

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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**UNEDITED**

THURSDAY

DECEMBER 14, 2006

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WASHINGTON, DC

+ + + + +

The Commission convened at 9:00 a.m., in Room 550 of 624 9<sup>th</sup> Street N.W., Washington, D.C., Gerald Reynolds, Chairperson, presiding.

Present:

- GERALD A. REYNOLDS, CHAIRPERSON
- JENNIFER C. BRACERAS (via telephone), COMMISSIONER
- PETER N. KIRSANOW, COMMISSIONER
- ARLAN D. MELENDEZ (via telephone), COMMISSIONER
- ASHLEY L. TAYLOR, JR., COMMISSIONER

Staff Present:

- KENNETH MARCUS, STAFF DIRECTOR
- DAVID BLACKWOOD, GENERAL COUNSEL
- CHRISTOPHER BRYNES
- DEREK HORNE
- EILEEN RUDERT
- SOCK-FOON MacDOUGALL
- LATRICE FOSHEE
- PAMELA DUNSTON
- RANITA CARTER
- DEBRA CARR

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Commissioner Assistants Present:

KIMBERLY SCHULDZ

Also Present:

DAVID KOTZ, INSPECTOR GENERAL

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A-G-E-N-D-A

I. Approval of Agenda . . . . . 5

II. Approval of Minutes of . . . . . 6  
November 17, 2006 Meeting

III. Announcements . . . . . 7

IV. Staff Director's Report . . . . . 8

V. Management and Operations . . . . . 14

VI. Program Planning . . . . . 33

VII. State Advisory Committee Issues . . . . . 40

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P-R-O-C-E-E-D-I-N-G-S

9:24 a.m.

CHAIRMAN REYNOLDS: I guess first off due to the weather conditions, a number of commissioners have been unable to get here. Jennifer was kind enough to get off the plane and then make her way to a phone. Commissioner Braceras, thank you. And before we start, I'd like to acknowledge the Inspector General from the Peace Corps, David Cox, who has been quite helpful in helping us get our operational issues improved. And Commissioner Melendez?

COMMISSIONER MELENDEZ: Good morning.

CHAIRMAN REYNOLDS: Good morning and thank you, too, for joining us. Okay, the meeting will come to order. This is a meeting of the US Commission on Civil Rights. All the commissioners are present with the exception of Vice Chair <sup>of</sup> Thurmstrom, Commissioner Yaki, Commissioner Melendez -- Commissioners Melendez and Braceras are participating by phone.

**I. Approval of the Agenda**

The first item on the agenda is the approval of the agenda. May I have a motion to approve it?

COMMISSIONER KIRSANOW: So moved.

CHAIRMAN REYNOLDS: Is there a second?

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1 COMMISSIONER TAYLOR: Second.

2 CHAIRMAN REYNOLDS: Discussion? All in  
3 favor, please say, aye.

4 (Aye)

5 CHAIRMAN REYNOLDS: Any objections? Any  
6 abstentions? The motion carries.

7 Okay, I move to amend the agenda, the one  
8 that we just approved, to add sub-item labeled Motion  
9 to Keep the Record of the Elementary and Secondary  
10 Desegregation Briefing Open for Public Comment  
11 immediately after the sub-item labeled Revise 2007  
12 Business Meeting and Briefing Calendar under the  
13 general item labeled program planning. The second  
14 change would be to postpone consideration of the anti-  
15 semitism campaign until the January meeting to allow  
16 for consideration of responses from effected agencies,  
17 and the third revision would be to eliminate the sub-  
18 item procedures for briefing reports in Section V. Is  
19 there a second?

20 COMMISSIONER BRACERAS: Second.

21 CHAIRMAN REYNOLDS: Discussion? All in  
22 favor?

23 (Aye)

24 CHAIRMAN REYNOLDS: Any abstentions? Any  
25 objections? The motion passes unanimously.

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1 **II. Approval of Minutes of**

2 **November 17, 2006 Meeting**

3 Let's see, the second item is the approval  
4 of the minutes for the November 17th, 2006 meeting.  
5 May I have a motion?

6 COMMISSIONER KIRSANOW: So moved.

7 CHAIRMAN REYNOLDS: Is there a second?

8 COMMISSIONER TAYLOR: Second.

9 CHAIRMAN REYNOLDS: Discussion? All in  
10 favor, please say "Aye".

11 (Aye)

12 CHAIRMAN REYNOLDS: Any objections?

13 COMMISSIONER BRACERAS: I have a question.

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER BRACERAS: How come Ashley  
16 always gets his middle initial but mine gets dropped?

17 CHAIRMAN REYNOLDS: That's a very  
18 important question and I must say --

19 COMMISSIONER BRACERAS: I know, it's  
20 critical.

21 CHAIRMAN REYNOLDS: Yes, I'm very  
22 particular about my middle initial as Ken Marcus  
23 knows. In any event, where are we?

24 COMMISSIONER BRACERAS: I would like to  
25 request in the future my middle initial be added to

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1 all documentation.

