The commission convened at 9:00 a.m. in room 550 of 624 9th St NW, Gerald Reynolds, Chairman, presiding.

Present:

GERALD A. REYNOLDS, Chairman
JENNIFER C. BRACERAS, Member
PETER N. KIRSANOW, Member
ARLAN D. MELENDEZ (via telephone), Member
ASHLEY L. TAYLOR, JR., Member
MICHAEL YAKI, Member

Staff Present:

KENNETH MARCUS, Staff Director
EMMA MONROIG, Solicitor
DAVID BLACKWOOD, General Counsel
A-G-E-N-D-A

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(9:20 a.m.)

CHAIRMAN REYNOLDS: Okay. I apologize for the late start. Is Commissioner Melendez on the line? Is anyone on the line?

COMMISSIONER MELENDEZ: Yes, I'm here.

CHAIRMAN REYNOLDS: Very good. Okay. This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights at 624 9th Street, N.W., Room 540, Washington, D.C. All the commissioners are present, except for the Vice Chair, Commissioner Melendez is participating by telephone. We were previously scheduled to conduct a briefing today on Voting Rights in the Territories. Unfortunately, due to scheduling conflicts, we have had a low rate of acceptance from potential speakers. We will try again to conduct this briefing next year; however, today we will conduct only our regular monthly meeting. First item on the agenda is the approval of the agenda. Once we have a motion to approve the agenda, I suggest that we amend the agenda just to rearrange the order.

I. APPROVAL OF AGENDA

In any event, may I have a motion to approve the agenda?
COMMISSIONER BRACERAS: So moved.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Okay. I move to change the order of the items to be considered so that the Staff Director's Report will be the last item on the agenda. Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion? All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any in opposition?

Okay. The motion passes unanimously.

The second item is the Approval of the Minutes of the October 13th, 2006 meeting.

II. APPROVAL OF MINUTES OF OCTOBER 13 MEETING

CHAIRMAN REYNOLDS: May I have a motion?

COMMISSIONER TAYLOR: So moved.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Discussion? All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any in opposition?

Any abstentions? The motion passes unanimously.
Next up, we have the Announcements for the month of November.

III. ANNOUNCEMENTS

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

Also, November marks the 22nd anniversary of Fred Korematsu and Min Yasui, and Gordon Hirabashi, their petition to overturn their World War II convictions for violating curfew and the evacuation orders directed at Americans of Japanese descent. It is also the --

COMMISSIONER YAKI: The coram novis cases.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER YAKI: They were called the coram novis cases.

CHAIRMAN REYNOLDS: I guess we could have a briefing on that alone, and have you as one of the
panelists. It is also the 16th anniversary of the signing by then President George H.W. Bush of a law requiring the payment of $20,000 to each surviving Japanese American internee.

And, finally, November 29th marks the 30th anniversary of the Individuals with Disabilities and Education Act. IDEA mandates the provision to allow students with disabilities to obtain a free appropriately structured public education. This anniversary reminds us of the importance of working together to ensure that all children are provided with educational opportunities that will enable them to reach their full potential.

Next up, we have the Briefing Report on the Benefits of Diversity in Elementary and Secondary Education.

IV. PROGRAM PLANNING

CHAIRMAN REYNOLDS: On July 28th, 2006, the Commission conducted a briefing on the impact of racial and ethnic diversity in elementary and secondary schools. The Commission directed staff to prepare a briefing report after the briefing. The Office of the Staff Director distributed the first draft of this briefing report to the Commissioners on September 29th, 2006, at which time we were asked for
our input with the hopes that OSD would incorporate those comments and redistribute a proposed final draft in time for a vote at the October 13th meeting.

Based on the request of some commissioners, additional time was needed. Consequently, at the October 13th meeting, Commissioners agreed to have OSD distribute another draft on October 20th; whereas, Commissioners' comments were due to OSD on November 2nd. The Staff Director's Office then turned around a proposed final draft briefing report incorporating those comments on November 9th for a vote at this business meeting.

It's now been three and a half months since the briefing, and a month and a half since the Commissioners were first provided with a draft of this report. May I have a motion to approve the briefing report sent to the Commissioners on November 9th, 2006?

COMMISSIONER BRACERAS: So moved.

CHAIRMAN REYNOLDS: A second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion? Oh, yes.

Why am I not surprised? Commissioner Yaki.

COMMISSIONER YAKI: No, you should not be surprised. Are the staff who wrote this report present?
CHAIRMAN REYNOLDS: Unfortunately, one of the individuals who put in a lot of time called in sick this morning.

COMMISSIONER YAKI: Well, that's unfortunate, because I would like to ask questions about --

COMMISSIONER BRACERAS: Who is that, by the way?

CHAIRMAN REYNOLDS: Chris Byrnes.

COMMISSIONER YAKI: Some of the statements in here, I'd like to know the source of many of the changes that were made, and I would especially like to know his familiarity with the rather voluminous bibliography that was attached, because I believe that there are statements made about certain of the studies that do not comport with what their conclusions were, other ones are all lumped together, and I'm not too sure whether they should be lumped together in terms of citations. And, again, I have no idea where some of the changes came, especially in the findings which are radically restructured in a way that would enable me to get some idea about who participated, and why certain changes were made.

In the absence of that, I cannot -- in the absence of the author being here, I really believe I
cannot, in good conscience, vote on this in any way, shape, or form, given the fact that this is our first opportunity publicly to discuss this document, and to ask questions that go toward the heart of the justification for many of the findings, and to ask whether or not aspects of the bibliography were, indeed, read cobbled together, or just relied upon from other citations in other works; which, for me, goes to the whole issue of why I have objections to the very nature of doing findings and recommendations in briefing reports.

I recall when I first came here a year ago, we had many discussions about the fact that we wish to do items that had a much more raw nature about the data and the research, that we would put it out there. I remember the quote, "Put it out there on the website and let people draw their own conclusions, or use it as they would in proceedings before the legislature, in Social Science, what have you." We have diverged radically from those original declarations, in that the briefings which I always thought would be a good way to get issues out on the table, to hear divergent points of view, to hear discussion and dissension on topics, and let the public, let the policy makers, let the researchers use

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that material, much as you would a hearing report in
the House of Representatives or the Senate, where
conclusions are not drawn, but the raw material is out
there for people to access and use. And when I looked
at - I don't want to jump too far ahead of myself -
when I looked at Commissioner Braceras' attempts to
put some structure to briefing reports, which I
greatly admire and commend her for doing that, it
still seems to me that it's like our dear late friend,
Ann Richards, used to say - you can put lipstick on a
cow and call it Susie, but it's still a pig.

This is an issue where the idea that we
can somehow from three hours of testimony, go to a
body of literature afterwards and create findings and
recommendations, I think is inconsistent with this.
It's a drain on staff resources. I would love to know
how much of our staff time is spent combing through
the one, two, three, four - seventy-odd, hundred-odd
citations in the bibliography, given that we already
are screaming about lack of staff resources for our
national reports, as it is. As you know, two meetings
ago we cut back on our national report, because we
don't have the kind of resources in which to do that.

So in the absence of Chris being here, I
understand he's a hardworking guy, respect him greatly. I would have appreciated him being here to answer these questions, which I believe go toward the credibility and the changes in the report over time, and in the absence of that, I can't vote on it.

CHAIRMAN REYNOLDS: Okay. Commissioner Braceras.

COMMISSIONER BRACERAS: This isn't specifically about this report, but I just wanted to raise, at this time, the issue of reforming the process going forward. And just to note for the record that as Commissioner Yaki said, I did submit to all of you for discussion purposes, a draft of proposed rules for briefing reports that I hope will eliminate many of the concerns that Commissioner Yaki has, and I share many of those concerns. And so, while I realize that we cannot grind our work to a halt while commissioners deliberate on new rules, and come up with a new plan for briefing reports, I would like just to be very clear that this will be the last briefing report that I will vote for until we implement, not necessarily my rules, but a system that hopefully we can get buy-in on from the Democratic members of the Commission, as well. Because I think that's really important to our credibility going
forward, and I think that it's important to have integrity in the process, and have all of the commissioners feel comfortable with that process, whatever it may turn out to be. So I hope that you'll all carefully look at the draft I put together, and we can maybe conference about it; and, ideally, bring it up for debate and vote at the next meeting.

So with that in mind, I'm going to vote for this report because a large amount of work went into it, and I think it's a good report, but it will be the last report I will support until we have some better procedural rules in place.

CHAIRMAN REYNOLDS: Okay. I'd like to --

COMMISSIONER MELENDEZ: This is Commissioner Melendez here.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: Yes. Can you hear me?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: I just wanted to say, I did submit some comments on this report. And I appreciate Jennifer's working on this issue, because it's really overdue and needed. But, again, what I said in my comments was that I believe that we go beyond the testimony, similar to the Native Hawaiians,
where we interjected most of our own opinion about staff, and I think we kind of see that here in this report. So just based on the fact that we don't want to seem biased to either of the presenters at that time, I would hope that we could send in a report to Congress that was basically without findings, similar to what we did before. And, hopefully, they can make up their own minds as to that testimony of all of the presenters, so that's kind of my position until we can actually get a better process in place, so I would concur with Mr. Yaki that the findings are what I'm having trouble with. We don't have the expertise as far as Social Science review in our office, I don't believe, or it hasn't been done, except for Chris Byrnes maybe reviewing this. And I think we go beyond what the people actually testified to, so that's my opinion, and hopefully -- I would vote not to include the findings, so thank you.

CHAIRMAN REYNOLDS: Okay. Well, I'd like to say that -- well, first of all, I'd like to commend the staff. I think that this report is quite good. I think that the staff put in a lot of time, and they came up with a -- the product is good, in my humble opinion. I find it interesting that we are spending this much time talking about our procedures.
So far, no one has identified any fatal flaws with the document.

COMMISSIONER BRACERAS: No, I --

CHAIRMAN REYNOLDS: Well, let me finish. We're talking procedural issues, tactical issues. If we can point to something in the document that is fatally flawed, then I think that we should address it. Hold on, folks, let me finish. I'll get to everyone.

COMMISSIONER YAKI: Don't raise a question that you know I'm going to have an answer to.

CHAIRMAN REYNOLDS: Oh, well, no. I don't mind. I want to have this discussion. The notion that we issue briefing reports without any findings, I don't think that's the way we should go. This is the U.S. Commission on Civil Rights, and it would be a deviation from the role that we have historically played. We are not neutral observers. Sometimes things are right, sometimes things are wrong. This agency, this commission has always had a particular point of view. If you will, it's been biased against say the South's attempt to deny the vote to blacks. It's not unusual for the commission to take a leadership role when it comes to civil rights issues. That's why we're here. This is not a think-tank.
Our job is not to just deliver facts to decision makers. Our job is to influence decision makers, in my view.

This particular document, I think that the findings reflect what was said. I think that the main thrust of the document is that when we look at the literature out there, at best, the benefits are modest in reading. In math, I think that there is a consensus that there is no benefits that have been quantified, so that was the main thrust of the findings. I think those findings are supported by the testimony.

This is not an instance where a particular panelist was singled out. I think that the findings are a -- this is the consensus of all the individuals that participated in the briefing. Modest findings for reading, no benefits in math, and some screwy findings with respect, and in one study showed that segregation, in some instances, helped Hispanics, so the data is all over the place. That's what I took away from the hearing.

Commissioner Braceras.

COMMISSIONER BRACERAS: I agree with you on the merits, that I think that that's what the evidence demonstrates. However, I have to
respectfully disagree with your comment that we're spending too much time discussing process. I think process is extremely --

CHAIRMAN REYNOLDS: Oh, no, no. I don't think I said that. I said I find it interesting that we're focusing on process --

COMMISSIONER BRACERAS: But I think process is critical, because --

CHAIRMAN REYNOLDS: Well, let me rephrase my statement then. I am not -- I think it's a good idea that we're going to have some clear guidelines with respect to our briefing reports, but looking at the merits, looking at this particular document, I don't see --

COMMISSIONER BRACERAS: Under a revised process, it may very well be that we'd come out with the exact same -- well, I think we would come out with the exact same findings and recommendations. However, I think what would be different about it is that the findings would be findings that -- rather than staff findings, I think they'd be commissioner findings. And I think there would be a chance to explore each of the findings at a commissioner level, instead of just voting for the report in and all or nothing format. And this -- it's the same objection I had under the
old regime with Mary Frances Berry, where at that
time, when we were in the minority, we were presented
with reports that had conclusions and recommendations
with which not everyone agreed, and we were asked to
vote up or down on the entire thing, even though there
may be some very good, interesting material in the
report. We, as minority commissioners at the time,
didn't necessarily agree with all the findings and
conclusions. And what we wanted from Mary Frances
Berry, and what we never received, was an opportunity
to deliberate over each of the findings, and have an
opportunity to vote on them individually.

Now under that regime, we still would have
lost those votes. And under this administration, the
Democratic commissioners may still lose particular
votes on particular findings, but I think that if they
had an opportunity to discuss the findings one by one,
and to dissent from each particular finding so that
would give the process greater integrity. That's all.
I'm not saying that the findings would be different,
or that the report is in any way academically flawed,
but I do think the process is extremely important.

Anyway, putting that aside, I'd just
simply like to ask Commissioners Melendez and Yaki if
there's any compromise possible on this document that
would satisfy them, and enable them to vote for it?
Is there anything, short of tanking the whole thing, 
that you would remove from the report? I mean, is 
there some way we can come up --

CHAIRMAN REYNOLDS: Or object to?

COMMISSIONER BRACERAS: Are there sections 
of the report that could be removed, and would then 
satisfy your concerns?

CHAIRMAN REYNOLDS: Well, point of 
clarification. With respect to -- well, I would -- am 
I correct that with our national reports, our 
statutory report, for example, we have the flexibility 
to support particular findings, but not others. Is 
that already in place?

COMMISSIONER BRACERAS: Yes. Right. So 
when the working group on the reform came up with its 
original rules, they were focused on national reports 
because we hadn't, as a commission, yet moved to this 
model. But then when we moved to this model, we found 
ourselves in the position of having to vote on 
findings and recommendations that hadn't been vetted 
in the same way by the commissioners themselves. And 
it's not that I think that the commission should not 
be in the business of making findings and 
recommendations. I think it's fine for us to make
findings and recommendations, but I think that as with other study groups, and even governmental commissions, I think that each finding needs to be considered separately, and there needs to be an opportunity to explain the positions of the majority and minority on each finding.

I think, for example, to the report on Title 9 that was done by you guys at the Department of Education. Right? That was under your leadership. Where the findings were stated, and then underneath it would say something like dissenting commissioners were concerned that blah, blah, blah, blah, so their concern about each finding was listed. There weren't voluminous dissenting statements, but it was broken down in what seemed to be a more procedurally democratic way. That might be a model that we would look to, and that's something that we need to discuss as commissioners, whether that's a model we want to adopt.

CHAIRMAN REYNOLDS: Well, I think we should redouble our efforts to get the procedures in place, and with any luck, vote on it at our next meeting.

COMMISSIONER BRACERAS: Well, that's what I'm trying to do, but in the meantime, I would like to
hear from Commissioners Yaki and Melendez as to whether there are specific paragraphs or things that if removed they could support the report, or would you vote against it anyway?

COMMISSIONER MELENDEZ: Well, I think --

this is Commissioner Melendez. Again, I have problem with a lot of the findings and a lasso citation to some of the Social Science portions of this. And really what that would require would be to delay this until another meeting, and go back over it, and basically see if it's acceptable to delete certain things, even more so; otherwise, I'd have to still vote against the way it is now.

