U.S. COMMISSION ON CIVIL RIGHTS

MEETING

FRIDAY, AUGUST 18, 2006

WASHINGTON, D.C.

The meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 9:30 a.m., Abigail Thernstrom, Vice Chairperson, presiding.

PRESENT:

ABIGAIL THERNSTROM, VICE CHAIRPERSON
JENNIFER C. BRACERAS, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER (via telephone)

KENNETH L. MARCUS, STAFF DIRECTOR

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
TYRO BEATTY, Director, Human Resources Division
CHRISTOPHER BYRNES, Acting Deputy General Counsel, OGC
DEBRA CARR, Associate Deputy Staff Director, OSD
RANITA CARTER
BARBARA FONTANA
DEREK HORNE, Attorney Advisor
MAHA JWEIED
FATIMA JOHNSON
SOCK FOON MACDOUGALL, Acting Assistant Deputy Staff Director, OCRE
TINALOUISE MARTIN, Director of Management, OM
EMMA MONROIG, Solicitor + Parliamentarian
BERNARD QUARTERMAN
EILEEN RUDERT

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STAFF PRESENT (Continued):

AUDREY WRIGHT
MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS
LISA NEUDER
KIMBERLY SCHULD

GUEST:

H. DAVID KOTZ, Inspector General
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PROCEDINGS

(9:34 a.m.)

VICE CHAIRPERSON THERNSTROM: All right. The meeting will come to order.

This is the U.S. Commission on Civil Rights, at 624 Ninth Street, Room 540. All of the Commissioners are present, except the Chair, and I'm not sure. Is Commissioner Yaki on? He's coming in by phone at some point.

MR. MARCUS: He's on the line now.

VICE CHAIRPERSON THERNSTROM: Is he on the line? Commissioner Yaki, are you on the line?

COMMISSIONER YAKI: Yes.

VICE CHAIRPERSON THERNSTROM: Good. You sound so grave.

I. APPROVAL OF AGENDA

VICE CHAIRPERSON THERNSTROM: First item is approval of the agenda. Can I get a motion to approve?

COMMISSIONER TAYLOR: So moved.

VICE CHAIRPERSON THERNSTROM: And a second?

COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: Okay. We
have a number of proposed amendments, proposed motions to amend the agenda. If you look at program and planning, the sub-item labeled "Record Items for the Briefing on Benefits of Diversity in Elementary and Secondary Education," as I said, under program planning. In its place would be a motion to keep the record open for the briefing on affirmative action in American law schools.

Can I have a motion on that? Give everybody time to look at what we're doing here.

COMMISSIONER BRACERAS: So we're deleting the first bullet under Roman numeral five and substituting?

VICE CHAIRPERSON THERNSTROM: Motion to keep the record open for the briefing on affirmative action in American law schools.

COMMISSIONER BRACERAS: So moved.

VICE CHAIRPERSON THERNSTROM: I need a second.

COMMISSIONER MELENDEZ: Just a question. Keep the record open for how long?

VICE CHAIRPERSON THERNSTROM: I believe it's -- that's a good question.

COMMISSIONER BRACERAS: We're just adding
it to the agenda right now. We're not discussing the merits of it.

VICE CHAIRPERSON THERNSTROM: Yes, but it's going to be 30 days. But all we're doing is adding it to the agenda.

Do I have a second on that?

COMMISSIONER TAYLOR: Second.

VICE CHAIRPERSON THERNSTROM: All in favor.

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: All opposed.

(No response.)

VICE CHAIRPERSON THERNSTROM: The agenda is amended.

Okay. The second proposed motion which would amend the agenda would add a sub-item labeled follow-up on the impact of racial preferences in American law schools. That sub-item would immediately follow discussion of the item labeled "Outline and Discovery Plan for FY 2007, Statutory Enforcement Report on Elementary and Secondary School Desegregation." Now, this is an additional sub-item.

COMMISSIONER BRACERAS: So moved.

VICE CHAIRPERSON THERNSTROM: Has anybody
got a second?

COMMISSIONER KIRSANOW: Second.

VICE CHAIRPERSON THERNSTROM: All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Opposed?

(No response.)

VICE CHAIRPERSON THERNSTROM: The agenda is amended to add that sub-item.

Third, there's a proposed motion to add a discussion of the concept paper that the staff has proposed in order to insure on time completion of the '07 statutory report on elementary and secondary school desegregation.

So I need a motion on that.

COMMISSIONER TAYLOR: Where are we adding this onto the agenda?

VICE CHAIRPERSON THERNSTROM: That is under --

MR. MARCUS: That would be the second --

VICE CHAIRPERSON THERNSTROM: Bullet.

MR. MARCUS: -- point under program planning.

VICE CHAIRPERSON THERNSTROM: Right.
MR. MARCUS: Which already discussed elementary and secondary school desegregation.

COMMISSIONER TAYLOR: Okay.

VICE CHAIRPERSON THERNSTROM: So this is just a discussion. It's a motion to discuss a concept paper. Staff has proposed modifying the -- I'm just looking for my page on the larger point here -- modifying our vision of this statutory report to make it manageable.

COMMISSIONER BRACERAS: So moved.

COMMISSIONER KIRSANOW: Second.

VICE CHAIRPERSON THERNSTROM: All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Any opposed?

COMMISSIONER YAKI: Me.

COMMISSIONER BRACERAS: You're opposed to adding it to the agenda?

COMMISSIONER YAKI: I oppose it.

VICE CHAIRPERSON THERNSTROM: Do you oppose adding it to the agenda?

COMMISSIONER YAKI: Yes.

VICE CHAIRPERSON THERNSTROM: You don't even want a discussion of it?
COMMISSIONER YAKI: I oppose it because getting it a week before has not given me enough time to really delve into it, a full discussion and to have that opportunity to change something as important as our program report. So I oppose it.

VICE CHAIRPERSON THERNSTROM: The statutory report, you mean. Yeah, okay.

So we have one nay and one, two, three, four, five --

COMMISSIONER MELENDEZ: I abstain.

VICE CHAIRPERSON THERNSTROM: You're abstaining. Four yeas, one abstention, let the record show.

And the agenda has been modified. I need a motion to amend the agenda to eliminate the closed meeting provision. Commissioner (name stricken) now does have the needed documents in and we no longer have to discuss it. So this is just striking that item from the agenda.

COMMISSIONER TAYLOR: So moved.

COMMISSIONER YAKI: Of course, the fact that we just mentioned his name kind of blows why we were calling it a closed session.

VICE CHAIRPERSON THERNSTROM: Michael
Yaki, you are perfectly right, and I apologize.

MR. MARCUS: Do you want to strike the name from the record?

VICE CHAIRPERSON THERNSTROM: Strike the name from the record, please.

COMMISSIONER BRACERAS: Move, move to strike.

VICE CHAIRPERSON THERNSTROM: Move to strike. I move to strike the name from the record.

COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: You got a second, yes.

Calling the question, All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Anyone opposed?

(No response.)

VICE CHAIRPERSON THERNSTROM: No. Sorry about that.

II. Approval of Minutes

VICE CHAIRPERSON THERNSTROM: Okay. I think we're up to approval of the minutes of July 28th. Could I get a motion to approve them?

COMMISSIONER KIRSANOW: So moved.
VICE CHAIRPERSON THERNSTROM: Second?

COMMISSIONER MELENDEZ: A question.

VICE CHAIRPERSON THERNSTROM: Yes.

COMMISSIONER MELENDEZ: I read this. Was there a question as to what time it started? It said 12 o'clock.

COMMISSIONER BRACERAS: First it needs to be seconded, and then we discuss.

COMMISSIONER MELENDEZ: Okay.

VICE CHAIRPERSON THERNSTROM: I was going to say can we have a second --

COMMISSIONER MELENDEZ: Second.

VICE CHAIRPERSON THERNSTROM: -- and any discussion?

COMMISSIONER MELENDEZ: It just said that the meeting is convened at 12 noon. I thought it started at 9:30.

VICE CHAIRPERSON THERNSTROM: Somebody is doing their homework and looking at these minutes.

COMMISSIONER MELENDEZ: The first line just at the top. I wasn't here, but I --

MR. MARCUS: That's correct. It did not start at noon. Oh, we had a briefing in the morning and this is only the meeting?
COMMISSIONER BRACERAS: Is it what time the meeting started as opposed to the briefing? I think that's why it says noon.

VICE CHAIRPERSON THERNSTROM: Yeah, I think that's correct.

MR. MARCUS: I believe that is correct. These are the minutes only of the business meeting itself. The briefing started at 9:30 and ended a little bit before noon.

VICE CHAIRPERSON THERNSTROM: Any further discussion of the minutes?

COMMISSIONER BRACERAS: Yes.

VICE CHAIRPERSON THERNSTROM: Yeah.

COMMISSIONER BRACERAS: Because of, I guess, technical snafus or human error or a combination of the two, I was not present for any of the business meeting, except the very last essentially good-byes.

VICE CHAIRPERSON THERNSTROM: Yes.

COMMISSIONER BRACERAS: So I would like the sentence that reads, "Commissioner Jennifer Braceras was present for part of the meeting via telephone," to be removed because that seems to imply that I was present during votes or discussion of
substantive issues, which I was not.

So if that could be deleted I would appreciate that. And then the only other thing is I believe the votes that are reflected in the minutes for the most part reflect the fact that I was not on the call, but one of them it says, "The Commission unanimously, six-zero, passed a motion offered by Chairman Reynolds." It could not have been six-zero, I don't think, if I didn't participate, right? One, two -- right, exactly right. How many? Was I on then? Yes, I was.

Okay. Sorry. My assistant has pointed out that I was on the phone at that point. So that vote is correct, and I think the rest are also correct, but just the first sentence. Maybe you want to change it to, "Commissioner Jennifer Bracer was present for only one vote," something to that effect.

I just do not want to give the impression that I participated in any of the other substantive conversations.

VICE CHAIRPERSON THERNSTROM: All right. Is there any objection to that amendment of the minutes??

(No response.)
VICE CHAIRPERSON THERNSTROM: If not, let us regard that as an amendment to the approval of the minutes and vote on it. All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Opposed?

(No response.)

VICE CHAIRPERSON THERNSTROM: It passes.

III. Announcements

VICE CHAIRPERSON THERNSTROM: Okay. We have got a few announcements. The period from September 15th to October 15th is National Hispanic Heritage Month.

August 6th was the 41st anniversary of the Voting Rights Act.

August 26th, 1920, the 19th Amendment of the Constitution was adopted guaranteeing American women the right to vote.

So all three events we note and commemorate.

IV. STAFF DIRECTOR'S REPORT

VICE CHAIRPERSON THERNSTROM: And we turn to the Staff Director's report.

MR. MARCUS: Thank you, Madam Vice Chair.

I would have only a few remarks to add to
my written Staff Director's report regarding the Omaha briefing, the Anti-deficiency Act and our agreement with the Peace Corps to obtain the benefits of services by their Inspector General, Mr. David Kotz, who is present with us today and who also will have a few brief remarks during the course of my Staff Director's report.

First let me say a few things about the Omaha briefing, which is coming up early next month in Omaha. Pam Dunston, the head of our Administrative Services and Clearinghouse Division has bid out a contract for a hotel. We had three hotels in Omaha bid, and the successful bidder was the Omaha Hilton.

We're in the process of developing a group of people to speak on the topic. We are looking at two panels, one of senior government officials and the other of people who are not state government officials.

On the government side, we hope to have two state senators. Senator Ernest Chambers, the primary supporter of the provision in question, has indicated that he would be willing to speak if formally invited. One of the primary opponents of the provision, Senator Patrick Bourne, the chairman of the
Nebraska Senate Judiciary Committee, has also indicated an amenability to speaking.

In terms of persons other than government officials, we have had a bit of a challenge in getting a balanced panel in that most of the people that we've been able to identify who are of stature nationally or in Nebraska have been opposed to the provision, and it has been a little bit of a challenge getting people who support it. We've been working with Senator Chambers about his suggestions for people who support his position on it, and he has identified for us Mr. Walter Brooks, a contributing editor of the Omaha Star and supporter of the measure whom we are planning to invite.

Some of the other people that we've identified and that we are considering inviting are a former Nebraska State Advisory Committee member who is on the Douglas County Board named Christopher Rogers, Professor Josephine Potuto of the University of Nebraska Law School, and/or an Urban League representative of whom the one identified by Urban League would be Brenda Council of the Urban League of Nebraska.

Those are the people we're looking at, and
we will probably be issuing invitations very shortly.

VICE CHAIRPERSON THERNSTROM: Is that the School Board that he's a member? You said Board.

MR. MARCUS: Brenda Council is a member of the Board of Directors of the Urban League of Nebraska.

VICE CHAIRPERSON THERNSTROM: No, no, no. There's a previous.

MR. MARCUS: Mr. Rogers is a member of the County Board of Douglas County, which is the Nebraska county in which Omaha is located.

VICE CHAIRPERSON THERNSTROM: All right. So we do not have any school officials.

MR. MARCUS: We do not have any school officials. That's right.

VICE CHAIRPERSON THERNSTROM: We need a school official. We need somebody who is going to talk about --

COMMISSIONER YAKI: Are you going to subpoena anybody?

MR. MARCUS: I don't know.

COMMISSIONER YAKI: Can we make a motion to authorize the Staff Director to subpoena an official from the school district?
MR. MARCUS: Well, I should say first of all that our rules provide for subpoenas in the event of hearings, but not of briefings. So that if we were to consider this, we would first have to convert this to a hearing, if we were to follow our procedures, and then look at all of the ramifications for holding a hearing in lieu of a briefing, which we have not done.

COMMISSIONER KIRSANOW: What day is the meeting?

COMMISSIONER BRACERAS: September 8th.

VICE CHAIRPERSON THERNSTROM: The 8th.

COMMISSIONER KIRSANOW: We don't have enough time.

COMMISSIONER BRACERAS: Can't do it.

VICE CHAIRPERSON THERNSTROM: Well, I do feel very strongly that this is an education issue. The people on the ground that are going to be, you know, dealing with it and that should have views on whether this is educationally beneficial are, you know, first and foremost educators.

MR. MARCUS: We certainly could invite a representative of the school system or the school board. Of course, this issue is now in litigation, and I understand there are a couple of cases. So
there may be a willingness to appear, but we can
certainly invite them.

COMMISSIONER YAKI: Anyone representing
either the PTA or teachers?

MR. MARCUS: If that's a preference of the
Commissioners, we certainly can invite a
representative of one or the other, sure.

VICE CHAIRPERSON THERNSTROM: What was the
first one, Commissioner Yaki? Teachers was the
second.

MR. MARCUS: PTA.

VICE CHAIRPERSON THERNSTROM: PTA? Well,
I'm more interested in the teachers, but PTA,
whatever. We seem to be a little bit short in terms
of people on the ground dealing with kids.

COMMISSIONER YAKI: There are a couple of
things to look at. One is usually school districts
have advisory committees comprised of either PTA
members or parents. We should see what advisory
committees they have because those are citizens who
are not parties of the lawsuit, number one, and then,
number two, check on PTA, and then number three check
if there's an applicable teacher's group that we
should invite as well.
VICE CHAIRPERSON THERNSTROM: Have we got any representative of the African American press in Amon? There must be some sort of a newspaper.

MR. MARCUS: To speak there? We can certainly look into that.

COMMISSIONER BRACERAS: And the school board you said.

VICE CHAIRPERSON THERNSTROM: And the school board. Now, the question is whether they are --

MR. MARCUS: They're defendants.

VICE CHAIRPERSON THERNSTROM: Yeah, they're defendants in the litigation. I don't think we're going to get anybody.

MR. MARCUS: I take it from the discussion so far that there are Commissioners who are open to having a larger number of speakers testify at this briefing than customarily.

VICE CHAIRPERSON THERNSTROM: Yeah. I mean, if we're going out there, let's really hear from a wide spectrum of people. Commissioner Yaki, don't you agree?

COMMISSIONER YAKI: Yes, I agree.

COMMISSIONER BRACERAS: And the school
board, members of the school board, even if they are defendants, can certainly recommend people who would support their positions.

MR. MARCUS: We would be happy to speak with them and see if they would either come or recommend others.

VICE CHAIRPERSON THERNSTROM: Tell me because I don't remember what was the process here. Was there a vote by the school board? I felt this was action at the state level.

MR. MARCUS: This is state legislation.

VICE CHAIRPERSON THERNSTROM: It is state legislation. So are we sure that the school board is a defendant here? It was not initiated in the school board.

MS. BUTLER: Something was held on Tuesday, and it may -- I haven't read the court case, but in talking to people they said that the school board was named as a defendant.

COMMISSIONER KIRSANOW: Yeah, it seems to me that they would be a necessary party.

VICE CHAIRPERSON THERNSTROM: Even if they themselves have not initiated or sanctioned.

COMMISSIONER KIRSANOW: Because it
directly concerns them. Is this in federal court?

MR. MARCUS: I believe it is in federal court.

COMMISSIONER KIRSANOW: So more likely than not they must be joined.

VICE CHAIRPERSON THERNSTROM: Well, I do think we should expand the list and expand the list of people we're talking to here.

MR. MARCUS: We'd be pleased if there's general agreement on it to try to get as many of those groups as possible or all of them, if they'll come.

COMMISSIONER KIRSANOW: If we make the trip, let's have a party.

MR. MARCUS: Good.

VICE CHAIRPERSON THERNSTROM: Yes, and I think Commissioner Kirsanow is right. Okay. If the members of the school board itself can't appear, let us at least contact them and see if --

COMMISSIONER BRACERAS: Another possibility for a speaker might be a representative of the Hispanic community since that is part of the mix --

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER BRACERAS: -- of what we're
going to be discussing.

VICE CHAIRPERSON THERNSTROM: Yes. Good idea. Okay. Anything else on that?

MR. MARCUS: That's it on the Omaha briefing.

Let me say just a word about the Anti-deficiency Act. I indicated a year ago at some length that we had identified multiple violations of the Anti-deficiency Act that occurred prior to the transition to new leadership in the year 2004. We have recently found evidence suggesting the possibility of violation in the year 2003 as well.

I've directed the General Counsel to investigate to determine whether there was a violation or multiple violations of the Anti-deficiency Act in 2003. He has been working together with our Office of Management, and in the event that we are able to determine that there was a violation, we, of course, will comply with our legal obligations to provide formal notice to various senior governmental officials, including the President and the leadership of Congress, of those facts.

COMMISSIONER KIRSANOW: Ken, how did that come to light, first of all?
Second, what would be at least the tentative amount of the deficiency?

MR. MARCUS: We have been working now for a considerable length of time with the component of GSA, which is essentially our landlord, to resolve the $75,000 rent issue from 2004. In the course of trying to resolve that, the landlord component of GSA has been working not only with us but also with our outside full service accounting provider, which is another part of GSA in order to track all of the money.

