

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, MAY 15, 2009

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The Commission convened in Room 540 at 624
Ninth Street, N.W, Washington, D.C., at 9:00 a.m.,
Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman

ABIGAIL THERNSTROM, Vice Chair

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

ARLAN D. MELENDEZ, Commissioner (via telephone)

ASHLEY L. TAYLOR, JR., Commissioner (via telephone)

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

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STAFF PRESENT:

DANIEL ADELEYE

DAVID BLACKWOOD, General Counsel, OGC

TERESA BROOKS

CHRISTOPHER BYRNES

DEBRA CARR (via telephone)

DEMITRIA DEAS

PAMELA A. DUNSTON, Chief, ASCD

LATRICE FOSHEE

ROBERT LERNER, Asst. Staff Director for OCRE

SOCK-FOON MacDOUGALL

TINALOUISE MARTIN, Director, OM

EMMA MONROIG, Solicitor

LENORE OSTROWSKY

KIMBERLY TOLHURST

AUDREY WRIGHT

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY

DOMINIQUE LUDVIGSON

KIMBERLY SCHULD

RICHARD SCHEMCHEL

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

(9:40 a.m.)

CHAIRMAN REYNOLDS: Okay. We can get started now. The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights. It is 9:40 Eastern standard time on May 15th, 2009. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C.

All Commissioners are present, except for Commissioners Kirsanow, Taylor, and Melendez.

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

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?
Commissioner Heriot.

COMMISSIONER HERIOT: I move to amend, to amend the agenda to include an item to discuss possible action with regard to the hate crimes bill that is now pending in the U.S. Senate, and I move that it be stuck at the end of program planning.

CHAIRMAN REYNOLDS: Okay. Conversation?

COMMISSIONER HERIOT: There needs to be a second on that.

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1 COMMISSIONER GAZIANO: Second.

2 CHAIRMAN REYNOLDS: Okay. All in favor
3 please say aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Any objections?

6 COMMISSIONER YAKI: I object.

7 CHAIRMAN REYNOLDS: Any --

8 COMMISSIONER YAKI: I find the description
9 of the item rather vague and ambiguous.

10 CHAIRMAN REYNOLDS: Okay. Would you like
11 to ask for clarification?

12 COMMISSIONER YAKI: I just stated what my
13 grounds were for --

14 COMMISSIONER HERIOT: I think it's already
15 broad --

16 COMMISSIONER GAZIANO: -- to explain they
17 can.

18 COMMISSIONER HERIOT: We can get to it
19 when we get to it because we already voted now.

20 CHAIRMAN REYNOLDS: Okay. Folks on the
21 phone, how do you vote?

22 COMMISSIONER KIRSANOW: Kirsanow, yes.

23 COMMISSIONER MELENDEZ: Melendez, yes.

24 CHAIRMAN REYNOLDS: Okay. The motion
25 passes. Let the record reflect that --

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1 COMMISSIONER YAKI: Point of order. I did
2 not hear Commissioner Melendez's vote and I do not
3 know if you recorded my vote as a no.

4 CHAIRMAN REYNOLDS: Okay. Commissioner
5 Melendez, I heard you vote in favor of the motion.

6 COMMISSIONER MELENDEZ: I'll abstain. I'm
7 not sure what the issue was.

8 COMMISSIONER YAKI: Commissioner Taylor, I
9 think, has joined us on the line.

10 COMMISSIONER GAZIANO: Yes. Commissioner
11 Taylor voted aye.

12 COMMISSIONER YAKI: Okay.

13 COMMISSIONER GAZIANO: Correct,
14 Commissioner Taylor?

15 COMMISSIONER TAYLOR: That's correct.

16 (Laughter.)

17 CHAIRMAN REYNOLDS: Okay, okay. Just to
18 be clear, Commissioner Melendez, did you abstain or
19 vote against the motion?

20 COMMISSIONER MELENDEZ: Well, I'm not sure
21 what the add-on was. So I abstain.

22 CHAIRMAN REYNOLDS: Okay. All right. Let
23 the record reflect that Commissioner Melendez
24 abstained; Commissioner Yaki voted against the motion;
25 the remaining Commissioners voted in favor. The

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1 motion passes.

2 Commissioner Heriot, where would you like
3 the placement to be?

4 COMMISSIONER HERIOT: At the end of
5 Section -- well, actually there are two Section Vs,
6 aren't there. At the end of the Program Planning
7 section. We have a numerical problem here. We have
8 two Section Vs. At the end of the first Section V.

9 CHAIRMAN REYNOLDS: Okay.

10 VICE CHAIR THERNSTROM: Mr. Chairman, I
11 also have a couple of motions to amend -- oh, sorry,
12 folks. I also have a couple of motions to amend the
13 agenda. The first one, I move to amend the agenda to
14 include a preliminary discussion of next year's
15 statutory report topic, and this would also go under
16 Program Planning.

17 I mean, we know from our experience with
18 this year's housing topic, with last year's religious
19 freedoms in prison topic, the longer we delay
20 selection of a topic, the more difficult it will be to
21 meet our deadlines.

22 CHAIRMAN REYNOLDS: Okay. I second the
23 motion.

24 Continue.

25 VICE CHAIR THERNSTROM: It's not too

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1 early. Perhaps we can avoid the same late start, and
2 so I'd like to amend the agenda to have a preliminary
3 discussion.

4 CHAIRMAN REYNOLDS: Any other discussion?

5 (No response.)

6 CHAIRMAN REYNOLDS: All in favor say aye.

7 (Chorus of ayes.)

8 CHAIRMAN REYNOLDS: Okay.

9 COMMISSIONER HERIOT: Oppose?

10 COMMISSIONER GAZIANO: Any opposed?

11 CHAIRMAN REYNOLDS: Well, before we go on,
12 Commission Taylor, how do you vote?

13 COMMISSIONER TAYLOR: Aye.

14 CHAIRMAN REYNOLDS: Kirsanow.

15 COMMISSIONER KIRSANOW: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Melendez?

17 COMMISSIONER MELENDEZ: Yes.

18 CHAIRMAN REYNOLDS: Okay. Objections?

19 (No response.)

20 CHAIRMAN REYNOLDS: Abstentions?

21 (No response.)

22 CHAIRMAN REYNOLDS: Commissioner Yaki, did
23 you vote in favor of the motion?

24 COMMISSIONER YAKI: Did we call for a
25 vote?

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1 VICE CHAIR THERNSTROM: Yeah, we did.

2 COMMISSIONER YAKI: Oh. Then yes.

3 CHAIRMAN REYNOLDS: The motion passes
4 unanimately, and so that issue will be taken up after
5 Gail's addition.

6 VICE CHAIR THERNSTROM: Right. And I've
7 got another on.

8 CHAIRMAN REYNOLDS: Okay.

9 VICE CHAIR THERNSTROM: And this regards
10 our projected civil rights conference, both our
11 strategic plan as well as our budget long included
12 program item for this year regarding the hosting of a
13 conference on the topic of civil rights in the 21st
14 Century, and I want to move to amend the agenda to
15 include a discussion of this conference, again, under
16 Program Planning.

17 I mean, the question, it seems to me, on
18 the table is whether this conference is really
19 necessary. I mean, this discussion started out in I
20 believe 2006. I could be wrong, but you know, what
21 would it accomplish? Whom do we really expect to pay
22 attention to it?

23 And I actually do have an alternative
24 proposal, which is to collect and publish a compendium
25 of essays, but --

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1 CHAIRMAN REYNOLDS: Okay. I second it.

2 I'm sorry. Continue.

3 VICE CHAIR THERNSTROM: Well, I have an
4 alternative proposal which is to collect and publish a
5 compendium essays from across the political spectrum,
6 different points of view on the topic of civil rights
7 in the 21st Century, and that would be something that
8 would have some lasting value, some shelf life, some
9 lasting value, something people could hold in their
10 hands or read at their leisure, and I think would have
11 a greater impact than a conference with a questionable
12 number of people attending and a questionable outcome
13 in terms of what we do with the material.

14 CHAIRMAN REYNOLDS: Well --

15 VICE CHAIR THERNSTROM: It has just gotten
16 to be very late as this has gotten kicked down there.

17 COMMISSIONER HERIOT: This is a motion to
18 amend the agenda. So we don't need to --

19 VICE CHAIR THERNSTROM: Yeah.

20 CHAIRMAN REYNOLDS: Okay. Any other
21 comments?

22 VICE CHAIR THERNSTROM: There is motion on
23 the floor, yeah.

24 COMMISSIONER GAZIANO: Is there a second?

25 VICE CHAIR THERNSTROM: Yeah, there is a

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1 second.

2 CHAIRMAN REYNOLDS: No, there is a second.

3 COMMISSIONER GAZIANO: He said he was
4 going to ask for the ayes and nays.

5 CHAIRMAN REYNOLDS: Well, I just wanted to
6 make sure that no one else has a comment. If that's
7 the case, all in favor.

8 (No response.)

9 CHAIRMAN REYNOLDS: Kirsanow.

10 VICE CHAIR THERNSTROM: You're just voting
11 for a discussion. That's all.

12 COMMISSIONER KIRSANOW: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Melendez.

14 COMMISSIONER MELENDEZ: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Taylor.

16 COMMISSIONER TAYLOR: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Yaki.

18 COMMISSIONER YAKI: It's okay.

19 CHAIRMAN REYNOLDS: Okay. The motion
20 passes unanimously. Any other amendments?

21 (No response.)

22 CHAIRMAN REYNOLDS: Okay. Next up is the
23 approval of the minutes for the meeting that was held
24 on April 17th, 2009.

25 COMMISSIONER GAZIANO: Or should we adopt

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1 the --

2 COMMISSIONER HERIOT: We have to adopt the
3 agenda.

4 COMMISSIONER GAZIANO: -- agenda as
5 amended?

6 CHAIRMAN REYNOLDS: Oh, I'm sorry. I move
7 that we adopt the agenda as amended. Is there a
8 second?

9 COMMISSIONER GAZIANO: Second.

10 CHAIRMAN REYNOLDS: Discussion?

11 (No response.)

12 CHAIRMAN REYNOLDS: All in favor, please
13 say aye.

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

16 COMMISSIONER KIRSANOW: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Melendez.

18 COMMISSIONER MELENDEZ: yes.

19 CHAIRMAN REYNOLDS: Commissioner Taylor.

20 COMMISSIONER TAYLOR: Yes.

21 CHAIRMAN REYNOLDS: This is strange, but I
22 feel I have to ask. Commissioner Yaki.

23 COMMISSIONER YAKI: Fine.

24 CHAIRMAN REYNOLDS: Is this a new tactic?

25 COMMISSIONER YAKI: What?

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1 CHAIRMAN REYNOLDS: That.

2 Okay. The motion passes unanimously.

3 Next up is the approval of the minutes of
4 the April 17th, 2009 meeting.

5 II: APPROVAL OF MINUTES OF APRIL 17, 2009 MEETING

6 CHAIRMAN REYNOLDS: I move that we approve
7 those minutes. Is there a second? Will you please?

8 COMMISSIONER GAZIANO: Second.

9 CHAIRMAN REYNOLDS: Discussion.

10 (No response.)

11 CHAIRMAN REYNOLDS: Okay. All those in
12 favor, please say aye.

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Any objections?

15 (No response.)

16 CHAIRMAN REYNOLDS: Any abstentions?

17 COMMISSIONER HERIOT: I abstain.

18 CHAIRMAN REYNOLDS: Okay. Let the record
19 reflect that Commissioner Heriot abstained. There
20 remaining Commissioners, I believe, voted in the
21 affirmative. The motion passes.

22 Okay. Announcements.

23 III. ANNOUNCEMENTS

24 CHAIRMAN REYNOLDS: This week marks the
25 55th anniversary of the Supreme Court decision in

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1 Brown v. Board of Education. On May 17th, 1954, the
2 Supreme Court unanimously struck down state laws
3 establishing separate public schools for black and
4 white students. With its decision, the Court
5 effectively rendered school policies that required
6 segregation illegal in 21 states.

7 In the aftermath of Brown it would also
8 sanction an extraordinary level of federal
9 intervention, including judicial supervision, to
10 insure compliance with its decision in response to a
11 wave of massive resistance adopted by many school
12 boards and state governments to maintain school
13 desegregation.

14 Also, on May 2nd of this year, Jack Kemp,
15 former Vice Presidential candidate, congressional
16 leader, and Secretary of Housing and Urban Development
17 passed away at the age of 73. Mr. Kemp had a long and
18 distinguished career serving in Congress for nine
19 terms and serving as HUD Secretary from 1989 to 1993
20 in the George H.W. Bush administration. Throughout
21 his private and public life Jack Kemp was a strong
22 advocate of equal opportunity for all people. He
23 worked passionately to provide housing opportunities
24 for low income people and was a strong proponent of
25 voting rights.

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1 In 2008, he co-chaired the bipartisan
2 National Commission on Fair Housing and Equal
3 Opportunity. The Commission held hearings throughout
4 the country to examine the effect of federal
5 enforcement of fair housing laws and the subprime
6 mortgage crisis had had on residential segregation. A
7 report was released in December of 2008.

8 Jack Kemp was an optimist who believed
9 that no dream was impossible to attain. His work was
10 a testament to that optimism and sets a great example
11 for others to follow.

12 At this point we will hear from the Staff
13 Director.

14 VICE CHAIR THERNSTROM: I've got lots of
15 dreams that are impossible to attain.

16 Go on. I'm sorry.

17 IV. STAFF DIRECTOR'S REPORT

18 STAFF DIRECTOR DANNENFELSER: Thank you,
19 Mr. Chairman.

20 During this past reporting period OCRE
21 received 92 written complaints, two congressional
22 complaints, one walk-in complaint, 16 E-mail
23 complaints, six facsimile complaints, and 172
24 telephone complaints of which 103 were repeat calls.
25 In total staff received and processed 289 complaints

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1 during the reporting period.

2 The Office of Management has prepared the
3 transparency report for the month of April, and that
4 was forwarded on to OMB.

5 The staff has met with the General
6 Services Administration and with the YWCA about
7 improvements to our space that might be made, and we
8 understand that the YWCA acknowledges that they have a
9 contractual commitment to do painting and new
10 carpeting throughout our space. So we are going to
11 try to schedule that with them. We're also looking at
12 some other improvements that would perhaps replace our
13 beautiful banner back here with something a little bit
14 more up scale.

15 And we also have --

16 COMMISSIONER GAZIANO: Could I just
17 interrupt you in that?

18 STAFF DIRECTOR DANNENFELSER: Yes.

19 COMMISSIONER GAZIANO: Since we sometimes
20 do get C-SPAN and other TV to cover us, the new
21 standard is something that is TV friendly so that
22 however it's framed on the -- whenever it's framed on
23 the Chairman, I don't know how expensive that is, but
24 would you consider that kind of impact when you're
25 going to change the banner?

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1 CHAIRMAN REYNOLDS: Well, could you
2 describe what you had in mind?

3 STAFF DIRECTOR DANNENFELSER: Well, we're
4 looking at some wall mount possibilities that would
5 have the actual, you know, wording of the Commission
6 in a -- what would you call that? -- wall mount form

7 CHAIRMAN REYNOLDS: What's the material?
8 A wall mount, is it wood? Is it metal?

9 STAFF DIRECTOR DANNENFELSER: There are
10 various options that we're looking at right now. One
11 option is all metal and there's another option that
12 would be a combination of metal and acrylic, and those
13 are among the options we're looking at right now.

14 CHAIRMAN REYNOLDS: Do you have
15 photographs?

16 STAFF DIRECTOR DANNENFELSER: We do have
17 some photographs, not with me right now, but I do have
18 some up in my office.

19 CHAIRMAN REYNOLDS: Could we upload them
20 and distribute them via E-mail? Would that be
21 possible?

22 STAFF DIRECTOR DANNENFELSER: I think we
23 can do that and get that around to the Commissioners.

24 CHAIRMAN REYNOLDS: I want to make sure
25 that Todd is happy with the --

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1 (Laughter.)

2 COMMISSIONER GAZIANO: Just a thought.

3 CHAIRMAN REYNOLDS: Oh, no, it's a good
4 one.

5 VICE CHAIR THERNSTROM: You're perfectly
6 right. We do have C-SPAN here sometimes.

7 CHAIRMAN REYNOLDS: Well, even if we
8 didn't, we can do better.

9 (Laughter.)

10 STAFF DIRECTOR DANNENFELSER: Okay. We're
11 also getting key card installations for our
12 stairwells, and that will enable people to move around
13 within our three floors without necessarily having to
14 use the elevators, and at times we do have trouble
15 with the operational situation with the elevators. So
16 people would not be stranded if that situation were to
17 develop.

18 Regarding the Website, the Website
19 statistics were submitted separately following the
20 last meeting for February and March, and the April
21 statistics on the Website are not yet available, but I
22 will be sending those to Commissioners when they are
23 received as I did with the previous ones for February
24 and March.

25 The library staff received 83 telephone

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1 inquiries. They completed 45 simple reference
2 requests and performed 28 research projects of various
3 sizes. An additional 53 research requests were
4 completed utilizing automated search services.

5 Regarding publications, there were 166
6 written requests and 153 E-mail requests for
7 publications that were received. Four hundred and 70
8 publications were mailed, and 48 different
9 publications were requested. There were no
10 congressional requests received for publications, but
11 we hope they were accessing our Website.

12 "Getting Uncle Sam to Enforce your Civil
13 Rights," a compilation of civil rights laws, and the
14 catalogue of publications were our most requested
15 publications, and currently there are 49 requests for
16 publications in process.

17 Staff has reviewed and revised the
18 position description for the Budget and Finance Chief,
19 and that will be going out in all likelihood next
20 week. We anticipate getting that posted.

21 There was also a posting for the Office of
22 General Counsel secretary position and a selection has
23 been made on that particular position.