COMMISSIONER BRACERAS: Let me just put it to you this way. If there were no findings and recommendations in this report, would you vote for it?

COMMISSIONER MELENDEZ: If there were no findings, yes.

COMMISSIONER BRACERAS: Yes. Commissioner Yaki?

COMMISSIONER YAKI: Well, let me just talk just a little bit about procedure. I am somewhat disturbed. And, again, this has nothing to do with the qualifications of Mr. Byrnes, who I think does a fine job, but this was, in many ways, an exercise in
understanding the Social Science research of this. It is my understanding that we have Social Science people in OCRE, and my first question is, did they review the bibliography and literature to determine whether or not some of the conclusions made about the literature, or characterization of the literature were accurate or not?

STAFF DIRECTOR MARCUS: In making the assignments, I think that we had the luxury of having on staff someone who is particularly expert in educational civil rights policy, and who had an unusual amount of expertise dealing with policies regarding diversity in education, and that's Mr. Byrnes. You may be aware that he joined us from the Office for Civil Rights at the Department of Education, where a large percentage of his work dealt with looking at issues of diversity in education. So he is, I think, a person who has an unusually strong background in the subject.

He was joined in this work for parts of it by an analyst that we had on detail from HUD. We did not have anyone --

COMMISSIONER YAKI: Is she an analyst or an attorney?

STAFF DIRECTOR MARCUS: Pardon?
COMMISSIONER YAKI: Was she an analyst or an attorney from HUD?

STAFF DIRECTOR MARCUS: She was not an attorney. I don't recall her exact personnel designation, but she was some form of analyst.

COMMISSIONER YAKI: And what kind of training did she have?

STAFF DIRECTOR MARCUS: Her background is in the Office of Fair Housing and Equal Opportunity dealing with fair housing issues at HUD. We did not have precisely the sort of exercise that you described, but we did have a review of at least some of the findings by OCRE, just where it appeared that some technical guidance would be necessary. It's a kind of a reality check.

COMMISSIONER YAKI: But the basic answer is no.

STAFF DIRECTOR MARCUS: I don't think that's the basic answer. The basic answer is what I just gave.

COMMISSIONER YAKI: No, I think the basic answer is that OCRE's Social Scientist did not play a significant role in reviewing whether or not the characterizations of the Social Science research and the bibliography, as characterized in the findings,
were accurate or not.

STAFF DIRECTOR MARCUS: They played only a supporting role in the findings. That's right.

COMMISSIONER YAKI: Thank you. The reason I'm bringing that up is that, like I said, I have great fondness and appreciation for the comments of Commissioner Braceras, and if you were to ask me, I would say that, to me, the significant flaw, fatal flaw of this document is in tone, and in characterization. When you start with Finding One, first sentence, "There's little academic consensus", that sentence in -- that phrase, in and of itself, I believe, is misleading. You had in the testimony from Professor Kurlaender and Attorney Coleman that they believed there was broad consensus on the idea that there were educational benefits.

Now part of this definitional issue that we have, as the Chair said, the Chair keeps on talking about math, but the educational benefit, the educational experience in the American primary school system, and its impact on secondary and post-secondary goes far beyond simply whether or not it's a math score, or the English score.

I like, for example, the points brought up about should there be differential research on
economics, and some of the other areas? I think those are good questions to pose. I think those are the kinds of things that briefing reports should look at to say, everyone seems to be focusing on these two factors, but there are other differentials that we should look at to see what kind of impact there is on that. I like that.

What I don't like, though, is the idea that you say there's little academic consensus, where there is clearly two people saying there is, two people there are not --

COMMISSIONER BRACERAS: Why don't we just say the evidence is mixed?

COMMISSIONER YAKI: The evidence is -- I would say we would simply characterize the panel as they said it, which is that two of them believe there was broad academic consensus, and cite who it was they believe constitutes that broad consensus, and the two said there wasn't, cite the one or two studies, which I know that they were doing, to say that there wasn't. That, to me, is how these findings should be done. So, number one, as it starts off, is just completely off the chart.

I could go --

CHAIRMAN REYNOLDS: Well, before you go on
COMMISSIONER YAKI: Well, you asked me for my response.

CHAIRMAN REYNOLDS: Oh, no. Oh, no, no, no. And I want you to continue, but before you do, since my memory isn't what it should be, I would like to respond to the first bullet point. I mean, we have to sit in judgment of the evidence that's put before us, and to judge the credibility of the panelists, and the evidence. And we, at times, will come to different conclusions, and I think that that's all right. But in terms of the academic piece of this, I don't think - at least I don't recall any panelist stating that there were significant academic benefits to diversity.

Now to put it in context, I mean, the issue before the court - okay --

COMMISSIONER YAKI: Did you say academic?

What did you -- rephrase that.

CHAIRMAN REYNOLDS: Academic benefits? I said that, no, I don't recall any of the panelists stating that there was significant academic educational benefits to diverse settings in schools.

Now the background, though, is a court case. The court is going to need a compelling state interest.
Now if we're saying that on the one hand we have to meet the strict scrutiny standard, and on the other, at best, what we have in one subject area is modest educational improvement, and even that is mixed. The high-performing black students, they seem to benefit; whereas, the low-performing black students do not. That's what the court is going to look at, and so when I discuss this issue --

COMMISSIONER YAKI: Is that a mixed result, or is that a differential result? In other words, you have a clear measure of higher performance in one category, and not in another. Now is that mixed, or is that a differential?

CHAIRMAN REYNOLDS: In that particular case, it's mixed. Overall, I believe all of the Social Scientists on the panel said that with respect to math, nothing; with respect to reading, it's modest. I believe the best we can do is two points.

COMMISSIONER BRACERAS: I mean, just with respect to this first sentence, the word "consensus" means agreement. The fact that we're even having this discussion proves the validity of the sentence, that there is little academic agreement. I mean, if some people think that are benefits to racial and ethnic diversity, and some people think that there are not
benefits, then there's no consensus.

COMMISSIONER YAKI: Well, I would disagree with that, Commissioner Braceras, because if you and I were to say based on, let's say Panelist A and Panelist B. Panelist A said there was consensus, Panelist B said there's no consensus, and you --

COMMISSIONER BRACERAS: And if they don't agree, there's no consensus.

COMMISSIONER YAKI: Well, that may be, except that Panelist B is talking about two reports, and Panelist A is talking about 125. I mean, to me, that is part of the methodological and open scholarship --

COMMISSIONER BRACERAS: But that's still not a consensus. It could be 99 to 1, and that's not a consensus, that's a majority viewpoint.

COMMISSIONER YAKI: Well, in that case --

COMMISSIONER BRACERAS: You wouldn't call it a consensus.

COMMISSIONER YAKI: In that case, then we should rephrase it to -- instead of using the weak phrase, "There's little academic consensus", we could, instead, say that the majority of academic reports support blankity-blank, versus us taking it back --

COMMISSIONER BRACERAS: Or we could just
say the evidence is mixed.

COMMISSIONER YAKI: -- and saying mixed.

COMMISSIONER BRACERAS: The evidence is mixed.

COMMISSIONER YAKI: But see, that's what I don't believe that the evidence is as mixed as you say it is. When I look at the bibliographies, and I see who it is that's saying no, and who it is that's saying yes, it's one thing to say there's 25 reports here, and 25 reports here. There's nothing to say there's 25 different reports by different authors in different studies over here, versus 25 of the same people jinnying up the same thing over and over again.

CHAIRMAN REYNOLDS: Are you backing out the flawed studies? I mean, the two panelists who were most expert in this area both agreed, there was consensus, that most of the studies had fatal methodological flaws. There are not many studies out there, there are not many sound studies out there on this particular issue, so when you talk about 25 studies here, are you including the flawed ones?

COMMISSIONER YAKI: No, I'm talking about the fact that when I received one of the big globs of backup material that we got from -- very late in the game that would support the -- that would go toward
supporting the findings in this document, and then I started looking at it more closely, it looked to me like complete rehashes by the same people over and over again, versus a much more distinct, varied, and broad-based set of studies on the other side. And that, to me, is --

COMMISSIONER BRACERAS: Yes, but can I just say one thing? I'm genuinely trying to sort of strike out a compromise, and if that means going over these findings one by one, and rewording them in a way that you think has a more neutral tone, then I'm willing to do that. But it seems from Commissioner Yaki's most recent statement that that may not solve the problem, because it seems like what you're really concerned about is not necessarily whether the language of these findings is neutral, but rather, the underlying studies. I mean, it seems, in other words, that you're not willing to acknowledge, for example, that the evidence is mixed. You don't like a certain set of studies, so you don't want to acknowledge them at all.

COMMISSIONER YAKI: No, I would say -- I would characterize it -- let me just put it to you another way. I am not a Social Scientist, I'm a lawyer, I'm a politician. I acknowledge that, that's
who I am. We have staff here who are Social Scientists, who can look at the data, arrange it in such a way and say these studies tend to favor these, these are the kinds of things these studies looked at. There really was very little variation in what these studies were saying over and over again, versus the kinds of data that these people were going. I would say in that case, there seems to be a greater range of research supporting this on this side, a narrower range of research on the other side, and just leave it at that. I wouldn't say it's mixed. If you want to say it's mixed at that point, yes, but as long as you accurately characterize what it is within Column A or Column B. And, quite frankly, I don't think that I am functionally competent to do that in the document as it's here right now.

Part of the reason why I wanted Chris here was to sort of ask him some of the questions about where some of these things came from, to help me understand better what he relied on, and what he didn't rely upon. But if you want to go one thing, which I think is completely off the chart, is Recommendation 17, which just pops out of nowhere from anything that I can think of.

CHAIRMAN REYNOLDS: Which page is that on?
COMMISSIONER YAKI: 20. And just to finish, because I think that this is -- I just have one final statement to make.

COMMISSIONER BRACERAS: Yes, I see.

COMMISSIONER YAKI: And that is, I just find -- the difficulty I have with briefing reports, and I was a big fan of the briefing report. It was a means of dealing with issues with a lack of resources. We do findings and recommendations on the national report. We do findings and recommendations on the big hearings that we do. Briefings in the original context, and I was a big supporter, was to get issues on the table, hear about them, get it out so that we could react quickly to what was going on. I understand what the Chairman says about having a point of view. Of course, we have a point of view, and the commission is charged with having a point of view. But to take a three-hour hearing with limited panelists on short timetables with limited staff, and then task that staff with going through 85, 90 different studies, and not even ask our OCRE folks, who have Social Science degrees and are called Social Scientists, to take a look at it, as well, and provide feedback back, I think is a methodological and fundamental flaw, weakness of the entire document. I
cannot support this document. I'm not going to --

COMMISSIONER BRACERAS: In any form.

COMMISSIONER YAKI: I'm not going to sit
here and try to improve it any way, other than to say
I think that for the benefit of the credibility of
those of you who are going to be voting on it, Number
17 just really sticks out there as -- well, let me
just throw --

COMMISSIONER BRACERAS: I agree with you.

COMMISSIONER YAKI: -- a bias out there
real far.

COMMISSIONER BRACERAS: I agree with you,
I think it should be removed.

COMMISSIONER YAKI: So, in other words, I
don't want to take up more of the commission's time.

CHAIRMAN REYNOLDS: No, I understand that.

COMMISSIONER YAKI: I think there is a
fundamental methodological and analytical weakness of
this document. I think that the findings
mischaracterize and do not do justice to the kinds of
opinions and studies that are out there. If we're
going to do this kind of work, it should be done in a
much deeper, broader, and more coherent point of view
that uses our Social Scientists at OCRE, and I cannot
support this report.
COMMISSIONER BRACERAS: But the whole point of the testimony, as I understand it, was that these people were brought in, these experts we brought in were Social Scientists who said that the Social Science data out there is both unreliable, and a mixed result, so how would we expect our staff of Social Scientists, who, while they might be well-trained, are not the experts that we brought in before us, to make sense of data that even they are saying they cannot make sense of?

COMMISSIONER YAKI: Well, just in response, Mr. Chair, and thank you for indulging this colloquy. In that case, we shouldn't have a report chock-full of references to studies that were not discussed in full by any of the panelists, because --

CHAIRMAN REYNOLDS: Well, then we can't have any briefing reports -- I mean, the standard that you just set forth --

COMMISSIONER YAKI: The standard I set forth is more like what I'm used to, which is a hearing report, which is people come, they give testimony, they have other stuff that's in there.

CHAIRMAN REYNOLDS: You want to dissect the report and any statement in there has to be traced back to not only a particular document, but we have to
explore the whole body of literature to see where that particular statement, how it sits --

COMMISSIONER BRACERAS: No, the opposite.

COMMISSIONER YAKI: No, no, no. If we --

COMMISSIONER BRACERAS: I think he's saying the opposite.

COMMISSIONER YAKI: If we are using statements that were not spoken of on the record, if we are using source data that was only alluded to by panelists - and if you look at the findings, they're like multiple, multiple, multiple, multiple citations for this and that; although, of course, there's no citation for the widely cited 1984 review of research in the second sentence.

CHAIRMAN REYNOLDS: In the Cook Report?

COMMISSIONER YAKI: Well, we're not citing it. Anyway, the --

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: I --

COMMISSIONER YAKI: I mean --

CHAIRMAN REYNOLDS: You know, just -- I find this beneficial because it's causing me to think about the role of the findings and who owns the findings. Is it the panelists who come before us? Is our job merely to regurgitate what they have said, and
if they haven't said it, offer no opinion on a particular topic. I have a different point of view.

    I think that the commissioners are here to exercise their judgment, to gather information, to cogitate, to think about it, to draw their own conclusions.

COMMISSIONER BRACERAS: But Commissioner Yaki is right that there was, at some point in time, conceptually, at least, a difference between hearings and briefings, and hearing reports and briefing reports, and the whole notion was that hearings, we would hear from all of the witnesses, and there would be probably more than one panel of witnesses, but then our own staff would get involved in doing their own research, be it legal analysis, or Social Science research. Whereas, a briefing was meant to be just that, bringing together people of different perspectives to give us their views, and for us to synthesize those views for the public, but not necessarily go back and do our own exhaustive research.

CHAIRMAN REYNOLDS: Changed.

COMMISSIONER BRACERAS: Huh?

CHAIRMAN REYNOLDS: That changed.

COMMISSIONER BRACERAS: Well, I don't know
if I agree with that part, but the point is that there were supposed to be two different vehicles for us to be relevant in the civil rights debates that are happening, and the line between hearings and briefings seems to have become blurred. And I think that's where a lot of the objections we're hearing from Commissioners Melendez and Yaki are resonating with me, because it is procedurally confusing.

CHAIRMAN REYNOLDS: Well, I agree that we need to get our arms around the procedural issues, and I think that the document that you put together is a good starting point. And I don't see any reason why - -well, we have some holidays coming up, but I'm hopeful that we will be able to have a serious discussion, and hopefully vote on these new procedures at the next meeting. So I don't think there's any push-back in terms of the need to formalize our rules in terms of briefings.

COMMISSIONER BRACERAS: No, no. I understand that. I mean, with respect to this report, I think it would be a useful exercise; and, frankly, I think it's something we should do all the time, to go over -- to take each finding and recommendation and discuss them. And I know we're not going to get agreement from Commissioners Melendez and Yaki on a
majority of them, but if there are some that are particularly either inaccurate or biased, then I would like to strike them for the integrity of the report.

CHAIRMAN REYNOLDS: There's nothing to stop us from discussing any aspect of this briefing report, whether it's the findings, or --

COMMISSIONER BRACERAS: All right. So let's do that right now.

CHAIRMAN REYNOLDS: Okay. Thank you for your patience, Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Just a couple of quick statements on the record. I concur with Commissioner Braceras, and I'm also sensitive to the procedure questions that have been raised by Commissioner Yaki. Just a couple of observations with respect to some specific aspects of it.

