

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

+ + + + +

FRIDAY

JULY 13, 2007

+ + + + +

WASHINGTON, D.C.

+ + + + +

The Commission convened at 9:34 a.m., in room 540, at 624 9th Street NW, Washington, D.C., Chairperson Gerald A. Reynolds, presiding.

PRESENT:

GERALD A. REYNOLDS, CHAIRMAN
ABIGAIL THERNSTROM, VICE-CHAIR
JENNIFER C. BRACERAS, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER KIRSANOW, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER (via telephone)

KENNETH L. MARCUS, STAFF DIRECTOR

DAVID BLACKWOOD, GENERAL COUNSEL

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Staff Present:

DAVID BLACKWOOD, GENERAL COUNSEL
MARGARET BUTLER
TERESA BROOKS
CHRISTOPHER BYRNES, ATTORNEY ADVISOR TO THE OSD
& ACTING DEPUTY GENERAL COUNSEL, OGC
RANITA CARTER
PAMELA A. DUNSTON, CHIEF, ASCD
LATRICE FOSHEE
KEVIN GOLDEN
MAHA JWEIED
MONICA J. KIBLER
SOCK-FOON MacDOUGALL
TINALOUISE MARTIN
EMMA MONROIG, SOLICITOR/PARLIAMENTARIAN
EILEEN RUDERT
KARA SILVERSTEIN
KIMBERLY TOLHURST

Commissioner Assistants Present:

DOMINIQUE LUDVIGSON
LISA NEUDER
RICHARD SCHMECHEL
KIM SCHULD

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

9:34 a.m.

CHAIRMAN REYNOLDS: On the record. Okay. Good morning. This meeting will come to order. This is the meeting of the U.S. Commission on Civil Rights at 624 9th Street, N.W., Room 540, Washington, D.C. All the commissioners are physically present except for Commissioner Yaki who is participating by telephone. This morning we have a meeting that deals with many important matters including the approval of the 2007 Statutory Report amongst other issues.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: The first item on the agenda is approval of the agenda. Is there a second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here. I would like to include in the agenda some discussion of some personnel issues with the staff director, whether that ends up in closed session, an update on some of the just hiring practices and some of the things, update on some of those issues we talked about last time.

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1 CHAIRMAN REYNOLDS: Is this primarily
2 about the email that we distributed by a former
3 employee?

4 COMMISSIONER MELENDEZ: Yes. To certain
5 set, part of the discussion would be that.

6 CHAIRMAN REYNOLDS: Okay. Comments?
7 Concerns?

8 COMMISSIONER YAKI: I second that.

9 CHAIRMAN REYNOLDS: Okay. All in favor of
10 this motion as amended by Commissioner Melendez please
11 say aye.

12 (Chorus of ayes.)

13 COMMISSIONER BRACERAS: I'm sorry. Where
14 would it fall? Before the agenda items?

15 CHAIRMAN REYNOLDS: Actually --

16 COMMISSIONER MELENDEZ: After the Staff
17 Director's report, I guess.

18 CHAIRMAN REYNOLDS: Actually since this
19 would require us to go into closed session, I would
20 suggest that we put it at the end so that we don't
21 have -- I assume that there are members from public.
22 They wouldn't have to leave and then come back. So we
23 put this item after the discussion on State Advisory
24 Committees, well, actually, after Future Agenda Items,
25 assuming that we have any.

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1 COMMISSIONER MELENDEZ: Okay. I have one
2 more motion. The other thing is that I received
3 actually the last three re-charters of New Jersey,
4 South Carolina and Vermont really late. I actually go
5 them Tuesday night and I flew out Wednesday.
6 Actually, there was too many of those to carry and
7 even review. I was asking to table the last three
8 that were given based on the fact that we haven't had
9 time to really review those. We really had, I think,
10 three already slated for agenda that I have reviewed,
11 but these last three, just didn't give me ample time
12 to even look at them.

13 CHAIRMAN REYNOLDS: If you don't mind, I
14 would like to handle your first motion first.

15 COMMISSIONER MELENDEZ: Okay.

16 CHAIRMAN REYNOLDS: So the motion that's
17 on the table is -- Well, actually, the amended motion
18 is on the table. Any additional discussion required
19 for that issue?

20 (No response.)

21 CHAIRMAN REYNOLDS: All in favor say aye?

22 (Chorus of ayes.)

23 CHAIRMAN REYNOLDS: Any objections?

24 (No response.)

25 CHAIRMAN REYNOLDS: Any abstentions?

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1 (No response.)

2 CHAIRMAN REYNOLDS: The motion passes
3 unanimately and for this second motion, is there a
4 second?

5 COMMISSIONER YAKI: Second.

6 CHAIRMAN REYNOLDS: Discussion?

7 COMMISSIONER BRACERAS: Which of the --
8 I'm sorry. Tell me again which are the three.

9 COMMISSIONER MELENDEZ: The last three we
10 received in that last FedEx was New Jersey --

11 CHAIRMAN REYNOLDS: Vermont.

12 COMMISSIONER BRACERAS: -- them all
13 together.

14 COMMISSIONER MELENDEZ: South Carolina and
15 Vermont. Those were given to use really late. I
16 actually flew out here Wednesday and I got them
17 Tuesday night.

18 CHAIRMAN REYNOLDS: Okay. Bear with me.

19 (Off the record discussion.)

20 CHAIRMAN REYNOLDS: Okay. Discussion?
21 How do folks feel about this?

22 COMMISSIONER BRACERAS: I had them in time
23 to look over them and my assistant actually was able
24 to go through them and outline more specifically and

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1 in summary form what was in them. But I have not
2 objection to tabling those three.

3 CHAIRMAN REYNOLDS: Is it three or two?
4 I'm sorry.

5 COMMISSIONER MELENDEZ: There's three, New
6 Jersey, Vermont and South Carolina.

7 COMMISSIONER HERIOT: How many does leave
8 for us to do?

9 CHAIRMAN REYNOLDS: Three.

10 COMMISSIONER MELENDEZ: I believe there
11 are six that would be on for re-charter.

12 COMMISSIONER HERIOT: There are six.

13 COMMISSIONER MELENDEZ: So we would just
14 be re-chartering three or talking about three today
15 instead of six.

16 COMMISSIONER HERIOT: None of the others
17 have to be tabled by anybody else?

18 COMMISSIONER MELENDEZ: Right.

19 COMMISSIONER BRACERAS: For any other
20 reason?

21 COMMISSIONER MELENDEZ: No. The others, I
22 think, are all right.

23 CHAIRMAN REYNOLDS: Okay.

24 COMMISSIONER MELENDEZ: Hawaii and the
25 other two, Pennsylvania and I forgot the other one.

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1 COMMISSIONER BRACERAS: That's fine. I
2 don't care, but I don't know how the others feel.

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

5 (Chorus of ayes.)

6 CHAIRMAN REYNOLDS: Objections?

7 (No response.)

8 CHAIRMAN REYNOLDS: Abstentions?

9 (No response.)

10 CHAIRMAN REYNOLDS: The motion carries
11 unanimously.

12 Okay. I move that we amend the agenda to
13 delete discussion of the subitem labeled 2009 Budget
14 under Section V, Management and Operations. As you're
15 aware, staff continues to work on the budget and a
16 draft has not been circulated for our review. Under
17 those circumstances, it's clear that we need more
18 time. But in addition to that though, in order to get
19 our budget done in a timely fashion, we would need to
20 have a teleconference to vote on the motion. So in
21 addition to tabling it, I think that we need to also
22 pick a date when we could get together on the phone to
23 --

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1 COMMISSIONER HERIOT: Could we do Vermont,
2 South Carolina and New Jersey then to move these
3 things along?

