The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:00 a.m., Abigail Thernstrom, Vice Chairperson, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chairperson
JENNIFER C. BRACERAS, Commissioner
GAIL HERIOT, Commissioner (via telephone)
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner
KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

TYRO BEATTY, Director, Human Resources Division
DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Attorney-Advisor, OSD
DEBRA CARR, Associate Deputy Staff Director
PAMELA DUNSTON, Chief, ASCD
BARBARA FONTANA
LATRICE FOSHEE
KIM HOLHURST
DEREK HORNE
MAHA JWEIDE
SOOK-FOON MACDOUGAL
TINALOUISE MARTIN, Director Office of Management
EMMA MONROIG, Solicitor/Parliamentarian
EILEEN RUDERT
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN RAMEY
COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER
KIMBERLY SCHULD
RICHARD SCHMECHEL
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PROCEDINGS

9:16 A.M.

VICE CHAIRPERSON THERNSTROM: Good morning. The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights at 624 9th Street, N.W., Room 540 in Washington.

All the Commissioners are here, except Chairman Reynolds and Commissioner Heriot. The chair, Gerald Reynolds -- I'm sorry, Peter Kirsanow is also not here, but will be joining us later in the day.

The chair is not participating and Commissioner Heriot, as everybody just heard, is with us via telephone.

This morning we're going to be focusing our attention on the business of administrative issues at the Commission and there will be a short lunch break and we'll reconvene at 1 o'clock and hold a briefing on covert wiretapping in the War on Terror.

For this afternoon, Commissioner Taylor is going to be chairing the proceedings. I can't be here.

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

I. Approval of Agenda

VICE CHAIRPERSON THERNSTROM: Can I have a
motion to approve it?

COMMISSIONER TAYLOR: So moved.

VICE CHAIRPERSON THERNSTROM: And do I have a second?

COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: I'd like to actually start with several motions to amend the agenda.

First, may I have a motion to amend the agenda to add Campus Anti-Semitism Public Education Campaign in Section 6, Program Planning, following Affirmative Action in Law Schools Briefing Report?

I need a motion.

COMMISSIONER TAYLOR: So moved.

VICE CHAIRPERSON THERNSTROM: Second?

COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: All in favor of amending the agenda, please indicate by saying aye.

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Anybody opposed? The agenda is amended and the motion is approved.

The second item is approval of the minutes of March 1, 2007.

II. Approval of Minutes of March 1, 2007 Meeting
VICE CHAIRPERSON THERNSTROM: May I have a motion on that?

COMMISSIONER MELENDEZ: So moved.

VICE CHAIRPERSON THERNSTROM: A second?

COMMISSIONER TAYLOR: Second.

COMMISSIONER YAKI: Where are the freaking minutes?

VICE CHAIRPERSON THERNSTROM: Are there any changes? Discussion, questions regarding the minutes?

COMMISSIONER YAKI: Did you get the minutes? I didn't get the minutes.

VICE CHAIRPERSON THERNSTROM: They came electronically?

COMMISSIONER YAKI: Oh yeah? I print off everything electronically. I don't have them.

VICE CHAIRPERSON THERNSTROM: Pardon me?

COMMISSIONER YAKI: I print up everything electronically, but I don't have them. I will abstain.

VICE CHAIRPERSON THERNSTROM: I'm sorry, say it again? You abstain. All right, all in favor?

Any further discussion?

All in favor.

(Chorus of ayes.)
VICE CHAIRPERSON THERNSTROM: Anybody opposed to approving the minutes? Motion is approved.

We have a few announcements.

III. Announcements

VICE CHAIRPERSON THERNSTROM: March is Women's History Month. We honor the leadership of extraordinary women who shaped our nation's history for the better. Personal note, I grew up in an era in which few women went to law school or medical school. My roommate in college was one of three women at the NYU Law School. No women were CEOs of major corporations, to the best of my knowledge. And before, of course, 1920, women could not even vote which means my mother was 19 years old before women were eligible. So we honor the women who were at the forefront of change, creating a degree of equality that we did not dream of not that many years ago.

Second announcement, major -- pardon me, yes?

COMMISSIONER YAKI: Just to add to Women's History Month?

VICE CHAIRPERSON THERNSTROM: Sure.

COMMISSIONER YAKI: I just wanted to say especially propitious this time of year that we have the first women president of Harvard University at
this time, as well as the first women Speaker of the House of Representatives.

VICE CHAIRPERSON THERNSTROM: And the first really serious candidate for the Presidency is a woman.

Thank you.

COMMISSIONER YAKI: All of the above.

VICE CHAIRPERSON THERNSTROM: Major League Baseball has announced it will host its first annual civil rights game on March 31, 2007 at 4:30 Central Standard Time.

COMMISSIONER YAKI: Did they invite us?

VICE CHAIRPERSON THERNSTROM: The civil rights game --

COMMISSIONER YAKI: Is Joe going to throw out the first pitch?

VICE CHAIRPERSON THERNSTROM: We thought you were going to do that, Michael.

COMMISSIONER YAKI: I've done that.

VICE CHAIRPERSON THERNSTROM: You've done that?

COMMISSIONER YAKI: Yes.

VICE CHAIRPERSON THERNSTROM: Did you get it over the plate?

COMMISSIONER YAKI: Absolutely.
(Laughter.)

VICE CHAIRPERSON THERNSTROM: You've got unsuspected talents.

COMMISSIONER YAKI: I practiced the entire day before because I hadn't thrown a baseball in 10 years and the first time I threw it it went 40 feet and down into the dirt. I thought I'm going to need to really practice, because there's no way I'm getting on that mound and toss it in the dirt.

The first baseball game that my friend Mayor Brown threw his first pitch out it was basically rolling a boccie ball. He threw it about 10 feet in front of him and it rolled across home plate. The second game, he threw it over the back stop. The third time he said, "Yaki, you do it." So --

VICE CHAIRPERSON THERNSTROM: Well, that just grazes my esteem of Jerry Brown.

COMMISSIONER YAKI: That was Mayor Brown. It was Willie Brown. Jerry Brown was supposed to throw out the pitch with me, but didn't want to do it.

VICE CHAIRPERSON THERNSTROM: Mayor Brown, sorry about that.

Anyway, the civil rights game will honor baseball's contribution to judging athletes on the basis of skills, rather than skin color and that
change has had a profound impact on American racial attitudes.

COMMISSIONER BRACERAS: When and where is this game taking place?

VICE CHAIRPERSON THERNSTROM: You missed that.

COMMISSIONER BRACERAS: I'm sorry.

VICE CHAIRPERSON THERNSTROM: The where, I don't know. It's got to be Central Standard Time, so it's got to be some place other than here.

STAFF DIRECTOR MARCUS: I believe it's in Memphis.

COMMISSIONER BRACERAS: And what is the date again?

VICE CHAIRPERSON THERNSTROM: March 31.

COMMISSIONER YAKI: And who are the teams?

VICE CHAIRPERSON THERNSTROM: I wasn't handed that information.

COMMISSIONER BRACERAS: I think we all need to be invited and given good seats and meet the players.

COMMISSIONER YAKI: It is Memphis, so it's got to be barbecue and music, right?

COMMISSIONER BRACERAS: Right.

VICE CHAIRPERSON THERNSTROM: I'll go for
the music, forget the game.

COMMISSIONER YAKI: The key is have we been invited or not, that's all I'm asking.

COMMISSIONER BRACERAS: Right.

VICE CHAIRPERSON THERNSTROM: You know what, you make sure we are.

COMMISSIONER YAKI: I thought this was the role of the chair and vice-chair, come on.

VICE CHAIRPERSON THERNSTROM: At Commission expense.

COMMISSIONER BRACERAS: No, at baseball's expense.

VICE CHAIRPERSON THERNSTROM: Or baseball's expense, whatever. Do you want to take a vote on -- actually, do I hear a motion that we be invited?

(Laughter.)

COMMISSIONER YAKI: How did we learn about this?

VICE CHAIRPERSON THERNSTROM: I have no idea. I'm handed the script which I actually changed.

STAFF DIRECTOR MARCUS: We learned about it through our usual research on civil rights matters around the country and --

COMMISSIONER YAKI: Well, March 31st is
before opening day, so the question is are there two
teams that are actually going to be --

STAFF DIRECTOR MARCUS: It is an
exhibition game between two Major League Baseball
teams. I don't recall the two teams. I believe that
Cleveland is one of the teams.

COMMISSIONER YAKI: It should be Cleveland
and it should be the Dodgers.

STAFF DIRECTOR MARCUS: I don't recall the
other.

COMMISSIONER YAKI: I mean in terms of the
two teams that have African-American players in each
league, Brooklyn Dodgers had Jackie Robinson; Larry
Dobi was for the Cleveland Indians, correct? Yes.

STAFF DIRECTOR MARCUS: I can tell you for
sure that Cleveland is one of the teams.

If the Commission wants to do some sort of
resolution commending baseball for doing this or
something that would --

COMMISSIONER YAKI: We want tickets.

(Laughter.)

COMMISSIONER BRACERAS: I'm not kidding.

STAFF DIRECTOR MARCUS: Or a letter to
them congratulating.

COMMISSIONER YAKI: Send a letter saying
thank you and hint, hint.

COMMISSIONER BRACERAS: Right, hint, hint.

COMMISSIONER YAKI: Hint, hint. You can do that subtly.

I move that we send a letter to Major League Baseball, commending them for this game and hoping that at some point they know of our role in civil rights legislation in America.

VICE CHAIRPERSON THERNSTROM: The acknowledgement takes a concrete form.

COMMISSIONER YAKI: Yes.

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER YAKI: Jennifer singing "The Star Spangled Banner" for example.

COMMISSIONER BRACERAS: That would be akin to Roseanne Barr singing "The Star Spangled Banner." I don't think you want to go there.

COMMISSIONER YAKI: But let's send a letter.

VICE CHAIRPERSON THERNSTROM: Yes, let's send a letter. I agree.

STAFF DIRECTOR MARCUS: I'd be happy to circulate a letter perhaps with the individual names of each Commissioner on it.

VICE CHAIRPERSON THERNSTROM: That's fine.
Is that fine? Does anybody have any objections to that? So if they're not going to invite us, can we move on?

We also remember today the forty-second anniversary of the March 7, 1965 Selma or I should say the March for Voting Rights in Selma on March 7, 1965, obviously a turning point in the civil rights movement. Actually, everyone in this room knows police enforcing Governor George Wallace's ban on demonstrations, viciously attacked more than 500 protesters with tear gas and batons as they marched from Selma to Montgomery. The attack on the demonstrators became known as Bloody Sunday and the bloodshed of that day was directly responsible for the passage of the 1965 Voting Rights Act five months later.

So I now turn to the Staff Director who has a report.

COMMISSIONER BRACERAS: It's a minor thing, but I'd like to reopen the vote on approval of the minutes to reflect the fact that my assistant Kimberly Schuld was on the call for the last meeting. The minutes left her name off.

VICE CHAIRPERSON THERNSTROM: We need a motion to reopen the vote, I believe.
COMMISSIONER BRACERAS: So moved. Moved to reopen the vote.

COMMISSIONER YAKI: I second it.

VICE CHAIRPERSON THERNSTROM: Right --

COMMISSIONER YAKI: Move to amend to include --

VICE CHAIRPERSON THERNSTROM: Any discussion?

COMMISSIONER YAKI: Move to amend to include Kim Schuld's name as a participant.