With respect to the point of the Social Scientists and who's considering the data, analyzing the data, it's my understanding from what the Staff Director said, that perhaps the person most suitable on staff to do that was, in fact, Chris Byrnes. Maybe it would have been helpful to run it by Social Scientists, also, but my understanding was that in the allocation of resources, Chris Byrnes was probably the individual who could do it the most efficiently, and
with the greatest amount of background.

Second, I would prefer a process similar
to what was described by Commissioner Braceras, and
that is that the statutory reports, of course, would
have much more guts to them, been vetted a number of
times, and could yield findings and recommendations;
whereas, briefing reports, as Commissioner Yaki
indicated, would probably consist of the facts
gathered, maybe with some summarization or synthesis
of those facts gathered, and put it out into the
public domain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow,
let me ask you; would the commission be within its
authority, would it be proper if there were some civil
rights event for us to issue a statement condemning --

COMMISSIONER KIRSANOW: No, I agree with
you on that. I think we don't sit simply as kind of
solons that kind of throw things up and let them fall
where they may. I think we do come to conclusions,
and we have -- that's part of our charter. But my
point goes to process, and I think having reviewed
Commissioner Braceras' emails that she had sent
around, I think that we're going to be going a long
way toward establishing a process that I think
everybody can sign on to.
A couple of other quick observations, and these are just very minor. With respect to findings and Recommendation 1, maybe I would have phrased it a little bit differently, but that was probably, in my estimation, the most accurate finding. I recall that we spent a good portion of time cross examining, for no other better term, the witnesses as to specific aspects of the purported educational benefits yielded by diversity. Not only did we go through the Grutter standards of whether or not it promoted cross-cultural understanding, eliminated stereotypes, prepared students for a global marketplace, those that were cited by Grutter, but we went through specific academic disciplines to determine whether or not the extant data yielded any benefits. We asked them, given that they are the experts in the area, please cite for us the data that supports, or literature that supports a finding of benefit, if there is any.

I recall specifically what those findings were, and we can go through the transcript. There was a marginal increase in spelling scores, there was a disputed report with respect to an improvement in geography, there was a disputed report as to improvements in attendance and tardiness, or overall discipline, virtually every - and this includes
Kurlaender, Coleman, Thernstrom, and Armor. Armor was, perhaps, the most knowledgeable. If there was a consensus, the consensus was there was hardly anything out there to support benefits. Later we received literature from, I believe it was Professor Kurlaender, which I went through in great detail, which purported to be literature in support of possible benefits in K-12, solely by virtue of diversity. That literature was, at best, at very, very best, yielding the most liberal interpretation mixed, and more likely than not saying nothing, simply coming up with conclusions that well, diversity is intuitively considered a good thing, but can't point to any particular standards whereby there have been objective measurements that show that there are either hard facts supporting improvements in academic scores, or the Grutter standards, the kind of soft standards of - and I don't even know how you measure these - promoting cross-cultural understanding were improved, so with respect to number 1.

Now going to another one, Commissioner Yaki's point with respect to 17, I agree with that entirely. If it were up to me, I would vote to excise that. And the reason I would is, I think we can come to conclusions like that. I think we have the
authority to do it. I think it's wise to avoid doing that, because I think it tends -- I think we go beyond really standing in judgment, to the point where we go make another leap beyond judgment, and even maybe beyond advocacy, to coming to conclusions. It's a very conclusory statement, but more important is, it is consistent with what - and maybe Jennifer Braceras and I, the old timers here - had been faced with during the previous regime, these kind of conclusions.

COMMISSIONER BRACERAS: Battered Commissioners' Syndrome.

COMMISSIONER KIRSANOW: Right.

COMMISSIONER BRACERAS: I can't help it.

COMMISSIONER KIRSANOW: I think we have to eliminate that one, even if we could somehow argue that the data there supports it, I don't know that it does, I think that's really a matter of opinion.

CHAIRMAN REYNOLDS: Okay. Now on 17 -- actually, I like 17, but I have no objections to --

COMMISSIONER KIRSANOW: Can I just say, I agree with 17, but for the purpose of this commission and its integrity, the fact of the matter is, I think it is wise for us to avoid certain types of statements, even if we could make reasonable arguments in support thereof.
CHAIRMAN REYNOLDS: Isn't there a moral, an ethical cost associated with distributing benefits, at least here in America --

CHAIRMAN REYNOLDS: I agree.

COMMISSIONER KIRSANOW: -- benefits and burdens on the base of risk. Isn't there an ethical and a moral --

COMMISSIONER BRACERAS: We can have that discussion, but I think -- let's just not -- I mean, it seems like the majority of the commissioners don't want number 17 in there. It's not that I disagree with you on the merits.

CHAIRMAN REYNOLDS: Well, no, I think --

COMMISSIONER BRACERAS: Let's just get rid of it and move on.

CHAIRMAN REYNOLDS: Well, I think that we're in agreement that 17 goes, but I think it's --

COMMISSIONER BRACERAS: You want to have the philosophical discussion, and we could do that at lunch.

CHAIRMAN REYNOLDS: Well, no. I think that it's an important issue.

COMMISSIONER BRACERAS: Well, there are lots of important issues, but we have an agenda, so if the majority of the commissioners don't support number
17, let's strike it and discuss the philosophy later.

CHAIRMAN REYNOLDS: Well, there's the discussion piece of the meeting here. This is the first time since we started the discussion of this briefing where we wanted to cut off discussion.

COMMISSIONER BRACERAS: No, I'm not saying that. I'm just saying that the moral and philosophical question is one that could be debated from here to eternity, and we --

CHAIRMAN REYNOLDS: No, I disagree. I think that the issue is settled in America, at least, amongst most Americans, that it is, at a minimum, unethical.

COMMISSIONER KIRSANOW: I would say this.

COMMISSIONER BRACERAS: Let's just deal with the report.

COMMISSIONER KIRSANOW: My recollection is that Item 17 actually encapsulates something that Professor Thernstrom said in his testimony.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER KIRSANOW: I don't know that -- I would prefer not to have it in there, but I think that it is, at least, supportable on the basis of something that someone had made a statement, somebody made a conclusion that an expert had come to based on
a considered analysis and a longstanding, I mean, 30
years analysis of the purported benefits of diversity,
and also assigning students or others on the basis of
race.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: That's fine, but -
-

CHAIRMAN REYNOLDS: So I would like to -
somebody tell me the procedure - move to amend the
document so that this particular finding is deleted.

COMMISSIONER KIRSANOW: May I make a
recommendation?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER KIRSANOW: I agree with
Commissioner Braceras. I don't think Commissioner
Yaki - he's already indicated he's not going to sign
onto the document, but for - I think there is an
institutional imperative for us to go through each one
of those and say yea or nay.

COMMISSIONER BRACERAS: Yes, I do. And I
think we should do that every time.

COMMISSIONER TAYLOR: And I would -- let
me add to that, because I think it will improve our
work product. Despite the fact that Commissioner Yaki
and Melendez may not be inclined to support the
document, I think it's helpful for purposes of improving the document to hear their criticism on each particular point, because I think it will help us in terms of our deliberative process. And we may want to tweak some language in response to the criticism, so I just encourage those two to participate.

CHAIRMAN REYNOLDS: And Commissioner Yaki's strong arguments from time to time persuade me that I am wrong.

COMMISSIONER YAKI: They should.

COMMISSIONER BRACERAS: So I think we should go over it, and then vote on the revised thing at the end.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: So number one, can I make a proposal?

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER BRACERAS: I would propose that we delete the first sentence, and instead say, "The academic literature on the effect of racial and ethnic diversity in elementary and secondary education is mixed." Leave the rest of it as it is.

CHAIRMAN REYNOLDS: Well, I think it would be more accurate to say that there is very little academic literature to support the notion that
diversity improves academic performance. When Commissioner Kirsanow went down the line, it was a long laundry list of subjects, and the response for most of them, the overwhelming majority was no, there is no evidence to support it. So to say that the evidence is mixed, I think is not --

COMMISSIONER BRACERAS: Well, there are studies. It's just that we believe, and the panelists believe that many of them are flawed. There are studies.

COMMISSIONER TAYLOR: Mr. Chairman, I just have a question. Are you distinguishing in your own mind between academic evidence and educational benefits?

CHAIRMAN REYNOLDS: I'm thinking test scores improved, academics.

COMMISSIONER TAYLOR: That's what I'm -- so are you using the two terms interchangeably?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER TAYLOR: My sense was that the -- the way I heard the evidence come out, there seemed to be more evidence on the soft side, which I put in the category of educational benefits, which I have a difficult time getting my arms around, versus the harder academic aspects, the test scores, things -
- I mean, just those tangible things. And I didn't know if you were using the two interchangeably.

CHAIRMAN REYNOLDS: Well, when I say academic or educational, I'm referring, basically, to subject matters like spelling, Social Studies, math.

COMMISSIONER TAYLOR: Things you can test, versus cultural efficiency.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: So how --

COMMISSIONER KIRSANOW: As we all know, as I think everybody here is a lawyer, there's a difference between evidence and opinion. And the evidence that was adduced during the hearing didn't even yield any standards with respect to the soft characteristics. They were simply conclusory statements made, and then when you go through the empirical - if you go through the literature, there's nothing there. In fact, if I have any flaw with number one, I wouldn't even say there was a consensus - there's little academic consensus on whether it results in significant education benefits. There's almost a consensus that it doesn't.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: So you don't want to use the word "mixed". You want something stronger.
CHAIRMAN REYNOLDS: I think that -- actually, when I look at this, I think that this was -- well, this could have been even harder. I think that there is very little evidence to support the notion that diversity raises test scores. And if we take a step back and just look at where is all this achievement taking place, when we look at school districts -- well, you pick the city where they have mixed classes, so you have the academic literature, you have the NAEP data, whatever benefits that are being generated by diverse classrooms, those benefits are modest.

COMMISSIONER BRACERAS: Okay. So what's your proposed edit?

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: Come up with something concrete.

CHAIRMAN REYNOLDS: There is little evidence to support that racial and ethnic diversity results in improved academic performance.

COMMISSIONER BRACERAS: There is little - say it again - little academic --

CHAIRMAN REYNOLDS: There's little evidence.

COMMISSIONER BRACERAS: There's little
evidence.

CHAIRMAN REYNOLDS: That racial and ethnic diversity results in improved academic performance. Yes, increased reading level by two to six weeks, I mean --

COMMISSIONER BRACERAS: All right. Let's just --

CHAIRMAN REYNOLDS: Okay. All right. I'm trying.

COMMISSIONER BRACERAS: So there is little evidence that racial and ethnic diversity in elementary and secondary schools --

CHAIRMAN REYNOLDS: Results in improved --

COMMISSIONER BRACERAS: -- results in improved academic performance.

CHAIRMAN REYNOLDS: Right.

COMMISSIONER TAYLOR: I would strike the word "any", and keep the word "significant", so that it reads results in significant --

CHAIRMAN REYNOLDS: Yes, that's better. That's more accurate.

COMMISSIONER BRACERAS: Okay. There is little evidence that racial and ethnic diversity in elementary and secondary schools results --
COMMISSIONER TAYLOR: In significant academic.

COMMISSIONER BRACERAS: -- in significant academic performance.

COMMISSIONER TAYLOR: Right.

COMMISSIONER BRACERAS: Wait, significant --

CHAIRMAN REYNOLDS: Improvements in academic performance.

COMMISSIONER BRACERAS: Significant improvements in academic performance. Does everybody agree with that?

COMMISSIONER KIRSANOW: Yes.

COMMISSIONER BRACERAS: Or is there majority support for that sentence? There is little evidence that racial and ethnic diversity in elementary and secondary schools results in significant improvement in academic performance. That's the new first sentence of number 1.

CHAIRMAN REYNOLDS: Does that get your support?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: No, it seems pretty much the same as what we had before.
CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: All right. Number 2, does anybody have any concerns, or proposed language changes?

COMMISSIONER KIRSANOW: I don't.

COMMISSIONER BRACERAS: I have none.

CHAIRMAN REYNOLDS: Let's go to number 3.

COMMISSIONER BRACERAS: I have no comments on number 3.

CHAIRMAN REYNOLDS: Neither do I.

COMMISSIONER KIRSANOW: Neither do I. But I just want to interject, so far in the first three in going through this, I just want to relay to Chris Byrnes that I think he has digested accurately and truthfully what was represented at the hearing.

COMMISSIONER YAKI: I disagree.

COMMISSIONER BRACERAS: One small point on 3.

CHAIRMAN REYNOLDS: Steven?

COMMISSIONER BRACERAS: Yes. That's supposed to be Thernstrom. Right? Not Steven.

CHAIRMAN REYNOLDS: He was probably calling him up at the time.

COMMISSIONER BRACERAS: Oh, okay. I didn't know who he was referring to.
CHAIRMAN REYNOLDS: I was going to make the same comment.

COMMISSIONER BRACERAS: So maybe a last name should -- a first or last name should be --

CHAIRMAN REYNOLDS: I assume this is a last name.

STAFF DIRECTOR MARCUS: I believe it's reference to Professor Walter G. Stephan.

COMMISSIONER BRACERAS: Can we say Walter G. Stephan?

CHAIRMAN REYNOLDS: Or Professor Stephan.

COMMISSIONER BRACERAS: It's just a little confusing, since the panelist was Steven Thernstrom, Steven spelled that way. I don't know. Maybe it's not a big deal.

COMMISSIONER KIRSANOW: I agree with Commissioner Braceras because in findings and recommendations, there's no previous reference to Professor Stephan, so it would be confusing as to --

COMMISSIONER BRACERAS: I know. I know that's the way Social Scientists do it, though.

STAFF DIRECTOR MARCUS: We tried to follow the usual form, and in future findings we also refer to a number of Social Scientists by last name.

COMMISSIONER BRACERAS: Yes.
COMMISSIONER KIRSANOW: Let's remain uniform, at least.

COMMISSIONER BRACERAS: Let's just keep it as it is.


COMMISSIONER YAKI: Wait. I just want to make an objection on number three.

COMMISSIONER BRACERAS: Yes.

COMMISSIONER YAKI: And cite studies by Braddock, Crane, McPartland, Dawkins, Eric Fulcher, Hallanan, Hawley, Schofield, Ward, Slavin, Sandleitner, Woods, and Amy Wells as being to the contrary.

COMMISSIONER BRACERAS: So --

COMMISSIONER KIRSANOW: Contrary to what?

COMMISSIONER YAKI: The idea that their --

COMMISSIONER BRACERAS: It says mixed results.

COMMISSIONER YAKI: Right.

COMMISSIONER BRACERAS: So those studies --

COMMISSIONER YAKI: I don't think they're mixed. I don't think that what we heard had anything to do with being mixed. I thought that what I heard...
from Thernstrom and Armor was much more on the academic achievement side, and much less contradiction of Professor Kurlaender's points of view. And I think that the bibliographies that are out there tend to support that, so I object. But, whatever. Let's keep it going.

COMMISSIONER BRACERAS: What if we deleted the second paragraph of number 3, instead of bringing in the examples, just sort of plucking out the studies that we want to highlight, and just leave the first paragraph as it is, which just says there are varied results, and mixed results.

CHAIRMAN REYNOLDS: Would you support that finding?

COMMISSIONER BRACERAS: And not pluck out the examples that we like.

COMMISSIONER YAKI: And, by the way, the things I'm looking at, which come from the David Armor bibliography, were all post 1978.