4 COMMISSIONER BRACERAS: That's a great
5 idea.

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER KIRSANOW: We need to
8 separate the motions, table and decide on a separate
9 date.

10 CHAIRMAN REYNOLDS: Okay. All right. So
11 the first part. All in favor of tabling the motion
12 please say aye.

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Any abstentions?

15 (No response.)

16 CHAIRMAN REYNOLDS: Any objections?

17 (No response.)

18 CHAIRMAN REYNOLDS: The motion passes
19 unanimously. I also move that we establish a date to
20 have a teleconference to move on the budget as well as
21 the SACs that we tabled at this meeting. Is there a
22 second?

23 COMMISSIONER KIRSANOW: Second.

24 CHAIRMAN REYNOLDS: Discussion?

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1 COMMISSIONER MELENDEZ: Yes. Discussion.
2 We haven't even received -- You're talking about 2009
3 budget?

4 CHAIRMAN REYNOLDS: Yes.

5 COMMISSIONER MELENDEZ: We haven't even
6 received the budget yet.

7 PARTICIPANT: We will.

8 COMMISSIONER MELENDEZ: Okay. So you're
9 going to send that to us relatively soon?

10 CHAIRMAN REYNOLDS: Yes. When do you
11 think it will be sent out?

12 STAFF DIRECTOR MARCUS: It should be
13 within the next few business days.

14 CHAIRMAN REYNOLDS: So early next week.

15 STAFF DIRECTOR MARCUS: Early to mid next
16 week.

17 CHAIRMAN REYNOLDS: Okay. So we can look
18 at our calendars and see what's available.

19 STAFF DIRECTOR MARCUS: I have received
20 communications from some commissioners indicating
21 available dates from within our suggestions and so far
22 the only two dates that everyone would be available
23 would be the 30th and the 31st, although those two days
24 --

25 COMMISSIONER HERIOT: That one --

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1 STAFF DIRECTOR MARCUS: But I think you
2 indicated that there were some times within those two
3 dates.

4 COMMISSIONER HERIOT: Yes, but I don't
5 know what times right now.

6 STAFF DIRECTOR MARCUS: So there is no
7 date other than --

8 COMMISSIONER BRACERAS: I'm not available
9 either of those two days.

10 VICE-CHAIR THERNSTROM: And it may be
11 problematic for me.

12 COMMISSIONER BRACERAS: I'm out of pocket
13 all day both of those days.

14 COMMISSIONER KIRSANOW: And I don't like
15 those two days.

16 (Laughter.)

17 STAFF DIRECTOR MARCUS: So there is no
18 other date that has not been objected to by at least
19 one commissioner.

20 CHAIRMAN REYNOLDS: Did we offer dates out
21 to August?

22 STAFF DIRECTOR MARCUS: Up to August 8th,
23 yes.

24 COMMISSIONER MELENDEZ: I guess the
25 question I have is trying to get too many things

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1 approved on a conference call is rather difficult. If
2 you just have the charters themselves, that would take
3 some time and I think that the 2009 budget is a real
4 important document based on some of the positions that
5 haven't been filled and all this discussion we're
6 going to have on the personnel. So I think that a
7 discussion on the 2009 budget would be better done at
8 the next general meeting that we have because I think
9 it's an important issue to really look at.

10 CHAIRMAN REYNOLDS: There's no doubt that
11 it's better to do have these discussion face-to-face.
12 However, we have some deadlines that we need to meet,
13 I believe.

14 STAFF DIRECTOR MARCUS: We have a
15 September deadline for our budget. Even if we were to
16 have it in the August meeting which is not currently
17 scheduled for a general business meeting, I think that
18 there is little chance that we would make that date.
19 As it is, if we were to have the teleconference at the
20 end of July or early August, it would be tight squeeze
21 and we might be little late. But if we had --
22 Considering that our next gathering is in, as I
23 recall, fairly late August -

24 COMMISSIONER HERIOT: It's the 24th.

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1 STAFF DIRECTOR MARCUS: It would be mean
2 we would certainly be late on the budget.

3 VICE-CHAIR THERNSTROM: What are the
4 consequences of being late on the budget?

5 STAFF DIRECTOR MARCUS: Well, there are no
6 specific penalties and the fact that is prior to 2004
7 the agency was frequency late on the budget and in one
8 year did not submit a budget whatsoever. It certainly
9 gave the agency a bad reputation with OMB and was not
10 helpful --

11 CHAIRMAN REYNOLDS: We should strive to --

12 VICE-CHAIR THERNSTROM: Yes, that's not
13 very good.

14 CHAIRMAN REYNOLDS: We should strive to
15 meet the deadline.

16 STAFF DIRECTOR MARCUS: I was going to say
17 Lord have mercy.

18 VICE-CHAIR THERNSTROM: Nobody is
19 suggesting that we not have a budget to go on. That's
20 not even a question. My question is how bad is it if
21 in the spirit of Commissioner Melendez's question
22 whether we do our discussion until we don't have to
23 conduct it on a teleconference basis.

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1 STAFF DIRECTOR MARCUS: I don't think I
2 can assess it. It just will make us look a little bit
3 worse in front of OMB.

4 COMMISSIONER MELENDEZ: My only point is
5 all of us are limited on conference calls and a lot of
6 times, I don't think we have time to get on a
7 conference call for talking about re-charters plus
8 talk about a budget. Unless you're going to stay on a
9 conference call for a couple hours, I think it's not
10 adequate time to do that.

11 COMMISSIONER HERIOT: And I object to all
12 this. I think that we've put off far too many things.
13 We should have far more conference calls and we should
14 be doing a lot more business than what we're doing
15 right now. Things get delayed. We have just delayed
16 consideration of these SACs out of a courtesy to you,
17 Commissioner Melendez, and I think, in the spirit of
18 getting things done, we need to schedule a date and do
19 it.

20 VICE-CHAIR THERNSTROM: Well, are we
21 scheduling a date as well to take up the questions of
22 the SACs that we charter?

23 COMMISSIONER BRACERAS: I think the most
24 important thing is to get a date and then we can
25 discuss what we're going to fill the time with. I

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1 mean, the bottom line is we may not find the time when
2 every commissioner can participate, but that's also
3 true of our business meetings and our briefings.

4 VICE-CHAIR THERNSTROM: True.

5 COMMISSIONER BRACERAS: And they are
6 scheduled and the people who can come, come and the
7 people who can't don't.

8 VICE-CHAIR THERNSTROM: There is one
9 difference.

10 COMMISSIONER YAKI: Or some can make it by
11 teleconference.

12 COMMISSIONER BRACERAS: Or sometimes not
13 at all. I mean, I had to miss Omaha all together
14 because of a competing commitment that I had.

15 COMMISSIONER YAKI: As we were told many
16 times, Omaha wasn't really needed.

17 COMMISSIONER BRACERAS: But you get my
18 point. The point is it's more important to schedule a
19 time when the majority of commissioners can be present
20 and if I'm not one of them, so be it. It's more
21 important as Commissioner Heriot said to move the
22 business and the agenda forward.