2 COMMISSIONER KIRSANOW: Objection.

3 MR. MARCUS: That won't be a problem.

4 CHAIRMAN REYNOLDS: Commissioner Braceras,  
5 we have one objection to your request but we outvoted  
6 Commissioner Kirsanow. All right, we were in the  
7 process of voting. All in favor?

8 (Aye)

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

11 **III. Announcements**

12 Okay, next are the announcements for the  
13 month of December. On December 1st, 1955 Rosa Parks  
14 refused to give up her seat to a white passenger on  
15 a Montgomery, Alabama bus. She was arrested and fined  
16 for violating city ordinance but her brave act led to  
17 the Montgomery bus boycott and began a movement that  
18 ended the legal segregation in America.

19 In addition, on December 10th, 1964,  
20 Martin Luther King, Jr. was awarded the Nobel Peace  
21 Prize. Dr. King was awarded <sup>the</sup> Nobel Peace Prize for his  
22 work as the leader of the Southern Christian  
23 Leadership Conference and his philosophy of violence.  
24 At the age of 35 he was the youngest man to receive  
25 the Nobel Peace Prize.

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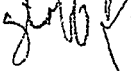
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1           And finally, on January 15th, 2007, is the  
2 nation's 22nd commemoration of Dr. Martin Luther King,  
3 Jr.'s federal holiday. The nation honors a leader of  
4 a civil rights movement that dedicated his life to  
5 principles of freedom, non-violence and equal  
6 opportunity for all. Today America benefits from Dr.  
7 King's work. His legacy of courage, dignity and moral  
8 clarity and his advocacy that injustice anywhere is a  
9 threat to justice everywhere.

10           Next up we have the staff report, the  
11 Staff Director's Report rather.

12           **IV. Staff Director's Report**

13            MR. MARCUS: Thank you, Mr. Chairman. For  
14 this month's report I would like only to say a few  
15 words to acknowledge the service of Ms. Joann Daniels.  
16 She is a long-time employee of Central Regional  
17 Office, who will be retiring from the Commission on  
18 Wednesday, December 27th, 2006. Ms. Daniels has  
19 served with the Commission since 1972 and dedicated  
20 nearly 38 years of her life to federal service. She  
21 began her federal service career with the Federal  
22 Aviation Administration in 1969 and worked for a short  
23 time at the Social Security Administration as a clerk  
24 stenographer. She also worked at the Health and Human  
25 Services before joining the Commission.

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1 Ms. Daniels has demonstrated her  
2 commitment to the advancement of civil rights and has  
3 been a great asset to the Commission. Her departure  
4 is certainly well-earned and her significant expertise  
5 and experience will be missed. Member of the staff  
6 have certainly enjoyed working with her for these many  
7 years. In departing she has spoken of the rewarding  
8 nature of her work at the Commission and the fact that  
9 she has found many of her goals fulfilled by serving  
10 as the administrative person in the Central Regional  
11 Office. She will be deeply missed by the Agency.

12 CHAIRMAN REYNOLDS: That's it?

13 MR. MARCUS: That's it unless there are  
14 questions.

15 COMMISSIONER MELENDEZ: I have a question.

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER MELENDEZ: As far as the  
18 Staff Director's Report, I just wanted an update on  
19 our budget for 2007 and how that looks. There were --  
20 particularly there were issues, there were some SAC  
21 activities, I believe, out in the Rocky Mountain  
22 Region. There was supposed to be a planned joint  
23 project on Native American discrimination at border  
24 towns as we lead up to that issue in October later in  
25 2007. I was just wondering, I know that that joint

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1 Strategic Plan remains preliminary, it will be vetted  
2 further with OMB and others. In addition,  
3 Commissioners will have opportunities to offer  
4 revisions. May I have a motion that the Commission  
5 preliminarily adopt the proposed draft Strategic Plan  
6 that was developed by the Strategic Plan working group  
7 and distribute it to Commissioners on December 6th,  
8 2006?

9 COMMISSIONER KIRSANOW: So moved.

10 COMMISSIONER MELENDEZ: Second.

11 CHAIRMAN REYNOLDS: Thank you.

12 Discussion?

13 COMMISSIONER BRACERAS: Yeah, I have a few  
14 things.

15 CHAIRMAN REYNOLDS: Yes, Commissioner  
16 Braceras.

17 COMMISSIONER BRACERAS: Is it possible for  
18 me to submit a draft rewrite of inclusions at this  
19 point?

20 CHAIRMAN REYNOLDS: Yes, this is --

21 COMMISSIONER BRACERAS: You know, it's  
22 stylistic.

23 CHAIRMAN REYNOLDS: Yes, all Commissioners  
24 still have the opportunity to offer revisions to the  
25 document, so the answer to your question is, yes.

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1 COMMISSIONER BRACERAS: All right, well,  
2 I will -- I have some language with me that I was  
3 prepared to distribute but when I get home, I will e-  
4 mail it to the Commissioners and the Staff Director  
5 for the proposed substituted inclusions.

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER BRACERAS: And then I did  
8 have a few questions on some of the performance  
9 measures. Would this be an appropriate time to raise  
10 them?

11 CHAIRMAN REYNOLDS: Well, would you mind  
12 posing the questions to the Staff Director off-line  
13 unless you feel that it's something that the full  
14 Commission should hear.