COMMISSIONER TAYLOR: I think if you took out the second paragraph it would be --

COMMISSIONER BRACERAS: All right. I move that we strike the second paragraph in number 3.

COMMISSIONER TAYLOR: Second.

COMMISSIONER MELENDEZ: This is
Commissioner Melendez. Hello?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: I have in my recommendation that I sent in, that was it possible to consolidate finding 3-5. We got 20, I was wondering is there any consolidate any of these?

CHAIRMAN REYNOLDS: Would you support the document with that change?

COMMISSIONER MELENDEZ: Well, that's just one component. I don't know if this is -- I'm trying to take my comments line by line right now.

CHAIRMAN REYNOLDS: Well, I guess I'm trying to see -- I mean, we're changing the document and we're trying to accommodate some of the concerns of Commissioners Melendez and Yaki, and I'm just trying to see if that's going to be enough to get support. And if not, then --

COMMISSIONER YAKI: Well, I think you can pretty much count on the fact I'm not going to support this document. The fact you're going through this exercise is, I think, nice.

COMMISSIONER BRACERAS: I think we still need to do it.

COMMISSIONER YAKI: You're working on your own dime now, Mr. Chairman.
COMMISSIONER BRACERAS:  It needs to be done. I just --

CHAIRMAN REYNOLDS:  Okay.

COMMISSIONER BRACERAS:  We could not have a regime where we have to vote up and down --

CHAIRMAN REYNOLDS:  Okay.

COMMISSIONER BRACERAS:  -- on serious findings and recommendations without going through them as a commission.

CHAIRMAN REYNOLDS:  Okay.

COMMISSIONER BRACERAS:  Otherwise, we're just a rubber stamp for the staff.

CHAIRMAN REYNOLDS:  I mean, there's no disagreement. We are already doing what you have suggested.

COMMISSIONER BRACERAS:  All right. So we're striking the second paragraph of number 3.

CHAIRMAN REYNOLDS:  Okay. That's fine.

COMMISSIONER BRACERAS:  I want to kind of piggyback on what Commissioner Melendez just said about some of the subsequent findings, seeming a little drawn out, and maybe recommending a consolidation.

CHAIRMAN REYNOLDS:  So we strike the second paragraph of 3.
COMMISSIONER BRACERAS: Well, I mean, it seems that 4, 5, and 6 are not really findings, but just summaries. They're summaries of studies, they're not findings.

CHAIRMAN REYNOLDS: I think a piece of 4 is a finding, and the discussion about the mythological weaknesses.

COMMISSIONER BRACERAS: Yes, that is a finding. No, 4 is a finding, but 5 and 6 are not findings, they're summaries of research.

CHAIRMAN REYNOLDS: This is probably something more appropriate in the body of the document.

COMMISSIONER YAKI: 5 and 6 is really what I wanted to talk to Chris about.

COMMISSIONER BRACERAS: I would strike 5 and 6, to be honest with you.

COMMISSIONER TAYLOR: Is the first sentence in 5, is that accurate, or is that misleading?

CHAIRMAN REYNOLDS: Why would you suspect that that's --

COMMISSIONER TAYLOR: Well, if we're striking it, to me, the first sentence seems to be an important finding.
COMMISSIONER BRACERAS: Some ongoing research, including several longitudinal studies --

COMMISSIONER TAYLOR: Yes, those are -- if we think that is where the research is really going, I think that's an important point. I don't need the examples afterward.

COMMISSIONER BRACERAS: Right. I mean, the examples are something that should be either in a footnote, or --

COMMISSIONER TAYLOR: Yes, they should be in a footnote.

COMMISSIONER BRACERAS: They're not findings.

CHAIRMAN REYNOLDS: Okay. So what I am hearing is keep the first sentence of finding 5, and either delete or drop the remaining information in a footnote.

COMMISSIONER KIRSANOW: Drop it in a footnote. I think the information is useful, and then anyone who is interested in the finding can refer to the footnote, and then go to the original source material.

COMMISSIONER BRACERAS: So 5 and 6 would go into a footnote?

COMMISSIONER KIRSANOW: I think that's
right. Keep the first sentence of 5, and the balance of 5, and all of 6 would be a footnote, probably to the finding, although, I prefer it to be in the text somewhere, at the appropriate place in the text.

COMMISSIONER BRACERAS: Well, there is no appropriate -- see, here's the other thing, there is no appropriate place because there's no commission opinion, as it were. Right? There's a summary of what the panelists said and what the discussion was like, and then there's the panelists' papers, but there's no place in these documents, other than the findings and recommendations, where we offer our own views.

COMMISSIONER KIRSANOW: Then let's put it in a footnote.

COMMISSIONER BRACERAS: So I think it should in a footnote, but I also think the first sentence needs to be tweaked a little bit. "Raise questions about" is a little vague. I would just say some ongoing research, including blah, blah, blah, suggests that - whatever it suggests. And then there's a footnote. Right?

COMMISSIONER YAKI: I would just like to point out from a scholarship point of view that neither of these papers has actually been published
yet under the first two by Fulker, and Ladd, and Cooley, at least according to the bibliography, one was a paper presented at a research conference, the other one is an unpublished manuscript, so we do not know whether or not, what kind of peer review its gone through before it has entered the academic mainstream.

I just thought I'd point that out.

COMMISSIONER BRACERAS: I would be fine striking it all together, to be honest with you.

CHAIRMAN REYNOLDS: I'm comfortable.

COMMISSIONER TAYLOR: I have no strong feelings about it. It's more of a question than anything else.

COMMISSIONER BRACERAS: I mean, it's interesting, but it's not critical to the rest of --

CHAIRMAN REYNOLDS: Let's drop it.


CHAIRMAN REYNOLDS: So we're at 7.

COMMISSIONER TAYLOR: I'm sorry. How did we handle 4?

COMMISSIONER BRACERAS: We're leaving it, as is.

COMMISSIONER TAYLOR: Okay. Let's go to number 7.
CHAIRMAN REYNOLDS: 6 you mean, 7.

COMMISSIONER BRACERAS: 5 and 6 have been stricken, struck, eliminated.

CHAIRMAN REYNOLDS: Struck.

CHAIRMAN REYNOLDS: 7 makes a different point. The piece that discusses controlling for socio economic status.

COMMISSIONER BRACERAS: I think it's fine.

CHAIRMAN REYNOLDS: 8. I like 8.

COMMISSIONER KIRSANOW: That's consistent with the questions that we posed to them.

COMMISSIONER BRACERAS: I'm interested in the relationship that racial and ethnic diversity has on people's performance in shop class.

COMMISSIONER KIRSANOW: Penmanship. Mine was penmanship. I acknowledge that these questions, that they are kind of silly, but I thought, you know, no more silly than trying to come up with measurable differences in performance between students who are in a diverse setting, and those who are not, with respect to whether or not it promotes cross-cultural understanding, or there is an improvement in the --

COMMISSIONER BRACERAS: Yes, yes.

COMMISSIONER KIRSANOW: -- global marketplace. How do you measure those things?
COMMISSIONER BRACERAS: Do people still take home ec?

COMMISSIONER KIRSANOW: Yes, they do. What I did is, when I posed those questions, I went through the --

COMMISSIONER YAKI: That's one of his teaching assignments. Right?

COMMISSIONER KIRSANOW: I went through report cards that you might find through K-12, and I just --

COMMISSIONER BRACERAS: Oh, okay.

COMMISSIONER KIRSANOW: -- pulled out every single one and said give it to me.

COMMISSIONER BRACERAS: All right. Well, I think 8 is fine.

CHAIRMAN REYNOLDS: 9.

COMMISSIONER KIRSANOW: That's not consistent with what Professor Armor said.

COMMISSIONER YAKI: That's not consistent with some of the other studies, but that's okay. I'm not voting for it, anyway.

COMMISSIONER BRACERAS: Is -- can we just say on number 9 - I think this might change the tone of it a little bit - there is some evidence indicating that students in racially diverse
elementary and secondary schools were somewhat more likely to engage in spirited classroom discussion than their racially isolated peers.

CHAIRMAN REYNOLDS: I'm comfortable with that, but, I mean, the horse trader in me, I don't feel comfortable handing over compromises --

COMMISSIONER TAYLOR: To quid no pro.

CHAIRMAN REYNOLDS: Right.

(Laughter.)

COMMISSIONER BRACERAS: It's not a compromise to try to get the result.

CHAIRMAN REYNOLDS: I feel like I'm negotiating against myself.

COMMISSIONER BRACERAS: No. It's not negotiating against yourself. We're not changing the language to buy their votes. I mean, if they want to vote for it, that's great. And if they don't feel they can vote for it, that's their prerogative. I want to change it to make it a better document, and to make it as neutral and fair, as possible. And some of the points that they raise I think are valid, and we should incorporate them, not because we're trying to get their votes, but because they're good comments.

COMMISSIONER KIRSANOW: Commissioner Braceras' comment, the impact of it actually dilutes
whether or not spirited classroom discussions are supportable, findings are supportable. She said "somewhat more likely".

COMMISSIONER BRACERAS: Well, because it says they found only a small difference.

COMMISSIONER KIRSANOW: Yes, there was a very small difference. When you take a look at what Professor Armor said, and there was really no contradiction -- I'm sorry, not Professor Armor.

COMMISSIONER YAKI: I'm sorry, that's not true.

COMMISSIONER KIRSANOW: It is true.

COMMISSIONER YAKI: It is not true.

COMMISSIONER KIRSANOW: It is true.

COMMISSIONER YAKI: We can pull the transcript.

COMMISSIONER KIRSANOW: Well, then let's pull it.

COMMISSIONER YAKI: Since we've obviously gone beyond the transcript in all these things, let's get Chris out here, pull out the Amy Wells report that went after the long-term impacts of classroom interaction. Let's pull it out.

COMMISSIONER KIRSANOW: My recollection is that in response, Professor - I think it's Professor
Armor referred to the flawed nature of that study, and there were at least two other studies --

COMMISSIONER YAKI: Well, we're taking his word that it was flawed, and she says his stuff is flawed back. And we can sit here and argue all day about it.

COMMISSIONER KIRSANOW: And what we're saying is there's research to support, despite the fact that he says they're flawed, we're actually going with --

COMMISSIONER BRACERAS: There's some evidence indicated.

COMMISSIONER KIRSANOW: If we're simply relying on Professor Armor, we wouldn't even say there's any evidence.

COMMISSIONER BRACERAS: Right.

COMMISSIONER YAKI: Well, if we were relying on Professor Armor, we'd be in a much different country than we are right now.

COMMISSIONER KIRSANOW: Professor Armor says that he disputes that.

(Simultaneous speech.)

COMMISSIONER YAKI: Well, that's the question that I asked him during the thing, and I stand by that.
COMMISSIONER BRACERAS: I think all the evidence we heard during our briefing on historically black colleges and universities - now, granted it's higher ed and not primary and secondary ed, but, basically, came to the opposite conclusion; that students that attend historically black colleges and universities, which are majority black, tend to be more confident, and more engaged in spirited classroom discussion, so I think evidence is all over the place of it. I don't know which way that cuts --

COMMISSIONER KIRSANOW: I believe that --

COMMISSIONER BRACERAS: -- but I think we should say that there is some evidence that comes to this other conclusion. That's fine.

COMMISSIONER KIRSANOW: I think this is an accurate summary --

CHAIRMAN REYNOLDS: Before we go on, we have an issue. Ken.

STAFF DIRECTOR MARCUS: I'm just going to remind commissioners that under our Defame and Degrade Rules, any individual who might be defamed or degraded by remarks here will have a right to respond, and the transcript we'll review for purposes of compliance after the meeting.

COMMISSIONER BRACERAS: Fine. Okay. So
number 9, here's my suggestion.

CHAIRMAN REYNOLDS: I thought it was a good shot.

COMMISSIONER BRACERAS: There is some evidence --

COMMISSIONER REYNOLDS: and he has a sense of humor.

COMMISSIONER BRACERAS: There is some evidence indicating that students in racially diverse elementary and secondary schools --

COMMISSIONER KIRSANOW: Were somewhat more likely.

COMMISSIONER BRACERAS: -- were somewhat more likely to engage in spirited classroom discussions than their racially isolated peers, period.

CHAIRMAN REYNOLDS: That's good.


I'm okay with number 10.

CHAIRMAN REYNOLDS: Okay. Number 11.

COMMISSIONER KIRSANOW: I'm still reading. Please bear with me. I don't read as quickly as some of you. I'm fine with it. Number 11.

COMMISSIONER BRACERAS: I don't understand.
COMMISSIONER KIRSANOW: This seems redundant here.

COMMISSIONER BRACERAS: Yes.

COMMISSIONER KIRSANOW: I don't know that we need 11, since we've made the point pretty much in 10.

CHAIRMAN REYNOLDS: Let's strike it.

COMMISSIONER BRACERAS: Strike 11. Yeah, I think that similar to number 5, I think that some of the citations to these other studies that weren't in the transcript should just go into a footnote. I mean, I know we ended up striking five all together, but in this case, I would stop after the word "definitive", period, footnote. And then the whole "For example" part, I would put in a footnote. And then I would come back to the text with, "It is difficult".

COMMISSIONER KIRSANOW: I'm okay with that.

CHAIRMAN REYNOLDS: Yep.

COMMISSIONER BRACERAS: But take out -- well, I'd put the whole thing in a footnote. I'd stop at "definitive", and put everything else in a footnote.

CHAIRMAN REYNOLDS: Okay.
COMMISSIONER YAKI: Oh, by the way, Mr. Staff Director, given the characterization of Ms. Kurlaender's testimony in the beginning of the document, I suggest that if you're going to do a defame and degrade process, you should send that to her, because when I last communicated with her, she thought that was an overly narrow characterization of her testimony, and she didn't have a chance to correct it.

STAFF DIRECTOR MARCUS: I would be pleased to submit the entire matter for a defame and degrade review.

COMMISSIONER YAKI: Fine.


COMMISSIONER KIRSANOW: I'm just a little puzzled as to why we are making reference to early studies. What do we yield from that? What gain do we get from that? I mean, I think there's good academic reason for that, but I'm not sure that needs to be a finding of ours.

COMMISSIONER BRACERAS: I would strike number 13 for that reason.

CHAIRMAN REYNOLDS: Okay. Let's strike it.

COMMISSIONER KIRSANOW: And let me just
say that I would not be opposed to putting this into a footnote or somewhere. I mean, I think it's useful information, but I don't know why it would be a finding.

COMMISSIONER BRACERAS: Let's just strike it for now, because -- well, let's just strike it, because then we're going to vote, and we can't ask for, at this point, the staff to go back and reword, so I think it's either in or out.

CHAIRMAN REYNOLDS: Any strong feelings on that matter, on whether it goes into the footnote or not?

COMMISSIONER KIRSANOW: I don't have a strong feeling.

CHAIRMAN REYNOLDS: Okay. Let's strike it.

COMMISSIONER BRACERAS: So in number 14, I haven't read it carefully just now, but I would delete the word "more", because it makes sense if we're taking out 13, and start with "recent".

COMMISSIONER KIRSANOW: Right. Exactly.

COMMISSIONER MELENDEZ: I had a question. Commissioner Melendez. I had suggested that merging it into finding two and my comments, if that's possible.
COMMISSIONER KIRSANOW: Merging 14 into 2?

COMMISSIONER MELENDEZ: Yes, is that possible? We've got too many findings, in my opinion.

COMMISSIONER BRACERAS: No, I think it's different, because one has to do with academic -- well, number 2 has to do with academic achievement, and number 14 has to do with cross-racial friendships.

COMMISSIONER KIRSANOW: Yes, there are two different components. One is the hard component, the other one is the soft component.