23 COMMISSIONER YAKI: I would object to
24 that. I would say that it's important to ensure that

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1 as much as possible every commissioner is available
2 because --

3 COMMISSIONER BRACERAS: Then it's
4 important that they make themselves available.

5 COMMISSIONER YAKI: Given the fact then
6 that there are only two Democrats on the Commission
7 having a majority only rule for when we need to
8 schedule a teleconference, I think, is inappropriate.

9 CHAIRMAN REYNOLDS: That hasn't occurred
10 and we are charged with making reasonable efforts to
11 accommodate everyone's schedule and I think that in
12 the past we've gone beyond that and as a result, we
13 have gotten -- We have a backlog of work as a result.
14 But in any event --

15 COMMISSIONER YAKI: I would really object
16 again to that characterization because we can't find
17 time to meet that is why we have a backlog of work. I
18 think that, for example, the statutory report issues
19 have nothing whatsoever to do with whether or not we
20 can get our own schedules together and everything to
21 do with whether or not internally we were able to meet
22 any of those schedules.

23 CHAIRMAN REYNOLDS: Commissioner Yaki, I
24 don't think that we are pointing fingers at any
25 particular commissioner, but I think that --

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1 COMMISSIONER YAKI: I'm just saying that -
2 - I'm just saying I don't think you can keep saying
3 that it's the fault of the commissioners not being
4 available for the fact that we can or cannot get work
5 done when a lot of these problems that we have deal
6 with the fact that we can't make our deadlines
7 internally.

8 CHAIRMAN REYNOLDS: Okay. Well, we have a
9 difference of opinion. But in any event, why we don't
10 consult our calendars to see if there's a date where
11 we can all discuss these issues together and have a
12 sense of harmony.

13 VICE-CHAIR THERNSTROM: Mr. Chairman,
14 there is one difference between having a calendar
15 which we've committed ourselves and if some of us
16 can't meet it, you know, can't come to a meeting at
17 the last moment, so be it. But I do think it's
18 important when we're scheduling a teleconference that
19 we really do our best to make sure everybody can come
20 if that's possible.

21 CHAIRMAN REYNOLDS: Okay. Let's see if we
22 can meet that high standard. Okay?

23 COMMISSIONER MELENDEZ: Just one other
24 comment. I think that when we were scheduling what we
25 call these business meetings because we didn't have a

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1 briefing. You know, there were a couple that we
2 scheduled for the whole year. So those should be the
3 primary meetings where we talk about budget and all
4 these other things that are on the agenda so we're not
5 competing with a briefing that we have limited time.
6 So it's day like today that we should be actually
7 talking about the budget. We'd more time talking
8 about all these different things. So it's not really
9 the fault of the commissioners.

10 When we schedule -- There are a couple of
11 days throughout the year that we want the staff and
12 staff to have this budget ready and everything else.
13 So it's kind of not put on us. Basically, we came out
14 here, traveled out here, to deal with business and now
15 all this stuff is tabled to telephone calls when we
16 should just stayed home and did a telephone call for
17 this meeting also. That's my concern.

18 CHAIRMAN REYNOLDS: Not all of us is as
19 wise as Commissioner Yaki. But you raise a good
20 point. The budget is an important matter and it is
21 preferable to do -- well, to have all of our
22 conversations face-to-face. Ken, I see you. Do you
23 have something to say?

24 STAFF DIRECTOR MARCUS: If you care to --
25 I mean, the only thing I would add is we do have a

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1 full slate of information that the commissioners could
2 be deliberating on this morning. I think that between
3 the statutory report, the six state advisory committee
4 reports that were made available it could certainly
5 take all morning. So I think part of the concern is
6 that we had made an immense amount of material
7 available for the commissioners and if everyone were
8 prepared, we certainly could spend all morning looking
9 at that.

10 CHAIRMAN REYNOLDS: Let's refer to our
11 calendars to see if we could select a date where we
12 can all be present.

13 COMMISSIONER BRACERAS: I can do any
14 Monday, Wednesday or Thursday at any time including
15 into the evening if that's more convenient to our West
16 Coast colleagues except for the last week of July.
17 That week I can do evenings only. I'm in meetings all
18 day where I won't have time to cut out and take a call
19 for more than five minutes.

20 VICE-CHAIR THERNSTROM: Is there something
21 wrong with the evenings? They appeal to me a great
22 deal.

23 CHAIRMAN REYNOLDS: I have no objection
24 and I suspect that it will be better for the folks on
25 the West Coast.

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1 COMMISSIONER YAKI: It depends on what
2 time you're talking about because it three hours and -
3 -

4 CHAIRMAN REYNOLDS: Okay. How does the --

5 COMMISSIONER BRACERAS: There are
6 inconveniences for all of us, but I'm willing to
7 overcome them and meet whenever other than that week
8 of July which again if the majority prefers that week,
9 that's my problem, nobody else's.

10 CHAIRMAN REYNOLDS: Okay. August 6th at
11 say -- Pick a time someone.

12 COMMISSIONER MELENDEZ: Noon.

13 CHAIRMAN REYNOLDS: August 6th, does the
14 date work?

15 COMMISSIONER BRACERAS: What day of the
16 week is it?

17 CHAIRMAN REYNOLDS: That's a Monday.

18 COMMISSIONER HERIOT: Monday. Any one of
19 those 24 hours I am available.

20 COMMISSIONER MELENDEZ: Noon.

21 CHAIRMAN REYNOLDS: How about noon? Noon,
22 okay. That's three.

23 VICE-CHAIR THERNSTROM: Noon what?
24 Pacific time?

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1 CHAIRMAN REYNOLDS: Okay. That's 3:00
2 p.m. for you, 11:00 a.m. for me. Commissioner Yaki?

3 COMMISSIONER YAKI: I'm looking at my
4 calendar. The 6th, I'm out of pocket that day.

5 CHAIRMAN REYNOLDS: I'm sorry.

6 COMMISSIONER YAKI: I'm out of pocket on
7 the 6th.

8 CHAIRMAN REYNOLDS: Okay. Strike one.
9 The 13th?

10 COMMISSIONER KIRSANOW: Available.

11 COMMISSIONER BRACERAS: Sorry. I don't
12 have my calendar with me. What day of the week is it?

13 VICE-CHAIR THERNSTROM: Monday.

14 CHAIRMAN REYNOLDS: I'm just going through
15 Mondays now.

16 COMMISSIONER BRACERAS: Yes, fine.

17 STAFF DIRECTOR MARCUS: I'm not available
18 on the 13th.

19 CHAIRMAN REYNOLDS: Okay.

20 PARTICIPANT: What about Wednesday?

21 CHAIRMAN REYNOLDS: The 8th, Wednesday.

22 COMMISSIONER KIRSANOW: Available.

23 VICE-CHAIR THERNSTROM: Wait. What did
24 you just say, Jennifer? You're available Mondays and
25 what?

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1 CHAIRMAN REYNOLDS: Wednesdays.

2 COMMISSIONER BRACERAS: Mondays,
3 Wednesdays and Thursdays any hour of the day.

4 VICE-CHAIR THERNSTROM: I don't think I
5 can make it on the 8th, but I have no idea.

6 COMMISSIONER KIRSANOW: Available.

7 CHAIRMAN REYNOLDS: The 9th?

8 COMMISSIONER BRACERAS: Available.

9 VICE-CHAIR THERNSTROM: I may be moving on
10 the 8th and 9th. I don't know.

11 CHAIRMAN REYNOLDS: You tell those folks
12 they're going to have wait. You have a conference to
13 -- You're available?