15 COMMISSIONER BRACERAS: Fine, I'll e-mail  
16 -- well, but then it has to be voted on again?

17 CHAIRMAN REYNOLDS: Okay, pose your  
18 question or your series of questions.

19 COMMISSIONER BRACERAS: All right, they're  
20 small. Page 23, Strategic measure 2 performance  
21 measures 3, can you hear me?

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER BRACERAS: Okay, where it  
24 says collects data --

25 CHAIRMAN REYNOLDS: Well, Commissioner

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1 Breceras, please give us a moment. We're trying to  
2 locate that page. Okay, I'm sorry, please continue.

3 COMMISSIONER BRACERAS: Okay, these will  
4 go to Performance Measure 3, collect data on complaint  
5 types, it seems to me that we collect data on more  
6 than just complaint types and so I didn't know if that  
7 performance measure was too narrow. In other words,  
8 I just thought it should be broadened because we're  
9 not only collecting data from other agencies on types  
10 of complaints received. You know, we may partner with  
11 them to collect and analyze data on a whole host of  
12 issues, not just the complaints that they receive.

13 MR. MARCUS: Commissioner Braceras, this  
14 is Ken Marcus, I'm not sure if that is a question or  
15 a proposal to broaden the performance notion. I think  
16 that the idea behind this was that we would attempt to  
17 move beyond what we're currently doing to develop some  
18 sort of MOU or project where we would work with an  
19 agency or agencies to take some of their data and to  
20 be able to by working with multiple agencies, to  
21 rework it in ways that's useful both for them and for  
22 the public.

23 It was complaint data that we had in mind.  
24 I don't know if there's anything other that you  
25 specifically had in mind. I'll say that the idea --

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1                   COMMISSIONER BRACERAS: Well, I mean, if  
2 we're measuring our performance based on something  
3 that we don't already do, shouldn't we also measure it  
4 based on the things that we already do do?

5                   MR. MARCUS: We certainly could and it  
6 might take a little bit of time of thinking and  
7 talking to come up with a sort of performance measure  
8 you had in mind. Here the idea was that it -- and  
9 this came out of, as I recall, our stakeholder  
10 discussions with the EEOC that there -- that there is  
11 some data that they have that it might be useful for  
12 us to analyze and it might also be that there are  
13 multiple agencies that have data that's not aggregated  
14 and analyzed together.

15                   And then it might be useful for  
16 enforcement agencies to get a better sense of trends  
17 and future projections based on analyses that could  
18 best be done by a separate independent agency.

19                   COMMISSIONER BRACERAS: Yeah, I mean, no,  
20 of course it is. I'm not suggesting that this is a  
21 useful performance measure. I'm simply saying that  
22 it's much broader, civil rights agencies to collect  
23 and analyze data on various civil rights topics, and  
24 we're only measuring that by a narrow subset. So I  
25 didn't know if an additional performance measure was

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1 needed, not instead of but in addition to because  
2 you're measuring something quite narrow and the  
3 objective is quite broad.

4 CHAIRMAN REYNOLDS: Commissioner Braceras,  
5 would you feel comfortable if we continue to work on  
6 this issue at a later date because it sounds like that  
7 to fully address your concern, we're going to have to  
8 do some thinking and that's going to chew up some  
9 time.

10 COMMISSIONER BRACERAS: Okay, I don't know  
11 why it's that complicated. I just -- I guess I still  
12 continue to lack understanding for the bureaucratic  
13 types of performance measures, apparently but I just  
14 see the performance measure here as being far narrower  
15 than the objective or that the other ones sort of  
16 track each other better.

17 MR. MARCUS: Yeah, I would say that this  
18 objective was a difficult one to do performance  
19 measures for simply because we are trying to hold  
20 ourselves accountable for doing a sort of work that we  
21 aren't really currently doing. The whole objective of  
22 partnering with other civil rights agencies to collect  
23 and analyze data is largely a different sort of  
24 enterprise than what we're currently doing. And we  
25 don't yet --

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1                   COMMISSIONER BRACERAS: I just wouldn't  
2 say that on various civil rights topics because it's  
3 not various civil rights topics, it's one, right,  
4 complaints received?

5                   MR. MARCUS: Oh, I suppose that's a way of  
6 looking at it. I think what we had in mind on various  
7 complaint topics is that we might look at a topic like  
8 say post-9/11 discrimination, gathering data not just  
9 from the EEOC but perhaps from HUD and Department of  
10 Education or we might look at pregnancy discrimination  
11 and --

12                   COMMISSIONER BRACERAS: All right, fine,  
13 fine, then leave it as is. Objective Number 4, no,  
14 not Number 4, Number 5, is it, yeah, it's Number 5,  
15 promote public awareness of current civil rights laws,  
16 remedies and enforcement agencies. It's just two  
17 small things and that's the end of my comments on  
18 this. Under the objectives, shouldn't we also have  
19 issues. In other words, promote public awareness of  
20 current civil rights issues, laws, remedies and  
21 enforcement agencies, because it's not always legal.