VICE CHAIRPERSON THERNSTROM: Right, move to amend Kim Schuld who was participating by telephone. I did not get a vote on -- I did not get agreement on amending it first. That's the first thing we need to do, I believe.

If not, can we just --

STAFF DIRECTOR MARCUS: I think we can just vote.

VICE CHAIRPERSON THERNSTROM: Okay, I move to amend. Commissioner Yaki has just moved to amend the minutes to include the fact that Kim Schuld was present by phone.

Any discussion? All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON THERNSTROM: Anybody
opposed? Motion is passed.

COMMISSIONER BRACERAS: Thank you. Sorry about that.

VICE CHAIRPERSON THERNSTROM: It's okay. I think we turn now to the Staff Director's Report.

**III. Staff Director's Report**

STAFF DIRECTOR MARCUS: Thank you, Madam Vice Chair, Commissioners. I would like to add a few remarks to my prior written statements regarding our information quality guidelines as they apply to oaths, the procurement function, the strategic plan and SAC rechartering.

First, let me say a word about oaths. We are recommending that starting today at all briefings, we swear in the witnesses. The reason is that we have just adopted information quality guidelines reflecting and implementing the OMB guidelines. Those require that we ensure the quality and accuracy of Commission work products that are published or posted to our website.

Some of our products, such as our briefing reports include information provided by outside parties, namely the experts. We would find it certainly very difficult to independently verify each factual statement made by all of our witnesses, and of
course, we're aware that sometimes statements made by witnesses conflict with one another.

The guidelines anticipate that issue and they provide that we are able to discharge our duty for information quality with respect to those third-party statements, if we rely on statements that are made under oath. So beginning today, our recommendation is that we swear in each of the witnesses and that's why we plan to do that, if there are no objections starting with today's briefing.

COMMISSIONER YAKI: Did we advise the witnesses coming forward that they would be sworn?

STAFF DIRECTOR MARCUS: We certainly will in all future months. I don't believe that today's witnesses were apprised of this.

VICE CHAIRPERSON THERNSTROM: Does that really solve the problem that you just pointed to of --

COMMISSIONER YAKI: It doesn't stop lying.

VICE CHAIRPERSON THERNSTROM: I mean so we get garbage.

STAFF DIRECTOR MARCUS: When it comes to information quality, there's always a question as to how much an agency can do to absolutely ensure that what it is providing is accurate. There's always
going to be some error rate. There's always going to be a limit to what one can do. And so what the OMB guidelines do is they ensure that we have procedures that we make them transparent and that we do something that is appropriate to make clear the extent to which we've checked on the accuracy.

COMMISSIONER YAKI: What OMB guideline are you referring to specifically?

STAFF DIRECTOR MARCUS: Those are the information quality guidelines issued by OMB, I believe in the Year 2001 -- 2002, that are cited within our own information quality guidelines.

VICE CHAIRPERSON THERNSTROM: When we swear these witnesses in, are we accompanying that process with a statement that this -- as to what -- are we putting them on notice, in effect, that we are concerned that they bring to us verifiable information?

This just seems to me some sort of band-aid on a sore that can't be really healed.

STAFF DIRECTOR MARCUS: We put them on notice that they are making statements that they have to be accountable for in the sense that they swear that it is, and the General Counsel can help me on the standard, but that it is information which is true and
accurate to the best of their knowledge and belief.

The oath in full reads as follows: "Do you solemnly swear or affirm that the information you are providing to the Commission is true and accurate to the best of your knowledge and belief."

COMMISSIONER YAKI: What do Committee witnesses on the Hill, is that the same oath?

STAFF DIRECTOR MARCUS: We have reviewed a significant number of oaths and tried to provide one that ensure the quality, but that was not so stringent that it would prevent researchers from commenting on information as to which they didn't have personal, direct personal knowledge.

I don't think it's the same one as the Hill. I think it's taken from the State of Maryland.

MR. BLACKWOOD: Correct.

COMMISSIONER YAKI: What does the one on the Hill say, because I was sworn in, I testified in the oversight hearing two years ago.

STAFF DIRECTOR MARCUS: Why don't I defer on this one to the General Counsel, if that's okay to the Vice Chair.

MR. BLACKWOOD: In answer to your question, Commissioner Yaki, I don't know exactly what the -- what is used to swear on the Hill. I believe
it would be under the penalties of perjury and make that explicit. We did look at a whole variety of those. Given that this oath was supposed to direct or to address the circumstances posed by the information quality guidelines, we used a much lesser stringent guideline, basically swearing that they're in good faith believe that it's true and accurate what they're providing as far as factual evidence.

We didn't think -- frankly, I didn't think it was appropriate to say "under penalty of perjury."

STAFF DIRECTOR MARCUS: Let me also say just a word about procurement. It has been my observation that this Agency needs to have a much stronger staffing in the procurement function than what we have. As the Commissioners are aware, we have introduced substantial new policies and procedures, including a new manual with directions as to how procurement should be properly conducted. It's a very important set of reforms that we introduced last year and it addressed a number of documented weaknesses in that area provided in prior GAO reports.

Those policies are intended to be a part of GAO implementation and more generally to ensure that we are in compliance.

The problem, however, is that it's not
enough to have appropriate policies and procedures. They need to be effectively executed by staff that have the appropriate skill set. It is my observation and the observation of management in that area, that we do not have a sufficient staffing in that area, nor have we in quite some time.

We have recently attempted to recruit in that area and our observation, and frankly this is not a surprise. It is that for a micro-agency to attract the level of quality and recruitment that we need is at best a challenge. What I am planning and proposing to do in order to ensure that we have a greater strength in the procurement function and to ameliorate the problem that arises with our recruitment problem within that area is to outsource a portion of that function to another outside entity. We have looked into it and there are a few agencies that have bid on essentially a contract that would provide us the services that would otherwise be provided by a procurement analyst at approximately the GS-13 level. We had previously planned to bring on an analyst at that level. If we complete the contracting process, to bring that agency on board, the cost to us would be equivalent to approximately one GS-13. And we would actually have someone likely physically stationed
here.

I think that that is probably the most effective way, given limited resources of strengthening that function to try to make sure that we are able to implement the policies that we put in place last year.

If there are no further comments on that, I will make a few comments about the strategic plan. As the Commissioners are aware, we recently approved a preliminary draft strategic plan that could be presented to OMB and Congress and we have provided it to OMB. In response, however, we received a very significant number of comments from OMB. We have not yet submitted it to Congress, but given the materiality of some of the comments, it seemed to me best before going to Congress to first arrange with the Commissioners possible ways of addressing the comments.

In general, there were concerns from OMB that the strategic goal should not be activities that we need to describe goals so that they are outcome related. Performance measures should be written so they are quantifiable and have a time line for completion. We need to align performance measures with the appropriate long-term goals, avoid
unnecessary duplication and update untimely or stale agency information. Those are a few of the major ones.

In general though, the most significant comments dealt with metrics and were consistent with older comments that we had received from our Congressional House Authorizing Committee that we need to think very carefully about how we can impose measurements by which the Agency will be held accountable. It is in order to try to address the OMB comments and using the OMB comments as a guideline to anticipate what we would hear from Congress, that we have provided a revised draft to the Commissioners with suggested changes which are certainly fairly significant.

The one other thing that I would like to say is that we have a number of State Advisory Committee recharter packages that are now in the pipeline. The State of Tennessee, we have a package that has been recommended to the Commissioners and is ripe now for discussion. We are working right now intensively on a significant number of other states, including Hawaii, Nevada, Texas, Maryland, Indiana and a number of others. And of course, we continue to be open to suggestions from Commissioners. We recently
received a few suggestions from Commissioners which we're very pleased with and we certainly invite Commissioners to make any other suggestions.

The Tennessee Committee, I'm delighted that we were able to attract a number of people with very significant, useful experience, ranging from the Director for the Office of Civil Rights of the Tennessee Department of Education; to the Executive Director of the Tennessee Human Rights Commission; to the former board director of a LULAC; a president of the Chattanooga Chamber of Commerce; a senior pastor and founder of the New Covenant Fellowship, a multi-ethnic church; and a distinguished professor of political science and law at Vanderbilt University.

VICE CHAIRPERSON THERNSTROM: Who is that?

STAFF DIRECTOR MARCUS: That is Professor Carol Swain.

And that will be on the agenda for discussion today.

COMMISSIONER MELENDEZ: Just a question.

As far as the testimony for the appropriation that's happening next week --

STAFF DIRECTOR MARCUS: Yes, Commissioner.

I was asked the day before yesterday by staff to
provide them with some briefing yesterday afternoon and I did brief House Appropriations staff, including minority and majority staff, yesterday on the Hill. And a hearing is anticipated for next week on Thursday, although we have not yet received a final formal indication, so I'm not sure if we know that it's definite. When I last asked staff about it, I was told that they anticipate that that's when it will be, but that there was still some possibility that it would need to be changed based on activities being done at the committee level.

COMMISSIONER MELENDEZ: Just another question. We had talked about how we can incorporate trying to get more money for the Civil Rights Commission. Have we kind of decided how to do that? We recognize that you probably can't do it since you're part of the Agency, but at some point I think the message needs to be that we're drastically under funded here at the Commission to do the job here and the mission.

And the other thing would be how is the reauthorization, because I know that that's mentioned in the strategic plan, given I think a date to accomplish that, either 2007 or 2008, which is really quick to try to get reauthorization, since we haven't
been reauthorized since a number of years in the past, so is that part of the testimony that you'll be addressing those two issues, at least the reauthorization, or is that something that's not -- you won't really talk about that?

STAFF DIRECTOR MARCUS: Let me try to take them separately, so the questions deal with the concerns that some Commissioners had about needing more money and the reauthorization. The concerns that some Commissioners had about money, I understand that there are some Commissioners who had ideas of perhaps writing a letter. Others have had different sorts of ideas dealing with maybe having oral discussions. To the best of my knowledge that's something that's been discussed as a matter for individual Commissioners recently and as opposed to a staff matter.

And whether I would address it on the Hill depends on what the Commissioners ultimately do.

COMMISSIONER BRACERAS: What was the impetus for including 2007 as the date for reauthorization? I know it's the 50th anniversary, but whose suggestion did that --

STAFF DIRECTOR MARCUS: To the best of my recollection, it was staff originated and it was based on the 50th anniversary, indications we've had now for
over a year that they've been planning to deal with this and the announcement by the House Judiciary Committee a month or so ago that their priorities for this year include oversight of the Civil Rights Commission.

Now whether this is overly ambitious or not is a tough question. I don't think that we really know enough about the views of all members of the various authorizing committees. It would be, I would characterize it as a stretch goal.

COMMISSIONER BRACERAS: Right, but are we asking that our performance be measured by something that's completely outside our control?

I mean whether or not the Commission is reauthorized depends on what the folks on the Hill do, so why are we measuring our success or failure based on that?

STAFF DIRECTOR MARCUS: For a number of -- there is some risk that things outside our control will affect us. I think that that's true for virtually anything that we're committing to. In the event that we include this within a strategic plan, it would essentially prioritize the issue so that we would in figuring out how to divvy up our time consider working with the congressional committees to
be a higher priority matter towards reauthorization.

    Now it's as Ms. Carr has reminded me, it
is not characterized as a goal in the plan, so in the
event that it doesn't happen, it's not something that
we would have to report as being a failure.

    COMMISSIONER BRACERAS:  I'm sorry, what
exactly is it characterized as?  If it's not a goal,  
is it some sort of performance measure?

