

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

COMMISSION MEETING

+ + + + +

TELECONFERENCE

+ + + + +

WEDNESDAY
FEBRUARY 11, 2009

+ + + + +

The meeting convened telephonically at
11:00 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
ABIGAIL THERNSTROM, Vice Chair
TODD GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Chief, Programs
 Coordination Unit
DEBRA CARR, Associate Director
PAMELA DUNSTON, Chief, ASCD
MAHA JWEIED
DR. ROBERT LERNER, Assistant Staff Director
 for OCRE
TINALOUISE MARTIN, Director, Office of
 Management
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
EILEEN RUDERT
KIMBERLY TOLHURST
AUDREY WRIGHT

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

TABLE OF CONTENTS

	<u>PAGE</u>
I. Approval of Agenda	5
II Program Planning, FY 2009 Statutory Report	7
III. Adjourn	60

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

P R O C E E D I N G S

(11:08 a.m.)

1
2
3 CHAIRMAN REYNOLDS: This is Chairman
4 Reynolds. It is 11:08 Eastern standard time on
5 February 11, 2009. We're having a telephonic meeting
6 with Commissioners participating from different
7 locations.

8 I will call the name of each Commissioner
9 in order to determine if there is a quorum.

10 Vice Chair Thernstrom.

11 VICE CHAIR THERNSTROM: I'm here.

12 CHAIRMAN REYNOLDS: Commissioner Gaziano.

13 COMMISSIONER GAZIANO: Here.

14 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

15 COMMISSIONER KIRSANOW: Here.

16 CHAIRMAN REYNOLDS: Commissioner Heriot.

17 COMMISSIONER HERIOT: Here.

18 CHAIRMAN REYNOLDS: Commissioner Melendez.

19 COMMISSIONER MELENDEZ: Here.

20 CHAIRMAN REYNOLDS: Commissioner Yaki.

21 Commissioner Yaki.

22 (No response.)

23 CHAIRMAN REYNOLDS: Commissioner Taylor.

24 COMMISSIONER TAYLOR: Here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Okay. Is the Staff
2 Director on the line?

3 STAFF DIRECTOR DANNENFELSER: Yes.

4 CHAIRMAN REYNOLDS: And is the court
5 reporter on the line?

6 THE REPORTER: Yes.

7 CHAIRMAN REYNOLDS: Okay. All right. The
8 meeting will come to order.

9 If a Commissioner wants to make a
10 statement, please identify yourself first. If it is
11 necessary to take a vote, I ask that you provide your
12 name and your vote. After the voting is concluded, I
13 will read out how each of you has voted in order to
14 insure that the tally is correct.

15 **I. Approval of Agenda**

16 I move that we approve the agenda. Is
17 there a second?

18 VICE CHAIR THERNSTROM: Second.
19 Thernstrom, second.

20 CHAIRMAN REYNOLDS: Discussion?

21 (No response.)

22 CHAIRMAN REYNOLDS: Okay. Vice Chair
23 Thernstrom, how do you vote?

24 VICE CHAIR THERNSTROM: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Gaziano.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER GAZIANO: I am sorry. I
2 didn't see the agenda. I'll abstain.

3 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Heriot.

6 COMMISSIONER HERIOT: Yes.

7 CHAIRMAN REYNOLDS: Commissioner Melendez.

8 COMMISSIONER MELENDEZ: Could I ask a
9 question?

10 CHAIRMAN REYNOLDS: Sure.

11 COMMISSIONER MELENDEZ: The agenda has
12 Item II, Program Planning, FY 2009 Statutory Report
13 and III, Future Agenda Items. Is that the agenda
14 we're voting on?

15 COMMISSIONER YAKI: Hello, everyone.

16 CHAIRMAN REYNOLDS: Commissioner Yaki.

17 COMMISSIONER YAKI: I am here.

18 CHAIRMAN REYNOLDS: Very good. So we have
19 the full complement.

20 Mr. Staff Director, will you please
21 respond to Commissioner Melendez's question?

22 STAFF DIRECTOR DANNENFELSER: Yes, that's
23 correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MELENDEZ: Okay. There's
2 just four items I see including the adjournment; is
3 that right?

4 VICE CHAIR THERNSTROM: That's correct.

5 COMMISSIONER MELENDEZ: Okay. Thank you.

6 VICE CHAIR THERNSTROM: We're trying to
7 get out of here fast.

8 COMMISSIONER MELENDEZ: Okay.

9 CHAIRMAN REYNOLDS: So, Commissioner Yaki,
10 we are voting on the agenda.

11 Commissioner Melendez, how do you vote?

12 COMMISSIONER MELENDEZ: I vote yes.

13 CHAIRMAN REYNOLDS: Commissioner Yaki? On
14 the agenda I vote yes.

15 COMMISSIONER YAKI: On the agenda I vote
16 yes.

17 CHAIRMAN REYNOLDS: Commissioner Taylor.

18 COMMISSIONER TAYLOR: Yes.

19 **II. Program Planning, FY 2009 Statutory Report**

20 CHAIRMAN REYNOLDS: Okay. Commissioner
21 Gaziano voted to abstain. The remaining Commissioner
22 voted in favor of the motion. The motion is approved.

23 Next, on January 26th, the Staff Director
24 sent the Commissioners an annotated outline of a 2009
25 statutory report. On February 9th, the Staff Director

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 also sent a memo from the General Counsel with those
2 changes and modifications to the scope of the
3 statutory report.

4 There were basically two proposed changes.
5 The first related to Chapter 2. Instead of a
6 recitation of the various statutes relating to
7 discrimination in housing and/or mortgage lending,
8 there was the summary of the most important aspects of
9 these statutes, and with respect to Chapter 3, the
10 report includes a review of the methods employed in
11 establishing credit scores and the effects of federal
12 civil rights and housing law enforcement on such
13 methods. The recommendation is to limit the analysis
14 to existing data or to make that analysis the subject
15 of a separate briefing report.

16 At this point I open up the floor for
17 discussion.

18 COMMISSIONER MELENDEZ: This is
19 Commissioner Melendez.

20 I have read some of the E-mails that come
21 back and forth. One of the questions has to do with
22 whether or not we were doing original research or just
23 repackaging existing stuff. Was that part of the
24 issue?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: At least one
2 Commissioner has expressed that concern.

3 VICE CHAIR THERNSTROM: Well, this is Vice
4 Chair Thernstrom.

5 I'm unhappy, Commissioner Melendez, with
6 the word "repackage." All of us who are social
7 scientists take existing data, I mean, in writing our
8 ridiculously long Thernstrom & Thernstrom book and
9 this household. We don't have new data, but we do
10 take data from a variety of sources. You, too, can
11 easily -- you also have easy access to other data, and
12 you know, we take an independent look at them.

13 In order to do good social science work,
14 one does not have to reinvent the data wheel.

15 COMMISSIONER MELENDEZ: The other question
16 I had was was the main focus on predatory lending?
17 Was that the major focus of this report or is it kind
18 of other things besides that?

19 CHAIRMAN REYNOLDS: Well, I believe that
20 we would also take a look at HUD's policies, those
21 policies that encourage lending to increase minority
22 home ownership, as well as any effects, any unintended
23 consequences that flow from the Community Reinvestment
24 Act.

