppose materials that were not approved by a majority of the Commission. And that is an issue which we knew would have to be worked out, and we would need to make sure that documents are kept in an official manner without extraneous or misleading markings, and that they are kept in an appropriate manner.

We're still in an early phase of the discussion, but I thought I should bring it to the attention of the Commission, in case there are members of the Commission who have either concerns or ideas about this.

Preliminarily, it appears to be a way of ensuring that, since the University of Maryland is
keeping these documents anyhow, that they do it in a way which is neutral and objective and consistent with Commission policy, and without any expense to the Commission or to the GPO.

I don't know if there are any questions on that before I move on, or any input that people have.

(No response.)

So I will continue to keep Commissioners posted as we go forward in discussions with GPO and the University of Maryland on that topic.

Finally, I regret to inform the Commission that three very dedicated, very highly valued members of our staff have indicated an intent to resign and to take other positions elsewhere. Terri Dickerson, the Director of the Office of Civil Rights Evaluation, will be leaving the Commission to accept a position at the United States Coast Guard. She is leaving the Commission after almost six years of service. We expect that her last day in the office will be Friday, March 31st.

Seth Jaffe, an Attorney Advisor in the Office of the Staff Director, will be leaving the Commission to accept a position in the United States Office of Government Ethics. And Mireille Zieseniss, a Civil Rights Analyst in the Office of Civil Rights
Evaluation, will be leaving the Commission after seven years of service to accept a position in the Department of Housing and Urban Development. Mireille's last day in the office will be Friday, March 17th.

All three of these individuals have provided excellent service. We have been privileged to have them among us, and are proud to have had them within the agency. I don't mean to lump them all together, except in the sense that they will all be leaving within approximately the same time, but we thank them for their service and will be sorry to leave them -- to see them go. But we do wish them well in their new employment.

VICE CHAIRMAN THERNSTROM: And I would certainly like to second that, that I'm very sorry to see all three of them go, and it has been a privilege and pleasure to have them here.

COMMISSIONER KIRSANOW: Madam Chair, a couple -- first, I would concur with that. They have all done very good work. And I've had the longest experience obviously with Ms. Dickerson, who has always been extraordinarily professional and has done a very, very good job for the Commission. That's not to diminish anybody else, but she has been I think
around a little bit longer, or at least I've had more interaction with her.

Second, just a question, actually two questions. One is, to what extent, if you've done this or assessed it already, is the budgetary impact on that attrition? It seems to me we're going to have to replace all three anyway, or maybe not. And next is, to what extent have we taken any steps, or where are we with respect to possibly finding replacements?

STAFF DIRECTOR MARCUS: Those are good questions. We certainly will want and need to replace Ms. Dickerson, and we will be announcing a senior executive service position. Since all three of them have fairly recently given notice, we have not yet taken official step to announce their positions.

Similarly, Mr. Jaffe will need to be replaced by another attorney advisor in the Office of the Staff Director.

As for the upcoming vacancy in the Office of Civil Rights Evaluation, it seems to me that we have two options. We certainly have fewer people in that office than we need, so it will -- it would certainly hurt not to replace an outgoing civil rights analyst.

On the other hand, there are also other
vacancies that are very important as well. One of the alternatives before the Commission is to -- is to hold off on replacing her and in the meantime using the funds that are saved to authorize the hiring of another Commissioner Assistant.

I've been asked in prior meetings whether it would be possible, consistent with our budget, to hire another Commissioner Assistant for Commissioner Melendez. One of the options that we now have available is to permit him to do that immediately on a permanent basis rather than a detail.

As for the question of the budget impact, I would say that no matter -- I would say that no matter how quickly we're able to bring people on, there is going to be a bit of a lag, which means that there will be some savings of money. On the other hand, it certainly does mean it will be difficult to handle our programs in the next few months.

It is at least fortunate that our statutory report is either done or nearly done, and that's the main work of OCRE. But it's still the case that we have a large number of briefings coming up for OCRE, and we're just going to have to work to try and do more with less.

VICE CHAIRMAN THERNSTROM: Does the fact
that Terri Dickerson is leaving and OCRE is really not properly staffed, should it have an impact on how we think about our priorities in terms of these briefings and in terms of the statutory report as well?

STAFF DIRECTOR MARCUS: To answer the question for me, Madam Vice Chair, it seems to me that we will still be able to do them in the same way or the same order. If it turns out that workflow just becomes unmanageable with the fewer people, I can report back to the Commission as to whether we need to cut a briefing or two that is scheduled for later in the year. But for the meantime, I think the best way is just to try and continue along the path that we're on.

VICE CHAIRMAN THERNSTROM: And can we contract work out if there is social science expertise, for instance, needed on a particular topic?