And in the course of tracking what exactly happened in 2004, they went back into 2003 to make sure that they understood the 2004 context. In doing so, they found indication that there had been a deferral of rent not only from 2004 to 2005, but also from 2003 to 2004.

Now, that's an indication that they found. This is something that is being investigated. I cannot say that we have determined this with certainty, but it was the evidence of deferrals of rent from '03 to '04 which has led us to investigate to see whether there has been a violation or multiple violations.
Now, Commissioner, you asked me the amount, I believe, of deficiency. This is being looked at now, but it appears that there may be an amount in rent that was deferred of over $100,000. It might be in the vicinity of $140,000 or so. We are looking into that. Since we don't know for a certainty whether it happened, we certainly can't say for certainty that that was the amount, but that number has been coming up preliminary on some documentation.

In the event that that is the case, there would be a deficiency for that fiscal year in an amount of money that is somewhat less than 140, but that would be material. However, it would also reduce the actual deficiency from 2004. In other words, if the paper work is as we think, it could be that the '04 actual deficiency could be eliminated. There would still be violations of the Anti-deficiency Act in 2004 because it still appears we still know that there were obligations of 2005 funds in fiscal year 2004 in advance of the '05 appropriations. So there is still a violation in '04, but it is possible that the deficiency is only in the year 2003.

COMMISSIONER KIRSANOW: When do you think
that your review will be concluded?

MR. MARCUS: I certainly hope and expect it will be concluded in advance of our next business meeting, which is in October.

COMMISSIONER KIRSANOW: Okay. My recollection is during that fiscal year I know a number of Commissioners had made inquiries. I know I did on several occasions as to what the status of our finances were, and representations were made to us repeatedly. This was during a period of time when we were engaged in considerable travel. Representations were made that there were no fiscal problems. So I'd like to continue to pursue that.

(Pause in proceedings.)

COMMISSIONER BRACERAS: Order in the court.

VICE CHAIRPERSON THERNSTROM: Yeah. Commissioner Yaki, have you got a problem?

Well, yes. That was an ongoing theme in --

COMMISSIONER YAKI: I have one question. Wouldn't we be evicted by now if we weren't paying the rent?

MR. MARCUS: We're not aware of any
default on any rental obligation. The issue in 2004 was an explicit agreement with General Services Administration to defer the rent. What we're looking into with the possibility of an explicit agreement with GSA that took place in 2003 as well.

COMMISSIONER YAKI: I apologize for the lacking. I was confused between Utah while I was trying to make coffee for my wife.

(Laughter.)

MR. MARCUS: Are there any other questions or comments regarding the Anti-deficiency Act before I move on to the next issue?

VICE CHAIRPERSON THERNSTROM: No. Move on to the next issue.

MR. MARCUS: As the Commissioners are aware, the Government Accountability Office issued a report in May on quality assurance policies of the Commission and on the agency's utilization of 51 state advisory committees. The report concludes, among other things, that they believe the Commission needs more written policies and procedures insuring the objectivity of national office products as well as additional controls and procedures regarding transparency and accountability for changes to
national office reports, additional or improved utilization of the state advisory committees, and an external accountability mechanism like an Inspector General to insure that the agency's response and related reforms are adequate.

The Commission has been working to address GAO recommendations and to strengthen various controls for several weeks, including issuing a revised AI 1-6, which substantially increases formal controls regarding transparency and accountability and formalizes our accountability and objectivity policies and procedures.

During late July, I'm delighted to say, the Commission was able to retain the services of an Inspector General whom I referred to earlier through a reimbursable agreement. That Inspector General is Mr. David Kotz of the Peace Corps.

Mr. Kotz has begun his work and will be here until September 4, 2006, for a total of six weeks at an estimate cost of less than $8,000.

I must express our gratitude to the Peace Corps for providing Mr. Kotz and for Mr. Kotz for his commitment to public service and his willingness to provide what I think are very important services to
the Commission.

He has in his work been extremely thoughtful and serious minded. Many of the Commissioners have spoken with him. Since coming on board, Mr. Kotz has worked swiftly to assess the Commission's operations in light of the GAO report and is reviewing the agency's response and initial efforts at reform.

Among other things, he has interviewed several of you. He has met with members of agency senior staff, participated in a conference call meeting with regional directors, and reviewed some of our recent reforms, and as I say, his work is ongoing.

He and I have met several times to discuss the work that we're doing to address objectivity and to address the various other reforms that are related to the GAO report, and I am looking forward to continuing to work with him on this issue. Mr. Kotz has come here and is available to say a few more words about the work that he is doing and to answer any questions which the Commissioners might have at this time.

Mr. Kotz.

A. Presentation by David Kotz
MR. KOTZ: Thank you, and I want to first thank all of you for this opportunity to serve in this respect. It has been my experience that I have dealt with civil rights issues for a number of years, and I very much welcome the opportunity to assist in any way I can in the good work that you all do.

Let me give you very briefly a little bit about my background. I'm an attorney by training. I graduated from Cornell Law School in 1990, subsequently worked for large law firms in New York City and Washington, D.C., then began to work for the U.S. Agency for International Development both on the legal side and on the management side, and then came to the Peace Corps where I have worked both in the General Counsel's Office until becoming the Inspector General for Peace Corps.

During my time working in law firms and in two different agencies, I litigated very often related to matters involving civil rights and EEO type issues. So I have some familiarity.

As Ken mentioned, my main role is involved with respect to the GAO 2006 report that was recently issued. My first role in my process was and is ongoing to speak to as many people as I can to get a
wide variety of information about the Commission, how it works, and what could be done to assist in the process.

I have spoken on the phone to all the Commissioners, except one who I will shortly speak to, and plan to in addition to Ken and Ken's staff speak to a variety of the SAC members as well, as many as I can over the next few weeks, to try to get as much information as I can about the process.

And I want to thank particularly Ken for making himself available for so much time and his staff available to me to assist me in this process.

In terms of some of the specifics of what I'm going to be doing, what I plan is at the end of my time, which as Ken mentioned ends in September 4th, I plan to have further revisions to Administrative Instruction 1-6. I did have a chance to look at the initial revisions that Ken put together, and I felt that they made significant progress. There are some additional revisions that I'm going to suggest to that condition, some revisions to Administrative Instruction 5-7 which deals with the SACs and regional program development as well, and then I will draft an exit memorandum which will summarize all of the work
that I've done, and have all of that done by the time frame.

In terms of the specific matters in the GAO report that I wish to address, I want to just discuss them briefly. In addition to the overall recommendation that, in effect, the General would be brought in, which my presence will address, there were other specific recommendations made in the GAO report.

Specifically documenting the process, concerns about having more documentation in the process, and the way I intend to respond to that is through a checklist. There was a checklist that was discussed in the first revision to Administrative Instruction 1-6, and I plan to expand on that, as well.

I think that a checklist can be very useful for the Commission, for the staff director in terms of making sure that all processes are taken care of, and then as well, to create something that's workable and not tremendously time consuming, manageable, but nevertheless that shows and documents all of the steps that I've gone through in connection with the reports, hearings, and briefings.

The second issue that the GAO mentioned
was related to the consideration of varied and opposing perspectives, and what I intend in respect to that is to add language to the administrative instruction that throughout the different parts of the process, to have language that describes input from as many sources as possible, again, in a manageable way.

The topics, to try to get information on what topics to use, suggestions for topics through background research, proposed witnesses and presenters, try to have language all the way through the process that allows for a wide variety of views.

Also to have some language with regard to certain briefings and hearings in terms of the balance of the witnesses. While keeping in mind Ken just mentioned the difficulties in trying to get witnesses, and I do understand that we don't want to set up a rigid formula that prescribes specific numbers in every single case so that it's an unworkable situation where while you would like to get a specific number of witnesses on each side, you may not be able to simply because these folks are not available.

So with some flexibility, I still would like to put together some language that prescribes certain balance, you know, in inappropriate cases.
External review is something that the GAO recommended, and you know, part of that is myself being brought in. I don't know that there is the possibility of having an Inspector General full time for a variety of reasons having to do with authority and funding, but to have some method throughout the process of having someone outside look at the procedures, not necessarily in a substantive way, like the peer review was discussed previously, so as not to create an unwieldy situation, but to have some method where we can satisfy that goal, and Ken and I are working very carefully and closely on that.

Transparency, I'm suggesting some language that makes clear the Commissioner access to information documents where changes are made, that Commissioners have access to that, Commissioners having sufficient time to review materials, and you know, many of these things are being done.

As a matter of fact, I think it's helpful to have specific language in the administrative instructions that's responsive to the GAO report.

There is recommendation regarding process for improving state advisory committee charters, and what we've been thinking about in that respect is to
have some kind of tracking system where, in addition to dealing with the charters as they are now to try to get them re-upped, but also to have some kind of tracking system where six months before a charter is about to expire, have that trigger a period where there's a process that goes forward to try to insure that the charter remains in effect.

There was a recommendation that separate funds for regional offices, and that's going to depend on, I think, the amount of funds, but assuming that there is an amount of funds available, that's something that I may recommend as well.

The time frames for staff director review of SAC reports, again, that's something that I want to put a specific time period on, possibly 65 days, and Ken has already been working on that.

And then integrating the SAC mission into the strategic planning. I've had several discussions with Commissioners about ways in which there can be more coordination between SAC groups and the Commission and the Commissioners. I'm going to have more conversations and have conversations with SAC members and all, but try to come up with some method to look at.
You know, I intend to at the end suggest matters that will respond to each one of the GAO recommendations, but at the same time not interfere with the way you are doing business, such that it creates, you know, an unwieldy system where it's difficult to get through the regular business of the Commission because of specific things that are being put into place.

While I was at the Peace Corps I did have experience involved in a GAO report of Peace Corps, and we were able to successfully respond to the recommendations, but also continue to do our work in an efficient way.

So that's essentially the generality for my plan. I'm continuing to work with Ken, meeting with him regularly, and intend to have all of the language that I suggest to the revisions of the various administrative instructions in place before September.

And, again, I thank you very much. I'm happy to remain available after the end of my tenure as an advocate for the work that you all have been doing and in any way I can assist in the future, and that is my brief remarks, and I'm happy to take
questions.

VICE CHAIRPERSON THERNSTROM: Well, thank you very much.

I don't personally have questions, but do other Commissioners?

COMMISSIONER KIRSANOW: David, when do you expect to have this exit memo done? Would it be some time contemporaneously with your exit of September 4th or would it be some time thereafter?

MR. KOTZ: Yes, I think the substance of the memo will be done before September 4th. The question is I would like the exit memo to reflect hopefully approval of some of the measures in place and because of timing of the Commission meetings, et cetera, that may not be in place by September 4th, but essentially all of my work will be done by that date. I do not intend to -- other than the mere fact of insuring the approval which may necessitate a later meeting.

VICE CHAIRPERSON THERNSTROM: Well, it will necessitate a later meeting.

MR. KOTZ: But in terms of the substance of the work and the time, it will all be done by September.
VICE CHAIRPERSON THERNSTROM: Well, we thank you very much for the work that you're doing, and we know it's going to be of high quality already. So we're very appreciative.

MR. KOTZ: Thank you.

V. PROGRAM PLANNING

VICE CHAIRPERSON THERNSTROM: So we're on to the Program Planning and a motion to keep the record open for the briefing on affirmative action at American law schools.

I believe that the idea here is very simple. In order to give an opportunity to anyone interested in providing information on the briefing that we had on affirmative action in American law schools, I'm recommending that the record be kept open for 30 days from today's date.

This is a bit of business we normally would have conducted at the end of the briefing itself. We ran out of time. So I'd like a motion that the Commission keep open the record from June 16th, 2006 briefing on affirmative action in American law schools for 30 days from today's date.

COMMISSIONER BRACERAS: So moved.

COMMISSIONER KIRSANOW: Second.
VICE CHAIRPERSON THERNSTROM: All in favor.

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Anybody opposed?

(No response.)

VICE CHAIRPERSON THERNSTROM: Okay. Then there is the motion to amend the project concept and approve the outline discovery plan for FY '07 statutory enforcement report on elementary and secondary school desegregation.

You will all remember the Commission approved on May 13th, 2005 this topic as our statutory enforcement report for FY '07, consistent with the working group on reform rules concerning Commissioner input on national office projects.

This sentence, I'm sorry, it does not make sense, but let me start again and see if I can make sense of it.

Consistent with the working group on reform rules concerning Commissioner input on national office projects, also passed at the same meeting and later were embodied in Administrative Instructions 1-6, staff have prepared a detailed project outline,
including a time line and a discovery plan for the
Commissioners' review and approval at this business
meeting.

Mr. Staff Director, could you advise the
Commissioners of the progress made at the initial
project training for this report and the
responsibilities at this stage?

MR. MARCUS: Madam Vice Chair, I'd be
pleased to do so. First let me express the
appreciation for the hard work of our new General
Counsel, Mr. David Blackwood, and his team within
Office of General Counsel in OCRE for their hard work
in preparing the outline discovery plan and proposed
alterations in the scope of the project. I'm also
going to turn to Mr. Black in a few moments to say a
few words about the project.

As you'll recall, AI 1-6, Section 7.03,
requires the program office responsible for a national
report to submit a detailed project outline to
Commissioners for their vote. This is one of the new
procedures that we implemented as a result of the
working group on reform last year.

Under 1-6, the outline includes a summary
of the research performed to date, the proposed
methodology, and a time line for completion. AI 1-6, Section 8.01 requires the program office responsible for a national report to submit a discovery plan also to the Commissioners for a vote. According to the AI, the discovery plan describes in as much detail as practicable the subpoenas, the interrogatories, discovery requests and other forms of discovery and information gathering that the project team proposes to undertake.

The plan also provides a timetable for doing so. This is the sort of work that OGC has put together and which is before the Commission.

Commissioners should note that the only firm deadline in the proposed timetable is that for a vote on the final report since we're required by statute to submit a statutory enforcement report to Congress and the President before the end of the fiscal year. In other words, the timetable that we've provided shows a whole series of very specific interim deadline and sub-deadlines that are an expectation. Some of these may slip, but we're going to try as much as possible to meet all of them. The one that cannot slip is the requirement that we complete the project by the end of the fiscal year.
It should be noted that the current proposed time line builds in significant time for Commissioner input both at the front and back ends in keeping with both the spirit and the letter of the working group on reforms rule, on engaging Commissioners more in the initial phase of the project planning. This will be the first statutory report that we are doing under this process, and our first experience in making sure that it can get done.

Of course the more time we have built in at the front end for review and at the back end for review, the less time there is in the middle for the actual development of the product, and that's why I'm particularly pleased with the very hard work which our depleted OGC staff is doing.

I've asked our new General Counsel, Mr. Blackwood, to provide a little bit more detail in how we can complete this report and meet quality standards while complying with all of the new procedural rules concerning both our timing and the diminished staff resources.

Mr. Blackwood, would you say a few extra words on that?

MR. BLACKWOOD: Hi. As the Staff Director

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has indicated, we're creating a new template here. A good part of that is most of OGC is new as well. So we are starting with a clean slate as far as our expectations.

As he indicated, we have submitted a project outline, background information, a proposed methodology, and proposed time line, as well as the discovery plan. Let me just walk you through that in a very general way.

Most significantly, the original concept paper contemplated that we would rely on information submitted or that we would obtain from the Department of Education. When I arrived here about five weeks ago, I reviewed the background information that career staff had already accumulated, looked at what our regional offices had performed with regard to the issue of desegregation generally.

It seemed to me that the information or our project would be much better suited if we were guided by information supplied by the Department of Justice. Frankly, the information we had received from Justice was much more succinct, much more direct, and much more -- well, it was just in a better organized fashion.
Specifically, we had a docket provided by the Department of Justice indicating or listing all of the cases that are currently under court order with regard to desegregation. This allowed us, and frankly, I pass on a lot of credit on this to Peter Minarik, who is head of the Southern Regional Office, who had with this information created a universe of research as far as those cases, or he came up with a project of, first off, look at the Department of Justice information. That defines the parameters as far as those cases currently under court order. Look at the other universe of those cases or those school districts that have obtained unitary status, and third, those jurisdictions which have never been subject to any court order.

Now, there is no database that currently lists those three universes. We have the information from the Department of Justice. What Mr. Minarik came up with was the idea that -- and this is unique -- is to make a survey of each school district, specifically using government independent sources of information and school district information itself. He has worked to compile specifically in the Southern Region, and other regions are undertaking similar surveys, to
create a database showing exactly the status of each and every school district within his region.

This lone survey is going to be extremely valuable. The Justice Department does not have any similar database, and as far as we're aware of nobody does. So creating, gathering this kind of information, this kind of survey, using with and working with the information we're going to obtain from the Justice Department, specifically the educational opportunity section.

The idea is to create an analysis and test whether there is a difference in school level racial integration between those school districts determined to have achieved unitary status in other school districts.

Now, this process has already begun. It is very preliminary, but the feedback I have obtained from the career staff is that it is extremely valuable, that it is something that is a new product, that it is not redundant, that it is not duplicative.

Now, where it's going to go I can't tell you. As I say, it's all very preliminary, but the idea is to create this database, gather the information first. We're not wedded to a single
method of analysis. I want to emphasize that. We are using a basic -- at this time using an index of dissimilarity to analyze the data for each school district that we have obtained the information with regard to whether they were under a court order, have obtained unitary status or have never been involved in the court system.

And we're trying to determine in a very general way, all subject to changes as we go along as to the extent of the information and the value of various means of analysis that greater segregation exists after release of a court order, whether it's less, and we're not going to limit ourselves to just that question. We're going to go where the data takes us.

But the process has already begun to collect this data. Already five jurisdictions I won't say are complete, but in the southern region substantially complete or substantially in process to gather this information that I mentioned before about a survey.

The analysis itself we believe can be accomplished in a timely fashion. We are, of course, governed by the general terms of AI 1-6, and we are
trying to accomplish that. The guidelines that we have set forth in our discovery guideline are meant to comply with AI 1-6. I can't say that we're going to meet every deadline exactly on the date shown. We are certainly going to try to, and we believe they are at least at this stage realistic. We may have bumps in the road when we request information from various entities whether they comply and whether they comply in a timely fashion, but we do believe it is possible to meet these deadlines.

And as you also note, there is considerable time built in for your all's input. We want to be -- as we develop our methodology, we will provide that information to you. If things change, we will provide that information to you and are looking for feedback, but this is, in broad terms, the nature of our program.

As I mentioned before, the key issue as far as today is that we have changed our focus from enforcement by the Department of Education to enforcement by the Department of Justice, and that, I believe, is going to require a vote.

Yes, ma'am.