1 STAFF DIRECTOR DANNENFELSER: This is the
2 Staff Director.

3 I guess the board point I meant is whether
4 government action may have led to relaxed credit
5 standards in certain aspects of the financial crisis,
6 and in doing that we also began to look at the
7 Community Reinvestment Act, and behind it all there
8 were transmissions being made recognizing among other
9 things --

10 COMMISSIONER GAZIANO: If I could speak.

11 STAFF DIRECTOR DANNENFELSER: As far as
12 predatory lending being a major issue was looked at as
13 well.

14 COMMISSIONER GAZIANO: This is Todd.

15 As I've communicated in previous meetings
16 and communications, I still have two concerns. The
17 first is that while we were seeking a more refined and
18 detailed kind of research hypothesis, what we received
19 last night is at least kind of in the form of a
20 research hypothesis, but still is rather vague.
21 Whether government action -- and "government action"
22 is not defined yet even at this stage -- obviously if
23 you pick a date in time or some database, it can't
24 study government action that happened after that. So
25 you need to define what the government action is that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you're going to test. Otherwise it could be that we
2 still have no direction. We're going to examine 100
3 different government actions.

4 So whether government action may have led
5 to relaxed credit standards, I hope at this point we
6 would have defined that with some more particularity,
7 but without going into that, and then it may have
8 caused certain aspects of the financial crisis.
9 Hopefully I would have expected that we would have
10 defined what those certain aspects are that we were
11 going to try to study since I don't think we should
12 study all aspects of the financial crisis.

13 But that is an example of where I don't
14 think that we have a refined real research agenda.
15 This isn't a thesis that I would think a good Master's
16 student would have if they were really going to go
17 forward. I have, you know, some confidence that we
18 could eventually get there. I'm just very worried
19 that we should have been there a long time ago.

20 The second concern was really expressed
21 very well by Richard Schmechel that it's not really --
22 even if we had this defined research notion, the
23 proposal, the recommendation from staff really hasn't
24 limited anything. I hope we certainly didn't describe
25 every function of every civil rights statute. That was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 never my intent. So I'm not sure the first
2 recommendation really limits very much.

3 The second recommendation that maybe we
4 would abandon the data analysis seems like it comes
5 from nowhere but is a nonstarter, and secondly, it's
6 that we may have to abandon it. But I think we wanted
7 a recommendation so that we, the Commissioners, could
8 actually take some action now to refine the focus so
9 that it's very meaningful, and I don't think we have
10 that right now.

11 CHAIRMAN REYNOLDS: Okay. Marty, is it
12 our intention to merely describe anti-discrimination
13 statutes or do we intend to just select those anti-
14 discrimination statutes that may have had an impact on
15 the financial crisis?

16 STAFF DIRECTOR DANNENFELSER: Well, we
17 define the anti-discrimination statutes, but as far as
18 that's legal, I would like the assurance of the
19 General Counsel and have him elaborate on that point.

20 MR. BLACKWOOD: Yes, this is David
21 Blackwood.

22 Commissioner Reynolds, what I was seeking
23 clarification of is, for example, last year's report
24 we tended to do a recitation. Here's the statute.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 This is what it does, et cetera, and repeated over and
2 over.

3 I thought that did not make sense given
4 the current report, that it is sufficient to summarize
5 those relevant parts relating to our topic and not do
6 page after page after page with the full outline of
7 what the statute says. That could be limited or the
8 actual terms of the statute could be attached.

9 COMMISSIONER GAZIANO: Do we not know what
10 those sections are by now? Couldn't we have gotten a
11 list of which sections you intended to say something
12 about?

13 COMMISSIONER HERIOT: That's what's
14 troubling. I mean, last year I was screaming and
15 jumping up and down over and over again that we spent
16 too much time summarizing statutes, and it seems odd
17 that we have this revelation now that maybe
18 summarizing statutes is not a great idea.

19 I thought we decided that a year ago, and
20 what we should be down to is which sections are
21 relevant to what we're doing, and that I don't see
22 anywhere here.

23 MR. BLACKWOOD: Well, there is a detailed
24 outline of the sections. Pages 1 through 4 are the
25 detailed outline.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: The detailed outline
2 is just what we don't want. The long, long recitation
3 of every statute doesn't say what section is
4 important. It just says, you know, here's a giant
5 statute passes by Congress, and here's another one and
6 here's another one and there's another one.

7 We should be down to like you know very
8 specific sections, very specific wording, and what
9 impacts they have and not just a giant list of
10 statutes.

11 MR. BLACKWOOD: If I may, this is David
12 Blackwood again.

13 The directions that are set forth in the
14 annotated outline is at the direction of the
15 Commissioners in the instructions we got. What I'd
16 like to do is identify those sections which I believe
17 are relevant. So I did not undertake that until I
18 have your all's permission to do so.

19 COMMISSIONER GAZIANO: But the
20 recommendation was supposed to list how we are going
21 to narrow it, and the recommendation simply says we'll
22 look at some of them and we'll only do some of some of
23 them. That doesn't tell us very much.

24 COMMISSIONER HERIOT: Looking at relevant
25 statutory material doesn't mean like the entire Fair

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Housing Act and the entire Truth in Lending Act. You
2 know, we're looking for some very trendy issues that
3 we can study.

4 I think there's a lot of misunderstanding
5 going on here. You know, this stuff about how we
6 don't feel we can create a data set, it never occurred
7 to me in our wildest dreams that we could create a
8 data set. Of course we're going to use existing data
9 sets, but we need to know exactly what are we going to
10 study. What's on the X axis? What's on the Y axis?

11 CHAIRMAN REYNOLDS: Okay. I don't know if
12 anyone is experiencing the same issue that I am. On
13 my end the phone is beeping as Commission Heriot is
14 speaking.

15 (Off the record discussion.)

16 CHAIRMAN REYNOLDS: Well, I think at this
17 point it is clear that the goal is not to repeat what
18 we've done in the past in terms of reciting the
19 statutes.

20 COMMISSIONER GAZIANO: Can I just go back
21 to one other point on this research hypothesis? Even
22 if we get a definition of one of them, it looks like
23 there's lots of potential research hypothesis in the
24 outline. Are we going to eliminate any of them? Is
25 that the proposal? Is that a suggestion?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And maybe if we don't have a suggestion
2 from staff on that we just need to do the hard work of
3 doing it ourselves, but I wish we had -- there are a
4 lot of potential research hypotheses in that outline.
5 I thought we were going to get a recommendation as to,
6 you know, which precise ones we should follow that
7 were going to be meaningful.

8 CHAIRMAN REYNOLDS: The staff was charged
9 with narrowing the scope of the proposed statutory
10 report and also to provide more definition. Overall I
11 think that they have done what we've asked them to do.

12 To the extent that there are shortcomings
13 with the documents they've distributed, I think that
14 we should identify the shortcomings and make
15 recommendations on how they can improve on what
16 they've done so far.

17 STAFF DIRECTOR DANNENFELSER: This is the
18 Staff Director.

19 I may be looking for more clarification on
20 this point, but going back to the transcript of the
21 January 16th meeting, I examined the two hypotheses
22 that Commission Gaziano laid out, and I believe that
23 we are following those two hypotheses, and I'm not
24 clear, and they are in, number one, whether government
25 action that may have led to relaxed credit standards

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 caused certain aspects of the financial crisis; and
2 two, whether there was intentional racial animus in
3 the lending industry that led to a certain type of
4 credit that was --

5 COMMISSIONER GAZIANO: Yes, I thought it
6 was sort of interesting that I saw some of my language
7 finally coming back to me last night, but, yes, that
8 was an example of what I hoped you all would fill in.
9 That was an example of what I hoped you all who were
10 looking at that would provide details.

11 But the idea that, you know, certain
12 aspects meant that you all or we collectively need to
13 figure out what those certain aspects are that we're
14 going to study.