24 All of the reports that were due to OPM
25 and other sources were submitted in a timely fashion,

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1 and there is ongoing instruction and training for the
2 E-2 travel system. The most recent training session
3 was conducted on May 7th of this month and several of
4 our staff members attended that session.

5 And that's my report, Mr. Chairman.

6 CHAIRMAN REYNOLDS: Okay. All right.
7 Questions?

8 COMMISSIONER MELENDEZ: Melendez here.

9 Where was the Deputy Staff Director's
10 position?

11 IV. DEPUTY STAFF DIRECTOR POSITION

12 STAFF DIRECTOR DANNENFELSER: Yeah, we
13 announced that some time ago and went through a
14 process. We found out during the process that there
15 were at least two people who believe that they were
16 screened out, inappropriately screened out of
17 eligibility, and upon further review, it was
18 determined that they were, in fact, screened out
19 inappropriately.

20 There were several other reports of
21 technical problems with people who were trying to
22 access the system. So at this point it's my intention
23 to cancel that particular selection process and then
24 to allow Commissioners to have further discussion
25 about moving forward on that at some point in the

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1 future.

2 COMMISSIONER MELENDEZ: Okay. Could I ask
3 another question? How does this comply with the
4 agency's human capital plan? I think one of the
5 meetings you mentioned we had a human capital plan in
6 2005, and I'm not sure what that plan actually means
7 in relation to hiring new staff and whether this
8 position is in there.

9 STAFF DIRECTOR DANNENFELSER: Well, we are
10 currently looking at the possibility of doing some
11 outside contracting relating to the human capital plan
12 to see if we can bring in a consultant to help to
13 develop that human capital plan. That is something
14 that we intend to accomplish by the end of this
15 calendar year.

16 COMMISSIONER MELENDEZ: One more question.
17 I heard that some of the agency employees were
18 approached about some sort of buy-out, early
19 retirement. Is that happening within the agency?

20 STAFF DIRECTOR DANNENFELSER: There were a
21 few discussions that were held along those lines, yes.

22 COMMISSIONER MELENDEZ: And where have you
23 looked at it? Are some people actually taking early
24 retirement?

25 CHAIRMAN REYNOLDS: I would ask is that an

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1 appropriate --

2 MR. BLACKWOOD: No, we'd have to go into
3 closed session. You can talk generally about it, but
4 not about individuals.

5 CHAIRMAN REYNOLDS: Okay. So let's just
6 keep the conversation general.

7 COMMISSIONER MELENDEZ: Okay.

8 STAFF DIRECTOR DANNENFELSER: These were
9 preliminary discussions. If we were going to move
10 forward on that process, we would have to approach the
11 Office of Personnel Management with a plan for moving
12 forward. So these were preliminary discussions to
13 gauge potential interest on the part of several
14 employees.

15 COMMISSIONER YAKI: What was the purpose
16 of it?

17 STAFF DIRECTOR DANNENFELSER: To -- in
18 looking at the positions we might want to fill down
19 the road and other use of resources, to see if there
20 were some possibilities for consolidation and making
21 resources available for some other positions and other
22 activities of the Commission.

23 COMMISSIONER YAKI: I don't understand.
24 So at some point you made a decision that we needed a
25 substantial restructuring of the staffing of the

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1 Commission and to do that you would engage in a
2 potential buy-out situation, and this is the first
3 that I have heard of this.

4 CHAIRMAN REYNOLDS: Well, Commissioner
5 Yaki, you have characterized what was said in a way
6 that I suspect that the Staff Director would not
7 agree. What he stated was that there were preliminary
8 inquiries to gauge the level of interest.

9 COMMISSIONER YAKI: When I asked him why
10 he did that, he then went on to explain a series of
11 substantive reasons for doing so that I am unaware --

12 CHAIRMAN REYNOLDS: They were normal
13 reasons. When federal agencies consider buy-outs,
14 generally one of the reasons is to reallocate
15 resources. Over time the needs and the skill sets of
16 an organization may change, and this is one vehicle
17 for realigning an organization's skill set. This is
18 not anything that is unusual. No decisions were made
19 in regard to this issue. It was seeking information
20 to gauge the level of interest because if there's
21 insufficient interest, I mean, the plan can't go
22 forward unless there is a sufficient number of
23 individuals you would entertain the idea of an early
24 buyout.

25 COMMISSIONER YAKI: With all due respect,

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1 Mr. Chair, you just stated a fact not in evidence, and
2 that is a plan going forward. So, therefore, --

3 CHAIRMAN REYNOLDS: A plan going forward?

4 COMMISSIONER YAKI: You said you had to
5 gauge interest before the plan goes forward.

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER YAKI: My point --

8 CHAIRMAN REYNOLDS: If you were going to
9 have a buyout --

10 COMMISSIONER YAKI: My question goes to
11 there must be a reason why this gauge of interest
12 occurred. That is why I asked the Staff Director why
13 that was. He then proceeded to talk about using the
14 words "elimination" and "consolidation of positions"
15 and as much as it may be a natural occurrence in an
16 agency of 900, 1,000 to 10,000 employees, I have less
17 confidence about any realignment, consolidation,
18 elimination and what have you in an agency of our
19 current size and current vacancies for the past five
20 years, four years I have been on the Commission.

21 And I would think that something of this
22 magnitude is not something that, you know, is just
23 junior position I, tech II, you know, in DOD. These
24 are people who we see in our audience every month at
25 our meetings and in our offices as we walk around. It

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1 is not as if there are lots and lots of positions that
2 you can play around with.

3 So my concern is that, you know, I want to
4 know and I want it stated for the record, you know,
5 what is the Staff Director thinking about in terms of
6 elimination or consolidation of positions that led to
7 this gauging of interest for potential buyout.

8 STAFF DIRECTOR DANNENFELSER: Mr.
9 Chairman.

10 CHAIRMAN REYNOLDS: Well, let me respond
11 quickly.

12 COMMISSIONER YAKI: May I ask the Staff
13 Director? I assume this is what he's doing. If
14 you're doing it, Mr. Chair, then I will listen to you
15 explain your rationale for doing it.

16 CHAIRMAN REYNOLDS: Okay. Since I am
17 involved in everything, I will provide you with my
18 rationale.

19 COMMISSIONER YAKI: Okay. That's all I
20 wanted to get out on the table.

21 CHAIRMAN REYNOLDS: This exercise is not
22 new. This exercise has taken place within this agency
23 in the past. The size of the agency is not
24 determinative. We have critical needs in various
25 agencies, including budget and procurement. We have

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1 worked hard to obtain clean audits over the last few
2 years, but we still have significant deficiencies in
3 terms of manpower and skill sets in certain areas of
4 the Commission, and the Staff Director, in
5 consultation with the Chairman, we have been looking
6 at ways to shore up some of these areas.

7 And I have done this with the current
8 Staff Director. I have done this with the previous
9 Staff Director. These inquiries have taken place
10 before under my tenure, and they've taken place before
11 under my predecessor.

12 COMMISSIONER GAZIANO: Mr. Chairman.

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER GAZIANO: For the record, I
15 was not aware that these inquiries were being made,
16 but given that we didn't even request formally \$2
17 million that we thought last September was important
18 for our agency, I commend the efforts of the Staff
19 Director and others to see whether there are any
20 options so that we can be more effective and complete
21 our mission and be able to hire one or two staffers.

22 Given the budget projection at least for
23 the next year, this seems very prudent to me.

24 STAFF DIRECTOR DANNENFELSER: Yes,
25 Commissioner Gaziano makes a good point. Our request

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1 to OMB was actually, I guess, about \$3 million more
2 than what was called the pass-back from OMB. So there
3 were a number of different positions that we proposed
4 to fill at that time, and of course, we have moved
5 forward on filling the Commissioner special assistants
6 and the budget chief and a few others.

7 So I think we should have to get some
8 gauge on what are the possibilities in order to come
9 to the Commission with a plan. Before we would go to
10 OPM, we certainly would have to come to the Commission
11 and the Commission would have to approve a plan that
12 would be submitted to OPM.

13 CHAIRMAN REYNOLDS: Additional questions?

14 COMMISSIONER MELENDEZ: Yes. Commissioner
15 Melendez.

16 I know that we have a goal to assess an
17 issue and report a value relating to the effectiveness
18 of the agency's organizational and administrative
19 structures. With that goal in mind, is what we're
20 doing as far as looking in to these possibilities of
21 any buyouts and those things conducive to -- have we
22 taken that into consideration or do we try to evaluate
23 the effectiveness of the organization and then make
24 the changes after we've done that?

25 CHAIRMAN REYNOLDS: Well, Commissioner

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1 Melendez, we were taking a look to see if this
2 particular option was a viable option. As I said
3 earlier, if there was an insufficient number of people
4 who were interested, then it's an option that we would
5 have to remove from the table.

6 So we have not reached a point where we
7 could describe with any precision how this, you know,
8 developing option would fit in the context of our
9 human capital plan.

10 COMMISSIONER MELENDEZ: My only comment is
11 we need to be kept up as far as Commissioners because
12 we have a concern, at least I do as far as, you know,
13 the effectiveness. We have enough work to do, and we
14 don't have the manpower to do it in many instances
15 because we're short staffed. So if we eliminate
16 positions, we need to be kept up to date whether or
17 not it's just not rehire that position or whether or
18 not it's going to be consolidation to have one person
19 do more duties, that type of thing.

20 So I'm just saying we need to be kept up
21 to date, and that goes into one of my action items
22 later in the agenda.

23 CHAIRMAN REYNOLDS: Well, to the extent
24 that significant decisions are about to be made or
25 significant decisions will be brought before the

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1 Commissioners, but we're not there yet.

2 COMMISSIONER MELENDEZ: Could I ask a
3 question to the Staff Director as far as if he thinks
4 the Commission will fail in any of its 2009
5 performance goals at this point.

6 STAFF DIRECTOR DANNENFELSER: I think we
7 have to do further review to make a clear
8 determination on that point. We're striving to attain
9 them, but I think it's still an open question.

10 CHAIRMAN REYNOLDS: Next question.

11 COMMISSIONER YAKI: Next question, just to
12 follow up on this and I'd like the General Counsel to
13 explain what would be the best way in which this would
14 be accomplished, but I would like to know to whom the
15 approaches were made, and if it has to be done in
16 whatever confidence, but I would like at least for my
17 own purposes to understand what areas, and I'm not
18 going to prejudge, but I would like to look at the,
19 quote, unquote, raw data for myself.

20 CHAIRMAN REYNOLDS: Now, this is an
21 unusual request. What's your concern?

22 COMMISSIONER YAKI: Oh, I think you could
23 pretty much figure out my concern, Mr. Chair.

24 CHAIRMAN REYNOLDS: If I could, I still
25 would ask the question.

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1 COMMISSIONER YAKI: I think my concern
2 that would better be left to closed session rather
3 than in open session.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER YAKI: So that's why I was
6 simply asking for the raw data.

7 CHAIRMAN REYNOLDS: Okay, and whether it's
8 a request that's reasonable, I guess, will turn in
9 part on --

10 COMMISSIONER YAKI: For everyone else,
11 this is something that requires the Commission. I am
12 personally requesting --

13 CHAIRMAN REYNOLDS: No, I --

14 COMMISSIONER YAKI: -- that I be allowed
15 to review the names of the individuals to whom buyout
16 approaches were made.

17 CHAIRMAN REYNOLDS: I understand that, and
18 whether the request will be granted depends in part on
19 where this is doing.

20 COMMISSIONER YAKI: Well, I didn't know
21 that you had total control over whether or not I could
22 ask the Staff Director about actions that were done in
23 the name of the agency.

24 CHAIRMAN REYNOLDS: You can ask the Staff
25 Director --

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1 COMMISSIONER YAKI: If you're telling me
2 that, indeed, you have the ability --

3 CHAIRMAN REYNOLDS: You can ask the Staff
4 Director--

5 COMMISSIONER YAKI: -- to shut down a
6 single Commissioner from asking for information that
7 is within the domain --

8 CHAIRMAN REYNOLDS: You can ask the Staff
9 Director anything --

10 COMMISSIONER YAKI: -- of each
11 Commissioners.

12 CHAIRMAN REYNOLDS: -- you would like. Is
13 there anything else you would like to ask?

14 STAFF DIRECTOR DANNENFELSER: Let me make
15 a clarification just on this point. There were no
16 formal offers made to anybody. They were just --
17 there was a survey, if you will, of several people in
18 the agency as they were --

19 COMMISSIONER YAKI: I'd like to know --

20 STAFF DIRECTOR DANNENFELSER: --
21 preliminary discussions.

22 COMMISSIONER YAKI: -- at whom the survey
23 was aimed.

24 CHAIRMAN REYNOLDS: Well, my concern --

25 COMMISSIONER GAZIANO: This is pure

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1 speculation, but I would speculate it's people who are
2 close to retirement, and beyond that I don't know that
3 we need to know.

4 CHAIRMAN REYNOLDS: Well, my --

5 COMMISSIONER YAKI: You may choose not to
6 know, but I would like to know.

7 COMMISSIONER GAZIANO: I want to know, but
8 I say just don't understand why we need to know.

9 CHAIRMAN REYNOLDS: My concern is that --

10 COMMISSIONER YAKI: Well, you may not need
11 to know, but I do.

12 CHAIRMAN REYNOLDS: Commissioner Yaki,
13 your request is unusual. It's getting into a level of
14 detail that we don't ordinarily do, and we do it in
15 part to ensure that the functioning of the agency is
16 not disrupted.

17 Now, if you think that there was something
18 -- if you believe that the Staff Director has engaged
19 in activities that are inappropriate, that resonates
20 with me, but if it's for some other reason, I would
21 like to know what those reasons are.

22 So we can do it in a closed session, do it
23 off line. The choice is yours.

24 COMMISSIONER YAKI: I'm making my request.
25 I'll stand by it. If you wish to discuss it with me

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1 off line, that's fine.

2 CHAIRMAN REYNOLDS: Okay. All right.

3 COMMISSIONER MELENDEZ: Question.

4 Commissioner Melendez here.

5 At the April meeting the Staff Director
6 said that the staff was updating the Commission's
7 budget to include the three special assistants and
8 upgrade to the conference room and other matters.
9 Have we received a revised budget which incorporates
10 those changes so we can see practically where we are
11 with some of the modifications to the budget at this
12 time?

13 I believe I asked that at the April
14 meeting.

15 CHAIRMAN REYNOLDS: Bear with us,
16 Commissioner Melendez.

17 STAFF DIRECTOR DANNENFELSER: I'm sorry.
18 I would like to have the question repeated.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER MELENDEZ: I was asking at
21 the April meeting I believe you said or the Staff
22 Director said that he was updating the Commission's
23 budget to include to hire the three special assistants
24 and upgrade the conference rooms and some other
25 matters, and you're going to get us a revised budget

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1 as to what those costs were, and we haven't received
2 that yet.

3 STAFF DIRECTOR DANNENFELSER: Okay. I
4 will get that put together and send that out to
5 Commissioners.

6 COMMISSIONER MELENDEZ: Okay. Thank you.

7 CHAIRMAN REYNOLDS: Additional questions,
8 comments?

9 (No response.)

10 CHAIRMAN REYNOLDS: Next step, Mr. Staff
11 Director. Could you walk us through the status?
12 Where are we with the 2009 statutory report?

13 V. PROGRAM PLANNING

14 UPDATE ON STATUS OF 2009 STATUTORY REPORT

15 STAFF DIRECTOR DANNENFELSER: Well, at
16 this point I'd like to turn to the General Counsel and
17 ask him to provide an update on that score.

18 MR. BLACKWOOD: Well, first I'd like to
19 apologize since virtually every estimate I've given
20 has been inaccurate. Just yesterday or actually as of
21 today we have received all of the editorial feedback
22 from the Editorial Review Board in leader sufficiency.

23 There have been some very helpful comments.

24 Some of them have suggested that a
25 restructuring of the report, not that the substance of

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1 it is, for example, wrong or whatever, but that
2 different parts of the report appear in different
3 sequences. That was something initially I was hopeful
4 that I would address editorial review very quickly and
5 turn it around over the weekend.

6 I'm not going to be able to do that. I
7 talked with the Staff Director and others in our staff
8 about perhaps rearranging the report along the lines
9 that I just mentioned, changing the sequence of
10 certain things, moving certain parts of the text to
11 the appendix and maybe certain parts of the existing
12 appendix into the text, emphasizing different issues,
13 and it was very useful in hearing this from a variety
14 of different individuals pointing out in some regards
15 a similar issue. You know, why didn't we address this
16 issue in the body of the text, for example.

17 So the good news is I think 99 percent of
18 the report exists. It's actually in writing. I do
19 think it's going to take more than just the weekend
20 though to change the report in a way that the
21 editorial review writers have indicated to me that
22 they thought would add to the clarity and context of
23 the issues that we have addressed.

24 As I said before, I have a horrible track
25 record. I recognize that. I would say approximately

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1 one week. I will hopefully get it done faster, but I
2 would suggest it's not going to be able to turn around
3 by Monday.

4 CHAIRMAN REYNOLDS: Commissioner Gaziano.

5 COMMISSIONER GAZIANO: Yeah, I'd like to
6 just ask a little bit more about that process and then
7 perhaps a little bit more on the substance of what we
8 should expect. I appreciate all of the hard work I'm
9 sure you and the other staff are putting in, but sine
10 we have the deadlines to meet, I would have liked --
11 we all, I'm sure, would have liked -- to have been
12 able to review it so that we could then follow up at
13 this meeting on some of the substantive questions.

14 Just partly because I'm curious, who was
15 on the Editorial Review Board or what type of people
16 were on it?

17 MR. BLACKWOOD: Well, there were three
18 individuals on the Editorial Review Board as well as
19 the Staff Director made his own substantial comments.

20 Lenore Ostrowsky, Chris Burns, and Peter
21 Minarik --

22 COMMISSIONER GAZIANO: Yeah, partly
23 whether it's external, how many does --

24 MR. BLACKWOOD: No, the external review
25 does not happen until --

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1 COMMISSIONER GAZIANO: Okay, and that's
2 not substantive?