COMMISSIONER BRACERAS: I'm unclear as to
why the change in focus has been made. I know you
said that the information from the Department of
Justice was just more crisp and clear and organized,
but what is the substantive difference between the
information available from OCR and the information
available from Justice?

MR. BLACKWOOD: Sure. The information
with Justice focuses to me -- and, again, coming in
with eyes open as far as with a new look -- looking at
the background, legal articles, and general social
research, they all focus on the emphasis of the
changing analysis of unitary status, its value, how it
is changed, how the courts interpret it.

That necessarily focuses more on a role by
the Department of Justice, which is focused
exclusively on enforcement as opposed to the
Department of Education, which is a mix of enforcement
and funding. The Justice Department is going to be
dealing with court orders that define unitary status.

The Department of Education --

COMMISSIONER BRACERAS: The smaller
universe.

MR. BLACKWOOD: Correct. It's a smaller
universe. It's more discrete, but it's also clearer
as far as the courts are involved. You can't say that necessarily with the kind of agreements that the Department of Education did.

COMMISSIONER BRACERAS: Okay.

MR. BLACKWOOD: Yes, ma'am.

VICE CHAIRPERSON THERNSTROM: Well, it is obviously a smaller universe, but out in the larger universe, of course, there are racial balancing plans that have not been court ordered. There is other forms of desegregation strategies, and they do take various forms, that it seems to me if one is really going to properly evaluate what is going on in terms of official efforts to create racial mix in schools, we're not going to get a proper picture without looking at that wider universe.

This is bothering me a little looking simply at the Justice Department aside from the fact that there are also some definitional questions here of exactly what is the meaning of desegregation, what's the meaning of racial balance.

I mean we just had a briefing on the Seattle and Louisville cases in which, you know, Seattle has done this wild thing of you are either white or non-white, and measuring racial balance in
that multi-cultural sitting by criteria that don't make much sense --

COMMISSIONER YAKI: I would object to that characterization, but just to let you know.

VICE CHAIRPERSON THERNSTROM: Okay. But in any case, there are -- and I think Commissioner Yaki's intervention here illustrates it -- there are very complicated, sticky issues here, and I'm a little bothered by kind of going with Justice Department definitions and confining ourselves to the data which involves only court ordered, but yes.

COMMISSIONER BRACERAS: I have to disagree with the Vice Chair just because I think we're limited in what we can do by our manpower and our time frame, and I think that rather than produce something that tries to do more and ends up doing it less well, we need to just focus on a discrete area so we can analyze thoroughly, of course making note of the fact in the report that there are other areas for research and perhaps listing what they are.

I just think we get into the problem then which we had. You know, if we bite off more than we can chew, we get into the problem that we had under the previous regime where these reports are throwing
in everything but the kitchen sink, and they're not focused, and they become virtually unusable.

VICE CHAIRPERSON THERNSTROM: Yes, look. I'm not in disagreement with that. What I would want to see is a discussion up front of just how limited a window this is through which we're looking.

MR. BLACKWOOD: Absolutely. We recognize, and I think Commissioner Braceras hit the nail on the head, that we're limited by our time, by our resources. What I was encouraged by was that this is something new. It is something distinct. It is a part of the puzzle. Obviously you can't address the whole issue, but it will have value to anyone who is interested in the issue.

People can take it where they will, results for different policy reasons, but it will provide them with some additional new data to help them determine what is the proper role of unitary status, how is it being applied, and then it will be up to decide where they want to take it.

VICE CHAIRPERSON THERNSTROM: Yes, okay. As long as both at the beginning and end there is a very clear statement as to the limits of what we are looking at here.
MR. BLACKWOOD: Absolutely.

VICE CHAIRPERSON THERNSTROM: And what you can conclude from the data present.

COMMISSIONER BRACERAS: Just to follow up on the Vice Chair's point about terminology, and perhaps this is something that we'll discuss again when we see actual language in the form of a draft, but the Vice Chair correctly points out that the terms, "segregation," are sometimes poorly defined. So you're using a definition that's based on Department of Justice guidelines?

MR. BLACKWOOD: What we are going to do is solicit from the -- well, I will tell you this. We're going to obviously solicit this information from the Department of Justice. What standards do they use? How are they applying it? And we're going to be seeking that from them.

At the same time kind of as a second component we're going to be doing our own analysis using Corps data information together with the survey that we are working on with regard to every school district. It should sweep up information, not only what Justice Department is doing, individual plaintiffs are doing, and we are soliciting and have
received from many of these school districts what is
their intention to seek unitary status, and we're
getting anecdotal evidence which may or may -- you
know, we're seeing where that goes. If you haven't
sought unitary status, why not? If you are seeking
it, what factors did you look at?

That's more anecdotal, but that
information is beginning to come in.

COMMISSIONER BRACERAS: And so essentially
it would be a database, a list, if you will, of
schools that have achieved unitary status, schools
that have not and schools that have partially achieved
it, and then with that information you're going to
analyze. That's where I'm confused.

MR. BLACKWOOD: The main analysis, and I
wrote it down so I would follow it correctly, is --
and this is only partial. We may expand it. We may
refine this -- but test whether there is a difference
in school level racial integration between those
school districts determined to have achieved unitary
status and other school districts.

COMMISSIONER BRACERAS: Okay. I guess I
have a normative question there, which is, you know,
we all assume that integration is a good thing, and of
course, as far as freedom of choice and legal barriers, it is; breaking down legal barriers, it is. But I'm not necessarily sure that all of us here and all of us in the larger world agree that a school is necessarily better or worse based on the percentage of blacks and whites that attend the school.

In other words, do you understand what I'm getting at?

MR. BLACKWOOD: Yes.

COMMISSIONER BRACERAS: I am concerned about the implicit assumption, I think, in the analysis that a school that is racially balanced is necessarily better than a school that is not racially balanced, and I'm concerned with the assumption that Justice Thomas has often pointed out, that a school that is majority black is necessarily a bad thing.

MR. BLACKWOOD: This report is not going to be approaching with that kind of analysis. It's not going to take a position other than saying, "Here is the way the law has been developing. Here is what Justice Department is doing," and we have to gather that information. "Here is what we're seeing as far as those jurisdictions that have obtained unitary status. Is there a difference?"
We're not saying it's good, bad or indifferent.

COMMISSIONER BRACERAS: Right.

MR. BLACKWOOD: Is there a difference between the levels of integration in those states or school districts that have obtained unitary status and those that have not.

COMMISSIONER BRACERAS: Right, and I think that's useful information for a whole variety of folks. I would phrase it in terms of demographics because demographics is to my mind a neutral term. So, in other words, you're saying these are the schools that fall into the particular legal categories, and this is what the demographics look like in those schools.

MR. BLACKWOOD: Correct.

COMMISSIONER BRACERAS: The word "demographic" doesn't convey necessarily that it's a good thing or a bad thing. It just it is what it is. So I raise that mainly to piggyback on the Vice Chair's comments about terminology. Sometimes when we use the words "integrated," "segregated," 'desegregated," you know, "racially balanced," "racially imbalanced," those are more politically
charged words that have different sociological and legal meanings depending on the context.

So I think if the report sticks to the language of demographics then social scientists and policy makers can do with it what they will, but it will appear, I think, a little less value laden.

COMMISSIONER YAKI: This is Commissioner Yaki. I'm a little confused by that. I mean, the fact is that part of the legal standard that is used utilizes the description in terms of race, in terms of balance, in terms of, you know, de jure de facto, whatever you want to call it, and then I'm also concerned with how we can possibly opine on what the law is when the law is kind of a (unintelligible) as can be determined by two or three briefings we have already had.

The Commission, subject to wildly different interpretations of exactly what the meaning of different Supreme Court decisions have with regard to elementary and secondary school education, much less desegregation.

So how are we going to be determining what the, quote, unquote, legal standard is against which we are comparing, quote, unquote, data from DOJ.
MR. BLACKWOOD: I think, Commissioner, if that's the impression I left you I misspoke. We're not trying to make a resolution. We are pointing out that there is confusion. Virtually every article that I have read on the topic indicates that the law is in flux.

So what I --

COMMISSIONER YAKI: I understand that. I understand that, but then the question I ask is then if there isn't confusion and we're simply going to be doing the report, the reports on the confusion, what real value of that report is there?

COMMISSIONER BRACERAS: Can I speak to that?

MR. BLACKWOOD: Yes.

COMMISSIONER BRACERAS: I think the value, Commissioner Yaki, is that it would lay out in one place the different standards that courts have applied and significantly the standards that are currently being used by the Department of Justice, and so those will all be laid out in one place, and in the same volume there will be the numerical data and the sociological and demographic data that shows, that sort of fleshes out the picture of what schools that
have been labeled X, Y or Z by a particular court actually look like.

And as I understand it, there is no place currently where somebody, a researcher can go to get all of that information, and so I do think that that's useful.

I agree with you that it's risky to try to opine on where the law should go in this area, but I think it's a very valuable service to collect this information in one place.

COMMISSIONER YAKI: For all 366 cases?

MR. BLACKWOOD: No, no. Here's where you'll find -- I believe it's in one of the footnotes in our report or the proposal. We are going to because of time restraints, because of statistical restraints as far as what is valuable. We're not going to be able to look at all 366, although that may be accomplished over a little bit longer period of time.

But the report itself will focus more on those jurisdictions which the social scientists have informed me require a critical mass within a state because this is a state-by-state analysis of those that have a critical mass of court ordered cases.
At this time it is likely that most of those states will be in the South because those have the majority of the actual court ordered situations in school districts. As our analysis proceeds, we are in the process of trying to determine whether this kind of survey can be done in a time sensitive manner to include other jurisdictions.

I believe in the report we point out right now that there are five states that we feel substantially sure that we will be completed and be able to analyze: Georgia, North Carolina, South Carolina, Florida, and Alabama.

We're recently getting information that we may be able to include also Mississippi and Louisiana, but that is going to vary depending on our resources and how fast we can get these surveys completed.

So we are not going to be able to complete a nationwide analysis.

MR. MARCUS: Let me add just a couple of points.

COMMISSIONER YAKI: Well, I just have a quick question. This goes into a general complaint about -- and maybe this is just because as someone who doesn't have an assistant, agendas that flow between
meeting to meeting and refer back to one another give me headaches, and sometimes I wish when we get agendas that talk about an issue, that they ask that for that item refer back to agenda whatever it is packet as we go on because the project concept that I have in my briefing book is three pages long, and I'm not finding that list of states you're talking about, which is part of the reason why I objected to having this thing come on, because I thought, boy, this is not too much stuff for a big change in direction.

But if we're going back to the original project description, which is an agenda two or three items ago, I have to dig through a lot more stuff to find it, and sometimes it has been sort of a recurrent irritant to me in that since we are doing all of this by E-mail anyway, it's not that hard to throw in stuff that was two or three months ago so that we can cross-reference whether or not we're going to need it or not for a particular meeting that we have.

So anyway, I only have three. Are we talking about the memorandum as well?

MR. MARCUS: It is on the project outline, page 5, Footnote 6.

COMMISSIONER YAKI: Okay. I don't have a

VICE CHAIRPERSON THERNSTROM: Yes, you do.

MR. MARCUS: While Commissioner Yaki is turning to that page, let me just make a couple of other observations in answer to the question what is the value we're adding.

It is surprising how little information there is out there even just on the basics regarding the status of desegregation in various states. So even the preliminary information showing the status of court cases saying the State of Alabama is something you will not be able to find in other places that will be available because of this work that's now ongoing both in the regional office and in the Office of General Counsel.

So that in itself, I think, is a substantial value added. The other point is that I would also emphasize within the outline that we are indicating that we will also attempt to analyze whether school districts are capable of achieving all of the so-called green factors and to what extent impediments exist to achieving these factors and why certain school districts have or have not achieved unitary status and been released from school
That's a somewhat ambitious part of it.

COMMISSIONER BRACERAS: Where is that exactly?

MR. MARCUS: That's on the same page 5 we were looking at, and it's Item No. 6 under the purpose of this study.

COMMISSIONER BRACERAS: That more ambitious part is where I start to get a little nervous because I think, well, two things. Number one, it is simply more ambitious and time consuming, but also I've always felt that the best role for this Commission to play is as a national clearing house of information, and the more we can stick to the data and avoid commentary in reports like this I think the more credibility they will have because we will all have different views, I think, on the meaning of the data. I'm not sure it's necessarily -- in a large report like this, I'm not sure it's necessarily our role to opine.

VICE CHAIRPERSON THERNSTROM: I mean, it seems to me there's a blurry line between data and opining. That is, what if you were asked the bottom line question, which is does the racial makeup of a
district have any implications for student performance?

COMMISSIONER BRACERAS: But we're not asking that question.

VICE CHAIRPERSON THERNSTROM: And we're not asking that question, but it is obviously the bottom line question with respect to --

COMMISSIONER BRACERAS: But that's for other researchers to take our data and to then go ask that question and come to their own conclusions. That's sort of second tier analysis.

VICE CHAIRPERSON THERNSTROM: Right. I'm just -- okay.

COMMISSIONER BRACERAS: I guess I'm not interested in using this data to make a political point one way or the other. I'm interested in collecting this data and putting it out there in the public sphere to allow people from all sides of the political spectrum in all --

VICE CHAIRPERSON THERNSTROM: No, I agree with that.

COMMISSIONER BRACERAS: -- you know, academics and clinicians and various --

VICE CHAIRPERSON THERNSTROM: I agree with
that.

COMMISSIONER BRACERAS: -- you know, practitioners to use the data in the way that they see fit.

COMMISSIONER TAYLOR: Vice Chair.

VICE CHAIRPERSON THERNSTROM: Yes.

COMMISSIONER TAYLOR: I don't think we're well equipped to go to that next level of analysis.

VICE CHAIRPERSON THERNSTROM: No, we're not.

COMMISSIONER TAYLOR: I just think we get on shaky ground when we do so, despite our intentions, but for me at least Item 6 is a classic example of the right direction that we can achieve the goal of the Commission, I think, which is to -- Commissioner Braceras calls it a clearing house. I tend to think of it as shining a spotlight on relevant national issues and providing a platform for the larger society, policy makers, et cetera, academics to engage in discussion.

And so what I hope we can always do is we can put issues on the table and then in some way step away and initiate a debate without necessarily getting caught up in the debate.
And Item No. 6, as soon as I read it I thought rather than determining whether or not a school district is capable, an analysis of those school districts that have, indeed, achieved those standards, and if you don't have a lot of school districts achieving those standards, the facts speak for themselves.

And I think we can do a great service to the discussion by just identifying what exactly is going on at this point in time, which you know, for me at least throughout the discussion I was somewhat concerned about the direction we were going in this area, but I'm more satisfied now that ultimately this will be a product not only that we can be proud of, but that will be very useful.

And to Commissioner Yaki's concern, as I heard, at least, I see the role of this Commission as offering what is often lost in the national debate, that is, a snapshot in time as to where we are today, and are we having the right discussion for the right issues and are we taking the right tools to the right task for today.

And in this context, since the law is in flux, the next comment I want to make goes back to the
question of demographics versus segregation, and
Commissioner Yaki is right in terms of the legal
language. I would argue, I think, that we want to
perhaps back away from the legal language in one sense
because Item 4 is what we really want to get to. That
is, we want an analysis or a comparison as to the
demographic profile of those districts that have
achieved unitary status and those that have not.

That is what I think we're really
concerned about. We're not concerned about whether
they're classified as being segregated or
desegregated. We want the world to say, "Look at this
demographic profile and compare it to this demographic
profile. Does it make sense? Does it matter?"

COMMISSIONER BRACERAS: Right, and that
will generate further research questions by other
social scientists. I mean, for example, a district
can be unitary and be majority/minority. It can be
overwhelmingly African American and still have
achieved unitary status.

Now, there are normative questions about
whether that's good, bad or indifferent, and what the
quality of that school is and what the achievement
level of those students are, and all of those things
are important questions. But they're not questions that we can ask and answer in this limited time.

COMMISSIONER TAYLOR: And because I agree with Commissioner Yaki's concern, as soon as we try to do that, then we end up arguing in this forum about what it means. I think we can go about this in a way that eliminates those issues, but nevertheless really informs the national debate, and I hope focuses everyone back on the issues at hand.

COMMISSIONER BRACERAS: So I would recommend or make a motion perhaps to eliminate number six because it seems that the question of whether school districts are capable of achieving all six green factors, you know, is a very subjective analysis. I mean, some school districts are going to argue they're not capable of achieving one or the other for a variety of reasons, and other people are going to say they absolutely are capable of achieving them.

And as far as identifying the impediments, again, that's a much more subjective question. So I would in the interest of time and efficiency and objectivity, I would eliminate number six on this page 5, this list of goals for the study.
VICE CHAIRPERSON THERNSTROM: I don't object to that. You know, I still have other problems here, and I do agree with Commissioner Taylor's remark there, but, for instance, provide analysis as to whether there's significant difference in racial integration between school districts that have achieved unitary status in other schools.

Well, Boston, for instance, has achieved unitary status. We're down to 13 percent whites.

COMMISSIONER BRACERAS: That's my point.

VICE CHAIRPERSON THERNSTROM: You know, are those whites properly spread around? Is that the question?

I mean, you know, the white population and the middle class black and Latino populations have left the Boston school district. You know, is that a unitary system? We have no whites left in it, to speak of. Most of those whites are in either the exempt schools or the very early grades.

So we are not able to strip -- even getting rid of six, we're not able to strip this of some complexities.

MR. BLACKWOOD: The complexities are going to exist. Even preliminary review of what we think
we're going to end up with is along the lines of Commissioner Taylor's view. You're going to be able to, in our mind, go wherever you want to go normatively. What it is going to show is basically over the period -- the target is using school year '92-'93 as the baseline. See how these districts have changed from then to school year '03-'04 or -- I'm sorry -- I think it's '03-'04, and then compare those districts that have obtained unitary status as viewed by the courts, not obtained unitary status, or never were in the court district.

VICE CHAIRPERSON THERNSTROM: I'm sorry. Where does the '92 baseline come from? How did you arrive at that?

MR. BLACKWOOD: The '92-'93 we came to because that was the time the Dowell decision was made.

VICE CHAIRPERSON THERNSTROM: I see. Okay.

MR. BLACKWOOD: That was the basis of it. Now, as I say, we may change some of these baselines depending on, you know, whether we find it statistically makes sense, but that was the basic premise. During that time period it is the '92-'93
school year versus school year '03-'04. What happened? Is there a difference between those school districts that obtained unitary status? Is there no change?

And certainly there are a variety of scholars that said there are dramatic changes. Others have said none. We're going to look at the data and say, "Here it is."

COMMISSIONER BRACERAS: Are you looking at all in changes in population data during the same time period?

MR. BLACKWOOD: We are looking as to whether we can do that.

COMMISSIONER BRACERAS: Okay.