15 STAFF DIRECTOR DANNENFELSER: We laid out
16 some ideas in the proposed briefing, that we're going
17 to examine the Community Reinvestment Act. We're
18 going to examine the HUD goals that were established
19 with Fannie Mae and Freddie Mac, and then we were
20 going to examine predatory lending. We listed the
21 types of witnesses that we would propose to invite on
22 both sides and different positions on the various
23 issues. We could have a balance with respect to them.
24 We welcome feedback from the Commissioners on that
25 proposal.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: That might be back
2 the same as it always has been, and that is we need
3 something very, very, very, very, very, very, very,
4 very, very, very specific and it is not here.

5 STAFF DIRECTOR DANNENFELSER: Okay. Then
6 please give it to us.

7 CHAIRMAN REYNOLDS: Well, the problem is
8 though that Commissioner Heriot's views at least on
9 this point aren't shared by everyone. For example, my
10 approach, I like the approach of narrowing the scope
11 and the fashioning that we're doing now. It's
12 gradual, and it's through discussion, and it's a
13 refinement process.

14 I mean, you know, do we have specific
15 things in mind? You know, we can criticize staff
16 forever saying that this is not what I asked for, but
17 we need to reach a consensus.

18 COMMISSIONER GAZIANO: What government
19 actions are we going to study? This is an enforcement
20 report. Which government actions are we going to --
21 you know, of course, I said I want you to identify
22 which government actions, and what we get back is
23 we're going to study government actions. All of them?
24 Are we going to study all of them, some of them?
25 Which ones?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Commissioner Gaziano,
2 I am struggling to understand. I'm looking at a
3 document that has listed numerous statutes that may
4 have had an impact on the financial crisis. The Equal
5 Credit Opportunity Act, the Community Reinvestment Act
6 are two examples.

7 COMMISSIONER GAZIANO: There are two
8 issues going on. We agreed in October it was too
9 broad and we would have to narrow it, and the proposal
10 to narrow it is that we would study government
11 actions. Which ones?

12 CHAIRMAN REYNOLDS: The ones that are
13 listed.

14 COMMISSIONER GAZIANO: All of them?
15 That's not a narrowing. That's not a narrowing from
16 October. If we're going to study all of them, then
17 nothing is narrowed.

18 STAFF DIRECTOR DANNENFELSER: Okay. Tell
19 us which ones. Do you not want to study the Community
20 Reinvestment Act? Do you not want to study the HUD
21 goals? Do you not want to study what's in the Freddie
22 Mac bids? Do you not want to study what happened on
23 Wall Street? Tell us what you don't want to study and
24 then we will narrow it down to those one or two --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: Now, wait a
2 minute. We will only narrow it down --

3 COMMISSIONER YAKI: I may not agree with
4 it either. This is Commissioner Yaki I may not agree
5 with that kind of narrowing either.

6 VICE CHAIR THERNSTROM: Yes, exactly.

7 COMMISSIONER YAKI: Don't go bargaining
8 away before you know what kind of support you have for
9 the position you have currently got.

10 VICE CHAIR THERNSTROM: Exactly. Thank
11 you.

12 COMMISSIONER GAZIANO: Some of us thought
13 that this was a little unmanageable, and we might have
14 accepted, or at least I hope we all would have
15 accepted a lot of different options. What we were
16 promised was this process where based on, you know,
17 some serious study we would get a couple of maybe
18 fruitful options we could go.

19 To not know where we are going at this
20 point is very problematic, putting aside, you know,
21 what exactly the focus should be.

22 VICE CHAIR THERNSTROM: I have a question
23 for the Staff Director. This is Abigail Thernstrom.

24 Marty, do you think it is accurate to say
25 we don't know where we're going?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 STAFF DIRECTOR DANNENFELSER: No, I don't.
2 I think we don't have a conclusion yet because we
3 haven't looked into the different essential problems.
4 My suspicion is that we're going to find a variety of
5 factors that contribute, and if that's what we're
6 looking at, there's a great deal of discussion in the
7 public that the Community Reinvestment Act was the
8 starting point for this problem. There are people who
9 believe that the HUD goals might have been too
10 ambitious that were set for Fannie Mae and Freddie
11 Mac. There are others who say that the securitization
12 on Wall Street did this, that maybe that Fannie Mae
13 and Freddie Mac tried to compete with Wall Street, and
14 they got in at the wrong time as the housing bubble
15 was collapsing.

16 So if we want to look at these types of
17 things, we proposed we invite different witnesses to
18 come, and then we will see where the facts lead us,
19 but we don't have a conclusion at this point. But
20 like I say, my --

21 COMMISSIONER GAZIANO: If the majority
22 wants to examine all of that, then we're back in
23 October Land, and I disagree. I think it is much more
24 fruitful if we -- by the way, anyone who thinks that
25 any one of those caused it all is probably a fool. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 think it is much more fruitful if we try to figure out
2 what the effect was of a particular one or two
3 government actions, and there in theory are ways we
4 can test what the likely effect is maybe on some
5 mortgage failure rate and then let others conclude
6 whether the mortgage failure rate had anything to do
7 with anything that anyone cared about.

8 But that to me is more valuable, and I
9 thought that's where we were in October. We're back
10 to saying we're going to do it all, and then we're
11 going to conclude in September? We're going to write
12 it up in September and see if we've done anything
13 valuable?

14 VICE CHAIR THERNSTROM: I would ask the
15 Staff Director is that a fair description.

16 STAFF DIRECTOR DANNENFELSER: The Staff
17 Director has a technical point. I have just been
18 handed a note, which is to remind people to identify
19 yourselves for the court reporter.

20 VICE CHAIR THERNSTROM: That was Abigail
21 Thernstrom asking the Staff Director to say whether
22 that is a fair description.

23 STAFF DIRECTOR DANNENFELSER: I think I
24 should go through the research. We are going to look
25 at government actions that took place. We are going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to then have time lines to see what kind of time lines
2 in terms of foreclosure rates and so on that occurred
3 synonymous with those time lines or subsequent to
4 those time lines.

5 In any event, we will likely let people
6 draw their own conclusions at that point and see if
7 there's some kind of pattern, but hopefully the
8 Commissioners will make the final findings and
9 recommendations, but we will try to gather the data
10 and see how the data connects with different events
11 that took place over time.

12 CHAIRMAN REYNOLDS: Okay. This is
13 Commissioner Reynolds.

14 I have a question for the General Counsel.
15 Mr. Blackwood, on page 2 of your memo, you talk about
16 a review of the methods employed in establishing
17 credit scores and their effects on federal civil
18 rights and housing law enforcement on such methods.
19 Could you unpack that for me so that I could get a
20 better sense of what you're talking about?

21 MR. BLACKWOOD: Sure. This is David
22 Blackwood. What I wanted to address was where we
23 started from -- when the Commissioners first discussed
24 credit scoring, which was possibly doing some original
25 research. At the last meeting of June 16 I expressed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some concern about following that original proposal
2 and at that time Dr. Lerner addressed several
3 questions. I believe from Commissioners Heriot and
4 Gaziano with knowing that the adoption to any
5 additional research with that said given that we were
6 going to limit it. I'm still concerned, if we are
7 biting off too much so at that time I met with Dr.
8 Lerner. We reviewed that the scope would be that would
9 work within the time frame of preparing the report.

10 He assured me, and I agree at this stage,
11 that we can do that if we keep it within the framework
12 of a limited review focusing on the existing data and
13 his analysis of what that data means.

14 What I did want to alert the Commissioners
15 was, one, yet again what Dr. Lerner said. This is
16 going to be more limited than was originally proposed,
17 and two, that I did have a separate concern not as to
18 the value of this information for the report, but that
19 time frame-wise, I wanted to put you all on alert that
20 in the event that there is a time constraint, this is
21 the one section of the report that I could see
22 removing based on time constraints.