COMMISSIONER BRACERAS: But I would -- in addition to striking the word "more" at the beginning, after the sentence that ends "racially isolated schools, period." I would take that data, 2005 study, and put it in a footnote at the bottom.


COMMISSIONER BRACERAS: 14, I would take -- I'm sorry, 15.

CHAIRMAN REYNOLDS: 15.

COMMISSIONER BRACERAS: I would start with "A study by Crane and Mihard", and then down to the bottom and put that in a footnote.

COMMISSIONER KIRSANOW: You know, I wouldn't, Jennifer, and I'll tell you why.
COMMISSIONER BRACERAS: You wouldn't?

Okay.

COMMISSIONER KIRSANOW: Yes. Because the first sentence deals with military academies, the second one has to do with occupational aspirations. It's a different subject. I was initially inclined to do that, but I think it should remain as-is. We're talking about two different concepts.

COMMISSIONER BRACERAS: Wait a minute. Where is it military academies?

COMMISSIONER KIRSANOW: The first one says that racial composition has no effect on whether or not someone is more likely to attend military academies, or become officers. 15, right there, for example.

COMMISSIONER BRACERAS: Yes.

COMMISSIONER KIRSANOW: Okay. And then it goes to occupational aspirations, in general.

COMMISSIONER BRACERAS: Yes, gotcha. All right. Keep it, keep 15 as-is.

COMMISSIONER TAYLOR: I don't -- persuasive, it says a little persuasive evidence?

COMMISSIONER BRACERAS: Yes. Delete persuasive.

COMMISSIONER TAYLOR: Yes.
CHAIRMAN REYNOLDS: That's a good point.

Anything else on 15?

COMMISSIONER BRACERAS: Wait a minute.

Hold on a second.

COMMISSIONER KIRSANOW: Number 16, I would delete. I agree with the statement. In fact, this is a statement that I think I made, but I don't think it's a finding.

COMMISSIONER BRACERAS: I agree.

COMMISSIONER KIRSANOW: This goes to the whole rationale by O'Connor under Sweezey v. New Hampshire, the Frankfurter rationale related to the benefits or the deference accorded to institutions of higher education, so let's delete that.

CHAIRMAN REYNOLDS: I don't agree, but I'll go along. I think that that's inordinate.

COMMISSIONER KIRSANOW: I think that this makes it a tighter document. I think it has -- I thought the document originally had good integrity in terms of reflecting what was adduced at the hearing, and I think this is a very useful exercise. However we adopt or don't adopt changes to the procedure for briefings, and I think Commissioner Braceras' work on this is going to be very helpful, I think that this improves this particular document. And I hope we can
do something - if we ever have findings and recommendations for briefings, and I have issues with respect to whether or not we should do that - but if we do that, and for statutory reports, I think this kind of exercise, first of all, is useful in terms of sheer transparency, the procedural aspect of this.

Second, I think it vets the document one last time. Third, I think it reflects more accurately the consensus of the commission, and so that we can support this document more readily in a public domain.

If we're ever asked in hearings, or by the press, or anyone else, I think that we have a more effective means by which we can respond, because this is -- I think this does reflect the consensus of the commission. And, going to what Commissioner Braceras had indicated before, the Battered Commissioner syndrome, is the antithesis of what had occurred before. I asked the question, are we potted plants? Because something would be presented to us, and the commission - by the way, let me just say, the staff had always done fine work, and it was within the parameters of what their charge was, but we would be presented with it, and we said we either sign off on it, or don't sign off on it.

COMMISSIONER BRACERAS: That is the first
time we've done this, and I think it was extremely helpful. So, anyway, I guess I'd move that we approve the document, as edited by the commission.

COMMISSIONER KIRSANOW: I second.

CHAIRMAN REYNOLDS: Okay. Discussion?

Commissioner Yaki.

COMMISSIONER YAKI: I just wanted to thank the rest of the commission for going through this process. I think that for this document, it was a good exercise. I still believe that for future briefings, we need to look at a different process all together.

CHAIRMAN REYNOLDS: I think that there is --

COMMISSIONER YAKI: And I am not a member of -- I do not have Battered Commissioner Syndrome, but I'm wondering if I stay here too long, if I'll get Stockholm Syndrome.

(Laughter.)

COMMISSIONER BRACERAS: You might.

CHAIRMAN REYNOLDS: Okay. All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: All the folks who object?

(Vote taken.)

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CHAIRMAN REYNOLDS: Okay. Let the record reflect that Commissioners Yaki and Melendez voted against the amended motion, and the remaining commissioners voted in favor, the motion passes.

V. MANAGEMENT AND OPERATIONS

Okay. Next up, last month all of the members of the commission signed letters urging the Attorney General to investigate very disturbing allegations of Anti-Hispanic Voter Discrimination in Orange County, California. I am pleased that the commissioners were unanimous in calling upon the Attorney General in this matter. This unanimity is reflective, I believe, of the level of cooperation that we should strive for. I thank Commissioner Michael Yaki for bringing this matter to the attention of the commission, and I thank all of the commissioners for accepting Commissioner Yaki's recommendation to send the letters.

These letters, I think, should be accessible to the public. May I have a motion for posting to the website the letters from Commissioners Braceras, Taylor, Yaki, Kirsanow, and Reynolds, the letter that was sent to Attorney General Gonzalez on October 18th regarding an Anti-Hispanic Voter Harassment Letter, and the letter that was sent by
Vice Chair Abigail Thernstrom and Commissioner Melendez to Attorney Gonzalez dated October 19th regarding the same topic.

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion? All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections, abstentions? The motion carries unanimously.

Okay. Now it's time to set a schedule for the meetings during the 2007 calendar year. May I have a motion to approve the proposed 2007 business meeting and briefing calendar that was distributed to the commissioners via email and hard copy sent on November 9th, 2006? May I have a motion?

COMMISSIONER YAKI: So move.

CHAIRMAN REYNOLDS: Second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Okay. Commissioner Braceras.

COMMISSIONER BRACERAS: Yes, I'd like to discuss. A couple of things; first, I think as our previous discussion indicates, we need more time in the calendar for business meetings, and for thoughtful consideration of our reports, so I would like to
propose -- I mean, the way it's set up right now is we have four briefings scheduled back-to-back, and then everything right now is open, but I assume that the theory was that we would plug briefings into those other slots. I think it's very difficult to have a productive business meeting and a briefing on the same day. I know the commissioners that come from farther away have to get home, the commissioners who have children need to get home at the end of the day, and it's just hard to go late in the day on Friday, for a variety of reasons. So what I would like to propose is that we do fewer briefings, and perhaps get on an every other month rotation, where we'd do six briefings, and every other month have simply a business meeting where we can really hash out the reports, because I think while we put out fewer reports and fewer briefings, they would be of a higher quality, and we wouldn't rush through our agenda.

CHAIRMAN REYNOLDS: I like the idea, but I would ask that, would anyone object to tabling this issue so that we can think about it some more? I like the idea of reducing the number of briefings for the very reasons you've just articulated.

COMMISSIONER BRACERAS: Well, I think the staff needs to know what they're going to be preparing
for January, February, and March, so I think -- I mean, my proposal would be to have a briefing in January, to not have a briefing in February, and then we could go from there. And I think -- I'd like to sort of discuss the order of the briefings, too. But if you want to just first vote on the calendar and the dates, we could do that, and then --

CHAIRMAN REYNOLDS: Well, how about this; how about we keep the briefing schedule for January, and table everything else until we give this some more thought in terms of restructuring our approach, and also the order of the briefings.

COMMISSIONER BRACERAS: I guess I'm not sure why it's not something we can just discuss right now. It doesn't seem that complicated. If there are concerns, let's discuss them. I mean, it's simply a question of whether the quantity of work product is more important than breathing room, because I, myself, feel that I need breathing room, and I think some other commissioners do, as well.

CHAIRMAN REYNOLDS: Okay. So basically, we would move everything -- well, we would space -- we would add a business meeting between each briefing.

COMMISSIONER BRACERAS: Yes.

CHAIRMAN REYNOLDS: Starting after
January.

COMMISSIONER BRACERAS: Yes. Hopefully, that would avoid a situation where we have to continuously table our votes on reports because people feel that they haven't had the time to discuss or consider it, because we've been discussing and considering them at the meeting, so it might end up helping us to produce our reports more quickly in the end.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Well, I understand the sentiment, but I object.

COMMISSIONER BRACERAS: Okay.

COMMISSIONER YAKI: Two reasons; one, I like the briefings, I think that they provide intellectual and civic discussion of important issues, number one. Number two, a lot of this could be solved if we didn't have this insanely cumbersome mini-national report process for briefing reports, where that has a habit of consuming staff time while they're busy also trying to prepare for briefings in the future. And, number three, I have my own parochial objection, because so far, those items which I had proposed keep on getting bumped further and further back, and an alternate schedule will put anything that
I had an interest in probably into 2008, and I'm just --

COMMISSIONER BRACERAS: Which are your priorities on the list?

COMMISSIONER YAKI: None of the ones right there.

COMMISSIONER BRACERAS: But tell me which ones on the broader list are your priorities?

COMMISSIONER YAKI: Well, let's see, the Patriot Act is now back to 2008, but the Domestic wiretapping issue is something that I'm very interested in, and it got a high number of votes, and it could be -- it's last on that list, hopefully not in terms of priority, but it always appears there last, and I'm just worried that's going to get kicked off yet again.

COMMISSIONER BRACERAS: Well, I mean, that is very understandable, and I, personally, am more than happy to see some of your priorities --

CHAIRMAN REYNOLDS: Moved up.

COMMISSIONER BRACERAS: -- moved up to early this year, early 2007.

CHAIRMAN REYNOLDS: Folks, let's take a 10-minute break.

COMMISSIONER BRACERAS: Why now, we're in
mid-conversation?

CHAIRMAN REYNOLDS: Because I have to --

(Laughter.)

CHAIRMAN REYNOLDS: I would rather not respond.

COMMISSIONER YAKI: All right. All you have to do is hand the gavel over, walk out the door. No one is going --

COMMISSIONER BRACERAS: Yes, hand the gavel over.

(Whereupon, the proceedings went off the record at 10:55:59 a.m., and went back on the record at 11:06:47 a.m.)

CHAIRMAN REYNOLDS: Everyone is here. Let's go back on the record.

COMMISSIONER BRACERAS: I wanted to, if it's okay, just discuss strictly the dates in the calendar, first, before we discuss anything else, if that's okay. And I raise the point that I know right now that Friday, June 8th, doesn't work for me. I do appreciate the September meeting not conflicting with the first day of school this year, that's very helpful, but December 14th, I'd like to point out is, I believe, several days after Commissioner Kirsanow's term and my term expire. Maybe you care about that,
maybe you don't, but if you wanted us to participate in the December meeting --

CHAIRMAN REYNOLDS: When does it expire, when does your --

COMMISSIONER KIRSANOW: I think both of ours is the same date, December 9\textsuperscript{th}.

COMMISSIONER BRACERAS: December 7\textsuperscript{th}, or the 9\textsuperscript{th}.

COMMISSIONER KIRSANOW: The 7\textsuperscript{th}.

COMMISSIONER BRACERAS: 6\textsuperscript{th}.

CHAIRMAN REYNOLDS: Okay. Let's --

COMMISSIONER BRACERAS: Yaki can't get them down fast enough.

(Laughter.)

CHAIRMAN REYNOLDS: Okay. Does anyone -- let's see, let me get out my gizmo. Okay. Let's start with June. Will the 7\textsuperscript{th}, you said that that may possibly work, the 7\textsuperscript{th}.

COMMISSIONER BRACERAS: I don't know how Thursdays work for other people. I could do a different week, or I could do --

CHAIRMAN REYNOLDS: How does the 7\textsuperscript{th}, June 7\textsuperscript{th} work for everyone?

COMMISSIONER KIRSANOW: It's fine with me.

COMMISSIONER YAKI: For the west coasters,
that kind of bites.

COMMISSIONER BRACERAS: Thursday bites?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: This is Commissioner Melendez. Thursdays would be hard for me, but Friday would work.

COMMISSIONER YAKI: How about the 15th?

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: Well, what about earlier, what's the Friday before?

CHAIRMAN REYNOLDS: The first. Are kids out of school on the 15th?

COMMISSIONER BRACERAS: No, we go almost until July in New England.

COMMISSIONER YAKI: What has happened to education since we went to school?

COMMISSIONER BRACERAS: Really.

CHAIRMAN REYNOLDS: Okay. The first and the 15th - the first works for me, and so does the 15th.

COMMISSIONER BRACERAS: I mean, it is true, depending on snow days, that could potentially be the last day of school, but we tend to go much later. So the first would be preferable, just from my --
CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: They tack on school days for snow days now?

COMMISSIONER BRACERAS: Yes.

COMMISSIONER YAKI: Outrageous. I think we ought to have a hearing on that.

(Laughter.)

COMMISSIONER BRACERAS: I know their civil rights are being violated.

COMMISSIONER YAKI: Absolutely.

CHAIRMAN REYNOLDS: Okay. So unless I hear an objection, I'll put it down for June 1st.

COMMISSIONER BRACERAS: Thank you.

CHAIRMAN REYNOLDS: Commissioner Melendez, is that okay with you?

COMMISSIONER MELENDEZ: That's fine. I had another question about next month's meeting, was that a Thursday instead of a Friday?

CHAIRMAN REYNOLDS: It's a Friday.

COMMISSIONER BRACERAS: No, it's a Thursday, because Friday is the --

CHAIRMAN REYNOLDS: Oh, next month.

COMMISSIONER BRACERAS: Friday, that Friday in December is the first day of Chanukah.

COMMISSIONER YAKI: Also, one of the worst
travel days of the year.

COMMISSIONER MELENDEZ: We can't move it a week earlier?

CHAIRMAN REYNOLDS: Okay. Let's take a look.

COMMISSIONER YAKI: It's too late, isn't it? We have to give 30 days notice or something like that.

STAFF DIRECTOR MARCUS: I'm not aware of a legal requirement.

PARTICIPANT: No, we don't need a 30-day notice for agendas or attending a meeting.

STAFF DIRECTOR MARCUS: No, it makes it a little bit more difficult in terms of notice to the panelists for the briefing, but I'm not aware of any legal requirement.

COMMISSIONER BRACERAS: What is our December briefing?

STAFF DIRECTOR MARCUS: Elementary and secondary desegregation.

CHAIRMAN REYNOLDS: Haven't we already sent out the -- have we received the responses?

STAFF DIRECTOR MARCUS: We've not yet.

CHAIRMAN REYNOLDS: Okay. If that's the case, then, we wouldn't be asking the panelists to
change their schedule. December.

COMMISSIONER YAKI: Don't change - if you change the 14\textsuperscript{th}, I'm toast.

COMMISSIONER BRACERAS: So--

CHAIRMAN REYNOLDS: It's a Thursday.

COMMISSIONER BRACERAS: It's currently scheduled for Thursday.

CHAIRMAN REYNOLDS: That's the only Thursday that actually works for me. The only Thursday, what about a Friday? Say the --

COMMISSIONER YAKI: The 8\textsuperscript{th} does not work.

CHAIRMAN REYNOLDS: Oh, not for me.

COMMISSIONER BRACERAS: Any later in the month is probably untenable --

CHAIRMAN REYNOLDS: Right.

COMMISSIONER BRACERAS: But that's okay, I can participate by phone.

COMMISSIONER YAKI: You're going to get snowed in at the airport, anyway, or the train station.

CHAIRMAN REYNOLDS: Okay. Here are the ugly options, the 29\textsuperscript{th}, the 1\textsuperscript{st}.

COMMISSIONER YAKI: Of what?