MR. BLACKWOOD: I mean, as Commissioner Thernstrom pointed out, there are going to be limitations, and we will spell out what those limitations are and what our parameters are.

COMMISSIONER BRACERAS: Right.

MR. BLACKWOOD: We may be able to expand it depending on what we have and the time we have and our resources. But this is the core of what we are trying to do. If we can add other issues that we believe statistically we can find out and present
additional information, we'll do that and we'll inform you. But I can't say that yet.

COMMISSIONER BRACERAS: No, I think that the Vice Chair's point about the Boston School District though illustrates exactly the type of information we should be collecting and also what we shouldn't be saying. In other words, looking at Boston, the report would say, you know, this is the legal status of Boston unitary. This is the sociological, demographic data, 13 percent white, X percent whatever else, and not necessarily draw conclusions from that.

There are -- you know, certainly other useful information would include data about changes in the population of the City of Boston, but I don't think any conclusion should be drawn about, you know, whether or not it's good or bad to have only 13 percent of the students be white or where they should be or how they should be spread. That's all second tier.

VICE CHAIRPERSON THERNSTROM: I agree with that. It's just there has got to be some acknowledgement in the report of the complexities of the notion of a unitary school district when you have
-- you know, Boston is not alone -- when you have cities like Boston where the definition of achieving unitary is you basically have a non-white school population.

COMMISSIONER BRACERAS: Right, but I mean, certainly as with, you know, other social science papers, a natural section would be identifying areas for further research.

VICE CHAIRPERSON THERNSTROM: Yes, yes.

COMMISSIONER BRACERAS: And that would be one of the questions.

VICE CHAIRPERSON THERNSTROM: No, I just think that that's incredibly important in this, the limits of what we've done, areas for further research.

The same thing.

COMMISSIONER BRACERAS: So do I need to formally move to strike number six?

VICE CHAIRPERSON THERNSTROM: Yes.

COMMISSIONER TAYLOR: Well, before you do, that raises a question in my mind at least. One of the things that number six raises, again, is perhaps a school district has sought unitary status and been denied by the court. So that you may have a number of situations where the school districts themselves
identify impediments and argue to the court these are structural impediments and, therefore, we should be either excused or it somewhat mitigates a particular problem.

A discussion of those issues without any commentary, I'd like to see that as part of this because that would help inform the debate and without the Commission necessarily taking a position on what the school district said as to whether it's right or wrong, but just raising the point the school district raises. It was rejected by the court and it didn't find its way into its final rule.

MR. BLACKWOOD: But what we are asking for and so far the school districts generally are working with us, is we ask, you know, are you seeking unitary status, and I don't think we have put it in terms of what are the impediments, but what factors have you considered? If you are not seeking unitary status, why?

You know, it depends. As I say, anecdotal as opposed to statistical, but we were thinking along the lines of potentially depending on the response rate attaching that with no comment about it, but this is what we have received from a survey. The survey
obviously would have limitations, particularly scientific, but we need to see what the results are first. Is it useful? Do we get a real sample? Do we only get, you know, some responding just, "We decided not to"? Are they going to spell out the reasons?

But that is one of the things we were thinking along the lines that might have some value. Without our making comment, this is what the school districts themselves have said what they are considering or why they have not sought unitary status or what problems they have.

COMMISSIONER BRACERAS: But that's more of a cataloging of individual school districts' efforts and the response of the courts. That's different than the way I read number six, which is to say analyze on a global level what the problems are, and to what extent those problems can be resolved.

I don't think that there should be a global conclusion drawn or an analysis done of, you know, these are the trends necessarily. These are the big problems. I just think we should let the data speak for itself, and I have no objection to cataloguing the times that districts apply for unitary status and are rejected or that they haven't applied
and there are reasons why. I don't mind cataloging those.

I just don't want to opine because I guess I'm -- you know, I fear having bias sort of creep into this report, and this is really, as the Staff Director said, the first statutory report that we'll be putting out under these new guidelines and these new processes that we adopted, and I'd really like to see it be something where we can get as much agreement from as many Commissioners as possible and have it be as neutral and objective as possible.

And if that means biting off, you know, tinier pieces, then so be it.

VICE CHAIRPERSON THERNSTROM: Commissioner Taylor, I wonder if there's a way of framing the question you would like answered without the problems that Commissioner Braceras --

COMMISSIONER TAYLOR: Oh, I think so. I think it's useful information. It's information I think that would inform the debate, and frankly, I'm taking this position from the viewpoint that if we go about this the right way, I suspect the facts that we catalogue and present to the public will speak volumes, and if we weave into that our opinion, it
will actually detract from the argument.

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER TAYLOR: So I just want to make sure we don't lose what I think may be some very good facts about what's going on out there, what school districts have argued that have been rejected, what they have not argued because this is their position. I think all of those facts -- I don't want that to get lost if we --

COMMISSIONER BRACERAS: Well, I don't mind the cataloguing, the analysis.

VICE CHAIRPERSON THERNSTROM: Right. Can you reword six so that it becomes a matter of cataloguing rather than analyzing?

COMMISSIONER BRACERAS: I wouldn't use the word "analyze," and I wouldn't use the word "capable." I would just say collect information or data on failed attempts by school districts to achieve unitary status and/or, you know, decisions by school districts not to seek a determination of unitariness.

VICE CHAIRPERSON THERNSTROM: All right. We want to have something about, don't you, for something about impediments that they have identified as --
COMMISSIONER BRACERAS: Sure, yeah. Catalogue -- I don't know. I'll leave that to the general counsel and the --

COMMISSIONER TAYLOR: Catalogue, collect, survey, anything along those lines, anything other than analyze, render opinion, determine whether.

VICE CHAIRPERSON THERNSTROM: Capability, right.

COMMISSIONER BRACERAS: And their capability, right.

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER BRACERAS: I think he knows what we're getting at.

MR. MARCUS: Let me just make sure that we're on the same page and that we understand. We are no longer analyzing and, in particular, not providing subjective opinions on the topic, but we are collecting data regarding the decisions by school districts not to seek unitary status or reason for their failure to do it. This would not be a formal survey, but would involve a cataloguing of information.

We will have to look at our new objectivity criteria to determine to what extent we
need to get information from multiple sources on this. So we might if we're cataloging, it might mean cataloguing information from not just the school district, but from others. But it's not for the purpose of analyzing or coming up with ultimate conclusions. It's simply for the matter of finding out what information our data is out there.

COMMISSIONER BRACERAS: Yes, there's two categories though. I mean there's the category where districts make a determination not to seek a finding of unitariness, and that may be harder to catalogue for the reasons you said, that we may need to get so many other people to give their views that it may be unwieldy. I'm not sure. We'll have to see what happens.

But the second category is districts that have sought unitary status and have been rejected, and that will be easier to catalogue.

COMMISSIONER TAYLOR: That's the information I think which will be particularly useful because before you make an argument like that to a judge, that will have been vetted, and that will be the real policy position of the school board.

COMMISSIONER BRACERAS: Right, because
you'll have the school's argument and you'll have the judge's rejection. So you'll have both sides.

MR. MARCUS: Just for the sake of clarity there are going to be reasons why school districts don't seek it that are totally unrelated to the specific arguments that are presented before the court. So there are two categories of information.

COMMISSIONER TAYLOR: The difficulty with that, I think, is going to be getting a, quote, official position as to why they did not seek status.

VICE CHAIRPERSON THERNSTROM: Yes.

COMMISSIONER TAYLOR: That is going to be a little tricky.

COMMISSIONER BRACERAS: Yeah, I mean, we'll just have to see what --

MR. BLACKWOOD: I will say one of the things that we are looking into is realistically in what way could we offer some form of confidentiality because already people are telling us, well, we got this back in the mail, and then I talked to them and they said, well, also X, Y, and Z, but that's off the record.

COMMISSIONER BRACERAS: Well, and the other thing is, I mean, you have group think, right?
I mean any time a committee or a group of people decide not to do something, you know, different members may agree not to proceed for their own personal reasons. So I think --

COMMISSIONER YAKI: I can't imagine that ever happening here.

COMMISSIONER BRACERAS: Yes, exactly. So I think that part of it will be very hard to come down, reasons why they did not seek it.

But you know, in cases where they did seek it and were rejected, I see why that's extremely useful. I mean, I think the bottom line here that I would like to convey is that because this is a statutory report, we are concerned mostly with enforcement and not with making policy recommendations.

VICE CHAIRPERSON THERNSTROM: No, I understand that.

COMMISSIONER BRACERAS: And making recommendations for, you know, what direction the law should go in. So I think --

VICE CHAIRPERSON THERNSTROM: I understand that.

COMMISSIONER BRACERAS: -- we have a real
opportunity here.

VICE CHAIRPERSON THERNSTROM: So can you get back to us with new language on that?

MR. MARCUS: Well, I could. However, I think we need to have a consensus here because if we wait for the next meeting to achieve language on this, I don't know that we can make the other deadlines.

VICE CHAIRPERSON THERNSTROM: Right.

MR. MARCUS: But perhaps we can come up with directives on how to change this, and then we can be acting based on that.

VICE CHAIRPERSON THERNSTROM: Well, I think that those directives have really been given between Commissioners Taylor and Braceras.

MR. MARCUS: So let me make sure that I understand now. The current language for Item No. 6, let me go with this but with the understanding that we would be making changes to the other related documents to conform to it. In other words --

VICE CHAIRPERSON THERNSTROM: No, we would not go with the language as stated.

MR. MARCUS: that's right. We're deleting six and replacing it with new language, and then we'll make conforming language to --
VICE CHAIRPERSON THERNSTROM: Right.

MR. MARCUS: -- the outlined concept paper, anything else that includes information tied to six.

VICE CHAIRPERSON THERNSTROM: Right.

MR. MARCUS: Instead of six we'll simply indicate that we are obtaining or collecting data regarding the efforts by school districts to seek unitary status, and the arguments that they've articulated for achieving unitary status and the reasons for their failure to achieve it. Is that essentially it?

And we are not looking into the question of --

VICE CHAIRPERSON THERNSTROM: Their stated reasons for.

MR. MARCUS: Their stated reasons. We are not looking beyond that, and we are not asking the question as to why some school districts that may have achieved unitary status in fact are not seeking a court order recognizing it.

Is that the consensus?

COMMISSIONER YAKI: Is that assuming that we know when, that we can make the judgment that we
know when the school has achieved --

COMMISSIONER TAYLOR: I was going to say it's when the demographic profile is one that may look like they've achieved unitary status because, you know, Commissioner Yaki's point is that we can't make that determination and then work backwards.

MR. MARCUS: That's right, and we are not going to ask that question. We are not going to look at school districts which are not seeking a determination of unitary status to ask why they're not seeking it.

COMMISSIONER TAYLOR: Correct.

MR. MARCUS: We are cataloging information on school districts which have unsuccessfully sought a determination of unitary status to see what their arguments have been.

COMMISSIONER BRACERAS: And what the response was.

VICE CHAIRPERSON THERNSTROM: And what the impediments to that to be.

MR. MARCUS: And that could be based simply on court papers.

COMMISSIONER BRACERAS: Exactly. That's why I think that's doable, whereas the other side of
it is not.

VICE CHAIRPERSON THERNSTROM: So, Commissioner Yaki, are you okay with that? Have you still got problems with it?

COMMISSIONER YAKI: Well, I mean, am I okay with the overall thing? --

VICE CHAIRPERSON THERNSTROM: No. Let's just concentrate on this.

COMMISSIONER YAKI: On that particular topic, I'm satisfied by the answer.

VICE CHAIRPERSON THERNSTROM: Okay.

COMMISSIONER BRACERAS: What are your overarching concerns? I understand you seem to have a process concern, but I haven't heard you voice a substance --

COMMISSIONER YAKI: Well, the process concern is related to the substantive concern, which is I'm just wondering to what extent -- I take what OGC is saying at face value. I'd like more backup as to why we're changing from the DOE cases to DOJ cases, and I'm just wondering if there's a substantive content impact in terms of the quality or types of cases or issues that we're looking at.

I mean, DOJ intervention is obviously one
avenue, but there are a number of other avenues, I mean, via the whole settlements with the DOE. I just like to know why there is a impossibility factor when it appears even in this arena we've done some paring back and focus which is needed. But I'm just wondering why we can't do the same thing with the DOE contact.

MR. BLACKWOOD: The straightforward answer is time and resources.

VICE CHAIRPERSON THERNSTROM: What are we losing, in your view, by getting rid of the DOE data?

MR. BLACKWOOD: Part of it is I have to rely on background information I've received from others, that it is likely to include more information. It is likely to include extraneous information; that it is more -- and, again, this is second hand. I am familiar with the Department of Justice type materials as a lawyer. I'm not as familiar with Department of Education, but that it's going to have information. In essence, these 441(b) agreements are contracts, but they are not court ordered documents, but they often are not reviewed by courts.

Part of it is time and resources. We would have to go through each 441(b) as opposed to the
Department of Justice, although we're going to look at the procedures and the standards, et cetera. There's either a court order or there is not. It's rather straightforward. I don't need to know or we're not going to have the time or resources in the Department of Justice case to look at each court file. We're not trying to because we already know there is a court order or there is not.

And part of that is also the work that was previously done before I got here, was focused more on the Justice Department because the Justice Department information was easier to obtain.

COMMISSIONER BRACERAS: So I think that's just something where it needs to be clearly noted that, you know, another area, another line of inquiry would be to look at the Department of Education materials, but it's just beyond the scope of this particular project, and someone else can pick that up or we can pick it up another year, but you know, we just can't bite off too much.

VICE CHAIRPERSON THERNSTROM: Commissioner Yaki?

COMMISSIONER YAKI: Well, I just -- hello?

VICE CHAIRPERSON THERNSTROM: Yeah, we're
listening.

COMMISSIONER YAKI: I'm sorry. I'm trying to get ready. I'm going to be dropping off of this line and having to go to my cell phone in about five minutes. I'll give that announcement when I have to do it. So if you hear clanking, it's because I'm trying to get out the door.

My concern, I guess, and it goes back to some of my concerns I had with the Voting Rights Act report in that simply looking at DOJ data gives a very not just small, but depending on what DOJ data you look into, I mean, DOJ may have officially intervened, and those are the cases that we're looking at. There may be other cases where DOJ threatened to intervene and a 441(d) order resulted from that.

I guess my concern is not really with -- well, my concern is that we are taking not just the snapshot. We are taking a very, very small snapshot of this, and I just wonder how in that case we have to be very straightforward about the fact that it is a really very small snapshot that privilege only conclusions or opinions or further whatever it is can we draw from that particular snapshot, and the more that we just confine ourselves to the data, the more
I'm more comfortable with it because I don't think there's any way you can extrapolate from this particular type and moment in time case to any broader discussion about the issue in general.

COMMISSIONER BRACERAS: That's true of all social science research. I mean every social science report is limited to the parameters that it establishes and, you know, raises further questions for others to study later because you can't study everything in one survey.

VICE CHAIRPERSON THERNSTROM: Well, I'm actually very sympathetic to what Commissioner Yaki is saying, but I think I have to take seriously the General Counsel's word that the project becomes unmanageable from his perspective given our depleted staff if we further broaden it. I mean, you know, that's why I'm willing to go along with this, and I would actually like to call the question on this.

Let's have a vote on this. All in favor of going with the amended description of this project.

I vote aye.

COMMISSIONER BRACERAS: Yeah, I think there are two separate votes, right? One, to approve the discovery plan --
VICE CHAIRPERSON THERNSTROM: Oh, right.

COMMISSIONER BRACERAS: -- and one to amend the scope.

VICE CHAIRPERSON THERNSTROM: Right.

Okay. First vote on approving the discovery plan. All in favor.

COMMISSIONER BRACERAS: I think we need to do the scope first and then --

VICE CHAIRPERSON THERNSTROM: You're perfectly right. I'm not thinking this morning. I'm very short on sleep today and very distracted by other things.

COMMISSIONER YAKI: Let me say please don't say short on sleep to the guy who woke up at 5:00 a.m. to take this call.

COMMISSIONER BRACERAS: That's okay, Michael. I woke up at 4:00 a.m. to get here.

VICE CHAIRPERSON THERNSTROM: And Ashley Taylor as well. So we've got a number of people here with a little bit of a numb state, but --

COMMISSIONER YAKI: That explains a lot then. Okay. Can I have a motion that the scope of this report be clarified to reflect the scope contained in the concept paper distributed to the
Commission on August 11th as explained by the General Counsel?

MR. MARCUS: And with the modification based on the changes that we discussed regarding purpose number six on page 5 of the outline.

VICE CHAIRPERSON THERNSTROM: Right.

Thank you.

Swimming under water here.

COMMISSIONER TAYLOR: So moved.

COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: All in favor.

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

VICE CHAIRPERSON THERNSTROM: Abstained.

Okay. Let the record note one abstention.

COMMISSIONER TAYLOR: And let the record note that he's not here.

VICE CHAIRPERSON THERNSTROM: Oh, and Commissioner Kirsanow is not participating in this vote. Okay.

COMMISSIONER TAYLOR: The motion passes.
VICE CHAIRPERSON THERNSTROM: The motion passes, right. Really, really swimming under water.

COMMISSIONER BRACERAS: Discovery plan.

VICE CHAIRPERSON THERNSTROM: Okay, and is there a motion to approve the outline and discovery plan with the understanding that the deadlines are tentative?

All in favor?

COMMISSIONER TAYLOR: So moved.

COMMISSIONER BRACERAS: So moved.

VICE CHAIRPERSON THERNSTROM: So moved, yeah. Okay. Second?

All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Opposed?

(No response.)

VICE CHAIRPERSON THERNSTROM: Abstentions?

COMMISSIONER YAKI: Me.

VICE CHAIRPERSON THERNSTROM: Pardon me?

COMMISSIONER YAKI: Me.

VICE CHAIRPERSON THERNSTROM: You're abstaining. Okay.

COMMISSIONER YAKI: Where is Peter?

VICE CHAIRPERSON THERNSTROM: Peter has
disappeared at this very important moment in the history of the Commission. He is absent.

COMMISSIONER TAYLOR: In legislative vernacular, he is taking a walk during the vote.

VICE CHAIRPERSON THERNSTROM: All right. Let the record note that Commission Kirsanow was not here to vote. Commissioner Yaki abstains and the motion carries.

MR. MARCUS: And we will recirculate versions of these documents that are revised to reflect the changes.

COMMISSIONER BRACERAS: Commissioner Kirsanow reenters.

VICE CHAIRPERSON THERNSTROM: Commissioner Kirsanow, you have missed the two votes and you were sorely missed because obviously they would have gone the other way had you been here.

All right. Next on the business.

COMMISSIONER BRACERAS: Thank you.

