The Commission convened at 9:00 a.m., in Room 550 at 624 Ninth Street, Northwest, Washington, D.C., Gerald Reynolds, Chairperson, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairperson
ABIGAIL THERNSTROM, Vice Chairperson
JENNIFER C. BRACERAS, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, (via telephone), Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, (via telephone) Commissioner
KENNETH L. MARCUS, Staff Director
STAFF PRESENT:

IMAMI AFRYKA
DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
CHRISTOPHER BYRNES, Attorney Advisor to the
  Office of the Staff Director + Acting Deputy General Counsel, Office of the
  General Counsel (OGC)
RANITA CARTER
DEBRA CARR, ESQ., Associate Deputy Staff Director, Office of the Staff Director (OSD)
PAMELA A. DUNSTON, Chief, Administrative Services and Clearinghouse Division (ASCD)
BARBARA FONTANA
DEREK HORNE, Attorney Advisor
TINALOUISE MARTIN
SOCK-FOON MACDOUGALL, Acting Assistant Deputy Solicitor + Parliamentarian
EMMA MONROIG, Solicitor + Parliamentarian
EILEEN RUDERT
BERNARD QUARTERMAN, JR.
MOHAMMAD SULEIMAN KHAN
MARIA O. THOMPSON
KIMBERLY TOLHURST
MICHELE YORKMAN RAMEY

COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER
KIMBERLY SCHULD
I-N-D-E-X

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9:09 A.M.

CHAIRPERSON REYNOLDS: Are Commissioners Yaki and Melendez, are you still on?

COMMISSIONER MELENDEZ: Yes.

CHAIRPERSON REYNOLDS: Okay, you provide us with a quorum, so please let me know if you get off the line.

The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights at 624 9th Street, Room 540 in Washington, D.C.

All of the Commissioners are present with the exception of Abigail Thernstrom. Commissioners Yaki and Melendez are participating by phone. And we expect Vice chair Thernstrom to arrive shortly.

The first item on the agenda is approval of the agenda.

I. Approval of Agenda

CHAIRPERSON REYNOLDS: We'll have a couple of motions to amend. I move that we amend the agenda. Is there a second?

COMMISSIONER TAYLOR: Second.
CHAIRPERSON REYNOLDS: Discussion?
All in favor, please say aye.
(Chorus of ayes.)
Any in opposition? Any abstentions? The motion carries.
I move to add an item labeled motion to keep the record of the Supplemental Educational Services under No Child Left Behind Act briefing open for public comment in Section 5 and to add an item labeled Mississippi SAC immediately following the discussion of the Alabama SAC under State Advisory Committee issues. Is there a second?
COMMISSIONER TAYLOR: Second.
CHAIRPERSON REYNOLDS: Discussion?
All in favor say aye.
(Chorus of ayes.)
CHAIRPERSON REYNOLDS: All in opposition? Any abstentions? The motion carries.
The second item is the approval of the minutes of the January 26, 2007 business meeting.

II. Approval of Minutes of the
January 26, 2007 Meeting
CHAIRPERSON REYNOLDS: Well, actually, this is the business meeting. May I have a motion?

COMMISSIONER TAYLOR: So moved.

CHAIRPERSON REYNOLDS: Second?

COMMISSIONER KIRSANOW: Second.

CHAIRPERSON REYNOLDS: Discussion?

All in favor, please say aye.

(Chorus of ayes.)


Next up we have announcements.

III. Announcements

CHAIRPERSON REYNOLDS: And this is, as you know, the celebration of Black History Month. During National Black American History Month we honor the heritage and the accomplishments of Black Americans and recognize their extraordinary contributions to the United States. The greatness of America is reflected in the contributions of Black Americans from all walks of life throughout the history of the United States. Examples includes the writing of DuBois, Baldwin, Ralph
Ellison, Alex Haley and others; the music of Mahalia Jackson, Billie Holiday, Duke Ellington, and Billy Strayhorn.

So in recognition of past and present achievements of Black Americans, the United States Commission on Civil Rights calls upon public officials, educators, librarians and all people of the United States to observe this month with appropriate programs and activities that highlight and honor the contributions made by Black Americans to our nation.

Okay, Mr. Staff Director, do you have anything?

COMMISSIONER MELENDEZ: Mr. Chairman?

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER YAKI: I would also like to add to the record the recognition of the fact that just this month we had the first Super Bowl coached by -- both teams were coached by African Americans, and an African American won the Super Bowl coach for the first time.

CHAIRPERSON REYNOLDS: That's
right. And one lost, too.

VICE CHAIRPERSON THERNSTROM: I didn't hear that.

CHAIRPERSON KIRSANOW: An African American coach lost for the first time also.

(Laughter.)

IV. Staff Director's Report

CHAIRPERSON REYNOLDS: Mr. Staff Director, do you have anything to add to your written report?

STAFF DIRECTOR MARCUS: Thank you, Mr. Chairman. I do have a few words about the Commission's budget, the PART and the SACs, a new Commission staff.

First, to update the Commission, we expect that we will soon have appropriations in the form of continuing resolution for the current fiscal year. As the Commission is aware, we requested $9,308,000 and change for this fiscal year as a part of the President's budget. However, the House of Representatives passed a continuing resolution that would fund the Commission at only $8,933,000. The Senate is currently debating the funding resolution. Closure was filed yesterday to limit debate.
We anticipate that the Senate will follow the House's lead and that we would have the continuing resolution that is under $9 million, that is approximately $300,000 less than what we have requested and will mean various reductions as compared to our plan.

The specific impact, as a result of this CR will include that we will not be able to hire the additional two full-time attorneys within the Office of General Counsel that we had proposed to hire. We will not be able to conduct the additional State Advisory Committee travel for which we had assigned funds, we will not be able to issue the Spanish language public service announcements most likely this year that we had requested. And we will not be able to backfill for a social scientist who led the office for Civil Rights Evaluation. All of those things that we had requested, many of them were things that we had specifically requested as additional funds that I anticipate that we will not be able to do this year.

In addition, of course, we will be able to do fewer briefings than we had
initially anticipated, but the Commission has already voted to reduce the number of briefings being done in this fiscal year.

In addition, the President has just forwarded his budget to the Congress and we will need to advance our request as well. We do have a request that is ready to go. We are a little bit late, although much less late than the Agency has been in the past.

I have, as Commissioners may recall, issued an administrative instruction that changes the process for budget formulation, specifically by providing that the Commissioners in addition to voting on the budget justification, as you have done in the summer, will also have an opportunity to vote on any changes made between the budget justification and the budget request which we are about to make; in other words, an opportunity to vote as to whether the changes that we have to make in order to reflect the amount that's actually in the President's budget, whether that's accurate. And we have some suggestions that we will be making about how to deal with the $192,000 shortfall.
between the initial budget justification and the budget request that we will be submitting.

Essentially, the way we can close that gap without impairing Agency functions and while ensuring continuity of all staff positions is by refraining from hiring additional secretaries for the Central and Western Regions who had to backfill for recent retirements and by refraining from hiring an additional attorney-advisor in the Office of General Counsel, as we had planned, and by only conducting 8 briefings, rather than 11, which is consistent with the Commission's recent vote as well.

CHAIRPERSON REYNOLDS: Anything else?

STAFF DIRECTOR MARCUS: Well, that is it on the budget. I should say a few words about the PART which is the Program Assessment and Rating Tool process for the Office of Management and Budget.

CHAIRPERSON REYNOLDS: Excuse me, Ken, before we move on to another topic, I just want to highlight the fact that the Agency continues to shrink. It is the
incredible federal shrinking agency. Our flat budget is over time impairing our ability to carry out our statutory obligations and Congress will have to act in the not too distant future if we're going to continue to carry out our statutory obligations.

COMMISSIONER MELENDEZ: I have a question. This is Mr. Melendez.

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER MELENDEZ: As far as the 2008 budget, at what point are the Commissioners going to review that?

STAFF DIRECTOR MARCUS: That's a good question, Commissioner Melendez. The question for review is whether the Commissioners agree that the changes that I suggested are appropriate. The Commissioners, of course, reviewed the budget last summer and I would suggest that the Commissioners address that question as well. And my recommendation is that we do it at the soonest possible instance.

The House Appropriations Committee has indicated to us a likelihood that they will want to conduct a hearing regarding the
Commission's operations and a possibility that that hearing will take place on March 9, which is the same date on which we have scheduled both a Commission business meeting and a briefing on the topic of domestic wiretapping and the war on terror. How we deal with that conflict and whether the Appropriations Committee would be amenable to changing the date is something that we don't know, as we've just gotten word of that.

By the way, the House Authorizing Committee has also informed the public of their oversight priorities for this year and this Agency is included on the list of their priorities, but we do not, at this point, expect that a hearing will take place prior to March 9.

So my recommendation is that we should look at that budget question at the soonest opportunity. We were not able to come up with the recommendations that I mentioned a week in advance of this meeting and I know that Commissioners typically like to have a week to review and consider. So my suggestion would be that we consider having a special
meeting perhaps by conference call at the
soonest opportunity between now and the March
meeting. And that might be a topic for future
business or something that we could add to the
agenda. If we were to issue a notice in the
Federal Register of a future meeting, the
soonest that we could possibly have a separate
meeting for that topic by conference call
would be the Tuesday after President's Day.

COMMISSIONER MELENDEZ: Another
question, Ken. As far as the budget, I know
that you have recommended in a letter to the
House of Representatives that we're going to
allot a certain amount of money to the regions
and I'm not sure exactly what that means. I
know that the staffs continually have a lot of
problems operating. They're not even able to
meet face-to-face because we don't really even
have a base that actually goes out to each
SAC. Even if that were a $1,000 or whatever
it may be for one face-to-face meeting. And I
know it's been handled just case by case, but
at some point in the budget I'd like to see
what it would take to actually fund a SAC at a
minimal amount even for one meeting, face-to-
face per year, something like that. And I think that should be part of the budget. At least we can see what that expense would possibly be.

STAFF DIRECTOR MARCUS: Thank you, Commissioner. At this point, I am encouraging the existing charter committees to meet at least by phone and preferably face-to-face, as much as possible. I would say that staffing and scheduling of members at this point is as much a constraint as money. We have had recently SAC conference calls. For instance, there was a California State Advisory Committee conference call that took place earlier this week. I do anticipate that there will be further meetings, both by conference call and face-to-face over the next couple of months, including we'll soon have a face-to-face meeting of the Georgia State Advisory Committee. There are other committees that have requested and for which I'm approving funds for meetings, particularly in the Southeast. I anticipate receiving a request from the California State Advisory Committee for a meeting in late March and it looks like
we should be able to fund that.

I'm urging our regional staff to try to put together meetings as best they can for the newly chartered committees. At this point, at a regional level, my priorities are to make sure that we can get our unchartered State Advisory Committee chartered as quickly as possible and to make sure that at the same time we are having at least in each region some meetings and face-to-face meetings, particularly to deal with the nationwide priorities such as the prison project to support our upcoming statutory report.

We're also looking at ways that we can decentralize at least a portion of the budget in order to provide for greater authority and accountability at the level of the Regional Directors. That work is going on, but it is hampered by the limited amounts of money that we do have. I think that given the small number of chartered SACs, they should all be able to meet face-to-face, but when we get all of the SACs chartered, we would be talking about 51 committees and the idea of having multiple face-to-face meetings
by the 51 committees is something that I think will require a greater amount of funding than we have right now.

COMMISSIONER MELENDEZ: I would just like to address this in the 2008 budget, hopefully we can talk about it again?

STAFF DIRECTOR MARCUS: I have recommended, yes, that there be an additional subsequent discussion about the 2008 budget.

COMMISSIONER MELENDEZ: Just one other comment. I know that as far as planning for these SACs, I know that they need at least six months if they're going to plan some major meeting such as the meeting out in Utah that has to do with Native Americans. I think if they know what their budget is, I think they can plan better as far as assembling speakers and all the different -- the same thing that we have to do. They just need a lot more time to plan that.

And then the other question I have is I know that we lost our -- we don't have a Budget Director and I know that that's crucial and critical to whatever we're doing within our office and so what are the plans there and
what do you see? I know that somebody has to be holding the fort down as far as without a Budget Director, so what's the status on that?

STAFF DIRECTOR MARCUS: That's an excellent question, Commissioner, and yes, I would say that that function is one of the highest priorities that we have operationally in terms of strengthening the work that we're doing. In the recent vacancy in that position, that's been officially vacant now for certainly over a week. I don't know if it's been officially vacant for two weeks, but it's been from the Director of Management, I'm getting the indication it's been about a week or so.

During that period, the understaffing has been compensated really by, I think, an extraordinary extra bit of hard work from our Director of Management who is much more detailed right now and hands on in the budget area than she would otherwise be. And I think that our Budget Analyst is also stepping up and doing additional work. And it does create additional strain throughout the organization and particularly within the area
of the Office of Management.

We have looked at that and I would say that my concern is that this is a critical function, Budget and Finance. It is a function that historically and especially over the last several years has been a major source of weakness for the Agency, not just during the prior tenure of the former Director, but prior to that. And it is an area where we have had considerable difficulty recruiting and attracting high-level personnel.

Now I would say that we have recently strengthened our recruitment ability through exemplary work by the Director of HR which has been recognized by OPM and because of that work we have been much more effective in recruiting very strong candidates in some positions, notably in Attorney Advisor positions. We are able to attract a large number of qualified attorneys and other persons. But in light of our financial records and the well-publicized problems that we've had in that area, it has been significantly harder to attract people in that area.
I've also been concerned about our ability using recruitments and internal hires to staff that function at the highest possible level that we can. For that reason, we have been having discussions over the last few months now with the General Services Administration about expanding the scope of the work that they are doing.

Now I would say one of the bright spots in our financial function lately has been the good quality work that we are getting at GSA. Other agencies were not willing to come in and provide us full accounting services, but GSA was willing to do it and they were willing to do it at a lower price point than we had gotten quoted elsewhere and I think that their work is a part of the reason, together with hard work from Commission staff that we were able to get unqualified opinions on our financial statements. So we are looking to see to what extent they can expand that, ideally, to the point where we can outsource to them the maximum possible extent of the financial function. Now we have considered them to be
full-service accounting, but there are a
number of functions previously conducted by
the Director of Budget and Finance and we are
discussing with them the extent to which they
can take over many of those functions.

There are some things that I think
should still be done in-house. There are
reconciliations that I would like to have done
in-house, if only to serve as a check or
control on the work being done by GSA.
Additionally, since GSA is located in, I
believe in Kansas, and does not have on-site
personnel, there is some coordination work
that needs to be done here.

GSA has finally agreed in principle
to negotiate a Memorandum of Understanding
under which they would assume significantly
greater aspects of the Budget and Finance
function which I think would be a real step
forward in solidifying that function and their
agreement in principle to do so, I think is a
real tribute to that agency and their
willingness to be of assistance.

It is taking a while as inter-
agency Memorandum of Understanding frequently
do and we will need to carefully work with
them on the Memorandum of Understanding and to
determine based on the results of that
negotiation what the remaining tasks have to
be done so we can determine what additional
staffing is required at the Agency.

Our hope is that there will be
little additional work that has to be done,
but until we execute the Memorandum of
Understanding, we won't know exactly what
grade level is required or how exactly to
craft the position description.