3 MR. BLACKWOOD: No. The external review
4 doesn't do substantive review. It's to make sure that
5 the other checks have occurred.

6 COMMISSIONER GAZIANO: I understood that
7 was normally the case. I just thought maybe for this
8 report there was some external review.

9 MR. BLACKWOOD: No. I will say that we
10 are also well aware that other deadlines will have to
11 be affected by this, and in reporting to you when we
12 send out the report, indicate suggested changes of the
13 deadline as far as making sure that the Commissioners
14 have substantially the same amount of time to make
15 their comments.

16 COMMISSIONER GAZIANO: Okay. Well, I
17 don't think this is particularly sensitive, I should
18 say. I mean, there are some times we don't share
19 actual drafts with the public until we've already
20 approved them, and I know this is a public meeting,
21 but I'd like to have a little bit of a substantive
22 discussion because at some of the prior monthly
23 updates we heard, well, we might be able to do this,
24 which some of us were very interested in. We don't
25 know.

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1 So I don't know whether it's appropriate.
2 If you're able to answer this question or Dr. Lerner
3 is able as well, can you tell us what the major
4 substantive findings are in the draft report?

5 MR. BLACKWOOD: Findings, no, but I can
6 tell you about what the topics --

7 COMMISSIONER GAZIANO: I'm sorry. Your
8 major conclusions, whatever, however you want to put
9 it because there were some things that we said we were
10 going to get updates on, and then we were told, well,
11 let's just wait until we get the draft.

12 MR. BLACKWOOD: Okay. Well, let me walk
13 you through the report itself.

14 COMMISSIONER GAZIANO: Sure.

15 MR. BLACKWOOD: And it follows in general
16 terms the outline that was approved by the
17 Commissioners. There's a discussion of the statutes.
18 There's a discussion of the major policies that were
19 involved. There is then a discussion of enforcement
20 efforts.

21 Now, keep in mind part of the issue that
22 I've heard feedback from is maybe the sequence of
23 things change. Then there is a discussion of the
24 development of these, backgrounds as far as what was
25 the motive of some, what was the idea behind some of

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1 these statutes and how they evolved because they are
2 not static.

3 Next would be a review of views of
4 individuals about what led up to the mortgage crisis
5 and what roles these policies played, and that is a
6 survey that covers a variety of different
7 perspectives.

8 Next is a very large chapter, going over
9 data that has been prepared by members of OCRE, going
10 into some depth to, as I say, we're not drawing
11 conclusions, but it looks at the variety of
12 information regarding types of loans, subprime loans,
13 Alt A loans, rates of foreclosure, very extensive. In
14 fact, one of the issues is is it too extensive. If
15 so, how should we narrow it? And maybe some of that
16 belongs in an appendix. Some of it is very slicing
17 the bologna, if you will, very thin. So maybe we
18 focus more on the bigger issues, but all of them
19 involving issues about home ownership, types of loans,
20 what happens to those types of loans, things that
21 influence those types of loans, for example, the HUD
22 lending goals, the CRA.

23 There are two large appendices at this
24 time. One is the credit scoring issue, which is very
25 well addressed in my mind. There have been a lot of

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1 studies that have come out recently, and those have
2 been incorporated, although we still have more work,
3 for example, a recent study that just came out a month
4 or so ago that we're trying to incorporate. It's a
5 bit of a moving target.

6 That, for example, is an appendix because
7 my belief is that it was better addressed as an
8 appendix as opposed to in the text.

9 And finally, there's an appendix
10 addressing some of the issues addressing the
11 intellectual background of these. It's more of a
12 survey of some of the background of what led to these
13 particular policies.

14 COMMISSIONER GAZIANO: We were discussing
15 just drilling down on the hypotheses that the report
16 attempts to try to shed light on, and one was that
17 predatory lending based on race, that there would be
18 some sort of test of that. Is that one of the things
19 that the report is -- or does the report -- I
20 remember. There was some discussion that is a
21 pejorative term and, you know, possible to test.

22 MR. BLACKWOOD: Well, I think it's fair to
23 say that the issue of predatory lending is addressed,
24 but by itself, as someone well involved in fair
25 housing issues, predatory lending is a misnomer.

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1 There's no agreement on what constitutes predatory
2 lending.

3 COMMISSIONER GAZIANO: Were you able to
4 define it in some way, is what I'm trying to say, and
5 then try to test to see.

6 MR. BLACKWOOD: Well, I'll put it this
7 way. It's addressed in a variety of ways. One, we
8 point out that the variety of different opinions about
9 what constitutes predatory lending. Then we break it
10 down as far as at least core issues: mortgage
11 discrimination, about fraud, and look at the
12 enforcement efforts and whether they have grown or not
13 grown or how they have done.

14 This ties in also with the credit scoring
15 topic about how -- because with some of the
16 allegations of predatory lending by certain groups is
17 based on, in essence, credit scoring itself is
18 discriminatory. And we reviewed those issues and
19 that's discussed at length.

20 COMMISSIONER GAZIANO: Okay. Well, maybe
21 my final question is if we were writing a pre-press
22 release on what new the Commission's report was going
23 to address, what hypothesis or issue is this report
24 going to cover that will be worthy?

25 MR. BLACKWOOD: Worthy. Well, I'll let

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1 you decide what is worthy, but let's put it this way.
2 The core is what was approved on as far as the
3 outline, approved by the Commission, which boiled down
4 to its main theme. Did the federal policies relating
5 to try to increase home ownership, including
6 specifically the Community Reinvestment Act, as well
7 as the HUD lending goal, did they have the effect that
8 was desired and in what way?

9 And it is possible through a lot of this
10 data that we are looking at, what specific role did
11 they play to the extent we can determine in the home
12 ownership increase and then its subsequent bursting of
13 the bubble.

14 COMMISSIONER GAZIANO: I had personally
15 expressed less interest in the CRA than the credit
16 scoring aspect of that, but I suppose I'll wait for
17 the draft, which I'm sure with the extra work that's
18 been put in is going to be in very fine shape. There
19 are other -- I'll yield to other Commissioners if they
20 have questions.

21 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

22 VICE CHAIR THERNSTROM: No.

23 CHAIRMAN REYNOLDS: Commissioner Heriot?

24 COMMISSIONER HERIOT: Have to wait for the
25 draft.

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1 CHAIRMAN REYNOLDS: Okay.

2 VICE CHAIR THERNSTROM: We'll have plenty
3 of questions when the draft comes in, I'm sure.

4 CHAIRMAN REYNOLDS: Okay. Next up.

5 COMMISSIONER MELENDEZ: Commissioner
6 Melendez.

7 When will the draft come in?

8 MR. BLACKWOOD: Well, as I say, with all
9 of my disclaimers, my view is that we should have it
10 out by next week, by next Friday.

11 COMMISSIONER MELENDEZ: Thank you.

12 CHAIRMAN REYNOLDS: Okay. Next up, a
13 report on status of the briefing report backlog.

14 V. PROGRAM PLANNING

15 UPDATE ON BRIEFING REPORT BACKLOG

16 CHAIRMAN REYNOLDS: The report on status
17 of the briefing report backlog was sent to
18 Commissioners on April 9th. An updated report was
19 included in the binders that were sent to
20 Commissioners on May 7th.

21 At the April 17th Commission meeting,
22 Commissioners decided to postpone discussion of the
23 pending briefing reports until today's meeting so that
24 Vice Chair Thernstrom could be present and so that
25 there could be discussion by Commissioners regarding

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1 how staff should prioritize the backlog reports going
2 forward.

3 Mr. Staff Director, please provide us with
4 an update on the status of the pending briefing
5 reports.

6 STAFF DIRECTOR DANNENFELSER: Thank you,
7 Mr. Chairman.

8 At the meeting in April, the No Child Left
9 Behind Act and supplemental education services
10 briefing report was approved, and Commissioners agreed
11 that comments would be due on June 1st for that
12 report, and that the Staff Director would then
13 promptly distribute the Commissioners' comments upon
14 which there would then become another 30-day response
15 period from the point of the Staff Director
16 distributing the Commissioners' initial comments.

17 The Department of Justice voting rights
18 enforcement for the 2008 U.S. presidential election
19 briefing report. The findings and recommendations for
20 that report were adopted at the April 17th meeting.
21 Part A had previously been adopted, and Commissioner
22 comments were also determined to be due on June 1st,
23 2009 for that report with the same process of the
24 Staff Director distributing the comments to all the
25 Commissioners for a 30-day response period.

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1 The covert wiretapping report was
2 distributed to Commissioners, and that is listed on
3 the agenda for today.

4 The Title IX athletics report was sent to
5 Commissioners April 9th, with a request for comments
6 by May 19th.

7 The Multi-ethnic Placement Act briefing
8 report, staff has finalized findings and
9 recommendations, and those are going to be
10 incorporated into the briefing report, and that would
11 be one that would be available for Commissioners. I
12 know there are several reports out there right now.
13 So that, I guess, should be part of the discussion in
14 terms of prioritizing, but that report is one that is
15 available for Commission review if there is a
16 determination that we will want to put that one in the
17 pipeline right now.

18 The illegal immigration report had the
19 editorial and legal sufficiency reviews conducted.
20 The outreach was done to the panelists to make sure
21 that we had incorporated their testimony properly.
22 The findings and recommendations have been prepared
23 for that report, and I am currently going to a final
24 review of that report before making that available to
25 submit to Commissioners.

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1 The encouraging minority students to
2 pursue careers in science, engineering, technology and
3 mathematics, we have received final clarifications
4 from the panelists. The office of Staff Director
5 attorney advisor has submitted the draft report to the
6 Staff Director, and she and the Director of OCRE are
7 developing draft findings and recommendations to be
8 submitted, and that report will then be available very
9 soon for submission for the editorial and legal
10 sufficiency reviews.

11 The educational effectiveness of
12 historically black colleges and universities report
13 has been completed with findings and recommendations,
14 and there has been some discussion as to whether that
15 report should be considered and released jointly with
16 the STEM briefing report.

17 The discrimination against Native
18 Americans in border towns, OCRE is making some final
19 changes to that report. It was submitted previously
20 to the Office of the Staff Director, and OCRE has been
21 asked to make some revisions and resubmit it, and they
22 are in the process of completing that resubmission.

23 The Blaine amendments briefing report is
24 with the General Counsel. It has been involved with
25 some other matters recently, but will be turning back

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1 to completion of that report in the near future.

2 The English in the workplace briefing
3 comment period was extended to April 20th. So that
4 period is now closed. There were approximately 250
5 comments received from the public generally arguing
6 that the EEOC should not be suing businesses and
7 nonprofits like the Salvation Army for having English
8 in the workplace policies.

9 The Director of Federal Government
10 Relations for English First submitted a letter that
11 was critical of the EEOC's policies. Senators Tom
12 Coburn and Lamar Alexander, along with 20 members of
13 the House of Representatives, also submitted comments.

14 And that's the update on the briefing
15 reports at this time, Mr. Chairman.

16 CHAIRMAN REYNOLDS: Questions?

17 COMMISSIONER MELENDEZ: Yes, Mr. Chairman.
18 Commissioner Melendez.

19 Is it possible that we could get either a
20 checklist or time line or a written report on all he
21 said? I tried to write down all the stuff as he went
22 along, but it would be helpful if every business
23 meeting we had just a report in writing that kind of
24 has different categories of when the report first came
25 into existence and how it's progressing and what's the

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1 pending status in different columns, and then we could
2 have it on one sheet or something like that.

3 CHAIRMAN REYNOLDS: You raise another
4 point that needs to be discussed. We have a lot of
5 briefing reports in the queue, and in terms of
6 priorities, I think that we also, in addition to your
7 suggestion, I would suggest that we discuss how we
8 want to prioritize these briefing reports that are in
9 the queue.

10 Commissioner Gaziano.

11 COMMISSIONER GAZIANO: Yeah, I was going
12 to address that. I think I sort of tried to make
13 clear at the last meeting. I certainly don't think
14 that all briefing reports in backlog are equal, and
15 that the passage of time has made some moot. Some
16 have more currency because of current events.

17 It made sense that we put the Department
18 of Justice voting rights enforcement, you know,
19 somewhat ahead of some of the older ones. And what I
20 would suggest is that we obtain -- and I'm not sure
21 how -- this probably isn't very difficult, but a
22 little bit more of a description of what is contained
23 in them, and I'll tell you why.

24 On the next item in the agenda is
25 consideration of the briefing report on covert

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1 wiretapping. When I saw that title, I didn't know
2 what that was, and when I actually read the report, it
3 raised, you know, new issues for me, which I'll bring
4 up at the next agenda item, and I think if we had a
5 little bit more information on each of these, then
6 maybe at our next business meeting we may put one on
7 the queue as it is, but on our next agenda or maybe in
8 between there could be some solicitation from the
9 Staff Director on what our prioritization is, and then
10 we could take a vote at the next meeting.

11 But I'd like a little bit more
12 information, particularly on those that I was not on
13 the Commission for, and there are other Commissioners
14 who weren't present for some of these.

15 CHAIRMAN REYNOLDS: Okay. Vice Chair
16 Thernstrom.

17 VICE CHAIR THERNSTROM: No, go ahead.

18 CHAIRMAN REYNOLDS: No.

19 VICE CHAIR THERNSTROM: I was just going
20 to ask Commissioner Gaziano. As I look at the list as
21 I wrote it down, it doesn't look to me as if mootness
22 is a problem with Title IX, multi-ethnic placement,
23 legal immigration, STEM, HBCUs, Native Americans,
24 Blaine amendments, English in the workplace. Do you
25 think some of those topics are moot?

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1 COMMISSIONER GAZIANO: Most of those, but
2 you skipped over legal immigration, and I just don't
3 know what it covered.

4 VICE CHAIR THERNSTROM: No, I actually
5 included that.

6 COMMISSIONER GAZIANO: Oh, I didn't hear
7 it. I mean, that may be the most important, depending
8 on what we cover. So we may want to put that at the
9 front of the line. If I knew a little bit more about
10 it, I don't know what the specific focus of the Title
11 IX briefing was, and so maybe the specific focus of
12 the Title IX briefing was on something that Congress
13 has amended or guidelines that have been issued. So
14 perhaps that is more or less moot. I just don't know
15 without knowing a little bit more about -- those two
16 are just examples.

17 I think the illegal immigration was one
18 that I was on the Commission, but had to miss that
19 briefing. Is that the one that was March of 2008?

20 STAFF DIRECTOR DANNENFELSER: April.

21 COMMISSIONER GAZIANO: I'm sorry, yeah,
22 April. That's one that I -- so, you know, I think I
23 know a little bit more about what that one was about,
24 but the Blaine amendment one, I don't know if there
25 has been some action, but if it's not too much of a

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1 problem to get a little bit more of a description,
2 that might be helpful in just deciding whether we want
3 to get the immigration one out before the Title IX
4 athletics one, for example.

5 STAFF DIRECTOR DANNENFELSER: Well, the
6 one at Title IX has actually been sent to
7 Commissioners.

8 COMMISSIONER GAZIANO: Oh, I'm sorry.
9 You're right.

10 STAFF DIRECTOR DANNENFELSER: But there
11 are a number of others. I guess once you begin with
12 the Multi-ethnic Placement Act on the list that was
13 with the binders this month, I guess those are the
14 ones that have not yet been sent to the Commissioners.

15 COMMISSIONER GAZIANO: There is some
16 litigation in Blaine amendments right now. That might
17 be more topical or relevant for us to get out, and I
18 don't know if anyone else has a better idea as to how
19 we should be -- do other Commissioners like the idea
20 of being told and then discussing it at our next
21 business meeting?

22 Is that unnecessary?

23 CHAIRMAN REYNOLDS: Well, I think it's a
24 good idea that we get a description of each briefing
25 report and suggest a prioritization of the briefing

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1 reports, and then at our next business meeting, we
2 could, you know, decide what has higher value.

3 VICE CHAIR THERNSTROM: The Blaine
4 amendment, one, as I understood it, will be completed
5 very soon; is that correct, Mr. Staff Director?

6 STAFF DIRECTOR DANNENFELSER: It should be
7 relatively soon. The General Counsel is very involved
8 right now with the statutory report. So he has not
9 been able to devote as much attention to that report
10 as he might otherwise, but it is substantially
11 completed. It does need some more work to get it into
12 final form though. But then it would have to undergo
13 some internal reviews once it goes to that point.

14 VICE CHAIR THERNSTROM: As I understand
15 it, in each case they are substantially down the road
16 of being in shape --

17 STAFF DIRECTOR DANNENFELSER: Yes, they
18 are.

19 VICE CHAIR THERNSTROM: -- for us to
20 consider.

21 STAFF DIRECTOR DANNENFELSER: The English,
22 yeah, with the exception of the English in the
23 workplace report, I think that's accurate to say.

24 VICE CHAIR THERNSTROM: Okay.

25 COMMISSIONER GAZIANO: But given our time

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1 and attention, you know, we should focus on those that
2 it's more important to focus on first.

3 CHAIRMAN REYNOLDS: Yeah, and just the
4 time constraints. We have a fair number that are
5 ready, and it is possible that -- I mean one approach
6 would be to just release them as they're completed. I
7 think that we would be overwhelmed.

8 So I think that we need to establish some
9 type of priority and move forward in a methodical
10 fashion.

11 Commissioner Heriot.

12 COMMISSIONER HERIOT: This is kind of off
13 topic, but I need to bring it up. It's the second
14 time I've brought it up, but it's just something that
15 occurred to me at this moment and you can tell me when
16 I should bring it up.

17 We've seen the release reports, such as
18 the proposed report that we have in our book here,
19 where we in very large numerals put the date of the
20 actual briefing, in this case March 9th, 2007. You
21 might as well put a big red flag for newspapers to say
22 this report is old and washed up and you shouldn't
23 bother to read it. We should not be dating our
24 reports the date of the actual briefing. It should be
25 the date that the report is released, and that will

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1 always be a future date as far as the meeting is
2 concerned.