23 I also mentioned in the memo that because
24 I do believe this is a valuable topic, that if it
25 appears that it cannot appear in this report, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Commissioners might nonetheless consider bringing it
2 up as a separate topic later in the year or some other
3 time.

4 CHAIRMAN REYNOLDS: Well, David, what's
5 your concern? I mean, if you have gotten together
6 with Dr. Lerner and you have narrowed the scope,
7 narrowed the review, and I assume based on what you
8 said that you're both comfortable that after narrowing
9 the scope of the review that you can do it within time
10 lines, I'm not sure why we have further discussions
11 about jettisoning this portion.

12 MR. BLACKWOOD: This is David again.

13 I just wanted to be fair because in my
14 mind, going back to when this topic was originally
15 discussed, several Commissioners specifically wanted
16 this addressed and wanted it addressed in a broader
17 way, that our recommendation is, one, we cannot do it
18 in a broader way, but, two, if those Commissioners
19 wanted to preserve this as a topic to be viewed in
20 depth, they should understand that that would have to
21 be done separately.

22 CHAIRMAN REYNOLDS: Okay. So right now
23 where we are you've narrowed the scope. We're not
24 talking about original research. You're --

25 COMMISSIONER GAZIANO: How is that narrow?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: David, if I understand
2 you right, we're going to narrow the scope; that
3 you're comfortable that we can get this done within
4 our time frames.

5 MR. BLACKWOOD: That is correct, and when
6 I say -- Commissioner Gaziano was just asking in what
7 way this would be narrowed. As originally discussed
8 when the topic was voted on, it was contemplated that
9 we might do extra data runs or try to cooperate with
10 the Fed. or get the Fed. to turn over what has turned
11 out to be proprietary information and do original
12 data.

13 That has just not happened, and that is
14 what I was trying to address.

15 COMMISSIONER HERIOT: It seems to me we
16 sometimes had some confusion between original research
17 and new data sets. Those are two different things.
18 You know, this notion of, you know, we are not going
19 to create our own data set, of course we are not going
20 to create our own data set. By not doing original
21 research, we simply mean a survey of the literature.
22 You know, I think that is not worth doing.

23 STAFF DIRECTOR DANNENFELSER: This is the
24 Staff Director.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think we have had some confusion because
2 we have several social scientists among our group and
3 others who are not, and I think there is confusion
4 about the terms at times when we talk about original
5 research and data sets and so on. But let me turn to
6 Dr. Lerner to try to elaborate on that.

7 DR. LERNER: Yes, this is Robert Lerner.

8 Essentially what we propose to do, as
9 David has talked around, is to review the existing
10 study and to comment on it and use data to comment.
11 Given the time constraints --

12 COMMISSIONER HERIOT: Like a graph in an
13 article?

14 VICE CHAIR THERNSTROM: Can I hear the
15 rest of Dr. Lerner's comments, please?

16 DR. LERNER: All I was going to say was
17 within the time constraints that we have scheduled
18 that we have to meet in order to make our deadlines,
19 the kind of write-up that Mr. Blackwood and I have
20 discussed I think that's feasible, I think it will add
21 something to the report, and I think it can be done.

22 CHAIRMAN REYNOLDS: Commissioner Heriot,
23 do you have a comment or a question?

24 COMMISSIONER HERIOT: I'm sorry. Yes, my
25 question was whether or not when we talk about using

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 data from the literature we're simply talking about,
2 you know, taking a graph that's in a particular
3 article or are we talking about going back to data
4 that went into that article.

5 DR. LERNER: Yes. First of all, there is
6 not a literature. There is one study, a path
7 breaking, landmark study done by the Federal Reserve
8 on the issue of credit scoring and validity with
9 respect to predicting mortgage outcomes and validity
10 with respect to whether it can predict differently for
11 members of different racial and ethnic groups.

12 Our standards review the literature. I
13 have also sent this out to independent statisticians
14 who agree with us that this is a sound study and
15 they've done a great job. Therefore, we're going to
16 discuss it in some detail as part of this report.

17 COMMISSIONER GAZIANO: This is Todd
18 Gaziano.

19 When we were talking in January, I suppose
20 it is a tiny, tiny, tiny narrowing that you're not
21 going to be doing extra data runs. That seemed at
22 least possible in January.

23 I also remember you telling me that you
24 may run some different confidence tests on it. Is that
25 no longer being contemplated either?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 DR. LERNER: Yes, that is correct. It is
2 our belief that given the time constraints under which
3 we are operating and given the difficulty we have had
4 so far in obtaining either access to the data
5 ourselves or the availability of going to the Fed. to
6 do the runs for us, given the fact that the
7 information that we would get is not sufficient, we
8 cannot justify it.

9 COMMISSIONER GAZIANO: Well, this one,
10 somewhat -- Gaziano again -- somewhat tiny narrowing
11 is a major disappointment. It's the one area that
12 seemed somewhat interesting, but I also wish since I
13 don't have a special assistant, maybe I can borrow Mr.
14 Schmechle sometimes because he seems to have pointed
15 out how. It's also unclear from the memo are we going
16 to do every other kind of analysis that was set forth
17 in the outline.

18 MR. BLACKWOOD: This is David Blackwood.

19 I'm not sure I understand what analysis
20 you're referring to.

21 COMMISSIONER GAZIANO: Well, the actual
22 analysis isn't exactly described in the outline. They
23 have some sort of issues, and there's a whole bunch of
24 other issues kind of identified in the outline which
25 potential analysis could be done. It is just still

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unclear to me, except for this one very disappointing
2 piece of news that we're not going to do something
3 that I thought for the past several months was being
4 looked into, that the scope of the review is being
5 narrowed at all.

6 VICE CHAIR THERNSTROM: This is Vice Chair
7 Thernstrom.

8 I don't understand this rather
9 disappointing news. This is not new news. This is
10 what we discussed at the last Commission meeting or
11 the one before. I can't remember which.

12 COMMISSIONER GAZIANO: What I have just
13 under -- you know, there was going to be some
14 different analysis done on the data set that was used
15 in the Fed. study. Our social scientists were going
16 to sort of confirm through new tests. Now I'm told
17 that they're going to just sort of report on it.
18 They're going to report on this study. They're going
19 to highlight it.

20 That's kind of disappointing to me.

21 VICE CHAIR THERNSTROM: Is that an
22 accurate description? I'm sorry. Is that an accurate
23 description, Dr. Lerner and David Blackwell?

24 MR. BLACKWOOD: Well, this is David
25 Blackwell.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 All I can say is that this was discussed
2 on January 16th, and at that time I expressed my
3 concern that expanding or keeping it in a broad
4 parameter would prohibit us from including it in the
5 report.

6 COMMISSIONER GAZIANO: Let's be specific.
7 We were contemplating different runs. We were
8 contemplating different ways of verifying the
9 confidence level. That's not contemplated right now,
10 is it?

11 MR. BLACKWOOD: No, it is not.

12 COMMISSIONER GAZIANO: Okay. So
13 essentially you're just going to highlight that study.

14 MR. BLACKWOOD: That is correct.

15 COMMISSIONER GAZIANO: Okay.

16 COMMISSIONER MELENDEZ: Could I ask a
17 question? Commissioner Melendez.

18 As far as the study we're talking about,
19 did that study -- was that done recently, and did it
20 basically pertain to the economic meltdown in the
21 lending/housing part of this whole situation that the
22 country is in?

23 I'm trying to get a handle as to what
24 you're referring to as the study we're going to refer
25 to.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BLACKWOOD: It's a 2007 study done by
2 the Federal Reserve. I don't have the official title
3 right in front of me, but I think it's in the outline.

4 Does it address the meltdown directly?
5 No. That wasn't its purpose, but the Commission
6 specifically had wanted us to address to the extent we
7 could credit scoring, and this, as Dr. Lerner says,
8 seems to be a primary, most timely, and most
9 comprehensive study of this kind.