14 COMMISSIONER MELENDEZ: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: I have a court thing
17 that's going to go the 8th and the 9th and 10th.

18 COMMISSIONER BRACERAS: What dates are
19 your available?

20 COMMISSIONER YAKI: I was available the
21 13th.

22 CHAIRMAN REYNOLDS: Okay. How does your
23 schedule look for the 15th which is a Wednesday?

24 COMMISSIONER YAKI: No. I'm in
25 negotiations all day.

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1 CHAIRMAN REYNOLDS: What about in the
2 evening?

3 COMMISSIONER YAKI: It's labor
4 negotiations. So I don't know how long it's going to
5 last.

6 CHAIRMAN REYNOLDS: I understand. The
7 16th?

8 COMMISSIONER YAKI: The 16th, yes.

9 CHAIRMAN REYNOLDS: Is that a yes?

10 COMMISSIONER YAKI: Yes.

11 CHAIRMAN REYNOLDS: All right. Gail?

12 COMMISSIONER HERIOT: I can't get -- but I
13 can't tell when school starts. But I think we can
14 assume that, yes, I'm available.

15 CHAIRMAN REYNOLDS: Okay. Ken?

16 STAFF DIRECTOR MARCUS: Yes, the 16th is
17 fine.

18 CHAIRMAN REYNOLDS: Commissioner Melendez.

19 COMMISSIONER MELENDEZ: I can't do it at
20 11:00 a.m., but I can do it any other time, either
21 earlier than 11:00 a.m. or late in the afternoon.

22 CHAIRMAN REYNOLDS: Okay. Vice-Chair
23 Thernstrom.

24 (Off the record discussion in background.)

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1 VICE-CHAIR THERNSTROM: Look. My August
2 schedule is so up in the air that just do it without
3 me.

4 CHAIRMAN REYNOLDS: Okay.

5 VICE-CHAIR THERNSTROM: And I hope to be
6 there.

7 CHAIRMAN REYNOLDS: The date is the 16th.
8 Now times? You had a preference?

9 COMMISSIONER KIRSANOW: You didn't ask me.

10 (Laughter.)

11 COMMISSIONER MELENDEZ: I would say 9:00
12 a.m. Pacific.

13 CHAIRMAN REYNOLDS: Okay. That's 11:00
14 a.m. my time.

15 VICE-CHAIR THERNSTROM: 12:00 noon
16 Eastern.

17 STAFF DIRECTOR MARCUS: 12:00 noon our
18 time, yes.

19 CHAIRMAN REYNOLDS: Hell.

20 COMMISSIONER KIRSANOW: Or even 8:00 a.m.
21 It doesn't matter. Why is that bad?

22 CHAIRMAN REYNOLDS: Would doing it later
23 in the day? Would that be possible? How about noon
24 your time?

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1 COMMISSIONER MELENDEZ: Well, it probably
2 would have to be 1:00 p.m. my time Pacific. I have a
3 commitment at 11:00 a.m. that will probably a couple
4 hours Pacific time.

5 CHAIRMAN REYNOLDS: And you can't go later
6 in the day?

7 COMMISSIONER MELENDEZ: I can go later in
8 the day, but that's Pacific Time.

9 VICE-CHAIR THERNSTROM: What time are you
10 suggesting?

11 COMMISSIONER MELENDEZ: Well, 2:00 p.m.
12 Pacific Time, but that's -- What time is it for you?

13 COMMISSIONER KIRSANOW: 5:00 p.m.

14 COMMISSIONER BRACERAS: Perfect.

15 VICE-CHAIR THERNSTROM: That's fine.

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER MELENDEZ: Okay.

18 CHAIRMAN REYNOLDS: So the 16th at --

19 STAFF DIRECTOR MARCUS: 5:00 p.m.

20 CHAIRMAN REYNOLDS: Did he say 5:00 p.m.?

21 VICE-CHAIR THERNSTROM: Yes. 5:00 p.m.
22 Eastern Standard Time.

23 CHAIRMAN REYNOLDS: Okay. I see. We're
24 making our adjustments.

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1 COMMISSIONER YAKI: We can Jennifer's kids
2 at the dinner table.

3 CHAIRMAN REYNOLDS: Okay. So the 16th at
4 5:00 p.m. Eastern Standard Time. Okay. So I guess we
5 can vote on this now.

6 COMMISSIONER KIRSANOW: Eastern Daylight
7 Time.

8 (Laughter.)

9 CHAIRMAN REYNOLDS: All in favor please
10 say aye.

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: Any objections?

13 (No response.)

14 CHAIRMAN REYNOLDS: Any abstentions?

15 (No response.)

16 CHAIRMAN REYNOLDS: The motion carries
17 unanimously.

18 Okay. I move that we -- Whoa.

19 COMMISSIONER BRACERAS: We're now within
20 the context of the meeting. Is it just the budget or
21 the budget and the SACs?

22 COMMISSIONER HERIOT: Have we looked at
23 this budget before? Are there going to be substantial
24 changes?

25 (Off the record discussion.)

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1 CHAIRMAN REYNOLDS: Okay. Are we going to
2 have some discussion? Commissioner Melendez raises a
3 good point that we haven't seen this document before.
4 It is our budget. Do we need to carve out -- Should
5 this time be used exclusively for the budget or should
6 we handle the SAC issues also?

7 VICE-CHAIR THERNSTROM: It depends on how
8 long the budget discussion is going to take.

9 CHAIRMAN REYNOLDS: Okay. Well, then how
10 about this? Why don't we proceed --

11 COMMISSIONER MELENDEZ: Put them all on
12 the agenda.

13 CHAIRMAN REYNOLDS: Yes, we put everything
14 on the agenda, the discussion of the budget as well as
15 the discussion of the SACs and if it turns out that we
16 run out of time we'll deal with it during the
17 teleconference.

18 COMMISSIONER MELENDEZ: Yes.

19 CHAIRMAN REYNOLDS: Any objections to that
20 approach?

21 COMMISSIONER HERIOT: We could set a
22 backup time for a second teleconference if we need.

23 VICE-CHAIR THERNSTROM: Well, that's too
24 hard. Why we can't we if we run out of time spend a
25 bit of time on August 24th on the leftover business?

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1 CHAIRMAN REYNOLDS: I don't see why not.
2 But then again, I don't know what the agenda is going
3 to look like.

4 COMMISSIONER YAKI: (Inaudible.)

5 VICE-CHAIR THERNSTROM: It's a briefing
6 report.

7 COMMISSIONER YAKI: (Inaudible.)

8 VICE-CHAIR THERNSTROM: Maybe those who
9 have trouble the proposed membership of the SACs that
10 need re-chartering could give us documents beforehand
11 so we know what the issues are and can expedite the
12 process.

13 COMMISSIONER YAKI: That would be a nice
14 suggestion but --

15 CHAIRMAN REYNOLDS: But are you willing to
16 embrace it?

17 COMMISSIONER YAKI: No.

18 CHAIRMAN REYNOLDS: For tactical reasons,
19 you want to bushwhack us or there are other reasons?

20 COMMISSIONER YAKI: Mainly time.

21 CHAIRMAN REYNOLDS: All right. Let's just
22 put everything on the agenda for the 16th and, again,
23 we'll deal with it. If we don't have time, we'll deal
24 with it at that point in time. Okay.