22                   MR. MARCUS: That certainly sounds like a  
23 good change, yeah. That just grabs what we do.

24                   COMMISSIONER BRACERAS: Yeah, I just  
25 thought that was an oversight in the language.

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1 MR. MARCUS: I think it was an oversight.

2 COMMISSIONER BRACERAS: And then in the  
3 corresponding performance measures, first of all, it  
4 goes from E to G without an F, but whatever, that's --  
5 and then in 5A, publish the number of public briefings  
6 and to we want to also put hearings or no? Is there  
7 a reason for "not including most formal hearings?"

8 CHAIRMAN REYNOLDS: No, that's fine.

9 MR. MARCUS: I would urge that if we're  
10 going to mention hearings that we use an or rather  
11 than an and in case in a particular year we're not  
12 able to hold a hearing.

13 COMMISSIONER BRACERAS: Yes, yes,  
14 absolutely. And in one earlier draft of these, I  
15 believe we had something about conducting advertising  
16 campaigns or promoting public service announcements  
17 where finances permit it. That seems to have dropped  
18 out. I wasn't sure why, maybe purely for financial  
19 reasons.

20 (Pause)

21 CHAIRMAN REYNOLDS: Okay, Jennifer,  
22 apparently it was dropped due to financial  
23 constraints. We didn't want to be obligated to do  
24 something that --

25 COMMISSIONER BRACERAS: We can't afford to

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1 do.

2 CHAIRMAN REYNOLDS: Right.

3 COMMISSIONER BRACERAS: Gotcha, okay.

4 And then I only wondered whether a final performance  
5 measure under Number 5 should be added that just says  
6 publish a number of briefing reports and/or hearing  
7 reports so that we could get credit, if you will, for  
8 the publications we've been doing as evidence of our  
9 success.

10 CHAIRMAN REYNOLDS: Sounds good.

11 MR. MARCUS: Yeah, I don't see any problem  
12 with that. That does sound like a good one.

13 COMMISSIONER BRACERAS: That's all. I  
14 mean, they're nit picky little things but I just -- I  
15 thought I'd raise them now before I, you know, forgot.

16 CHAIRMAN REYNOLDS: Okay.

17 MR. MARCUS: Good.

18 CHAIRMAN REYNOLDS: Okay, as amended,  
19 we're ready to vote now. All in favor please say aye.

20 (Aye)

21 CHAIRMAN REYNOLDS: Any objections? Any  
22 abstentions? The motion, as amended, carries  
23 unanimously. Okay. Okay, the next item on the agenda  
24 is the procedures for national office products which  
25 consists of three motions. These motions deal with

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1 the procedures for national office products and  
2 briefings. As you may recall in May the Commission  
3 received a GAO report on the Agency's Quality  
4 Assurance Policies. The GAO report recommended that  
5 the Commission develop written policies and procedures  
6 that would insure the objectivity and balance of the  
7 National Office fact finding activities, including  
8 reports and briefings. The proposed procedures for  
9 National Office products and briefings addressed the  
10 GAO concerns and reflect recommendations made in the  
11 report. The first one deals with witnesses and  
12 presenters at hearings and briefings, the second with  
13 seeking information from a variety of sources and the  
14 third, using outside reviewers to insure that  
15 Commission procedures were followed.

16 May I have a motion that the Commission  
17 adopt as a policy matter the Staff Director's  
18 recommendation to establish a policy that Commission  
19 hearings and briefings seek to achieve substantial  
20 numerical balance of witnesses and presenters between  
21 opposing views, opinions and perspectives when  
22 appropriate in light of the subject matter and the  
23 staff's ability to locate credible and topical  
24 witnesses?

25 COMMISSIONER TAYLOR: So moved.

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1 CHAIRMAN REYNOLDS: Is there a second?

2 COMMISSIONER KIRSANOW: Second.

3 CHAIRMAN REYNOLDS: Discussion?

4 COMMISSIONER MELENDEZ: Yes, this is  
5 Commissioner Melendez. I had a question. Did the  
6 Inspector General consider other ways of insuring  
7 balance on this as far as numerical?

8 CHAIRMAN REYNOLDS: Well, it's not limited  
9 to numerical. Opinions, perspectives, views are also  
10 considered but the Inspector General is here. Would  
11 you mind responding?

12 MR. KOTZ: Sure.

13 CHAIRMAN REYNOLDS: Would you please come  
14 up to the table and we'll have someone --

15 MR. KOTZ: Yes, thank you, David Kotz for  
16 the Inspector General for the Peace Corps. Happy to  
17 be here and let me just respond. There were various  
18 different ideas that were discussed in terms of  
19 creating this. You know, there is certainly language  
20 in there that talks about objectivity and that was  
21 initially discussed just to have general language  
22 about objectivity and to insure that the witnesses  
23 reflected varied and opposing views, opinions and  
24 perspectives.

25 We decided to -- I decided to recommend

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1 and with the Staff Director's approval to go a little  
2 more further and to include this concept of numerical  
3 balance which would provide where appropriate, where  
4 it can be achieved, that there is, you know, specific  
5 numerical balance between the two ideas and I thought  
6 that that was the best way to be able to respond to  
7 the GAO's recommendation.