3 CHAIRMAN REYNOLDS: Agreed.

4 COMMISSIONER HERIOT: Really, if you took
5 this and put it in front of a newspaper reporter,
6 you'd have to pay them thousands of dollars to even
7 look on page 2 if it's got a date like that on it, and
8 it says we can't do that. Let's put the date the
9 report is really released. This is a report on covert
10 wiretapping in a War on Terror, and it's the date
11 that --

12 CHAIRMAN REYNOLDS: And it's clear within
13 the body of the document.

14 COMMISSIONER GAZIANO: Of course.

15 COMMISSIONER HERIOT: The briefing
16 occurred on March 9th, 2007, but the report --

17 CHAIRMAN REYNOLDS: Right.

18 COMMISSIONER HERIOT: -- is, you know,
19 June 30th, 2009.

20 COMMISSIONER GAZIANO: Yeah, and obviously
21 our findings and recommendations and Commissioner
22 statements are an important part of the report.

23 COMMISSIONER HERIOT: This is actually an
24 issue that we've brought up before. It's just we
25 didn't --

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1 STAFF DIRECTOR DANNENFELSER: The actual
2 outside covers of the report do have the date when the
3 report is published, but we can adjust the inside
4 papers as well.

5 COMMISSIONER GAZIANO: Why? Have we got
6 to make it --

7 COMMISSIONER HERIOT: This is the part
8 that has --

9 STAFF DIRECTOR DANNENFELSER: Well, that
10 would not be the cover of a printed report, but that
11 is, say, the inside cover, if you will.

12 COMMISSIONER HERIOT: Well, I want to see
13 that date prominent.

14 COMMISSIONER GAZIANO: Yeah, prominently,
15 yeah. I think on our Website they appear that way,
16 too. So it looks like we haven't issued any reports
17 in the last year.

18 COMMISSIONER HERIOT: I talked to someone
19 yesterday who asked me why the Commission had not
20 issued any reports in years, and they were going on
21 the basis of the date they were seeing on the Website.

22 CHAIRMAN REYNOLDS: Sure.

23 COMMISSIONER HERIOT: And it was very
24 embarrassing.

25 STAFF DIRECTOR DANNENFELSER: Well,

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1 obviously when the Commission takes up the findings
2 and recommendations, those are much more current, and
3 they're a significant part of the report.

4 CHAIRMAN REYNOLDS: Well, this is an easy
5 fix. I think that Commissioner Heriot is right. When
6 we publish a document that should be the date that's
7 front and center.

8 Additional comments, questions?

9 COMMISSIONER YAKI: So we're not going to
10 be relegating the data of the brief into a footnote,
11 are we?

12 COMMISSIONER HERIOT: It goes in the text.
13 Yeah, it goes in the text, "on March 9th, 2007, a
14 panel of three experts."

15 CHAIRMAN REYNOLDS: It's in the document.
16 It's in the text of the document.

17 COMMISSIONER GAZIANO: It could even be in
18 the table of contents.

19 CHAIRMAN REYNOLDS: -- of who, what, when,
20 where.

21 COMMISSIONER YAKI: I very uncomfortable
22 with the fact that the only reference to the date of
23 the briefing would be within the text itself.

24 COMMISSIONER GAZIANO: It can be in the
25 table of contents.

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1 CHAIRMAN REYNOLDS: Okay. Additional
2 questions?

3 COMMISSIONER YAKI: Is this a formal
4 policy that's being adopted? Should we vote on it?
5 Is there a motion on the floor?

6 CHAIRMAN REYNOLDS: No, this doesn't rise
7 to the level of policy. These are editorial -- it's
8 an editorial adjustment.

9 COMMISSIONER YAKI: I just want to
10 state --

11 COMMISSIONER HERIOT: On the other hand, I
12 don't want to see the mistake made --

13 COMMISSIONER YAKI: -- I just want to
14 state my objection --

15 COMMISSIONER HERIOT: -- again.

16 COMMISSIONER HERIOT: -- on the record.

17 CHAIRMAN REYNOLDS: Okay. You've done so.

18 COMMISSIONER HERIOT: Can we vote on it?
19 I don't want --

20 VICE CHAIR THERNSTROM: Let's not have a
21 vote on it.

22 COMMISSIONER HERIOT: Wave your arms and
23 say, "Don't forget this." It's something that we'll
24 make sure that nobody forgets this.

25 VICE CHAIR THERNSTROM: Yeah, we've

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1 already agreed to it.

2 CHAIRMAN REYNOLDS: Remind me during a
3 break or after we're done here. I just want to
4 respond to that off the record.

5 In any event, moving on, next up approval
6 of the briefing report on covert wiretapping in the
7 War on Terror.

8 V. PROGRAM PLANNING

9 APPROVAL OF BRIEFING REPORT ON COVERT

10 WIRETAPPING IN THE WAR ON TERROR

11 CHAIRMAN REYNOLDS: Based on information
12 offered during the Commission's March 9th, 2007,
13 briefing, staff offers for approval a draft report on
14 covert wiretapping and the War on Terror. Part A of
15 the report is up for consideration at this meeting.

16 Because the issues dealt with during the
17 briefing have largely been rendered moot by policy
18 changes made during the Bush administration and by
19 subsequent legislation passed by Congress, staff did
20 not recommend findings and recommendations. After
21 Part A was distributed to the Commission along with
22 staff recommendations against findings and
23 recommendations, Commissioners Yaki and Melendez
24 requested an opportunity to draft findings and
25 recommendations that could be considered at a

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1 subsequent meeting.

2 That request was approved. Assuming that
3 Part A is approved today, our findings and
4 recommendations will be considered at a subsequent
5 business meeting, and the period for Commissioner
6 comments will not begin until such consideration,
7 according to our standard practice.

8 I move that the Commission approve for
9 publication Part A of the report produced by staff and
10 reflecting Commissioner and panelist input on
11 Commissioners' March 9th, 2007 briefing on covert
12 wiretapping in the War on Terror, as distributed in
13 draft form to Commissioners on May 7th.

14 Is there a second? Pretty please.

15 COMMISSIONER HERIOT: Do you really
16 want --

17 COMMISSIONER GAZIANO: If we do not have a
18 second we won't go.

19 COMMISSIONER YAKI: I'll second it.

20 CHAIRMAN REYNOLDS: Okay. Discussion?

21 COMMISSIONER GAZIANO: Okay. I'd like to,
22 Mr. Chairman, a substitute motion that the
23 Commission --

24 COMMISSIONER HERIOT: Well, wait, wait,
25 wait. If Yaki is seconding this, we can just vote. I

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1 thought you had a procedural objection.

2 COMMISSIONER GAZIANO: Oh, no.

3 CHAIRMAN REYNOLDS: Yes, thanks for
4 reminding me.

5 COMMISSIONER HERIOT: Do you want to
6 withdraw that second or do you want to --

7 CHAIRMAN REYNOLDS: Commissioner Yaki,
8 there is a technical problem. We have some steps that
9 should be taken prior to a briefing report being
10 brought here for a vote.

11 Mr. Staff Director, could you describe
12 what happened or at least what the deficiency is?

13 STAFF DIRECTOR DANNENFELSER: The reports
14 that go through the various review, the editorial
15 review and the legal sufficiency reviews, and those
16 have been done, and then a checklist is sent along
17 with the report to an external reviewer. We did not
18 complete the external review process for this report.
19 So that part of it is not complete at this point.

20 COMMISSIONER YAKI: Then why are we
21 bringing it up now?

22 CHAIRMAN REYNOLDS: This was brought to my
23 attention yesterday.

24 COMMISSIONER YAKI: Just move to table it
25 for the next meeting.

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1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER GAZIANO: I have a substitute
3 motion then unless you've formally -- you were
4 suggesting that. Let me offer my substitute amendment
5 first.

6 I move that the Commission cease work on
7 this report and not complete the external review on
8 two grounds. The first is that the majority of the
9 legal discussion is now moot and not within our
10 jurisdiction, as the witnesses and some of the
11 Commissioners pointed out at the time of the hearing,
12 and that the issue that was potentially within our
13 jurisdiction, whether there was any racial profiling
14 going on, the Commission did not obtain any evidence
15 sufficient one way or the other on that question, and
16 it would be a waste of Commission resources for us to
17 expend further time on a report that did not produce
18 sufficient evidence one way or the other of the matter
19 in our jurisdiction.

20 COMMISSIONER HERIOT: I'll second that
21 motion.

22 CHAIRMAN REYNOLDS: Discussion.

23 COMMISSIONER YAKI: Yeah. I mean, well,
24 this is interesting. I've never seen a position where
25 we've decided to basically kill a report because a

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1 couple of Commissioners decided that they just didn't
2 agree with the evidence provided, given the fact that
3 they're more than happy to do findings and
4 recommendations on hearings with much less factual
5 background or factual predicate.

6 I think that even in the case of the Omaha
7 briefing, which was extremely late, that involved a
8 statutory deadline that passed, we did not say it's
9 irrelevant; it's not worth the use of staff time;
10 we're not going to release it. We did, indeed,
11 approve the Omaha report.

12 COMMISSIONER HERIOT: No, we did not

13 COMMISSIONER YAKI: It's on the Website.

14 COMMISSIONER HERIOT: Well, it shouldn't
15 be because we did just the opposite. We did exactly
16 that to what we're doing to this one.

17 STAFF DIRECTOR DANNENFELSER: There was a
18 motion to just put the transcripts and the testimony
19 on the Website, but not to issue it as a formal
20 report, Omaha.

21 COMMISSIONER YAKI: Well, actually I
22 remember.

23 COMMISSIONER GAZIANO: Let me clarify my
24 motion. I don't mind the transcript remaining on the
25 Website. Let readers see what I'm saying today, that

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1 most of it covered matters not in our jurisdiction.

2 CHAIRMAN REYNOLDS: Well --

3 COMMISSIONER GAZIANO: And that which was
4 discussed --

5 COMMISSIONER YAKI: I would strong object
6 that it did not -- it did cover matters within our
7 jurisdiction, that when you look at the racial and
8 religious profiling that went on during that time
9 period from the testimony that was produced by members
10 of the Islamic community, that it is important that we
11 continue to put this information out there because
12 certainly to forget it is, I think, a very dangerous
13 precedent.

14 It deals with a very uncertain time in our
15 country. It dealt with direct actions by our federal
16 government against a discrete and identifiable group
17 of people based upon issues of race and religion.

18 COMMISSIONER GAZIANO: There was no
19 evidence of that.

20 COMMISSIONER YAKI: And the --

21 COMMISSIONER GAZIANO: There was
22 assertions to --

23 COMMISSIONER YAKI: Well, I would assume
24 that in half the stuff that you put out, Mr. Gaziano.
25 There's no evidence backing anything that you put

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1 out, but I am not going to go over that.

2 COMMISSIONER GAZIANO: I didn't -- I
3 didn't direct it to you personally, Commissioner.
4 Commissioner Yaki, I did not -- point of personal
5 privilege, Mr. Chairman.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano,
7 let him finish.

8 COMMISSIONER GAZIANO: No. Point of
9 personal privilege.

10 CHAIRMAN REYNOLDS: He has --

11 COMMISSIONER GAZIANO: When someone is
12 attacked personally, they have a right to be --

13 CHAIRMAN REYNOLDS: -- you should not cut
14 each other off, and at the time that you made your
15 comment, he did not bring you up.

16 COMMISSIONER GAZIANO: Okay. Then give me
17 the point of personal privilege as soon as --

18 CHAIRMAN REYNOLDS: No, defend your honor.

19 COMMISSIONER GAZIANO: -- as soon as he is
20 done.

21 CHAIRMAN REYNOLDS: Done?

22 COMMISSIONER YAKI: Hell no.

23 CHAIRMAN REYNOLDS: Roll on, roll on.

24 COMMISSIONER YAKI: I think I have worked
25 with the Islamic community on issues from Persian Gulf

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1 War, from the first Persian Gulf War, Desert Storm,
2 and in the aftermath of 9/11, and as we went forward
3 in the second Gulf War, and I can tell you that I even
4 went to a workshop attended by the FBI, hosted by the
5 Islamic community probably only a year ago where the
6 issues are still pertinent, where there is still
7 ongoing reconciliation, where the sensitivity levels
8 have been raised, but they've only been raised because
9 a spotlight has been shown on them.

10 I think that the idea that there were no
11 evidence or facts produced is silly. I think it's
12 silly in the fact that we had, I think, very
13 compelling testimony from people involved about how
14 actions were being taken. I think there were
15 materials introduced into the record afterwards that
16 talked about it at even greater length, and I am just
17 offended that for an issue that continues to have
18 relevance today why we would simply pretend that it is
19 of little importance to the Commission, little
20 priority to the Commission, not worth -- in the words
21 of a fellow Commissioner a waste of any Commission
22 resources to spend on it, and if this is the position
23 that the Commission wishes to take, given that this
24 was a briefing that I tried to get on for two years
25 and it has taken three years or so, another two years

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1 to get this report out; you know, if that's the
2 Commission's role, fine, but I will make sure that
3 everyone who came, who I have spoke with, who came to
4 this, understands what you did and why you did it
5 because it is very clear that if you take this
6 position, you are showing incredible insensitivity to
7 a segment of our population, Americans, who were
8 targeted, who were harassed, and for whom perhaps the
9 laws of government may have expired now, but there are
10 continuing issues with it.

11 Senator Specter has legislation that talks
12 about this.

13 CHAIRMAN REYNOLDS: Commissioner Yaki.

14 COMMISSIONER YAKI: I just want to put
15 this out there. It is not an issue that is going away
16 or has gone away. In fact, it seem to repeat itself
17 with alarming regularity at various intervals in our
18 nation's history.

19 CHAIRMAN REYNOLDS: Commissioner Yaki,
20 we've got to give other folks an opportunity.

21 Commissioner Gaziano.

22 COMMISSIONER GAZIANO: Well, let me be
23 clear. On several of the points I think I was clear
24 already, but given Commissioner Yaki's statements, I
25 apparently was not.

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1 Regarding 70 to 80 percent of what the
2 briefing was about is whether the international call
3 program that was terror surveillance program that was
4 leaked to the press that intercepted international
5 calls between suspected terrorists abroad and
6 suspected allies in the United States, whether that is
7 constitutional, is within the President's inherent
8 authority is not within our jurisdiction.

9 CHAIRMAN REYNOLDS: Commissioner Yaki, do
10 you believe that that issue is within our
11 jurisdiction?

12 COMMISSIONER YAKI: I believe that if the
13 usage of the program was targeted on people's last --
14 based on their ethnicity, religion or whether they
15 categorized their last name as belonging to a specific
16 ethnicity or religion, yes, I do.

17 COMMISSIONER GAZIANO: Okay, and that one
18 aspect --

19 CHAIRMAN REYNOLDS: Working as a
20 facilitator here.

21 COMMISSIONER GAZIANO: But let me try to
22 finish my thought. That one aspect, I don't think any
23 Commissioner thinks wasn't important.

24 CHAIRMAN REYNOLDS: Do you agree with his
25 statement that if someone was targeted because of

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1 their ethnic background that that does implicate our
2 -- that it falls within our jurisdiction?

3 COMMISSIONER GAZIANO: If it was -- to
4 study, to study and to see if (a), in fact, that was
5 true and (b), in fact, whether that may have in part
6 been justified.

7 Yes, let me get to that. There were
8 Commissioners and witnesses who engaged in that,
9 whether there was any evidence that Swedish Americans
10 who were calling certain suspected terrorists abroad
11 were listened to any more than Arab Americans who were
12 calling suspected terrorists abroad, and there was no
13 evidence one way or the other that was obtained.

14 I'm not sure that there was a likelihood
15 that given it was a top secret wartime program that
16 the Commission would have been able to obtain that
17 evidence, but to the extent that there was a hope that
18 we could have produced that kind of evidence, maybe
19 that was a reason to go through with the hearing.

20 But the record produced no evidence of
21 that one question that is in our jurisdiction one way
22 or the other. It's an important issue that I think we
23 all agree, and to this day I don't think Congress on
24 the public record or anyone else has been able, you
25 know, knows definitively what the result is.

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1 But our record, this report -- by the way,
2 I want to commend the staff. I think it's a well done
3 summary of what the witnesses who were speculating
4 about many of these things on the legal issues not
5 under jurisdiction. There was a flat disagreement.
6 There was a lot of attention paid to whether District
7 Judge Diggs' opinion was going to be affirmed or
8 reversed. We now know the footnotes in the report
9 says it's reversed, but I, again, think it's a waste
10 of our resources to publish this debate which is now
11 moot.

12 On the question before us, however, we
13 produce no evidence one way or the other to make
14 findings. We have no evidence in the record on that
15 question, but as to the personal attack, Commissioner
16 Yaki, I did not say that you did not produce this. I
17 would appreciate an apology from you, and if I don't
18 receive it, it'll -- it'll -- it'll be in keeping with
19 prior comments that you've made.

20 CHAIRMAN REYNOLDS: All right. All right.
21 Commissioner Heriot.

22 COMMISSIONER HERIOT: Okay. I agree with
23 Commissioner Yaki that if we held a briefing on
24 whether or not Americans of Middle Eastern extraction
25 have been targeted, that that would be certainly

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1 within our jurisdiction. The evidence didn't really
2 go to that. We didn't have someone saying, "Yes, it
3 is targeted," and someone saying, "No, it isn't."
4 We're not making a decision on the facts here.

5 There was very little even passing
6 discussion of that.

7 I also agree with Commissioner Yaki,
8 although I'm not dead certain that you ever said this,
9 Commissioner Yaki. I was told that you said that at
10 the Commission we should subpoena witnesses on this
11 issue. I agree we should subpoena a lot more than we
12 do. That's our comparative advantage.

13 A lot of people do research on civil
14 rights issues. We are the one institution that can do
15 research on civil rights issues and make sure people
16 do, indeed, deliver data to us, and it seems to me we
17 should use that a lot more.