    STAFF DIRECTOR MARCUS:  We have identified
it as an external factor that would impact on our
success.

    COMMISSIONER BRACERAS:  Okay.  Thank you.

    VICE CHAIRPERSON THERNSTROM:  I'm sorry.

    Commissioner Yaki?

    COMMISSIONER YAKI:  I have some concerns
about the minutes from the March 1 meeting accuracy
with regard to the discussion about the appropriations
process.  As I recall, we actually had a rather
vigorous discussion regarding what the Staff
Director's responsibilities were with regard to
delivering the President's budget versus expressing
the concern of the Commission and I believe that -- I
don't think with some Commissioners -- I think it was
a pretty unanimous centering among the Commissioners
including the chair, myself and others regarding the
resource deprivation that has gone on and continues to
go on and is further -- I was looking for that
transcript -- and is exacerbated in the budget
submission for this year.

I thought and the minutes do not reflect
the discussion, perhaps the transcript does, that we
had talked about having a separate statement variable
that expressed the view of the Commission and I mean
by that the Commission, not Commissioners, not
individual Commissioners, the Commission, the now
seven sitting members of the United States Commission
on Civil Rights, stating that we believe that the
budget is inadequate to meet our needs and although we
voted for it per our duty to submit a budget to the
Congress, it does not reflect what we believe are the
resources necessary to carry out our duties.

Furthermore, I believe that at the end of
that conversation, there was discussion about the
preparation of a letter and I wish I had the
transcript because I thought the Staff Director said
that he would take a crack at it. If not, I'm
mistaken and I apologize to the Staff Director. But I
just don't -- oh great, thank you.

(Pause.)

VICE CHAIRPERSON THERNSTROM: I wasn't at
that meeting, but when it was reported to me, that was
precisely -- as Commissioner Yaki describes it, it was
precisely how it was reported to me.

COMMISSIONER YAKI: So I -- I thought we
were going to be having -- well, anyway, the chair did
actually prepare a letter. Let me apologize for that.
But I thought it was going to be -- and it does
reflect the chair and Commissioner Kirsanow,
Commissioner Melendez, myself and others' viewpoints
on this and it was, the thought was to have a letter
signed by the Commission or resolution by the
Commission. We talked about resolution, directing the
Staff Director that if asked whether the Commission
needed additional resources, he could answer by
stating that the Commission has authorized me to state
that it is the Commission's position that they do.
And I would like to see that done because with all due
respect to Commissioner Kirsanow, I do not think that
individual meetings are going to do it.

I think that we need to at the initial
hearing stage, state emphatically and for the record
that the Commission itself, notwithstanding the
President's budget request, believes that its mission
requires more funding than is being asked for at this
time and I would ask to suspend the rules and to add
to the agenda a motion to do exactly that which is a motion to direct the Staff Director that if asked by Congress whether the Commission agrees with this budget or whether this budget is sufficient for the Commission's duties and missions, that he can answer that I've been directed by the Commission to answer this way that it is the Commission's position that it does not believe that the budget as currently submitted to you will enable the Commission to adequately fulfill all of its missions, duties and goals consistent with its statutory mandate.

VICE CHAIRPERSON THERNSTROM: Have you got any --

STAFF DIRECTOR MARCUS: The Commissioners are aware that I prepared a letter. It doesn't say exactly what was indicated in there, but I prepared a letter based on the notion that that could be an effective way for Commissioners to communicate.

COMMISSIONER YAKI: Point of information, just to let you know. In the transcript, page 20 to 21: (Commissioner Yaki reading from transcript)

Commissioner Kirsanow: "Kirsanow here. I think what we should do is, rather than do this on the fly -- Chairperson Reynolds: Right. Commissioner Kirsanow: -- it is true, you know, I mean, the Staff
Director can even draft that motion. We can always vote on it next week at our meeting. Chairperson Reynolds: I agree. Very good. Commissioner Yaki: I think that motion should include some specificity as to what we believe the budget is deficient in so that when we give guidance to the Committee as to where we would want increases to occur, if they're being so general. Commissioner Kirsanow: I think that's a good idea." So --

STAFF DIRECTOR MARCUS: And all of that is consistent with my recollection, and Commissioner Yaki may recall that if he'd gone back further in the transcript, there had been earlier question as to whether the Staff Director thought it would be useful to have such a motion and I indicated that I thought a motion would be useful.

COMMISSIONER YAKI: Yes, absolutely.

STAFF DIRECTOR MARCUS: I don't believe that there was ever a vote on this, just a discussion and apparent consensus. Subsequent to that, after discussion with staff, it occurred to me that a letter might be an effective way of doing this and I suggested a letter, which I believe had been reviewed by all members of the Commission and there's been discussion about it, including some criticism by some
Commissioners of the idea of sending a letter.

If we were to go in the direction that you follow, Commissioner Yaki, and to comply with OMB guidelines, I will have been directed, if asked to provide specific testimony, and I think that would have to be characterized as testimony that I would anticipate providing regarding our budget to Congress. And therefore, would fall within the requirement in OMB (a)(11) requiring five-day pre-clearance. So if there were such a vote directing that I provide this statement, if asked, we would reduce it to writing and of course, provide it to OMB to see if they would pre-clear.

COMMISSIONER YAKI: Well, I'd like to try that.

VICE CHAIRPERSON THERNSTROM: So that doesn't take the form of a motion, I assume.

STAFF DIRECTOR MARCUS: Yes, Commissioner Yaki is suggesting that this be something on behalf of the Commission, it would be a motion.

VICE CHAIRPERSON THERNSTROM: Do you want to make a motion?

COMMISSIONER TAYLOR: A question. Is it your view that that's the most effective way to communicate our message, that is a motion that he, in
turn, is authorized to say in the context of a hearing, rather than a letter?

VICE CHAIRPERSON THERNSTROM: Why is a letter more effective?

COMMISSIONER TAYLOR: It's a question of effectiveness and attention, etcetera.

COMMISSIONER YAKI: I think it goes to two questions. One is if we are asked did we attempt to do everything we could within our process and do it, it answers that question, yes. In other words, if OMB gives us pre-clearance or if OMB doesn't give us pre-clearance, that sort of states we have exhausted that remedy.

And the second stage is that I do not anticipate this being in lieu of the letter. I think that the letter should still be there on the record and he may not even get the question in which case we would still have the letter. But in anticipation that if the question were asked, because I know that the question is being -- I haven't asked the question why is the Commission asking for less money than it did the year before. And that will probably be -- it would be natural if I had that question to come out during the hearing. And if so, I would like the Staff Director to say that the Commission has directed me to
say that they are not -- they believe -- they're unhappy -- they don't have to say they don't believe the President's budget -- they can simply say they believe that their mission would be better served through additional funding.

COMMISSIONER TAYLOR: Okay.

VICE CHAIRPERSON THERNSTROM: You don't want to say "has been compromised." You'd rather --

COMMISSIONER YAKI: Let me put it to you this way, the Staff Director is one who deals with OMB. I think if the sentiment is clearly one that states that it is the sentiment of the Commission that funding is provided, whether you want to say "to further enhance activities" or "because our mission has been compromised", I leave that to the discretion of the Staff Director in terms of his dealings with OMB.

But I think that we should have an answer in his testimony for that to see whether it can get pre-clearance, number one. And then number two, I would say that he would have -- he would be authorized to submit the letter from the Commission to the committee as well.

VICE CHAIRPERSON THERNSTROM: And obviously, we'll all have a chance to look at the
letter, but again, the tone of the letter -- it is
different to say would be further -- the work of the
Commission would be further enhanced than to say the
work of the Commission has actually been compromised.

COMMISSIONER YAKI: I mean my -- you saw
the edits I made to the letter which clearly state
that these things won't happen, these things are
continuing -- you know, we're cutting back on this,
we're cutting back on that.

VICE CHAIRPERSON THERNSTROM: Actually, I
haven't seen it.

COMMISSIONER YAKI: I would be much more
inclined to say that the mission has been compromised,
that we've had to cut back on briefings because of
staff shortages, that the regions have vacant
positions left and right, blah, blah, blah, blah,
blah. But you know, I would give that discretion to
the Staff Director. The letter can be more emphatic,
but in terms of just being able to answer the
question, this isn't enough money --

VICE CHAIRPERSON THERNSTROM: I have moved
on to the question of the letter.

COMMISSIONER YAKI: Okay.

VICE CHAIRPERSON THERNSTROM: You were
formulating a motion. You had formulated that motion,
had you? I'm sorry, I've lost track.

Do we have a --

COMMISSIONER YAKI: I would say that why don't we have the Staff Director continue with parts of his report and I will write out a motion right now.

VICE CHAIRPERSON THERNSTROM: Okay. Is the Staff Director's report at an end?

STAFF DIRECTOR MARCUS: Unless there are further questions, I've given my report.

VICE CHAIRPERSON THERNSTROM: Can we kind of wait 30 seconds and you'll have a motion?

I know how facile you are. You can do this fast.

(Laughter.)

COMMISSIONER YAKI: Then I'm not going to write it down. I would move that we request the Staff Director to prepare a statement in anticipation of a question from appropriators relating to whether this funding is adequate for the Agency, that the statement that the Director prepare, that we understand requires pre-clearance by OMB, basically state that it is the sense of the Commissioners on the U.S. Commission on Civil Rights that our mission is being curtailed, compromised and adversely affected by the continuing diminution of funds to the Agency; and that it is
their request that funding be increased for the Agency
in order it not suffer further loss of mission
capability.

VICE CHAIRPERSON THERNSTROM: Okay.

COMMISSIONER YAKI: Or words to that
effect.

VICE CHAIRPERSON THERNSTROM: I have a
motion -- we'll go to discussion immediately after
that. Let's get a second on the motion.

COMMISSIONER MELENDEZ: Second. I have a
question. On this pre-clearance from OMB, does that
mean they could actually say no, we can't do that or
what does that actually mean?

STAFF DIRECTOR MARCUS: That pre-
clearance, they can say yes. They can say no. Or
they could say please make these changes.

COMMISSIONER BRACERAS: And they could
actually say that?

STAFF DIRECTOR MARCUS: Yes.

COMMISSIONER MELENDEZ: So if they say no,
what is our back-up, would it be the letter route?

STAFF DIRECTOR MARCUS: Agency
correspondence also requires five-day pre-clearance to
OMB.

COMMISSIONER MELENDEZ: So it would be
better to do both, take one or the other?

  COMMISSIONER YAKI: That was the testimony part. The motion will also ask that the Staff Director submit to the Commission a letter signed by as many Commissioners as are willing to sign it, stating essentially that same point of view, that our mission capability is being curtailed and adversely impacted by the level of funding that we have been receiving.

  STAFF DIRECTOR MARCUS: It also has to be consistent with OMB guidelines.

  COMMISSIONER YAKI: What?

  STAFF DIRECTOR MARCUS: Agency correspondence to Congress regarding the budget also requires --

  COMMISSIONER YAKI: From individual Commissioners?

  STAFF DIRECTOR MARCUS: You know that's an interesting question.

  COMMISSIONER YAKI: My testimony during the oversight hearing wasn't pre-cleared by anybody.