8 The GAO's recommendation talks about  
9 requiring that it's written products considering  
10 varied and opposing perspectives and I thought that  
11 through the use of the general language that requires  
12 the varied and opposing views and perspectives in  
13 addition to the numerical balance concept, would be  
14 the best way to achieve a successful response to the  
15 GAO recommendations.

16 CHAIRMAN REYNOLDS: Commissioner Melendez,  
17 is that a satisfactory response?

18 COMMISSIONER MELENDEZ: Yes, thank you.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER TAYLOR: One other question,  
21 what is --

22 COMMISSIONER BRACERAS: I can't hear  
23 whoever is speaking.

24 COMMISSIONER TAYLOR: It's the  
25 Commissioner with the middle initial. What is the

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1 practical impact if we adopt this policy if we're  
2 unable to achieve numerical balance?

3 MR. MARCUS: Commissioner Taylor, if we're  
4 unable to achieve numerical balance, then at the end  
5 of the briefing, when a report is prepared, I would  
6 need to fill out a checklist and with respect to the  
7 item indicating numerical balance, I would have to  
8 indicate that there wasn't and might put in a short  
9 note of why there wasn't and there might be various  
10 reasons that there wouldn't be relating to the subject  
11 matter and the availability of witnesses.

12 For example, the Commissioners may recall  
13 that we attempted to achieve a numerical balance with  
14 respect to the Omaha briefing but then there was a  
15 concern that we achieve not just a balance between  
16 different viewpoints but that we invite various  
17 constituencies, such as members of the Hispanic  
18 community, parents and teachers, without necessarily  
19 knowing whether the result would be to confirm the  
20 numerical balance or to throw it off. So sometimes a  
21 desire to bring in different sorts of viewpoints and  
22 stakeholders would have the ironic effect of throwing  
23 off a balance.

24 There may also be some issues where there  
25 are unusual numbers of positions, not just two but

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1 three or four and it would be difficult to get an  
2 equal balance, and it would simply mean that I need to  
3 check the box indicating that it wasn't a numerical  
4 balance and then explain why.

5 COMMISSIONER MELENDEZ: Very well.

6 CHAIRMAN REYNOLDS: Additional questions?

7 COMMISSIONER MELENDEZ: I have just one  
8 question, Commissioner Melendez. This wasn't a  
9 recommendation of the GAO report, or is this --

10 MR. MARCUS: This does grow out of the GAO  
11 report, Commissioner Melendez.

12 COMMISSIONER MELENDEZ: Okay.

13 CHAIRMAN REYNOLDS: Additional questions,  
14 comments? I have one comment, and that is that the  
15 question from Commissioner Taylor asking about the  
16 practical effect of this rule change my view, this is  
17 what we do currently. I believe that we strive to  
18 insure that all viewpoints are represented and that  
19 there is a numerical balance. We have not stacked the  
20 deck. But after saying that, though, formalizing this  
21 is not going to -- it will formalize what we actually  
22 do. So if there are not further questions or  
23 comments, at this point, we can vote.

24 COMMISSIONER MELENDEZ: I have one other  
25 question, Commissioner Melendez here. My main

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1 concern on this whole issue was whether or not the  
2 A1.6 actually applied to briefing reports. I'm not  
3 real sure how this whole issue ties into that  
4 discussion later. I'm not real sure on this whole  
5 issue.

6 MR. MARCUS: Commissioner Melendez, this  
7 is the Staff Director. The question that you raise is  
8 of course, a question that has been raised and  
9 discussed in prior meetings and for which we have a  
10 separate working group on briefing procedures. It is  
11 my understanding that there are different  
12 interpretations and different views both as to whether  
13 the existing AI applies and also whether it should  
14 apply to briefings and to what extent it should apply.

15 Our intent in decoupling, as it were, the  
16 AI on briefings from this AI is to simply make sure  
17 that we are applying the objectivity standards and  
18 then have a separate discussion about to what extent -  
19 - to what extent we are applying unrelated things to  
20 briefings. So in other words, I would say that the  
21 motions that are being discussed today would apply to  
22 briefing reports as well as to other products.

23 But as for whether other requirements  
24 within 1.6, such as the requirements relating to a  
25 discovery plan or the 30-day viewing time for

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1 Commissioners, whether they apply or not to briefing  
2 reports is a separate issue for which I think that it  
3 will be useful to have additional discussion.

4 COMMISSIONER MELENDEZ: Thank you.

5 CHAIRMAN REYNOLDS: Okay, are there any  
6 other additional questions or comments? All in favor?

7 (Aye)

8 CHAIRMAN REYNOLDS: Any objections? Any  
9 abstentions?

10 COMMISSIONER MELENDEZ: One, Commissioner  
11 Melendez abstains.

12 CHAIRMAN REYNOLDS: Okay, please let the  
13 record reflect that Commissioner Melendez abstains and  
14 that the remaining Commissioners voted in favor of the  
15 motion. The motion passes.