CHAIRPERSON REYNOLDS: Ken, could
you provide us with an estimate in terms of
when you believe we will hear, get a
definitive answer from GSA?

STAFF DIRECTOR MARCUS: The process
has been taking a few months now. I am
hopeful that we will have something finalized
by the March meeting, but I certainly am not
in a position to provide any sort of assurance
of that, because we've not seen yet even a
first draft, so we don't yet know whether
we're on the same page.

Based on our conversations with
them, it seems like we're on the same page, but you really need to see the paper before you know.

CHAIRPERSON REYNOLDS: So they've agreed in principle to do this and we're talking about just working out the details?

STAFF DIRECTOR MARCUS: That's right.

COMMISSIONER YAKI: Ken?

STAFF DIRECTOR MARCUS: Yes.

COMMISSIONER YAKI: On a totally unrelated topic, as we get the Staff Director's report for January, what perturbations are going on with regard to the March hearing? What contingencies are we looking at for rescheduling that indicates that we have an oversight hearing that day?

STAFF DIRECTOR MARCUS: Well, that's a good question and a tough question. The possibility of the oversight or rather the appropriations hearing arose only, I believe it was just yesterday afternoon.

We have been working on bringing in speakers and making at least preliminary phone calls to try to get speakers who are
consistent with the concept paper.

    Commissioner Yaki, you suggested that we invite the -- forgive me if I get the name wrong. I think it's the American-Arab Anti-defamation Committee which --

    COMMISSIONER     YAKI:     Anti-discrimination.

    STAFF DIRECTOR MARCUS: I'm sorry, Anti-discrimination Committee. Congresswoman Mary Rose Oakar=s Committee. And we have examined the concept paper and that group is consistent with the concept paper. And we are reaching out to that organization. They've certainly cooperated with us in the past, including the recent past, and we're hopeful that they would participate.

    I think recently Andrew McCarthy has been recommended as a potential speaker. We're reaching out to him and to other potential speakers. So that's in process right now.

    There are, I think, two difficulties that are arising. One is the scheduling challenge and since we just heard yesterday afternoon that there's a possible
conflict, we're not sure whether, for instance, the Appropriations Committee might have any flexibility on the date or not. If not, then I suppose we would have to look into the question of postponement, but that's not something that we've reached yet, since this is all essentially news to us.

CHAIRPERSON REYNOLDS: Or moving the date of the Commission meeting.

STAFF DIRECTOR MARCUS: Or moving the date of the Commission meeting, that's right.

There is one wrinkle though with the topic and I don't know if this is an appropriate time to address that?

CHAIRPERSON REYNOLDS: Sure.

STAFF DIRECTOR MARCUS: The wrinkle with the topic is that we, under the concept paper, are addressing the domestic wiretapping in the War on Terror and specifically, looking at issues of the legality and constitutionality of programs such as the -- what has been called the Terrorist Surveillance Program.

The most important, arguably, legal
and constitutional issues have been whether that program can be conducted absent the use of warrant and absent Court involvement. The recent announcement by the Administration that this will be going through the FISA Court has, at a minimum, significantly changed the issue. Many of the legal arguments or debates are no longer, shall I say, forward looking. There may be historical questions of legality, but they're no longer a part.

We have not essentially changed the approach from what has been approved by the Commission, but there are people who have asked the question, do we still address the same topic in the same way now that events have changed, or do we make changes to it?

Commissioner Yaki, please correct me if I get this wrong, I think that you have suggested, for instance, that we look at questions such as who is being listened to or how are people selected, things of that sort, and perhaps the way the FISA Court is used. That's not exactly within the approved scope, but it's close to it.

Alternatively, we could continue
exactly under the approved scope, even though
the relevance may be a little bit different
than it was, or we could take it in a somewhat
different direction. One other possible
direction we could look at is to broaden the
scope, for instance, to look at little bit
more broadly at civil rights in the War on
Terror including, but not limited to the
wiretap program. That possibility arose in
part through conversations that I've had with
other federal agencies, including especially
the Office of the Director of National
Intelligence.

I approached them to find out
whether there were issues, either specific to
the terrorist surveillance program or
generally with respect to the issue of civil
rights protections that would be with publicly
discussing and that are relevant to the
protections that we do or don't have, but
which can be discussed in an open setting. I
think people are aware that there is a
commission that's been established to look
into such questions called the White House
Privacy and Civil Liberties Board and they're
looking specifically into issues such as civil liberties protections in the wiretap program, but it's my understanding from talking to that agency that they have been able to get meaningful information about questions like who is being listened to only through the use of security clearances that they have obtained, but that we don't have and the information they've gotten is not such that they could have it publicly aired.

On the other hand, I have heard from the Office of the Director of National Intelligence that there are some real questions about civil rights and the War on Terror that could be addressed, publicly. They may relate a little bit more broadly to questions about I guess there have been allegations about the Defense Department conducting surveillance on protesters or other U.S. citizens, questions about the function of the FISA Court, questions about data mining procedures, questions that exceed the current scope that could be discussed. And they have raised the possibility that they might be able to discuss from an intelligence perspective.
what protections exist or don't, but that they're not sure if they would be able to do it if the scope of the briefing were limited to the wiretap issues.

COMMISSIONER YAKI: I understand. I would like to be kept very much engrossed in these discussions. This was my topic and certainly there are other organizations we can also consult with that I can think of that would also be helpful and perhaps helping either find other areas of focus within the topic as is or where we can broaden the topic to make it as topical and informative as possible. So if you could keep that in mind, I would appreciate that.

STAFF DIRECTOR MARCUS: Certainly.

COMMISSIONER BRACERAS: This is Jennifer Braceras.

My concern is just that if we broaden it too much, it becomes scattered and we have different panelists talking past each other and it's not a productive discussion, but that said, this is Commissioner Yaki's topic and I would defer to his view on how you should proceed. However Commissioner Yaki
wants to sort it out, he has my proxy.

  COMMISSIONER YAKI: Thank you, Jennifer, I appreciate that.

  CHAIRPERSON REYNOLDS: Commissioner Thernstrom?

  VICE CHAIRPERSON THERNSTROM: I second what Jennifer just said. It is your topic, Michael, and I want you to have first say on it.

  I do have a very strong feeling, however, that we do a better job when we focus on a manageable question and that to define this too broadly is really to dilute the effectiveness of any findings and recommendations that we might come up with and in fact, weaken the whole enterprise.

  So I would urge -- I would hope that we could structure this in a way such that the briefing were really quite focused.

  COMMISSIONER YAKI: Thank you. I appreciate that.

  STAFF DIRECTOR MARCUS: I will continue, but before I do, I'm not sure if I have any different marching orders or whether this is something that we should address later
in the meeting or otherwise.

At present, this is scheduled for March 9 which is the next meeting. We do have an approved concept paper. The approved concept paper is fairly narrow and relates just to the domestic wiretapping. It seems to me if we were to expand it, it would require essentially a vote or something of that sort.

COMMISSIONER BRACERAS: Can I just make a motion that the Staff Director work with Commissioner Yaki to formulate the panels for the briefing and the scope of the briefing and that's it.

VICE CHAIRPERSON THERNSTROM: Well, it is not a silly question, it seems to me of expanding it. It's simply restating its focus or perhaps it's just simply a question of restating the focus.

COMMISSIONER BRACERAS: That's what I'm saying is we're all in agreement on the general topic and I'm willing to just give discretion to the Staff Director to work with Commissioner Yaki on the details and if we need a motion, you know, to do that, then we can put it in a motion form.
It doesn't bother me if the panels that the Staff Director and Commissioner Yaki come up with are technically a little bit outside of the scope of the concept paper we originally approved. I'm willing to provide that discretion to the Staff Director now to do what he sees fit in light of changed legal circumstances.

VICE CHAIRPERSON THERNSTROM: I agree with that. I also think that in terms of looking backwards, the question as currently formulated, is a little out of date. But nonetheless, looking backwards, it may not be irrelevant to the future, so that it's -- so our previous formulation may not, in fact, be quite as irrelevant as one might think.

CHAIRPERSON REYNOLDS: I agree with Vice-Chair Thernstrom. I still think that this issue is relevant despite the changed approach and it's worthy of our attention.

I think that Commissioner Braceras' suggestion is a good one and I second it.

VICE CHAIRPERSON THERNSTROM: Good. We're all agreed. Michael, it's in your hands.
COMMISSIONER YAKI: Thank you.

CHAIRPERSON KIRSANOW: Don't mess it up.

(Laughter.)

VICE CHAIRPERSON THERNSTROM: We'll fire you.

COMMISSIONER YAKI: I wanted to go for a couple of appropriations for a field hearing, but I guess we don't do that.

COMMISSIONER BRACERAS: Do we need a vote? Or just so you get the sense of the Commission that it's okay to move forward --

COMMISSIONER TAYLOR: And to the extent the Staff Director and Commissioner Yaki revise a concept such that the Staff Director and the Office believe that it's necessary for us to vote on a new concept, we can do it by way of a poll vote.

STAFF DIRECTOR MARCUS: That's sufficient for me.

COMMISSIONER BRACERAS: The other thing, if we vote now to give him the discretion, I don't think we need another vote later.

VICE CHAIRPERSON THERNSTROM:
That's not necessary.

CHAIRPERSON REYNOLDS: Okay, as long as there is no objection, we don't need to have an official vote on this issue.

COMMISSIONER BRACERAS: It's adapted as you see fit.

VICE CHAIRPERSON THERNSTROM: I mean I am very concerned about this possible scheduling conflict because this is a complicated issue. Putting together a really good panel is not going to be easy and I hope we know sooner, rather than later, whether we've got -- whether we need to move the time of this meeting.

COMMISSIONER BRACERAS: Michael, can you pull some strings on the Hill to get them not to do their hearing that day?

COMMISSIONER YAKI: Actually, I was just sending emails on that right now.

(Laughter.)

COMMISSIONER BRACERAS: We'll leave that in your able hands.

VICE CHAIRPERSON THERNSTROM: Yes.

STAFF DIRECTOR MARCUS: Thank you. Another issue that I think the Commissioners
should be aware of is the Commission's use of
the OMB Program Assessment and Rating Tool
process, known as PART.

Commissioners may recall that this
is a lengthy, resource-intensive and very
rigorous process that is required of most
executive agencies. Frankly, it's not
something that anyone looks forward to.
Officials at other agencies I've talked to
have frankly dreaded the process.

We were exempt from the
requirement. We were not required to use the
PART. However, we chose voluntarily to use
the PART, based on the recommendation of GAO
and the vote of the Commission to implement
GAO recommendations.

And we did so, although it wasn't
required, in the hope that it would provide us
with some useful direction on how we can
improve our management and operations beyond
what had been specifically recommended under
the GAO process.

Now we've gone through the first
phase of it now and we have received an
overall rating from OMB. We knew from the
beginning that the rating would not be good. We knew from the beginning that it is essentially impossible for any Agency that doesn't have a current strategic plan to get what you might call a passing grade and we were aware of significant weaknesses within the Agency. And I don't think that the ultimate determination of PART is really surprising in that respect.

Approximately three percent of federal programs are rated ineffective which is the lowest rating of the PART. That refers to ineffectiveness of program management, program purpose and design, strategic planning, etcetera. I think that that is essentially where we would have been had the process been completed in 2005. We were not within the category of ineffective. However, we were in the next category up which is results not demonstrated which includes approximately 22 percent of all federal programs.

This reflects, I think, both that there have been significant improvements that have been acknowledged by OMB, because without
those significant improvements we certainly would have been in the bottom category. Also, then we have significant progress that we need to make, especially in the area of finalizing the strategic plan, but also in other parts of management and operations.

The PART process did involve OMB determining that the Commission has taken meaningful steps to correct strategic planning deficiencies. Even though we haven't finalized the strategic plan, they recognized even as of several months ago when they assessed us that we were making meaningful steps. OMB also recognized that we are tying our budget requests to annual performance goals. This is something that was not true a couple of years ago, but it's one of the innovations through our reforms.

They've also recognized that the Commission collaborates and coordinates effectively with new APHIS programs and that we're taking meaningful steps to address management deficiencies. So we have gotten some kudos there. On the other hand, overall, I would say the score reflects the fact that
we have some way to go and are working on that and have developed through the process a plan to correct deficiencies, including, among other things, the finalization of the strategic plan.

Through this process, I think that we've gotten some helpful learning that has gone into the measures that are in our draft strategic plan and I think we have further learned it will help us in further refining strategic measures.

CHAIRPERSON REYNOLDS: Ken, this is your discussion of the strategic is a nice segue into where we are with respect to the standards for briefing reports. It's my understanding that until that piece is completed that affects a number of items including our ability to complete the strategic plan, is that right?

STAFF DIRECTOR MARCUS: It is correct that we are still in the midst of that process and it is correct that it does affect a number of things that are coming up, including especially it's holding up the Inspector General's report and it is certainly
affecting what we're going to do on all of our briefings that are coming up. I don't know that the strategic plan per se is held up, but certainly other things are as well, and I am concerned about the prospect that we might go on to the Hill without having come to closure on it.

Happily enough, we did have the first, at least partial meeting of the working group on briefings which was conducted just earlier this week. We have not been able to come up with a meeting time when all Commissioners have been able to participate, but we at least had a preliminary meeting with some of the Commissioners, so we've gotten a start.

CHAIRPERSON REYNOLDS: I strongly urge the members of the working group to rearrange their busy schedules to have the meetings necessary so that we can, the full Commission can receive a recommendation in light of the hearing that's going to take place on the Hill. We would all be in a better position if we went to that hearing, having put that issue behind us, and also the
related issues.

STAFF DIRECTOR MARCUS: If there are no further questions on that, the last thing I would like to say is that despite staff attrition, we have been able to bring some new people on. For instance, we're very pleased that we were able to hire Ms. Kimberly Tolhurst for the Office of General Counsel. She has practiced anti-trust for several years as an associate at the distinguished law firm of Crowell & Moring in Washington, D.C. Most recently she served as senior attorney for the Battered Women's Justice Project. She's a graduate from the University of Virginia and William and Mary Law School. During law school, she spent a summer as an intern here at the Commission and we're delighted to have her on board.

CHAIRPERSON REYNOLDS: Is she here, present?

STAFF DIRECTOR MARCUS: Yes.

CHAIRPERSON REYNOLDS: Welcome aboard.

STAFF DIRECTOR MARCUS: In addition, we have three new legal interns who
are helping us this summer. And they are much needed. As you know, the Office of the General Counsel is very understaffed which is affecting the time table, not just for briefing reports, but for the statutory report. They are Maria Thompson, M. Suleiman Khan from Michigan State University and Rabia El-Hage from George Mason University. Are they here at all?

CHAIRPERSON REYNOLDS: Okay, thanks for helping out.

STAFF DIRECTOR MARCUS: If there are no further questions --

COMMISSIONER KIRSANOW: I just wanted to confirm, we're operating currently in a continuing resolution at $8.9 million, budget at $8.9 million?

STAFF DIRECTOR MARCUS: Yes, Commissioner.

COMMISSIONER KIRSANOW: And you indicated that there was going to be a closure vote at some point in the future?

STAFF DIRECTOR MARCUS: We're hopeful that it will be today.

COMMISSIONER KIRSANOW: Okay. Is
there any prospect that our budget would be anything greater than $8.9 million at any point in the near future?