CHAIRMAN REYNOLDS: December.

COMMISSIONER BRACERAS: The 29\textsuperscript{th}?
COMMISSIONER YAKI: Mr. Chairman --

CHAIRMAN REYNOLDS: I said --

COMMISSIONER YAKI: -- is your middle name Grinch?

CHAIRMAN REYNOLDS: I prefaced my statements by saying that these are the ugly options. You're not available on any Thursday, except the 14th.

COMMISSIONER BRACERAS: I actually could do the 29th, now that I think about it.

COMMISSIONER YAKI: I'm in Hawaii.

CHAIRMAN REYNOLDS: Good man.

(Off the record comments.)

CHAIRMAN REYNOLDS: Okay, folks. Where are we on December? Jennifer is fine with the 29th.

COMMISSIONER MELENDEZ: I'm fine with that, too.

(Laughter.)

COMMISSIONER YAKI: What was that laugh? What the hell laugh was that? If you want to fly on the weekend before New Year's, that is just --

CHAIRMAN REYNOLDS: Folks, the 29th, I mean, Jennifer, Arlan, I just think that the 29th is just bad.

COMMISSIONER BRACERAS: Okay.

CHAIRMAN REYNOLDS: Staff is going to want
to prepare for the New Year's, and all that good stuff, and people will take time, at least I hope.

COMMISSIONER BRACERAS: Yes. No, that's fine.

COMMISSIONER YAKI: Scrooge.

COMMISSIONER BRACERAS: Let me just throw something else out there. Do we need a December meeting? We had an August meeting.

COMMISSIONER KIRSANOW: We have a briefing scheduled.

STAFF DIRECTOR MARCUS: We could postpone the briefing to January.

COMMISSIONER BRACERAS: We can't make it earlier in December? And what's the problem with the date we have on the calendar?

CHAIRMAN REYNOLDS: Who is the trouble maker?

COMMISSIONER YAKI: I thought it was you.

COMMISSIONER BRACERAS: No, I'm fine with it. I think Commissioner Melendez raised it.

COMMISSIONER MELENDEZ: I have a meeting on Wednesday night. I will pull a red-eye, like Michael Yaki did the last time.

CHAIRMAN REYNOLDS: Well, would you be willing to participate by phone?
COMMISSIONER MELENDEZ: Yes, I guess I could do that, if I have to.

CHAIRMAN REYNOLDS: Yes. Okay.

COMMISSIONER BRACERAS: Keep it where it is then.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: No?

COMMISSIONER YAKI: Yes, it's good. I like it. It's the only Thursday that works for me.

CHAIRMAN REYNOLDS: Any other dates that are problematic?

COMMISSIONER BRACERAS: Well, the only other one I raised was the December 14th.

COMMISSIONER KIRSANOW: Of next year.

COMMISSIONER BRACERAS: Of next year.

CHAIRMAN REYNOLDS: Okay.


CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: Actually, I have a problem with that date, too.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: Can we do it the week before?

COMMISSIONER TAYLOR: We need to move it up another week.
CHAIRMAN REYNOLDS: Right. So like the first.

COMMISSIONER MELENDEZ: I'd be in the same situation, a Wednesday meeting.

CHAIRMAN REYNOLDS: No, the 7th.

COMMISSIONER BRACERAS: It needs to be the week before that if Commissioner Kirsanow and I are going to participate. And we'll be expecting a big farewell party with beverages and pastries.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: No, they said their terms expire the 6th, so we have to do it before the 6th.

COMMISSIONER YAKI: Oh, the 6th.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: So Wednesday, the 5th? Or Monday?

CHAIRMAN REYNOLDS: The 3rd works for me.

COMMISSIONER YAKI: I can actually do it Monday.

COMMISSIONER BRACERAS: Is that the 3rd?

COMMISSIONER YAKI: Yes.

COMMISSIONER KIRSANOW: It doesn't matter to me.

CHAIRMAN REYNOLDS: Commissioner Melendez.
COMMISSIONER MELENDEZ: What date?

CHAIRMAN REYNOLDS: The 3rd, which is a Monday. How much pain does that inflict on you?

COMMISSIONER MELENDEZ: That's fine.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: If you guys get reappointed before then, I want to move --

(Laughter.)

CHAIRMAN REYNOLDS: Okay. Are we done with the -- we are done with the dates. Okay. Briefings. I suggest that we take two items that are not currently slotted. One would be, assuming that Commissioner Yaki approves, is to put the domestic wiretapping briefing on the calendar, and also --

COMMISSIONER BRACERAS: Excuse me. I'm sorry. Can we deal with the structural question first?

COMMISSIONER KIRSANOW: Yes. I think so, as to whether or not we're going to have on-day/off-day, or on-briefing --

COMMISSIONER MELENDEZ: Can I ask a question? This is Commissioner Melendez. As far as alternating may not be feasible, but I think maybe one time we should have just strictly not a briefing meeting, similar to today's meeting.

COMMISSIONER BRACERAS: Even if it's just
once a quarter.

COMMISSIONER YAKI: Like two on, one off, two on, one off.

COMMISSIONER BRACERAS: Yes.

COMMISSIONER YAKI: Like the Senate schedule, two weeks in, one week off.

CHAIRMAN REYNOLDS: Okay. Is everyone comfortable with that approach?

COMMISSIONER BRACERAS: I'm comfortable with that, as long as we have some that are designated for purely business agendas.

COMMISSIONER YAKI: That's fine.

CHAIRMAN REYNOLDS: Okay. If that is the case, then the question of when this starts.

COMMISSIONER BRACERAS: So, if we have a briefing in December, then maybe we want to have a business meeting in January, and a briefing in February, and in March, and a business meeting in April. What does the Staff Director think of that?

CHAIRMAN REYNOLDS: He thinks it's crazy.

STAFF DIRECTOR MARCUS: I think that there's no problem with that. I think we're indifferent as to where the breaks are.

COMMISSIONER BRACERAS: Okay.

STAFF DIRECTOR MARCUS: I mean if the
breaks have some operational ramifications that I think balance out. One is that we might have had difficulty doing all of these briefings in light of the expected appropriations, anyhow, so this is --

CHAIRMAN REYNOLDS: So there will be seven briefings for next year.

STAFF DIRECTOR MARCUS: On the other hand, we've announced publicly and to Congress the briefings we're going to have, so we'll have to revise that, and let them know we're going to do less than we initially committed to, that may be a wash.

COMMISSIONER BRACERAS: Well, I think that's okay.

CHAIRMAN REYNOLDS: Okay. So if I understand this right, we will have a briefing in December, a business meeting in January, then a briefing in February.

COMMISSIONER KIRSANOW: I think I preferred having a briefing in January, given the fact that we've had a briefing today. Let's do December, January, then take --

COMMISSIONER BRACERAS: Break in February.

CHAIRMAN REYNOLDS: Business meeting in December.

COMMISSIONER KIRSANOW: No.
COMMISSIONER BRACERAS: No, no.

COMMISSIONER KIRSANOW: Briefing in December, briefing in January, then we'll take --

COMMISSIONER BRACERAS: And a business meeting in February.

COMMISSIONER KIRSANOW: -- February for a business meeting. So it'll go March, April, business meeting in May.

COMMISSIONER YAKI: So that means the last meeting can be done strictly to extolling your virtues, and --

COMMISSIONER BRACERAS: Exactly.

(Off the record comments.)

COMMISSIONER YAKI: So it would be seven briefings, four meetings.

COMMISSIONER BRACERAS: Right. And then as Kim points out, the end of the fiscal year in September, that would be a strictly business meeting, which might be good. So briefing January, business February, briefings for March and April, business May, briefings June and July, business September, briefings October and November.

CHAIRMAN REYNOLDS: Is anybody writing this down?

COMMISSIONER YAKI: And party in December.
COMMISSIONER BRACERAS: And party for Pete and me in December.

(Laughter.)

CHAIRMAN REYNOLDS: Okay. So we are done, I believe, with that.

COMMISSIONER MELENDEZ: Can I ask a question?

CHAIRMAN REYNOLDS: Okay. Yes.

COMMISSIONER MELENDEZ: Are we set for four briefings next year already all the way up to April?

CHAIRMAN REYNOLDS: We are about to tackle that issue, as soon as we're done with the briefing versus business meeting.

COMMISSIONER BRACERAS: Right. So we've got the calendar now. Now we're going to plug in the topics.

COMMISSIONER MELENDEZ: Okay, go ahead.

CHAIRMAN REYNOLDS: Okay. I would like to move two issues that are not currently calendared, and they are the No Child Left Behind briefing, and the Domestic Wiretapping Briefing.

COMMISSIONER YAKI: I'd like to add, Commissioner Melendez' important one was the discrimination against the American Border towns.
COMMISSIONER MELENDEZ: Yes. I’ve been waiting a long time for that one, also.

(Off the record comments.)

COMMISSIONER BRACERAS: I mean, why don’t we let the Democrats pick the March briefing. You work that out amongst yourselves.

COMMISSIONER YAKI: No, we're both going to get one. What are you talking about?

COMMISSIONER BRACERAS: Well, which do you want in March? You can't have two in March.

COMMISSIONER YAKI: Oh, in March.

CHAIRMAN REYNOLDS: Well, you don't have to decide now. You can consult with Commissioner Melendez, and just let the Staff Director know.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: Okay. I propose that the one on No Child Left Behind, NCLB, that that go forward in January.

COMMISSIONER TAYLOR: As a briefing.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: That's fine.

COMMISSIONER BRACERAS: And March will be the topic of the Democratically appointed Commissioners' choice. The Democrats choice.

COMMISSIONER YAKI: Arlan, do you mind if
I put mine there?

COMMISSIONER MELENDEZ: Go ahead, that's fine.

COMMISSIONER YAKI: Okay.

COMMISSIONER MELENDEZ: Domestic wiretapping?

COMMISSIONER YAKI: Yes.

COMMISSIONER MELENDEZ: For March.

CHAIRMAN REYNOLDS: So you pulled rank on him.

(Laughter.)

COMMISSIONER YAKI: I asked did he mind.

CHAIRMAN REYNOLDS: Yes, that's right.

COMMISSIONER MELENDEZ: No, that's fine.

CHAIRMAN REYNOLDS: Sort of like when my boss asks me if I want to do something. Okay. So we have December covered, January covered, March covered. When is the next briefing?

COMMISSIONER BRACERAS: April.

CHAIRMAN REYNOLDS: April. Thoughts?

COMMISSIONER BRACERAS: Well, one thought I have is that we haven't done anything on gender, and so that might be an appropriate slot for the Title 9 topic.

CHAIRMAN REYNOLDS: I'm still recovering...
from my involvement with Title 9 when I was at the Department of Education, but that's fine.

COMMISSIONER YAKI: So you have Battered Title 9 Syndrome. Is that --

CHAIRMAN REYNOLDS: Yes, indeed. Yes, indeed, angry women, angry girls.

COMMISSIONER BRACERAS: Okay, go ahead.

CHAIRMAN REYNOLDS: That's fine with me. Is there -- does anyone else have concerns? Okay.

COMMISSIONER YAKI: How would you like to reserve either October or November for Arlan's briefing?

CHAIRMAN REYNOLDS: I'm sorry. What are the months?

COMMISSIONER YAKI: Either October or November for Arlan's briefing.

CHAIRMAN REYNOLDS: Sure. Okay. How about we put it down for October?

COMMISSIONER YAKI: Is that good?

COMMISSIONER MELENDEZ: Thank you.

COMMISSIONER YAKI: And you guys can work out the rest offline.

CHAIRMAN REYNOLDS: Okay. I think that's a good suggestion.

COMMISSIONER YAKI: Okay.
CHAIRMAN REYNOLDS: Okay. Is everyone in agreement that we would work out the rest of the slots offline?

COMMISSIONER BRACERAS: All right. So it's NCLB in January, domestic wiretapping in March, Title 9 in April, and the rest is to be determined?

CHAIRMAN REYNOLDS: No. And the border towns.

COMMISSIONER BRACERAS: I'm sorry, where is that?

COMMISSIONER YAKI: October.

CHAIRMAN REYNOLDS: October.

COMMISSIONER BRACERAS: And why October, as opposed to --

COMMISSIONER YAKI: I just chose October. And then you can --

CHAIRMAN REYNOLDS: I defer to the Democrats.

COMMISSIONER YAKI: That'll give you a nice stream of uninterrupted Republican briefings, so --

COMMISSIONER BRACERAS: You didn't want the summer, you'll be vacationing?

(Laughter.)

COMMISSIONER BRACERAS: Okay. October is
border town.

COMMISSIONER YAKI: I have good attendance here.

COMMISSIONER BRACERAS: And the rest is to be determined from this list. Sounds good.

CHAIRMAN REYNOLDS: Okay. Where am I?

VI. STATE ADVISORY COMMITTEE ISSUES

CHAIRMAN REYNOLDS: Okay. The staff has done an exemplary job of preparing the recharter packages for the commission's consideration for the State of California. In this instance, the recharter package was initially presented to the commission for a vote in July of 2006. At the request of a commissioner, the vote was delayed until today's meeting. At this point, I would like to discuss the folks who are being voted on. Well, I’ll skip that piece.

Okay. I'm going to move that the following individuals be appointed to the California SAC; Gail Heriot, Luis Alejo, James Bolton, Sharon Browne, Jack Citrin, John Dodd, Marc Dollinger, Percy Duran, Thomas Gray, Lance Izumi, Manual Klausner, Sanford Lakoff, Al Latham, Leonard Mitchell, Velma Montoya, and Matthew Rosenthal. And I also move that the commission appoint Gail Heriot as Chair of the
newly rechartered California State Advisory Committee. These members will serve as uncompensated government employees. Under the motion, the commission authorizes the Staff Director to execute the appropriate paperwork for the appointment of these individuals. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. This is Commissioner Melendez. Again, I have a real concern in the makeup of some of our advisory committee members. One of my concerns, as I mentioned, and even the Connecticut, and some of these other State Advisory Committees, was that I think there's a lack of women. As you know, there was only 19 percent in this of California SAC nominees, 13 percent in Connecticut, and only 27 percent in Georgia, as far as number of women that are being appointed to the SAC. And the other thing was that there's four returning members to this California SAC, and I was wondering why one of those returning members wasn't the Chair, would be nominated then for the Chair.

CHAIRMAN REYNOLDS: I probably nominated Gail. I know her personally. She's scary smart. She knows a lot of the issues that come before the
commission, and I just thought that she'd do a fine job. So that's the rationale.

COMMISSIONER MELENDEZ: And then the other thing I had was, there is -- the other question was how qualified are our commissioners with respect to civil rights work, and I think there was one question as far as this John L. Dodd, who didn't really appear to me that he has a lot of experience in civil rights issues. That was my other concern.

CHAIRMAN REYNOLDS: Okay. I went through the rechartering packages last night, and I looked at each individual in terms of their interest in civil rights, and no one jumped out at me as not having an interest, but give me a moment while I find his paper.

COMMISSIONER YAKI: Can I ask a question of the solicitor?

CHAIRMAN REYNOLDS: Sure. Yes.

COMMISSIONER YAKI: What are the conflict of interest rules regarding, can a SAC committee member participate on an item in which he or she is involved in litigation on the subject? In other words, if the SAC were to consider desegregation, and one of the attorneys is involved in a desegregation case. I know that we have some conflicts in our ability to deal with items for which we are receiving
remuneration or compensation for specific items, specific topics. I just want to know whether or not that applies to SAC members, as well.

MS. MONROIG: Well, the regional directors have -- and in some cases, civil rights analysts have been appointed Deputy Ethics Officers. The appropriate thing is for members of SACs that might have a conflict to disclose all the circumstances, and for them, in the first instance, to analyze it to see if there's a conflict, and maybe consult on the matter.