10 DR. LERNER: May I?

11 MR. BLACKWOOD: Yes, go ahead.

12 DR. LERNER: This is Bob, Dr. Lerner.

13 The official title of the study is the
14 Report to the Congress, Credit Scoring and its Effect
15 on the Availability and Affordability of Credit. It
16 was submitted to the Congress in August 2007 in
17 response to legislative directive that Congress had in
18 2003 directing the Federal Reserve system to
19 investigate this issue.

20 So that's the report. The report is
21 available on their Website. Anybody can download it.

22 CHAIRMAN REYNOLDS: Okay. At this point,
23 unless we have some more --

24 COMMISSIONER MELENDEZ: I have a question
25 again.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER MELENDEZ: Based on, you know,
3 the question of everybody in the country asking what
4 was responsible for the meltdown and the economy, are
5 we saying that everybody would refer to this report
6 that has all the answers to what everybody is asking
7 as to what was the reason for how everything was
8 implemented that would lead to where we are today?

9 I guess my question would be are we trying
10 to in some way further go into more original research
11 to answer some questions that may not have been
12 answered in this study that has been done in 2007. I
13 guess that's what I'm trying to get a handle on.

14 MR. BLACKWOOD: David Blackwood again.

15 No, this is not an omnibus report that
16 would explain what happened on Wall Street. That's
17 well beyond the level of our enforcement report. I
18 would refer you though to Chapter 4 of the outline,
19 Subparts A and B, which come directly out of the
20 project outline approved by the Commissioners before,
21 that we're really looking at the extent to which any
22 government policies, any questions, specifically the
23 HUD guidelines and the Community Reinvestment Act,
24 rendered to minority individuals and others, similarly
25 situated, vulnerable, financial distress, and a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 heightened risk of default, thus undermining the goal
2 of the minority home ownership. That's A.

3 And B, the examination of any evidence
4 that minority homeowners in particular have been
5 unfairly targeted or otherwise treated in a
6 discriminatory way by any lender or lending policy,
7 and the extent to which the current policies have
8 encouraged such targeting.

9 CHAIRMAN REYNOLDS: Commissioner Melendez,
10 is that responsive?

11 COMMISSIONER MELENDEZ: Well, has all of
12 the Commission read that report or is it something
13 that's really long? What is it? How many pages is
14 it? Because I haven't really.

15 DR. LERNER: Commissioner Melendez, may I
16 answer your question? Yes, the report is very long.
17 Although it was submitted to Congress, I don't think
18 that probably very many people read it. It's well
19 over 100 pages long. It's crammed full of tables. It
20 has some fairly statistical apparatus. I would guess
21 probably most people haven't read it.

22 My staff and I have read it thoroughly,
23 and as I had mentioned earlier, I have also sent it
24 out to friends and colleagues of mine or statisticians
25 and scientists to get their feedback on it. It's one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the reasons that I believe it is useful to be
2 included in the report. It's just a discussion that
3 Mr. Blackwood outlined. It is precisely because no
4 one has read it because it's so technical, it's
5 complicated, it's difficult to read. I said that as
6 someone who is a statistician. So, therefore, I would
7 assume if this was the general public, they would have
8 difficulty.

9 So I think just bringing the study to
10 light and discussing it in some detail, my personal
11 opinion, if I may be permitted, is it's a contribution
12 to the report or any other research that the
13 Commission would choose to do on the subject.

14 COMMISSIONER MELENDEZ: How do the
15 Commissioners feel about the report? If you
16 understood it totally, does that kind of help us in
17 determining whether or not that report is something
18 that moves us forward with the support of the way
19 we're going now? Are we saying that we kind of don't
20 know what's in the report, and unless somebody
21 summarizes it for us and we kind of get kind of some
22 grip as to what's actually in it, it doesn't
23 adequately answer what we're trying to find out.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BLACKWOOD: Are you talking about the
2 -- this is David Blackwood -- the present study itself
3 or something else?

4 COMMISSIONER MELENDEZ: What I'm talking
5 about is you're referring to a report that I don't
6 really know what's in it, whether or not it satisfies
7 where we're going here. I would like to know a
8 summary of what's actually in that report. If we're
9 saying we're just referring to highlighting it in our
10 statutory report, what's in there? I'd like to know
11 whether or not to me what's in there is adequate, as
12 my feeling of what's in there. I just don't know
13 what's in that report, whether it's old material or
14 even relevant to what has happened.

15 CHAIRMAN REYNOLDS: Dr. Lerner, please
16 send Commissioner Melendez a copy of the report and a
17 summary of what's in it, and if any other
18 Commissioners would like that information, just let
19 Dr. Lerner or Marty know.

20 STAFF DIRECTOR DANNENFELSER: Okay.

21 DR. LERNER: Thank you.

22 VICE CHAIR THERNSTROM: This is Vice Chair
23 Thernstrom.

24 I just have one additional point to make
25 here. Look. Summaries, I mean, for those of you who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are attorneys certainly know this. I know this as
2 somebody who writes on the law. I mean, all the time
3 I look at Supreme Court and other judicial decisions.
4 I summarize them because it is an important
5 contribution to look at what others have written, in
6 this case judicial opinions, and to say, "Look, folks.
7 Here's what's in them," to tease out the basic
8 responses to questions that are legitimately asked.

9 And I think that that's what we're doing
10 here.

11 COMMISSIONER GAZIANO: This is Todd.

12 I don't think anyone is saying that
13 summaries are never worth anything. They're just not
14 what is our highest value use.

15 But with regard to this one study, to
16 connect it to our enforcement statutory report, I
17 think some of the government actions that were
18 mentioned by Staff Director actually post date some of
19 the factors that other scholars have said led to the
20 relaxed credit scoring, and by the way, there may be
21 several things that led to this alleged relaxation and
22 reliance on credit scoring.

23 I think Liebowitz had some arguments about
24 what they are. Does the Commission know at this
25 point? Does staff? Shouldn't Commissioners by this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 point know which government actions we're going to try
2 to connect with that if we're going to rely on this
3 study?

4 If we're going to rely on this study, and
5 it may be a valuable one, oughtn't we to know right
6 now kind of the range of government actions we're
7 interested in looking at?

8 CHAIRMAN REYNOLDS: Well, with respect to
9 credit scoring, I mean, credit scoring was an attempt
10 to demonstrate a lack of bias, you know, the folks
11 pointing out racial disparities and lending, and I
12 believe the industry responded by trying to come up
13 with what it believes was an objective, neutral and
14 nonbiased way of allocating credit.

15 COMMISSIONER GAZIANO: It did, and then
16 there was pressure. The argument is there was
17 pressure from government entities for lenders not to
18 use credit scores if they had a disparate impact.

19 CHAIRMAN REYNOLDS: yes.

20 COMMISSIONER GAZIANO: Okay. What were
21 those government actions? Ought we not be quite clear
22 on that by now so that if we're going to have a
23 briefing, for example, we call the right people, so
24 that those of our staff who are conducting further
25 research, interrogatories -- preferably, it seems to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 me, that we should have focused on this in September
2 or October. There are some allegations about an
3 earlier Boston Fed. study that was mischievous,
4 resulted in some changes, if I recollect, to lending
5 manuals.

6 Are we pursuing this? There are some
7 other suggestions. Are we pursuing them all? Because
8 it would matter what period of time we're looking at.

9 CHAIRMAN REYNOLDS: Well, I think that
10 those are very good points, and I think that all
11 Commissioners after this meeting should compile their
12 suggestions and to further assist the staff in
13 focusing their efforts. I don't know if staff has
14 already considered the issues that you just put on the
15 table, but to the extent that they haven't, I think
16 that they should, and to the extent that other
17 Commissioners have additional recommendations, we
18 should submit them to staff.