STAFF DIRECTOR MARCUS: I suppose that until they finalize the process it could be either greater or lower, but we have no reason to think that it will be anything different than the figure that came out of the House.

COMMISSIONER KIRSANOW: Okay.

CHAIRPERSON REYNOLDS: What was that figure?

STAFF DIRECTOR MARCUS: I believe it's $8,933,000.

CHAIRPERSON REYNOLDS: Is that through September 15th of this year?

STAFF DIRECTOR MARCUS: I believe it's through the end of September.

CHAIRPERSON REYNOLDS: End of September, I'm sorry, September 30th of this year?

STAFF DIRECTOR MARCUS: Yes.

CHAIRPERSON REYNOLDS: Okay.

Anything else?

STAFF DIRECTOR MARCUS: That's it,
thank you.

CHAIRPERSON REYNOLDS: Okay, if there are no additional questions, so we will move on to the Quality Information Guidelines which is the next item on the agenda.

V. Management and Operations

Quality Information Guidelines

CHAIRPERSON REYNOLDS: In Section 15A of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Congress required that federal agencies issue guidelines ensuring and maximizing the quality, objectivity, utility and integrity of information, including statistical information disseminated by the agency; and (b) establish administrative mechanisms allowing effective persons to seek and obtain correction of information, maintained and disseminated by the agency that do not comply with these guidelines. These guidelines are based on guidelines issued in 2002 by the Office of Management and Budget.

According to these guidelines, the agency should not disseminate substantive information that does not meet a basic level
of quality. The more important the information, the higher the quality standards to which it should be held.

The Quality Information Guidelines for the Commission were previously published in the Federal Register on July 24, 2006 and received no comments during the notice and comment period. These guidelines are substantively the same.

I move that the Commission approve the Quality Information Guidelines sent to the Commissioners on December 6 and that the Staff Director send these guidelines to the Federal Register for publication.

May I have a second?

VICE CHAIRPERSON THERNSTROM: Second.

CHAIRPERSON REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes, Commissioner Melendez here. We had a discussion on this on Wednesday with the group for procedures on briefings and it's my understanding that was not, the Director was going to determine how the guidelines will affect the briefing reform procedures and I
think that was determined partially whether or not we should vote on this today.

STAFF DIRECTOR MARCUS: Yes, thank you, Commissioner. I have reviewed this material again with that question in light and also conferred with the General Counsel on this point.

It is clear from the face of the documents that these guidelines will apply, if approved, to briefings as well as to other documents. However, these guidelines will not in any way alter certain of the questions regarding briefing procedures that have been raised previously. Specifically, questions have arisen as to the applicability or inapplicability of legal sufficiency review, editorial review board or affected agency review to briefing reports. And I know a question was raised during the working group meeting as to whether these guidelines would alter in any way that applicability. And I think that the answer is clearly no.

It is true that these guidelines do discuss, particularly in Section 3, the Commission's existing policies and procedures
to ensure and maximize information quality. And in the course of that discussion, there is a summary of procedures included within AI 1-6, which include the legal deficiency and defame and degrade review as well as editorial policy review and other reviews of the sort.

However, this section which describes those procedures merely provides a summary of the existing procedures and does not purport to alter them in any way. So whether the Commission approves or disapproves this guideline should not affect the question as to whether those protections in AI 1-6 apply to briefings.

COMMISSIONER MELENDEZ: Okay, one other question. Is it true that until we pass these guidelines, there is no process for someone who wants a correction of information the Commission has publicly disseminated?

STAFF DIRECTOR MARCUS: I don't know that I would accept that. This policy certain provides some very formal processes including a formal avenue for complaints and a formal process for appeals. Even with this though people have the opportunity to write to
us if they think any of the information is inaccurate in any way and for us to review it, although not through the same formal mechanisms.

And there is an example of this that I can give. And it's sort of an unfortunate example and it deals with a person who was mentioned by a witness during the briefing on campus anti-Semitism. Now as the Commissioners will recall, that briefing was unusual in the number of institutions and individuals who were discussed, some of whom in a negative light. And for that reason, the Agency engaged in an unusually substantial defame and degrade review, contacting a couple of dozen individuals and educational institutions to provide them with an opportunity to respond if they felt that they had been defamed or degraded within the meaning of the policy.

However, even though we engaged in a very laborious process, more rigorous and extensive than we have for other briefings, it turned out that there was at least one person who fell through the cracks, who was discussed
in the course of a lengthy written statement by one of the witnesses, who was mentioned in a negative light, but for whom we had inadvertently not sent a defame and degrade letter. And that person wrote to us to express concern that she felt that she had been defamed. It was a difficult issue.

Initially, the response from the General Counsel was that there were some things that had been said by the witness to which this complainant did not challenge. And since they were not challenged or contested, we certainly should not change them in way, but that there was one small statement within it that she did contest. And since there was some question about it, we went back to the witness to see, since it was his statement whether he would have objection to deleting that portion of it and he did not. So we took out, it was less than a sentence, it was a few words.

We then received another letter from the same person who said that she had issued a public apology. The issue, I don't know if this is too much length for an explanation, she admitted that as a student
she had disseminated materials by David Duke addressing Israel or Jewish people, but she contended she was not aware at the time who David Duke was and there was a factual disagreement about whether she'd apologized, whether she still agreed with the content of the material or not.

However, based on the second round of information, and then we found that there was, in fact, a formal, written apology that she had written and not only that, but that the entire incident had taken place several years ago. It was older than most of the other incidents that took place that were discussed with the briefing. So we contacted the author, the witness, and we mentioned this issue, the fact that it was more outdated, the fact that the witness had apologized and so on and so forth and that there were potential additional defame and degrade issues.

And he indicated that he did not think that the entire sentence or less than the sentence that remained was really that significant and that he would agree just to deleting it all together.
So we have taken that as one sentence from the statement of one of the witnesses that we took out. That's something that I think would fall within this policy and we would now, if we pass this, have a formalized policy, but we dealt with it informally in that way.

COMMISSIONER BRACERAS: Just out of curiosity, did that all take place after publication?

STAFF DIRECTOR MARCUS: It did.

COMMISSIONER BRACERAS: So now the hard copies are being retracted and republished?

STAFF DIRECTOR MARCUS: Well, we have done two things. On the website -- the website is the way most people review our reports, so we changed the website. And we essentially finished the run of the publication, but it's still in very high demand, so we have to do a reprint and the reprint --

COMMISSIONER BRACERAS: The reprint will reflect the change.

STAFF DIRECTOR MARCUS: That's
right, that's right.

COMMISSIONER YAKI: This matter had been brought to my attention. I have forwarded it to the Staff Director and I just want to thank you, Ken, for your diligence and to the staff for their diligence in pursuing this issue.

STAFF DIRECTOR MARCUS: Certainly.

Thank you, Commissioner.

COMMISSIONER MELENDEZ: Ken, Commissioner Melendez here. How does the Inspector General's report -- did he comment on this whole guideline issue?

STAFF DIRECTOR MARCUS: I have to say offhand I don't recall whether he commented on the guidelines. I certainly can say he didn't criticize us for it. It's possible that he noted the guidelines. He might not have perhaps because we hadn't passed it. In the event that we do pass the guidelines, we will certainly forward them to him in the event that he cares to make -- add any mention to them in his report.

COMMISSIONER MELENDEZ: Okay, I think he should receive a copy of this. Thank
you.

STAFF DIRECTOR MARCUS: We'd be pleased to forward him one.

CHAIRPERSON REYNOLDS: Okay, at this moment, if there are no further comments or questions, all in favor, please say aye.

(Chorus of ayes.)


I move that we keep the record of No Child Left Behind and Supplemental Education Services briefing open for 30 days from the date of the briefing in order to provide the public the time to submit comments. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRPERSON REYNOLDS: Discussion?

All in favor, say aye.

(Chorus of ayes.)

Any objections? Any abstentions?

The motion passes unanimously.

Next up is Program Planning.

VI. Program Planning

CHAIRPERSON REYNOLDS: We will now
consider the topic of program planning for 2009 in two stages; first, the adoption of the National Conference on Civil Rights, and second, the adoption of a statutory report and three projects for briefings.

The draft strategic plan says that the Commission will have as its goal to support a national conversation on the current civil rights issues that will identify civil rights priorities for policymakers. The Commission hopes to support a national conversation on current civil rights issues by convening a national conference in 2009 to elicit varied multi-disciplinary and bipartisan perspectives on civil rights in the 21st century.

The draft strategic plan also says that the Commission will achieve this goal by preparing a 50 State Report in which the Commission's individual SACs identify civil rights priorities facing their states and regions. However, there still has not been a formal vote on the strategic plan, therefore a motion is proposed to conduct a national conference in 2009 on civil rights issues in
the 21st century. Under this motion, the Commission will seek to draw at least 100 participants made up of scholars, practitioners, policymakers and other specialists to elicit varied and bipartisan perspectives on civil rights issues in the 21st century.

Participants would address perspectives on civil rights in the 21st century, including both broad themes and discrete topics. This conference will result in a report of findings entitled "Civil Rights Priorities for the 21st Century." This report will also identify issues and research topics to round out the Commission's programmatic planning for 2010 through 2012, lay the foundation for updating the Commission's strategic plan in 2011 and identify any areas where the Commission's powers and mission need to be expanded to respond to emerging challenges.

Is there a second?

VICE CHAIRPERSON THERNSTROM: Second.

CHAIRPERSON REYNOLDS: Discussion?
COMMISSIONER MELENDEZ: Yes.

Commissioner Melendez here. The national meeting we're going to have in 2009, two questions. Since we're talking about budget constraints, I think at some point we need to know whether we can anticipate the cost would be and then the other question is how does this play into this? Is it just some written testimony that they send in and we incorporate it into something?

CHAIRPERSON REYNOLDS: I think your first question is a very good one. With the discussion that we had earlier in the meeting about budget constraints, we need to have a conversation about whether this is feasible and to that end, I turn to the Staff Director.

STAFF DIRECTOR MARCUS: This conference is a central part of the strategic plan as currently written and as preliminarily approved. It is suggested for the year 2009 which is the year for which we are now doing program planning, in the event that it is approved now, the next step will be to conduct a budget call during which the staff will try to assess the costs and it would be presumably
included in the proposed budget estimate that we would submit first for a Commission vote, hopefully in the summer time, and then send off to OMB in the fall.

We haven't yet assessed exactly how much it is, but however much it seems like it will cost that would then go in the budget estimate and we'll see whether Congress and the President are willing to fund it. It may well require us to seek more money for 2009 than we're seeking for 2008.

COMMISSIONER MELENDEZ: Just another comment. Commissioner Melendez here.

One of my concerns is the number of actual potential briefings because I know that it sounds to me like we're only going to do three and I think that Commissioner Yaki, I think, he had a priority that I believe was worth -- and I had one also on disparate treatment of Native Americans, having to do with -- it's almost like lawlessness on Indian Reservations and that it basically missed the cutoff, but I think we'd like to see those included so that we have at least either four reports or five instead of three and if it was
up to me, because of the national meeting that we can't have four or five reports for the year, then I would have a concern in not supporting the national meeting at the expense of less briefings.

CHAIRPERSON REYNOLDS: Ken, is it true we're talking about three briefings for '09?

STAFF DIRECTOR MARCUS: This is true. We proposed, before people voted, we indicated that we thought that if we were doing both a statutory report and a conference and then a report coming out of the conference, as well as the 50 States SAC report that feeds into the conference report, that we would be hard pressed to do three reports. That's an estimation, but that's what we felt we would be able to responsibly do.

CHAIRPERSON REYNOLDS: Commissioner Braceras?

COMMISSIONER BRACERAS: Yes, just to respond to Commissioner Melendez' concerns, first, I would suggest that the rankings that we came up with, it's always been my
understanding that those are presumptions and it's a vehicle for opening discussion, but it's by no means binding, right? Those rankings we came up with?

CHAIRPERSON REYNOLDS: Well, I mean we can vote on them now and accept them and decide to change later or we can amend what we have now.

COMMISSIONER BRACERAS: Right, but I mean my understanding was that we submit our choices and if the Staff Director's Office ranks them and that that document is then a vehicle for discussion, it's not cut and dry.

CHAIRPERSON REYNOLDS: It's not done.

COMMISSIONER BRACERAS: Right.

STAFF DIRECTOR MARCUS: That's correct.

COMMISSIONER BRACERAS: So that's the first thing. The second thing is to the extent that the topics that Commissioner Yaki or Commissioner Melendez are concerned with, to the extent that those topics might fit into the national conference, it's possible that they could be addressed there, is it not?
CHAIRPERSON REYNOLDS: Would that be acceptable Commissioner Melendez?

COMMISSIONER MELENDEZ: I think it's a broad issue. It depends on how -- I know there's going to be a number of discussions. When you bring a broad, national meeting, I'm sure it's going to be just a million things that people are going to put forth and I am still concerned about what are we going to basically get out of that besides a number of points of views on civil rights.

COMMISSIONER BRACERAS: Right, and that's been the concern all along that I had, but I think the idea of the conference is for the Commission to be able to glean from the conference sort of broad policy objectives for the future, not to have a million little discussions on a million little topics and I know the conference was originally the brainchild of Commissioner Kirsanow and I'm sure he'll be working with the Staff Director to kind of hone and narrow the scope of the conference, but I think the idea, if I understand it, was to bring together scholars and practitioners and people from different
areas and have several panels and have the panels be focused panels and for the Commission to be able to issue a report afterwards about key issues for policymakers to address going forward, that it wouldn't be -- in other words, it wouldn't be a conference for people to bring forth a million grievances. It would be broad discussions of emerging issues and trends.

CHAIRPERSON REYNOLDS: Question, Commission Thernstrom?

VICE CHAIRPERSON THERNSTROM: Well, I'm also concerned about having only three briefings and well, two things. One, a question for the Staff Director, is this -- is the reduction down to three briefings a budgetary matter or is it a staff capability matter or a combination of both?

But the other thing is really a question for Commissioner Kirsanow. I wonder if since the purpose of the conference of this kind of umbrella conference is to identify key issues, I wonder if that process couldn't come out of more briefings if they were properly structured with that in mind because this
looks to me like a very expensive undertaking.

COMMISSIONER BRACERAS: But it is part of our strategic plan now.

VICE CHAIRPERSON THERNSTROM: It is.

COMMISSIONER BRACERAS: And we've had conversations about it for at least a year. It's something we've agreed to do and I think we -- you know, we need to think about how we're going to focus it and how we're going to cabin the discussions that take place, but I don't think that we can reopen the discussion on whether or not to have it at this point.

COMMISSIONER KIRSANOW: If I could respond to the Vice Chair's point. I don't think it could be done through multiple conferences. I think the idea of this is to -- we've been in existence for 50 years and many of the topics that we've addressed have been exhausted. A lot of people have questioned whether or not we have continuing relevancy.

VICE CHAIRPERSON THERNSTROM: Right.
COMMISSIONER KIRSANOW: Many of us here have wondered whether we have continuing relevancy and it's to try to determine what are the civil rights issues possibly for the next 50 years and it's more over-arching than simply including some additional briefings.