VICE CHAIRPERSON THERNSTROM: Where are we? Okay. Do we actually need to discuss the motion to eliminate the closed meeting or we just eliminated it? That's all.

Where are we?
MR. MARCUS: I think we're on page 10, top of 11.

VICE CHAIRPERSON THERNSTROM: All right. We are at the question of the follow-up on the impact of racial preferences in American law schools, and at the last Commission meeting Commissioner Kirsanow indicated he'd like at this meeting to discuss the Commission undertaking for the research on the work done on higher education by Professor Richard Sander specifically on the mismatch effects.

Commissioner Kirsanow, you have the floor.

COMMISSIONER KIRSANOW: Yeah, I'd like to just make this very briefly. I think the memorandum was distributed to everybody concerning Professor Sander's proposal or his kind of analysis of the potential proposal, and I think it's quite ambitious before that --

COMMISSIONER BRACERAS: Actually, I do not have that memorandum.

COMMISSIONER KIRSANOW: You don't? Well, for that reason we'll keep it even shorter.

COMMISSIONER BRACERAS: And I don't believe I ever received it.

Oh, it was? I'm sorry. Did it come in E-
mail form? For some reason I must have just not printed this one out because I do have the motion and everything else prior.

COMMISSIONER KIRSANOW: I'm not prepared at this point to make a motion because I think it really does require a little bit more analysis. In fact, what I would propose --

VICE CHAIRPERSON THERNSTROM: A bit more of what kind of analysis?

COMMISSIONER KIRSANOW: A bit more evaluation and analysis.

COMMISSIONER YAKI: Just a second. Point of order. I need to switch to my cell phone now. So could the appropriate individual to deal with it call me back on my cell?

VICE CHAIRPERSON THERNSTROM: Yes. Evidently the answer is yes.

COMMISSIONER YAKI: Okay.

VICE CHAIRPERSON THERNSTROM: So do we need a motion on that, whether we call Commissioner Yaki back?

COMMISSIONER KIRSANOW: Let's not.

(Laughter.)

COMMISSIONER YAKI: You'll be called back.
Please call if you -- well, you will be called back.

COMMISSIONER YAKI: Thank you.

COMMISSIONER KIRSANOW: Preliminarily as you know, Professor Sander had, along with Professor Lempert suggested that the Commission further evaluate the mismatch effect not just at the law school level, but at other graduate school levels to the extent that they're measurable, and he indicated that he believes and he sets forth in greater detail in this particular proposal that he thinks that the mismatch effect can be analyzed with objective data and reliable data because you've got certain set points such as Bar passage rates, GRE passage rates, Med Cats, so on and so forth. They could give you a pretty good picture as to whether or not there is, in fact, a broader mismatch beyond law schools and within law schools themselves because, as you know, Professor Sander's proposal --

VICE CHAIRPERSON THERNSTROM: Hold on, Commissioner Kirsanow.

Do you need --

PARTICIPANT: Commissioner Yaki?

COMMISSIONER YAKI: Hello.

VICE CHAIRPERSON THERNSTROM: You're
there. Okay. Commissioner Kirsanow is just spelling out his interest in the Sander or elaborating on the Sander report.

COMMISSIONER KIRSANOW: To continue, Professor Sander only had a limited data set upon which he could base his two law review articles related to the mismatch effect among law students and attorneys. In other words, he's like to broaden it, to put it very briefly.

My own view is that this proposal needs more evaluation and possibly more work, and I also think in the interest of time that it would be feasible for us to cherry pick the proposal at this particular point.

I think it's of sufficient merit that requires more sober deliberation and evaluation, and what I would propose instead of making a motion at this particular meeting is to possibly simply make a referral to staff to take a look at this particular proposal, maybe work through it, and identify weaknesses in it, strengths in it, and maybe come back to us with certain recommendations as to how this proposal could be refined.

It doesn't necessarily have to be at the
next meeting, and maybe it could be done by E-mail, but when I've gone through this proposal a couple of times and I've spoken with Professor Sander -- I know some other Commissioners have also -- it has got tremendous substantive merit, but there are a lot of things in here that I think would cause the Commission some difficulty in adapting this proposal to our methods, our operations.

So rather than make the printed sure motion at this point, I'd like to take this under further advisement with the assistance of staff. To be more specific with respect to what I'd like the staff to do is, he makes certain proposals in here related to partnering with other agencies or funding organizations, also seeking possibly a supplemental appropriation for funding this, having a panel of scholars advise, and all of these things are very interesting, but there are things that exceed, at least in my tenure the operational dictates and authority that the Commission has embarked upon in the past.

So it would require us to do some pretty innovative things as far as what the Commission has done, and I think it requires a little bit more
thought and refinement, although I think the mission that he proposes is one that could be of extreme value.

So what I'd like the staff to do is to take a look at this, see if we can form this proposal more closely to what we have done in the past, and number two, are capable of doing, and two, take a look at what the probable costs may be, presuming, of course, that we could partner with somebody else who might be able to provide us with additional money, which in and of itself is a big deal because, you know, the parameters of that, the legal constraints upon us in doing that, for example, may be something that may not be surmountable.

So my motion is to have staff further evaluate this, report back to us either by E-mail or at the next meeting or possibly even the October meeting, as to how we can feasibly do this or accomplish the objective of having a broader based report with respect to the mismatch effect.

I don't know if that requires a motion or a second or anything. I'm simply just asking staff to take this and give us a report.

COMMISSIONER BRACERAS: To evaluate the
feasibility.

COMMISSIONER KIRSANOW: Yeah.

COMMISSIONER TAYLOR: Does it require a motion?

VICE CHAIRPERSON THERNSTROM: It doesn't require a motion you're saying. No, it doesn't require a motion.

Commissioner Yaki, have you got any input on this? Commissioner Yaki, there?

COMMISSIONER YAKI: I'm here. I'll see what comes back.

MR. MARCUS: I'm not sure I heard that.

VICE CHAIRPERSON THERNSTROM: He'll just see what comes back.

MR. MARCUS: Okay. So if that's the consensus of the Commission, we'll be pleased to do that.

COMMISSIONER KIRSANOW: Thanks.

VICE CHAIRPERSON THERNSTROM: Okay. Well, that's taken care of nicely, very fast. I think we're at the motion regarding the campus anti-Semitism public education campaign.

At the July meeting the Staff Director described the anti-Semitism public education campaign.
After he described the Website, the Commissioners approved the poster.

At that meeting the Staff Director also said he might recommend that the Commission approve a brochure to provide further information, particularly with respect to the availability of information on our Website pending on further research conducted by the staff.

So, Mr. Staff Director, do you have anything to communicate to us on this matter?

MR. MARCUS: I'd be pleased to, Madam Vice Chair.

Since the last meeting, we have had a working group type meeting with a number of organizations that are focused on the issue of anti-Semitism generally and specifically with respect to college campuses.

We had a meeting that included, for instance, representatives of the Anti-Defamation League, the Israel On Campus Coalition, and Hillel, as well as the American Jewish Committee, and we discussed with them the methods that we were talking about to communicate to college students their rights to be free from anti-Semitic harassment, including the
idea of having a portion of our Website dedicated to this issue, as well as a poster that would inform students of the issue and of our Website and our complaint line, and we discussed also the idea that staff had suggested to me that we might need also a brochure to reach a greater number of students and to make sure that they were aware both of our Website as well as our complaint file.

And the feedback that we got back is that the brochure could be helpful, and in fact, we have preliminarily started talking to GPO about a brochure, but what some of the groups indicated to us is that for college students, just limiting a campaign to paper and a Website does not necessarily reach enough students, and that if we had to choose, they would suggest some form of virtual or viral marketing for the campaign, specifically that we look into some form of electronic banner or button that might be developed relatively inexpensively, that we could develop that would in some way direct people to our Websites, and which might be posted various other Websites.

None of the groups made a formal commitment that we could use their Websites, but they indicated that it might be a possibility, and that
moreover that there might be forms of electronic banners or similar devices that could also be passed from organization to organization and from student to student, and that might be a more effective way of getting the information out.

So we have in addition to the Website and the poster, the two possibilities of doing a brochure, which might cost in the vicinity of, say, $15,000 or so for distribution and/or a virtual or viral marketing campaign consisting of something like an electronic banner or button, which would be considerably less expensive, although we've not yet had the opportunity to cost it out in any way.

VICE CHAIRPERSON THERNSTROM: So I'd like to have a motion that the Commission authorize the Staff Director to work with GPO to create a proposed brochure and/or alternative electronic means of communication for Commission review for use in the Commission's public education campaign on campus anti-Semitism.

MR. MARCUS: And just for clarification, in the event that GPO isn't doing the virtual side of it, we might also be working with others that could do that.
VICE CHAIRPERSON THERNSTROM: Right, right.

COMMISSIONER TAYLOR: So moved as modified.

VICE CHAIRPERSON THERNSTROM: Have I got a second?

COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: Okay. All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: All opposed?

(No response.)

VICE CHAIRPERSON THERNSTROM: Anyone abstaining?

(No response.)

VICE CHAIRPERSON THERNSTROM: Passed unanimously.

VI. MANAGEMENT AND OPERATIONS

VICE CHAIRPERSON THERNSTROM: Okay. We move on to Management and Operations here, and we have now the strategic plan performance measures, and if Commissioner Kirsanow isn't here, maybe Commissioner Braceras could answer this.

Have performance measures been -- oh, here
you are. We're on performance measures, Commissioner Kirsanow. So have performance measures been approved by the task force? Where are we here?

COMMISSIONER KIRSANOW: We have preliminary approval. We had left it up to the working group to keep open the performance measures. For a moment I thought -- my understanding was that Commissioner Braceras might have some additional input on this. I have not received the input, but pending that and if there is none, yes, we would recommend the performance measures be approved.

VICE CHAIRPERSON THERNSTROM: I'd like to have a discussion of this before a motion. I'm not sure we want to move that they be approved, but there's some possibility of tabling this.

COMMISSIONER BRACERAS: Well, unfortunately I was not on the last working group call. I was actually on vacation. So I didn't have a chance at that point to give my input.

Essentially, I agree with 99 percent of the performance measures as they're outlined in the most recent document we received. I just have a few recommendations that I'd like to throw out there that may require us to table this while we develop some new
language.

Should I go through them?

COMMISSIONER KIRSANOW: Before you do that, just the question I have though is if we've got to revise this language, we do have some time considerations here, Ken, with respect to budget.

MR. MARCUS: You know, I've checked again, and I understand that we can get the performance budget together using the strategic goals and objectives. So as long as the changes don't affect the strategic goals and objectives, we'll base our budget on that. So if there are changes to the performance --

COMMISSIONER BRACERAS: Well, and maybe they can be addressed right here at this meeting. There aren't too many of them. So should I just --

COMMISSIONER KIRSANOW: Okay.

COMMISSIONER BRACERAS: With respect to Strategic Goal No. 1, and this is just really an organizational point, Performance Measure 3(c), it just seems to me to be misplaced because we're talking there about measures of performance with respect to the national conference, that we plan on convening in FY 2009, and the Performance Measure 3(c) speaks
specifically about investigating allegations of discrimination and deprivations of voting rights, and that seems to me not to necessarily flow from the conference.

The conference as I understand it will be more about identifying key policy areas for the 21st Century and beyond and not focused so much on allegations of past wrongdoing and prior wrongdoing. So I do think that that should remain, you know, a performance measure or a task that we perform, that is, investigating discrimination. It's part of our statutory mandate.

But I don't think it's properly placed within the Strategic Goal No. 1.

COMMISSIONER KIRSANOW: Do you think it should go under Strategic Goal No. 3? That's the clearing house goal.

COMMISSIONER BRACERAS: Yeah, wait. What's number two? Oh, either two or three. I'm not sure. I mean in some sense it is --

VICE CHAIRPERSON THERNSTROM: It should be three. Go on.

COMMISSIONER BRACERAS: Well, in some sense it is enhancing the ability of the federal
agency to do its job because if we identify, for example, widespread voting rights deprivations and we lay a factual predicate, then the Justice Department could then take our findings and do something about them.

So in that sense we are enhancing the ability of other agencies to do their jobs. So it could go there, but it also -- as I said before, I view Strategic Goal No. 3 as more of the sociological data collection side of what we're doing, and for example, you know, the clearing house function is not the same as our investigatory function. So in other words, Strategic Goal No. 3 deals with gathering data and making it accessible to the public as we are doing with the desegregation report, right? Whereas Strategic Goal No. 2 has more to do with partnering with other agencies for two reasons: public awareness and enforcement. Right?

So number one is -- the first strategic goal, as I've said before, is sort of visionary and has to do with policy priorities for the future. Strategic Goal No. 2 has to do with, you know, both communications and enforcement, and Strategic Goal No. 3 is sort of data collection and sociological, and
Strategic Goal No. 4 is administrative.

So I would put it under number two.

COMMISSIONER KIRSANOW: Okay, and would it be maybe under 2.3, in other words, partner with other agencies to collect and analyze data on various civil rights topics? Maybe we'd have to create another category there in terms of objectives.

COMMISSIONER BRACERAS: I think it would go under number five.

COMMISSIONER KIRSANOW: Promote public awareness?

COMMISSIONER BRACERAS: Of current civil rights laws, remedies and enforce -- well, I mean, I think that there's an objective missing really, which is, you know, simply investigating allegations of systemic discrimination.

No, because -- so that's what I've been grappling with. I mean, I think we all agree that Performance Measure 3(c) is something we need to have in our mission statement. It's just a matter of where it goes.

VICE CHAIRPERSON THERNSTROM: I mean, the problem with putting it under two, it seems to me, is you at this meeting very correctly have been
emphasizing the importance of data collection, not coming to public policy judgments in areas that are part of a war zone, as it were, and it does seem to me investigating allegations of widespread deprivation of voting rights, pervasive discrimination, et cetera, we do want to confine that as we have with the elementary and secondary school report to data collection.

COMMISSIONER BRACERAS: But that's part of our statutory mandate. I mean --

COMMISSIONER KIRSANOW: That is our statutory mandate.

COMMISSIONER BRACERAS: -- that is our statutory mandate. That may not be what we're doing with the statutory enforcement report, but we do have statutory authority to investigate --

VICE CHAIRPERSON THERNSTROM: Well, no, that is true.

COMMISSIONER BRACERAS: -- these things, and --

VICE CHAIRPERSON THERNSTROM: It's just -- all right. Whatever.

COMMISSIONER BRACERAS: So it needs to be in there. It's just --

VICE CHAIRPERSON THERNSTROM: No, I was
simply arguing for moving it to three, but whatever, it doesn't --

COMMISSIONER BRACERAS: I mean this is one of the issues I was going to raise at the last meeting when unfortunately I wasn't able to participate because of a technical SNAFU, but I do think we need probably another objective or goal which simply restates this statutory mandate. This may not be where we want to focus our resources right now, but it's still part of our mandate.

COMMISSIONER KIRSANOW: I wonder if this should just be a separate strategic goal.

COMMISSIONER BRACERAS: I think so. And it's not drawing from the conference and report. It's simply, you know, investigate allegations, blah, blah, blah.

MR. MARCUS: May I suggest that if we can't figure out a goal to put it under that we table for the time being discussion of the change of --

COMMISSIONER KIRSANOW: Let's do this. We've got a working group on reform meeting on Monday anyway.

VICE CHAIRPERSON THERNSTROM: Are you going to be able to participate, Jennifer?
COMMISSIONER BRACERAS: What time is it?

COMMISSIONER KIRSANOW: One o'clock on Monday.

COMMISSIONER BRACERAS: I have a meeting that gets me home at about one. So if we can --

COMMISSIONER KIRSANOW: This may be a separate strategic goal, and it may be simply making the strategic goal investigate allegations of widespread deprivations, voting rights, et cetera, and then making one of the objectives -- I'm sorry -- one of the performance measures 3(c), drawing from the conference report, investigate.

COMMISSIONER BRACERAS: But it's not going to be drawing from the conference report because the conference report will --

COMMISSIONER KIRSANOW: But what I'm saying is that will be one of the performance measures of investigating allegations.

COMMISSIONER BRACERAS: But it has nothing to do with the conference report.

COMMISSIONER KIRSANOW: The conference report would inform the nature of the investigation or could inform the nature of the investigation.

COMMISSIONER BRACERAS: I guess here is

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where I see it differently. I see the conference report as saying, you know, these are issues based on changing demographics and trends that are emerging that civil rights groups and enforcement agencies need to focus on going forward, whereas investigating, the investigatory function is more like -- excuse me -- has more to do with things that are happening on the ground right now.

In other words, we hear through our complaint line. We're getting a lot of calls that there's harassment of, you know, whatever, Jewish students on college campuses, Muslim, you know, business owners, whatever. We're getting chatter about widespread discrimination in a certain community or a certain area, and we decide to investigate that particular problem.

That would be something that we might decide to do because of that type of information, not just because we held a conference and people came forward and talked about different issues. So I don't want to tie our investigative powers simply to this big conference we're going to hold.

You know, there could be race riots in Detroit tomorrow and we're going to want to go
investigate.

COMMISSIONER KIRSANOW: It is simply one of the performance measures. That's all. In other words, the strategic goal is not solely drawing from the conference report, but as with every one of the other strategic goals, it's one of the performance measures.

I'm just throwing this out. We have a conference, and they say, "Okay. Here are the areas that we're having problems with. We're not having anymore problems with ADEA or with some other aspect of Title VII, but here's where the critical mass, here's where the gravity is with respect to civil rights violations.

Drawing from that conference report we investigate those specific areas.

COMMISSIONER BRACERAS: But that's 3(d), right? Drawing from the conference report, we're identifying issues and researching topics, you know, putting things on our programmatic agenda based on what we heard at the conference.

That has nothing to do with, you know, race riots break out tomorrow in New York City and we decide we need to be present in this discussion.
COMMISSIONER KIRSANOW: Okay.

VICE CHAIRPERSON THERNSTROM: Or Omaha goes to breaking up the school district into three --

COMMISSIONER KIRSANOW: Let me recommend that we revisit this rather than take up time.

VICE CHAIRPERSON THERNSTROM: Yeah. I would prefer --

COMMISSIONER BRACERAS: Wait.

VICE CHAIRPERSON THERNSTROM: Go ahead, yeah.

COMMISSIONER BRACERAS: I guess I feel that we're constantly tabling and revisiting, and I think we need to sort of bite the bullet on some of these things and deal with them. Now, are there logistical problems with doing that?

MR. MARCUS: If we try to change the goals today, formally change the goals and think that in just a few weeks we're going to file a budget submission with OMB that are based on the new goals, I just don't think that there's a chance we're going to be able to do any --

COMMISSIONER BRACERAS: I guess that's what I don't understand because it seems -- I don't understand why that's so because basically 3(c)
basically restates our statutory mandate. So that has
to be one of our goals or one of our objectives, and
I'm not sure that that takes any additional budgetary
line items than what we're already doing because we're
already doing that. We're already responding to
what's happening in Omaha and going there to
investigate. That's exactly the type of thing we're
already doing. So --

    MR. MARCUS: I don't think that there are
going to be any new budget line items.