  STAFF DIRECTOR MARCUS: The guidelines require that agency communications must be pre-cleared, so that would include communications from me and from the Commission as a whole. In the event that
all of the Commissioners or a majority of the Commissioners were to write correspondence, one could ask whether the letter of the requirement requires preclearance or not. It certainly seems to me that the spirit of it does. If it were just one Commissioner that might be another question, but it seems to me that if the Agency were to forward correspondence from a significant number of Commissioners regarding the budget, it would likely be construed to be agency correspondence --

   COMMISSIONER BRACERAS: How about if the Agency doesn't forward it? How about if Michael Yaki's secretary mails it? It's ludicrous.

   VICE CHAIRPERSON THERNSTROM: We'll go to discussion immediately after that.

   COMMISSIONER HERIOT: It can't be that we can't all agree and have a letter? Maybe it doesn't go on Commission letterhead.

   VICE CHAIRPERSON THERNSTROM: Should we each right the same letter?

   COMMISSIONER YAKI: Let's first start with the letter as joint, because that has the most impact and see if OMB gives it pre-clearance. If they don't, then we will --

   COMMISSIONER BRACERAS: I don't even see
why we have to send it to them. That seems absolutely
ludicrous that Commissioners cannot sign a letter,
either individually, or as a group, whether it's the
majority of them or all of them or some subset and
have their individual secretaries send it to Members
of the Committee.

COMMISSIONER YAKI: I agree.

COMMISSIONER BRACERAS: We don't live in a
Stalinist state yet.

COMMISSIONER YAKI: I agree with you 100
percent and to me, it would have more power if it had
all of our signatures on it.

VICE CHAIRPERSON THERNSTROM: One letter,
all of our signatures would have more power.

Gail, do you have anything to say further
on this?

COMMISSIONER HERIOT: I am perfectly
willing to work on this with everyone. I don't see
that unanimous letter has to get pre-clearance, if
it's not sent on Commission letterhead, you know, the
Commissioners rather than the staff preparing this.

COMMISSIONER YAKI: I have my own
letterhead. I can print on that.

It's not printed at government expense.

COMMISSIONER HERIOT: We can try the
Commission letter first and get that pre-cleared.

VICE CHAIRPERSON THERNSTROM: Why don't we do that, try it as a Commission letter first. See if we can get it pre-cleared. If we can't, we do a fakery.

COMMISSIONER BRACERAS: Frankly, I object to even trying to get it pre-cleared because --

VICE CHAIRPERSON THERNSTROM: Just do it.

COMMISSIONER YAKI: Smash the state.

COMMISSIONER BRACERAS: Yes.

(Laughter.)

COMMISSIONER BRACERAS: First of all --

COMMISSIONER YAKI: Our Western Commission will be showing "Reds."

(Laughter.)

COMMISSIONER BRACERAS: If you submit it to OMB and they don't pre-clear it and then we do it this other way, it seems as if we're being underhanded. Whereas, if we just send it -- I mean we all have first amendment rights to send what we want to send. I don't --

VICE CHAIRPERSON THERNSTROM: Jennifer, the only problem --

COMMISSIONER BRACERAS: I don't want to the Stalinist nature of the system. I really don't.
(Laughter.)

VICE CHAIRPERSON THERNSTROM: I agree with you, the only problem with this is if in fact we're violating some bureaucratic procedures here, there is a danger that the letter will never -- will go in the nearest waste paper basket.

COMMISSIONER BRACERAS: How so?

VICE CHAIRPERSON THERNSTROM: Because it hasn't gone through the proper channel.

Look, I'm happy --

COMMISSIONER BRACERAS: Who is going to put it in the waste basket?

VICE CHAIRPERSON THERNSTROM: I don't know, one of the Stalinist bureaucrats.

(Laughter.)

COMMISSIONER BRACERAS: I mean if I write a letter directly to the committee, how is OMB -- how are their tentacles going to reach out to the committee members' office, steal the letter and put it in the waste basket?

VICE CHAIRPERSON THERNSTROM: We're talking here about an attempt to send a letter on Commission stationery with our signatures on it.

COMMISSIONER BRACERAS: I'll do whatever the majority is comfortable doing.
COMMISSIONER YAKI: Let me ask, when we sent the letter to the Smithsonian, did we have to get pre-clearance -- on the African-American Museum, did we have to get pre-clearance from OMB to send that letter?

STAFF DIRECTOR MARCUS: That letter was not subject to the requirements of OMB (a)(11) because it did not relate to our budget.

VICE CHAIRPERSON THERNSTROM: He's just signed on to the Stalinist state.

COMMISSIONER YAKI: Let's just try going through the system. If the system kicks it out, I will work with the anarchist Braceras and create some facsimile stationery that will have all of our signatures on it.

VICE CHAIRPERSON THERNSTROM: We could create a new committee for --

COMMISSIONER YAKI: For the People's Revolution in Civil Rights.

VICE CHAIRPERSON THERNSTROM: Exactly. All right, we have, I believe, a motion on the table. Is there any further discussion about the motion that Commissioner Yaki formulated?

All in favor.

(Chorus of ayes.)
Anybody opposed? Okay. I think we move to the procedures for briefing reports and update on the working group on briefing report procedures and I turn to Commissioner Braceras.

COMMISSIONER YAKI: Comrade Braceras.

VICE CHAIRPERSON THERNSTROM: Comrade Braceras

(Laughter.)

V. Management and Operations, Procedures for Briefing Reports

COMMISSIONER BRACERAS: Okay, well, by way of background for Commissioner Heriot's benefit, the working group has been attempting to put together a series of procedures for dealing with reports that are not hearing reports and are not subject to the full array of procedural safeguards that hearing reports are subject to.

And so there are a number of proposals on the table. The main question -- I think the main over-arching question is whether or not briefing reports appropriately contain findings and recommendations. If they do contain findings and recommendations, how those should be dealt with and how those should be approved, and whether or not Commissioners, individual Commissioners should have
the ability to submit dissenting opinions to briefing reports.

So basically, I think that the consensus of the working group is that we need not just two, but three types of events. The first would be the regular hearings which procedures are already outlined and those, due to budgetary and other reasons are few and far between nowadays. The other end of the spectrum would be what I call a symposium where we bring in speakers and basically publish a clearinghouse report that collects their testimony and summarizes Commissioners' statements without issuing findings and recommendations. And the intermediate level event would be the briefing report which we've done a number of over the past year or two that could, if Commissioners deemed it appropriate, contain findings and recommendations, but that there would need to be certain procedural safeguards attached to that. And beyond that, we haven't come to any consensus as to what those should be or what that should precisely look like.

So after the last conference call where we didn't have the benefit of Commissioner Yaki's input, because of his flight and bad cell connections and the like, my assistant, Kim Schuld, basically put together
a list of all the proposals that were on the table and I merged that with a document created by Commissioner Melendez' assistant and so what we have, what I circulated yesterday is a document entitled "Proposals for Briefings and Resulting Reports" which isn't particularly organized and doesn't necessarily reflect the consensus of the working group, but attempts to outline everything that's on the table right now.

And then the second document that I circulated lists the briefing reports that are already in progress, based on briefings that have already been held and sort of throws out a list of suggestions as to how we are going to deal with those reports. I think -- I don't think we're going to come to an agreement today on what the proposal should be for briefing reports going forward, but what I would hope to do is vote on how we're going to handle those reports that are already in the pipeline and put that to rest so that the staff can continue their work on those reports and we can move those forward.

So that would be my objective for today and I guess with that, if we could open the discussion, I know Commissioner Taylor had some views on both of those questions, both how we should handle reports going forward and what we should do with those
in the pipeline.

Maybe I could hand it over to him.

COMMISSIONER TAYLOR: Let me state at the outset that I am not tied to a particular procedure. I come to this to accomplish an overall goal in my mind. This entire briefing structure was designed to give us more flexibility to allow us to respond to events as they occur, to allow us to frankly have a discussion across a broad range of issues throughout the year and I did not and still do not envision every briefing resulting in findings and recommendations. That's never been what I've had, at least in my mind.

I have a recommendation on the table, but again, I'm not tied to it, but I do want to see the process allow for what I just described.

If your, Jennifer, recommendation can be melded with Commissioners I think Yaki and I don't know if Arlan signed off to it yet or not, but the hard cap concept, that's not inconsistent with what I mentioned.

VICE CHAIRPERSON THERNSTROM: Would you explain to Gail what the hard cap concept is?

COMMISSIONER TAYLOR: Do you want to give your hard cap concept?

COMMISSIONER YAKI: My hard hat?
COMMISSIONER TAYLOR: Hard cap concept.

COMMISSIONER YAKI: Essentially, the compromise that I suggested is that there be a hard cap on the actual number of briefings that contained findings and recommendations each year. That serves two purposes. One, it addresses my concern that we've been throwing out briefings with findings and recommendations in a manner that I thought was inconsistent with what the original intent of briefings were.

Number two, it also addresses the fact that the procedures for a report that have findings and recommendations should be much more stringent than they currently are and that would obviously require an allocation of staff resources and time and given the fact that we are getting less and less money each year, rather than cut down on the amount of activity that we engage in because I think that all of us agree that the briefings, notwithstanding our fights afterwards on the findings and recommendations, but the briefings themselves, are a valuable and to put it quite bluntly, enjoyable part of what it is that we do as Commissioners. I don't want to see that further curtailed because of the resource issue.

So my proposal was to put a hard cap of
two which would mean that there would be two reports
with findings and recommendations in addition to the
national report done each year which I think is
manageable for staff. The remainder would be briefing
qua briefing which is just for us to have an issue,
put it out there in the public domain and--

COMMISSIONER BRACERAS: Just for the sake
of the record and clarity, can we just call that a
symposium?

Or can we give it a name so that we're not
confusing ourselves?

COMMISSIONER YAKI: Yes, I know. I guess
my concern was symposium sounded -- sounds more like
where you have even -- it just didn't sound right to
me. I like the fact that we're a Commission and that
we hold something official. I don't think we hold
official symposia. I would just rather it be -- if I
were kidding I would call it a "heafing" between a
hearing and a briefing. I do like the word briefing
though for the non-finding on recommendation. I would
just like maybe it would be called briefing 1 or
briefing 2.

COMMISSIONER BRACERAS: Okay.

VICE CHAIRPERSON THERNSTROM: I think you
need to say for Commissioner Heriot what you have in
mind what you say that the procedures should be much
more stringent when we have findings and
recommendations.

COMMISSIONER BRACERAS: Can I jump in for
a second?

One of the things that we started with
with respect to how to handle briefings with findings
and recommendations was the notion that we would have
a bifurcated vote so that the reports would be divided
into two pieces. The first half would be the
clearinghouse portion that contained a summary of the
proceedings, a summary of Commissioner questions and
the discussion, as well as copies of the actual
statements by the witnesses. That's the clearinghouse
portion and that would be voted on first.

Then, there would be a vote on the second
portion of the report which would be the findings and
recommendations. So in other words, if the
clearinghouse portion passed, but we couldn't come to
agreement on findings and regs, that could still be
issued as a document into the public domain and posted
on the website.

Second, with respect to how we would deal
with the second portion of the report, the finding and
recommendations, I have for a long time been
suggesting and insisting that each finding and recommendation receive a separate vote, that Commissioners not be required to vote up or down on the whole portion of the document. That way, we have a better chance of getting majority support for those findings and recommendations that aren't particularly controversial.

So we would vote individually on each finding and recommendation and it would be noted in the final document what the vote was. So it would say this recommendation passed by a vote of whatever, 5 to 3, with Commissioners so and so, so and so, and so and so approving and the others not approving. Whatever. So that would be noted, either in a footnote or somehow.