Now I do think that it's a major undertaking and I'm concerned that we're going to have a flat-line budget for the foreseeable future which means at some point we kind of flicker out of existence. There's going to become a point where we start to cannibalize our resources and we're simply paying staff salaries and we're not going to be able to produce anything. That's a very real prospect and I think it's something that we're going to have to keep in mind as we go forward. It could very well be the case that by 2009 we don't have the capability to do this.

It could very well be by 2009 we may have the capability to do something similar to this, but not as ambitious a scale and I think it's a work in progress. I think it's something we're going to have to monitor as time moves forward and we may have to make
adjustments accordingly. And it could very well be that we're not able to put on this conference, and frankly, we may not even have the capability to do more than three briefings anyway. At $8.9 million and for anything similar to that over the next couple of years, given the -- factoring in cost-of-living increases and just general inflation, I think that it's going to be a stretch for us to do any more briefings, let alone have this conference.

VICE CHAIRPERSON THERNSTROM: I would emphasize, Commissioner Melendez, that the rank ordering is tentative. It's not only that we can discuss them today, but we can discuss with the Commission and we can discuss them in the future.

COMMISSIONER MELENDEZ: Is there any way to include five for right now and then as we get closer to the end of 2008 or next year as we see how the budgets actually come out and we gain a cost for this national meeting that we can leave five on and then basically adjustments in the future?

COMMISSIONER: KIRSANOW:
Commissioner, we're going to be making adjustments throughout. That's been our practice. We take a look at things, time changes, sometimes projected briefings become obsolete with the passage of time, just as our wiretapping briefing may have to be amended. So I don't think that as Commissioner Braceras indicated that any vote that we take today is written in stone and the rankings that we had, we need to vote on and I would be receptive to considering -- I know I had ranked very highly several of the topics that I think you suggested and I would be very receptive to revisiting that.

COMMISSIONER YAKI: I have a question. Couple of things. One, have we voted on the final draft of the strategic plan yet?

STAFF DIRECTOR MARCUS: We voted -- there was a vote to preliminarily accept it subject to further review by OMB which has occurred and by Congress which has not yet occurred. So there will be an additional final vote on acceptance of the strategic plan in the future.
COMMISSIONER YAKI: Let me just say that first of all, with all due respect to some of the previous speakers, the idea of a national conversation is I hope advanced by some of the Members of the Commission, so I hope this will be a joint project. The entire Commission, I know that I mention it in one version. Commissioner Taylor has mentioned it. It was mentioned by Commissioner Kirsanow. So I am interested in having this national conversation on to an agenda, I support it.

I think that we have our agenda for '09, given that we're still in '07. We don't know what our budgetary capabilities will be in '09. We don't know if any of us, how many of us are going to be around in '09, depending on when our appointments are up. And I would simply say that we do what we've always done which is we approve a list slightly larger than that what we believe we might have available. There have been times when we have to mix and match, but otherwise -- or because of priorities or changes in preference. We have moved stuff around.
So I would say that the best of all worlds would be to say that we approve three and two alternates and move forward.

COMMISSIONER MELENDEZ: I have another question.

CHAIRPERSON REYNOLDS: Commissioner Braceras was next up.

COMMISSIONER BRACERAS: Sorry, let me just see if this might help or answer some of your questions.

A few months ago when we were setting the calendar for this coming year and sort of moving things around and ironing out what this calendar year would look like, we basically came to an agreement that there were certain months, including March where we would let the minority Commissioners decide what would be plugged in to that slot, the Commissioners in the political minority.

And so and Commissioner Yaki and Commissioner Melendez got together and chose the wiretapping topic. I would be perfectly happy to have a process where we decided on a number of briefings, whether it be three or five and allotted certain slots, certain
number of those briefings to be selected by
those in the political minority so that that
way everybody gets to -- both sides of the
aisle, as it were, will have a chance to have
topics of their choosing addressed by the
Commission.

It wouldn't necessarily be an even
split. If we have an odd number of briefings,
I would recommend that those in the political
majority select the majority of briefings, but
if we did it three and two, for example, had
five briefings, three and two, I would be
perfectly happy just to say okay, Arlan and
Michael, you select these two topics amongst
yourselves and move forward.

CHAIRPERSON REYNOLDS: I am with
you part of the way. The topics that the
majority established, those topics are
negotiated. The minority makes friendly
amendments or asks for various changes. So I
am comfortable with the idea of ensuring that
the minority has an opportunity to select a
topic, but I think that it should be subject
to the usual give and take amongst all
Commissioners as opposed to just allowing the
minority to establish the full --

COMMISSIONER BRACERAS: Yes, that's fine. Ever since I was appointed to this Commission, I've had a concern for the rights of the political minority here and since I really feel that the value added of the Civil Rights Commission is to expand demand and to inform the public on various topics, you know, I think that the perspective of those in the political minority is valuable. So let them have topics that are important to them.

I think the problem with the ranking system is sometimes we end up with a list of topics that are -- we end up with a list of topics that are palatable to the majority, but it's not necessarily a balanced set of topics, both in terms of politics and in terms of substance. So, for example, we may end up doing a lot on race and education and very little on employment and gender or whatever. Those are just examples.

But it doesn't always end up creating the most balanced set of issues for us to address.

CHAIRPERSON REYNOLDS: Commissioner
Thernstrom?

VICE CHAIRPERSON THERNSTROM: I am actually in agreement with Jennifer Braceras here, which is really a recommendation for, as it were, set aside for the political minority. (Laughter.)

I mean there is a real partisan imbalance on this Commission at this point and I am concerned that both Arlan and Michael feel as if we've got briefings scheduled that they really are very eager to have and will have a lot of input into the shaping of.

I also think, just to go back to a previous topic, that given the uncertainty, the budgetary uncertainty, even the composition of the Commission uncertainty, that it would be good in addition to hoping for let's call it the Kirsanow conference, that it would be good in our briefing reports, in our findings and recommendations in the future, to make some effort to include some sentences about the relevance of this topic and the relevance of our findings to kind of the broader civil rights agenda as we go forward, in a kind a preliminary way we begin
to talk about that long range vision that Commissioner Kirsanow has in mind as the point of the larger conference.

So anyway, I'm on board with -- the most important point here, I am on board with Jennifer Braceras on that and I do feel very keenly having been in the political minority for probably longer than anybody else at this table, that we don't want to freeze people out in any -- partially, or in any respect.

COMMISSIONER KIRSANOW: Well, I feel very strongly. Commissioner Braceras and I have kind of Stockholm syndrome here. Extraordinary sympathetic to having Commissioners Melendez and Yaki have a topic although generally opposed to minority set asides. I think this is not was -- it is a political set aside. It's a political minority set aside.

I think the idea is and I wouldn't be opposed to having maybe four potential briefing topics. The point is throughout our history, we have had the practice of having six briefings set aside or in a hearing and then as time passes, we amend them.
And I suspect that's going to happen in this particular case too. I also think it's important and I'll try to articulate this as well as I can, that I and I think this also applies, although I haven't substantiated it with Chairman Reynolds and Commissioner Taylor, but I showered this morning.

And if we could get that off to Senator Biden, I'd appreciate that.

(Laughter.)

CHAIRPERSON REYNOLDS: Now, I want to make sure that the record reflects that Jennifer's proposal is -- at least the way I view it is formalizing what we already do. I don't want to give the impression that we have frozen the minority out.

COMMISSIONER BRACERAS: No, no, no. And I think that's exactly what we did, especially a few months ago, when we were formalizing the calendar for 2007. Just to comment on the chair's concern that he raised earlier is that obviously we would strive to have all panels be balanced and to have Commissioner input into the speakers that are...
invited on all panels. It doesn't mean okay, two panels are going to be Yaki-Melendez panels and that means that the Vice Chair has no input into who comes to speak. No.

I'm simply saying in terms of the topics we select, we allow those of the political minority to pick topics that are of interest or concern to them and then as with all other briefings, we will continue to strive for balance and objectivity and let all Commissioners have input into the shape of the panel.

CHAIRPERSON REYNOLDS: I am not quite sure if we are agreeing on the last three percent of your proposal. The way I view it that we would all have an opportunity to have input into all the topics regardless of whether the proposal is supported by the minority or the majority. Now that I can support. But the idea that we would have a carve-out where certain Commissioners would not have any input -- I'm not talking about the selection of the topic, but the details.

COMMISSIONER BRACERAS: I didn't say that we --
CHAIRPERSON REYNOLDS: That's what I was unclear of.

COMMISSIONER BRACERAS: Yes. No, no, no. There's no carve-out where people don't have any input.

CHAIRPERSON REYNOLDS: Okay. I'm with you now.

COMMISSIONER BRACERAS: I'm simply saying that with respect to the choice of topics --

CHAIRPERSON REYNOLDS: I've got you.

COMMISSIONER BRACERAS: I'm willing to say to the Democratic-appointed Commissioners what are the topics of interest to you and let's run with it. Discuss it amongst yourselves.

COMMISSIONER TAYLOR: I hate to speak, given the spirit of cooperation of I feel.

COMMISSIONER BRACERAS: Are you feeling the love?

COMMISSIONER TAYLOR: I am and that's why I hate to speak because I don't think I suffer from Stockholm that you all...
may suffer from.

(Laughter.)

COMMISSIONER TAYLOR: My sense is that the process we have in place which in many ways I think a set aside, even in this context, truncates a policy that works and what I see, Commissioner Melendez I'm thinking specifically of what is now number four in the disparate treatment of Native American victims as the type of topic I was going to support, what Commissioner Kirschmanow said. That is, you would have my support to move that up.

And in my view, the process the working, given the composition of the Commission and the good faith in which we're all operating in in that it requires me, while I may be in the political majority, to think through what I put on the table that will garner your support and Commissioner Yaki's support and I think similarly, you all, Commissioner Yaki, Commissioner Melendez, are thinking through the proposals you all put on the table in an effort to garner the support of the political majority.

And I think that process is
working, so I would hate to do anything.

CHAIRPERSON REYNOLDS: Well, how about this, Commissioner Taylor? It's working now with the current configuration of the Commission. The value I see of Jennifer's proposal is that we have what amounts to a rule in place so that when the composition of the Commission changes --

COMMISSIONER BRACERAS: Can I -- it may be that we don't need a rule right now and that's fine, although I like rules because they're a little more lasting, but they too can be changed in the future.

All I'm simply suggesting is that for purposes of our planning today, we don't necessarily need to adopt a rule. We decide how many briefings we're going to have and we compromise by allowing Commissioners Melendez and Yaki to select two out of the five or one out of the three, whatever the number is.

It doesn't have to be a formal rule.

CHAIRPERSON REYNOLDS: I move that we increase the number of briefings from three to five, that the two briefings identified by
Commissioner Melendez be added in the fourth
and fifth slot with the understanding that --

    COMMISSIONER BRACERAS: We haven't
selected one for three. We have a presumptive
ranking, but I want to discuss that too.

    CHAIRPERSON REYNOLDS: Right. At a
minimum, I move that we add slots four and
five and that those slots be filled by the
recommendations of the minority.

    VICE CHAIRPERSON THERNSTROM: There
is a little bit of a puzzle here, Commissioner
Melendez, in that I know I and a few others
did vote for either educational discrimination
against Native Americans or disparate
treatment of Native American victims. I don't
know -- obviously, I think I did the education
and nobody else or nobody else joined in on
that.

    But I am certainly open to -- I
know how strongly you feel about the
importance of a topic on discrimination
against Native Americans and I'm certainly
very open to discussing moving that up.

    COMMISSIONER MELENDEZ: I think,
just a comment. When you look at the process
that we've had in place, when you look at
voting on 20 items and then you recognize one
of the items you voted on only got two votes,
well you're asking the question if there's a
revote and you saw how the ranking is done, I
could revote on the top seven. Then you would
change your vote. So that's kind of -- that's
the issue that we face.

COMMISSIONER BRACERAS: These
aren't binding choices. We're going to have a
discussion now about them and all I've done is
indicate a willingness and Ashley has
indicated a willingness and I think others at
this table have too to listen to your concerns
and move your choices up. This list is just
for purposes of discussion.

COMMISSIONER MELENDEZ: I was only
-- what Abigail was saying about she had
thought that maybe that was an important issue
on Native Americans and she has no idea that I
was looking at another Native American issue,
but if she hadn't known that after she sees
the ranking now, if she would revote, she
would probably taken into consideration what I
was thinking along those lines --
COMMISSIONER BRACERAS: That's why we're having this discussion now.

COMMISSIONER MELENDEZ: -- clearly when we first vote.

CHAIRPERSON REYNOLDS: Okay, folks, let's circle back and see what we would were actually considering. I believe I moved to have the conference on civil rights priorities in the 21st century.

COMMISSIONER TAYLOR: Let me speak to that issue, if I may? I think and this goes back to the Staff Director's comment about us actually planning ahead such that we can go back to Congress, specifically the appropriators, and say to them this is the type of conference that we should be doing and this the type of conference that I think would be appropriate to go back and ask for a supplementation of our budget.

So I support it for that reason. I think it's forward looking. It's emerging issues and I think it's something that both parties, particularly both political parties involved in the appropriation process should support in terms of enhancing, if necessary,
our budget.

CHAIRPERSON REYNOLDS: Okay, at this point, are we ready to vote? Are there additional comments or questions?

VICE CHAIRPERSON THERNSTROM: Wait a minute, what's the vote?

COMMISSIONER BRACERAS: Voting on the chair's motion regarding the 2009 conference.

VICE CHAIRPERSON THERNSTROM: Okay.

CHAIRPERSON REYNOLDS: All in favor?

(Chorus of ayes.)

CHAIRPERSON REYNOLDS: Any abstentions, any objections? The motion passes unanimously.

As a part of this project we would authorize the Staff Director to solicit input from SAC members on the topics.

May I have a motion to authorize the Staff Director to request the assistance of SACs in identifying civil rights priorities in their respective states? Under this motion, the Staff Director would be authorized to incorporate information obtained from the
SACs into the Commission's 2009 report entitled "Civil Rights Priorities for the 21st Century."

COMMISSIONER YAKI: Question.

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER YAKI: Who has final say over that? Would it be us?

CHAIRPERSON REYNOLDS: Over?

COMMISSIONER YAKI: In other words, if we get suggestions from the SAC, do we necessarily have to incorporate them or can we say no?

CHAIRPERSON REYNOLDS: We can say no.

COMMISSIONER YAKI: Okay.

STAFF DIRECTOR MARCUS: May I address the tentative proposal just to make sure we understand this?

CHAIRPERSON REYNOLDS: Sure.

STAFF DIRECTOR MARCUS: The notion for authorization to get input is part of the 50 state report. What I would envision is that I would ask some questions in the same way and in the same format of all committee members in each state in order to get a sense
of what each chartered State Advisory Committee considers to be the top civil rights issues in their state. And so we'll come up with a template so that we can ask them what do you consider to be the top civil rights issues within the State of Kentucky or Tennessee or what have you? And I hope through that to be able to get sort of a tabulation of what are considered to be the top issues within each committee and then that would be compiled into a document, the 50 State Report, which would, in turn, be part of the final document that comes out of the conference.

Now as to what extent the answers that we get from them about what they consider to be the important issues in their state, to what extent that affects what goes on in the conference, of course, that's entirely up to the Commissioners for their consideration.

At any rate, that is how I envision it.