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1 COMMISSIONER HERIOT: It just does seem to
2 me that we chronically run into this problem. Maybe
3 we should routinely have telephone conferences in
4 order to get our business done more rapidly. Things
5 get put off for far too long.

6 CHAIRMAN REYNOLDS: I agree and, in fact,
7 --

8 COMMISSIONER YAKI: I think we do do that.

9 CHAIRMAN REYNOLDS: Well --

10 COMMISSIONER HERIOT: Then we wouldn't
11 have so much of a problem scheduling this if we knew
12 that every month we were going to have a telephone
13 conference and we scheduled it early on.

14 VICE-CHAIR THERNSTROM: Yes, exactly.

15 COMMISSIONER HERIOT: And we wouldn't have
16 these difficulties that we're having today wasting
17 time scheduling a teleconference.

18 VICE-CHAIR THERNSTROM: Yes, exactly.

19 CHAIRMAN REYNOLDS: On the teleconference,
20 we could deal with issues that we assume are
21 noncontroversial.

22 COMMISSIONER HERIOT: Spillovers.

23 CHAIRMAN REYNOLDS: Deal with the stuff
24 that's easy.

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1 VICE-CHAIR THERNSTROM: There is not such
2 thing that's necessarily easy.

3 COMMISSIONER HERIOT: There's nothing easy
4 around here. So let's just figure that we'll do hard
5 stuff.

6 COMMISSIONER YAKI: That's all nice in
7 theory, but, the fact, is that for -- I know that
8 situation involving myself and the Chair where our
9 calendars sometimes come up against clients and things
10 that don't lend themselves to an easy routine of
11 scheduling them up before. It's very difficult to do
12 that.

13 CHAIRMAN REYNOLDS: It's difficult but --

14 COMMISSIONER HERIOT: It's better than
15 doing it post hoc. It's better having a date that you
16 can look forward to several months from now.

17 CHAIRMAN REYNOLDS: And plan around.

18 COMMISSIONER HERIOT: Yes.

19 VICE-CHAIR THERNSTROM: And having --
20 argument against the monthly meetings here. The fact
21 is you have to schedule your clients around these
22 meetings and if we had a predictable date, a
23 predictable series of dates in which we were holding
24 teleconference meetings, they would fall in the same
25 category as our monthly meetings in D.C. They would

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1 be occasions on which clients would have to be
2 scheduled around or else you would have to miss them.

3 COMMISSIONER YAKI: That may be one issue
4 to deal with, but I have a larger objection, the same
5 view as routinely doing teleconferences, and that has
6 to do with the aspect of transparency and public
7 participation. I just don't think that
8 teleconferences routinely where we push business of,
9 very important business, is something that I find is
10 conducive to that kind of transparency and public
11 participation.

12 COMMISSIONER HERIOT: Yes, but you're also
13 the one that objects that we have to kick off early on
14 the days that we're here because you need to catch
15 your plane. So you get one or the other. You can't
16 take both those stands.

17 VICE-CHAIR THERNSTROM: And we are
18 postponing today the re-chartering of three SACs not
19 at the request of any Republican.

20 CHAIRMAN REYNOLDS: Folks.

21 COMMISSIONER YAKI: Well, Professor
22 Heriot, perhaps if my schedule were as easy to
23 manipulate as yours -- I have over time perhaps, if
24 you care to read all the transcripts for the past two
25 years, proposed different methods by which to deal

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1 with the folks that the East Coast people, the West
2 Coast people, or at least myself and Commissioner
3 Melendez, I'm not speaking for you, I have to leave a
4 little bit earlier because of family and other types
5 of commitments in the afternoon on Fridays and I have
6 proposed alternatives prior many times to deal with
7 that issue including meeting, doing business on
8 Thursdays, doing the briefings on Fridays, things like
9 that. So it's nice of you to offer these kinds of
10 suggestions, but there's a history behind why it is we
11 do that and why I've taken the position that I have.

12 CHAIRMAN REYNOLDS: Okay. Very good.
13 Folks, let's focus here. We have a date. We have a
14 time. There is a proposal that we deal with the
15 budget and the SAC issues. There's an understanding
16 that if we run out of time we will deal with that
17 problem at the meeting. All in favor?

18 (Chorus of ayes.)

19 CHAIRMAN REYNOLDS: Any objections?

20 (No response.)

21 CHAIRMAN REYNOLDS: Any abstentions?

22 (No response.)

23 CHAIRMAN REYNOLDS: The motion carries
24 unanimously.

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1 Okay. I move to delete subitem labeled
2 "Briefing Report on Racial Categorization in the
3 Census" from Section VI, Program Planning. Under this
4 motion, discussion of this report will be tabled to
5 give staff additional time to review Commissioner
6 comments on the draft report that were received before
7 July 5, 2007. Is there a second?

8 COMMISSIONER KIRSANOW: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 COMMISSIONER BRACERAS: Yes. I realize
11 that we're not going to vote on that report today.
12 But is it worth having a discussion at all about the
13 report amongst Commissioners so that we might give
14 input to the staff today? I just throw that out
15 there.

16 COMMISSIONER YAKI: I was told pretty
17 early on this was going to be pushed off. So I did
18 not prepare anything.

19 VICE-CHAIR THERNSTROM: Ditto.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER BRACERAS: Okay. I have a
22 comment and I guess my question more specifically is
23 would you like my input now or would you prefer in
24 writing? The reason I raise it is because I find it
25 more productive to share my views and hear the views

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1 of my colleagues face-to-face than to just send an
2 email to Ken and I have no idea what the rest of you
3 are thinking or if I'm off base or what have you. So
4 in terms of any report that we may not actually be
5 loading on today, but that we've received copies of, I
6 simply ask whether this would be an appropriate time
7 to raise questions, concerns, comments if we have
8 them, not the only time and place for doing so, but
9 whether this might be a time and place for doing so or
10 if we should hold back and reserve our comments to
11 send through email, fax or what have you.

12 CHAIRMAN REYNOLDS: My two cents is that
13 since not all the Commissioners are prepared, the
14 exchange won't be as rich.

15 COMMISSIONER BRACERAS: But otherwise
16 there will be no exchange.

17 VICE-CHAIR THERNSTROM: Why can't we
18 remedy that, Jennifer?

19 CHAIRMAN REYNOLDS: Yes. We can -- My
20 assumption is that we will have a face-to-face
21 conversation where we walk through the various
22 questions and concerns.

23 COMMISSIONER BRACERAS: All right. That's
24 fine. I'll hold off until that point and in the

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1 meantime, I will send in my comments to the Staff
2 Director.

3 VICE-CHAIR THERNSTROM: And why can't the
4 Staff Director circulate them so that we can have a
5 bit of an exchange.

6 COMMISSIONER BRACERAS: Yes. I'm happy to
7 have that done. In the past, that hasn't really been
8 the practice. I mean, if Commissioners -- In other
9 words, I've never received copies of commissioner
10 comments. I've received revised drafts, but I've
11 never seen a memo to the Staff Director from
12 Commissioner Thernstrom, for example, with her
13 comments about a draft. But I'm happy to share my
14 thoughts with my colleagues and I'd be interested in
15 seeing others. That's fine.