And I haven't heard any objection to that part of the process, am I right?

COMMISSIONER TAYLOR: I think you are right.

COMMISSIONER YAKI: You are correct.

VICE CHAIRPERSON THERNSTROM: Hold on, if I'm not mistaken, there is, however, some controversy over exactly what the size of the --

COMMISSIONER BRACERAS: Right, but just to start with what we agree on, I think that I believe we
are in agreement as to bifurcation and as to individual votes on each finding and recommendation with a notation in the document as to how the votes broke down. And perhaps that's something we can vote on today and at least have that portion of the process in play.

I think the questions that are on the table are two-fold. One is what are the front-end procedures leading up to the briefing. In other words, what type of information do Commissioners get ahead of time; what type of input do they have ahead of time; what type of discovery is done ahead of time; and, if any, what type of literature review is done ahead of time, if any. So that's the front end question.

The back-end questions have to do with what type of reviews take place at the staff level, affected agency review and those types of things. And finally, with respect to the document itself, whether or not we allow dissents or Commissioner statements and whether or not there's a cap on the length of those statements. But honestly, I don't think that those issues are unresolvable. I don't -- I think they can easily be resolved. I think we've gotten bogged down in some of the procedural requirements at
the staff level, which is not to say that those are
unimportant, but only to say that I think that they've
clogged up the discussion on the other aspects of the
reports. So --

COMMISSIONER TAYLOR: The front-end detail
questions, as you have just described them, it has not
been my sense that that has been the cause of any
disagreement, the particular procedures that attach.
The question has been how many briefings will we have
which could result in findings and recommendations.
The question of what procedural protections attach I
think is one that we all know is important, but I
don't think it's bogged down the discussion.

The question has been how we determine or
whether we determine a hard cap up front, whether we
determine at the beginning of the year or before each
briefing, we vote on whether that briefing on a case
by case basis may result in findings and
recommendations. That seems to be the question on the
table that has yet to be resolved.

COMMISSIONER BRACERAS: Right and I think

--

COMMISSIONER TAYLOR: Is that fair?

COMMISSIONER BRACERAS: Yes, that's fair

and I think I understand where Michael's proposal is
coming from and I'm not -- I don't have a hard and fast objection to it. On the other hand, it does seem to hamper our flexibility and some of these briefings may not seem to lend themselves to findings and recommendations until after we've heard the testimony and a consensus may develop.

So for example, even with the Omaha briefing, I think we all voted to go down there thinking gee, this is a really interesting topic. It really forces people to sort of reconsider their pre-existing notions about civil rights and let's go down there and get into the mix and see if we can generate debate and what we can learn. And it was only after the Commission came back from Omaha that certain Commissioners seemed to indicate that it would be very useful to have findings and recommendations. So I don't think in the case of Omaha that was something that we predicted.

VICE CHAIRPERSON THERNSTROM: Does somebody want to explain to Commissioner Heriot what the Omaha briefing was?

COMMISSIONER YAKI: I want to respond first to what Commissioner Braceras just said. I did not say afterwards that I thought findings and recommendations should be necessary. I presumed since
we've been going down this path for the last year, that we were doing findings and recommendations notwithstanding my general objection to them. And on the one issue where I thought there should be, then the question arose well, let's pick this one as one example to knock it out. So it wasn't a question of saying oh, I think it should be done. It was simply the expectation that we've been doing that for everything else and that's what we should be doing.

Omaha, Commissioner Heriot, had to do with the fact that the Nebraska State Legislature adopted a redistricting plan for the City of Omaha that would have consolidated several of the -- many of the school districts into sort of three super-aggregate districts which when you look at it just happen to be divided along the lines of African American, Caucasian and Hispanic. And it was not designed by accident, if you listen to the testimony from the principal author, State Senator Chambers, who is African American, who authored the proposal. That's what we were talking about.

COMMISSIONER BRACERAS: Just to get us back on track, I don't want to argue right now what we're going to do about Omaha, because frankly I agree with you, Commissioner Yaki about Omaha and having
findings and recs. That's fine.

I simply raise it as an example of cases where it may not be predictable at the outset that the findings and recommendations are going to be possible.

COMMISSIONER YAKI: I understand, Commissioner Braceras, but I disagree with that characterization because we did Omaha under the same aegis that we've been proceeding before, so the expectation was we would be doing findings and recommendations on it anyway.

My concern has been that, as you know, my original thought and partially affirmed -- affirmed in part by Commissioner Taylor was that it did give flexibility. It did give us a chance to give air to some issues, but what we've been doing now is we have been voting. We have been prioritizing. In the case of -- I can use Omaha as another example. I think that was a case where there was probably unanimous support on the Commission to do something about that. That would have been an exception to the rule that I would have agreed to, to go down there and take care of -- and deal with that very important issue.

So I don't see how that's inconsistent with (a) a hard cap; and (b) a unanimous requirement to waive the cap in certain instances.
COMMISSIONER BRACERAS: Well, be that as it may, the proposal, the Yaki proposal is that there be a cap on a number of briefings, but that --

COMMISSIONER YAKI: Briefing ones.

COMMISSIONER BRACERAS: The number of briefings that contain findings and recommendations, but that there would be some flexibility preserved by a unanimous vote if we wanted to increase the number. So it would force us to prioritize and think ahead.

On the other hand, it would, I think curtail our flexibility a little bit, but that said, I'm willing to support the proposal. It's not something I feel strongly about one way or the other. I'm just trying to lay the arguments on the table.

So I'm willing to go along with that. My main concern all along has been with the manner in which we vote on reports and giving Commissioners ability to vote on separate portions of the report without having to accept a document hook, line and sinker, which is the way things happened in the old regime and I wanted to give Commissioners greater input in that regard. So that's always been my main concern. I have no major problem with the cap.

VICE CHAIRPERSON THERNSTROM: Let me ask a question here.
I'm sorry, Commissioner Heriot, do you want to come in?

Let me ask a question and then why don't you come in? I don't understand what the criteria will be for deciding beforehand what briefings will be, briefings with finding and recommendations, we can simply call them that or just plain briefings. And I do hope we are putting in place procedures that will stand the test of time, as it were, so let's say that if the partisan balance on this Commission changes and the Democrats are in the majority, they too will agree that these are proper procedures.

And I'm frankly -- I just read the briefing report as it currently stands without any findings and recommendations on the HBCUs and I thought this report cries out for some findings and recommendations, even if the recommendations take simply the form of questions, because it is really thin reading. It is, as it stands, in my view and I am extremely interested in this topic, a worthless document. So unless the Commissioners have some input of some sort and to kind of shaping this into something more interesting, we have wasted our time.

COMMISSIONER BRACERAS: And we have discussed the alternate route of instead of particular
findings and recommendations, simply publishing the clearinghouse portion and then having a second portion which poses questions for further inquiry. They would not be called recommendations. We would not be making findings based on the record. We would simply have Commissioners submit questions for further inquiry and let it go at that.

VICE CHAIRPERSON THERNSTROM: Then you're left --

COMMISSIONER HERIOT: I don't quite see what the problem is here. Don't we freely allow the staff to be attached to briefing reports?

COMMISSIONER BRACERAS: Currently, we do. My view is that we shouldn't, but I realize I'm in the minority on that and I'm willing to compromise on that. My position has been that in other, if you look at other reports by other commissions, reports put out by the 20th Century Fund, for example, or reports -- the Title IX Report put out by the Department of Education, they do not include lengthy either majority opinions or dissents. They simply state the findings and recommendations with the numerical breakdown of the vote and sometimes they have a paragraph after each finding and recommendation that says those who support this recommendation felt blah, blah, blah.
Those who oppose it felt blah, blah, blah. Because I think that it makes it number one, more user friendly.

And number two, it avoids the situation where basically Commissioners are taking interest group work product, tinkering with it, putting their names on it and publishing it as a dissenting. Or on the other hand, doing their own individual lengthy research and coming up with a whole separate product.

Now in the case of a hearing, I think that's a totally different story, because hearing reports are basically majority reports for which there needs to be an outlet for a dissenting voice. But briefing reports by definition do not contain a majority opinion and therefore, I didn't see the need for dissents.

Now I know that other Commissioners don't agree with that and so my proposal will probably not be accepted. That's fine. Again, my backstop position was that I felt that the dissents were, number one, I felt if you're going to allow dissents, you have to allow any Commissioners to submit a statement. But number two, I thought we could cap the page limit because quite frankly, I think it's a little ridiculous to publish a volume where the dissenting opinions are four times as long as the
report itself when it wasn't even a hearing, but rather simply a briefing.

So that's where I come out on all this, Gail, but again, I'm not wedded to it. I just -- I'm trying to make it user friendly and I'm trying to avoid having the Federal Government being the printing office for the NAACP or the National Women's Law Center which frankly, I think it was becoming.

VICE CHAIRPERSON THERNSTROM: But Commissioner Braceras, it does seem to me that if I just go back and I know Commissioner Yaki wants to talk, if I just go back to the HBCU briefing report, I mean in fact what that briefing report, without findings and recommendations amounts to is inadequate findings and -- yeah, that is what the testimony amounts to and so there are implicit findings and if there's nothing more then again, my view is this is filed in the dead letter box material. And it's just worthless.

Yes, Commissioner Yaki?

COMMISSIONER YAKI: That leads then to the concern that Commissioner Melendez and myself have continued to propose. If that's your reading of how the narrative of the HBCU report is, then the reason for our concern has been that we are taking limited
time, limited opportunity briefings and then using a process that has been, for lack of better word, ill-defined and inconsistent, going back through other documentation to create findings and recommendations that to fill the void.

Now if this were a hearing where witnesses are sworn, interrogatories are propounded, discovery is done, multiple panels of people are there, you can sort of have enough to sort of glom onto. But my problem has always been that with briefings, we are basically taking a very -- we are skimming not just the top layer, we are skimming the very, very, very top layer of an issue, given our limited resources to just get an idea of what the problems are and what the issues are that people are bringing up. But then all of a sudden we come back or my concern and I can't say for Commissioner Melendez, but I think I do, that we come back --

COMMISSIONER BRACERAS: I agree with you, you speak for me on that.

COMMISSIONER YAKI: Four or five months later and we come up and there's all this other stuff in there that none of us ever heard, asked a question about or what have you or mischaracterized the testimony. Just for your own -- Commissioner Heriot,
I think the most egregious example of this, unfortunately, was the briefing on Native Hawaiians where we weren't taking issue with anything that you said or other people said, well, we were, but that's another question. But in terms of the actual findings that came out, the Commission ended up stripping every single one of them because it contained testimony and conclusions based on information none of us had ever seen before. So that has been a danger and that has been the concern for me about how briefings have been converted into this and that is why dissents unfortunately have been -- I've never received anything from anyone about how to write anything, but -- so I don't know who you're referring to with regard to the National Women's Law Caucus or whatever. But I can say that --

COMMISSIONER BRACERAS: I'm talking about the potential for --

COMMISSIONER YAKI: Okay, but I can say that I feel a need in terms of representing the people who I believe I represent, that if staff resources which outnumber us way by a vast, vast majority having used to go back into documents and records and testimony that we never saw, we never heard, or were never presented to us, I have an obligation to try and
deal with that in as best a manner as I can or
Commissioner Melendez can because of the lopsidedness
in terms of staff resources.

Commissioner Melendez and I have one staff
assistant --

COMMISSIONER BRACERAS: I agree with you, but why isn't that in our argument for publishing a
clearinghouse report with questions for further
inquiry?