COMMISSIONER BRACERAS: I had almost envisioned that they would be, in some sense, two separate things, that the
conference would be more paradigmatic in terms of discussing broad themes and paradigms for conceptualizing what is a civil rights issue in our country. Is it something that's limited, for example, to disparate treatment or is it something that is properly considered a civil rights issue if it's a broad social trend. These are issues we've discussed even just last time when we discussed the issue of education and whether or not it's a civil rights issue and does it fall within our mandate because either of charges of discrimination or not. So I thought my view was that it would be a more thematic discussion.

CHAIRPERSON REYNOLDS: Well, but we would also have the opportunity if there was something, some information provided by one of the SACs that we could incorporate it into the other piece, if we decided that it supported what we were trying to do.

COMMISSIONER BRACERAS: Yes, we can iron all this out at another time.

CHAIRPERSON REYNOLDS: Yes. So Commissioner Yaki, does that satisfy you?
COMMISSIONER YAKI: Yes, fine.

(Laughter.)

CHAIRPERSON REYNOLDS: Michael, did you take a nap on us?

COMMISSIONER YAKI: No, actually, I had the mute on and I couldn't figure out how to get it unmuted.

CHAIRPERSON REYNOLDS: Okay. All right, somebody tell me where are we?

COMMISSIONER YAKI: I took a nap about five minutes ago.

(Laughter.)

COMMISSIONER BRACERAS: So now we're going to discuss the briefings.

CHAIRPERSON REYNOLDS: Yes

COMMISSIONER KIRSANOW: We had a motion on the table.

COMMISSIONER BRACERAS: We voted, didn't we?

COMMISSIONER TAYLOR: No, we had questions and commentary.

CHAIRPERSON REYNOLDS: All in favor, please say aye.

(Chorus of ayes.)

COMMISSIONER REYNOLDS: Any
objections? Any abstentions? The motion carries unanimously.

Okay, on December 15th, the Staff Director shared with Commissioners potential 2009 project topics and asked for additional suggestions in order to get a head start on program planning for that year. The projects were based on staff and SAC member suggestions. All concepts that received some Commissioner support during 2008, but which were not ultimately selected were also included on this list.

Commissioners did not submit any additional suggestions, so a final list was recirculated on January 17th to determine Commissioner preferences. The Staff Director asked Commissioners to follow a procedure similar to the one followed for May 2005 and May 2006 planning meetings in selecting potential projects. Specifically, the process asks Commissioners to rank potential projects in order to streamline the process of developing a slate of potential candidates bearing in mind that in 2009 on the preliminary-approved strategic plan, the
Agency would be putting much of its resources into the 2009 project, "Civil Rights Priorities for the 21st Century."

Given that this would require us to produce both a statutory report and a substantial clearinghouse report, we should not plan to do more than three briefings and briefing reports during 2009. All Commissioners submitted rankings by February 7th. The Office Staff Director tabulated the results of this ranking and they are as follows: the Fair Housing Initiative to combat housing discrimination received 25 points; civil rights enforcement at the Department of Homeland Security received 18 points; civil rights enforcement at the Department of Health and Human Services received 4 points.

I'd like to stop right here and have a discussion about the rankings of these statutory --

VICE CHAIRPERSON THERNSTROM: Wait, I don't understand those rankings. Four points only on Department of Health and Human Services?
CHAIRPERSON REYNOLDS: That's correct.

VICE CHAIRPERSON THERNSTROM: How did it end up in the top three?

COMMISSIONER BRACERAS: No, no.

VICE CHAIRPERSON THERNSTROM: I'm sorry, you said statutory reports, of course. I'm sorry, I'm not thinking. I'm asleep on my feet today.

CHAIRPERSON REYNOLDS: Is there -- well, desire for discussion?

Are we satisfied with the rankings?

Okay, I will move on. The potential briefings for 2009 are as follows: school choice as a civil right received 23 points; racial disparities in health care access and outcome received 22 points; misuse of disparate impact theory received 14 points; disparate treatment of Native American victims and criminal investigation and prosecution received 9 points; application of state and local marriage and family law to gay and lesbian Americans received 9 points; single sex education received 6 points; protecting the civil rights of our country's aging
population received 4 points; federal efforts to combat human trafficking received 4 points; and assessment of language accessible services received 2 points; education value of diversity in undergraduate education received 2 points; education discrimination against Native Americans' education received 2 points; consumer discrimination against Native Americans received 1 point; and finally, minority home ownership received 1 point.

So okay, I move that the statutory report for 2009 based on the fact that there were 25 points in support of it, I move that Fair Housing Initiative to combat housing discrimination be the statutory report for 2009. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRPERSON REYNOLDS: Discussion?

All in favor?

(Chorus of ayes.)

Any objections? Any abstentions?

The motion carries unanimously.

Okay, next I'd like to have a discussion about the top three vote getters for briefings which are school choice as a
civil right; racial disparities in health care, access and outcomes; and the misuse of disparate impact theory, recognizing that our previous discussion about adding to other briefings.

Commissioner Braceras?

COMMISSIONER BRACERAS: I just want to ask a question about number three, the use of disparate impact theory, because it seems to me that that is the type of broader topic that we would discuss at the conference and you know, it's a topic that's close to my heart. I've written a Law Review article on it. But it doesn't seem to me to fit with these other briefing topics because it's more of a theoretical discussion than some of these other more substantive discussions.

Also, I would note that we did do a briefing on disparity studies which is not exactly the same, but is related to this topic and so as much as I am interested in this area of the law, I did not support it as one of my top choices for the reasons I just stated. So I don't know if anybody else has any thoughts on that.
CHAIRPERSON REYNOLDS: How about you Commissioner Thernstrom

VICE CHAIRPERSON THERNSTROM: Well, first place I would like the title changed to "Use of Disparate Impact Theory" rather than "misuse."

I agree with Commissioner Braceras. Unless we really state it in a focused way, I mean I don't want some kind of general theoretical discussion of disparate impact, but if it was stated as the use of disparate impact theory and then we -- I can't remember the description now, but --

COMMISSIONER BRACERAS: I also feel that -- I guess it depends on what we think the goal of briefings, what the goal is of having these briefings. They're sort of vehicles to engage the public and to engage the media in thinking about civil rights issues. Disparate impact theory isn't exactly something that the average man on the street is going to get fired up about. It's a little technical.

It might be -- if we're using these briefings to sort of shine a spotlight on key
topics, it's not the sexiest topic outside of the legal community. And although it certainly is extremely important, I do think it's more of a thematic, philosophical discussion that could be wrapped into our conference. That's all.

COMMISSIONER KIRSANOW: I agree with Commissioner Braceras. In addition, I would note that we've got pending either before the Supreme Court now or coming up the pipeline a number of cases that could render this, if not completely moot, substantially circumscribed its importance.

VICE CHAIRPERSON THERNSTROM: Well, we have also got specific topics here like disparate treatment of Native American victims and criminal investigation that can raise the larger issue of how you think about disparities.

CHAIRPERSON REYNOLDS: Okay, I sense a consensus developing.

COMMISSIONER YAKI: Really?

COMMISSIONER TAYLOR: You all can't interpret this as yet? May I make a --

CHAIRPERSON REYNOLDS: Well, I was
about to ask for someone to articulate what that consensus is.

COMMISSIONER TAYLOR: In light of this discussion and our earlier discussion, I would suggest that we take disparate treatment of Native American victims and criminal investigation and prosecution and move that to number three.

CHAIRPERSON REYNOLDS: Michael would you like to disagree?

COMMISSIONER YAKI: Nope.

VICE CHAIRPERSON THERNSTROM: Do you have your mute button on?

COMMISSIONER BRACERAS: Arlan, is that the one he wanted.

COMMISSIONER MELENDEZ: That's fine, thank you.

COMMISSIONER YAKI: 2009 is a long way away.

VICE CHAIRPERSON THERNSTROM: We all agree.

COMMISSIONER BRACERAS: Yes, it's a long way away.

VICE CHAIRPERSON THERNSTROM: This is an exercise that has a --
COMMISSIONER YAKI: The revolution may yet occur.

COMMISSIONER BRACERAS: Dream on.

(Laughter.)

VICE CHAIRPERSON THERNSTROM: It is a shame you missed the look on Jennifer Braceras' face just now.

CHAIRPERSON REYNOLDS: Okay, so what we've established, we have one of the three selected. Additional conversation about the other two items?

COMMISSIONER BRACERAS: Yes, I think we should sort of throw open discussion of all of these topics and I'll just make a few comments and then look forward to hearing what my colleagues think about these things. But racial disparities in health care access, that will, of course, raise the theoretical question of when disparities are significant and when disparate impacts is significant to warrant either policy changes or legal action.

So that would sort of raise that topic and I'm not sure which way that cuts, one way or the other.

I guess I just want to make a pitch
for the single sex education topic because it is an incredibly hot topic right now. It may have completely cooled off by 2009 and it may not be relevant, but I think it's an issue that has relevance to a lot of average Americans. I think the Department of Education just released regulations related to the provision of single sex classrooms and schools at the elementary and secondary level. So I think it's timely and we don't do a whole lot with gender Title IX. And so I would just like to make a pitch for moving that one up.

CHAIRPERSON REYNOLDS: How would you feel if we made that a significant component under school choice as a civil right? Does that topic fit comfortably under that?

COMMISSIONER BRACERAS: Not necessarily because I have long believed that issues of gender and sex discrimination have been neglected during my time at the Commission and I'd like to see it discussed in and of itself. It's a large topic. If you do single sex education broadly, and you're discussing both Title IX and equal protection
concerns and you're discussing primary, secondary education and beyond, you're discussing the college level and if you're discussing both private and public institutions, it's a very large topic. It brings us back to the VMI case and it's regulatory, it's statutory, it's constitutional. So I think there's a lot of meat there for a briefing in and of itself.

CHAIRPERSON REYNOLDS: That's true.

Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I originally had this in my top three and I think it's a very important topic. I also had health care as one of my top three. It strikes me that one of the reasons I put health care up there is I think it's an important issue. I also think it's something that could inform what I anticipated would be an on-going debate with respect to health care reform. I didn't think we would resolve that before 2009. But when I rethink it some more, it's one of those topics that -- and I don't have any necessarily empirical data to support this, but it's my general sense that it's one
of those topics that we've not been very successful in doing very well, whereas single sex is something I think falls within the orbit of topics which we traditionally have done relatively well.

I'm not suggesting that we supplant health care with single sex, but I would be receptive to doing that or expanding to four and making health care number four.

CHAIRPERSON REYNOLDS: You mean six.

COMMISSIONER KIRSANOW: Six, whatever it may be.

CHAIRPERSON REYNOLDS: Okay, Commissioner Thernstrom?

VICE CHAIRPERSON THERNSTROM: I didn't list it as one of my topics simply because I think there's a paucity of data and now maybe that will change by 2009.

COMMISSIONER BRACERAS: You're a social scientist and I'm a lawyer, and so we come at the question maybe from different angles. And there may be a paucity of data, but there are a whole host of legal rulings and regulations and legal theories that could
be explored.

CHAIRPERSON REYNOLDS: Public policy issues.

COMMISSIONER BRACERAS: And public policy issues. And of course, those are -- we need data, that's true. But there may be some value in collecting what data is out there and identifying areas where data should be collected going forward.

VICE CHAIRPERSON THERNSTROM: Okay. I want to raise another question.

CHAIRPERSON REYNOLDS: Separate from this single sex issue?

VICE CHAIRPERSON THERNSTROM: Yes, separate from the single sex issue.

I see minority home ownership only got one point. Gee, it seems to me that our number one topic of fair housing initiative, and I'm just looking for the description here. It's again a question of whether a narrower focus, that is on minority home ownership, as getting to the broader issue might make more sense, but I would have to stare once again at the descriptions here. I mean I have, in general, a preference for specificity over
these very broad --

COMMISSIONER BRACERAS: We still need a statutory report and those tend to be broader by definition.

VICE CHAIRPERSON THERNSTROM: Okay. My eyes are wandering between the statutory report, sorry, again. Right. Sorry about that.

I can't seem to read. Sorry about that.

CHAIRPERSON REYNOLDS: Okay, the single sex issue. Pete, did I hear you entertain the notion of not doing the --

COMMISSIONER KIRSANOW: Health care?

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER KIRSANOW: I thought single sex had been one of my top three. I think it's an important issue. I think it's one that is much more targeted than health care disparities. Again, that's such a topic. I'm not sure we first of all had the expertise to handle that well. And it's such a meaty topic, despite the fact that will be a hot topic, I think we're better suited to
handle single sex.

CHAIRPERSON REYNOLDS: So can I translate that as a motion from you two to replace the briefing on access to health care, to replace that with single sex?

COMMISSIONER KIRSANOW: Yes.

VICE CHAIRPERSON THERNSTROM: You know, before we vote on that --

COMMISSIONER YAKI: Whoa, whoa, whoa, whoa, whoa.

VICE CHAIRPERSON THERNSTROM: It seems to me we need to discuss other topics. I agree, whoa, whoa, whoa.

COMMISSIONER BRACERAS: Let's throw it open.

CHAIRPERSON REYNOLDS: Who's next? Commissioner Taylor?

COMMISSIONER TAYLOR: I would just like to raise some questions about the topic that received the most support. School choice as a civil right.

VICE CHAIRPERSON THERNSTROM: Question mark.

COMMISSIONER TAYLOR: It's a question mark. And is the intention here to
have that theoretical discussion, should school choice be a civil right on the same plain as other quote civil rights? Is that our intention?

CHAIRPERSON REYNOLDS: I haven't read the write up, so I don't recall whether --

VICE CHAIRPERSON THERNSTROM: There you go, I've got the same problem with that.

COMMISSIONER BRACERAS: I am trying to understand what the problem is.

CHAIRPERSON REYNOLDS: It's a question.

CHAIRPERSON REYNOLDS: We should focus not so much on the title, but what the actionable --

COMMISSIONER TAYLOR: And there seems to be a disconnect, I guess that's my point. There seems to be a disconnect between the title and the description. My question is what are we intending to control?

CHAIRPERSON REYNOLDS: I think that the description should control as opposed to the title.

COMMISSIONER TAYLOR: Okay.
VICE CHAIRPERSON THERNSTROM: We need a question mark after is school choice a civil right or something.

CHAIRPERSON REYNOLDS: Okay, other comments?

Commissioner Yaki, do you want to weigh in?

COMMISSIONER YAKI: On everything?

CHAIRPERSON REYNOLDS: Anything you like.

COMMISSIONER BRACERAS: Anything and everything.

COMMISSIONER YAKI: I am not so quick to throw out the health care issue. I think it's an important issue. I think for the Asian American community it's very important, especially among the newer immigrants from Southeast Asia. It's important for the African American community. I think it's important for the Latino community as well and it may be hard to get a handle on it, but it's a briefing and I have my own version of what a briefing is.

Everyone else has their own version. But for me, it's a perfect choice...
for a briefing simply because it allows us to have people come from those communities and raise these issues and point out areas that might need improvement or where wrongs may be committed or omissions being committed in terms of treatment. I think it is when we start talking about whether school choice is a civil right or not, access to health care comes to mind as one of those fundamental rights to which all Americans are entitled and when that access is not meted out in proportion to and based one zip code or the color of one's skin, I think it's important for us to address it.