16 May I have a motion that the Commission  
17 adopt as a policy matter the Staff Director's  
18 recommendation to establish a policy that Commission  
19 staff should, as long as feasible, seek input and  
20 information from a wide variety of sources including  
21 external groups during these several phases of program  
22 planning and execution, including the gathering of  
23 ideas for possible project concepts, the  
24 identification of possible witnesses and presenters  
25 and conducting background research and literature

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1 review?

2 COMMISSIONER TAYLOR: So moved.

3 CHAIRMAN REYNOLDS: Is there a second?

4 COMMISSIONER KIRSANOW: Second.

5 CHAIRMAN REYNOLDS: Discussion.

6 COMMISSIONER MELENDEZ: Yes, is this the  
7 one having to do with external reviewers?

8 CHAIRMAN REYNOLDS: No, I believe that is  
9 -- let me make sure.

10 MR. MARCUS: That's next.

11 COMMISSIONER MELENDEZ: Oh, that's next.

12 CHAIRMAN REYNOLDS: Correct.

13 COMMISSIONER MELENDEZ: Okay.

14 CHAIRMAN REYNOLDS: Okay, all in favor,  
15 please say aye.

16 (Aye)

17 CHAIRMAN REYNOLDS: Any objections? Any  
18 abstentions? The motion carries unanimously. Okay,  
19 Inspector General David Kotz has provided checklists  
20 as appendices AI.1 through 6 and AI.1 through 6A that  
21 delineate the procedures adopted by the Commission for  
22 insuring impartiality and transparency of National  
23 Office Reports and briefing reports respectfully.  
24 These checklists will be used by external reviewers to  
25 certify agency adherence to implemented procedures.

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1 May I have a motion that the Commission adopt this  
2 policy the Commission's use of external reviewers,  
3 paid or unpaid, to certify that agency procedures for  
4 insuring the impartiality and transparency of National  
5 Office reports and briefing reports are followed?

6 COMMISSIONER KIRSANOW: So moved.

7 CHAIRMAN REYNOLDS: Second?

8 COMMISSIONER TAYLOR: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 COMMISSIONER MELENDEZ: Yes, Commissioner  
11 Melendez, what will an external reviewer actually do?

12 MR. MARCUS: Commissioner Melendez, it's  
13 envisioned that the external reviewer would complete  
14 the checklist that has been circulated with that AI  
15 based on a review of the -- review of the work and  
16 review of the completion of the checklist by the Staff  
17 Director. I don't know if the IG has anything to add  
18 to that.

19 MR. KOTZ: I mean, yes, essentially that's  
20 it. There's the checklists and the external reviewer  
21 would get the checklist and review it to insure that  
22 all items were checked appropriately on the checklist  
23 and then sign it at the bottom that it was done. So  
24 that the procedures that are put in place will be  
25 insured by someone outside that these have been done

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1 as per the administrative instruction.

2 COMMISSIONER KIRSANOW: Where do the  
3 external reviewers come from?

4 MR. MARCUS: Well, according to this  
5 motion, it could be paid or unpaid. Of course, we  
6 have limitations on unpaid compensation but our State  
7 Advisory Committee Members serve without compensation,  
8 so our State Advisory Committee members are one source  
9 of external reviewers, or we could get people to come  
10 in as consultants to do that alternatively.

11 COMMISSIONER KIRSANOW: How do we select  
12 them or who selects them?

13 MR. MARCUS: Under this it would be for  
14 the Staff Director to select the reviewer.

15 CHAIRMAN REYNOLDS: Additional questions,  
16 comments? Okay, it's time to vote. All in favor,  
17 please say aye.

18 (Aye)

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

21 **VI. Program Planning**

22 Okay, the Commission has currently scheduled for  
23 January 2007 a briefing on the impact of the No Child  
24 Left Behind Act on the Minority Achievement Gap. This  
25 briefing will take place in Washington, DC. May I

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1 have a motion to replace the scope of the briefing so  
2 that the briefing would examine whether school  
3 districts are facilitating or impeding the provision  
4 of supplemental educational services by best qualified  
5 providers required in some cases by the No Child Left  
6 Behind Act?

7 COMMISSIONER KIRSANOW: So moved.

8 CHAIRMAN REYNOLDS: Okay, is there a  
9 second?

10 COMMISSIONER TAYLOR: Second.

11 CHAIRMAN REYNOLDS: I would also suggest  
12 that we invite parents, experts and administrators to  
13 testify. The information will also be sought on how  
14 these decisions potentially impact disadvantaged and  
15 minority children. Okay, that's my piece of the  
16 discussion. Any other comments, questions? All  
17 right.

18 COMMISSIONER TAYLOR: I just want to thank  
19 everyone again for the accommodation.

20 CHAIRMAN REYNOLDS: All right, all in  
21 favor say aye.

22 (Aye)

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

25 MR. MARCUS: Mr. Chairman, given the short

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1 time between now and the January briefing, staff has  
2 gone ahead provisionally to see whether certain  
3 potential speakers would be available for such a  
4 briefing and we've been heartened so far to have a  
5 pretty good response. Given the desire of  
6 Commissioners to have balanced groups of parents,  
7 experts and administrators, I expect that this will an  
8 unusually long briefing, perhaps with three different  
9 panels so that each of the three groups are  
10 represented. But we have so far gotten favorable  
11 responses from the -- from a couple of  
12 superintendents, from New Jersey as well as from  
13 advocacy groups and we have at least some names of  
14 parents in various areas. So the initial response has  
15 been good. Of course, it will be difficult to get  
16 people over the holidays, but if we are able to  
17 succeed and continue to get more speakers, we would  
18 envision perhaps as much as three panels.