19 VICE CHAIR THERNSTROM: Mr. Chairman, this
20 is Abigail Thernstrom, Vice Chair.

21 My only concern about that suggestion of
22 yours is that if the staff gets a medley of different
23 suggestions that has not been -- that may be those of
24 one Commissioner only, maybe two Commissioners agree,
25 but in any case, it's a, you know, hodgepodge list of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 suggestions. I'm not sure that we are facilitating
2 the work of the staff.

3 COMMISSIONER GAZIANO: I would much rather
4 the Commission members as a whole identify what
5 factors we think may be relevant. I endorse the --

6 VICE CHAIR THERNSTROM: Or why don't we --

7 COMMISSIONER GAZIANO: -- I endorse the
8 Vice Chair's basic point, but the problem is we have
9 not done it yet, and the problem is that what we focus
10 on and what the staff is focusing on might vary
11 depending on the answer to that question.

12 VICE CHAIR THERNSTROM: But it's certainly
13 possible for Commissioners to circulate ideas, is it
14 not, Mr. Chairman, amongst themselves and see if we
15 can't arrive at a few manageable suggestions that the
16 staff would feel, again, are doable?

17 CHAIRMAN REYNOLDS: The suggestion made by
18 you and Todd, I believe it's a good suggestion. In
19 order for it to work, we all need to set aside the
20 time to either make recommendations, but definitely to
21 review the recommendations that are submitted by other
22 Commissioners.

23 COMMISSIONER GAZIANO: Should we seek
24 recommendations from the staff that has been studying
25 this? That's what I was hoping for.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Okay. I thought that
2 we were --

3 COMMISSIONER GAZIANO: Maybe we've got to
4 give up on that at this point.

5 CHAIRMAN REYNOLDS: Well, the proposal as
6 I understood it was that we were going to digest what
7 has been discussed today, identify areas where we
8 could refine the approach that staff has set forth in
9 the outline, and what we would do, we would circulate
10 recommendations amongst ourselves. That is how I
11 understood at least Vice Chair Thernstrom's
12 recommendations.

13 And at one point I thought that you were
14 in agreement, but apparently I was wrong.

15 Vice Chair Thernstrom, did I characterize
16 your recommendations?

17 VICE CHAIR THERNSTROM: You have it right.

18 CHAIRMAN REYNOLDS: Anyone else want to
19 weigh in on a recommendation?

20 (No response.)

21 CHAIRMAN REYNOLDS: Okay. Well, then
22 let's, in this particular case, let's interpret the
23 silence to mean that that's what we're going to do.

24 COMMISSIONER GAZIANO: Or exhaustion.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER HERIOT: Let me just say one
2 thing, why I think it's difficult, why we're having
3 problems here. It's very difficult to produce a
4 hypothesis unless we know what the data set is like.
5 That's, I think, why we are -- it's very difficult to
6 have the Commission come up with a refined hypothesis
7 since we don't know what it is we're testing it
8 against.

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER MELENDEZ: Could I ask
11 another question?

12 CHAIRMAN REYNOLDS: Yes.

13 VICE CHAIR THERNSTROM: Wait a minute.
14 Could I have a response to that from -- I don't know -
15 - David Blackwood, Dr. Lerner, Staff Director? I
16 don't care.

17 MR. BLACKWOOD: Well, this is David
18 Blackwood.

19 All I can say is that from the beginning,
20 and I'm referring specifically to our October 30, 2008
21 project outline which was adopted by the
22 Commissioners, to point out the issues that we are
23 going to review, including specific government
24 actions, such as -- I'll say actions and/or policies
25 -- the Community Reinvestment Act and the HUD

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Guidelines and whether that had an adverse or
2 beneficial effect on minority home ownership.

3 And our outline, the detailed outline that
4 was just submitted, those same headings, those same
5 sections are, again, restated, and they are restated,
6 for example, as the Staff Director mentioned, in the
7 comments by Mr. Gaziano in the transcript of January
8 16th. Those are the two main prongs of government
9 actions that we are looking at.

10 The third prong of the report is what was
11 previously discussed about predatory lending. Did any
12 particular lending practices specifically with regard
13 to, say, subprime and Alt. A loans, was that
14 specifically targeted towards minorities or low income
15 borrowers?

16 On all three of these topics we believed
17 it is existing information because we have seen it
18 from a variety of federal agencies showing how -- I
19 won't say directly how these policies have affected,
20 but the information exists when we tie it together and
21 synthesize it to show one way or another how home
22 ownership was affected and whether it had a
23 disproportionate effect on minorities.

24 That is how we intended to proceed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: Now, I mean, I'm
2 trying to say it, but I am very satisfied with what
3 the staff is doing at this point, and I would have a
4 preference for letting them go ahead further and
5 putting on hold more Commission interference at this
6 point.

7 COMMISSIONER GAZIANO: Interference? We
8 haven't narrowed it one iota, except that we're not
9 going to do some of the stuff that seemed rather
10 promising.

11 We adopted the October paper with the
12 caveat that we were going to narrow it, and when
13 things like CRA were mentioned, that we weren't
14 assuming that those were going to be the exclusive
15 causes of anything.

16 And so if the majority -- we seemed to
17 have a majority that we were going to narrow the
18 topic, and we seemed to have a majority we were going
19 to narrow it long before now. If the majority is
20 changing its mind right now, that's a serious problem,
21 and if we don't move faster to do it, I'm not sure
22 it's not too late now anyway.

23 But if we don't move very fast in doing
24 so, it's going to be a better problem.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: At this point I'm not
2 sure how much value there is in continuing. My
3 recommendation is that, Commissioners, to the extent
4 you have suggestions with respect to the outline and
5 the manner in which the General Counsel has attempted
6 to narrow the scope of the statutory report, let's put
7 it -- let's get these recommendations. Let's
8 distribute them. Let's have conversations, and then
9 let's provide back guidance. Let's provide some
10 guidance to staff to the extent we have a consensus.

11 COMMISSIONER GAZIANO: Well, at a minimum
12 I suppose we're not overruling our prior commitment to
13 discuss this at every single one of our meetings, and
14 it seems to me we need to make sure to reserve
15 sufficient time at each of our meetings if we're going
16 to continue down this road.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER GAZIANO: We're not punting
19 to the staff at this point, in other words.

20 CHAIRMAN REYNOLDS: Okay. So --

21 COMMISSIONER GAZIANO: With our additional
22 submissions.

23 CHAIRMAN REYNOLDS: Well, just to make
24 sure that I understand, well, I don't recall that we
25 committed to having monthly discussions of the issue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER GAZIANO: We did.

2 CHAIRMAN REYNOLDS: Okay. I'll defer to
3 your memory. I think it's a good idea. So unless
4 someone else has a objection or wants to revisits what
5 we apparently agreed to in the past, I think that,
6 Marty, you should at the point of your Staff
7 Director's report include an update of where we are in
8 terms of the statutory report.

9 COMMISSIONER GAZIANO: But is this --
10 again, I don't know how we can get this train, if it
11 exists, back on the tracks, but is it really -- I
12 don't know that we really need to take the vote. Are
13 we really going to narrow this report or are we not?

14 CHAIRMAN REYNOLDS: Well, I'm not sure
15 that we're going to vote on anything today. The
16 purpose was to have a discussion and provide
17 additional guidance to staff. At least that's my
18 understanding of the purpose of this teleconference.
19 And there is a difference of opinion over whether what
20 staff has done is sufficient.