I would not support moving it down the rung. It a high number of points and if we're moving stuff that more support, we could probably be talking the next two hours about all the other things that maybe got two points or one point or what have you.

COMMISSIONER BRACERAS: One of my problems with this ranking system is it doesn't give us the benefit of consultation with our colleagues and so you know it's important to me to hear what Michael and
Arlan's first choice for a topic is and what Commissioner Thernstrom thinks is an important topic or why she thinks a topic may be unimportant.

So you know, I don't give these rankings that much credence, except it's just sort of a first cut at what seems to be popular.

And I guess the other sort of theoretical question I would raise is for school choice and health care raise big picture questions about civil rights issues in the 21st century. And I love both topics, but aren't they more of the paradigmatic questions that we're going to be asking at the conference? In other words, the traditional civil rights model deals with disparate treatment and individual discrimination. But looking forward into the 21st century, aren't some of these other issues like the ability to choose your own school and receive an education and have access to health care, aren't those really the issues?

COMMISSIONER YAKI: I think Jennifer is right, Commissioner Braceras is
absolutely correct and I'm just wondering if
maybe we should simply say that our intention
is to have the conference, the statutory
report and a minimum or maximum of three
briefings and that the subject of those
briefings will be culled from this list in
late '08 because presumably by then we'll have
a better handle on how the national
classification will be structured in such a way
that we know whether or not some of the issues
that Commissioner Braceras brings up, I bring
up, other people bring up might not be a more
proper topic of discussion within that and
then having that being decided, we can then
decide okay, now we know these things are
being addressed or covered in some way in the
national conference. The briefings that we
looked at should have as little overlap as
possible and now we go back to this and
revisit whether or not what the two and one
should be.

COMMISSIONER BRACERAS: I like
Michael's idea. And I would just say so you
all know where I'm coming from is that I
envision that the conference would have panels
on education and health care and then maybe a panel of methodologies that would discuss disparate impact versus disparate treatment theory and things of that nature. And the briefings should really be highly focused discussions of specific topics and not theoretical in nature. So, for example, this June we're scheduled to do a school choice related topic on the Blaine Amendment. That's a narrow slice of the school choice issue, but the theoretical question of whether education and choice in education is a civil right, to me, that's more properly addressed through our national conference.

So I would just -- whether we pick specific briefing topics or not, I would envision briefings being finely honed, limited discussions of specific issues.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes, Commissioner Yaki's statement has appealed to me also. I thought for a long time there was an element of absurdity for us to program out three years, two years in advance and I never
knew why we continued to do that and I sat here as Mark Steyn would say, "never underestimate the seductive power of inertia" and we just continue to do it.

In the meantime, we would constantly be rearranging these briefings or eliminating some, adding others, some would become moot, some would become hot and I think especially given that when envisioning -- Commissioner Braceras calls is paradigmatic approach with respect to the conference. Now maybe we should revisit the whole idea of projecting outward with program planning two years hence.

It might be that we keep our powder dry until we see precisely what are the relevant topics and in fact, what even emerges from the conference.

STAFF DIRECTOR MARCUS: The strategic plan is a five-year plan, of course. But the budget process is one that we're working on right now. And the challenge that we've had from an operational perspective that annual program planning is essentially is the first substantive step in the process of
developing the budget estimate.

COMMISSIONER KIRSANOW: Understood. But I guess my point is with the exception of briefings that are of such magnitude that staff needs tremendous lead time to prepare and/or we don't have a real handle on what the budget would be because of the magnitude and generally, if it's of that magnitude I would query whether there should be briefings at all.

We are generally able to budget a briefing within a certain range.

COMMISSIONER BRACERAS: Regardless of the topic.

COMMISSIONER KIRSANOW: Exactly right. And unless we're doing a field hearing and we factor in travel costs, but it looks to me like we probably have pretty good historical data to show what the average briefing costs and we can say we're going to do three briefings or four briefings and that's factored into the budgetary process. But I don't know. I'm just suggesting that that's the approach to take.

STAFF DIRECTOR MARCUS: We may be
able to do that. We'll have to give it a little thought and establish that and OMB. In general, we've gotten pressure from OMB to be as specific as possible about the programs and then about the amount of money and we've tried to show how different briefings might cost different amounts of money, largely as a function of our expectation of how many of the witnesses would have to come from out of town and whether some briefings we anticipate would have a greater number of speakers than others.

I suppose we could try to do something that's a little bit more generic and say something like we'll do three or whatever of a longer list with more of an approximate and we thought we would have to see how much pushback we get.

COMMISSIONER TAYLOR: I am getting a sense of deja-vu here. I recall us having this same conversation a year ago and we adopted the approach we adopted, be careful of my language here, because for purposes of what the Staff Director needs to do, what the Hill needs to see, we had to have a certain level of specificity and we all acknowledged that we
would continue to re-analyze the issue and respond to issues that may be hot.

COMMISSIONER YAKI: Would you rephrase to say, Ashley, we just engaged in a little subterfuge to give them what they want even though we knew we were going to change it anyway?

COMMISSIONER TAYLOR: What you just said, see, that's spoken like a man who feels like he's in the majority on the Hill.

(Laughter.)

COMMISSIONER YAKI: I'm proud to say it too.

VICE CHAIRPERSON THERNSTROM: No, absolutely. I think that's correct. Yes. Given them the wanted level of specificity. It's fairly meaningless.

I do want to say something about -- what was it -- racial disparities in health care access. That is a very hot topic at the moment. It's in the mainstream media.

COMMISSIONER BRACERAS: But either way we're talking about '09.

VICE CHAIRPERSON THERNSTROM: I understand that. I do think it does fall into
the category of specific topics that are appropriate for briefings, but frankly, I don't care what we put down for '09 because it's, you know, this a formal exercise. It doesn't have much --

CHAIRPERSON REYNOLDS: We have to do something and I think that we all understand that whatever we decide upon today is there's a high probability that it will be changed somewhere down the line. So a vote today is not a -- well, what we vote on today is unlikely to occur in the order and the form that we vote on it. So I would suggest, at least put this out for consideration is that we vote for the top vote getters, expand -- well, the top five vote getters and -- the top three vote getters for briefings and the fourth and fifth slot be -- that we use the recommendations from Commissioners Yaki and Melendez and be done with this.

COMMISSIONER YAKI: I don't see why -- let me just --

CHAIRPERSON REYNOLDS: Michael, could you please describe what you were just doing?
COMMISSIONER YAKI: I was making a protein shake.

(Laughter.)

Why do we need to -- Ken, tell me if this is wrong. Why couldn't we say we have tentatively approved a list of say seven of which we will pick three that will comport with blah, blah, blah. Do we need to say these are the three blah, blah, blah? I really don't care. I agree we can change it any time we want, but my -- I am now being resistant to -- just because it's OMB, I'm always resistant to anything OMB says, so do we have to do it that way or can we say this is the list from which we will pick three and all within the general range of time and resources within our budget, blah, blah, blah.

STAFF DIRECTOR MARCUS: Michael, I'm prepared to try and see what they say. I know that if we did not give them a list at all and just said we would take whatever is pressing at the time that it would not work and they pressed us to give the specifics, but we've never actually tried to say that we will do whichever three out of the following seven
are most prominent to the national concerns at the time. We've never tried that. The one difficulty that it has is that we will not -- we then won't even be trying to give specificity in dollar amounts. In the past, we've said we'll do these whatever. We'll do these eight and one costs X dollars and two costs Y dollars.

COMMISSIONER YAKI: Okay, it's more staff work for you.

STAFF DIRECTOR MARCUS: It's actually less staff work, but the problem is it's more vagueness, so we can just wait and see how they react to that.

CHAIRPERSON REYNOLDS: Ken, can we provide historical data and where appropriate make adjustments? I mean we have done a number of briefings and we have historical data and I suspect that the costs fall within a fairly narrow range.

STAFF DIRECTOR MARCUS: I am prepared to give it a try and see. If this is the way the Commissioners want to go, we would say we're going to do whichever three out of the following seven and we would anticipate
that they would cost an average of so many dollars to do them.

VICE CHAIRPERSON THERNSTROM: If we took the top six, we would draw the line under single sex education. It seems to me that makes sense.

COMMISSIONER YAKI: I am for that.

STAFF DIRECTOR MARCUS: We could give it a try. This would provide less specificity than we have done in the past and so I think we would just have to report back in the event we got some sort of adverse reaction.

COMMISSIONER YAKI: Why don't we empower the Staff Director to rather than having to report back, do what Commissioner Thernstrom said which is give them the range and if they say no, we want you to do the three, then just pick three.

(Laughter.)

COMMISSIONER BRACERAS: Top six, removing disparate impact. The top six without disparate impact. So it's choice, health care, Native American, gay and lesbian marriage and single sex. That's five.
CHAIRPERSON REYNOLDS: Well, in addition to that what about --

VICE CHAIRPERSON THERNSTROM: No, I was just taking the top six, disparate impact got 14 points, but you know, fine, we can eliminate that and go down to the next one.

COMMISSIONER BRACERAS: Aging population?

VICE CHAIRPERSON THERNSTROM: Aging population. I was just, you know, not getting into the four points and two points.

CHAIRPERSON REYNOLDS: Someone explain to me -- we've already voted to provide the minority with two additional slots. That's a particular approach. It seems to me that we're taking a different approach to the issue now by picking the top six.

COMMISSIONER BRACERAS: Right.

CHAIRPERSON REYNOLDS: So are we shelving? Are we inadvertently undoing the motion we just approved?

COMMISSIONER BRACERAS: What are the two, what are the top two that Commissioners Melendez and Yaki support?
COMMISSIONER YAKI: Well, under the old list they were four and five.

COMMISSIONER BRACERAS: Forget the list. Just tell me the names of those.

COMMISSIONER YAKI: The Native Americans and criminal investigation prosecution one was Commissioner Melendez' first choice. And mine was the gay and lesbian issue.

COMMISSIONER BRACERAS: Okay, so those two are captured.

CHAIRPERSON REYNOLDS: So it works then.

COMMISSIONER YAKI: Right.

VICE CHAIRPERSON THERNSTROM: I'll stick with my recommendation. We draw a line under single sex. The rest didn't get enough.

COMMISSIONER YAKI: I am with that.

STAFF DIRECTOR MARCUS: So we draw a line under single sex and that includes disparate impact or do we drop that?

COMMISSIONER BRACERAS: I really think disparate impact should be removed, but for the reasons I stated. It's just not the same type of topic.
COMMISSIONER YAKI: For the purpose of this exercise I am indifferent.

CHAIRPERSON REYNOLDS: Okay, Jennifer, how do you feel about just leaving it in with the understanding that --

COMMISSIONER BRACERAS: That's fine. I won't be here anyway.

(Laughter.)

I'm not going to be here then.

VICE CHAIRPERSON THERNSTROM: I want to change to use not misuse.

COMMISSIONER BRACERAS: It's already been changed.

VICE CHAIRPERSON THERNSTROM: Has it?

CHAIRPERSON REYNOLDS: You made your comment --

COMMISSIONER YAKI: Where will you be, Jennifer?

COMMISSIONER BRACERAS: Where will I be?

COMMISSIONER YAKI: Yes.

COMMISSIONER BRACERAS: I will not longer be on the Commission. Who knows what the future holds.
(Laughter.)

VICE CHAIRPERSON THERNSTROM: She is running for President.

COMMISSIONER YAKI: Everyone else is.

CHAIRPERSON REYNOLDS: Okay, so here is the -- if I can articulate this new arrangement. We will just agree to consider the top six vote getters without identifying rank order.

Is there a second to this approach?

COMMISSIONER TAYLOR: Second.

CHAIRPERSON REYNOLDS: We've had our discussion, all in favor?

(Chorus of ayes.)

Any objections? Any abstentions?

COMMISSIONER BRACERAS: If I could just make one comment though.

CHAIRPERSON REYNOLDS: Of course.

COMMISSIONER BRACERAS: Go ahead.

VICE CHAIRPERSON THERNSTROM: Jennifer, go ahead.

COMMISSIONER BRACERAS: My only comment is that's great, we've got our list of things to consider in the future, but I would
eliminate any relevance from that point forward of the points, because there will be different Commissioners on then and people's views would have changed. So that's our list and who cares what got 23 points and who got 6 points. It makes it completely irrelevant.

CHAIRPERSON REYNOLDS: That's how it works in practice. I fully expect minority homeownership of one point.

COMMISSIONER BRACERAS: That's dropped off now.

CHAIRPERSON REYNOLDS: Well, in 2009 it will be back on because some Commissioner will think that it's extremely important, so I say this only to agree with you that these points have little or not consequence.

COMMISSIONER YAKI: And who is going to bring that up again?

CHAIRPERSON REYNOLDS: I wouldn't be surprised. Okay, the motion passed unanimously.

The next item on the agenda is consideration of the briefing report on affirmative action in American law schools.
VI. Affirmative action in American Law Schools Briefing Report

CHAIRPERSON REYNOLDS: I move that the Commission approve for publication Part A of the draft report reflecting Commissioner and panelist input on the briefing the Commission held on June 16, 2006 on affirmative action in American law schools. Part A, as distributed in draft form to Commissioners on January 18, 2007 contains the following: an executive summary with a brief overview of the issue and why the Commission chose to conduct this briefing; a summary of the proceedings consisting of synopses of panelists' oral statements during the briefing; and a synopsis of the question and answer sessions. Actually, no. The last item is copies of the panelists' written statements.

Is there a second?

VICE CHAIRPERSON THERNSTROM:

Second.

COMMISSIONER BRACERAS: I have a comment I'd like to discuss. The current executive summary includes and in my view
should not, a summary of findings and recommendations. So we can't vote to approve that if we haven't voted to approve Part B.

CHAIRPERSON REYNOLDS: Okay, I am sorry.

COMMISSIONER BRACERAS: In other words, the process has been bifurcated so that Part A of the document is a summary of testimony essentially.

CHAIRPERSON REYNOLDS: Right.

COMMISSIONER BRACERAS: And Part B is finding the recommendations, but Part A also includes an executive summary that summarizes the findings and recommendations.

CHAIRPERSON REYNOLDS: I see. I'm with you.

COMMISSIONER BRACERAS: So that needs to be -- maybe we just don't want it on the executive summary right now at all.

CHAIRPERSON REYNOLDS: Okay, well, let's reverse the order then.

COMMISSIONER BRACERAS: No, we can't reverse the order. I think -- no, no, no. I think we need to -- my view is that at a bare minimum, the Commission should be able
to almost unanimously approve a document that summarizes our briefing and that shouldn't be controversial.

CHAIRPERSON REYNOLDS: Okay. I see.

COMMISSIONER BRACERAS: And we should be able to publish that regardless of what happens with findings and recommendations. So I'd like to vote on that today and hopefully pass that today, but the executive summary cannot contain something, a summary of something we haven't approved.

CHAIRPERSON REYNOLDS: Could there be a vote on Part A exclusive of the summary of findings and recommendations?

COMMISSIONER BRACERAS: Yes, that's what I'm saying.

So I'm making a substitute motion that we vote on Part A of the document, affirmative action in American law schools, minus the part of the executive summary which begins on page five and carries over to all of page six.

CHAIRPERSON REYNOLDS: And seven.

COMMISSIONER BRACERAS: Right, and
seven. So the part of the executive summary that we're not voting on is page six, seven and the bottom of page five that begins with the word "based".