19 CHAIRMAN REYNOLDS: Very good. Okay, the  
20 next item on the agenda is the approval of the revised  
21 business meeting and briefing calendar. A revised  
22 calendar was distributed to the Commissioners by e-  
23 mail on December 12th, 2006. It reschedules the  
24 January business meeting and briefing and also changes  
25 the topic of the briefing. The January business

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1 meeting and briefing will now be held on January 26th  
2 and the briefing topic is the No Child Left Behind and  
3 supplemental educational services.

4 Furthermore, the revised 2007 calendar  
5 adds previously unscheduled briefing topics for the  
6 months of June, July and November. The briefing  
7 topics shall be school choice and the Blaine  
8 Amendments and anti-Catholicism, minority children in  
9 state foster care and adoption and minorities in  
10 special education respectively. May I have a motion  
11 that the Commission approve the revised 2007 business  
12 meeting and briefing calendar --

13 COMMISSIONER TAYLOR: So moved.

14 CHAIRMAN REYNOLDS: -- that was  
15 distributed to the Commissioners via e-mail on  
16 December 12th, 2006.

17 COMMISSIONER KIRSANOW: So moved.

18 COMMISSIONER TAYLOR: Second.

19 CHAIRMAN REYNOLDS: Discussion? All in  
20 favor?

21 (Aye)

22 CHAIRMAN REYNOLDS: Any objections? Any  
23 abstentions? The motion carries unanimously. In  
24 order to give an opportunity to individuals interested  
25 in the briefing schedule for this afternoon and to

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1 provide information concerning said briefing, the  
2 record should be kept open for 30 days. May I have a  
3 motion to keep the record for the elementary and  
4 secondary school desegregation briefing open for  
5 public comment for 30 days?

6 COMMISSIONER KIRSANOW: So moved.

7 COMMISSIONER TAYLOR: Second.

8 CHAIRMAN REYNOLDS: Okay, discussion? All  
9 in favor, please say aye.

10 (Aye)

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

13 CHAIRMAN REYNOLDS: Okay, next we will  
14 establish a time line for Commissioner review of the  
15 of the briefing report on affirmative action in law  
16 schools. May I have a motion that establishes the  
17 following time line; Commissioners submit comments on  
18 the draft briefing report on affirmative action in  
19 American law schools to the Office of the Staff  
20 Director no later than December 29th, 2006. The  
21 Office of the Staff Director will address these  
22 comments in a revised draft to be distributed to  
23 Commissioners on January 5th, 2007.

24 Commissioners will have until January  
25 12th, 2007 to submit comments to the Office of Staff

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1 Director on this revised draft. The Office of Staff  
2 Director will then distribute a proposed final  
3 briefing report on affirmative action in law schools  
4 to Commissioners on January 18th, 2007 for a vote at  
5 the January 26th, 2007 Commission business meeting.

6 COMMISSIONER KIRSANOW: So moved.

7 CHAIRMAN REYNOLDS: Second?

8 COMMISSIONER TAYLOR: Second.

9 CHAIRMAN REYNOLDS: Discussion? All in  
10 favor?

11 (Aye)

12 CHAIRMAN REYNOLDS: Any abstentions? Any  
13 objections?

14 COMMISSIONER MELENDEZ: Opposed one.

15 CHAIRMAN REYNOLDS: I'm sorry?

16 COMMISSIONER MELENDEZ: Opposed  
17 Commissioner Melendez.

18 CHAIRMAN REYNOLDS: Okay, please let the  
19 record reflect that Commissioner Melendez opposes the  
20 motion. The remaining Commissioners vote in favor.  
21 The motion carries. At the February 26th meeting, the  
22 -- at the February 2006 meeting, the Commission  
23 approved a policy that all State Advisory Committee  
24 reports would be printed if they satisfied the  
25 procedural and legal criteria for such reports to the

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1 satisfaction of the Staff Director or his designee.

2 Furthermore, the Commission -- furthermore  
3 that Commission members would receive all State  
4 Advisory Committee reports but would not be asked to  
5 vote to accept or reject State Advisory Committee  
6 reports. Pursuant to this policy, I'm asking that  
7 you not vote on the reports sent by the Kentucky and  
8 Florida State Advisory Committees.

9 The Kentucky SAC report deals with equal  
10 educational opportunity, an analysis of the racial  
11 achievement gap in Kentucky urban schools. The  
12 Florida State Advisory Committee's reports deals with  
13 the desegregation of public school districts in  
14 Florida. Eighteen public school districts have  
15 unitary status, 16 districts remain under court  
16 jurisdiction. These reports are intended to provide  
17 the Commission with information for its 2007  
18 nationwide project on the subject.