18 But we didn't use it in this report. So
19 what we have are a few witnesses who really didn't
20 know that much about the program. We didn't learn
21 that much about the program. Unless we can show that
22 there was discrimination on the basis of national
23 origin, it's not within our jurisdiction. It is
24 certainly moot.

25 So I can't imagine a report that we should

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1 less want to spend time on. If we were to issue
2 findings and recommendations, I can't see how they
3 would be anything other than we didn't have any
4 evidence and, therefore, we don't have any opinion.
5 That's not a good use of our resources.

6 Had we had a better briefing, perhaps we
7 could have done something here. Perhaps we could have
8 issued an opinion that there was no discrimination on
9 the basis of national origin or that there was
10 discrimination on the basis of national origin, but
11 from this record we don't have a prayer of doing that.

12 CHAIRMAN REYNOLDS: Commissioner Yaki,
13 before you start, I just want to make one brief point.

14 I was living in Washington, well, on 9/11, and you
15 could cut the fear with a knife. They had a gentleman
16 that sold ties, a Sikh gentleman, not too far away
17 from the Department of Education, and you could smell
18 the fear on the man.

19 There were a number of incidents around
20 the country. In fact, we did work to insure that a
21 school in Brooklyn that has a high percentage of
22 Muslim children were protected. There were definite
23 problems, still are to a far less degree, but I don't
24 get the sense from the transcripts that that briefing
25 was focused on those types of issues.

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1 My assumption and voting to have this
2 briefing report, my vote rested on the assumption that
3 we would have a different focus, you know, people
4 being targeted because they are from the Middle East
5 or are perceived to be from the Middle East. That was
6 not the primary thrust of the briefing based on my
7 review of the transcripts.

8 Commissioner Yaki.

9 COMMISSIONER YAKI: Yes. I mean, I would
10 say it would be an understatement for me to say that I
11 was unresolved by how this briefing actually got put
12 together. I had actually submitted a far greater list
13 of people to talk about the issues that I was
14 concerned about, Kareem Shora being the only one who
15 made it on, but there were at least two others who I
16 wanted on the list as well to talk about this from the
17 aspect of the Islamic American community.

18 VICE CHAIR THERNSTROM: Were they asked to
19 appear? Do you know?

20 COMMISSIONER YAKI: I don't know. I mean,
21 it was one of those things where it just kind of went
22 into a previous factor and it went into somewhere and
23 it didn't come out.

24 But I will say this, and that is rereading
25 what Mr. Shora said and the summaries of the question

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1 and answer, I think it would be a great disservice to
2 kill this report, and I think that one of the reasons
3 why Commissioner Melendez and myself asked for it to
4 be bifurcated so that we could work on some findings
5 and recommendations is precisely because we are
6 unsatisfied with what it did and what it could have
7 done.

8 And in fact, what we were talking about
9 just the other day was that our findings and
10 recommendations were not going to be the findings and
11 recommendations that this Commission generally puts
12 together, which I always think are made out of straw
13 and paper string and paper mache, but what the
14 original purpose of a briefing was, which is to raise
15 questions, to point to areas of further inquiry and
16 oversight for policy makers. That is what our
17 proposed findings and recommendations are going to be
18 about.

19 They are not going to be conclusions that
20 state that it is without a doubt that 99 percent of
21 the Islamic American community was targeted by the FBI
22 and the CIA for covert wiretapping. We don't know
23 that, but what we do know is that representatives of
24 that community have communicated to me and have said
25 in this thing that there were a number of different

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1 programs, including this, where they received many,
2 many anecdotal stories about how they were getting
3 phone calls at hospitals, overseas, and they were
4 getting phone calls at their home, and they were
5 getting FBI visits up there at their house, what have
6 you.

7 It begs the question of, well, what should
8 we be doing based on just what we have so far. What
9 should we be looking for? What are the things that we
10 as a Civil Rights Commission should be concerned about
11 implementation of this or any subsequent programs of
12 its ilk in the future?

13 That is, frankly, what Commissioner
14 Melendez and myself proposed to do with the proposed
15 findings and recommendations. By killing this out,
16 you deny us the ability to, I think, point what we
17 think are the deficiencies in the report, where we
18 think further inquiry could be developed, and what
19 issues policy makers should be concerned about in the
20 future for this and other types of programs in the
21 context, in the context of why these things happened
22 again.

23 I am telling you this. To simply bury
24 this report is to simply pretend that these events and
25 the paranoia or whatever didn't occur, and it's one of

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1 those instances where if you forget about it, you do
2 it again, and I don't want to see that happen. It has
3 happened before.

4 So if you want to go ahead and do it,
5 find. But I'm just telling you what we were going to
6 propose to do with our findings, which was not to make
7 grandiose conclusions based on spit and bailing wire,
8 which is what I think, quite frankly, a lot of our
9 conclusions in our briefing reports are done, based on
10 scantier evidence than produced here, but to talk
11 about what needs to be done, what needs to be looked
12 at, what inquiries should be followed, that is a far
13 different kind of creature.

14 If you don't want to hear that, that's
15 fine, but I'm just going to go back and tell everyone
16 that when it comes to an issue of this import to the
17 civil liberties of American in this country, this
18 Commission decided it wasn't worth the paper to print.

19 COMMISSIONER HERIOT: Why don't we instead
20 of doing a report because a report has so much stuff
21 that is so clearly outside our jurisdiction, and the
22 factual basis is something; why don't you write your
23 proposals and such not as findings and recommendations
24 for this report, but as a letter to Congress that the
25 Commission could send?

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1 VICE CHAIR THERNSTROM: Well, and publish
2 on our Website as well.

3 COMMISSIONER HERIOT: And publish on our
4 Website if we adopt it.

5 VICE CHAIR THERNSTROM: Yeah. No, I think
6 that --

7 COMMISSIONER HERIOT: Because otherwise we
8 have like this long report that really doesn't bear
9 that much on what your concerns are. Your concerns
10 are more narrow than that, and your concerns are more
11 what the Commission is supposed to be doing and not
12 what's in this report. Write the letter. Bring that
13 up at the next --

14 CHAIRMAN REYNOLDS: Please respond.

15 COMMISSIONER YAKI: Well, I'm sorry. I
16 think that the context of the report is important for
17 what it is that Commissioner Melendez and I would
18 propose to do. The very fact that we were -- please
19 let me finish.

20 The very fact that we were denied access
21 to a lot of information, the very fact that there were
22 I would say a fair amount of stonewalling going on by
23 those who defended the program is exactly the kind of
24 context that I think is important for what
25 Commissioner Melendez and I choose to do. Without

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1 that context, it simply appears in thin air.

2 And you know, to simply make this report
3 go away to never see the light of day is to ignore
4 that context and, quite frankly, if you're so dead set
5 about doing this, then I'm just going to say this.
6 The appendix to my letter is going to be the whole
7 damned report. The transcript, everything else is
8 going to be on the Website, and if it's not on the
9 Website, then I think that, you know, this is just,
10 you know, sandbagging of immense proportions.

11 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

12 VICE CHAIR THERNSTROM: Well, my
13 understanding is that there is no dispute that the
14 transcript needs to be on the Website. Am I
15 incorrect?

16 COMMISSIONER HERIOT: It's there.

17 CHAIRMAN REYNOLDS: Well, I do have a
18 concern. I mean if there is a consensus that we lack
19 jurisdiction, I don't see how anything goes on our
20 Website that's out of our jurisdiction.

21 COMMISSIONER HERIOT: How are we to
22 determine if it has jurisdiction? We held the
23 briefing.

24 VICE CHAIR THERNSTROM: We did hold the
25 briefing.

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1 COMMISSIONER HERIOT: It wasn't
2 inappropriate to hold a briefing that we thought
3 could, you know, be touching on discrimination on the
4 basis of national origin.

5 VICE CHAIR THERNSTROM: Yeah, I --

6 COMMISSIONER HERIOT: I think it's okay to
7 leave that transcript.

8 VICE CHAIR THERNSTROM: That transcript
9 has to remain on the Website, the statements of
10 witnesses and so forth, and I do like Commissioner's
11 Heriot's proposal, and I think that you can make sure
12 and particularly given the fact that the transcript
13 would be on the Website, that whatever you write makes
14 the context clear.

15 I was going to raise my hand before
16 Commissioner Heriot spoke to ask whether there was a
17 way in which we could hear from you and Commissioner
18 Melendez without going forward with this report as a
19 compromise.

20 Two things. One, I do have to say, and
21 this is important, that I was at neither of the
22 briefings, nor have I read the material. I just have
23 not had a chance to. But I do have procedural
24 problems with anything that smacks of silencing you
25 and Commissioner Melendez.

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1 And so, therefore, I very much like what
2 Commissioner Heriot is proposing, provided the
3 transcript and the statements of witnesses are also on
4 the Website.

5 COMMISSIONER HERIOT: Wait. If a letter
6 were to be posted on the Website, it has to be adopted
7 by a majority.

8 COMMISSIONER GAZIANO: Correct. I was
9 just --

10 VICE CHAIR THERNSTROM: Well, it has to be
11 adopted by a majority. As a letter from two
12 Commissioners.

13 COMMISSIONER HERIOT: We don't put
14 individual correspondence.

15 COMMISSIONER GAZIANO: Mr. Chairman.

16 COMMISSIONER YAKI: We have in the past.

17 COMMISSIONER GAZIANO: I would certainly
18 encourage Commissioners Yaki and Melendez to draft
19 such a letter as well, and I hope that we could all
20 join it, and I certainly would be happy for them to
21 quote from whatever part of the transcript they want,
22 but --

23 COMMISSIONER YAKI: That is such B.S.

24 COMMISSIONER GAZIANO: Would you please
25 not interrupt.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki

2 COMMISSIONER YAKI: That's it. That's it.

3 This is just ridiculous.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER YAKI: You guys have just
6 gone beyond --

7 CHAIRMAN REYNOLDS: Commissioner Yaki.

8 (Simultaneous conversation.)

9 COMMISSIONER YAKI: The idea that the
10 transcript alone --

11 CHAIRMAN REYNOLDS: Commissioner Yaki, I
12 have --

13 COMMISSIONER YAKI: The idea that the
14 transcript alone will suffice --

15 CHAIRMAN REYNOLDS: Commissioner Yaki, I
16 had this conversation with Commissioner Gaziano. Let
17 him finish.

18 COMMISSIONER HERIOT: Let the record
19 reflect that Commissioner Yaki has been screaming,
20 yelling, and is now storming out of the room.

21 COMMISSIONER YAKI: No, no. Storming
22 would be inappropriate. Screaming would be
23 inappropriate. Raising my voice in utter disbelief
24 that this Commission would take this report --

25 CHAIRMAN REYNOLDS: Well, we could debate

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1 --

2 COMMISSIONER YAKI: -- and bury it in the
3 trash can because they don't agree with it --

4 CHAIRMAN REYNOLDS: We should be --
5 (Simultaneous conversation.)

6 CHAIRMAN REYNOLDS: -- on the record.

7 VICE CHAIR THERNSTROM: Commissioner Yaki,
8 I have not understood what you said in response to my
9 other --

10 COMMISSIONER GAZIANO: I still have the
11 floor, I believe.

12 CHAIRMAN REYNOLDS: Time out, folks.

13 VICE CHAIR THERNSTROM: I would like to
14 hear from Commissioner Yaki.

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
16 Commissioner Gaziano has the floor. When he is done -
17 -

18 VICE CHAIR THERNSTROM: Okay. It's just
19 that I didn't understand Commissioner Yaki.

20 CHAIRMAN REYNOLDS: Vice Chair Thernstrom
21 --

22 VICE CHAIR THERNSTROM: Yes.

23 CHAIRMAN REYNOLDS: -- let's try to
24 proceed in an orderly fashion.

25 COMMISSIONER YAKI: You mean Commissioner

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1 Tattle-tale?

2 CHAIRMAN REYNOLDS: Whatever that means.

3 Commissioner Gaziano.

4 COMMISSIONER GAZIANO: As I was saying
5 before I was so rudely interrupted, I would be happy
6 for Commissioners Yaki and Melendez to write the kind
7 of letter that Commissioner Yaki says he was thinking
8 of proposing for finding and recommendations. It
9 doesn't sound like though it would be appropriate as a
10 finding and recommendation, and that's why I think
11 it's much more suitable as something else.

12 But I hope for it to garner a majority
13 vote or I expect for it to garner a majority vote and
14 be eligible for posting on our Website that he stick
15 to points that we all would agree with, and I think
16 the areas of agreement are the concerns that were
17 raised by many in the Arab American Community are
18 suggestions that any one terrorism surveillance needs
19 to be very careful not to engage in racial profiling
20 based on assumptions and stereotypes.

21 If that is the letter that the other
22 Commissioners are suggesting or the document, I think
23 that it would garner majority support. If it is, you
24 know, based on speculation about the prior program and
25 contains an inherent condemnation, then I'm not sure

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1 it will garner majority support, but that sounds like
2 something we should be working on.

3 If we can come to a consensus on that and
4 we can send it to Congress and we can send it to the
5 President, I think that would be valuable.

6 CHAIRMAN REYNOLDS: Yeah, reaching
7 consensus. It's possible I could be a point guard for
8 the New York Nicks next year.

9 (Laughter.)

10 CHAIRMAN REYNOLDS: Possible. I suggest,
11 to the extent -- well --

12 COMMISSIONER GAZIANO: All right. Let me
13 -- to the extent that 90 percent of this Part A is not
14 on any of that which Commissioner Melendez says --
15 Commissioner Yaki says he wants to write, I don't
16 think it's appropriate to go forward with publishing
17 Part A. I think that the other Commissioners can
18 achieve all they intend and more by a separate
19 document that we can all approve, if indeed it's what
20 the Commission represented.

21 CHAIRMAN REYNOLDS: Anyone want to remind
22 me where we are procedurally?

23 COMMISSIONER HERIOT: We've got a motion
24 to terminate this project --

25 CHAIRMAN REYNOLDS: Okay.

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1 COMMISSIONER HERIOT: -- that has been
2 seconded.

3 COMMISSIONER MELENDEZ: Melendez here.

4 CHAIRMAN REYNOLDS: Commissioner Melendez.

5 COMMISSIONER MELENDEZ: Yes. You know,
6 just going back through, you know, briefings in
7 general, we've invited these people in to come and
8 give their positions, pro or con, on issues, and I
9 think the people who testified, you know, they don't
10 want to be doing this for nothing. They came here,
11 and it's a sad fact that we didn't pick the right
12 people. That's too bad. I mean, we've had situations
13 where we don't have to issue recommendations or
14 anything like that. We can just basically write a
15 briefing as to what these people actually said, you
16 know.

17 COMMISSIONER HERIOT: But, you see, that's
18 already on the Website. You see, remember our report
19 is nothing but a summary of the transcript. Well,
20 we've already got the transcript on the Website. So
21 they're actually better served. This way they can't
22 be misrepresented.

23 COMMISSIONER MELENDEZ: Well, I'm just
24 saying I think the briefing should be treated like we
25 treat our other briefings and not really waste our

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1 time of going through all of this, which costs money
2 bringing people in and then all of a sudden we say,
3 well, whatever these people said isn't worth moving
4 forward.

5 So I'm just saying that we should just
6 continue to not have recommendations, like you said,
7 and put it into a report and send it Congress and the
8 President and whoever else wants to see it and be done
9 with it.

10 CHAIRMAN REYNOLDS: Any other comments?

11 COMMISSIONER YAKI: I have a comment.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: Thank you very much,
14 Mr. Chair.

15 This is a report of approximately 53 pages
16 in length. It is a compilation of statements, a
17 summary, biographies of the speaker which is not
18 available in the transcript. I just want to say that
19 I find it mind boggling that the Commission would bury
20 this report and simply say, well, the transcript is
21 good enough, when the whole point of why -- if that
22 were the case, why do we need summaries at all of
23 witness statements --

24 COMMISSIONER HERIOT: I don't think we do.

25 COMMISSIONER YAKI: -- in any of our

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1 briefing reports.

2 COMMISSIONER HERIOT: Yeah, I think
3 they're a complete waste.

4 COMMISSIONER YAKI: Because they just --
5 you can go, "Well done."

6 COMMISSIONER HERIOT: Yeah.

7 COMMISSIONER GAZIANO: Well, even well
8 done --

9 CHAIRMAN REYNOLDS: Let Commissioner Yaki
10 get through his statement.

11 COMMISSIONER YAKI: On the other hand,
12 they do serve a good purpose in terms of helping to
13 summarize, if they're accurate, statements and
14 especially that question and answer session that
15 follows.

16 I think that if the Commission chooses to
17 do this, they do so at the peril of turning our back,
18 one, on a community and, two, more poorly on our
19 statutory mandate. We may narrowly define our
20 statutory mandate however way we choose to, but I
21 think that the whole purpose of what the Civil Rights
22 Commission was brought about was to look to see where
23 civil wrongs were being perpetrated upon Americans and
24 to make that part of our jurisdiction.

25 We did not use -- we did not used to. We

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1 have expanded our jurisdiction. It has been actually
2 part of the Commission's proud history that we took
3 the mission of the Commission from beyond that of
4 simply race to that of gender. That was part --

5 CHAIRMAN REYNOLDS: Understood that.

6 COMMISSIONER YAKI: But that was also part
7 of our first reports that came out in the late 1960s
8 or early 1970s. It was not simply a matter of
9 Congress saying, "Include women." It was part of what
10 the Commission started to take up in the early '70s on
11 the issues of domestic violence.

12 I've read the history. That's what at
13 least our own history says.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER YAKI: So the question is --
16 the question is I think that the briefing does fit
17 within our jurisdiction. I think that there's one
18 part of the briefing that specifically fulfills our
19 mission and our charter. I am not going to -- and if
20 my colleagues choose to deny Commissioner Melendez and
21 I the opportunity to present what we are calling
22 findings and recommendations, which I think we're
23 stuck on the nomenclature because, like I said, that's
24 not really what we are going to do; it is more about
25 lines of further inquiry, questions for the future,

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1 issues that policy makers must consider.