STAFF DIRECTOR MARCUS: Well, that's something we would have to look into. We do have an ability to contract out for work, but there are some statutory limitations on our ability to do that. Over the next several months, the main challenges that we have in the Office for Civil Rights Evaluation, once we get through the statutory report, will be to conduct the briefings.
Now, that work I think is best done --

VICE CHAIRMAN THERNSTROM: In-house.

STAFF DIRECTOR MARCUS: -- in-house.

VICE CHAIRMAN THERNSTROM: Yes.

STAFF DIRECTOR MARCUS: To do the public education campaign on anti-semitism. I suppose we could look into that question, but I think it could be done in-house. And I suppose OCRE will need to provide backup support to OGC's project on elementary and secondary education, and perhaps to get started early on the next statutory report.

I think that the projects they're working on probably at this point can best be handled in-house, and it's just a matter of replacing the outgoing employees.

VICE CHAIRMAN THERNSTROM: Did somebody have their hand up here?

COMMISSIONER YAKI: I did. I just wanted to say that in my year on the Commission I have enjoyed working with Terri, Mireille, and with Seth, and wish them all the very best success in their future endeavors.

VICE CHAIRMAN THERNSTROM: Well, I know that's a -- it's a rare issue on which there is consensus on the Commission.
V. Management and Operations

Special Assistant for Commissioner Melendez

VICE CHAIRMAN THERNSTROM: And that really does -- the Staff Directors' report really does bring us directly into the next item, which is a Special Assistant for Commissioner Melendez.

This would be a motion in the nature of a substitute amendment to lift the moratorium on hiring Commissioners Special Assistants, to permit the hiring of one for Commissioner Melendez. Can I have a motion to that effect, that we lift the moratorium on the hiring of Special Assistants, and for the exclusive purpose of hiring a Special Assistant for Commissioner Melendez as soon a possible?

COMMISSIONER YAKI: Second.

VICE CHAIRMAN THERNSTROM: Any discussion?

COMMISSIONER KIRSANOW: Yes. I wonder if the Staff Director could flesh out a little bit the impact of whatever budgetary savings we may have as a result of the attrition that was just discussed on the possible hire of a Special Assistant for Commissioner Melendez.

STAFF DIRECTOR MARCUS: Well, I would envision that the new Special Assistant would replace the outgoing civil rights analyst, since we are
replacing a civil rights analyst at a GS-13 level, who
as a Commissioner's Assistant, even if the new
Commissioner's Assistant were brought in at a GS-13
level, which is the maximum, it would be
essentially --

COMMISSIONER KIRSANOW: A wash?

STAFF DIRECTOR MARCUS: -- a wash, yes.

Now, that would -- it would be essentially a wash.

VICE CHAIRMAN THERNSTROM: Any further
discussion?

(No response.)

Let's have a vote. All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

The motion passes unanimously.

COMMISSIONER MELENDEZ: I want to thank
you very much for that. It will really help me out in
the work I have to do as a Commissioner, so thank you.

VICE CHAIRMAN THERNSTROM: Well, it's our
pleasure, and, of course, every Commissioner should
have a Special Assistant.

COMMISSIONER MELENDEZ: Okay.

VICE CHAIRMAN THERNSTROM: Any time you
can tell members of Congress that, you're welcome to.
It's appreciated.

February 15, 2006 Letter to Senate Subcommittee on the Constitution

VICE CHAIRMAN THERNSTROM: Okay. We need a motion to post a letter requesting SAC term extension on the Commission website, a letter authorizing subcommittees to extend the terms of the State Advisory Committees in reauthorization legislation. You should have the motion in front of you.

COMMISSIONER KIRSANOW: Do you need a second?

VICE CHAIRMAN THERNSTROM: Yes. Well, I need somebody to make a motion, actually.

COMMISSIONER KIRSANOW: I move that the Commission post on its website the order submitted by the Chairman to our House and Senate authorizing committees to extend the terms of the State Advisory Committees in our reauthorization legislation.

This letter, submitted on February 15, 2006, recommended that Congress extend the terms of the SACs and their members to four years when it considers reauthorization legislation for the Commission.

VICE CHAIRMAN THERNSTROM: All right. Now
I need a second.

COMMISSIONER TAYLOR: Second.

VICE CHAIRMAN THERNSTROM: Any discussion?

(No response.)

All in favor?

(Chorus of ayes.)

Any opposition?

(No response.)

Passes unanimously.

**February 15, 2006 Corrective Action Plan**

VICE CHAIRMAN THERNSTROM: Then, there's the question of the corrective action plan. The Commission submitted its corrective action plan, as requested by the Office of Management and Budget, on November 15, 2005. This plan addresses reportable conditions noted in the Commission's fiscal year financial -- '05 financial statement audit.