19 The first part of the report consists of  
20 a description of the status of 67 public school  
21 districts in Florida. The second part contains an  
22 analysis on the impact of unitary status with respect  
23 to school integration. I wish to thank both State  
24 Advisory Committees for their dedicated efforts on  
25 behalf of civil rights.

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1                   COMMISSIONER BRACERAS:   Excuse me, I'm  
2                   sorry, this is Commissioner Braceras.   Since I'm now  
3                   in the car headed back from the airport, I just want  
4                   you all to know that we're entering an area that  
5                   typically has very poor cell coverage.   So I may be  
6                   dropped off the call some time within the next 10  
7                   minutes but I'll stay on as long as I can.

8                   CHAIRMAN REYNOLDS:   Okay.

9                   COMMISSIONER BRACERAS:   I will call back  
10                  in when I reach my destination.

11                  **VII. State Advisory Committee Issues**

12                  CHAIRMAN REYNOLDS:   Okay, thank you.   May  
13                  I have a motion to appoint two additional individuals  
14                  to the California State Advisory Committee?

15                  COMMISSIONER MELENDEZ:   Can I ask a  
16                  question?

17                  CHAIRMAN REYNOLDS:   Yes, Commissioner  
18                  Melendez.

19                  COMMISSIONER MELENDEZ:   On this Kentucky  
20                  and Florida report, are they expecting us to accept or  
21                  vote to accept their report or something like this?

22                  CHAIRMAN REYNOLDS:   They should not.   In  
23                  February of 2006, the Commission approved a motion  
24                  that changed our procedures.   We no longer vote to  
25                  accept or reject reports prepared by SACs.

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1 COMMISSIONER MELENDEZ: Okay, thank you.

2 COMMISSIONER BRACERAS: Can I just speak  
3 to that quickly by way of background for Commissioner  
4 Melendez?

5 CHAIRMAN REYNOLDS: Yes, yes, Commissioner  
6 Braceras.

7 COMMISSIONER BRACERAS: The reason we did  
8 that was because and I forget whether you were with us  
9 at the time but in the past we had been asked to vote  
10 on reports but yet we were not allowed to take  
11 positions on the contents of what was actually in the  
12 report. So we had to vote to accept them procedurally  
13 which some people were very uncomfortable with if they  
14 disagreed with the content of the report. They didn't  
15 want to have to vote to accept something that they  
16 disagreed with.

17 So we just said we're going to publish all  
18 SAC reports and we're just going to put a disclaimer  
19 on them saying that they do not necessarily reflect  
20 the views of the National Commission, it's the local  
21 report. It's their report, we'll publish it and the  
22 more voices the better.

23 COMMISSIONER MELENDEZ: All right, thank  
24 you.

25 CHAIRMAN REYNOLDS: Okay, I move that the

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1 Commission appoint the following individuals to the  
2 California State Advisory Committee, Sharon Paulo and  
3 Maimon Schwarzschild. These members will serve as  
4 uncompensated government employees under this motion.  
5 The Commission authorizes the Staff Director to  
6 execute the appropriate paperwork for the appointment.  
7 Is there a second?

8 COMMISSIONER TAYLOR: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 COMMISSIONER MELENDEZ: Yes, this is  
11 Commissioner Melendez. I had a question on Mr.  
12 Schwarzschild. The question is what I have with the  
13 SACs. Why is he being appointed to this and what does  
14 he bring in the field of diversity and civil rights  
15 background to this SAC?

16 CHAIRMAN REYNOLDS: Well, he served as an  
17 attorney in the Civil Rights Division at the Justice  
18 Department from 1976 through 1981. He is a professor  
19 and he specializes in constitutional law with an  
20 emphasis on civil rights law and policy.

21 COMMISSIONER MELENDEZ: Okay, my concern,  
22 I know that you know, just looking at some of the  
23 background, he has, in my opinion close ties to Gail  
24 Harriet and I just think that why, you know, in a  
25 diverse state like California, we're talking about a

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1 number of people and in California it's real hard to  
2 -- basically, what you see is people coming out of the  
3 same institutions or the same -- or colleagues from  
4 the same think tank or whatever you may say, so I'm  
5 just saying in a large state like California, I think  
6 we could be more diverse. That's my only point.

7 CHAIRMAN REYNOLDS: Okay, additional  
8 comments? Okay, all in favor, please say aye.

9 (Aye)

10 CHAIRMAN REYNOLDS: Objections?  
11 Abstentions? The motion carries unanimously.

12 Okay, I move that the Commission recharter  
13 the Arizona State Advisory Committee. Under this  
14 motion, the Commission appoints the following  
15 individuals to that committee based on recommendations  
16 of the Staff Director; Thomas Patterson, Clint Bolick,  
17 Gabriel Chin, Blanca Esparza, Lawrence Gallagher,  
18 Lorraine Lee, Keli Luther, Jose Matus, James McKenzie,  
19 Catherine Medina, Jaime Molera, Vernon Parker and  
20 Frederick Taylor. These members would serve a  
21 uncompensated government employees and the  
22 Commissioner appreciates that hard work that they will  
23 no doubt contribute. Is there -- oh, and under this  
24 motion, the Commission would authorize the Staff  
25 Director to execute the appropriate paperwork for the

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