16 COMMISSIONER HERIOT: Is there anything to
17 prevent commissioners from simply copying the other
18 commissioners when they send it to Ken?

19 COMMISSIONER BRACERAS: No. I don't think
20 so. So I'll do that.

21 COMMISSIONER KIRSANOW: There is a
22 provision in the United States Code, I believe.

23 (Laughter.)

24 (Off the record comments.)

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1 CHAIRMAN REYNOLDS: A real comedian today.
2 Okay. So any other comments? All in favor please say
3 aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Any objections?

6 (No response.)

7 CHAIRMAN REYNOLDS: Any abstentions?

8 (No response.)

9 CHAIRMAN REYNOLDS: The motion carries
10 unanimously.

11 VICE-CHAIR THERNSTROM: I'm -- One more
12 word on that. I do think that there's a real point to
13 what Commissioner Heriot just raised. I mean, I've
14 sent a bunch of comments in to the Staff Director on
15 the statutory report. There is no reason in principle
16 why those couldn't have simply been shared more widely
17 and I think it might be production in general to
18 assume that we're going to do so.

19 COMMISSIONER HERIOT: I guess, my
20 inclination would be to always copy everybody on these
21 things.

22 VICE-CHAIR THERNSTROM: Yes, which I
23 didn't.

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1 COMMISSIONER HERIOT: And the
2 commissioners can make their own decision about that.
3 If there's some reason they don't want to, then don't.

4 **II. APPROVAL OF MINUTES OF JUNE 1 MEETING**

5 CHAIRMAN REYNOLDS: All right. The second
6 item is the approval of the minutes for the June 1,
7 2007 meeting. Is there a second?

8 COMMISSIONER KIRSANOW: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 (No response.)

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

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Any objections?

15 (No response.)

16 CHAIRMAN REYNOLDS: Let the record reflect
17 that all the commissioners with the exception of the
18 Chairman voted in favor of this and I abstain since I
19 did not participate in that meeting.

20 **III. ANNOUNCEMENTS**

21 CHAIRMAN REYNOLDS: Announcements. This
22 month marks the 43rd anniversary of the landmark Civil
23 Rights Act of 1964: this legislation board; unequal
24 application of voter registration requirements;
25 discrimination of public accommodations in interstate

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1 commerce; and discrimination in employment on the
2 basis of race, national origin, sex or religion. All
3 Commission staff and members of the Commission should
4 be proud as am I to serve on a commission that helped
5 put these laws on the books.

6 Also, in addition to the Civil Rights Act,
7 this month also marks the 17th anniversary of the
8 signing of the American With Disabilities Act. Pardon
9 me.

10 (Off the record discussion.)

11 CHAIRMAN REYNOLDS: Seventeen years ago,
12 the Act was signed in an effort to bring civil rights
13 to persons with disabilities. The Americans With
14 Disabilities Act provides for reasonable
15 accommodations in work situations and standards for
16 physical accessibility to buildings and public
17 transportation for people with disabilities. Today we
18 recognize the impact of this important statute.'

19 At this point, the Staff will present his
20 report.

21 **IV. STAFF 'S REPORT**

22 STAFF DIRECTOR MARCUS: Thank you, Mr.
23 Chairman. I would like to say a few words about the
24 budget, our interns and upcoming state advisory
25 committee meetings.

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1 First, with respect to this year's budget
2 as the result of attribution issues with which the
3 Commissioners are aware, we are in a very budgetary
4 posture. We have a very significant amount of money
5 by which we have underspent during the first three-
6 quarters of the year. As a result, I have been able
7 to direct our regional staff that they may conduct as
8 many state advisory committee meetings during the
9 remainder of the year as they are able to without the
10 budget being an impediment.

11 I've urged staff members to use this time
12 to what training they need to take and we're looking
13 at various purchases that have been considered for
14 awhile that may be ticket items in the lines of
15 communications and technology. But you should know
16 that we are in a very favorable posture with respect
17 to the state of funds at this time in this year.

18 With respect to next year, of course,
19 starting October 1, we do not yet know where we will
20 be. So far what news we've received from the Hill has
21 been favorable. As you are aware, the President's
22 budget provides approximately \$8.7 million for the
23 Commission which would be a reduction from prior years
24 and I'm sorry. That's for 2007. Budget estimate for
25 2008 is \$8.8 million. However, the Senate Committee

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1 recommendation is an even \$9 million. So the Senate
2 currently is ready to provide us with a greater amount
3 of money than what the President requested.

4 The House was engaged in deliberations
5 during the course of this week including yesterday.
6 I've not yet heard a word on that. There is a
7 question, of course, as to whether the President would
8 sign whatever appropriations bill is decided. But at
9 least in terms of the Senate, the figure looks good
10 and we'll keep you posted as it's developed.

11 COMMISSIONER YAKI: Didn't you hear, Ken,
12 that Congress was going to attach the Iraq troop
13 withdrawal to our budget?

14 (Laughter.)

15 CHAIRMAN REYNOLDS: So it looks like
16 continuing resolutions.

17 STAFF DIRECTOR MARCUS: Very good.

18 (Laughter.)

19 STAFF DIRECTOR MARCUS: We will be having
20 a number of state advisory committee meetings over the
21 course of this summer and early fall. I'd like to
22 mention a few of them to you to encourage if you are
23 able to attend any of them, please let me know.
24 Certainly, it would be appreciated as a gesture in the
25 event that any commissioner were available.

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1 On August 8th, the Alabama State Advisory
2 Committee will meet to conduct program planning
3 activities for future civil rights activities and
4 they'll have a number of substantive issues that
5 they'll be discussing in Birmingham. On August 13th,
6 the Mississippi State Advisory Committee will be
7 meeting in Jackson, Mississippi. On August 29th, the
8 Georgia State Advisory Committee will be meeting in
9 Atlanta.

10 COMMISSIONER KIRSANOW: What date was that
11 again?

12 STAFF DIRECTOR MARCUS: That's August 29
13 in Atlanta. The Tennessee State Advisory Committee is
14 looking at a potential meeting on August 6th. There
15 are a number of other potential meetings that would
16 come up later in the summer that are still being
17 discussed by the state advisory committee members.

18 COMMISSIONER YAKI: A question for the
19 staff director. If we were to attend any of these
20 meetings, we would have to do so on official
21 Commission business or if we went there on our own,
22 would that be constituted as volunteer time which is
23 prohibited? Do we have any interpretation on that?
24 And then are all these meetings teleconference
25 accessible?

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1 STAFF DIRECTOR MARCUS: First, let me say
2 that we are able to provide your transportation
3 officially. So you could do it in your official
4 capacity. If you're asking whether you could
5 voluntarily do it out of your pocket, I think we would
6 have to look into whether that would be a problem or
7 not. I don't think it would be, but I would not want
8 to answer that without looking into that legally.

9 COMMISSIONER YAKI: I mean, if we went as
10 a commissioner observing that, I would think that
11 would be characterized Commission action and if we did
12 it on our dime, it would be counted as volunteer time.
13 So I think we should get an opinion on that from the
14 Solicitor--

15 STAFF DIRECTOR MARCUS: If you like
16 opinion on it, I will have an appropriate member of
17 the staff helping in terms of the analysis. Let me
18 say a couple things about it. First, we certainly
19 have a tradition in this agency of commissioners
20 attending state advisory committee meetings in their
21 official capacity. It has been done customarily and
22 without issue or problem and not only that, but it has
23 been very well received.