21 I think that Abby has already indicated
22 her views on that point. Pete, Ashley, Michael,
23 Arlan, please share your views.

24 COMMISSIONER KIRSANOW: Mr. Chairman, this
25 is Kirsanow.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR THERNSTROM: And, Gerry, I also
2 have a question relevant to this discussion. Could I
3 just interject for now with that?

4 COMMISSIONER KIRSANOW: Go ahead.

5 VICE CHAIR THERNSTROM: Look. As I think
6 about it, I'm not sure how this process is going to
7 work and what the time frame is, and the RAIs do say
8 that Staff Director has the ultimate, you know,
9 discretion or authority to judge this stuff. I think
10 in our discussions from this point on, we ought to
11 keep that in mind.

12 But anyway, go on.

13 COMMISSIONER KIRSANOW: Well, this is
14 builds on your question.

15 COMMISSIONER HERIOT: -- any discussion
16 over anything.

17 CHAIRMAN REYNOLDS: One at a time. Pete
18 was up next. I believe, Pete, do you want to defer to
19 Gail.

20 COMMISSIONER KIRSANOW: I'll defer to Gail
21 for a moment.

22 VICE CHAIR THERNSTROM: I think Pete was
23 about to build on what I was just going to say. So I
24 would really like Pete to -- I'd like to hear him.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Well, we will, but
2 he's willing to defer to Gail. Gail, do you want to
3 respond?

4 (No response.)

5 COMMISSIONER GAZIANO: Her phone seems to
6 be going in and out.

7 COMMISSIONER KIRSANOW: Okay. Let me step
8 in then. Yes, I was building on what Abby just said,
9 and one has to do with timeliness. Having reviewed
10 the outline, it looks like an ambitious undertaking,
11 and I think Todd is raising some very reasonable
12 points.

13 I do think -- well, I do have one question
14 primarily, and I think it has been answered by General
15 Counsel, but I'd like to move it to the Staff
16 Director/General Counsel and to Dr. Lerner.

17 Given the current frame of the outline, if
18 no other changes were made, and I mean that to say
19 that no significant changes were made to it, is this
20 something, given the time frame that we have in order
21 to issue a statutory order, that you have assessed as
22 doable, you know, getting out the statutory report in
23 a timely fashion?

24 MR. BLACKWOOD: This is David Blackwood.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I take it and agree with your assessment
2 that it is ambitious. I also believe that it is
3 totally doable. We took on an ambitious project in
4 2007 on the deseg. project. We got it done.

5 My background is as trial lawyer. I'm
6 very cognizant of deadlines. We will meet the
7 deadline. If however -- and keep in mind that I
8 originally proposed monthly kind of updates from those
9 working on the report -- if we believe or we find out
10 that, for example, as interrogatory answers come in,
11 that we are not able to address a particular section
12 or a particular issue, I will send up a flare
13 immediately.

14 But at this stage, based on the public
15 information we have already reviewed, yes, I believe
16 we can accomplish the goal and on a timely basis.

17 COMMISSIONER KIRSANOW: And I guess that
18 -- now, I don't want to put words in anybody's mouth
19 -- but Staff Director and Dr. Lerner concur?

20 STAFF DIRECTOR DANNENFELSER: Well, Dr.
21 Lerner would like to speak and then I'll comment.

22 DR. LERNER: Yes. Given the way the
23 report is structured now, the one word answer is, yes,
24 I believe we can do it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER KIRSANOW: And let me just
2 say I'm not holding you to this. I've been to this
3 rodeo before.

4 COMMISSIONER GAZIANO: I am.

5 COMMISSIONER KIRSANOW: I know the
6 difficulties inherent to it. I mean, I understand
7 based on what the General Counsel said that at some
8 point, you know, he may say, "Whoa, we're getting in
9 kind of deep here. We may have to reassess."

10 But I'm taking this also to be a response
11 that this is something that is, while ambitious, it's
12 manageable.

13 COMMISSIONER GAZIANO: I'm sure you can
14 cover all of these topics very thinly. We committed
15 in October we were going to focus. I thought a
16 majority of us would rather focus it. So let's just
17 be clear. You can always do something. What's the
18 result?

19 CHAIRMAN REYNOLDS: Well, I think at this
20 point it's premature. We don't have sufficient
21 evidence to conclude that we're going to get a product
22 that is thin. I would hold David and Marty
23 responsible for getting this done on time, along with
24 Dr. Lerner, and to the extent that they discover
25 problems that require us to reconsider an approach, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would expect them to let us know as soon as they have
2 concluded that this discussion is needed.

3 I do not expect the staff to produce a
4 shoddy document. I'm expecting a document that is
5 going to add to the discussion. Right now the
6 financial crisis is topic number one. The housing
7 component of it, arguably, triggered this meltdown,
8 and I expect that whatever we produce will be useful,
9 will be useful and will increase understanding of how
10 we got to the situation that we are in today.

11 STAFF DIRECTOR DANNENFELSER: This is the
12 Staff Director.

13 One of the next steps that we have here in
14 this process is the briefing that we propose for March
15 20th, and that was the second memo that was included
16 that was sent to the Commissioners, and I guess at
17 this point I'd just like to see if we are clear to
18 move forward on that and would welcome any specific
19 recommendations.

20 We laid out a number of different names,
21 proposed potential people to invite to be witnesses
22 and in other cases representatives of HUD,
23 representatives of Fannie Mae, Freddie Mac, and so on.
24 If we have some feedback from the Commissioners on
25 that as to how we might produce specific people or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 perhaps eliminate some of those on the list or add
2 some other names or organizations that are not on the
3 list, we would welcome that information, but would
4 also like the Commissioners' approval to move forward
5 and to start inviting people because we are only about
6 six weeks away from that point which we have to have
7 this hearing.

8 COMMISSIONER GAZIANO: A brief point of
9 order. Is Commissioner Heriot still on the line?

10 COMMISSIONER HERIOT: Yes, I'm here.

11 COMMISSIONER GAZIANO: Okay. We lost you
12 for a minute.

13 COMMISSIONER HERIOT: Yes, sorry.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER GAZIANO: I'm a little, as I
16 said in an E-mail, a little uncomfortable confirming
17 witnesses when we still haven't known the topic and we
18 still don't know what government action we are looking
19 at or which government actions and what government
20 effects and what aspects of the financial crisis we
21 care most about.

22 If it's the majority's view, we didn't
23 quite finish the round robin, that we should just
24 examine it all, then maybe I'd have a different set of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 witness lists or witnesses I'd prefer for the witness
2 list.

3 VICE CHAIR THERNSTROM: I somehow think
4 you can come up with witnesses that answer your
5 questions. You know, let's not try to slow this up
6 and stop the staff from moving forward.

7 COMMISSIONER GAZIANO: I have certainly
8 not tried to slow it up. I'm just concerned that
9 since we have slowed it up and we haven't answered a
10 question about focus, it gives me concern whether
11 we're going to have a good briefing in March and
12 whether we ought to postpone the briefing in March
13 because we haven't done our job, and I mean we as
14 Commissioners.

15 VICE CHAIR THERNSTROM: Well, I really
16 think you can come up with --

17 MR. BLACKWOOD: If you do postpone things
18 along the way, then we are not going to meet the
19 deadlines that the General Counsel talked about. I
20 think that the proposal for this briefing is very
21 specific. In Panel 1 we propose to look into the
22 Community Reinvestment Act, what affect that might
23 have had. Panel 2, HUD lending goals and is that
24 something Mae and Freddie Mac. Panel 3, predatory
25 lending and the mortgage crisis.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 They are three very specific areas that we
2 propose to look into, and that has been debated and
3 mentioned that it's possible culprits, if you will, in
4 this crisis.