COMMISSIONER YAKI: I would like to know from the Staff Director whether or not the California SAC is one of the SACs that would be dealing with the desegregation issue.

STAFF DIRECTOR MARCUS: I think that the SAC would have to convene together, and talk about what they want to deal with. At this point, I would say that the --

COMMISSIONER YAKI: But I --

COMMISSIONER BRACERAS: You mean for our national report.

COMMISSIONER YAKI: Yes. I had understood that some of the SACs were being tasked with dealing with some of the issues related to the national
CHAIRMAN REYNOLDS: But don't they have to decide to --

STAFF DIRECTOR MARCUS: Let me just answer these. That is, part of it is if they get to decide. California is not one of the states that we are relying on in the sense that we feel it is important to our national report to get something from them. I don't recall off-hand whether it was one of the ones that we designated with a request, that designation was based on whether they had certain filings there, but it's not one of the ones that we feel that we need.

COMMISSIONER YAKI: Okay. Well, my response to that is I find that very odd, given that it's one of the --

STAFF DIRECTOR MARCUS: Oh, I'm sorry. Commissioner Yaki, and I can say further that it is not one of the ones that we even made a request of.

COMMISSIONER YAKI: Okay. I was just going to say that's odd, given that it's one of the most diverse states in the country with some of the biggest issues involving deseg, but hey, whatever.

STAFF DIRECTOR MARCUS: The requests were not based on subjective evaluations, but based on the
Department of Justice docket.

CHAIRMAN REYNOLDS: Okay. Getting back to Commissioner Melendez' issue. I have before me the rechartering package, and, quite frankly, I am comfortable with his background. Apparently, he has done work in the area of Criminal Justice, representing the indigent, and I think that that is -- well, I'm satisfied. Other questions?

COMMISSIONER YAKI: I'm sorry, the indigent?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Are they within our charter?

CHAIRMAN REYNOLDS: Under certain circumstances, yes. To the extent that these issues relate to race, ethnicity.

COMMISSIONER YAKI: Okay. Well, may I speak on this subject?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: I have, as someone who has been an elected official in the great State of California, who has campaigned up and down the state, been involved in campaigns there, and electoral and public policy issues for 20 years of my life, I have to say that I am absolutely 100 percent - and you may
send this out for defame or degrade, whatever way you want - I'm completely appalled by the nominees to the California State Advisory Committee. There is a difference between having diversity of viewpoint on a committee, and creating uniformity of viewpoint in that diversity.

You have amongst these individuals overlapping -- let me put it another way. Three to four members of the appointees were all part of the Prop. 209 campaign, which has done horrific things to affirmative action issues in the University of California system. You have people who have been involved, who are currently involved working together on the Seattle and Louisville cases. They are, by most parts, all lawyers or professors, hardly a cross-section of the type - even if we cut out the issues of ethnicity, hardly a cross-section, a representation of the people of California.

I think that this is an elite group of individuals, who share a distinct point of view. I do not believe there is diversity. I look at the fact that 75 percent of the new nominees are white, and male. I look at the fact that 63 percent of the committee is going to be white in a state that is majority minority, and even if you say well, we have
no quotas, the mere fact you would ignore the fact that in a state where ethnicity and race plays such a major role in how things work, by having the committee of this makeup, I think is a slap in the face to Californians. It's a slap in the face to the communities of color in California, and I cannot support this in any way, shape, or form. And, to me, the idea that Gail Heriot would be named Chair, when I found her to be wholly unconvincing and evasive during her testimony on the Native Hawaiian Act, send that to her, let her respond, is a double insult to the people of color in California. And that is my statement, and I don't even want to participate in this vote.

CHAIRMAN REYNOLDS: Okay. We will treat Commissioner Yaki's actions as an abstention.

COMMISSIONER YAKI: I won't even be here.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: Not voting at all. I refuse to have my name appear in any way, shape, or form with any vote on the composition of this committee. This committee is anathema to everything that people of color, that women, and minorities in California have worked for, for years. And this is -- I mean, as I've said before, there is diversity, and there is uniformity.
CHAIRMAN REYNOLDS: Is this because those three individuals --

COMMISSIONER YAKI: It's more than the three. I could have gone into much more detail about all the different back -- about all the similarity of backgrounds, about all the organizations that they all cross-belong to.

CHAIRMAN REYNOLDS: Commissioner Yaki --

COMMISSIONER YAKI: The fact that they belong to the same network of people, and it just does not say to me that this commission is seriously interested, as I said it was, in promoting balance and diversity of viewpoint.

CHAIRMAN REYNOLDS: Commissioner Yaki --

COMMISSIONER YAKI: And the State Advisory Committees, especially in a state as big, and as important, as California. Because of that, I cannot participate in this farce of a proceeding on the California State Advisory Committee.

CHAIRMAN REYNOLDS: Is the driver that the individuals that you mentioned were in the forefront of Prop. 209, a proposition that was supported by a majority of the folks living in California?

COMMISSIONER YAKI: The driver is that the overall composition of this committee, the selection
process that was used, the criteria that evidently was pulled together, creates homogeneity of viewpoint and background that is completely contrary --

COMMISSIONER BRACERAS: Am I mistaken --

COMMISSIONER YAKI: There's more than three people.

CHAIRMAN REYNOLDS: Okay. You --

COMMISSIONER BRACERAS: Am I mistaken, I thought this was a pretty evenly balanced panel in terms of 50 percent sort of liberals, and 50 percent conservatives?

COMMISSIONER YAKI: No, because if you look at some of the resumes for the independents and the Ds, they're not.

COMMISSIONER BRACERAS: They're not what?

COMMISSIONER YAKI: They're not liberals.

COMMISSIONER BRACERAS: So would you like to remove some of the independents and Ds, and come up with your own suggestion?

COMMISSIONER YAKI: I've already spoken with the Chair. There is no desire to remove any of the people involved, and --

COMMISSIONER BRACERAS: So you just want more Ds.

COMMISSIONER YAKI: No, I just think that
COMMISSIONER BRACERAS: Not different Ds.

COMMISSIONER YAKI: I just think that the idea that if the commission were willing to think about looking at these names differently, adding a different kind of viewpoint and ethnic balance to the committee - for the life of me, I don't understand --

COMMISSIONER BRACERAS: Why don't you sit down and we'll discuss it.

COMMISSIONER YAKI: -- how the commission could believe that it could, with a straight face, nominate a SAC that is completely out of whack with the State of California.

CHAIRMAN REYNOLDS: How so?

COMMISSIONER YAKI: The idea that the State Advisory Committee would be 64 percent Caucasian in a state that is majority minority is, in and of itself, indicative of a lack of understanding. If you cannot find conservatives, people of color to articulate a viewpoint and put it out there, I have little trouble with that. Let that debate go on. That's number one.

Number two, is the fact that when you look at from where the recruitment began, there is such similarity and cross-overlap of bodies of work, of
organizations that they belong to, that it just does not seem to me -- it would be one thing to say I'm going to get someone from this community who is conservative and believes in dahdala dahdala da, but doesn't necessarily belong to the same three groups as three other people do.

CHAIRMAN REYNOLDS: I'm not sure that belonging to an organization, that that's a proxy for each issue. For example, the Federalist Society, there are libertarians.

COMMISSIONER YAKI: I have heard --

CHAIRMAN REYNOLDS: Conservatives --

COMMISSIONER YAKI: Mr. Chairman, with all due respect, I have heard your argument on that time and time again. The fact of the matter is, is that the fact that we cannot, especially in a state as big and as diverse, and as populous as California, with as many different interests, and people involved, that you cannot go outside the box of certain organizations, and instead, rely on the fact that well, maybe they're not all the same. Well, Democrats aren't all the same, Republicans aren't all the same. I understand that.

CHAIRMAN REYNOLDS: I agree.

COMMISSIONER KIRSANOW: We have in various
SACs, I would wager that a number of SACs, if not most, have more than one, two, three individuals who belong to the same organization, such as the NAACP. I don't know that belonging to the same organization is necessarily a disqualifying factor. I understand your concerns. I also don't think that, and I would be personally opposed to some type of proportional ethnic representation. If the chips fall where they may and that happens, fine. But I think one of the things we wanted to avoid was ethnicity as a proxy for viewpoint. So, because you're from California, and you've got a particular knowledge of that, I mean, I'm sensitive to your view, but I'm not necessarily persuaded by it.

COMMISSIONER YAKI: Well, I would say that you can look at certain areas, certain regions, certain states, and make differential conclusions about where interests lie, what groups should be involved. But I'm just saying this as a practical fact, it is California, it is the largest state in the Union, it is the most diverse state in the Union, it is the seventh largest economy in the entire world, it is a place where people of all colors, all creeds, all political persuasions get together and have a friendly hash fight, and not so friendly hash fight every two,
four, or six years, depending on what election is going on.

It just strikes me as bizarre, and certainly indicative of either lack of effort, imagination, or creativity to find a little bit more diversity. Just look at it from one point of view. Why is the vast majority of the new appointees all lawyers? Why is the vast majority or professors? That's it, that's the group. Certainly, there are other types of individuals involved in the civil rights perspective from both left and right, who don't necessarily belong in the lawyer drafting camp, and the professor camp.

COMMISSIONER BRACERAS: I have a question for you. May I ask a question of Commissioner Yaki?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: If this group were to contain more community activists, more people of color, as you suggest, but it still contained the names of the three individuals with whom I understand you have strong objection, would you vote for the panel?

COMMISSIONER YAKI: Let me just say this; I named three individuals as being sort of from the same cut of cloth. If you really want my --
COMMISSIONER BRACERAS: If Gail Heriot were still named as Chairman, and the other two individuals - I forget who they are, even, that you object to - are still on the panel, is it Manny Klausner, is that one of them?

COMMISSIONER YAKI: I'm not going to get into names.

COMMISSIONER BRACERAS: Okay. Well, if Gail were still named as Chair, and the other two individuals to whom you object are still on the panel, but there was reshuffling of other individuals to include more community activists, and other types of criteria that you desire, would you vote for the panel?

COMMISSIONER YAKI: I might.

COMMISSIONER BRACERAS: Because I don't believe that you would vote for a panel with Gail Heriot on it, no matter what it looked like. And so that's why --

COMMISSIONER YAKI: Well, Gail I have trouble with. I think overall in terms of what -- I mean, I've been a politician most of my life.

COMMISSIONER BRACERAS: Right. So what I'm saying is I think you're bluffing a little bit, because I think you would reject any panel that
included Professor Heriot.

COMMISSIONER YAKI: No. I can tell you right now, I would not reject any panel that included Professor Heriot.

COMMISSIONER BRACERAS: As Chair?

COMMISSIONER YAKI: It would depend on who the Vice Chair was, and would depend on the composition of the rest of the committee. Never say no, never say never.

COMMISSIONER BRACERAS: But you're not saying yes.

CHAIRMAN REYNOLDS: I suggest that we vote on the --

COMMISSIONER YAKI: I'm not saying yes, because I've been informed that that's not going to happen. And that's not going to happen, I can't vote for it. I'm not going to vote on speculation that maybe --

COMMISSIONER BRACERAS: I'm not asking you to vote. I'm just asking your intention.

CHAIRMAN REYNOLDS: I suggest that we vote on this slate, and this is 16 individuals. I believe California has what, 18 slots? Is that correct?

STAFF DIRECTOR MARCUS: Our standard is to go up to 19, no more than 19.
CHAIRMAN REYNOLDS: Okay. We could continue these conversations with respect to the remaining slots, and see if through discussions we can come up with some candidates that have the support of Commissioner Yaki. But in the meantime, I suggest that we vote. All in favor?

(Chorus of ayes.)

CHAIRMAN REYNOLDS: All in opposition?
COMMISSIONER MELENDEZ: Aye.
COMMISSIONER BRACERAS: That would be a nay.
COMMISSIONER MELENDEZ: No. I vote no.

CHAIRMAN REYNOLDS: Please let the record reflect that Commissioners Braceras, Kirsanow, Taylor and Reynolds voted in favor of the California SAC members proposed, and that Commissioner Yaki did not vote, and that Commissioner Melendez voted against the motion. The motion passes.
COMMISSIONER YAKI: For the record, Commissioner Yaki left the room so he did not vote.

CHAIRMAN REYNOLDS: Let the record reflect that Commissioner Yaki left the room so he did not vote.
COMMISSIONER YAKI: Would not vote.

CHAIRMAN REYNOLDS: Would not vote,
refused to vote. Next up, Future Agenda Items.

VII. FUTURE AGENDA ITEMS

CHAIRMAN REYNOLDS: Do any of the commissioners have any items that they’d like to discuss?

COMMISSIONER MELENDEZ: Yes. This is Commissioner Melendez. Are we going to have an update on the audit?

CHAIRMAN REYNOLDS: Yes, but -- one, two. Okay. We have to wait until Commissioner Braceras returns so that we will have a quorum. Okay. We’re going to start the discussion of the Staff Director's Report.

VIII. STAFF DIRECTOR'S REPORT

CHAIRMAN REYNOLDS: Staff Director Marcus.

STAFF DIRECTOR MARCUS: Thank you, Mr. Chairman. First, I just wanted to make a brief announcement about the Utah State Advisory Committee, which is one of our most newly rechartered committees. On December 13, the Utah Advisory Committee will conduct a briefing in Salt Lake City, Utah regarding discrimination against Native Americans in border communities. Our Denver office is working hard to put on what I think will be a very fine panel on that topic. The governor of Utah is now scheduled to
participate, as is the mayor of Salt Lake County, Utah.

The meeting is very shortly before our commission meeting, which, unfortunately, was an unavoidable conflict. Nevertheless, if there are any commissioners who are interested in attending that meeting, please let me know, and I'm sure that they will be welcome.

I'd like to say a few words about the commission's financial reporting and finances. On Thursday night, Wednesday night, early Thursday morning, we completed and issued our Annual Performance and Accountability Report, including our Audited Financial Statement.

As you know, these reports were seldom prepared and delivered to OMB on time in the past, and getting our paperwork together for the deadline was, I think, nothing short of a heroic effort. I particularly would commend Tina Martin and Debra Carr. Staff worked here until 2:30 in the morning to get the work done, and I think that their ability to compile this accountability report really was an indication of extraordinary dedication by commission staff.

The report, together with the audited
financial statement, paints a picture that I think has
two main features. One of them is that it shows that
we still have some weaknesses that are significant,
and that will require concerted effort in order to fix
them and turn them around. We still have a great deal
of work to do on our finances, and I think we have a
great deal of aggressive work still to do.

On the other hand, they do show rather
dramatic improvement from two years ago, and rather
dramatic improvement even from last year. As the
commissioners will recall, we have never before been
able to get even a qualified opinion on more than one
of our financial statements. In 2004, when we
arrived, the Parker firm was in the middle of an audit
that took two years to complete, and when they
completed it, they only looked at the balance
statement, and were unable to provide even a qualified
opinion. Instead, they provided a disclaimer,
together with a discussion of weaknesses on that one
statement.

Last year, we made substantial progress,
even though we still had the same accounting firm that
had been contracted by the prior administration, we
actually were able to get a full-scope audit, which is
to say an audit of all five financial statements, and
we were able to get not a disclaimer, but a qualified opinion on our balance sheet, as well as disclaimers on the other four statements.

This year, for the first time, we have opinions on all five financial statements. Becoming auditable, and being able to get qualified opinions on all five statements I think is an extraordinary amount of progress. But what's more is that we didn't get qualified opinion on all five of our statements, we actually got unqualified opinions on every single one of them for the first time, so this is a dramatic improvement.