2 Then so be it. Let them silence the
3 minority on the Commission. Let me silence the
4 Islamic American community who came to testify about
5 it, and I will attempt to do something, and if it
6 doesn't get five votes because it doesn't meet
7 whatever moving standard my colleagues have, so be it.

8 But I at least will go out knowing on this important
9 issue for an important community and an important time
10 in our nation's history I am not going to abdicate my
11 responsibilities.

12 CHAIRMAN REYNOLDS: Okay. Commissioner
13 Heriot.

14 COMMISSIONER HERIOT: I would like to
15 state that no one in the history of the world has ever
16 silenced Michael Yaki. I am sure there have been
17 people who wanted to, but I'm also sure that they have
18 failed, and that is certainly not what this Commission
19 is trying to do.

20 I'm glad to hear the case being made more
21 explicitly because it makes it much more clear that I
22 can't support it. We don't make things part of our
23 jurisdiction. Congress makes things part of our
24 jurisdiction. We don't have the authority to expand
25 our jurisdiction. It is set for us by the United

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1 States Congress.

2 On the other hand, I think that
3 Commissioner Yaki is looking a gift horse in the
4 mouth. I think we really should consider such a
5 letter, and if he can write a letter that he can pull
6 a majority for on the narrow issue that we do have
7 jurisdiction on, then that's a good thing, and rather
8 than publish a report which goes on at great length
9 about things that don't really bear on our
10 jurisdiction and really are not likely to interest
11 people who have already considered this issue, already
12 read the cases, already formed their opinion about the
13 issues, the Fourth Amendment issues, that's not what
14 you want to focus on anyway. You want to focus on the
15 civil rights issues.

16 Write a letter and it can be considered.

17 CHAIRMAN REYNOLDS: Okay. At this point
18 are we ready to vote?

19 VICE CHAIR THERNSTROM: I don't know
20 whether we are. I mean, this is a damned mess.

21 CHAIRMAN REYNOLDS: Okay. I call the
22 question. All in favor please say aye.

23 VICE CHAIR THERNSTROM: I'm sorry. What
24 is the --

25 COMMISSIONER GAZIANO: To suspend work, to

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1 suspend work on this report.

2 CHAIRMAN REYNOLDS: So does everyone at
3 this point know what we're voting on?

4 COMMISSIONER HERIOT: And that would allow
5 Commissioner Yaki to write a letter --

6 CHAIRMAN REYNOLDS: I'm sorry?

7 COMMISSIONER HERIOT: -- to consider.

8 COMMISSIONER TAYLOR: Please state what
9 we're voting on.

10 CHAIRMAN REYNOLDS: No, what we're about
11 to vote on is whether we should stop work on this
12 briefing topic.

13 COMMISSIONER TAYLOR: This is Commissioner
14 Taylor.

15 And what is the basis of the information
16 that we need to stop work on this report for? What
17 specific reason?

18 COMMISSIONER GAZIANO: My stated reason
19 and others may have different is that the great
20 majority of it was on issues not within our
21 jurisdiction.

22 By the way, one of the witnesses pointed
23 out and one of the Commissioners seemed to agree, and
24 that the small portion that was potentially within our
25 jurisdiction produced no evidence one way or the other

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1 whether there was racial profiling in the surveillance
2 program and thus no ability for us to make findings
3 and recommendations of any value.

4 COMMISSIONER HERIOT: And the legal issues
5 are now moot because the case they spent a lot of time
6 describing has, in fact, been -- was it vacated or --

7 COMMISSIONER GAZIANO: Vacated.

8 COMMISSIONER HERIOT: -- vacated by the
9 Sixth Circuit, and you know --

10 COMMISSIONER GAZIANO: Reversed and
11 vacated.

12 COMMISSIONER HERIOT: Reversed and
13 vacated, and in addition, this program is no longer
14 operative, if the person had any idea what the program
15 was in the first place.

16 COMMISSIONER KIRSANOW: -- issue a report
17 that says just that. (Unintelligible) jurisdictional
18 guidelines that yielded no information and that, in
19 fact, it may be moot.

20 And the second question for the Staff
21 Director if how much more work needs to be done on
22 this so that we would have a finished project.

23 VICE CHAIR THERNSTROM: I'm in agreement,
24 by the way, with issuing a report that says precisely
25 what Commissioner Kirsanow has just suggested.

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1 COMMISSIONER GAZIANO: Under our normal
2 procedures, just a point of clarification, we then
3 would allow a debate on findings and recommendations
4 that I don't think could be productive, and then we
5 allow Commissioner statements and Commissioner
6 rebuttals, and I think based on the record before us,
7 that would be inappropriate use of our attention and
8 our resources.

9 So the work on Part A seems to be almost
10 done. I would have a quibble or two about one or two
11 of the summaries, but I think that part is done, but
12 there's still a lot more that we would do, and I don't
13 see how we not put those portions of the report that
14 are not within our jurisdiction on the record if we go
15 forward at this time, unless we're going to completely
16 rewrite --

17 COMMISSIONER KIRSANOW: I have a real
18 problem with making statements about things that are
19 not within our jurisdiction. What I mean by that is
20 we can make a statement that much of what we adduced
21 was not within our jurisdiction. We simply make it
22 clear. We let the public know that rather than people
23 wondering, well, what happened to this thing.

24 Second, if there's not too much work to be
25 done on this I think that is where much of our work

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1 should be confined to.

2 COMMISSIONER HERIOT: There's a lot of
3 work in the Commissioner statements.

4 COMMISSIONER KIRSANOW: I have some degree
5 of sympathy with what Commissioner Yaki has got to say
6 here. I mean for purposes of the public, I think the
7 Commission needs to make a statement with respect to
8 this report. I think especially with the subject
9 matter of this report. That statement may be, hey, we
10 don't have anything to say, but I think we do have to
11 say something.

12 COMMISSIONER GAZIANO: Well, to make it
13 within our jurisdiction, what I meant by there's not
14 much work needs to be done, there's not much work that
15 needs to be done to summarize the statements that
16 aren't within our jurisdiction. To make it a report
17 that's within our jurisdiction, I think there would
18 have to be a lot of work done. They would have to lop
19 off about two-thirds of it and maybe individual
20 sentences here and there. It doesn't seem to me that
21 that makes sense.

22 There's a small portion that Commissioners
23 or there seem to be a majority agrees in our
24 jurisdiction, and we ought to kind of deal with that
25 in some other way. The letter that Commissioner

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1 Heriot suggested sounds like a meaningful way of doing
2 that.

3 COMMISSIONER YAKI: Point of order.

4 CHAIRMAN REYNOLDS: Yes.

5 COMMISSIONER YAKI: When we scope this
6 briefing out and in the preparation of the report, it
7 would be my understanding that it would undergo review
8 for legal sufficiency, et cetera. Did that not
9 happen?

10 CHAIRMAN REYNOLDS: I'm sorry. Please
11 repeat your question.

12 COMMISSIONER YAKI: The question is are we
13 basically trying to close the barn door after all of
14 the horses have left. The fact of the matter is don't
15 these reports undergo initial screening for legal
16 sufficiency, jurisdiction at the preparation phase and
17 then also in the report phase?

18 CHAIRMAN REYNOLDS: The answer is yes.

19 COMMISSIONER YAKI: So why are we having
20 this discussion now?

21 CHAIRMAN REYNOLDS: There are a number of
22 Commissioners who disagree with the conclusion.

23 COMMISSIONER YAKI: Well, why don't we ask
24 the person -- was there not someone on the staff who
25 goes through that and makes those --

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1 CHAIRMAN REYNOLDS: I assume that that was
2 done.

3 COMMISSIONER GAZIANO: What kind of legal
4 sufficiency is done?

5 CHAIRMAN REYNOLDS: Jurisdiction.

6 COMMISSIONER GAZIANO: Pardon?

7 CHAIRMAN REYNOLDS: Jurisdiction.

8 COMMISSIONER GAZIANO: For every
9 individual witness? I mean, it was possible that
10 witnesses would have produced evidence within our
11 jurisdiction.

12 CHAIRMAN REYNOLDS: Well, I don't know the
13 --

14 COMMISSIONER GAZIANO: Until you know when
15 the witnesses' statements are coming in if there's a
16 possibility that they would be within our
17 jurisdiction, you might not -- now we're in a
18 different position than we were prior to the briefing.

19 It's possible that the witness from the ACLU would
20 have produced evidence on that. Mr. Shora sort of
21 made some assertions on that.

22 I think it would have been on this issue
23 where there was a possibility that it was within our
24 jurisdiction impossible to say it wasn't, but now that
25 we see the testimony, two out of three of the

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1 witnesses were exclusively beyond the jurisdiction.
2 Most of the discussion was beyond our jurisdiction,
3 and it didn't produce any evidence on the matter that
4 was in our jurisdiction. We're in a different
5 position.

6 CHAIRMAN REYNOLDS: On the front end, if
7 we propose a topic during the review process on the
8 front end, there is an analysis to confirm that the
9 proposed topic falls within our jurisdiction. So I
10 assume that that was done. The way the issue was
11 framed, everyone had the expectation that the
12 witnesses and the evidence offered into the record
13 would fall squarely within our jurisdiction. Clearly
14 that did not happen.

15 So, folks, where are we?

16 COMMISSIONER HERIOT: That motion.

17 CHAIRMAN REYNOLDS: Which one?

18 COMMISSIONER GAZIANO: Motion to suspend
19 work on this particular report.

20 VICE CHAIR THERNSTROM: I don't think
21 we're ready to vote on this, Mr. Chairman. I really
22 don't. This does require more thought, more
23 discussion. It could happen, you know, on a
24 conference call or something, but I don't think we're
25 ready to vote.

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1 CHAIRMAN REYNOLDS: Do you think that the
2 positions that have been expressed around the table
3 today are going to change?

4 VICE CHAIR THERNSTROM: I do think that we
5 might be able to come to the point of having -- we've
6 got a report here, and it is really problematic to
7 kill a report that is based on a briefing, and I think
8 we might come to some agreement. There may be other
9 alternatives or whatever.

10 CHAIRMAN REYNOLDS: The alternative that
11 Commissioner Kirsanow put on the table, how does --

12 COMMISSIONER HERIOT: I think that's going
13 to cause open ended Commissioner's statements, and it
14 's going to be far more work than --

15 CHAIRMAN REYNOLDS: No, but why --

16 COMMISSIONER HERIOT: -- but I think it's
17 going to happen.

18 CHAIRMAN REYNOLDS: -- why do you mind --

19 COMMISSIONER HERIOT: I think Abby is
20 right. I think that if maybe we have a phone call on
21 this later, I predict Commissioner Yaki is going to
22 realize that my proposal is actually better for him.
23 Maybe I'm wrong, but I think that he would be much
24 better off doing it my way. It's going to be much more
25 effective, and he might actually, you know, get a

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1 letter that the Commission --

2 CHAIRMAN REYNOLDS: Commissioner Yaki, how
3 do you feel about that?

4 COMMISSIONER HERIOT: He's kind of grumpy
5 right now, but I don't think he will be.

6 COMMISSIONER YAKI: Grumpy? I haven't
7 opened my -- did she say "grumpy"?

8 (Laughter.)

9 COMMISSIONER YAKI: This is what I mean.
10 I think that --

11 COMMISSIONER HERIOT: I really think that
12 if he thinks about this, he's going to realize it's
13 better.

14 CHAIRMAN REYNOLDS: Okay. I'll bite.
15 I'll bite. Let me --

16 VICE CHAIR THERNSTROM: I don't want to
17 vote on this today.

18 CHAIRMAN REYNOLDS: -- that you will
19 change your mind.

20 COMMISSIONER HERIOT: Remembering that he
21 has to come up with a letter that he can get on the --

22 COMMISSIONER YAKI: Given that this
23 Commission has sent out letter that they have
24 absolutely not intent of getting my opinion
25 whatsoever, I find that an ironic statement coming

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1 from --

2 COMMISSIONER HERIOT: Oh, you never send
3 your own letter. You can send a letter with other
4 Commissioners, but I'm --

5 VICE CHAIR THERNSTROM: We're interested
6 in a letter we could post, Commissioner Yaki.

7 COMMISSIONER YAKI: But weren't we
8 discussing that a little bit later in the agenda?

9 VICE CHAIR THERNSTROM: Well, anyway, if
10 we could postpone this whole vote, it would make me
11 very happy. I don't think we're ready to vote.

12 CHAIRMAN REYNOLDS: Does anyone want to
13 make Vice Chair Thernstrom happy?

14 VICE CHAIR THERNSTROM: Of course.

15 CHAIRMAN REYNOLDS: Is there a second.

16 VICE CHAIR THERNSTROM: Everybody wants to
17 make me happy.

18 COMMISSIONER GAZIANO: Move to table it
19 for one month.

20 COMMISSIONER HERIOT: Okay. Well, no, to
21 call. Abby was suggesting that we have a call.

22 VICE CHAIR THERNSTROM: If necessary.

23 COMMISSIONER HERIOT: I'm not in favor
24 of --

25 CHAIRMAN REYNOLDS: Don't you want to have

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1 this face to face?

2 COMMISSIONER HERIOT: No, I think we need
3 a fall.

4 COMMISSIONER YAKI: To be quite frank,
5 it's a Memorial Day weekend between now and our next
6 meeting.

7 VICE CHAIR THERNSTROM: Okay. I second
8 Commissioner Yaki's proposal.

9 COMMISSIONER HERIOT: I don't favor that.

10 CHAIRMAN REYNOLDS: Hold it. What's his
11 proposal?

12 COMMISSIONER HERIOT: I don't favor it.

13 CHAIRMAN REYNOLDS: Yeah, but I need to
14 know what the proposal is.

15 COMMISSIONER HERIOT: -- call in a week or
16 so and get the issue --

17 VICE CHAIR THERNSTROM: His proposal is to
18 discuss it at the next meeting.

19 COMMISSIONER GAZIANO: We have a briefing
20 at the next meeting.

21 COMMISSIONER YAKI: There is Memorial Day
22 between now and the next meeting.

23 COMMISSIONER HERIOT: There's always a
24 holiday.

25 COMMISSIONER YAKI: I will be unavailable.

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1 CHAIRMAN REYNOLDS: Barbecuing.

2 COMMISSIONER HERIOT: We don't need to do
3 it on Memorial Day.

4 COMMISSIONER YAKI: But perhaps there are
5 some of us who take more than just one --

6 COMMISSIONER HERIOT: Yeah, it's 4th of
7 July in July and there's Labor Day in September and
8 there's Columbus Day and there's Halloween.

9 CHAIRMAN REYNOLDS: How do we feel about
10 tabling this until the next business meeting?

11 COMMISSIONER HERIOT: I do not favor that.

12 COMMISSIONER YAKI: I favor that.

13 VICE CHAIR THERNSTROM: I favor that.

14 COMMISSIONER HERIOT: Let's do a call. I
15 move we --

16 COMMISSIONER TAYLOR: Mr. Chairman, it
17 sounds like we need a roll call.

18 COMMISSIONER GAZIANO: It would take six
19 votes. Table. Tables take six votes.

20 COMMISSIONER YAKI: We're not tabling it.
21 We're postponing it.

22 COMMISSIONER GAZIANO: Your motion is to
23 table, and I think --

24 COMMISSIONER YAKI: Then I will reword my
25 motion.

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1 COMMISSIONER GAZIANO: I think that it is
2 still a motion to table.

3 CHAIRMAN REYNOLDS: Okay, folks, folks,
4 folks, just take it easy. We're making a little
5 progress here. We're going to kick this can down the
6 road.

7 (Laughter.)

8 COMMISSIONER GAZIANO: That's progress.
9 We had a pending motion. We have a pending motion.

10 COMMISSIONER YAKI: I wish to amend my
11 motion, Mr. Chair. I wish to place this on the agenda
12 for consideration at the next business meeting.

13 COMMISSIONER GAZIANO: That's out of
14 order, given the pending motion.

15 COMMISSIONER YAKI: Abby, who -- you
16 seconded my --

17 VICE CHAIR THERNSTROM: I did second it,
18 and can we regard it --

19 COMMISSIONER GAZIANO: Whether it's in
20 name or just in form, that's a motion to table.

21 CHAIRMAN REYNOLDS: Folks, folks.

22 COMMISSIONER GAZIANO: If we can agree, I
23 would like to resolve this in a call. I will withdraw
24 my motion.

25 CHAIRMAN REYNOLDS: Let's -- let's --

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1 COMMISSIONER GAZIANO: I will withdraw my
2 motion if we can do this in a --

3 CHAIRMAN REYNOLDS: Whether it's a call or
4 face to face, the issue is timing.

5 VICE CHAIR THERNSTROM: Will you withdraw
6 your motion so --

7 COMMISSIONER HERIOT: We need to do it
8 soon. You know, every time we kick something into the
9 next business meeting --

10 CHAIRMAN REYNOLDS: Shortly after the
11 Labor Day holiday or the Memorial Day. That's really
12 kicking it down the road.

13 STAFF DIRECTOR DANNENFELSER: We couldn't
14 notice in time to do it then anyhow. We couldn't
15 notice it in time to do it before Memorial Day. So it
16 would have to be after.

17 COMMISSIONER HERIOT: I'm happy to do it,
18 you know, before --

19 CHAIRMAN REYNOLDS: On the other side of
20 the holiday.

21 COMMISSIONER HERIOT: -- before -- on the
22 other side of the holiday.

23 COMMISSIONER GAZIANO: Before the next
24 briefing.

25 COMMISSIONER HERIOT: Before the next

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1 meeting.

2 CHAIRMAN REYNOLDS: yes.

3 VICE CHAIR THERNSTROM: Or what about
4 carving out the time at the briefing for --

5 CHAIRMAN REYNOLDS: Hold on. Let's get
6 this -- before we introduce -- before we introduce
7 another option, how do you feel about that compromise?