COMMISSIONER YAKI: That has always been
what I wanted.

COMMISSIONER BRACERAS: For example, in
the --

COMMISSIONER YAKI: I think Commissioners
should be allowed to and we should -- I don't mind
putting a page limit on that; one page, two pages of
questions or concerns for future --

VICE CHAIRPERSON THERNSTROM: Now wait a
minute. That wouldn't have worked with the Iacacca
board that you were so dissatisfied with.

COMMISSIONER BRACERAS: That's water under
the bridge.

VICE CHAIRPERSON THERNSTROM: It isn't
water under the bridge.

COMMISSIONER BRACERAS: Let's just forget
that for a minute.

VICE CHAIRPERSON THERNSTROM: It isn't.

COMMISSIONER BRACERAS: You brought up the pending example of the HBCU report. Why wouldn't the HBCU report be the perfect place to not have findings and recommendations, but instead pose questions for further inquiry?

VICE CHAIRPERSON THERNSTROM: Because the issue was hardly -- the complexity of the issue was hardly explored in the briefing and if we do not have some mechanism for laying out and the HBCUs do pose very tough questions that have split the civil rights community. If we don't have some mechanism for getting at the richness of that issue, then we have published something worthless.

COMMISSIONER HERIOT: Ladies and gentlemen, I apologize for this, but I am going to have to go to my conference now. I am very interested in this issue and would like to discuss it further with everyone and so again, I apologize and I hope that you won't be deciding anything on this without more input.

VICE CHAIRPERSON THERNSTROM: Yes, Commissioner Heriot, you're disappearing, the chair is not here and I do not think we should have a vote on
any of this today because I do think it warrants further discussion.

COMMISSIONER HERIOT: It's very important and I would like to be able to participate fully in this.

VICE CHAIRPERSON THERNSTROM: I would like to postpone any kind of vote and have further discussion in the next meeting so that you can be here and so that the chair will be here.

COMMISSIONER TAYLOR: I don't think it was Commission Braceras' intention to have a vote.

COMMISSIONER BRACERAS: No.

VICE CHAIRPERSON THERNSTROM: You wanted to vote on part of it. I would say a vote on nothing today.

COMMISSIONER BRACERAS: That is fine, but we have to -- we're scheduled to move the AVA report and I will only vote for the AVA report in the manner outlined with a bifurcated process. I'm not going to vote for it up or down. I've said for months that I wouldn't do that.

COMMISSIONER TAYLOR: We can put this off to another day, but I will tell you at the end of the day the concerns you have raised, that is, we are skimming the surface. We need a way to really get to
the richness of the discussion, goes to Commissioner Yaki, his point and we can't have it both ways, you all. If we have a number of briefings without all the procedural safeguards attached, it will always be a situation where you see it as not having enough information which leads into his argument well, if we don't have enough information, how can we come up with good solid findings and recommendations.

COMMISSIONER BRACERAS: Right.

COMMISSIONER TAYLOR: We're at a crossroads and we need to recognize it's an inherent conflict, those issues can't be reconciled and that's why, in my mind, what I was suggesting was a procedure that recognized a conflict and said for most of our briefings we will not have findings and recommendations because we can't given our resources and our time associate with every briefing all of the procedural safeguards that get to your point and provide you, Commissioner Thernstrom with what you see as the tools we need to have a rich discussion.

VICE CHAIRPERSON THERNSTROM: We should have fewer briefings.

COMMISSIONER BRACERAS: It's not just that. I mean I think since we joined this Commission, I know that Commissioner Thernstrom and I have shared
a frustration with some of the briefings and events we've had as being cursory. I believe the term she once used was "drive by shootings of events."

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER BRACERAS: And you know, we've both felt and think many Commissioners have felt that some of the briefings do not delve fully into the complexity of some of these issues. That said, I think it's impossible to do that without a full-fledged hearing and if we are going to have a mechanism whereby we respond quickly to events on the ground in certain places, and we want the Commission to be able to pull together material for the public and make them aware of certain issues, then we have to move to the Yaki-Melendez format of clearinghouse reports. We might even call it the Yaki-Melendez-Redenbaugh proposal on clearinghouse reports because he felt strongly about that.

So I have to say that I would rather have clearinghouse reports that were not as useful, as it were, than have reports with findings and recommendations that didn't fully address the complexity of these issues.

COMMISSIONER HERIOT: I am going to have to go, bye-bye.
VICE CHAIRPERSON THERNSTROM: Thanks for joining us,

COMMISSIONER TAYLOR: And welcome.

VICE CHAIRPERSON THERNSTROM: And we aren't doing anything momentous without you, I promise.


VICE CHAIRPERSON THERNSTROM: Look, we've only once in recent memory responded to on-the-ground events and that was the Omaha. Now I wasn't there. I was under the impression that we have made, having conducted that hearing, we have in some way shaped the racial landscape there or nationally. So I'm not for ambulance chasing anyway.

Either we do responsible work here or we're wasting our time.

COMMISSIONER YAKI: Commissioner Thernstrom, I agree and I think the proposal that I had enables us to do that, but at the same time and let me just be as honest with you as I can --

VICE CHAIRPERSON THERNSTROM: Which you usually are.

COMMISSIONER YAKI: Which usually --
usually I am just lying through my teeth to you.

VICE CHAIRPERSON THERNSTROM: Right.

COMMISSIONER YAKI: Whenever I say anything nice about you it's just -- blood dripping out of my eyeballs.

I like -- even if it is not always the deep layer of an issue that we could or should get to, I do enjoy and one of the things I do enjoy is having people who are leaders in the field, at least talking about some of these issues because it does illuminate and shed light on what it is.

Now is there further stuff to be done? Of course. Are there deeper layers to it? Absolutely. Could any of us sit here and go through some of their dissertations and statistical calculations, well, not this math idiot right here, but that's fine. That's still good. So I don't want to eliminate those.

I understand what you're saying and I'm saying that Omaha is almost the exception that proves a rule. I've been on the Commission for over two years now. It's the only one where we deviated from our established pattern of ranking, putting stuff together, blah, blah, blah, blah, blah. And I think that adding one more thing which is which one of these do we want to be the in-depth scrape as deep as we
possibly can kind of procedure short of a hearing
without all of the other discovery attached to it, I
mean I'd be willing -- I'm not adverse to that. I'm
just adverse to the churning stuff month after month
with a huge backlog that we already got right now.
That puts us further and further behind the eight ball
and quality will suffer.

VICE CHAIRPERSON THERNSTROM: Well, of
course, we don't have to have as many briefings. We
don't need to --

COMMISSIONER YAKI: I'm in the minority so
all of mine are going to be the little teeny ones.

COMMISSIONER BRACERAS: I think what we do
have to do is move on the ones that are in the
pipeline and we have been month after month having
essentially the same discussion about process and we
haven't been able to give any guidance to the staff or
move the things that are in the pipeline and it's
really becoming, I think, a bureaucratic nightmare.

So we need to come to some consensus, if
not today, soon, on what we're going to do with these
six things. We've got to get them out, they're stale.
What's going to be the usefulness of them if we don't
put them out until next year? Nothing. So we've got
to move them.
With all due respect, I want Commissioner Heriot's input, I really do, but with respect to the things that are in the pipeline, she was not a participant in those briefings and therefore I think we can move them without her.

VICE CHAIRPERSON THERNSTROM: No. We need to settle on some procedures here which apply to those briefings and future briefings.

COMMISSIONER BRACERAS: I disagree. I think we can move the ones that are in the pipeline without coming to a resolution on future briefings. Otherwise, you know what's going to happen? We're going to be here at Christmas and they still won't be published. You know that.

VICE CHAIRPERSON THERNSTROM: It won't make any difference if we wait for both Commissioner Reynolds and Commissioner Heriot until the next time. I agree we can take a vote in order to move the ABA report along.

COMMISSIONER BRACERAS: But I think the others, we need to come to a resolution at the next meeting in April on how we're going to deal with the rest of these in the pipeline, including the briefing we're having today.

VICE CHAIRPERSON THERNSTROM: Okay, April
is not today. Yes.

COMMISSIONER YAKI: Can we have a one-minute recess so I can say something to you off the record?

VICE CHAIRPERSON THERNSTROM: Absolutely. I call a one-minute recess. And I have a question.

(Off the record.)

VICE CHAIRPERSON THERNSTROM: All right, there has been a recess, as it turned out, more than five minutes than the expected or proposed five minutes. And there seems to be consensus or there seems anyway to be a majority view that the whole question of the ABA report and the procedures going forward with respect to briefings and reports, hearings should be postponed until next time. The whole question of three types of events and so forth, so that I need a motion to postpone -- whoops, somebody turn their cell phone off -- I need a motion to postpone any discussion of the Affirmative Action in Law School briefing report, along with its findings and recommendations.

COMMISSIONER BRACERAS: So moved.

COMMISSIONER TAYLOR: Second.

VICE CHAIRPERSON THERNSTROM: Any further discussion? All in favor?
(Chorus of ayes.)

All opposed? All right, that is unanimous. And just for the record, let me say that I have consulted with the chair and he was in agreement as well. And Gail Heriot, of course, did request a postponement of the discussion, so there is really a consensus on this.

That brings us now to I believe the Anti-Semitism Public Education Campaign.

VI. Anti-Semitism Public Education Campaign

VICE CHAIRPERSON THERNSTROM: Motion to approve the revised website pages for the Anti-Semitism Public Education Campaign that was distributed to the Commission on February 5, 2007, with revisions to reflect changes arising from effective agency review.

So can I have a motion to approve these revised website pages?

COMMISSIONER BRACERAS: So moved.

VICE CHAIRPERSON THERNSTROM: How about a second?

COMMISSIONER TAYLOR: Second.

VICE CHAIRPERSON THERNSTROM: Any discussion?

Hearing no discussion, all in favor
indicate aye.

(Chorus of ayes.)

STAFF DIRECTOR MARCUS: If I may, Madam Vice Chair, there are a number of organizations that have been asked to be kept apprised about when this goes live. Usually, we send a press release. It occurred to me that this might be something useful to bring together the groups that have been providing input to us and who have asked to know about it together to announce the website when it goes live and at the same time we do a press release.

I wanted to see if there was sort of any disagreement or objection or if there's general consensus with that.

COMMISSIONER YAKI: No, I think you should do a press conference, absolutely. Have one of the members or chair push the button that sends it live out there.

STAFF DIRECTOR MARCUS: Good idea.

VICE CHAIRPERSON THERNSTROM: When is it likely to go up?

STAFF DIRECTOR MARCUS: I think we need just a few weeks, just to polish up the last bit and then to put the press release together and give people enough time to schedule it.
COMMISSIONER YAKI: Would it be too far in the future for the April 13th meeting to do it at the beginning so that the Commission is here with the groups?

STAFF DIRECTOR MARCUS: We could. I imagine that there are going to be a number of groups here so it might take a little while, but it certainly could be.

VICE CHAIRPERSON THERNSTROM: I think we've got an -- given the fact that we've just postponed this entire discussion so we're back to having and we've got a briefing as well in April, isn't that correct?

STAFF DIRECTOR MARCUS: That's a question that we've got to deal with because I know there's been some sentiment that we shouldn't have meetings and briefings on the same day.

VICE CHAIRPERSON THERNSTROM: It's going to be a huge business meeting.

STAFF DIRECTOR MARCUS: We do have a briefing scheduled for April.