The plan presents audit findings, provides contexts or backgrounds related to each finding, summarizes the recommendations made by the independent auditors, and discusses the corrective actions the Commission has implemented or is in the process of implementing. The plan also provides the Commission's target completion dates for corrective action that are currently underway and indicated the actual completion
dates for correction action already implemented.

And I simply need a motion to post the corrective action plan on the Commission's website.

COMMISSIONER TAYLOR: Madam Vice Chair, I move that the Commission post on its website the corrective action plan submitted to the Office of Management and Budget on February 15, 2006. This plan addresses --

VICE CHAIRMAN THERNSTROM: We don't have to go through that whole language I just went through. I know it says it there, but it's just a repeat.

COMMISSIONER TAYLOR: Oh, okay.

VICE CHAIRMAN THERNSTROM: Precise language.

COMMISSIONER TAYLOR: All right.

VICE CHAIRMAN THERNSTROM: Have we got a second?

COMMISSIONER KIRSANOW: Second.

VICE CHAIRMAN THERNSTROM: Is there any discussion on this?

(No response.)

All right. All in favor, aye?

(Chorus of ayes.)

Opposed?

(No response.)
The motion is approved unanimously.

I think we're done. Do we have a motion to adjourn?

COMMISSIONER YAKI: So moved.

VICE CHAIRMAN THERNSTROM: And I second it.

COMMISSIONER TAYLOR: Future agenda items?

VIII. Future Agenda Items

VICE CHAIRMAN THERNSTROM: Oh, future agenda items. I'm sorry. It's because we have reordered this -- things are out of order. Sorry about that.

Future agenda items. I don't even have this in front of me. I have no idea.

STAFF DIRECTOR MARCUS: We don't have any future agenda items. Commissioner Yaki requested at the last meeting that we place on the agenda an item so that if anyone has future business issues they could be raised. That's --

COMMISSIONER TAYLOR: That makes for a nice segue into a comment I wanted to make. In my mind at least, I recognize that we're operating under significant fiscal constraints. But I really think it's important that we, to the extent feasible, try to have a meeting outside of Washington. And Katrina was
the obvious situation for us to have a meeting, and we
-- for a variety of reasons, we didn't.

But I just want to go on record as saying
I think we should work as hard as we can to put our
house in order such that we can have that flexibility
in the future. I think we need it. I think it's
something we should do. And I think we will become
conspicuously absent from certain events if we -- if
we continue to hold all of our meetings in Washington.
So --

VICE CHAIRMAN THERNSTROM: You know, it
does seem to me that Katrina specifically -- that
unless we have -- are going to hold -- have a
briefing, hold some kind of hearings, do something
Katrina-related, we don't want to go down to New
Orleans.

COMMISSIONER TAYLOR: No, I don't
disagree. I just we need that flexibility. We need
to plan such that we have the flexibility to do those
things when circumstances warrant. And right now we
don't, but we need to get in a position where we do,
because I think we're missing.

STAFF DIRECTOR MARCUS: If the
Commissioners have a compelling interest in doing that
this year, then we could look into it. We are doing
better this year than planned, because of the extent
of the attrition and because we have -- because of the
time necessary to hire new people. So this year is
actually a better year for thinking about those than
future years. Next year may be harder because it
looks like the budget will be tighter for next year.

COMMISSIONER KIRSANOW: I would note that
we have an extraordinarily pressing issue on the
Native Hawaiian matter that we had a briefing on, and
I suggest that we --

COMMISSIONER YAKI: A question on -- just
a followup on that. Are we going to -- when will that
report be ready, and when will Commissioner statements
be needed by for the Native Hawaiian briefing?

STAFF DIRECTOR MARCUS: We are working to
have it available for a vote at the April meeting.

COMMISSIONER YAKI: Okay.

STAFF DIRECTOR MARCUS: As for
Commissioner statements, I don't believe we've set a
date. We could either set it for the same -- for the
same date, which is to say the April meeting, or for a
couple weeks after that.

COMMISSIONER YAKI: After, because VRA
comments will be the same day as the April meeting.

VICE CHAIRMAN THERNSTROM: You're right.
STAFF DIRECTOR MARCUS: That's a good point.

VICE CHAIRMAN THERNSTROM: Yes.

COMMISSIONER TAYLOR: By the way, I would also be in favor of holding a meeting on tribal land. I don't know if every Commissioner has had the opportunity to actually step foot on tribal land, but if you have not I think it is helpful in terms of forming our discussion of these issues. So --

VICE CHAIRMAN THERNSTROM: Well, you know, I think there's -- well, I am in agreement with that. It would be nice to get out of Washington. I think as an agency it lends -- adds to our credibility.

Any other business, future business?

(No response.)

All right. We are adjourned.

(whereupon, at 11:37 a.m., the proceedings in the foregoing matter were adjourned.)