8 COMMISSIONER YAKI: I'm going to be away
9 in a place that has no cell phone reception.

10 COMMISSIONER HERIOT: From when to when?

11 CHAIRMAN REYNOLDS: From now until the
12 next meeting, eh?

13 COMMISSIONER YAKI: Pretty much. My
14 schedule has changed, as you know.

15 CHAIRMAN REYNOLDS: Okay, folks.

16 COMMISSIONER HERIOT: I hope you're not
17 under oath.

18 CHAIRMAN REYNOLDS: Folks, let's try to be
19 somewhat reasonable and somewhat rational. Let's try
20 to compromise. It won't be at the next meeting. It
21 won't be next week. Let's look at our calendars and
22 see what works. Let's try to get this done shortly
23 after the Memorial Day holiday.

24 Surely --

25 COMMISSIONER YAKI: Why don't we just meet

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1 the day before -- meet on June 7th to discuss this,
2 three o'clock in the afternoon. June 11th. Or
3 whatever it is, June 11th.

4 CHAIRMAN REYNOLDS: Because there are
5 certain Commissioners who would like to have this
6 issue dealt with sooner.

7 COMMISSIONER YAKI: It will be done before
8 the next meeting or next briefing.

9 COMMISSIONER HERIOT: Your proposal is to
10 do it when?

11 COMMISSIONER YAKI: The day before the
12 meeting.

13 COMMISSIONER GAZIANO: Essentially to have
14 a business meeting.

15 COMMISSIONER HERIOT: To have a two-day
16 meeting. I'm in favor of a two-day meeting. So it
17 sound like Commissioner Yaki is available for that
18 day. So, yes, I would be happy to be here for an
19 entire meeting on Thursday before the Friday meeting.

20 CHAIRMAN REYNOLDS: Oh, my God.

21 COMMISSIONER HERIOT: You'll love it,
22 Gerry.

23 COMMISSIONER YAKI: I've often proposed
24 that as an alternative.

25 COMMISSIONER GAZIANO: A call isn't

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1 superior to that?

2 VICE CHAIR THERNSTROM: No, it really
3 isn't.

4 CHAIRMAN REYNOLDS: Is that compromise
5 acceptable?

6 VICE CHAIR THERNSTROM: I have got -- no,
7 I'm busy that afternoon. I'm sorry. I've got a book
8 event.

9 CHAIRMAN REYNOLDS: We could do it in the
10 morning. Let's just do it in the morning.

11 COMMISSIONER YAKI: The morning of June
12 11th?

13 VICE CHAIR THERNSTROM: The 12th.

14 COMMISSIONER YAKI: The Thursday.

15 VICE CHAIR THERNSTROM: Oh, Gerry, I've
16 got a big book event at two o'clock.

17 CHAIRMAN REYNOLDS: Okay. We'll do it in
18 the morning.

19 COMMISSIONER HERIOT: Do it in the
20 morning. Wait a second.

21 COMMISSIONER YAKI: The alternative, Abby,
22 is to vote today.

23 VICE CHAIR THERNSTROM: No, the
24 alternative I'm suggesting is to have a business
25 meeting on the 12th.

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1 CHAIRMAN REYNOLDS: Okay. Let's just
2 continue with the calendar.

3 COMMISSIONER HERIOT: A book thing and who
4 cares? We'll do it at 9:30.

5 VICE CHAIR THERNSTROM: I care.

6 COMMISSIONER HERIOT: Then this can be one
7 of those meetings you miss.

8 CHAIRMAN REYNOLDS: And you stated earlier
9 that you didn't attend the briefing?

10 VICE CHAIR THERNSTROM: I didn't attend
11 the briefing.

12 CHAIRMAN REYNOLDS: And you didn't read
13 the materials.

14 VICE CHAIR THERNSTROM: Not up to this
15 point, but this looks as if I'm going to have to.

16 COMMISSIONER HERIOT: Nine, thirty.

17 COMMISSIONER YAKI: Well, then again, they
18 weren't around for the briefing either.

19 VICE CHAIR THERNSTROM: It is not possible
20 to combine on the 12th some sort of -- in a business
21 meeting?

22 CHAIRMAN REYNOLDS: Logistically it's
23 always ugly.

24 COMMISSIONER YAKI: What if we just
25 confine it to one item, nine to 9:30.

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1 VICE CHAIR THERNSTROM: Good.

2 CHAIRMAN REYNOLDS: You know, what it's
3 not going to work. We're going to do this all over
4 again. We're going to do this all over again whenever
5 we do it. So I'd prefer not to have this nonsense
6 bleed over into something else.

7 COMMISSIONER YAKI: I think you can create
8 -- I mean, let's put it this way. It's either over by
9 9:30 or -- I mean there are ways that --

10 COMMISSIONER GAZIANO: Or it isn't.

11 COMMISSIONER YAKI: No. Or it gets kicked
12 over.

13 COMMISSIONER GAZIANO: I see no reason to
14 postpone the vote today unless some people are willing
15 to compromise on a call or some other time that's
16 acceptable to anyone else. There are more important
17 things that we could add to the briefing on the 12th
18 than this.

19 CHAIRMAN REYNOLDS: How about a call two
20 weeks from today? How does that sound?

21 VICE CHAIR THERNSTROM: Well, we're not
22 going to have a call Commissioner Yaki can't make.

23 COMMISSIONER GAZIANO: Well, can he make
24 it?

25 CHAIRMAN REYNOLDS: I'm confident that we

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1 can find a date that works for him.

2 COMMISSIONER YAKI: Looking at my
3 calendar. Do we assume the day will be the 29th?

4 STAFF DIRECTOR DANNENFELSER: Yes.

5 COMMISSIONER YAKI: I'm on an airplane.

6 CHAIRMAN REYNOLDS: What about the 28th?
7 That's my birthday. I'm willing to do it on my
8 birthday.

9 COMMISSIONER YAKI: No, that's not going
10 to work.

11 COMMISSIONER GAZIANO: Can you tell us a
12 day that week or the next that would work?

13 COMMISSIONER HERIOT: He said the day
14 before the meeting works. So that's (pause).

15 COMMISSIONER YAKI: Yeah, the day before
16 the meeting works.

17 COMMISSIONER GAZIANO: Not for Abby.

18 COMMISSIONER HERIOT: She's got a book
19 thing in the afternoon.

20 COMMISSIONER GAZIANO: Not for Abby.

21 VICE CHAIR THERNSTROM: I know, but, Gail,
22 really.

23 COMMISSIONER GAZIANO: And I would
24 prefer --

25 COMMISSIONER HERIOT: Come on.

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1 CHAIRMAN REYNOLDS: Abby, if your morning
2 is available.

3 VICE CHAIR THERNSTROM: Well, I don't know
4 how available it is at this point. I've got a big
5 event that day.

6 COMMISSIONER GAZIANO: It also doesn't
7 make much sense to me that Commissioners would have to
8 fly in and stay an extra night in a hotel over
9 something we can resolve on the phone.

10 COMMISSIONER YAKI: I'm not too sure what
11 airline you fly, but that would require me doing a Red
12 Eye in any case.

13 COMMISSIONER GAZIANO: Some other
14 Commissioners might decide they need to stay in a
15 hotel.

16 CHAIRMAN REYNOLDS: Folks, this is crazy.

17 COMMISSIONER GAZIANO: It is. Are there
18 some times when you can join us on the phone,
19 Commissioner Yaki?

20 CHAIRMAN REYNOLDS: Do we have rules that
21 prohibit drinking during --

22 (Laughter.)

23 COMMISSIONER GAZIANO: Let's vote them
24 down if we do. Let's vote them down if we do.

25 CHAIRMAN REYNOLDS: Okay, folks. Come on

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1 now. Work with me.

2 COMMISSIONER GAZIANO: Commissioner Yaki
3 is there --

4 COMMISSIONER YAKI: I really don't want to
5 do this by telephonic. I'm with Commissioner
6 Thernstrom. I'd rather do it in person.

7 COMMISSIONER GAZIANO: Okay. I'd like to
8 vote today then.

9 COMMISSIONER YAKI: Fine.

10 COMMISSIONER HERIOT: Yeah.

11 COMMISSIONER YAKI: Please, do it. I have
12 my E-mail ready to go. So let's go.

13 CHAIRMAN REYNOLDS: All right. I'm going
14 to regret this. Any other comments from the folks on
15 the phone?

16 COMMISSIONER KIRSANOW: This is Kirsanow.
17 It's very difficult for me. I don't know
18 about Commissioner Taylor or Commissioner Melendez,
19 but I really couldn't hear any of the cross-talk in
20 terms of when the vote is going to be or if it was
21 going to be a vote or if we're going to have a
22 teleconference or --

23 CHAIRMAN REYNOLDS: It looks like the vote
24 is going to happen right now. We were unable, these
25 adults here were unable or refused to compromise.

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1 COMMISSIONER GAZIANO: Well, some of us
2 were quite willing to compromise. There's one
3 individual who insists that it be done in person.

4 VICE CHAIR THERNSTROM: No, I wanted it to
5 be done in person, too.

6 CHAIRMAN REYNOLDS: Okay. That's two
7 individuals, mentioning no names.

8 VICE CHAIR THERNSTROM: I really think
9 this requires --

10 CHAIRMAN REYNOLDS: Okay, folks.

11 COMMISSIONER HERIOT: But, Abby, do it on
12 the Thursday before the meeting.

13 VICE CHAIR THERNSTROM: It really won't
14 work for me, won't.

15 CHAIRMAN REYNOLDS: Is it necessary -- do
16 you feel strongly enough about this issue where you
17 believe you have to be at the meeting?

18 COMMISSIONER HERIOT: Call it in.

19 VICE CHAIR THERNSTROM: Gerry, this is
20 important. It's important procedurally. It's
21 important in terms of precedent.

22 CHAIRMAN REYNOLDS: Okay. You've answered
23 my question, and the answer is yes.

24 COMMISSIONER YAKI: May I just make one
25 sort of point of realism. This report has been in the

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1 hopper for how long? Whether we resolve it today,
2 tomorrow, I have no idea why when they talk about
3 compromise, their compromise is that they want to get
4 it resolved right away.

5 This report has been sitting on the shelf
6 on the rocks for quite some months now. If we can't
7 find time at a business meeting where we can discuss
8 this, again, without prejudice to this report
9 because --

10 CHAIRMAN REYNOLDS: That's not a bad
11 argument.

12 COMMISSIONER YAKI: -- you know, I mean, I
13 don't understand.

14 CHAIRMAN REYNOLDS: No ad hominem attacks.

15 VICE CHAIR THERNSTROM: You're right.

16 CHAIRMAN REYNOLDS: Marshalling some good
17 facts.

18 COMMISSIONER GAZIANO: There were some ad
19 hominem attacks implied in previous statements.

20 CHAIRMAN REYNOLDS: In previous
21 statements. I'm talking about this one. Folks, how
22 about this? Let's just -- let's do this. Let's do
23 this --

24 COMMISSIONER GAZIANO: So when are we
25 going to do this? When do you propose to me --

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1 CHAIRMAN REYNOLDS: I propose, despite the
2 difficulty this poses for Vice Chair Thernstrom, the
3 morning before the next meeting. To attempt to
4 accommodate Vice Chair Thernstrom's schedule, if we
5 want to start this at eight o'clock in the morning to
6 insure that she has -

7 COMMISSIONER GAZIANO: That's what she
8 would prefer.

9 COMMISSIONER HERIOT: I can do it any time
10 Thursday.

11 COMMISSIONER YAKI: Point of order.

12 VICE CHAIR THERNSTROM: No way.

13 COMMISSIONER YAKI: I think that you
14 perhaps misconstrued my statement. When I say that
15 this -- what I meant by saying that this report has
16 been on the rocks for months, it seems to me if to
17 accommodate my desire to be there in person, for Vice
18 Chair Thernstrom to be there in person, why we even
19 have to set an artificial date of June 11th I think
20 still begs the question.

21 This report is going nowhere fast. We can
22 direct that nothing be done on it until the time that
23 we actually discuss it so that there's no usage of
24 staff resource. I'm not going to say "waste." Usage
25 of staff resources, but I would say that, Mr. Chair,

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1 at the discretion of the Chair, it be --

2 CHAIRMAN REYNOLDS: I like this when it
3 comes to me.

4 COMMISSIONER YAKI: -- that it be put on
5 at one of our regular business meetings for final
6 discussion.

7 CHAIRMAN REYNOLDS: Okay. How about this?
8 How about this? You want to give it to me? I'll
9 make everyone unhappy. Let's table this issue, and at
10 the Chair's discretion, he will put it on the agenda
11 at an appropriate time.

12 COMMISSIONER HERIOT: Well, I have news.
13 You know, it's actually true that if you voted yes on
14 Todd's motion that you could always have done that.
15 You know, that's -- Todd's motion is cease work and
16 you always would have had --

17 CHAIRMAN REYNOLDS: Yes, but we're putting
18 something --

19 COMMISSIONER HERIOT: --put something --
20 that means you're going to vote yes.

21 VICE CHAIR THERNSTROM: His motion is --

22 CHAIRMAN REYNOLDS: No, I'm proposing that
23 we table the discussion.

24 VICE CHAIR THERNSTROM: Yeah.

25 CHAIRMAN REYNOLDS: And we will haggle

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1 about when the issue is reintroduced at a later date.

2 COMMISSIONER YAKI: I second that.

3 CHAIRMAN REYNOLDS: All in favor.

4 VICE CHAIR THERNSTROM: Aye.

5 COMMISSIONER GAZIANO: But I've got to
6 understand if this is a suggestion.

7 COMMISSIONER HERIOT: No.

8 COMMISSIONER GAZIANO: At least we've got
9 to get beyond one offensive argument that someone
10 certain Commissioners have sandbagged other
11 Commissioners -- no, let me finish, please. Let me
12 finish, please.

13 And that's why I brought this to the
14 jurisdictional, mootness and other concerns to the
15 Commission at the very first opportunity that we had
16 on our agenda to raise this. I especially don't want
17 to hear further argument to that regard if I agree to
18 postpone this another two months, that more work has
19 been done on findings or recommendations; that somehow
20 certain Commissioners are sandbagging other
21 Commissioners.

22 CHAIRMAN REYNOLDS: That's -- that's --

23 COMMISSIONER GAZIANO: Those sort of
24 accusations were inappropriate, and if we're going to
25 waste more time on an issue we should vote on today at

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1 another time, I at least want those sort of arguments
2 off the table.

3 CHAIRMAN REYNOLDS: Well, we can't control
4 what comes out of each other's mouths. We would hope
5 that folks would conduct themselves in a courteous
6 manner, but we fall short of that on a regular basis.

7 Now, having said that, I suggested that we
8 table this and revisit it at a later date. What that
9 date is I prefer not to discuss it because I don't
10 think we're going to make much headway.

11 VICE CHAIR THERNSTROM: Thank you.

12 CHAIRMAN REYNOLDS: Is that a second?

13 VICE CHAIR THERNSTROM: Yes.

14 CHAIRMAN REYNOLDS: All in favor.

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: One. No, no.

17 VICE CHAIR THERNSTROM: We have Kirsanow
18 and Taylor on the phone, too.

19 COMMISSIONER KIRSANOW: Again, I had a
20 difficult time hearing.

21 VICE CHAIR THERNSTROM: We're just tabling
22 this.

23 CHAIRMAN REYNOLDS: The vote is to table
24 this agenda item.

25 COMMISSIONER YAKI: To the call of the

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1 Chair, essentially.

2 CHAIRMAN REYNOLDS: That's it, just to
3 table it?

4 CHAIRMAN REYNOLDS: yes.

5 VICE CHAIR THERNSTROM: And the Chair will
6 decide on when it -- decide on a date for future
7 discussion.

8 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
9 how do you vote?

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Melendez.

12 COMMISSIONER MELENDEZ: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Taylor.

14 COMMISSIONER TAYLOR: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Yaki.

16 COMMISSIONER YAKI: Oh, yeah.

17 CHAIRMAN REYNOLDS: An "oh, yeah."

18 Okay. Please let the record reflect that
19 Commissioner Heriot voted against the motion.
20 Commissioner Gaziano abstained, and the remaining
21 Commissioners voted in the affirmative. The motion
22 passes.

23 Let's take a ten-minute break.

24 VICE CHAIR THERNSTROM: Yes, please.

25 Thank you. That would be great.

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1 (Whereupon, the foregoing matter went off the record
2 at 11:51 a.m. and went back on the record
3 at 12:18 p.m.)

4 CHAIRMAN REYNOLDS: Okay, folks. We are
5 almost back on the record.

6 Okay. The next item on the agenda is
7 under Management and Operations.

8 (Laughter.)

9 VICE CHAIR THERNSTROM: Gerry, we all feel
10 the same way.

11 COMMISSIONER HERIOT: Not me. I love it.

12 CHAIRMAN REYNOLDS: Okay.

13 VICE CHAIR THERNSTROM: I withdraw my
14 second motion.

15 COMMISSIONER HERIOT: You can't withdraw.
16 It has already been passed.

17 COMMISSIONER GAZIANO: If no one wants to
18 talk on her motion, we'll just -- I mean on her point,
19 we'll just move beyond.

20 CHAIRMAN REYNOLDS: Is this yours?

21 All right. At this late hour I'd like to
22 move that we table discussion of the 2010 statutory
23 report, also the added motion regarding the civil
24 rights conference, as well as the four motions that
25 were submitted by Commissioner Melendez, with his

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1 consent.

2 V. PROGRAM AND PLANNING

3 PRELIMINARY DISCUSSION OF 2010 STATUTORY REPORT TOPIC

4 V. MANAGEMENT AND OPERATIONS

5 CHAIRMAN REYNOLDS: Is there a second?

6 COMMISSIONER GAZIANO: Second.

7 COMMISSIONER HERIOT: What's on your list
8 again? All of the Management and Operations motions?

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER HERIOT: And then what else?