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER BRACERAS: "Based on the record, the Commission finds that" -- we're not voting to approve that and if we only approve Part A, it will be published without that language, all of the language.

CHAIRPERSON REYNOLDS: Okay. I second it.

All in favor?

(Chorus of ayes.)

Any objections? Any abstentions?

The motion carries unanimously.

COMMISSIONER BRACERAS: I have one more technical thought, question. In the version that we seek to publish, will these charts and graphs be made any bigger because I find most of them impossible to read.

VICE CHAIRPERSON THERNSTROM: They are impossible to read.

COMMISSIONER BRACERAS: Particularly the one on page 36, but all of
the graphics --

CHAIRPERSON REYNOLDS: We should be able to increase the font size without too much problem.

COMMISSIONER BRACERAS: Okay, so Kim tells me the margins have been changed because this is a tracked-changes version, so it doesn't accurately reflect the size of the graph?

STAFF DIRECTOR MARCUS: That's what I'm advised. When the proposed changes are accepted, it will increase the size of the graphics.

COMMISSIONER BRACERAS: Okay, well, just be mindful of that as I'm sure you will be. They don't do any good if you can't read them.

CHAIRPERSON REYNOLDS: Okay, I move that the Commission approve the publication of Part B of the report reflecting --

COMMISSIONER BRACERAS: Did we vote on Part A?

CHAIRPERSON REYNOLDS: Yes. It passed unanimously.

I move that we approve the
publication of Part B of the report reflecting Commissioner and panelists' input on the briefing the Commission held on June 16, 2006 on affirmative action in American law schools, Part B as distributed in draft form to Commissioners on January 18, 2007.

COMMISSIONER BRACERAS: Just to be clear, Part B begins on page 135? Are we talking about pages 135 through 137 only?

CHAIRPERSON REYNOLDS: I don't know. I believe that's right. Essentially, we're voting on what we deleted from Part A.

COMMISSIONER BRACERAS: No, that's the summary of it. Now we're voting on more specific --

CHAIRPERSON REYNOLDS: The findings, the actual findings and recommendations.

Okay, discussion.

COMMISSIONER MELENDEZ: A question. Commissioner Melendez. Doesn't this tie in to what we're working on as part of the procedures?

COMMISSIONER BRACERAS: Yes.

COMMISSIONER MELENDEZ: Of the
working group? Why would we be voting on this
if we're still not finished with that part?

COMMISSIONER BRACERAS: Well, I
think the answer is that we can't grind the
wheels of production to a halt while we wait
for all the members of the working group to
sort it out.

On the other hand, I agree with you
and maybe -- I agree with you that it's
somewhat troubling that we would be voting to
approve findings and recommendations when
there are members of this Commission who don't
even think there should be findings and
recommendations in these reports and maybe the
answer to that is that until we have our
procedures finalized, we simply issue Part A
as a clearinghouse report. I don't know.

CHAIRPERSON REYNOLDS: I would
suggest that the -- well, whatever we come up
with as procedures, I'd like to entertain the
notion of just having the rules apply
prospectively as opposed to -- depending on
what happens, this document -- we may have to
completely rework it.

COMMISSIONER BRACERAS: Right.
CHAIRPERSON REYNOLDS: A lot of work has gone into this and to hold it hostage to rules that are not --

COMMISSIONER BRACERAS: No, I understand that, but I just -- I want to express on the record my sympathy for Commissioners Melendez' and Yaki's view that briefing reports are not necessarily inappropriate vehicle for findings and recommendations. And I think I expressed several months ago the view that I was not going to continue to vote on reports that included findings and recommendations unless and until we had a process.

So for now --

CHAIRPERSON REYNOLDS: A formal process.

COMMISSIONER BRACERAS: A formal process. So for now, I have to say that I'm inclined not to support Part B, not because I don't agree with the findings and recommendations. I think they're stellar and I agree with all of them, but for process reasons and I guess I also just want to say on the record that I think why I come down on all
this is basically somewhere in between I think where Commissioner Thernstrom is and Commissioners Melendez and Yaki, because I do think that if we are going to have findings and recommendations attached to briefing reports, I sort of agree with comments Commissioner Thernstrom has made earlier that that's something that we should decide on a case by case basis and it will be fact specific to the briefing.

On the other hand, I think that findings and recommendations need to be structured in a different way and I've said before that my personal model for how this should be done is the way the Title 9 Commission, at the Department of Education dealt with findings and recommendations. And so in order to keep things simple, it basically established a process where for each finding and recommendation, there was a vote taken individually on each finding and recommendation and the vote on each finding and recommendation was noted so in other words, you know, four votes for it, five votes against it, or whatever.
And the brief paragraph under each finding and recommendation describes in one or two sentences the arguments made by the proponents and opponents of the finding and recommendations. I think that that's a much more streamlined, honest and balanced way to submit findings and recommendations. It avoids lengthy, treatise-like dissents and it also allows people to vote on particular findings and recommendations without having to swallow the entire package, hook, line and sinker.

So I do not like the current way we make findings and recommendations, although I recognize that there may be a need for them in some cases. And I'll say again that I agree with all the findings and recommendations in this report, but for procedural reasons I don't think I can support them today.

CHAIRPERSON REYNOLDS: Does that take the form of voting against it or an abstention?

COMMISSIONER BRACERAS: I'll have to think about that for a minute.

CHAIRPERSON REYNOLDS: Commissioner
Thernstrom?

VICE CHAIRPERSON THERNSTROM: Look, I'm not in disagreement with you, Jennifer, that the process needs to be revised. We are revising it, obviously, such that it is structured in quite a different way in the future. But this report comes out of an existing process and the process is in conformity with that -- there's nothing novel about it, it's in conformity with that which has applied to all our previous briefing reports.

COMMISSIONER BRACERAS: You know what, with all due respect, I actually don't think it complies with an existing process because this whole model that we've moved to in the past few years of doing more briefings and fewer hearings itself is one that we've sort of cobbled together as we went along.

VICE CHAIRPERSON THERNSTROM: But the --

COMMISSIONER BRACERAS: We never actually did it.

VICE CHAIRPERSON THERNSTROM: But our most recent briefing reports do not
differ.

COMMISSIONER BRACERAS: No, no, of course. Right. This is the same format and model as our current briefing reports, but we as a Commission never collectively discussed or decided to do them that way. They emerged that way and they've been great, but we never had a formal discussion about process at all.

VICE CHAIRPERSON THERNSTROM: Nevertheless, this is part of the existing order, as it were. I mean I'm all for changing that, but I am not for holding this up and I don't think that there's a justification for doing so and it's not because I agree with the findings. I'm a big process person. I just think, look, this --

CHAIRPERSON REYNOLDS: I have a proposal. Why don't we vote on Part A.

COMMISSIONER BRACERAS: We already did.

CHAIRPERSON REYNOLDS: Okay, and table Part B until our procedures are in place.

VICE CHAIRPERSON THERNSTROM: Well, that means that this report is going to held
unpublished for a long time.

CHAIRPERSON REYNOLDS: A year?

COMMISSIONER BRACERAS: No, because we held this hearing on June 16th.

So if you table it, by the time it's published, it's over a year.

VICE CHAIRPERSON THERNSTROM: Mr. Chairman, I don't think that's right. I just don't think that's right.

CHAIRPERSON REYNOLDS: Okay.

COMMISSIONER BRACERAS: Well, I think I was very clear at our last business meeting that I was uncomfortable supporting findings and recommendations until we had a process in place. And so for that reason I think what I will do here today is abstain on that question.

CHAIRPERSON REYNOLDS: Vice Chair Thernstrom --

COMMISSIONER BRACERAS: With respect to this report.

CHAIRPERSON REYNOLDS: Vice Chair Thernstrom makes a very good point. That suggestion was made as an attempt to take your considers into consideration, but there are
also countervailing issues as brought up by
Vice Chair Thernstrom.

Commissioner Kirsanow?

COMMISSIONER KIRSANOW: The
question I have is do we have any kind of
reasonable ETA for when we will have these
procedures in place?

CHAIRPERSON REYNOLDS: Based on our
track record, it doesn't look good.

COMMISSIONER KIRSANOW: Okay.

VICE CHAIRPERSON THERNSTROM:
People who testified -- you may be getting the
same emails saying where's our report?

COMMISSIONER KIRSANOW: I will
reiterate that I don't like the process that
we currently have. I prefer a process that is
similar to what she just described. I agree
in the general themes of the findings and
recommendations, but I think there's a matter
of process that needs to be followed before
they're issued.

I would not be adverse to the
proposal that the Chairman made and that is
that we voted to hold in abeyance Part B until
such time as we have a system in place. My
hope would be that that might provide some greater incentive to get that system in place more quickly. And I think it's important to have findings and recommendations on this particular matter.

If we don't have a process in place, I don't think we're ever going to issue findings and recommendations on this matter. It will not happen. So it seems to me that the options are we vote down a process of findings and recommendations never to be resurrected. Number two is we hold this in abeyance, get a process and then vote on it and maybe it will prevail. Maybe it won't. That is the findings and recommendations. And number three, well, those are actually the two options. There's a third one that doesn't really make a lot of sense.

COMMISSIONER BRACERAS: What was that?

COMMISSIONER KIRSANOW: It doesn't matter. I'm not going to go into it.

VICE CHAIRPERSON THERNSTROM: So we don't publish anything?

COMMISSIONER KIRSANOW: We don't
publish anything right now.

COMMISSIONER YAKI: The third option is rock, paper, scissors.

COMMISSIONER KIRSANOW: It's not even that good.

VICE CHAIRPERSON THERNSTROM: It's going to be published and republished?

COMMISSIONER BRACERAS: No, the first option is publish only portion A. The second option is wait on the whole document until we have a process.

CHAIRPERSON REYNOLDS: Let's revisit the conversation.

VICE CHAIRPERSON THERNSTROM: We'll have no document published until --

CHAIRPERSON REYNOLDS: Can we commit that the working group will conclude its work and we have recommendations by the next meeting so that we can vote on the new procedures and vote on the entire document or Part B?

VICE CHAIRPERSON THERNSTROM: I very strongly believe in regarding this as a finished product at this point. Part of the old order we will change the procedure going
forward, but I mean --

COMMISSIONER KIRSANOW: I think the problem is -- you may be correct, but I am not convinced we're past that.

COMMISSIONER BRACERAS: There is no old order. We've sort of done it ad hoc. And even with respect to the last report, I forget what it was, but the last report that we voted on at a business meeting and I know you weren't here, Vice Chair, but we went through each finding and recommendation and I believe we voted on them one at a time.

CHAIRPERSON REYNOLDS: Our rules allow us to do that.

COMMISSIONER BRACERAS: So there's no one way of dealing with these reports. We've handled them in several different ways and we are handling them a different way today.

CHAIRPERSON REYNOLDS: I don't think the Vice Chair disagrees with that. I think that what she's saying is that we have a document that's growing stale.

COMMISSIONER TAYLOR: In that regard, just to let you know where I am on
this, I would be inclined to vote against publishing what we are calling Part B, pages 135 to 137, because it is my sense after the working group meeting that we are going to be able to reach an accommodation in fairly short order and in the spirit of what I anticipate being a group that comes up with an accommodation that will come back and recommend to this committee. I would be inclined to vote against Part B for purposes of getting Part A and the entire document out into the mainstream in response to concerns you all hearing this being a stale document.

CHAIRPERSON REYNOLDS: So Commissioner Taylor, are you talking -- you want to table Part B?

COMMISSIONER TAYLOR: Right --

COMMISSIONER BRACERAS: No, he wants to go ahead and publish Part A.

CHAIRPERSON REYNOLDS: Yes, but to table Part B?

COMMISSIONER TAYLOR: Right.

VICE CHAIRPERSON THERNSTROM: I don't understand this process. I mean you publish in our usual publish form Part A and
what, after we agree on findings and recommendations that whole document is republished with the findings and recommendations?

COMMISSIONER BRACERAS: No.

COMMISSIONER TAYLOR: No.

COMMISSIONER BRACERAS: It's not. They're added to the website or they go out as a press release or whatever.

VICE CHAIRPERSON THERNSTROM: Our experience with findings and recommendations is that when you're dealing with the media, when you're dealing with people who might in any way be interested in this topic, they are interested in the findings and recommendations. They walk the bottom line.

COMMISSIONER BRACERAS: I understand that, but I'm not going to allow our desire to get media coverage or our desire to be relevant -- let me finish -- or to influence policy, change my view that we need a better process.

VICE CHAIRPERSON THERNSTROM: We do need a better process going forward.

CHAIRPERSON REYNOLDS: How about
this? Let's just table the whole -- both parts, Part A and Part B.

COMMISSIONER BRACERAS: I guess my question is this. Part A is a great document. It has a lot of juicy information. It will be relevant to law students and scholars. Why would you not publish Part A?

CHAIRPERSON REYNOLDS: Because it's a little --

COMMISSIONER BRACERAS: I think --

CHAIRPERSON REYNOLDS: Abbie makes a good point, too. When you publish a document, you publish a document as opposed to publishing it in a piecemeal fashion.

COMMISSIONER BRACERAS: But you're assuming that you're going to have majority support on this Commission for ever publishing findings and recommendations and I'm not showing that that's the case.

CHAIRPERSON REYNOLDS: No, no. That's why I'm suggesting that we table the whole thing until we get our procedures in place which Ashley has committed to --

COMMISSIONER TAYLOR: Either option is fine with me. I just think, again, Abbie,
I am focusing on not simply this report. I'm focusing on our discussion and how we treat these reports going forward.

VICE CHAIRPERSON THERNSTROM: I am totally with you on the process going forward. I do not think that it is legitimate to hold this particular report up.

COMMISSIONER BRACERAS: It's not holding it up. I think that the option we're discussing is an option to publish a clearinghouse report without findings and recommendations. It's not holding it up. It's publishing a different version.

CHAIRPERSON REYNOLDS: The value of the document, it seems to me, is significantly reduced if we issue it in a piecemeal fashion, especially the findings and recommendations. That's --

COMMISSIONER BRACERAS: I have to say I'm sorry. I think this is MFB-like. I mean basically the argument that I'm hearing is well, the staff has done the work, let's just get it out.

VICE CHAIRPERSON THERNSTROM: No.

CHAIRPERSON REYNOLDS: No, that's
not the argument. What I said was that it is -- well, first it's unusual to have a report that is published on two separate dates, especially when the meat -- the question is asked, so what is the Commission's position on this issue? When they look at Part B, they're looking -- okay, fine, what's their position?

COMMISSIONER BRACERAS: This all goes back to your definition of a briefing and what we had under the MFB regime was a regime where she conflated the two in order to get what she wanted. And so I thought, frankly, under the new regime that we had sort of gone back to separating the two so that hearings were more formal and had findings and that briefings were basically just that, briefings to spotlight an issue for the public and let people draw their own conclusions.

Now that doesn't mean that there can never be findings and recommendations, but the thought was that the process would be fundamentally different and that there wouldn't be just a laundry list of recommendations that you had to vote on hook, line and sinker.
CHAIRPERSON REYNOLDS: That's not -- we don't have to vote on the findings, hook, line and sinker. We always had the ability to vote on each finding and each recommendation. In terms of a resolution, it seems to me either --

COMMISSIONER BRACERAS: I'm willing to vote for the whole package now, if we can go through and vote on every finding and recommendation separately and if in the report it is noted how many votes for, how many votes against, and --

CHAIRPERSON REYNOLDS: I support that friendly amendment.