COMMISSIONER BRACERAS: Do we have a briefing scheduled for May? No.

STAFF DIRECTOR MARCUS: No.

COMMISSIONER BRACERAS: So we could flip
VICE CHAIRPERSON THERNSTROM: We can't flip them. We can put the -- postpone the briefing. We absolutely need the --

COMMISSIONER BRACERAS: That's what I said.

VICE CHAIRPERSON THERNSTROM: Okay, I didn't think really that was a flip, but anyway. Doesn't matter.

COMMISSIONER BRACERAS: I feel strongly about having the briefing though. I think we've done nothing on gender since I came on this Commission.

VICE CHAIRPERSON THERNSTROM: Let's just postpone that.

STAFF DIRECTOR MARCUS: We do have speakers lined up.

VICE CHAIRPERSON THERNSTROM: So on the assumption that we can get speakers for May.

COMMISSIONER BRACERAS: That's fine.

VICE CHAIRPERSON THERNSTROM: We can confine the April meeting to a business meeting.

STAFF DIRECTOR MARCUS: I think this should be a motion both to postpone the briefing and also not to conduct a business meeting in May.

COMMISSIONER BRACERAS: Okay, I hereby
move that the Commission postpone the briefing
previously scheduled for April on Title IX until our
May meeting and that the April meeting be solely a
business meeting.

VICE CHAIRPERSON THERNSTROM: Second.
COMMISSIONER TAYLOR: I will second
subject to the Staff Director contacting the
panelists, if we're flipping a date, it's already
March. I'd hate for us to lose a panelist because of
a conflict which would throw us off completely. So if
they can't move the date and it doesn't accommodate --
they can't accommodate a new date, I don't want to
lose the panelist.

VICE CHAIRPERSON THERNSTROM: We do lose
panelists. We've lost one for this afternoon.
COMMISSIONER TAYLOR: That's all.
COMMISSIONER BRACERAS: Who do we have
lined up right now?
STAFF DIRECTOR MARCUS: We have Stephanie
Monroe, the Assistant Secretary of Education for Civil
Rights. We have Jessica Gavora who has written
extensively on Title IX. We have a representative of
the NCAA. And we have, I believe a representative of
the National Women's Law Center. Those are the four
we have lined up and we look at the potential, if we
go to six, of either getting a couple of statisticians or an athletic director, but we've got those four.

COMMISSIONER BRACERAS: All right, well, I mean I think we can move it and I think if they can't do it, we can find someone else. I'm not concerned.

VICE CHAIRPERSON THERNSTROM: All right, it's been moved. It's been seconded. Any further discussion?

COMMISSIONER YAKI: Do we need to move not having a business meeting?

VICE CHAIRPERSON THERNSTROM: That was part of the motion.

COMMISSIONER BRACERAS: No, I was going to do that as a separate question.

VICE CHAIRPERSON THERNSTROM: I though you had put that together as a package.

COMMISSIONER BRACERAS: Fine, okay. Put it together as a package. One and the same.

Okay, I hereby move that the briefing on Title IX previously scheduled for April be rescheduled for May. And that the May meeting consists solely of a briefing and no business meeting and the April meeting consists solely of the business meeting and no briefing.

COMMISSIONER YAKI: Second.
VICE CHAIRPERSON THERNSTROM: Any further discussion?

All in favor?

(Chorus of ayes.)

Anybody opposed? Unanimously passed.

STAFF DIRECTOR MARCUS: Now just for clarity, there's been discussion about whether we should schedule together with the business meeting next month some sort of press conference or meeting with the stakeholders on the public education campaign, but I'm not sure if there was a motion or resolution.

COMMISSIONER YAKI: If there is to be a meeting, that can occur on Thursday. But I think that the ceremonial launch where you basically have the groups all together in front of the computer and you go bink could be either just prior to or during a break of the business meeting. I don't see this lasting more than 15 minutes, as long as everyone is ready to go. Troop upstairs -- because it would have to be upstairs, right? Can we do it down here?

STAFF DIRECTOR MARCUS: It depends how we structure it. What I had previously envisioned is explaining to the groups what we're doing because they have not all seen the information that you've seen and
if people are actually here, we might show them what
the website looks like using audio-visual.

COMMISSIONER BRACERAS: Just out of
curiosity, is this something for the benefit of the
stakeholders or is this something that we're doing for
press coverage, like as a press conference.

STAFF DIRECTOR MARCUS: It's both of those
and it's one other thing. Since we have one advantage
of the stakeholders is that they are groups, many of
whom have indicated a willingness to convey our
message to their communities and to do it in a way
that we couldn't otherwise do. So we're presenting it
to them so that they can forward links by email to all
of their people or include a discussion in their
newsletter. These are the people that we would rely
on to get the word out, whether it be directors of
student unions or to various committees involving
faculty or administrative --

COMMISSIONER YAKI: We don't need to do
that all at one time. You can do that in the week
prior or the two days prior and then just have the
launch itself where everyone says howdy doody, what a
great thing during the meeting or during a break in
the meeting.

VICE CHAIRPERSON THERNSTROM: Do you want
to wait until -- you could launch this much earlier
without --

STAFF DIRECTOR MARCUS: I think that the
meeting where we explain things would be a little
cumbersome to really be limited to 15 minutes, so the
division that Commissioner Yaki indicated I think
makes some sense.

VICE CHAIRPERSON THERNSTROM: But that
frees you up -- Commissioner Yaki mentioned two days
beforehand, but it really frees you up to do it much
earlier.

STAFF DIRECTOR MARCUS: Yes, we would just
have the meeting at some point between now and the
meeting. We just have to check on people's schedules.

COMMISSIONER YAKI: And then the launch
becomes a nice sort of press thing.

VICE CHAIRPERSON THERNSTROM: Okay. I
can't remember, have we had a vote on this? We have,
yes.

STAFF DIRECTOR MARCUS: We have not had a
vote on it.

COMMISSIONER YAKI: Do we need a vote on
it? I think it's the discretion of the Staff Director
to put it on the agenda to agendize it for April, for
the press part and whatever -- how he chooses to brief
the group beforehand and walk them through it and get their critiques, it's at his discretion.

VICE CHAIRPERSON THERNSTROM: I agree. We don't need a vote on this.

Okay, we are up to State Advisory Committee Issues.

VII. State Advisory Committee Issues

VICE CHAIRPERSON THERNSTROM: There's the Fair Housing Initiative at the Commission meeting held on February 9, 2007. Commissioners voted to produce a statutory enforcement report on the Fair Housing Initiative to combat housing discrimination in FY 09.

The Commission would benefit from the research assistants of State Advisory Committee and Regional Offices on this issue as it prepares a report.

We have a motion that the Commission requests State Advisory Committees and Regional Offices to take up the issue of the Fair Housing Initiative to combat housing discrimination within their jurisdiction as a research project.

Somebody move?

COMMISSIONER TAYLOR: So moved.

VICE CHAIRPERSON THERNSTROM: Second?
Have I got a second on this? This is --

COMMISSIONER TAYLOR: Somebody else has to believe in housing.

VICE CHAIRPERSON THERNSTROM: Somebody else has to believe --

COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: Is there any discussion of this?

COMMISSIONER MELENDEZ: Yes, Commissioner Melendez here. I have a concern yet with the -- I guess the workload of the SACs. For one thing, they already have, I guess, responsibility that we're asking them to on this 50 state report, you want them to -- I think part of the strategic plan is they're supposed to have the states -- all 50 states are supposed to have some input or to provide a report. Isn't that right?

STAFF DIRECTOR MARCUS: Here is how I've envisioned it and described it in our meetings. I envision asking a series of questions in the same form to all committee members in each state. I will ask them for initially for them to describe what they consider to be the most important civil rights issues in their state. And then I will ask them from the pool of issues that they've identified to rank them.
And then we will tabulate them and come up with each state what the members considered to be the issues in their state.

I don't envision it as being a very time or labor-intensive job. I don't see it as being comparable to say asking each State Advisory Committee to write their own report which I think would not be even remotely feasible, but simply to provide their views on the issues and to rank them in order of importance or priority.

VICE CHAIRPERSON THERNSTROM: I mean I think they would like to be pulled into this process a bit.

COMMISSIONER MELENDEZ: Commissioner Melendez. I guess the question would be if they see it as a mandate that they're supposed to come up with type of --

VICE CHAIRPERSON THERNSTROM: The word is request here.

COMMISSIONER MELENDEZ: Okay. And the issue is the situation with most of the SACs right now is half of them are partial SACs. People are still trying to recharter them and I think it's a real -- with only minimal funding, I think that's -- they have a tremendous amount of work load that they don't
really have funding to do anything.

VICE CHAIRPERSON THERNSTROM: Well, Commissioner Melendez, are you -- is your bottom line that we should not even make this request in any form?

COMMISSIONER MELENDEZ: My concern is that they don't look at it as taking precedent over any of the priorities they have. Because within the State of Nevada, I know that that may not be their main priority right now. They're looking into some law enforcement things, when I read their SAC report. So this would be throwing something on top of what they're already and I just didn't want to build that -- whatever their priority is now, they have to drop that and focus in on fair housing.

It's just how you make the request.

VICE CHAIRPERSON THERNSTROM: Yes. Let me ask the Staff Director. If a SAC were to come back to us and say this is, given our priorities, given our work load, given whatever, it's not feasible for us at the moment.

STAFF DIRECTOR MARCUS: I think the motion is worded as a request. So some of them may find there are other priorities or there might be analysis that they do and they focus on an issue in their state.
VICE CHAIRPERSON THERNSTROM: Right. So it is just a request.

Commissioner Yaki?

COMMISSIONER YAKI: I just had a quick question on this. Which state SACs are participating in the -- what is it, is it the elementary --

STAFF DIRECTOR MARCUS: Elementary and secondary desegregation.

COMMISSIONER YAKI: Which states are those?

STAFF DIRECTOR MARCUS: Generally, they are the states within the Southern Regional Office and some within the Kansas City-based region. Mississippi and either at a SAC or regional level, Arkansas.

COMMISSIONER YAKI: Could (a) someone email that list to me, number one; and (b) did we take a vote on that as well?

STAFF DIRECTOR MARCUS: There was a vote quite some time ago to request that they look at this issue, yes.

There was also a request made to request that the SACs look at religious discrimination in prisons.

COMMISSIONER MELENDEZ: Just in the discussion, I would just adjust that. We have some
language that says we welcome the SACs' input on the
2009 topic, but we are not requiring them to focus on
that, if other local issues seem more pressing to
them.

STAFF DIRECTOR MARCUS: I don't see how
that would be a problem.

VICE CHAIRPERSON THERNSTROM: That would
not be problematic from my point of view. So that is
-- I would regard that as a friendly amendment to the
motion on the table.

So do we need a rewording, a formal
rewording?

STAFF DIRECTOR MARCUS: I think
Commissioner Melendez --

VICE CHAIRPERSON THERNSTROM: Just gave it
to us. Okay. So -- we do need a second.

COMMISSIONER TAYLOR: Second.

VICE CHAIRPERSON THERNSTROM: All in
favor?

(Ayes.)

VICE CHAIRPERSON THERNSTROM: Anybody
opposed?

COMMISSIONER YAKI: I abstain.

VICE CHAIRPERSON THERNSTROM: All right,
we have one abstention. Commissioner Yaki has
abstained.