24 Just yesterday, one staff member
25 reminisced with me about what a powerful impact was

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1 made by a commissioner who attended an Illinois state
2 advisory committee meeting several years ago and it
3 was discussed quite awhile afterwards. It certainly
4 is appropriate and it's appreciated.

5 As for voluntary attendance, I can tell
6 you we have looked into the question as to whether
7 members of the state advisory committees can attend
8 state advisory committees voluntarily and without
9 receiving compensation because that issue had come up
10 and the answer was essentially "Yes, but." Yes, but
11 they needed to do it within specific parameters that
12 we had to set up by way of guidance to ensure that
13 their waiver of reimbursement was sufficiently
14 expressed, that it could not lead to a later liability
15 against the Federal Government within various rules
16 regarding potential liability of the Federal
17 Government.

18 COMMISSIONER YAKI: Okay. It would be
19 helpful then if at the earliest opportunity if you
20 could send out the dates, the times and the location
21 for each of these meetings so that a commissioner who
22 might be interested in attending and then figure out
23 how it would work travel-wise, either personally or
24 officially in the most cost efficient manner possible.

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1 STAFF DIRECTOR MARCUS: We'll be happy to
2 update you on that, sir.

3 CHAIRMAN REYNOLDS: Okay. Is any
4 commissioner planning to attend a SAC meeting on their
5 own dime and, if so, why would they spend their
6 personal funds when we have sufficient --

7 COMMISSIONER YAKI: I would like to try
8 them on the official dime. I was just saying that
9 given that we're usually been in posture of penny
10 pinching, I was exploring the other option.

11 CHAIRMAN REYNOLDS: Sure.

12 COMMISSIONER YAKI: But just for the
13 record, I would like to attend several of those
14 meetings if possible.

15 CHAIRMAN REYNOLDS: Okay.

16 STAFF DIRECTOR MARCUS: And finally, I'd
17 like to say that we are fortunate to have several
18 interns working with the Commission. I think some,
19 but certainly not all, are here right now. They have
20 been providing really a substantial contribution to
21 the agency. Much of the work that we've been able to
22 do has been thanks to the very hard work of our
23 interns.

24 The Office of the General Counsel
25 currently has four interns and if you are here, please

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1 stand when I mention your name, Lianne Labossiere is a
2 student at Stanford Law School and we're glad to have
3 her and the others. Marie Laughinghouse is a senior
4 at Woodrow Wilson High School. Kristen Manderscheid
5 is a rising sophomore at Duke University and Nagmeh
6 Shariatmadar is a student at University of California
7 Davis School of Law. Is Nagmeh here?

8 CHAIRMAN REYNOLDS: Yes.

9 STAFF DIRECTOR MARCUS: Nagmeh
10 Shariatmadar. In the Office of the Staff , we have
11 John Barone from Syracuse Law School and Johanna Flood
12 of the University of San Diego School of Law. At the
13 Office of Civil Rights Evaluation, we have Alexander
14 Babiszewski from the University of Illinois at Chicago
15 and Richard Privado of Cesar Chavez Public Charter
16 School.

17 The Eastern Regional Office has four
18 interns this summer, Lia Garvin of the University of
19 California at Los Angeles, Stephen Kim at the
20 University of Michigan, Diana Rudd of the University
21 of Maryland and Latasha Whitehead of Woodrow Wilson
22 High School.

23 At the ASCD Office, we have Arica Boone of
24 Coolidge High School and Michael Whitehead of
25 Roosevelt High. We have a high school student also in

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1 the Library, Rayshon Strom and finally, in our Office
2 of Management, Tyra Hunter of the Margaret Murray
3 Washington High School that's helping us out.

4 So we thank all of the interns who are
5 voluntarily serving the agency.

6 CHAIRMAN REYNOLDS: Okay. Let's take a
7 five minute break. Off the record.

8 (Whereupon, at 10:18 a.m., the above-
9 entitled matter recessed and reconvened at 10:38 a.m.
10 the same day.)

11 CHAIRMAN REYNOLDS: On the record. Okay.
12 Commissioner Yaki, are you on the line?

13 COMMISSIONER YAKI: Yes.

14 CHAIRMAN REYNOLDS: Okay. Bear with me.

15 **V. PROGRAM PLANNING - FY 2007 STATUTORY REPORT**

16 CHAIRMAN REYNOLDS: Okay. I have recently
17 learned that the Department of Justice has provided
18 some additional information that we intend to
19 incorporate into the statutory report and since no one
20 has had an opportunity to look at these changes, we
21 are going to discuss the report. But we will not vote
22 on the report.

23 The recommendation is that in order to
24 meet our statutory deadline that we have a second

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1 teleconference to vote on the report. So there will
2 be no vote, but the floor is open for discussion.

3 COMMISSIONER KIRSANOW: Mr. Chairman, in
4 addition, the changes consists of what precisely?

5 CHAIRMAN REYNOLDS: Staff Director Marcus.

6 STAFF DIRECTOR MARCUS: The changes are
7 largely of the form discussed in the July 6th memo
8 which is to say that we'll making technical
9 corrections to affected agency review as well as
10 remodeling charts and tables and confirming citations
11 to the Commission style guidelines.

12 The significant changes involve ensuring
13 that all of the data in the most recent, I believe, 26
14 cases received from the Department of Justice are
15 incorporated insisently throughout the document.
16 They have been incorporated into many of the charts
17 and much of the text, but there are portions of the
18 text which do not include those 26 cases. There are
19 hundreds of other cases that are, but those 26 cases
20 have been reflected in the charts and tables and text
21 for some parts, but not all.

22 VICE-CHAIR THERNSTROM: And is there
23 anything distinctive about these 26 cases?

24 STAFF DIRECTOR MARCUS: Yes. They're
25 recent and the recent cases do have some different

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1 characteristics than the older cases and I think that
2 the difference in the characteristics is already
3 described somewhat in the text and is also reflected
4 in the findings and recommendations. But since they
5 are the newer cases and the newest cases are not just
6 like the older ones. The new cases have some of the
7 different characteristics.

8 CHAIRMAN REYNOLDS: Okay. One comment,
9 I'd like to thank the staff. I think that this is a
10 very strong document. I think that staff has come up
11 with a lot of information that I have never seen
12 before. So thank you. Good job.

13 Okay. The floor is open. Does anyone
14 want to discuss the Executive Summary or --

15 COMMISSIONER BRACERAS: Sure. I'll begin.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER BRACERAS: I have a number of
18 comments that are not really substantive. They're
19 more in the way of line edits, but I'd like to suggest
20 them to the staff.

21 The first comment relates to the first
22 paragraph of the Executive Summary and this is an
23 issue that I noticed throughout the report which has
24 to do with the syntax and the first sentence reads
25 "For almost a century following the end of the Civil

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1 War, areas of the United States suffered under a
2 crippling system of state-sponsored segregation."
3 There is a sense throughout the document that
4 segregation is something that happens to the United
5 States. The United States suffered as opposed to
6 something that was a policy choice by individual
7 policy makers. So the grammar of that is awkward and
8 I think that somebody should look over the document
9 and try to clean that up where possible.