    COMMISSIONER BRACERAS: Okay.

    MR. MARCUS: What my concern is that in
the course of developing a performance based budget
with the sort of narrative that's necessary to link
our spending to the specific goals and objectives,
there's some writing that has to be done that is being
done to explain the connection between our approved
goals and objectives in the different items.

    COMMISSIONER BRACERAS: Okay, and you
don't think that can be done?

    MR. MARCUS: I don't think it can. At any
rate, what I would say is it creates a significant
danger that we're not going to be able to get to --

    COMMISSIONER BRACERAS: Okay. What I
would recommend then is simply deleting it here today, deleting 3(c) because it doesn't make sense there, and I don't want to tie our investigatory -- two things. I don't want to tie our investigatory power to the conference, and I don't want to tie the measure of whether the conference is a success to whether or not we then go out and investigate things that are talked about at the conference. I think they may not be separate, but they could be completely separate.

So I would like to take that out.

VICE CHAIRPERSON THERNSTROM: Well, wait a minute. I don't quite understand what you just said. Would you prefer from your point of view that we do not have a vote today on the performance measures?

COMMISSIONER BRACERAS: No, he doesn't want to change the goals.

MR. MARCUS: I prefer that we not change the goals and objectives.

COMMISSIONER BRACERAS: There's a lot of bureaucratic-speak.

MR. MARCUS: Yes.

COMMISSIONER BRACERAS: Goals, objectives, performance measures. You know, I know the Vice Chair is thinking who cares what we call them; let's just
deal with the substance. I feel your pain. Okay?

But what he's saying, if you have this
document in front of you, is that the things in yellow
which we're calling the strategic goals --

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER BRACERAS: -- and the
objectives in the left column are to remain untouched
for purposes of discussion.

VICE CHAIRPERSON THERNSTROM: Okay, and
the performance --

COMMISSIONER BRACERAS: But the
performance measures we are discussing.

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER BRACERAS: And in that case,
I would like -- in an ideal world I would like to move
Performance Measure 3(c) and turn it into either its
own goal or its own objective. But since for
logistical reasons that's not possible to do today, I
would simply like to delete it.

VICE CHAIRPERSON THERNSTROM: Okay, and my
question is: on the performance goals specifically,
do you have any problem with voting on performance
measures today?

COMMISSIONER YAKI: I've got a real
VICE CHAIRPERSON THERNSTROM: Yes?

COMMISSIONER YAKI: A real problem with deleting 3(c) and not putting it anywhere because it's so-called logistical problems. What in the heck is that about? I don't get that.

Three (c) is parts of what we do and --

COMMISSIONER BRACERAS: Right. It's our statutory mission.

COMMISSIONER YAKI: We do it because of things that happen or are brought to our attention.

COMMISSIONER BRACERAS: Right.

COMMISSIONER YAKI: That's not to say, well, if we can't figure out what way to go then its crap.

COMMISSIONER BRACERAS: Well, Michael, I agree with you, and that's why I want to highlight it more because in my view that is the core of what we're charged with doing, and it shouldn't be a sub-bullet. It should be a goal or objective in and of itself. It's not a performance measure. It's our mandate.

VICE CHAIRPERSON THERNSTROM: It's our statutory mandate, right.

COMMISSIONER YAKI: Why then do we remove
it entirely from the entire list?

COMMISSIONER BRACERAS: Well, I don't want to remove it entirely. I just want it to be where it should go because if we leave it where it is, and this is bureaucratic gobbly-gook --

COMMISSIONER YAKI: Just take 3.4 and make 3(c) another three.

VICE CHAIRPERSON THERNSTROM: Pardon me? Say it again.

COMMISSIONER YAKI: Make Strategic Goal No. 3 Strategic Goal No. 4, and take 3(c) and make it number three, taking out the first clause, going to conference and report.

COMMISSIONER KIRSANOW: The problem is, as Ken just indicated, we've got some logistical problems in terms of the budgetary submission and changing any strategic goals.

COMMISSIONER BRACERAS: Can we make it an objective? Are you concerned with changing the goals or also the objectives?

See, the bureaucratic part of it is lost on me.

COMMISSIONER YAKI: No, what I mean is within Strategic Goal No. 1 --
COMMISSIONER BRACERAS: No, I know that. I'm asking -- I just have a question for Ken.

MR. MARCUS: It's both the goals and objectives.

COMMISSIONER BRACERAS: Neither the goal nor the objective can change.

COMMISSIONER YAKI: Where did that come from?

COMMISSIONER BRACERAS: See, Michael, I agree with you. This is where my mind is boggled by the bureaucracy.

MR. MARCUS: I'm not sure if you were on your cell phone. so you might have missed a few minutes of the conversation. The challenge that I've just raised is that we are just a few weeks from the deadline to get our budget submission to OMB for fiscal year 2008. It was only at the very last minute, which is to say last month, that we finally came up with strategic goals and objectives.

So now there has been work since then to sort of scramble to try and translate or interpret that into narrative that can be part of our performance based budget to justify the money that we're asking for.
The concern that I have is that with a limited period to try and have to redo that work and to rewrite a new, new narrative on the performance base with different goals and objectives endangers our ability.

COMMISSIONER BRACERAS: But it's not rewriting the whole thing, and it's not really a new goal. I guess I feel that what's been lost in this whole process, and I wasn't able to articulate this at the last meeting for the reasons I've already stated, is we've limited our goals here to the visionary aspects and the partnering with other federal agencies aspect, and the serving as a national clearing house aspects, and the key component of what we do has somehow been lost, and I'm not sure how that happened or where in the process it happened, but it did, and I know that we as a Commission haven't forgotten it because going to Omaha is a perfect example of how we're actually doing it.

But in terms of having it incorporated into this document, it was administratively lost.

VICE CHAIRPERSON THERNSTROM: Well, it should be Strategic Goal No. 1 since it is our statutory mandate, and the others should be bumped.
MR. MARCUS: Well, let me --

VICE CHAIRPERSON THERNSTROM: Wait a minute. Commissioner Melendez has been trying to get in here for quite a while.

COMMISSIONER MELENDEZ: No, I agree it should be a goal. After I looked at this again, I just don't know how we're going to do it based on that time frame.

MR. MARCUS: May I could suggest this. If this becomes a strategic goal, then presumably we're going to need to develop not just the new goal, but a series of new objectives to go with the goal, and then performance measures to go with that, and that will take a little bit of time and presumably work by the strategic working group.

Perhaps we can agree that since that can't be done right now as we sit here, we'll continue with our OMB submission to rely on the approved goals and objectives, but have the working group try to develop a new set of -- you know, translate 3(c) into a new strategic goal and come up with new objectives to go with it.

COMMISSIONER YAKI: All I can say is that if we send a document that doesn't have our basic
mandate in it, we're going to look like morons.

    COMMISSIONER BRACERAS:  I agree, and I
    guess I don't understand why it has to be that
    complicated. I don't understand why it has to be that
    complicated.

    VICE CHAIRPERSON THERNSTROM:  Not for the
    first time, Commissioner Yaki.

    COMMISSIONER BRACERAS:  I mean, you know,
    that's the strategic goal. I don't know. This
    objective performance measure bureaucratic gobbly-gook
    is mind boggling to me. I don't understand, but I'm
    sure somebody could parse out the necessary language
    that would go underneath this goal.

    VICE CHAIRPERSON THERNSTROM: Well, wait a
    minute. Since it is our statutory mandate, is it
    essential to have objectives and performance measures?
    Why can't it simply be stated goal number one? It is
    our statutory mandate?

    COMMISSIONER BRACERAS: Because
    bureaucrats need minutiae to worry about.

    MR. MARCUS: We would not get through and
    be a budget that did not present specific strategic
    objectives to go with each of our strategic goals.
    That's a concern.
Now, we can discuss these activities: investigate allegations of deprivations of voting rights, et cetera, et cetera in the course of one of the existing goals and objectives.

VICE CHAIRPERSON THERNSTROM: No, but I mean everybody who has spoken to this issue is right. This just simply restates our statutory mandate. It needs to stand alone.

MR. MARCUS: Without objectives?

VICE CHAIRPERSON THERNSTROM: Well, whatever, but it cannot be kind of sprinkled as it were throughout these other goals as if this is not the primary goal.

COMMISSIONER BRACERAS: I mean, that's the goal, and the objectives are, number one, you know, respond to timely events as they develop by investigating the facts or something of that -- you know, I mean, something like that. That's the objective: the performance measures, hold a hearing as necessary. Done. I don't understand why it's more complicated than that.

Am I misunderstanding something?

MR. MARCUS: I don't think it's necessarily that hard to come up with objectives to go
with it. I don't know that we're going to do it today. Maybe we will do it on Monday.

COMMISSIONER BRACERAS: Why isn't it that simple? Why isn't it that simple that the objective is to respond in a timely manner to civil rights issues as they develop in our public discourse and the performance measure is, you know, to be on the ground, to hold a hearing.

VICE CHAIRPERSON THERNSTROM: You've got language here. Investigate allegations of widespread deprivations.

COMMISSIONER BRACERAS: That's the goal.

VICE CHAIRPERSON THERNSTROM: Civil rights, whatever, yeah.

COMMISSIONER BRACERAS: Right. So the objective is respond in a timely manner to allegations of civil rights deprivations, period. The performance measure is hold the briefing or hold the hearing, right? No?

MR. MARCUS: Well, I don't know what it is.

COMMISSIONER BRACERAS: It seems really basic.

MR. MARCUS: I think it is going to take a
little bit of time to figure out exactly what is it. Is it to hold briefings, to hold hearings, to --

COMMISSIONER BRACERAS: Well, what are the other possibilities?

MR. MARCUS: I'm sure we could hash it out in a little bit of time.

COMMISSIONER BRACERAS: I guess I'm misunderstanding what needs to be hashed out.

MR. MARCUS: Why don't you --

COMMISSIONER BRACERAS: I'm not a bureaucrat. I'm sorry. I don't get it. I don't get it.

VICE CHAIRPERSON THERNSTROM: Commissioner Yaki, have you got something to say on this?

MR. MARCUS: If you want to suggest some specific objectives --

COMMISSIONER BRACERAS: I just did.

MR. MARCUS: -- maybe we can do it that quick. We'll hold a briefing or hold a hearing.

VICE CHAIRPERSON THERNSTROM: No, those were the performance measures.

COMMISSIONER BRACERAS: Okay. The goal is, quote, investigate allegations of widespread deprivations of voting rights, semicolon, or
allegations of pervasive discrimination on the basis of race, color, religion, sex, age, disability or national origin, or in administration of justice, period. That's the goal.

The objective is to respond in a timely manner to allegations --

VICE CHAIRPERSON THERNSTROM: Of civil rights --

COMMISSIONER BRACERAS: -- of widespread civil rights deprivations because we're not investigating individual complaints like the EEOC would. We're investigating patterns and practices. So to respond in a timely manner to allegations of widespread civil rights deprivations.

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER BRACERAS: Period. That's the objective. The performance measure is holding a hearing or a briefing. That's the performance measure. That's where you see the Civil Rights Commission in action. We're there on the ground, for example, in Omaha, right?

MR. MARCUS: I would feel more comfortable having someone with a little bit of training and
experience in strategic planning go over these and, for instance, advise on whether a goal with one objective is satisfactory, whether this is --

COMMISSIONER BRACERAS:  Okay.  But that's a separate point.  I mean that could certainly be one objective and performance measure.  Maybe we can come up with others if the bureaucracy requires that we have more than one.  Then I'm sure we can come up with one, but --

VICE CHAIRPERSON THERNSTROM:  Another one.

COMMISSIONER BRACERAS:  -- I don't see the -- if somebody disagrees with those particular objectives or performance measures, please speak up.  I don't understand why it's controversial.

COMMISSIONER YAKI:  (Unintelligible) do this easily because --

COMMISSIONER BRACERAS:  Michael, you're bleeping.

COMMISSIONER YAKI:  I know.  I need someone to call me back if I disappear.  Can you hear me now?

COMMISSIONERS:  Yes.

COMMISSIONER YAKI:  I mean, if worse comes to worse just bang out something on the word
processor, circulate it amongst us with a week deadline and then do a phone poll, yes or no, and put it in.

COMMISSIONER BRACERAS: I mean, I'm curious to your view on my specific proposal. Am I off the mark with where I'm going?

COMMISSIONER YAKI: Well, no, believe it or not, you're not off the mark.

(Laughter.)

VICE CHAIRPERSON THERNSTROM: A rare day at the Commission.

COMMISSIONER BRACERAS: So.

COMMISSIONER YAKI: I would add to some of what you've done, but I think you're absolutely on the right track, and I don't see why it would take more than, you know, a few hours of concentrated effort to get it done, circulate it amongst us, do a phone poll, get it done, and off we go.

COMMISSIONER BRACERAS: I mean, I think what I'm hearing though is that I don't hear any objections to having that added as a goal. So I don't think it's going to be -- you know, if we have a poll vote, it should almost be pro forma because it seems that everybody agrees that that should be a goal.
COMMISSIONER YAKI: Right. I'm just saying the poll vote because I don't know what the bureaucrats will say trying to terminate our --

(Laughter.)

VICE CHAIRPERSON THERNSTROM: And, by the way, I reiterate my point.

COMMISSIONER YAKI: I'm going through a turn right now that may cut me off. So if you don't hear my dulcet tones in about 30 seconds, it means I've been blipped off.

VICE CHAIRPERSON THERNSTROM: Okay.

COMMISSIONER BRACERAS: What I would propose, which is what I've been trying to propose from the beginning is to actually have this be strategic goal number two, not because it's not important, but because I see this mission statement as going from the broad to the most narrow, in other words, from the visionary to the minutiae of administration, and so the national conference should be goal number one because it's the broadest, and then the next level is the investigatory, and then the level below that is partnering with the other agencies, and then it goes down from there in an upside down triangle.
So I'm not really particularly wedded to whether it's Goal No. 1 or Goal No. 2, but I think it would flow best if it were Goal No. 2.

VICE CHAIRPERSON THERNSTROM: I do think that if it's going to be more abbreviated than the other goals in terms of spelling out the objectives and the performance measures and we are simply, in effect, restating our statutory mandate, that it makes more sense to have it as in effect a preamble as our statutory mandate. The other goals follow from it. Whatever; I don't care. I mean, it's -- you know.

COMMISSIONER BRACERAS: Well, I mean, which sort of brings us back to the option of deleting it, which I don't think anybody was happy with, but it is in the preamble of the document which we're not voting on today, but --

COMMISSIONER YAKI: I said that was a good idea, Abby, by the way.

VICE CHAIRPERSON THERNSTROM: Oh, that's a first for me.

COMMISSIONER YAKI: No, it's not. On one hand.

(Laughter.)

COMMISSIONER BRACERAS: I mean, so in
other words, the other idea of deleting it, we're not deleting it as part of our mission. You know, if we take it out as part of the preamble and these are the strategic goals that flow from that core mission, which is stated at the top, in other words, where it says mission statement, if it's incorporated in that.

COMMISSIONER YAKI: I think it would --

VICE CHAIRPERSON THERNSTROM: Say that again, Michael.

COMMISSIONER YAKI: I'd be good with that.

VICE CHAIRPERSON THERNSTROM: All right.

COMMISSIONER YAKI: Different ideas that you two have both proposed, on both I do not violently object. So --

COMMISSIONER TAYLOR: What does the Staff Director think of that? What does that do to the process?

MR. MARCUS: I'm not sure. I'm going to have to consult either later today or Monday with the staff who are focused on drafting the budget. The budget is due with me at the beginning of next week. Obviously we're not going to be able to get that in. We'll just do the best we can.

VICE CHAIRPERSON THERNSTROM: The Staff
Director looks as if --

COMMISSIONER BRACERAS: Ken, I'm sorry, and I don't want to --

VICE CHAIRPERSON THERNSTROM: Complicating.

COMMISSIONER BRACERAS: -- be making work and complicating things, but I feel strongly that this either has to be a separate goal or be incorporated into the mission statement above.

MR. MARCUS: In prior years the agency routinely missed its deadline for getting budget submissions in, and developed a certain reputation for it. We might just miss our deadline again.

(No response.)

COMMISSIONER BRACERAS: I don't understand why this can't simply be cut and paste.

COMMISSIONER TAYLOR: If I were to guess, I would guess that it would cause less of a disruption in the bureaucratic process to come to some conditions that --

COMMISSIONER BRACERAS: That's what I'm thinking.

COMMISSIONER TAYLOR: If I were to guess. So I'd be happy --
MR. MARCUS: I'm sorry. You're suggesting only put it there in the mission statement, not in the --

VICE CHAIRPERSON THERNSTROM: Yes.

COMMISSIONER BRACERAS: That's my second alternative to alleviate your troubles.

COMMISSIONER KIRSANOW: Let's do that. Let's put it in the mission statement.

MR. MARCUS: -- that way, then that will not create any problems with our submission.

COMMISSIONER KIRSANOW: Let's put it in the mission statement.

COMMISSIONER BRACERAS: Right. Solved.

COMMISSIONER KIRSANOW: Because another argument for all of this is that it's peculiar to put your -- in one way having your charter requirement be a goal. It's almost a presumption.

COMMISSIONER BRACERAS: A different level of --

COMMISSIONER KIRSANOW: Right. So let's just do that. Take it out. This way it doesn't disturb strategic goals. We may be able to get a budget submission in a more timely fashion than we have in the past.
VICE CHAIRPERSON THERNSTROM: Okay. So let's make sure we're all on board.

COMMISSIONER BRACERAS: The mission statement should read as follows: to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws by investigating allegations of widespread deprivations and blah, blah, blah, blah, blah, and through quality research, objective findings, something like that. I don't know. It's getting a little long there.

COMMISSIONER KIRSANOW: Let's have staff wordsmith that. This is not rocket science.

COMMISSIONER BRACERAS: You have a good point. It shouldn't be.

VICE CHAIRPERSON THERNSTROM: Commissioner Yaki, are you there? He's not, but I think he said before --

COMMISSIONER BRACERAS: Well, the point is we're moving it up to the mission statement, and staff can wordsmith it.

VICE CHAIRPERSON THERNSTROM: And staff can work on the wording. Commissioner Braceras, you had other problems.
COMMISSIONER BRACERAS: Well, that's number one.

COMMISSIONER YAKI: I will deal with it. I was in the middle of changing three lanes.