COMMISSIONER BRACERAS: And -- I'm not done. There's a statement added after each finding and recommendation, one sentence, proponents, supporters of this finding felt whatever; opponents of this finding were concerned that whatever. No dissents, that's it.

I'll vote for it that way.

COMMISSIONER YAKI: I'm going to object to the no dissents issue on that one.

VICE CHAIRPERSON THERNSTROM: Yes,
we can't have a no dissents.

CHAIRPERSON REYNOLDS: I think it's important.

COMMISSIONER BRACERAS: Once again that gets us back to then what is the difference between a hearing and a briefing, because if a briefing report is going to be a full-fledged report with full-fledged dissents, with findings and recommendations, then it's really just a matter of semantics. It's the same thing as a hearing, except that you haven't issued subpoenas and you're not calling it a hearing. There's really -- and it's shorter. There's no substantive difference. It's just shorter.

CHAIRPERSON REYNOLDS: I would have concerns telling a Commissioner, adopting a position that tells a particular Commissioner that you cannot file a dissent and articulate your --

COMMISSIONER BRACERAS: But you're assuming -- Commissions do that all the time. Look at the Title IX Commission that you were a part of didn't have lengthy, bar review-like dissents. It is very streamlined and easy to
read and user friendly.

COMMISSIONER YAKI: Are you calling my dissents bar review-like?

(Laughter.)

COMMISSIONER BRACERAS: No, it's not that, your dissents are well written, Michael, but it goes to the question of what is the purpose of these documents. Are our briefings simply are shorter versions of hearings without the subpoenas or are they something different in kind? And I have always felt that they're something different in kind.

CHAIRPERSON REYNOLDS: I think that needs to be worked out initially amongst the working group --

COMMISSIONER BRACERAS: It does and that's why I won't vote for it until it is.

CHAIRPERSON REYNOLDS: And then the full Commission will vote on it, but I think that your proposal, I like it. I'm interested to hear what the other Commissioners, Vice Chair --

VICE CHAIRPERSON THERNSTROM: If you think of the Iacacca bill briefing,
without the findings and recommendations, it would be dead on arrival.

COMMISSIONER BRACERAS: But see and that begs the question as to what the purpose is. Is the purpose -- let me finish -- is the purpose to be influential?

VICE CHAIRPERSON THERNSTROM: This is totally irrelevant.

COMMISSIONER BRACERAS: To me, the process is more important than whether or not we're --

VICE CHAIRPERSON THERNSTROM: I agree that process is important. I just want it to apply in the future.

COMMISSIONER BRACERAS: And frankly --

VICE CHAIRPERSON THERNSTROM: This is a briefing from last June.

COMMISSIONER BRACERAS: I agree with that, believe me, it's stale. But I have always felt that this Commission can be best utilized if it acts more in the vein of a think tank than a policy activist.

VICE CHAIRPERSON THERNSTROM: That's not --
COMMISSIONER BRACERAS: Whether or not we influence legislation doesn't matter, if we're putting out materials that are useful to scholars and from which scholars can draw their own conclusions.

VICE CHAIRPERSON THERNSTROM: Well --

CHAIRPERSON REYNOLDS: We are having a conversation that should take place amongst the working group.

COMMISSIONER BRACERAS: I'm just explaining to you why I can't vote for it as is.

CHAIRPERSON REYNOLDS: I understand that. Jennifer put a compromise on the table.

VICE CHAIRPERSON THERNSTROM: It's going to take us the rest of the afternoon, do you realize that to go through these one by one.

COMMISSIONER BRACERAS: Well, then let's just vote up or down.

COMMISSIONER YAKI: Well, the facts that there are no dissents, I can't do that.

CHAIRPERSON REYNOLDS: We haven't settled on that matter, Michael.
VICE CHAIRPERSON THERNSTROM: And I don't understand why if we vote on the findings and briefings but allow dissents, why doesn't that solve the problem?

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I agree with many of the points that have been made with one exception, that by voting on this at some point later than today somehow this report is going to be that much more stale. I don't necessarily agree with that. It's been nine months.

COMMISSIONER BRACERAS: It's already stale.

COMMISSIONER KIRSANOW: Ten months isn't going to make any difference. Second is it strikes me that we have got kind of an atomized position among the Commissioners. I've heard maybe five or six different positions as to how we should approach this, so I don't think that we're going to have the majority vote on any of them today.

I don't like moving forward without a procedure.
CHAIRPERSON REYNOLDS: Can we table the whole thing?

COMMISSIONER KIRSANOW: My preference would be, again, we're operating in traditional vacuum.

CHAIRPERSON REYNOLDS: What information is missing?

COMMISSIONER KIRSANOW: First of all, we've got a working group that's working on a process. That may be a process in which all of us can work and at some point it's done. I would table this report, voting on it, until that is done.

VICE CHAIRPERSON THERNSTROM: Then it may end up being -- I've got a question for Commissioner Yaki.

If we voted on the findings and recommendations today, and if they were approved, and if we said to you look, you can write a dissent, just as long as the briefing report, as far as I'm concern --

COMMISSIONER YAKI: longer, longer

VICE CHAIRPERSON THERNSTROM: whatever length. Would that solve the problem for you of voting today on the entire package?
COMMISSIONER YAKI: No. I was under the impression and I am in support of my fellow working group member, Commissioner Braceras and Commissioner Taylor that we can work to resolve this issue. I mean I have -- there may be points of compromise that I can come to on briefing reports other than what you already know is my hard and fast belief that it's inappropriate to do findings and recommendations on briefing reports. But I have been listening to this and thinking about how I can work to accommodate some of the issues that I care about and still meet what is the inevitable majority position that could prevail on this. But I want to do that in the context of the discussion of the working group, otherwise, I'm not going to be prepared to spend about an hour talking about the report itself today and if a vote were forced on it today, I would rather not.

I would rather see if there's a way that we can work out the procedures within the working group so that we don't have these 20 to 30 minute debates prior to each report every time it comes up.
CHAIRPERSON REYNOLDS: I move that we table the entire report. Is there a second?

VICE CHAIRPERSON THERNSTROM: Second.

CHAIRPERSON REYNOLDS: All in favor?

(Ayes.)

CHAIRPERSON REYNOLDS: Any objections? Any abstentions?

COMMISSIONER BRACERAS: I abstain.

COMMISSIONER TAYLOR: Abstain.

CHAIRPERSON REYNOLDS: The motion passes. Let the record reflect that Commissioners Braceras and Taylor abstained.

VICE CHAIRPERSON THERNSTROM: So the plan is to bring this up again at?

COMMISSIONER TAYLOR: The pressure now is full square on the working group.

CHAIRPERSON REYNOLDS: Commissioner Taylor has committed and offered to pay a fine if he fails to --

COMMISSIONER TAYLOR: Using Commissioner Yaki's checkbook.

CHAIRPERSON REYNOLDS: Whatever
works, but anyway the plan is that the working
group will get its work done between now and
the next meeting.

COMMISSIONER YAKI: I need to find
a checkbook.

VICE CHAIRPERSON THERNSTROM: Wait
a minute, when do we have to see the
recommendations of the working group?

CHAIRPERSON REYNOLDS: It would
have to be at least a week before the next --

VICE CHAIRPERSON THERNSTROM: Exactly, the working group is committing
itself to finishing its work at least a week
before the next meeting.

COMMISSIONER BRACERAS: Everybody
is staring at me.

COMMISSIONER TAYLOR: The answer is
yes.

COMMISSIONER BRACERAS: Well, I
think, right, and we're just going to have
accept the fact that some of our
communications may have to be done by email
because the problem is people on the West
Coast prefer an afternoon schedule and because
of my work schedule, and having the kids all
afternoon on some days, I need a morning schedule and so that's what's been one of the problems in finding a time when we all can meet.

CHAIRPERSON REYNOLDS: Well, that problem will remain.

COMMISSIONER BRACERAS: We'll have to resolve it, but maybe some of it's done with email.

CHAIRPERSON REYNOLDS: Okay. SACs.

VII. State Advisory Committee Issues

CHAIRPERSON REYNOLDS: We're going to recharter two SACs today. I move that we recharter the Alabama State Advisory Committee. Under this motion the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director: David Beito, who is also nominated as chair; Valerie Askew-Williams, Margaret Brown, Richard Finley, Ed Haden, Silvia Hoyos, Randy Kelley, Merceria Ludgood, Raphael Maharaj, Harriet Means, Charles Nuckolls, Mary Elizabeth Peters, and William D. Smith.

I also move that -- oh no. The
Commission will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment.

Is there a second?

VICE CHAIRPERSON THERNSTROM:

Second.

CHAIRPERSON REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Commissioner Melendez. Is this for Alabama?

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER MELENDEZ: Again, my concern -- and who is the chair of this now or was recommended?

CHAIRPERSON REYNOLDS: It would be David Beito. Have I mangled his name?

COMMISSIONER MELENDEZ: Again, there are two people, Mr. Haden and Mr. Smith, who are basically, my concern is in the documents we have in the recharter package, there's very little said about them as far as work in civil rights and that's always been my comment on some of these. I don't know where they came from, but that's just my comment for
those two.

CHAIRPERSON REYNOLDS: Okay, at least with respect to Ed Haden, I know that he worked up on the Hill for I believe Jeff Sessions and worked on civil rights issues.

Ken, can you give me some help with the other individual?

STAFF DIRECTOR MARCUS: Haden, I recall. I'm just trying to pull Mr. Smith up.

CHAIRPERSON REYNOLDS: Apparently, the same is true for Smith.

Additional comments or questions?

COMMISSIONER MELENDEZ: Commissioner Melendez. There's the issue that on the applications that they sent in, they don't really write too much about themselves. I'm trying to find it, but I thought maybe they didn't write enough about themselves on the applications, things that tell us they have done all these things, but it's not in what they wrote down.

STAFF DIRECTOR MARCUS: Okay, I will certainly encourage regional staff to make sure that more of the information is pulled out and put on to the essay question
about background.

COMMISSIONER MELENDEZ: Yes, because that's always my concern. I look at the application, if I only see a sentence or two on what they've done, then I'll question that.

CHAIRPERSON REYNOLDS: Additional questions or concerns?

All in favor, please say aye.

(Chorus of ayes.)

CHAIRPERSON REYNOLDS: Any abstentions? Any objections?

COMMISSIONER YAKI: Yes.

CHAIRPERSON REYNOLDS: That was from Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRPERSON REYNOLDS: The motion passes. Please let the record reflect that Commissioner Yaki opposed.

COMMISSIONER YAKI: Said no.

COMMISSIONER MELENDEZ: I abstained.

CHAIRPERSON REYNOLDS: Oh, and in addition, let the record reflect that Commissioner Melendez abstained from the vote.
Okay. Next is the rechartering of the Mississippi State Advisory Committee. I move that the Commission recharter the Mississippi State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director: Bradley Clanton, who is also nominated as chair; Victoria Cintra, Goyo De La Cruz, Willie Green, Elizabeth Powers, Wendy Rosas-Altieri, Ronald Rychlak, Sue Sautermeister, Walter Scott, Forest Thigpen and Leroy Walker.

The members will also serve as uncompensated government employees and under this motion, the Commission would authorize the Staff Director to execute the appropriate paperwork for their appointment.

Is there a second?

VICE CHAIRPERSON THERNSTROM: Second.

CHAIRPERSON REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Commissioner Melendez here. Looking at the package again, the chair, Mr. Clanton, my understanding, but I looked at some of the
other candidates, Ms. Elizabeth Powers, who has a great deal more experience as far as being on the SAC before and I wondered why Mr. Clanton was picked. Could the Staff Director comment on that?

STAFF DIRECTOR MARCUS: Yes, Mr. Clanton was the chief counsel to the House of Representatives Judiciary Committee Subcommittee on the Constitution and Civil Rights which is the authorizing committee for this Commission and through his work there, he had developed what would appear to be a substantial knowledge both about the Commission itself, the mission of the Commission, and the environment in which the Commission operates. He certainly has a very distinguished background in his experience as the former chief counsel of our Oversight Committee seemed to give him a particularly interesting and useful perspective on the work that we do.

COMMISSIONER MELENDEZ: What do you think about Ms. Powers? Do you have any comment on her?

STAFF DIRECTOR MARCUS: I am
certainly recommending Ms. Powers for membership on the committee.

(Pause.)

COMMISSIONER MELENDEZ: No other questions.

CHAIRPERSON REYNOLDS: That being the case, all in favor say aye.

(Chorus of ayes.)

CHAIRPERSON REYNOLDS: Any abstentions?

COMMISSIONER MELENDEZ: Abstain.

CHAIRPERSON REYNOLDS: Any objections?

COMMISSIONER YAKI: Object.

CHAIRPERSON REYNOLDS: Please let the record reflect that Commissioner Yaki abstained --

COMMISSIONER YAKI: No, I voted no.

CHAIRPERSON REYNOLDS: Okay. Please let the record reflect that Commissioner Yaki voted in opposition and that Commissioner Melendez abstained.

Folks, we are done.

VICE CHAIRPERSON THERNSTROM:
Fantastic.

CHAIRPERSON REYNOLDS: Hold on, we are not done. We do need to schedule a date and time to discuss the budget.

VIII. Future Agenda Items

CHAIRPERSON REYNOLDS: Folks, let's get out our calendars.

VICE CHAIRPERSON THERNSTROM: I don't have mine with me.

(Laughter.)

CHAIRPERSON REYNOLDS: Then we will do this by email.

VICE CHAIRPERSON THERNSTROM: Yes.

I forgot my palm pilot.

STAFF DIRECTOR MARCUS: Can there be an agreement to hold a conference call to discuss these issues at a date and time to be decided subsequently?

CHAIRPERSON REYNOLDS: Yes.

VICE CHAIRPERSON THERNSTROM: Yes.

CHAIRPERSON REYNOLDS: We're done.

COMMISSIONER BRACERAS: We need a motion to adjourn.

COMMISSIONER YAKI: In scheduling a conference call, you can also do it after
hours East Coast time which comes close to the end of the day West Coast time.

COMMISSIONER TAYLOR: I don't know if I can do that.

COMMISSIONER YAKI: If the mornings aren't working for people.

VICE CHAIRPERSON THERNSTROM: I mean why can't you do that with the working group as well, just do it in the evenings?

COMMISSIONER YAKI: That's what I'm saying right now.

CHAIRPERSON REYNOLDS: Well, that presents --

COMMISSIONER TAYLOR: I am obligated to put the kids to bed and give them a bath and those duties.

(Laughter.)

COMMISSIONER TAYLOR: I am. I've got three kids.

(Laughter.)

CHAIRPERSON REYNOLDS: Okay, well, we will work it out.

VICE CHAIRPERSON THERNSTROM: How late do they stay up?

COMMISSIONER TAYLOR: I've got to
read them a book, put them to bed.

COMMISSIONER KIRSANOW: Motion to adjourn.

IX. Adjourn

CHAIRPERSON REYNOLDS: Okay. I'm sure no one is going to object.

(Whereupon, at 11:59 a.m., the Commission meeting was concluded.)