11 CHAIRMAN REYNOLDS: The 2010 statutory
12 report and the civil rights conference.

13 VICE CHAIR THERNSTROM: We're postponing
14 all of those.

15 COMMISSIONER GAZIANO: We still have
16 action on the hate crimes bill.

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER GAZIANO: I'd like before I
19 vote, just on the record, Commissioner Melendez, are
20 you on the phone?

21 COMMISSIONER MELENDEZ: I am.

22 COMMISSIONER GAZIANO: And do you have any
23 objection to postponing action on your motions?

24 COMMISSIONER MELENDEZ: (Unintelligible)
25 today also.

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1 COMMISSIONER GAZIANO: That's fine. I
2 just would have voted your way.

3 COMMISSIONER MELENDEZ: Well, you can vote
4 my way at the next.

5 (Laughter.)

6 CHAIRMAN REYNOLDS: Touche. Okay, folks.
7 All in favor please say aye.

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: Any objections?

10 (No response.)

11 CHAIRMAN REYNOLDS: Any abstentions?

12 COMMISSIONER HERIOT: Yes, I abstain.

13 CHAIRMAN REYNOLDS: Okay. Let the record
14 reflect that Commissioner Heriot --

15 COMMISSIONER HERIOT: Let me change my
16 vote. I'm going to change it to no.

17 CHAIRMAN REYNOLDS: Okay. Let the record
18 reflect that Commissioner Heriot voted against the
19 motion. The remaining --

20 COMMISSIONER HERIOT: Except insofar as it
21 involved Arlen's motions that he is pressed for time
22 on.

23 CHAIRMAN REYNOLDS: Okay. We have --

24 COMMISSIONER HERIOT: I guess that's the
25 whole thing. So I abstain.

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1 COMMISSIONER GAZIANO: She abstains.
2 Let's move on.

3 CHAIRMAN REYNOLDS: Okay. We have one
4 abstention from Commissioner Heriot. The remaining
5 Commissioners voted in favor. The motion passes.

6 So next up we have a letter.

7 V. PROGRAM PLANNING

8 DISCUSSION OF SENATE BILL RE HATE CRIMES

9 CHAIRMAN REYNOLDS: Commission Heriot,
10 would you like to take the lead?

11 COMMISSIONER HERIOT: Yes. I would like
12 to have a letter sent by the Commission to the United
13 States Senate weighing in on the hate crimes bill
14 similar to the one that four of us did for the House
15 on an express basis, you know, between meetings, and
16 I'd like to do the same thing for the Senate, but this
17 time I'd like to have the Commission vote on it.

18 CHAIRMAN REYNOLDS: I second it.

19 COMMISSIONER MELENDEZ: I couldn't hear.
20 Could you repeat it, Mr. Chairman?

21 CHAIRMAN REYNOLDS: Commissioner Heriot --
22 well, first of all a letter, dated April 29th was sent
23 to various folks in the House regarding hate crimes
24 legislation, and it was signed by Commissioner Heriot,
25 Commissioner Gaziano, and Commissioner Kirsanow and

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1 myself.

2 She is proposing sending a similar letter
3 to the folks in the Senate, and so that's the issue
4 that's on the table.

5 COMMISSIONER HERIOT: Oh, and by the way,
6 I am told that the Washington Times did an editorial
7 today where they didn't quote from the letter that was
8 sent to the House, but they quoted from an article
9 that I wrote and referred to me as a Commissioner. So
10 this is an issue that this press is interested in.

11 COMMISSIONER GAZIANO: And members of
12 Congress introduced this letter into the record as
13 well in the House debate.

14 COMMISSIONER HERIOT: So I think having
15 one for the Senate side.

16 CHAIRMAN REYNOLDS: Comments, other
17 comments? Now, come on now. What is this snapping
18 business?

19 Commissioner Yaki.

20 COMMISSIONER YAKI: Yes. I would like to
21 raise some serious issues regarding the April 29th
22 letter that was sent by the Chair, Commissioners
23 Gaziano, Heriot and Kirsanow. A couple of things.

24 First, it does not explicitly identify,
25 except in a footnote, and even then it doesn't, that

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1 is, it does not even really specify that. The first
2 paragraph says, "We write today to urge you to vote
3 against," blah, blah, blah, blah, blah, blah.

4 Now, the question is I don't believe that
5 it states with sufficient clarity. It does say on the
6 part of "right of individual members." It does not
7 really state that this is not official, an official
8 Commission position, I think, with sufficient clarity.

9 Certainly the statement made by Representative
10 Gohmert on the floor made no such distinction. He
11 simply identified it as a letter from the U.S.
12 Commission on Civil Rights because it was on the
13 United States Commission on Civil Rights' stationery.

14 I don't know exactly what the process is
15 for letters going out on official stationery that are
16 not the official position of the Commission, but I
17 think that's something that needs to be clarified,
18 number one.

19 Number two is that it has always been, I
20 think, a question of fairness that other Commissioners
21 be notified that a letter signed by Commissioners on
22 legislation, be notified that a letter was, indeed,
23 sent so in the case of wanting to send something to
24 the contrary they have the ability to do so.

25 To this date I have not yet officially

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1 received a copy of this letter from the Commission or
2 from the other Commissioners who signed this letter.
3 The first I heard about it was from the Judiciary
4 Committee wanting to know why Congressman Gohmert was
5 saying on the floor that he received a letter from the
6 U.S. Commission on Civil Rights. I assured him that
7 according to our policy it could not have been a
8 letter from the Commission. It could only have been
9 from individual Commissioners in their individual
10 capacities, not representing the Commission as a
11 whole. But he was not able to obtain that letter
12 until a little bit later.

13 And if you look at the addressees, it was
14 not sent to the Chair of House Judiciary or the
15 Subcommittee on Civil Rights, and the Constitution,
16 who is Chairman Nadler.

17 So I would just like to raise these points
18 from a procedural point of view, and from a
19 substantive point of view, I mean, let's just make
20 this debate very quick. I fundamentally disagree with
21 the idea that federal intervention is not warranted
22 where state remedies are not available or where states
23 will not take action. I thought that was an issue
24 that we resolved in 1957 with the first Civil Rights
25 Act and in the face of clear state inaction and

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1 failure to enforce civil rights laws.

2 Having federal jurisdiction is often and
3 certainly has been the case and I thought was a well
4 settled principle of civil rights law, is often the
5 backstop available remedy to ensure the enforcement of
6 our civil rights and say that is an end run around
7 state procedures, is going back to language that I
8 think that we dismissed more than 50 years ago. So I
9 will not be supporting this.

10 CHAIRMAN REYNOLDS: Commissioner Heriot.

11 COMMISSIONER HERIOT: I just want to make
12 sure we have on the record, you know, clearly what the
13 letter did say with regard to whether this is a
14 Commission letter or a letter from four Commissioners.
15 I'm reading the first two sentences of the letter.

16 "We write to day to urge you to vote
17 against the proposed local law enforcement Hate Crimes
18 Prevention Act, H.R. 1913. Although time does not
19 permit this issue to be presented for formal
20 Commission action, we believe it is important for us
21 to write as individual members to communicate our
22 serious concerns with this legislation."

23 Then there is a footnote identified as
24 Footnote 1 there -- this is, by the way, a three-page
25 letter -- and the footnote says, "We have not polled

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1 the other four members of this Commission, and this
2 letter should in no way be taken to suggest that they
3 have taken any particular position on the measure."

4 The reason that we hadn't polled the
5 members was, of course, that this was done very, very
6 quickly. This issue came to the floor of the House I
7 believe it was the very day of the letter, and if we
8 were going to get this out, it had to get out
9 immediately.

10 I actually would have loved to have
11 brought it before the Commission, and that's why, in
12 fact, I'm bringing it before the Commission right now
13 for the Senate letter. But my understanding is that
14 this letter went out, and I wasn't sure whether it had
15 gotten into anybody's hands before the vote or not.
16 Judging from the fact that it made it into the
17 Congressional Record it must have gotten out. I
18 believe it was sent by E-mail to the rest of the --

19 COMMISSIONER GAZIANO: Yes, Mr. Chairman.

20 I understand second hand that one or more of the
21 members of Congress thought it was worthy enough to
22 share with their colleagues, and that's how it was
23 disseminated more broadly, which is not -- which is a
24 hopeful sign, When we write to the leadership of one
25 of the bodies, that they find it important enough to

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1 share with their colleagues.

2 COMMISSIONER YAKI: Again, I would just
3 raise the issue of why when this letter was sent other
4 members of the Commission were not notified or sent a
5 courtesy copy of it at the time that it went out.

6 CHAIRMAN REYNOLDS: All right. Time to
7 vote. All in favor please say aye.

8 COMMISSIONER TAYLOR: What is the motion?

9 COMMISSIONER GAZIANO: On sending a
10 similar letter to the Senate.

11 COMMISSIONER HERIOT: Right, okay.

12 CHAIRMAN REYNOLDS: Do we have a second?

13 COMMISSIONER GAZIANO: Second.

14 CHAIRMAN REYNOLDS: Okay. We had
15 discussion. All in favor, please say aye.

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Commissioner Melendez?

18 COMMISSIONER MELENDEZ: Opposed to this.
19 Didn't know enough about it.

20 CHAIRMAN REYNOLDS: Okay. Kirsanow.

21 (No response.)

22 CHAIRMAN REYNOLDS: Taylor.

23 COMMISSIONER KIRSANOW: I'm sorry. This
24 is Kirsanow. I had it on mute. Yes.

25 CHAIRMAN REYNOLDS: Okay. Very good.

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1 VICE CHAIR THERNSTROM: Mr. Chairman, I'm
2 abstaining. I haven't really read this letter yet,
3 and I wasn't here for the discussion. I had to make a
4 phone call.

5 CHAIRMAN REYNOLDS: Okay. I'm sorry.
6 Commissioner Melendez, you?

7 COMMISSIONER MELENDEZ: I am voting
8 against because I didn't know enough about the issue.

9 CHAIRMAN REYNOLDS: Okay. Commissioner
10 Yaki.

11 COMMISSIONER YAKI: I'm voting no. I want
12 that to be noted in the letter that I vote no on the
13 substance of the letter.

14 CHAIRMAN REYNOLDS: I don't believe you
15 get to dictate the contents. Now, if as a compromise
16 it is decided that --

17 COMMISSIONER HERIOT: You can send a -- I
18 don't mind.

19 CHAIRMAN REYNOLDS: I mean, if the folks
20 putting together the letter, if they have no problem -
21 -

22 COMMISSIONER GAZIANO: We'll think about
23 it.

24 CHAIRMAN REYNOLDS: Okay.

25 MR. BLACKWOOD: I believe, and I'm doing

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1 it by memory, I think ADR 9-2 spells out the
2 procedures that happens when a letter is sent by the
3 Commission. As I'm told I think it says you just have
4 to show the vote and who voted for and who voted
5 against.

6 CHAIRMAN REYNOLDS: Okay.

7 MR. BLACKWOOD: Look at AR 9- --

8 COMMISSIONER HERIOT: That's fine. That's
9 fine.

10 CHAIRMAN REYNOLDS: Okay. So the issue
11 may be covered. Okay. Let's see. We have --

12 COMMISSIONER HERIOT: Commissioner
13 Taylor's vote?

14 CHAIRMAN REYNOLDS: He did not respond.
15 Commissioner Taylor.

16 COMMISSIONER TAYLOR: I'm back. I was
17 down the hall.

18 CHAIRMAN REYNOLDS: Okay. Just nod. How
19 do you vote?

20 COMMISSIONER TAYLOR: What's the motion?

21 CHAIRMAN REYNOLDS: A motion to send a
22 letter similar to the -- well, you're aware of the
23 letter -- there's a letter sent on April 29th to the
24 House regarding hate crimes legislation. The motion
25 is to send a similar letter to the Senate.

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1 COMMISSIONER TAYLOR: Oh, yes.

2 CHAIRMAN REYNOLDS: Okay, all right. Let
3 the record reflect that --

4 COMMISSIONER YAKI: Point of order. Are
5 we going to be receiving a courtesy copy before or at
6 the same time that you send it on or are we going to
7 have to wait three weeks for it to appear from someone
8 else?

9 COMMISSIONER GAZIANO: I'm sure a letter
10 from the Commission should be sent.

11 CHAIRMAN REYNOLDS: Do we want to make
12 them wait three weeks?

13 COMMISSIONER GAZIANO: I get to misbehave,
14 too, don't I?

15 CHAIRMAN REYNOLDS: We will send a copy
16 shortly after the letter goes out, and it won't be
17 three weeks.

18 COMMISSIONER YAKI: I would like a copy
19 sent the same day.

20 CHAIRMAN REYNOLDS: Sure.

21 COMMISSIONER HERIOT: Fine.

22 COMMISSIONER YAKI: By E-mail.

23 CHAIRMAN REYNOLDS: Hand delivery?

24 COMMISSIONER YAKI: By E-mail.

25 CHAIRMAN REYNOLDS: E-mail? Anybody have

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1 a problem? That's fine.

2 COMMISSIONER YAKI: Thank you.

3 CHAIRMAN REYNOLDS: Okay. Just to --

4 COMMISSIONER GAZIANO: How did you vote,
5 Mr. Chairman?

6 CHAIRMAN REYNOLDS: I voted for it. Let
7 the record reflect that Vice Chair Thernstrom
8 abstained. Commissioners Melendez and Yaki voted
9 against the motion. The remaining Commissioners voted
10 for it. The motion passes.

11 Next up is the approval of the
12 rechartering package for the Connecticut State
13 Advisory Committee.

14 VI. STATE ADVISORY COMMITTEE ISSUES

15 CONNECTICUT SAC

16 CHAIRMAN REYNOLDS: Fourteen of the 15
17 previously appointed members were eligible for
18 reappointment consistent with AI 5-9, Section 5.
19 These 14 were asked about their interest in
20 reappointment. Six previously appointed members are
21 being recommended for reappointment. Of the
22 recommended new appointees, Richard Wilson is
23 recommended as chair.

24 Recommended advisory committee members
25 were selected in compliance with the State Advisory

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1 Committee membership selection guideline, following
2 the Lean 6 Sigma process approved by Commissioners in
3 January 2008.

4 Commission staff reached out to a wide
5 variety of organizations and individuals. The Staff
6 Director detailed this outreach in a May 7th, 2009
7 memo to Commissioners.

8 Is there a second?

9 COMMISSIONER GAZIANO: Second.

10 CHAIRMAN REYNOLDS: Thank you.

11 I'm sorry. Here are the individuals with
12 the prize, the Connecticut State Advisory Committee:

13 Richard Wilson

14 William Alpert

15 LeRoy Bailey

16 Jay Bergman

17 Dove Burns

18 Justin Clark

19 Lawrence DeNardis

20 Kathleen Greider

21 Gerald Gunderson

22 Elizabeth Haynes

23 Anne Hendershott

24 Brian Langdon

25 And Ingrid Moll

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1 Oh, and Werner --

2 STAFF DIRECTOR DANNENFELSER: Oyanadel.

3 CHAIRMAN REYNOLDS: --Oyanadel. Thank
4 you.

5 Edith Pestana

6 David Rynolds

7 Edward Salabia

8 And Margaret Young.

9 Furthermore, the Commission would appoint
10 Richard Wilson as Chair of the rechartered State
11 Advisory Committee. These members will serve as
12 uncompensated government employees.

13 Discussion?

14 COMMISSIONER MELENDEZ: Question from
15 Melendez.

16 Were there some people that could have
17 been reappointed that were not that were interested
18 that had experience?

19 CHAIRMAN REYNOLDS: Mr. Staff Director?

20 STAFF DIRECTOR DANNENFELSER: All of the
21 people who were eligible for reappointment were
22 invited, and they either declined or did not respond
23 to the inquiry as to whether they were interested in
24 being reappointed.

25 CHAIRMAN REYNOLDS: Commissioner Yaki.

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1 COMMISSIONER YAKI: Just to follow up on
2 that, so I understand there were 14 members eligible.
3 Six were reappointed. So the other eight, they were
4 all subject to the same outreach, all 14, right? In
5 other words, if someone didn't respond right away, was
6 there a follow-up call made or no for the other eight?

7 I'm just curious.

8 STAFF DIRECTOR DANNENFELSER: There was
9 follow-up to the individuals.

10 COMMISSIONER YAKI: Okay. That's all I
11 needed to know. Thank you.

12 CHAIRMAN REYNOLDS: All in favor, please
13 say aye.

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Any objections?

16 COMMISSIONER YAKI: I abstain.

17 COMMISSIONER MELENDEZ: Melendez abstains.

18 COMMISSIONER KIRSANOW: Kirsanow abstains.

19 VICE CHAIR THERNSTROM: Thernstrom
20 abstains.

21 CHAIRMAN REYNOLDS: Okay. Commissioner
22 Taylor?

23 COMMISSIONER TAYLOR: I think I've got to
24 abstain.

25 (Laughter.)

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1 CHAIRMAN REYNOLDS: Okay. Are you going
2 to act on that urge?

3 COMMISSIONER TAYLOR: Yeah, I generally
4 act on most of my urges.

5 CHAIRMAN REYNOLDS: I'll call you after
6 the meeting.

7 (Laughter.)

8 CHAIRMAN REYNOLDS: Okay. Commissioner
9 Taylor, how do you vote?

10 COMMISSIONER TAYLOR: Abstain.

11 CHAIRMAN REYNOLDS: Okay. So we have
12 three votes in the affirmative. Commissioner Heriot,
13 Commissioner Gaziano, and the Chair vote in the
14 affirmative. The remaining Commissioners abstain.
15 The vote passes.

16 We are done, folks.

17 VII. Adjourn

18 CHAIRMAN REYNOLDS: Folks, we're done, and
19 everyone, every last one of you, I'm extending an
20 invitation to join me down the block.

21 (Whereupon, at 12:38 p.m., the meeting was
22 concluded.)

23

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