COMMISSIONER BRACERAS: Okay. Moving on to Goal No. 2, enhancing the ability of federal agencies to raise public awareness and efficiently and effectively execute their civil rights enforcement responsibilities.

Objective 5 under that goal is to promote public awareness of current civil rights laws, remedies, and enforcement agencies. Great. The performance measure for that objective, one of them, 5(h), is to increase the number of times the Commission's reports, et cetera, are cited to. And then it gives various places where we could be cited to.

I am uncomfortable making this a benchmark of our success when it is 100 percent outside our control.

COMMISSIONER KIRSANOW: And that's precisely why I think it should be a benchmark. I think it gives us more credibility and integrity if somebody else independently makes a judgment that the
integrity of our reports or the substance of our
reports is sufficient to which it should be cited.

COMMISSIONER BRACERAS: But that's not
going to be -- the number of times we're cited doesn't
necessarily mean that somebody else thinks our work is
fabulous. It could depend completely on the topic we
pick. If we are looking at a really trendy, timely
topic that a lot of people want to write on, we will
be cited. If we're looking at a topic that's
complicated, like desegregation and not necessarily
sexy, we may not be cited a lot.

COMMISSIONER KIRSANOW: But there are two
problems here. One is this is to some extent within
our control because we're saying increase. We're
starting from a baseline of right now increasing from
right now, whatever that may be.

Number two is that in the past, the
Commission -- and there are a variety of reasons why
this happened. Some of it was because the Commission
was actually doing work such as informing the debate
with respect to the implementation of the '64 Civil
Rights Act, the '68 Fair Housing Act, '65 Voting
Rights Act, so on and so forth, that would necessarily
require or result in more citations.

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But after a point in time, about the mid-'70s, there was still nonetheless a significant decrease in the number of times we had been cited to any one of these measures in congressional debates, executive policy position fitness reports, any of these.

Chris did a very exhaustive analysis of the number of times the Commission was cited, and even after those major events of the '64 Civil Rights Act, '65 Voting Rights Act, et cetera, passed, there was an incredible drop off specifically because I think the Commission began to develop a reputation for shoddy work product, partisan work product, and I think this really lends credibility to what we do.

The number of times, you know, I agree that could fluctuate, but it is a measure, maybe not the definitive measure, and that's not where we're saying that because we've got other performance measures in here.

COMMISSIONER BRACERAS: I'm just not sure it is --

COMMISSIONER KIRSANOW: But it is aimed at it.

COMMISSIONER BRACERAS: I'm just not sure
it tells us anything. If Mike Barnacle writes, you
know, 17 columns saying the U.S. Commission on Civil
Rights is a joke and here the reports that they did
that show you that they're a joke, is that a citation
that we're going to use to prove our effectiveness?

COMMISSIONER KIRSANOW: No, but for
example, there are a number of measures here, and I
don't think anyone with any --

COMMISSIONER YAKI: I'm all for it.

COMMISSIONER KIRSANOW: -- I don't think
anyone is going to say credibly that Mike Barnacle
stands in the same stead as being cited in the Supreme
Court opinion, but this year --

COMMISSIONER BRACERAS: Well, it's a
newspaper article. It's a journalistic editorial or a
news report.

COMMISSIONER KIRSANOW: But look.

COMMISSIONER BRACERAS: That's where
you've listed.

COMMISSIONER KIRSANOW: I think there are
qualitative differences that no one is going to
mechanically apply the number of times that Mike
Barnacle cites us in the same fashion as --

VICE CHAIRPERSON THERNSTROM: I've got
another objection.

COMMISSIONER BRACERAS: Well, you've listed here the number of times we're cited in journalistic editorials and news reports, an emergent and electronic and Internet-based mediums. Do you know how many times we're listed on Internet spaced mediums having nothing to do with the substance or the quality of our work?

VICE CHAIRPERSON THERNSTROM: There's a more fundamental objection here. The desire for the likelihood of citations by members of Congress or whoever are going to begin to drive our agenda. That is, we're going to be asking ourselves and looking at topics. Well, is this something Congress is going to unlikely --

COMMISSIONER BRACERAS: A back door way to make us a research arm for Congress.

VICE CHAIRPERSON THERNSTROM: Exactly.

COMMISSIONER KIRSANOW: And that really says something about us. Look. I would not have an objection to deleting maybe news reports. I'm not sure about that, but emergent electronic and Internet-based mediums.

VICE CHAIRPERSON THERNSTROM: No, I don't
care whether Congress cites us either.

COMMISSIONER KIRSANOW: Because the fact of the matter is this is not the definitive measure, but I feel extraordinarily strongly that we have to have some things in here that are, in fact, beyond our control because otherwise then we can manipulate how well we have achieved our strategic goals.

COMMISSIONER BRACERAS: Well, that may be true, but --

COMMISSIONER KIRSANOW: We are different than a lot of other agencies insofar as EEOC can say, "All right. We're going to process 5,000 more ADA complaints."

COMMISSIONER BRACERAS: Right.

COMMISSIONER KIRSANOW: And they can measure that. We don't have those kinds of tangible mechanisms by which we can say we have achieved objectives. One of the best ways, and let me just say this. Based on much research that Chris and I have done, we can show most of these citations would be to, say, either Congressional Research Service, the Congressional Quarterly, law review articles, court opinions, and sometimes citations like, for example, more recently we have been cited a number of times in
debate leading up to reauthorization of the Voting Rights Act.

VICE CHAIRPERSON THERNSTROM: Only because Commissioners put that in.

COMMISSIONER KIRSANOW: The Akaka bill, and so forth.

But it's a reflection, I think, of the esteem in which the Commission is held.

COMMISSIONER BRACERAS: Not really. I think the voting rights report was cited quit a bit, and I think it's a piece of crap.

COMMISSIONER KIRSANOW: For ten years --

VICE CHAIRPERSON THERNSTROM: Not only that. It was only cited because you and I went to hearings and put it in the record.

COMMISSIONER KIRSANOW: But that is just simply one --

COMMISSIONER BRACERAS: Not that voting rights, but the Florida voting rights.

VICE CHAIRPERSON THERNSTROM: The Florida voting rights.

COMMISSIONER KIRSANOW: That is one measure. It is simply one measure.

COMMISSIONER BRACERAS: The voting rights
report is not a piece of crap, I would like to reflect.

COMMISSIONER KIRSANOW: There's pretty good data to show that --

COMMISSIONER BRACERAS: The Florida report.

COMMISSIONER KIRSANOW: -- during the tenure of the previous regime, there was a precipitous drop off in the number of times the Commission was cited. Now, you can say that's because, you know, they were maybe trying to -- they were held hostage to some Congress or something, but the fact is I think there's a pretty good argument to be made that one of the reasons for the decline was the Commission's reputation suffered because the quality of the reports suffered, the quality of the --

COMMISSIONER BRACERAS: But that's my point. The Florida voting rights report was extremely poor quality, and it was cited up the wazoo.

VICE CHAIRPERSON THERNSTROM: And still is being cited.

COMMISSIONER BRACERAS: That's my point. It is --

COMMISSIONER KIRSANOW: Not in comparison
to other citations that the Commission has had in the past.

COMMISSIONER BRACERAS: Right. Well, if you go back to the 1950s and '60s, of course not, because that was the cutting edge.

COMMISSIONER KIRSANOW: We have an ability here starting in 2006 to start afresh and say, "Here. We're increasing the number of times," because now we're not necessarily hostage to the civil rights or the voting rights -- I'm sorry -- the 2000 Florida report, and go forward from there. I do think this is a very -- look. Back in the '60s, quite often the Commission would be cited in Supreme Court decisions.

VICE CHAIRPERSON THERNSTROM: The '60s is a century away --

COMMISSIONER KIRSANOW: I understand that.

VICE CHAIRPERSON THERNSTROM: -- from civil rights issues.

COMMISSIONER KIRSANOW: And my point is the citations would be to the Supreme Court Law Review articles, and there was still citations within the '70s and '80s --

VICE CHAIRPERSON THERNSTROM: I do not want our agenda --
COMMISSIONER KIRSANOW: -- and guess what. Almost contemporaneously with the ascension of certain people to the leadership of this place, it went off the cliff. There's a reason for that.

VICE CHAIRPERSON THERNSTROM: I don't want our agenda driven by --

COMMISSIONER YAKI: Nielsen ratings.

COMMISSIONER BRACERAS: Exactly.

VICE CHAIRPERSON THERNSTROM: -- Nielsen ratings, exactly.

COMMISSIONER BRACERAS: I just want to say I agree with Commissioner Kirsanow 100 percent that it would be wonderful to be cited by the Supreme Court and to be cited by Congress and to have people recognize the good work that the staff is doing and to recognize the fact that we are turning this Commission around the beginning to put out more objective reports.

I agree that that would be wonderful. I just don't want to have to say in a document like this that if we don't get cited because for whatever reason, that somehow we have failed. I don't think we have failed if we do not get cited because there are a lot of reasons why we might not get cited that are...
different from, separate from quality.

COMMISSIONER KIRSANOW: I really think that sometimes you put performance measures in where you're not absolutely certain that you're going to be able to meet them. They are aspirational. Maybe if we don't have as many citations we failed in this regard.

VICE CHAIRPERSON THERNSTROM: No.

COMMISSIONER BRACERAS: That is not a barrier.

VICE CHAIRPERSON THERNSTROM: -- to our agenda.

COMMISSIONER KIRSANOW: I don't think it will change our agenda at all, except to issue quality reports unless you say --

VICE CHAIRPERSON THERNSTROM: We're are already issuing quality reports.

COMMISSIONER KIRSANOW: Because otherwise that's saying something about the manner in which we're operating, that somehow we're going -- if we are going to be looking at Performance Measure No. 5(h) and causing that to be the loadstar by which we drive this Commission, I don't think --

COMMISSIONER BRACERAS: Then why is it in
COMMISSIONER KIRSANOW: Because I think it's one of the best ways of establishing on an objective basis. I don't think we're going to be driven by this. I don't think we're going to look at this and say, "Now we're going to craft reports that we get cited that are written" --

COMMISSIONER BRACERAS: I don't want any member of Congress or any bureaucrat to say or anyone from GAO or anywhere else to say the Commission failed in meeting its objective because they weren't cited by the Supreme Court this year or by a member of Congress.

COMMISSIONER KIRSANOW: I would be amazed if that happened. I think any GAO person who picks something like that up would look like a moron.

VICE CHAIRPERSON THERNSTROM: I don't know what the point of putting this in.

COMMISSIONER BRACERAS: Then what is the point?

COMMISSIONER KIRSANOW: Because I think, frankly, I will tell you this. Of all the measures we have in this, I think this is one of the best ways of determining whether or not the Commission is actually
COMMISSIONER BRACERAS: Does it matter if you get cited in dissents or majority opinions?

COMMISSIONER KIRSANOW: Look. I'll let somebody else make that decision.

VICE CHAIRPERSON THERNSTROM: No.

COMMISSIONER KIRSANOW: These are qualitative determinations.

VICE CHAIRPERSON THERNSTROM: When you write something, do you write it with, you know, whether it's an article or something, that what you've got in mind is am I going to get cited? No, you write it because it's what you believe in.

COMMISSIONER KIRSANOW: That goes to my point. That goes precisely to my point. We don't care if we're going to be cited. We don't care --

VICE CHAIRPERSON THERNSTROM: Well, we do.

COMMISSIONER KIRSANOW: When we produce a report, that's not driving our agenda.

What happens is somebody looks at it and says, "Damned good report."

VICE CHAIRPERSON THERNSTROM: Look. I am deeply opposed to this. Commissioner Yaki --

COMMISSIONER KIRSANOW: I'm deeply in
favor of this.

VICE CHAIRPERSON THERNSTROM: Commissioner Yaki.

COMMISSIONER KIRSANOW: And frankly, I will tell you I cannot support anything without this in here.

VICE CHAIRPERSON THERNSTROM: Okay, okay. If you want to lay down a marker like that, that's fine.

COMMISSIONER KIRSANOW: I will. I think this is one of the best measures.

VICE CHAIRPERSON THERNSTROM: That's fine. Go ahead.

Commissioner Yaki, did you want to get in here?

COMMISSIONER KIRSANOW: Because I want to make one other point. Taking something like this out is a reversion back to where the Commission had been before.

VICE CHAIRPERSON THERNSTROM: I think that's ridiculous.

COMMISSIONER KIRSANOW: We want some other measure to determine how we are performing our work other than things solely within our control because
that is manipulatable.

VICE CHAIRPERSON THERNSTROM: Commissioner Yaki, are you there?

COMMISSIONER YAKI: I just don't want to be graded by GAO or by Congress as to whether or not any of our reports for any given year. I mean, sometimes things take time to mature. Some issues we may be ahead of the curve, but people aren't really all that excited about it, but then they get excited about it two years later.

I mean I just think that -- I understand what Peter is saying. He's talking about and he cares about the reputation of the Commission and the work product it produces, but I don't think that citation alone is the way to do it, and I'm sorry I disagree with him.

VICE CHAIRPERSON THERNSTROM: Well, that's very well put from my point of view.

Anybody else got anything? Is there any further discussion on this?

COMMISSIONER TAYLOR: I guess the only thing I would say is that I sense that we're trying to establish a measurement tool for our relevancy, and I'm having a difficult time getting my mind around how
we measure that. That's what we're talking about.

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER TAYLOR: Because it's not an
example of the demonstration of necessary quality.

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER TAYLOR: But it does in some
way indicate that we are contributing to the national
debate, and that's, I think, what we're trying to
measure.

VICE CHAIRPERSON THERNSTROM: I don't see
how you can measure that. Let us do quality work and
assume that that's a contribution to the national --

COMMISSIONER TAYLOR: Let's be honest, and
maybe I shouldn't say this, but I'll say it anyway.
Of course we consider what we do. We talk all the
time in this Commission about using a product that's
timely because the Supreme Court will be considering
something at a particular point in time. So we; take
those things into consideration.

And I don't think there's anything wrong
with that. We want to be relevant, and I think that's
what you're trying to measure and you're trying to do
it by way of a source we can manipulate.

Just because I wake up in the morning and
think I'm relevant, great. Doesn't necessarily mean
that I am. I don't know. I don't think this measures
it. In fact, I was thinking maybe we should, you
know, focus on the Supreme Court. Is that a real
test?

And I thought no because I don't know who
on the Supreme Court would be citing us and for what
purpose. So I even felt uncomfortable with the
Supreme Court piece.

But, you know, frankly, I think our
measure of relevancy will be determined by our ability
to look ourselves in the eye and look at each other.
I'm having a hard time getting a third party
validation tool.

Let me just say this.

COMMISSIONER BRACERAS: Well, here's why I
think there's a disconnect between the objective and
the performance measure. The objective number five is
to promote public awareness not of ourselves, but of
current civil rights laws, remedies and enforcement
agencies.

Now, let's say we have our briefing and
our report on desegregation and there is subsequently
an up tick in the number of news articles and Law
Review articles and other things on the topic of desegregation. That's great. Then we're increased public awareness of that particular topic whether they cite our work or not.

The question is not whether they cite our work. The question is are more people aware of their rights, aware of the debates that are festering in society, aware of the remedies, aware of all of these other things. That's the objective, to make people aware of the law and of the issues and of their rights, not necessarily to make them aware of us.

COMMISSIONER KIRSANOW: They don't have to be aware of us. They have to be aware of the work that we're doing, and I'll just say one more thing and then I'll stop. And that is that there is no doubt that for a variety of reasons the Commission was more relevant in the '60s. For very obvious reasons it was more relevant.

In the '70s, after the major civil rights acts were passed, you would think that the Commission's relevancy would have dropped off the table, but it did not. Not even in the '80s did it really drop off. There were no really giant pieces of legislation that were being considered at least that
the Commission was informing, but the Commission's work was still being treated with a great amount of respect and the quality of the work was, and it was timely and relevant.

One of the ways you can measure that is are we informing the debate. One of the ways you determine whether you're informing a debate is who's debating. Who else is talking? We know quite clearly that for the last five, six years, excluding maybe the last two years, the Commission's work has been going into a dust bin. They will produce a report. Jennifer said it very eloquently earlier, where we put a mishmash of things together in the report. It was too big, voluminous, not focused on a particular subject matter, and no one would care about it, never get cited anywhere, not even to the Internet.

But when you've got something of quality, we are informing the debate because people are reading. Policy makers, decision makers are reading academic journals, advocacy briefs, Congressional Quarterly, Supreme Court decisions. That's one of the best measures of whether or not we are informing the debate.

COMMISSIONER BRACERAS: I just want to --
COMMISSIONER KIRSANOW: By enhancing the quality.

COMMISSIONER BRACERAS: I want to be clear about something because this performance measure is basically listed a couple of times here with respect to different objectives. So Pete keeps referring back to this being a measure of the quality and objectivity of our reports, and that's where I feel particularly strongly that it's not indicative of the objective we're dealing with.

But it's also listed above where I first raised it, is with respect to our PR function which is making people aware of the laws and the remedies and their rights. It's more relevant there because at least then every time we're cited it may not say something about our scholarship, but it at least flags the public that there's an issue.

If our report --

COMMISSIONER KIRSANOW: Where is that? I'm sorry, Jennifer. I --

COMMISSIONER BRACERAS: Well, under Strategic Goal 2, Performance Measure 5(h) --

VICE CHAIRPERSON THERNSTROM: It's got the same problem.
COMMISSIONER BRACERAS: Okay.

VICE CHAIRPERSON THERNSTROM: It's got exactly the same problem.

COMMISSIONER BRACERAS: Well, it's not quite the same problem, but the point is that we're getting all confused by the bureaucratic boxes once again, but the point is that citations to our work I don't think really ever say anything about the quality and objectivity of our report. They may on some occasions help us achieve our objective of making people aware of certain civil rights issues and laws, not always; sometimes. They may help to achieve that objective.

But where I feel most strongly about it is as an indication of the quality of the scholarship.

VICE CHAIRPERSON THERNSTROM: Well, look. I mean, the person who, the institution that is most cited by the Supreme Court, by members of Congress, by the media on school desegregation issues is the Harvard project on civil rights headed by Gary Orfield.

Now, Michael Yaki and I will disagree on the quality of that work, but if you want to measure it simply by times cited, they're doing a great job.
The fact is I don't think they're doing a great job.

COMMISSIONER KIRSANOW: But they're informing the debate and that's because the Commission is falling --

VICE CHAIRPERSON THERNSTROM: They are not informing the debate.

COMMISSIONER KIRSANOW: -- down on the job.

COMMISSIONER BRACERAS: Okay. Informing the debate, but that's a different goal. There's two goals. There's informing the debate and there's strengthening the quality of --

COMMISSIONER KIRSANOW: I don't care about bureaucratic boxes either. I don't care what box you want to put it in. I just think that this is one of the superior measures of what the Commission is doing.

