

## U.S. COMMISSION ON CIVIL RIGHTS

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## COMMISSION MEETING

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## TELECONFERENCE

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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

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COMMISSIONER ASSISTANTS PRESENT:

TIM FAY  
DOMINIQUE LUDVIGSON  
RICHARD SCHMECHEL  
KIMBERLY SCHULD

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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.

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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.

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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.

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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

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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?

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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

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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

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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.

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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.

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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

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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?

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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

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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.

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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?

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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 --

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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?

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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

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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

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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

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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

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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?

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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.

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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

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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?

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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

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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.

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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.

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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.

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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

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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

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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.

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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

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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

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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

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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

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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.

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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.

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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

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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

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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

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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

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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.

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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

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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?

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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 --

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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.

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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.

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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?

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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

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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.)  
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