As I say, there are still material weaknesses and reportable conditions. They deal with the travel and approval process, they deal with human capital needs, travel expenses, supporting documentation, file maintenance, and travel and approval processing. These are all things that we are in the process of developing a corrective action plan to deal with. Nevertheless, the work to ensure that our financial reporting is sound, I think was a big step forward. So it is mixed news, still very significant issues, very significant issues, but dramatic improvements.

COMMISSIONER MELENDEZ: Could I ask a
question? This is Commissioner Melendez. Here's where we really need what the findings was, maybe the other stuff, but we need the findings, here's where it's really needed. What were the actual findings as far as issues relating to the budget, and spending, those type things?

STAFF DIRECTOR MARCUS: If you're referring to the findings of our auditors, Walker and Company, they were distributed to commissioners yesterday. As I say, there were two material weaknesses, and three reportable conditions, which is an improvement from the prior year. Is it two and three or two and two? I'm sorry, it's two and two. Two material weaknesses, two reportable conditions, which is an improvement from the prior year, but that everything else is unqualified.

COMMISSIONER MELENDEZ: Okay. My question as to have we spent our money appropriately so that we don't really lose funding that reflects on the commission? Because, as you know, we were unable to hire special assistants for a number of months, and I'd hate to see us all of a sudden find out that we did not spend appropriately the money that we have. Could you answer that question?

CHAIRMAN REYNOLDS: Commissioner Melendez,
we intend to go into closed session, and that issue will be discussed at that time. But we do have an answer for you.

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: Any other questions?
Okay. The Staff Director has requested that the next portion of the meeting be closed pursuant to the commission's regulations implementing the Sunshine Act. Will the General Counsel and Solicitor please certify that the meeting can be closed pursuant to the commission's regulations?

MR. BLACKWOOD: Based on our knowledge of why the Staff Director is requesting the closed portion of the meeting, we certify in writing and have submitted in writing, that this meeting can be closed, and the information pertaining to same can be withheld. Pursuant to the following exemptions provided for in the commission regulations, see 45 CFR Section 702.54. Exemption Two, when a meeting relates to the internal personnel rules and practices of the commission. Exemption Five, when a meeting might involve censoring a person. And Exemption Six, when a meeting might involve disclosing information of a personal nature, where disclosure might constitute a clearly unwarranted invasion of personal privacy. And
Exemption Ten, when the meeting might involve the commission's participation in a civil action or proceeding.

CHAIRMAN REYNOLDS: Okay. May I have a motion to close this meeting pursuant to Exemptions Two, Five, Six, and Ten of the Closed Meetings Procedures for the commission meetings; furthermore, this motion would authorize the Staff Director to place in a location accessible to the public within one working day, business day, the public vote to close the meeting, reflecting an explanation of the decision to close the meeting, and a list of all persons attending the meeting.

COMMISSIONER KIRSANOW: So moved.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Okay. I will call out the name of each commissioner. The commissioner should then answer yes, no, or abstain. After the voting is concluded, I will read out how each one of you voted in order to ensure that the tally is correct. Please vote when I call your name.

Commissioner Braceras.

COMMISSIONER BRACERAS: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.
COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: And I vote yes, also.

The tally is as follows, Commissioners Braceras, Kirsanow, Melendez, Taylor, and Reynolds voted in the affirmative. Commissioners Thernstrom and Yaki did not participate in the vote. The motion passes.

At this point, I guess we need to clear the room pursuant to the affirmative vote. The individuals who will participate in the closed session are Commissioners Braceras, Kirsanow, Taylor, Melendez, and Reynolds. Also present will be Staff Director Marcus, the General Counsel, David Blackwood, the Assistant Deputy Staff Director, Debra Carr, the Director of Administration, Tina Louise Martin, the Director of Human Resources, Tyro Beatty, Derek Horne, who is the Attorney Advisor to the Staff Director, and the Solicitor, Emma Monroig.

STAFF DIRECTOR MARCUS: I would add that if Commissioner Melendez would want Mr. Schmechel to remain, that there is no problem with his remaining. I don't know whether Ms. Schuld is here, but if
Commissioner Braceras --

COMMISSIONER BRACERAS: She is no longer here. She needed to catch a flight.

COMMISSIONER MELENDEZ: Yes, Richard can remain.

CHAIRMAN REYNOLDS: Okay. Let the record reflect that Richard Schmechel will also be in attendance. Okay. So everyone is out, doors closed.

(CLOSED SESSION.)

CHAIRMAN REYNOLDS: Okay. Let's go back on the record.

COMMISSIONER BRACERAS: These are just minor questions that I have.

COMMISSIONER TAYLOR: Are we required to certify on the back-end?

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER TAYLOR: Are we required to certify on the back-end of a closed session?

CHAIRMAN REYNOLDS: I'm sorry. Yes.

(Off the record comments.)

STAFF DIRECTOR MARCUS: Ms. Monroig, why don't you answer the question.

MS. MONROIG: The requirement, according to the regs, is that you read the transcript of the closed session afterwards to determine if there is any
items there that are disclosable to the public or not.

COMMISSIONER TAYLOR: Okay.

CHAIRMAN REYNOLDS: Okay. Commissioner Braceras.

COMMISSIONER BRACERAS: Oh, I just had a question about transcripts, and where we stand in receiving them, and getting them up on the web for previous briefings and meetings?

STAFF DIRECTOR MARCUS: Yes, Commissioner Braceras. We are now several months behind in making the transcripts available in final form. The process that we go through is a time-consuming one. Usually, it is the Secretary to the Staff Director who does this work, which involves not just reading the transcript, but listening to the tapes carefully, finding any errors, with due respect to court reporters, which we do find.

COMMISSIONER BRACERAS: With respect to the briefing, or also the meeting portion?

STAFF DIRECTOR MARCUS: Both of them, we find errors in both. Based on various efforts using current staff, I've determined that we simply are not able currently to make our way through the backlog with the currently available people, particularly given that the Secretary to the Staff Director remains
on long-term medical leave.

We are bringing on a temporary person for the sole purpose of wading through these transcripts to try and come up to speed. And my expectation is that our temporary employee who is working on that matter, I hope, will be on board on Monday. And the Director of Management is nodding her head yes, we do expect her to be on board, so she can start.

COMMISSIONER BRACERAS: Okay. I raise it, simply because I've been asked by members of the public who are interested in some of the briefings we did, and I guess, wanted to do research based on them, whether the transcripts were publicly available.

STAFF DIRECTOR MARCUS: Yes. And that's why we're spending the money to bring a temporary person on board, is because we really need to get those --

COMMISSIONER BRACERAS: My other question is, is it our intention, with respect to all of the briefings we've done, to try to issue briefing reports, or are some of them just simply verbal briefings? Specifically, I was wondering whether we're putting together a report on the ABA Rules, and on the Omaha briefing that we had.

STAFF DIRECTOR MARCUS: Yes. We are
working on reports on all of the briefings that we've held so far.

COMMISSIONER KIRSANOW: When do you think the ABA Rules one might come out?

STAFF DIRECTOR MARCUS: Fairly confident by the January meeting, and there's a chance that it would be in the December meeting.

COMMISSIONER KIRSANOW: The reason I ask -- I'm sorry. Go ahead.

COMMISSIONER BRACERAS: Yes, the reason I asked, which may be the same reason that Commissioner Kirsanow was concerned, is that my understanding is that negotiations between the ABA and the Department of Education are moving along at a speedy clip, and I understand from folks at the Department of Education that it would be useful for them to have us weigh-in on the issue, or at least make the transcripts available as soon as possible.

COMMISSIONER KIRSANOW: That is my concern. My understanding is that the first week of December, the Department of Education is going to have its accreditation hearings. I know I'm going to be testifying at them, and then they're going to be making a determination shortly thereafter, so anything that we can do to weigh-in, I think might be helpful.
CHAIRMAN REYNOLDS: Well, I would suggest that we make that particular transcript a priority. Is there any chance -- well, what's your estimate in terms of completing the briefing report for that topic?

COMMISSIONER BRACERAS: I think he just said that --

STAFF DIRECTOR MARCUS: Well, again, I'm pretty confident for January, for December - and the December, I believe, is after the hearing. I think we have a pretty good chance, I don't know if it's 50/50 or not, but we can certainly try to focus on that above all the others. I have to say, and I may need to focus on it a little bit more, or maybe your input would be useful - one of the difficult questions for that briefing and the other briefings that are well advanced in process, is to what extent we need to redo them based on the new draft briefing procedures that I think are still in process.

COMMISSIONER BRACERAS: Well, let me just ask a few questions. What are, other than Omaha and ABA, the briefings that are out there that we're trying to reduce to writing?

STAFF DIRECTOR MARCUS: Voting Fraud and Intimidation, Misidentification or Misrepresentation
of Minorities in the Census.

COMMISSIONER BRACERAS: That's right.

Okay, so ABA, voting, census, and Omaha.

STAFF DIRECTOR MARCUS: Those are the ones I can think of off-hand.

COMMISSIONER BRACERAS: And which is -- I mean --

STAFF DIRECTOR MARCUS: I have to say that the -- some of the staff have been sent out and haven't come back, so I can't guarantee for sure I haven't forgotten something.

COMMISSIONER BRACERAS: Okay. No, no, that's fine, but of these, am I correct - I mean, this is just based on my shaky memory - but am I correct that the oldest, the one that's been out there the longest is ABA, or is it census?

STAFF DIRECTOR MARCUS: I think it's census. I did forget one. The one that I forgot is the Effectiveness of Historically Black Colleges.

COMMISSIONER BRACERAS: That's right.

HBCUs, okay. Right. And, hence, I think this sort of reiterates our need for separate business meetings, because this is a lot to talk about if we're going to be putting these out. So is the priority to do them in chronological order in terms of getting out the
briefing reports, or what is the priority?

CHAIRMAN REYNOLDS: I suggest that, to the extent an issue - a particular topic that's been covered is being covered by a federal agency - for example, the ABA briefing report, I would suggest that we take that one out of order.

STAFF DIRECTOR MARCUS: The ABA report happens to be one of the ones in the most advanced stage.

COMMISSIONER BRACERAS: Right. I mean, I think it should be, precisely for the reason that the Chair just stated. I mean, other than that, I think we should try to proceed chronologically, but when something is more timely or current, I think we need to move it to the head of the line.

STAFF DIRECTOR MARCUS: There are, of course, other considerations. For instance, there's at least one that was - the timing of which is affected by a change in personnel.

COMMISSIONER BRACERAS: Right.

STAFF DIRECTOR MARCUS: Being done by attorneys in OGC who are no longer employed here, so it got delayed by that reason.

COMMISSIONER BRACERAS: Right.

STAFF DIRECTOR MARCUS: There are others
that are a little faster based on difference in resources between OGC, versus OCRE, versus OSD.

COMMISSIONER BRACERAS: Okay. I guess my concern is that before we allocate staff time and resources to planning further briefings, I think it's important to try to kind of clear the docket, or make headway on the docket before we move on to the next thing. But my particular concern was with the ABA, and I'd like to see that moved forward as quickly -- I mean, if we could have with the ABA - if we could get the transcript available ASAP so that it can be useful to the Department as they move into their hearings, that would be great. And then the report will just come when it comes.

CHAIRMAN REYNOLDS: With any luck, by December. If not December, January.

COMMISSIONER BRACERAS: Right.

STAFF DIRECTOR MARCUS: We'll move it to the top of the list.

COMMISSIONER BRACERAS: Right. I mean, and why don't we, for purposes of procedure, you know, our procedures are in flux, but why don't we try to -- well, why don't we schedule -- I think that there needs to be some sort of conference call where a member of the minority commissioners - the
commissioners in the political minority can kind of go through it with some of the members in the majority, and hash it out line-by-line. I don't know that we need to call it a working group, per se, but I think Commissioner Yaki and myself, and whoever else may be interested with the Staff Director's cooperation, we should all talk soon about this. I don't know if you want to -- if we can ask the Staff Director's shop to coordinate that conference.

CHAIRMAN REYNOLDS: I think it's a good suggestion. I think the other commissioners, the ones who are not going to participate in this teleconference, should also read the document that you prepared, and to provide you with their input. But I think that the Staff Director should work with the participants to select a date that this conversation can take place.

COMMISSIONER BRACERAS: Can we try to do that in the next couple of weeks?

STAFF DIRECTOR MARCUS: I would certainly be happy to. Commissioner Melendez is on the line, still?

COMMISSIONER MELENDEZ: Yes.

STAFF DIRECTOR MARCUS: Did you want to participate on that?
COMMISSIONER MELENDEZ: If I'm available, yes.

CHAIRMAN REYNOLDS: Okay. Then we should assume that -- well, I'm going to assume that Commissioner Yaki, he has a keen interest in these procedural issues.

COMMISSIONER BRACERAS: How many can we have without violating the Sunshine Act?

CHAIRMAN REYNOLDS: It is four?

COMMISSIONER KIRSANOW: Four.

CHAIRMAN REYNOLDS: So --

COMMISSIONER TAYLOR: I would be --

COMMISSIONER BRACERAS: So that would be Yaki, Melendez, Taylor, Braceras.

CHAIRMAN REYNOLDS: Right.

COMMISSIONER BRACERAS: And the Staff Director.

CHAIRMAN REYNOLDS: That's right.

COMMISSIONER BRACERAS: And I think if we can all set aside a chunk of time, an hour or so, or more to hash through it on the phone, we can probably take care of it in one phone call. But if everybody else could get their written comments to me, and to the Staff Director ahead of time, that would be great.

I mean, with respect to how to proceed on
the reports you're going to be putting together, I guess I would -- I don't know. Do you have any thoughts?

COMMISSIONER KIRSANOW: No.

CHAIRMAN REYNOLDS: This is -- the markers laid down. Well, assuming that we get the new procedures in place quickly, then I don't think that we're going to need -- that we're going to lose too much ground, but there is the potential that we will have to go back and redo some things.

COMMISSIONER BRACERAS: Well, I think the only risk is that if a report is coming up for the December meeting for a vote, I think if we could separate it physically into two parts, the summary of the proceedings, and the finding and recommendations, then, at the very least, I think we can vote on sort of the clearinghouse version, and approve that without -- hopefully, we could also approve findings and recommendations, but that could be a separate discussion.

CHAIRMAN REYNOLDS: Yes, I would be interested to hear from Commissioner Yaki. I have no idea whether that would be an acceptable approach for Commissioner Yaki, but it's a reasonable one.

COMMISSIONER BRACERAS: And my guess is
that it would be, but I don't want to speak for him.

CHAIRMAN REYNOLDS: It's a reasonable approach.

COMMISSIONER BRACERAS: Like I said before, I am uncomfortable voting to approve any further reports, unless it is either just a clearinghouse report, or unless the process has been put in place beforehand. So if we're not voting on just a clearinghouse report, I would abstain from that vote.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: Until we have a process.

CHAIRMAN REYNOLDS: I understand. Any other questions or comments? Commissioner Melendez, questions, comments?

COMMISSIONER MELENDEZ: No.

COMMISSIONER BRACERAS: Oh, I do have one other question. Where do we stand with the strategic plan right now?

CHAIRMAN REYNOLDS: Ken.

STAFF DIRECTOR MARCUS: We're very close to having another draft. I think that we should have one early next week before Tuesday.

CHAIRMAN REYNOLDS: Thanksgiving reading.

COMMISSIONER BRACERAS: Okay.
IX. ADJOURN

CHAIRMAN REYNOLDS: Okay, on that note, let's adjourn until next month. Thanks, folks.

(Whereupon, the proceedings went off the record at 12:30 p.m.)