5 CHAIRMAN REYNOLDS: This is Commissioner
6 Reynolds.

7 I recommend that to the extent you're not
8 satisfied with the list of organizations and
9 individuals who are on the list, that you submit
10 additional names.

11 VICE CHAIR THERNSTROM: That's fine. We
12 can figure out what questions are most important to
13 us. You can submit a list.

14 COMMISSIONER KIRSANOW: This is Kirsanow.
15 With response to I think it was the Staff
16 Director's request that the meeting be limited to four
17 contacted witnesses, I have no problem with doing so,
18 and I guess the focus of the briefing is narrowed, and
19 I would suggest parenthetically if we're going to
20 narrow it, we had better do it damned quickly.

21 Then we can modify the witness list. You
22 know, if we've already made contact with someone and
23 confirmed them, my preference is we not then strike
24 them from the list, but I think that an approach can
25 be made in an intelligent fashion to witnesses as this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 approach being to the witness list that will be
2 confirmed shortly.

3 We do have how many more weeks, five weeks
4 of it or six weeks until the briefing? I think that
5 we can walk and chew gum at the same time.

6 CHAIRMAN REYNOLDS: Okay, folks. I think
7 at this point this is a good point to wrap it up.

8 COMMISSIONER HERIOT: Do we need a motion
9 to have the brief --

10 COMMISSIONER MELENDEZ: Could I ask a
11 question? What's the briefing titled for the March
12 meeting?

13 CHAIRMAN REYNOLDS: Marty, do we have a
14 title?

15 MR. BLACKWOOD: This is David Blackwood.

16 Since it relates to the statutory report
17 itself, your raw title would be an examination of
18 civil rights issues with respect to the mortgage
19 crisis, and then the three panels of the staff
20 director Marty mentioned.

21 COMMISSIONER MELENDEZ: Can I ask? The
22 other question was if you held a briefing prior to
23 doing the staff report, would that have helped us in
24 any matter as to what direction to go if it were
25 reversed?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BLACKWOOD: This is David Blackwood
2 again.

3 The timing is still such that the
4 testimony that should be presented at the briefing
5 would be useful in the report. A lot of the
6 information, we know where people are coming from, and
7 that's how they were able to identify, but it would
8 be, we believe, valuable anecdotally to pick up
9 information from your questions to them, that they
10 might get them away from their prior--

11 COMMISSIONER GAZIANO: Wouldn't it be more
12 valuable to have the interrogatory responses
13 circulated and some other updates so that we know
14 which witnesses and how to question the witness? Is
15 there really a problem with having this in April?
16 What would the problem be in April? Let me put it
17 that way.

18 MR. BLACKWOOD: The problem would be that
19 we would blow through AI 116.

20 COMMISSIONER GAZIANO: We can always
21 suspend an AI. So the problem is what is the problem
22 if we do so.

23 MR. BLACKWOOD: Well, if you suspend all
24 deadlines, including --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER GAZIANO: No, not all
2 deadlines. What's the problem with having this
3 hearing in April? I'm sure there are some, but I want
4 to weigh those against the advantages of having
5 interrogatory answers.

6 MR. BLACKWOOD: This is David Blackwood
7 again.

8 Well, hopefully we should have the answers
9 to interrogatories by that time. I don't control
10 them, but the responses and the feedback is that we
11 should have them presumably before or only
12 unfortunately shortly before the briefing if it goes
13 ahead in March.

14 COMMISSIONER GAZIANO: Okay. What's the
15 problem in having it in April though? Because I think
16 we might actually -- I'm imagining things focus what
17 we are most interested in before then, but what's the
18 problem having it in April?

19 MR. BLACKWOOD: Well, if you're willing to
20 suspend the rules, I suppose nothing, but right now
21 we're supposed to have a draft, first draft, on March
22 16th to the Staff Director and to the Commissioners on
23 April 27th, and we would need to do that. I have
24 taken it as job number one based on my understanding
25 is that the report needs to be timely.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So everything has a cost.

2 COMMISSIONER HERIOT: I would say having
3 the briefing sooner rather than later. So you know, I
4 would prefer March just because March is a month
5 before April. As you know, I'm not optimistic about
6 this whole process, but you know --

7 COMMISSIONER GAZIANO: No, I see costs
8 both ways. I just wanted to hear from staff. I mean,
9 I can imagine that it would be a little bit helpful if
10 you're going to be able to incorporate some
11 information from the briefing in the draft.

12 On the other hand, I'm not sure the
13 briefing will be as valuable. So I'm just trying to
14 -- but I -- given where we are right now, I see
15 neither option is great.

16 CHAIRMAN REYNOLDS: At this point --

17 STAFF DIRECTOR DANNENFELSER: Doing it in
18 March would help us in two ways. One, the drafting of
19 the statutory report. It would also give
20 Commissioners an opportunity to interact directly with
21 these witnesses, and we've seen from the past
22 sometimes these question and answer session allow the
23 Commissioners to probe and to come up with some
24 additional lines of inquiry that are helpful in
25 preparing reports.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN REYNOLDS: Okay. At this point,
2 Marty, do you have a sufficient amount of direction
3 with respect to the oral report and also this briefing
4 that we have teed up for March?

5 COMMISSIONER HERIOT: Don't we have to
6 vote on whether or not to hold any briefing?

7 STAFF DIRECTOR DANNENFELSER: Excuse me,
8 Commissioner Heriot. I didn't hear your questions.

9 COMMISSIONER HERIOT: Don't we have to
10 vote on having any briefing? Don't we need a motion
11 here?

12 CHAIRMAN REYNOLDS: Okay. I move that we
13 have the briefing that we just discussed in March. Is
14 there a second?

15 COMMISSIONER KIRSANOW: Second. Kirsanow.

16 VICE CHAIR THERNSTROM: Wait a minute.
17 I'm sorry. I thought there was already a vote on that
18 in a past Commission meeting

19 COMMISSIONER GAZIANO: I'm not sure of
20 that, but it can't hurt to have a motion to either do
21 it or confirm it.

22 CHAIRMAN REYNOLDS: Okay. Let's just have
23 the vote. Is there a second?

24 COMMISSIONER KIRSANOW: Kirsanow. Second.

25 CHAIRMAN REYNOLDS: Discussion?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (No response.)

2 CHAIRMAN REYNOLDS: Okay. Vice Chair
3 Thernstrom, how do you vote?

4 VICE CHAIR THERNSTROM: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Gaziano?

6 COMMISSIONER GAZIANO: No.

7 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

8 COMMISSIONER KIRSANOW: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Heriot.

10 COMMISSIONER HERIOT: Yes, with
11 reservations.

12 CHAIRMAN REYNOLDS: Commissioner Melendez.

13 COMMISSIONER MELENDEZ: I'll abstain. I
14 could go either way, I guess.

15 CHAIRMAN REYNOLDS: Commissioner Yaki.
16 Commissioner Yaki.

17 COMMISSIONER YAKI: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Taylor.
19 Commissioner Taylor.

20 (No response.)

21 CHAIRMAN REYNOLDS: Okay, and I also vote
22 in favor of the motion.

23 Let the record reflect that Commissioner
24 Gaziano voted against the motion. Commissioner
25 Melendez abstained, and Commission Taylor did not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 vote. The remaining Commissioners voted in favor of
2 the motion. The motion passes.

3 CHAIRMAN REYNOLDS: Okay, folks. At this
4 point let's call it a day.

5 VICE CHAIR THERNSTROM: Thank you.

6 CHAIRMAN REYNOLDS: Okay. Bye.

7 (Whereupon, at 12:21 p.m., the Commission
8 meeting was concluded.)

9

10

11

12

13

14

15

16

17

18

19

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701