We're at the motion to approve the rechartering of the Tennessee State Advisory Committee. I need a motion to recharter the Tennessee State Advisory Committee. Under this motion the Commission appoints the following individual to that committee based on the recommendations of the Staff Director, Tiffany B. Cox, Amber Darcy Gooding, J. Gregory Grisham, Dorothy Day Jones, Vicki Lott, Reverend Bernie Miller, who is recommended as chair, Carol M. Swain, Josh J. Thomas, Eluid Gonzalez Trevino, Susan J. Williams, Tom Edd Wilson. Furthermore, the Commission appoints, as I just suggested, Reverend Bernie Miller as chair of the new rechartered Tennessee State Advisory Committee. These members will serve as uncompensated government employees. The Commission appreciates the hard work they will contribute to this State Advisory Committee.

Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment -- or I should say appointments. And I need a motion.

COMMISSIONER TAYLOR: So moved.

VICE CHAIRPERSON THERNSTROM: And a second?
COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: Any discussion?

COMMISSIONER MELENDEZ: Yes, one question. As you know, we've been trying to follow these SAC. This Mr. Grisham, can you tell me a little bit about him? You had recommended him?

STAFF DIRECTOR MARCUS: Yes. As I recall he is a distinguished attorney with a firm in Tennessee. I believe, and I'm checking this, that this background has included civil rights, specifically employment and labor issues. The firm he's with is Weintraub Stock and Grisham.

VICE CHAIRPERSON THERNSTROM: Does anybody else have any further knowledge of Mr. Grisham?

STAFF DIRECTOR MARCUS: I guess I had forgotten that he had formerly been on the staff of Senator Howard Baker. And that he speaks regularly on Title VII in Tennessee.

COMMISSIONER MELENDEZ: All right, no other questions.

VICE CHAIRPERSON THERNSTROM: Anybody else got any further questions, discussions on this list?

If not, all in favor?

(Ayes.)
Anybody opposed?

COMMISSIONER YAKI: Abstain.

VICE CHAIRPERSON THERNSTROM: Let the record show that Commissioner Yaki has abstained.

With apologies, the Staff Director has just noted that somehow I missed Strategic Planning which came before what we eliminated, the discussion of the law school affirmative action question.

V. Management and Operations - Strategic Planning

VICE CHAIRPERSON THERNSTROM: So we do have one further item, our strategic plan. The draft strategic plan that was approved by Commissioners was send to the Office of Management and Budget. Comments made by OMB were included in the draft. The most important change was to strengthen and qualify the measures to hold the Agency accountable for results. Before submitting the strategic plan to the appropriate congressional committees, the additional changes by OMB have to be approved by the Commissioners.

Can I have a motion that the Commission adopt the proposed preliminary draft strategic plan distributed to Commissioners on March 1, 2007. Please note that approval of this motion does not constitute approval of a final strategic plan as the draft
strategic plan remains preliminary and must be further vetted with OMB and Congress.

So I need a motion to approve this proposed preliminary draft.

COMMISSIONER TAYLOR: So moved.

VICE CHAIRPERSON THERNSTROM: And a second?

COMMISSIONER BRACERAS: Second.

VICE CHAIRPERSON THERNSTROM: Any discussion?

COMMISSIONER MELENDEZ: Yes, Commissioner Melendez here. I think that there's been substantial changes to this plan since the last time we had worked on this. In light of -- I think Commissioner Kirsanow and some of the other people that also had input into this, I think they should actually be here to vote on this. But I think what we're saying here is that this is the final draft. Even though somebody up the line might recommend some changes, I would think that this actually is the final changes that the Commission here would really make to it, in my opinion.

VICE CHAIRPERSON THERNSTROM: That's not necessarily so.

STAFF DIRECTOR MARCUS: That is not how this is presented. The idea is that this is something
that would then go to the Hill for comments and we may get substantial comments or not and if there are, then it would be presented again before it goes final. In fact, either way, I think it needs to be presented again.

VICE CHAIRPERSON THERNSTROM: It will have to be presented again. There will have to be a motion and a discussion once again. I don't think we're at the end of this road.

COMMISSIONER MELENDEZ: Just going over some specifics, you know, if I might mention. I know that I had a concern about mentioning in this a document about the failure of the Commission, now that's pro and con in my opinion. It has maybe advantages to point out, but it's kind of like bashing ourselves in my opinion. And Congress, looking at this when we say we've been a failure over -- not only does it -- Congress can look at that and say well, if you guys are such a failure, maybe we should just do away with the Commission all together.

So I think when we're saying that, in here, even though we're saying that we're going to turn things around here, I just don't think that even saying something like that in this report is good.

VICE CHAIRPERSON THERNSTROM: What is the
exact wording on --

COMMISSIONER YAKI: Page 7, last paragraph, first sentence.

COMMISSIONER BRACERAS: I think if I may, I think when we started this process a while back there was a sense that we needed to take responsibility, if you will, for some of the Commission's past failings. And that was something that was generated by the Hill and it was felt that we needed to, in looking forward and showing how we were going to change things, acknowledge there were some problems. So that's -- maybe not that precise wording, but that sentiment has been in the strategic plan from the beginning.

VICE CHAIRPERSON THERNSTROM: The wording could be put so that we're not quite declaring ourselves, as you put, a failure.

(Pause.)

I've got problems with another paragraph here. On page 6, the paragraph that reads "The Commission directly influences the course of national civil rights policy and continues to have an impact that is disproportionate to its size. The Commission's 1961 report provided the intellectual and factual foundation for the landmark 1964 Civil Rights
Act." I agree with that and by the way I would also
further way that the Commission's reports back in the
1950s and right after the Commission's formation, late
'50s, on disenfranchisement in the South, black voters
having an enormous impact on the '65 Act. But here it
goes on to say "similarly, the Commission's hearings
on the disenfranchisement of black voters formed the
basis of the recently renewed Voting Rights Act of
1965." That is simply incorrect. I mean it's -- I do
not think that its hearings in Florida in 2001 had any
impact on the reauthorization of Section 5, the
reauthorization and amendment of Section 5 this past
July, nor should it have, and it is just factually
incorrect.

STAFF DIRECTOR MARCUS: I think that's a
matter of unclear wording. If you see the sentences
are listed in chronological order. There's reference

VICE CHAIRPERSON THERNSTROM: But it says
recently renewed.

STAFF DIRECTOR MARCUS: That's the
problem. The intention wasn't to indicate that we had
an impact on the recent renewal, but rather to say
that we had an impact on the 1965 act and we simply,
as an aside --
COMMISSIONER BRACERAS: That's not how that reads.

STAFF DIRECTOR MARCUS: I think it's unclear as written.

VICE CHAIRPERSON THERNSTROM: It's more than unclear. It's positively misleading.

COMMISSIONER BRACERAS: It makes it seem like we're applauding out -- not our, but the old regime's Florida report by saying it was influential in recent developments which I neither wish to applaud the Commission's Florida report nor do I wish to applaud any influence it may have had.

VICE CHAIRPERSON THERNSTROM: And it had none.

COMMISSIONER BRACERAS: And it had none.

STAFF DIRECTOR MARCUS: I think the words "recently renewed" probably were at best inartful.

COMMISSIONER BRACERAS: We need to put some dates on that. "Similarly, the Commission's hearings in the 1960s" --

VICE CHAIRPERSON THERNSTROM: There were some good reports -- I remember wonderful reports.

STAFF DIRECTOR MARCUS: Yes, the intent here is not to refer to any work by the Commission subsequent to the year 1965. That was the intent.
COMMISSIONER BRACERAS: That is fine.

VICE CHAIRPERSON THERNSTROM: You need to reword that.

STAFF DIRECTOR MARCUS: Shall we say in the 1950s and 1960s?

COMMISSIONER YAKI: Where are you again?

VICE CHAIRPERSON THERNSTROM: Page 6, middle paragraph, it starts "The Commission directly influences the course of national civil rights policy" and my point here is that it did its reports prior to the passage of the 1965 Voting Rights Act were extremely important. They were very, very well done. They can still be relied on today in writing up the history of that period, but the more recent hearings on disfranchisement in Florida --

COMMISSIONER BRACERAS: Alleged.

VICE CHAIRPERSON THERNSTROM: Alleged disfranchisement in Florida, a state which in any case barely covered by the voting rights, by Section 5 of the Voting Rights Act, only five counties are covered and they want the counties at issue -- subsequent to the 2000 election. In any case, those hearings had no impact on the recent renewal of the emergency provisions of the --

COMMISSIONER BRACERAS: So the sentence
should read, "Similarly, the Commission's hearings on the disenfranchisement of black voters in the 1950s and 1960s formed the basis of the Voting Rights Act of 1965."

VICE CHAIRPERSON THERNSTROM: Or were important in shaping the 1965 Voting Rights Act. And I have a preference for disfranchisement, rather than disenfranchisement. That is a nitpicking editorial comment. Disfranchisement.

So just to make this clear, this is an historical statement about the shaping of the 1965 Voting Rights Act, not our impact on last summer's reauthorization of the -- the reauthorization and amendment of Section 5 and other emergency provisions.

STAFF DIRECTOR MARCUS: Is there a motion to make this change?

VICE CHAIRPERSON THERNSTROM: I guess we do need a motion.

COMMISSIONER MELENDEZ: My main point here is there's been substantial changes to this since the last time I looked at it and we only received this about a week and a half, a week ago, or whenever it came in.

What should have happened was we should have been able to again send in our comments as to
what this latest version that came out. Trying to do it right here, I think we're going to leave -- and this is an important document, I'm just saying we're probably going to leave a whole bunch of things -- you know, I could send these back into you and there's a number of them that I have questions to. So it's not just like a couple of things are --

VICE CHAIRPERSON THERNSTROM: I had missed that because I haven't had a chance -- I hadn't had the time in the last 10 days.

COMMISSIONER MELENDEZ: I would ask if we could table this until the next meeting also and provide feedback into all these different changes. Based on that, I just think there's a number of changes that I --

VICE CHAIRPERSON THERNSTROM: There's a motion on the table to approve it. If we're going to table it, we simply vote no on approval and further motion and it seems to me to table. Would that be procedurally correct?

STAFF DIRECTOR MARCUS: We could just have a motion to table.

VICE CHAIRPERSON THERNSTROM: We can have a motion to table, even though there's a motion on the floor?
STAFF DIRECTOR MARCUS: Yes.

VICE CHAIRPERSON THERNSTROM: All right, I have a substitute motion to table. Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes.

VICE CHAIRPERSON THERNSTROM: Why don't you state it?

I move --

COMMISSIONER MELENDEZ: I move to table this until the next meeting in April and then to provide some feedback into this later --

VICE CHAIRPERSON THERNSTROM: In the interim period.

COMMISSIONER MELENDEZ: In the interim period we'll send in our latest comments back to the Staff Director on this latest version.

VICE CHAIRPERSON THERNSTROM: All right, can we have a second on that?

COMMISSIONER TAYLOR: Second.

VICE CHAIRPERSON THERNSTROM: Any further discussion?

All in favor?

(Chorus of ayes.)

Any opposed? It passes unanimously.

And I think we are at an end and we simply
need a motion to adjourn.

COMMISSIONER TAYLOR: So moved.

VICE CHAIRPERSON THERNSTROM: Second?

COMMISSIONER MELENDEZ: Second.

VICE CHAIRPERSON THERNSTROM: We are recessed until 1 o'clock.

We are adjourned in this meeting.

(Whereupon, at 11:42 a.m., the meeting was concluded.)