COMMISSIONER TAYLOR: The first goal we have listed is support a national conversation on current civil rights issues.

COMMISSIONER BRACERAS: Correct.

COMMISSIONER TAYLOR: That is the first goal we have, and I would agree not necessarily using the -- maybe using the term "support," that if you cite to the number of times you are cited, it clearly
demonstrates that you're participating in the national discussion, and frankly, it has no bearing on whether or not they're saying your work is of quality, shoddy.

COMMISSIONER BRACERAS: Then let's put it there.

COMMISSIONER TAYLOR: But it does demonstrate you're participating in the national conversation.

VICE CHAIRPERSON THERNSTROM: Well, but wait a minute.

COMMISSIONER BRACERAS: Then that's where it goes. Then that's where it goes.

VICE CHAIRPERSON THERNSTROM: Commissioner Yaki said before, and I don't want all of this language there; as Commissioner Yaki said before, issues may not be ripe. We may do work that three years from now becomes part of the national debate. This is not a performance measure.

COMMISSIONER TAYLOR: Let me address that.

VICE CHAIRPERSON THERNSTROM: And it will drive the agenda of this Commission in pernicious ways.

COMMISSIONER BRACERAS: I understand Commissioner Taylor's point, which is that it may not
be indicative of our quality, Goal No. 3, but it can
be indicative of our first goal which is basically
reinvigorating the discussion, and although I'm
uncomfortable with it as a performance measure
generally, if it is going to stay in, I can only
support it if it moves to a performance measure under
Goal No. 1.

I absolutely will not support it as a
measure of our quality under Goal No. 3, never ever,
ever.

VICE CHAIRPERSON THERNSTROM: There is a
majority here for eliminating it.

COMMISSIONER KIRSANOW: Wait a minute. We
haven't had a vote yet.

VICE CHAIRPERSON THERNSTROM: Well, there
seems to be on the basis of --

COMMISSIONER KIRSANOW: I think putting it
on -- I'm in favor of putting it under Strategic Goal
No. 1.

VICE CHAIRPERSON THERNSTROM: Commissioner
Yaki?

COMMISSIONER YAKI: Which is that I still
think that there's this pernicious threat here because
we may not even be able to reinvigorate the debate,
but we need to decide, gee, something is hot. Let's make sure that we do something they can throw in a niche because we need to meet that performance goal of getting cited.

And then there's the final point, which is how in the hell are you really going to accurately measure the citation aspect anyway? I mean, depending on what kind of research you do, you'll get nine million things on this and that, and it's a rather -- given our limited staff resources, do we want our staff ready and referencing, doing our bibliography of whether or not, you know, Gary Orfield says that he -- like Abby and Abby doesn't like Gary Orfield.

(Laughter.)

VICE CHAIRPERSON THERNSTROM: He's a perfectly nice guy.

COMMISSIONER BRACERAS: And then we can go around to different law schools and pay students to cite us in their notes.

COMMISSIONER KIRSANOW: To answer your question whether or not we can do this --

COMMISSIONER BRACERAS: This is ludicrous.

COMMISSIONER KIRSANOW: -- let me answer.

COMMISSIONER YAKI: -- promised to cite us
in their note.

COMMISSIONER KIRSANOW: Let me say a few things about this. First is this can be measured very easily, especially if you take out the last Internet-based mediums. You know, if we're cited to blogs, I don't care about that.

But in terms of Commissioner reports, congressional debates, policy positions, rulemakings, judicial opinions, advocacy briefs, state and local law making bodies, my assistant was able to do that very easily and -- not easily, but he was able to do it and comprehensively, and showed where we were being cited, what types of reports we were being cited, and the decreasing citations over a 30-year period. It was eye opening, quite illuminating, and I think if anyone takes --

COMMISSIONER BRACERAS: Can you share with us?

COMMISSIONER KIRSANOW: We have no problems with that if anyone takes a look at, in fact, we think it should -- I was thinking it should actually be a project of ours to take a look at how has the Commission been impacting the debate because we're operating in a vacuum here.
We were impacting the debate at one time, even past the passage of the major civil rights laws, and now we have been irrelevant for quite a period of time talking to one another, not caring about whether or not we are, in fact, driving the debate on civil rights, and we're not.

VICE CHAIRPERSON THERNSTROM: And you would change that by having that a performance goal?

COMMISSIONER KIRSANOW: I think it's one of the best means --

COMMISSIONER BRACERAS: I mean, we're going to change it by having our conference and doing these other things.

COMMISSIONER KIRSANOW: -- by which we determine whether other -- look. Otherwise we're simply treading water.

VICE CHAIRPERSON THERNSTROM: We're not simply treading water. We have --

COMMISSIONER KIRSANOW: This is one of the best ways of determining whether or not we're out there in the ether. Otherwise, if we don't measure whether or not we're having an impact on the debate, how do we know whether or not we're having an impact on the debate?
VICE CHAIRPERSON THERNSTROM: Hold on.

Commissioner Melendez.

COMMISSIONER MELENDEZ: I said I've got to catch a plane.

VICE CHAIRPERSON THERNSTROM: You've got to catch a plane. Would you like to come in on this?

COMMISSIONER MELENDEZ: Well, I just feel that it sounds like we've got more work to do on this whole strategic plan, and I'm just wondering if we're going to cover some of it --

VICE CHAIRPERSON THERNSTROM: We need to table this. I agree. Let's not have a vote on this.

COMMISSIONER KIRSANOW: We need a vote. We have the strategic goals, right?

MR. MARCUS: We have everything we need right now from the staff's point of view.

COMMISSIONER KIRSANOW: Okay.

VICE CHAIRPERSON THERNSTROM: I don't want to vote on it with you gone, and I also think you're right. We need some work on this.

COMMISSIONER BRACERAS: Well, let me leave it at this so that you know where I am and I think where the Vice Chair and others may be as well. I would like to see this language deleted from Strategic
Goal No. 2 and Strategic Goal No. 3 as performance measures. If you want to discuss adding the language under Strategic Goal No. 1, I'm open to discussing that. I haven't thought it through fully, but I'm open to discussing that.

But I am vehemently opposed to having it be a performance measure for either Goal No. 2 or Goal No. 3, and that is where I will leave it. I would like to see the performance measures for Strategic Goal No. 3 be linked to our processes. I think this is a really important point. I think that the way we measure the quality and objectivity of our reports is not going to be by looking at who agrees with it or who cites it. It's going to be looking to see whether we have a fair and balanced and objective process because people will always disagree with the outcome. There will always be critics with the substance.

So I would like to see the performance measure linked to process, not substance and not citations. So that's where I stand on that.

But I am open to the possibility of measuring the citations under Strategic Goal No. 1.

COMMISSIONER KIRSANOW: Well, I think everybody knows where I stand. I've got no problems
putting it under Goal No. 1, but I think this is one of the best measures, and to respond to claims that somehow this is going to be paying people to cite us, and I guess under Strategic Goal No. 1 we'd be paying people to attend the civil rights conference or any of these other goals that are capable of manipulation.

The key about this one is this is less able to be manipulated by us and, therefore, a better means by which to gauge whether or not we're doing anything out there in the ether because, frankly, I think we've been talking to ourselves for a long time, and one other --

VICE CHAIRPERSON THERNSTROM: What is going to change that, Pete, if that is so?

COMMISSIONER KIRSANOW: I think what changes that -- I disagree that it doesn't have an impact on the quality of our reports.

COMMISSIONER BRACERAS: Then take it out of that section.

COMMISSIONER KIRSANOW: Fine.

VICE CHAIRPERSON THERNSTROM: No.

COMMISSIONER KIRSANOW: The quality of our reports, it's n imperfect measure of the quality, but directly relates to the quality because no one at the
Supreme Court is citing to shoddy work.

VICE CHAIRPERSON THERNSTROM: But wait a minute. What is going to change? So we have this as one of the performance issues here. What are we going to do differently unless what you're saying is what we should do different is being driven by congressional agendas?

COMMISSIONER KIRSANOW: No. We've been doing it differently for the last year and a half.

VICE CHAIRPERSON THERNSTROM: Okay.

COMMISSIONER KIRSANOW: This is a means by which we can now measure and track it over the next five years.

VICE CHAIRPERSON THERNSTROM: If we've already been doing it differently, then what is it that you think we're going to get out of --

COMMISSIONER KIRSANOW: A lot of the stuff we're not doing differently in these goals. We're doing it the same way, but we're determining it's a measure. It's a metric. We have metrics of all kinds of performance --

VICE CHAIRPERSON THERNSTROM: So we find out the New York Times isn't citing us very much because they don't like what we have to say. What
COMMISSIONER KIRSANOW: I don't care about the *New York Times*, frankly.

VICE CHAIRPERSON THERNSTROM: Well, what do you care about?

COMMISSIONER KIRSANOW: What it does tell us is this, and I think Jennifer is right about maybe one of the best places to put it is enhancing the conversation. It tells us whether or not we're involved in the mix. It's the best way of determining it. Because look. There are no reporters here. Rarely are reporters here because nobody cares --

VICE CHAIRPERSON THERNSTROM: Wait a minute.

COMMISSIONER KIRSANOW: -- about what the Commission does.

VICE CHAIRPERSON THERNSTROM: We're issuing quality reports, and by that measure we don't measure. What is the consequence, that we pay more attention to what we might be cited more?

COMMISSIONER KIRSANOW: This is a measure of how we are impacting the discussion of civil rights out there, also whether or not we're driving the discussion of civil rights out there, and I also think
it's an indirect measure of the quality and integrity of our reports.

Law review articles don't cite to the environmental discrimination report of 2002. They don't do that kind of crap or any of the other things that Jennifer was referring to in terms of these omnibus reports that were issued. They will cite to reports with respect to the Hawaii bill. They will cite to, you know, the secondary education of the Seattle case. They will cite to those things.

VICE CHAIRPERSON THERNSTROM: You know, I have a --

COMMISSIONER KIRSANOW: -- it to produce quality reports --

VICE CHAIRPERSON THERNSTROM: I have a Google search --

COMMISSIONER KIRSANOW: -- for the best measures is who's citing us. Of the last 40 years our citations both in the quality of the citations, that is, the Harvard Law Review or the Supreme Court, and in the number have fallen off the map.

VICE CHAIRPERSON THERNSTROM: Well, my view is we do quality work and hope that somebody notices, but I have a Google search every single day.
for citations to the Voting Rights Act. I get more crap. I get at least ten a day. Who in the hell cares whether these people --

COMMISSIONER KIRSANOW: We can take out the blog section, the Internet section. That's fine.

COMMISSIONER BRACERAS: But I think we don't have to agree on this now. I think the bottom line is what we have agreed to do is to move Performance Measure 3(c) under Goal No. 1 up into the mission statement. We've agreed on that, and we've agreed that we're not going to vote on the performance measures today because we need to discuss this further and at least come up with something, some way to deal with this citation issue, but first and foremost it's dead on arrival in my book if it's a measure of our quality and objectivity.

If it is being used to measure that aspect of our work, it is dead on arrival.

COMMISSIONER KIRSANOW: I don't have a problem with that. I can put it under one. I don't care about boxes.

VICE CHAIRPERSON THERNSTROM: But you just kept talking about --

COMMISSIONER KIRSANOW: Well, I just said
I think it's an indirect measure. I don't have a problem with where it's put, but I do think it's an indirect measure of our quality.

VICE CHAIRPERSON THERNSTROM: I do not think we work for the media. We don't work for Congress. We don't work for the Supreme Court. We turn out quality.

COMMISSIONER KIRSANOW: We're not working for them. We are working for the American public, and the American public doesn't know jack about the Commission, doesn't care jack about the Commission because we haven't been producing quality reports that find themselves reflected in the discussion in --

VICE CHAIRPERSON THERNSTROM: We have been producing quality reports.

COMMISSIONER KIRSANOW: -- the last year and a half.

COMMISSIONER BRACERAS: Okay. Let's move on.

COMMISSIONER KIRSANOW: There's an echo effect.

VICE CHAIRPERSON THERNSTROM: Let's move on. Jennifer, have you got another.

COMMISSIONER BRACERAS: No, those are the
crux of my concerns.

COMMISSIONER KIRSANOW: That's where I need to go.

COMMISSIONER BRACERAS: Again, just so we're all aware for the call on Monday and future discussion, I would like to see the performance measure for Strategic Goal No. 3 be focused on our internal processes.

VICE CHAIRPERSON THERNSTROM: I agree with that.

There is still some business to do, and there's a memorandum of understanding with the Thurgood Marshall Library, approval of a memorandum of understanding or agreement which constitutes and outlines an agreement between the U.S. Government Printing Office, the University of Maryland School of Law, Thurgood Marshall Law Library, United States Commission on Civil Rights, for permanent access to content in the electronic collection of historical publications of the U.S. Commission on Civil Rights of the Thurgood Marshall Library.

COMMISSIONER BRACERAS: We need to know if Commissioner Yaki is still on to find out if we have a quorum, right?
VICE CHAIRPERSON THERNSTROM: Commissioner Yaki, are you still there?

COMMISSIONER YAKI: Yes.

VICE CHAIRPERSON THERNSTROM: We have a quorum.

COMMISSIONER YAKI: For what.

COMMISSIONER BRACERAS: To continue the meeting.

VICE CHAIRPERSON THERNSTROM: And, Commissioner Melendez, when do you have to go?

COMMISSIONER MELENDEZ: (Speaking away from the microphone location.)

VICE CHAIRPERSON THERNSTROM: On the rechartering? Let us just skip --

COMMISSIONER BRACERAS: Isn't the memorandum of understanding with the library fairly uncontroversial?

VICE CHAIRPERSON THERNSTROM: Yes, yes.

COMMISSIONER BRACERAS: Okay. So why don't we vote on that.

VICE CHAIRPERSON THERNSTROM: Yes, can I have a motion?

COMMISSIONER MELENDEZ: I make a motion to approve that.
VICE CHAIRPERSON THERNSTROM: Okay.

Second?

COMMISSIONER TAYLOR: Second.

VICE CHAIRPERSON THERNSTROM: Okay. All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Any opposition?

(No response.)

VICE CHAIRPERSON THERNSTROM: No. Motion is approved.

VII. State Advisory Committee Issues

VICE CHAIRPERSON THERNSTROM: Okay. The state advisory committee issue. Let us go right to -- because I know that Commissioner Yaki wants to speak to it.

COMMISSIONER YAKI: What's the issue?

COMMISSIONER BRACERAS: SAC re-chartering.

VICE CHAIRPERSON THERNSTROM: Let's go immediately to the California re-chartering of the California state advisory committee.

COMMISSIONER YAKI: I have a point of information.

VICE CHAIRPERSON THERNSTROM: yes.
COMMISSIONER YAKI: What is the quorum problem that we have right now?

VICE CHAIRPERSON THERNSTROM: We're fine until Commissioner Melendez leaves, and that's why I moved the California question up, because it's the most important of these.

COMMISSIONER YAKI: What if I leave?

COMMISSIONER BRACERAS: The same thing.

VICE CHAIRPERSON THERNSTROM: When we don't have a quorum obviously.

COMMISSIONER YAKI: I want to have a chance to discuss this with the Chair. We have not had a chance to discuss it yet.

VICE CHAIRPERSON THERNSTROM: This is up to you.

COMMISSIONER YAKI: I'd rather table it until the next meeting.

VICE CHAIRPERSON THERNSTROM: Well, if you leave it gets tabled. We do not have a quorum if you leave.

COMMISSIONER YAKI: Are you going to try and vote on it?

VICE CHAIRPERSON THERNSTROM: Pardon me?

COMMISSIONER YAKI: If I don't leave are
you telling me you're going to try and vote on it?

VICE CHAIRPERSON THERNSTROM: I assume so.

COMMISSIONER YAKI: Then I'm leaving.

COMMISSIONER BRACERAS: Well, what about Maine and Georgia? Do you want to do that and keep them in the room?

VICE CHAIRPERSON THERNSTROM: Do you want to stay for Maine and Georgia then and leave after that?

COMMISSIONER YAKI: Well, first of all, I don't know who this Maine person is. We haven't got anything in our packet about who this individual person is. So I have an objection with Maine. Georgia I don't have too much other than an objection to but you know (unintelligible). But I do know the people from California, and I want to have an opportunity to talk to the Chair about that.

If the intent of the Commission is to vote on California today and on Maine today, then I implore you that I have to leave the room.

COMMISSIONER BRACERAS: Well, maybe we can do Georgia.

VICE CHAIRPERSON THERNSTROM: Let's go Georgia, Commissioner Yaki. Can I have a motion to
re-charter the Georgia State Advisory Committee?
Under this motion the Commission appoints the
following individuals to that committee based on the
recommendations of the Staff Director.

Do I need to read all of these names into
the record?

MR. MARCUS: Yes, please.

VICE CHAIRPERSON THERNSTROM: Yes.

Charles B. Tanksley.

Tony K. Boatwright.

Alvin Arch Culbreth, I guess it is.

Julius Wayne Dudley.

Herbert W. Garrett.

Sharon L. Gosling.

William H. Jordan.

Ann L. Casun.

Luis L. Perez -- somebody help me with the
pronunciation. Michael, do you have the pronunciation
there? Eguiarte.

Arch Y. Stokes.

Pamela White-Colbert.

I also move that the Commission appoint
the Honorable Charles B. Tanksley as Chair of the
newly re-chartered Georgia State Advisory Committee.
These members will serve as uncompensated government employees and the Commission appreciates the heard work they will no doubt contribute to this state advisory committee.

Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment, and I apologize to any of these members of the SAC if I have pronounced their name incorrectly.

So can I get a motion to approve?

COMMISSIONER TAYLOR: So moved.

VICE CHAIRPERSON THERNSTROM: And a second?

COMMISSIONER MELENDEZ: Second.

VICE CHAIRPERSON THERNSTROM: Second.

Okay. All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Anybody opposed?

(No response.)

VICE CHAIRPERSON THERNSTROM: Okay. The motion is approved unanimously.

And as I understand it, we are losing our quorum.
COMMISSIONER YAKI: (Unintelligible) --

Maine and California?

VIII. FUTURE AGENDA ITEMS

VICE CHAIRPERSON THERNSTROM: Pardon me?

Are there any other items?

COMMISSIONER BRACERAS: Future agenda items.

VICE CHAIRPERSON THERNSTROM: Oh, future agenda items. We have just lost our quorum anyway.

COMMISSIONER YAKI: We did?

VICE CHAIRPERSON THERNSTROM: Yes.

Commissioner Melendez has just gone.

COMMISSIONER YAKI: Okay. Goodbye.

COMMISSIONER BRACERAS: Goodbye.

VICE CHAIRPERSON THERNSTROM: The meeting is adjourned.

(Whereupon, at 12:43 p.m., the meeting was concluded.)