10 CHAIRMAN REYNOLDS: To make sure that I
11 understand, are you stating that the United States had
12 a policy that condoned, permitted, slavery, that it --

13 COMMISSIONER BRACERAS: The United States
14 does not have a policy regarding segregation.
15 Individual communities and states had policies
16 regarding segregation.

17 CHAIRMAN REYNOLDS: I'm sorry. Yes.
18 Right.

19 COMMISSIONER BRACERAS: And the point is
20 the United States was not the victim of segregation.
21 African Americans were the victims of segregation, but
22 to say that the United States suffered under a system
23 of segregation is like you're saying some oppressive
24 dictatorship came in from the outside and imposed it

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1 on us. They didn't impose it on us. People chose it.
2 Politicians chose it.

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER BRACERAS: Wrongly and
5 immorally so, but it's just the --

6 VICE-CHAIR THERNSTROM: It should be
7 simply experienced a crippling.

8 COMMISSIONER BRACERAS: I wouldn't even
9 say experienced. Just something more active.

10 COMMISSIONER KIRSANOW: Yes, it has to be
11 active.

12 COMMISSIONER BRACERAS: It's not accurate.

13 COMMISSIONER KIRSANOW: It just didn't
14 happen to us. We did it.

15 COMMISSIONER BRACERAS: Right.

16 VICE-CHAIR THERNSTROM: I understand that
17 point.

18 COMMISSIONER BRACERAS: I would say
19 something to the effect of -- and I don't think we
20 need to belabor the point. I think the staff is
21 perfectly capable of going through the document and
22 rewriting those parts. But something to the effect of
23 "For almost a century following the end of the Civil
24 War, segregation, state sponsored segregation, was
25 commonplace in certain areas of the United States."

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1 VICE-CHAIR THERNSTROM: Why do we say
2 "certain areas"? Why don't we say "the South" and not
3 "was commonplace" but "was pervasive."

4 COMMISSIONER BRACERAS: Right. Something
5 to that effect.

6 CHAIRMAN REYNOLDS: California had
7 segregated schools.

8 VICE-CHAIR THERNSTROM: You did not have
9 the same de jure system as you did in the South in
10 California.

11 COMMISSIONER BRACERAS: I mean, anyway I
12 think the staff working with the staff director can
13 come up with some language and since we're not voting
14 today, I don't think we need to be precise.

15 VICE-CHAIR THERNSTROM: Yes.

16 COMMISSIONER BRACERAS: But I think we can
17 probably all agree that segregation was not something
18 imposed on us from the outside.

19 VICE-CHAIR THERNSTROM: Right.

20 CHAIRMAN REYNOLDS: Sure.

21 COMMISSIONER BRACERAS: And therefore the
22 syntax is wrong.

23 VICE-CHAIR THERNSTROM: Right.

24 COMMISSIONER BRACERAS: In the same vein,
25 I have sort of a grammatical problem or I have a

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1 problem with the grammar used to describe the role of
2 the courts. In the second paragraph of the Executive
3 Summary, it says "An extraordinary level of Federal
4 intervention was sanctioned." That sort of not the
5 worst example of it. I think the worst example of
6 this comes later in the report. But there's a
7 constant reference to consent decrees and judicial
8 intervention as something that just sort of happened
9 and if you were not a lawyer and you were to read this
10 report, you might be led to believe that the courts
11 reached out and decided to address this grave social
12 problem, when, in fact, lawsuits were filed and there
13 were remedies that were imposed and the court control
14 over school systems was part of a remedy and without a
15 finding of a legal violation, there can be no remedy.
16 That's the whole point.

17 So throughout the document, I would very
18 carefully go over that language and I'll just quickly
19 go through the findings without going through my
20 comments on the whole document. I'm just going to
21 quickly if it's okay, go through the findings and
22 recommendations and point out some line items that
23 speak to both of those global concerns.

24 CHAIRMAN REYNOLDS: Okay.

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1 VICE-CHAIR THERNSTROM: Can I just say one
2 thing on the sentence you just referred to, to address
3 the damage caused by racially separate school systems.
4 It was to address the persistent constitutional
5 violations that those -- that segregation entailed.
6 It wasn't a damage caused by racial and separate
7 school systems as much, although that was present of
8 course, to talk about damage. Nevertheless, the heart
9 of the matter here is the constitutional violation of
10 de jure segregation.

11 COMMISSIONER BRACERAS: Right.

12 COMMISSIONER HERIOT: I think there's
13 pervasively that problem through this document that
14 the "process of integration" I thought was probably
15 not the right term there in that last sentence in that
16 second paragraph. It's the court order remedies.

17 COMMISSIONER BRACERAS: Exactly. That's
18 exactly my point.

19 COMMISSIONER HERIOT: That are being met
20 with resistance. There's a bond. There's a remedy.

21 VICE-CHAIR THERNSTROM: Right.

22 COMMISSIONER BRACERAS: And yes, there's a
23 societal change that went with that and that might
24 have been resisted as well. But that's not what we're
25 talking about here.

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1 VICE-CHAIR THERNSTROM: Right.

2 COMMISSIONER BRACERAS: In this document.
3 So anyway, I would ask the staff to go over it
4 carefully with an eye towards those issues and again,
5 it's not a substantive -- I think substantively the
6 report looks excellent, but --

7 VICE-CHAIR THERNSTROM: But these are
8 substantive issues. They're not simply stylistic that
9 you're bringing up and they're correct.

10 COMMISSIONER BRACERAS: So I just would
11 like to look if we can at the findings that begin on
12 page 82.

13 VICE-CHAIR THERNSTROM: Can I make a
14 general comment that's related to what you've just
15 been talking about. When you -- In the paragraphs
16 referring to pre-1954, pre-Brown, we are, in fact,
17 talking about de jure segregation. We are talking
18 about in my view the only legitimate and widely
19 accepted definition of segregation.

20 As the report goes on, there is a
21 confusion it seems to me between -- And I simply want
22 some kind of note to this effect that we are for
23 convenience sake continuing to use the word
24 "segregation" and "desegregation." But these is an
25 implicit blurring of the line between racial

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1 clustering, racially-identifiable schools and
2 segregated schools. In my view, segregated schools
3 require a segregator.

4 COMMISSIONER BRACERAS: I would go a step
5 further and ask that where that occurs the language be
6 changed to say "racially-isolated schools" or
7 "racially-identifiable schools" instead of "racially-
8 segregated schools unless we're specifically talking
9 about as you say cases where there are segregators.

10 VICE-CHAIR THERNSTROM: That's fine with
11 me, but I want some acknowledgment in the report that
12 there's a distinction between de jure segregation and
13 racial clustering, racially-identifiable schools, etc.
14 that simply reflect demographic patterns.

15 STAFF DIRECTOR MARCUS: Madam Vice Chair,
16 could I ask on page 48, footnote 2, there is a
17 discussion of that.

18 VICE-CHAIR THERNSTROM: It's too late.

19 STAFF DIRECTOR MARCUS: I would want to
20 know if we move it forward whether that footnote
21 reflects your concern.

22 VICE-CHAIR THERNSTROM: Okay. Page 48,
23 footnote 2. Well, that wouldn't -- All other things
24 being equal, I would go with what Commissioner

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1 Braceras just suggested which is really to change the
2 language in the report itself.

3 COMMISSIONER HERIOT: As long as we're not
4 going to approve this today, it seems like they would
5 probably have time to fiddle with the language a
6 little bit.

7 VICE-CHAIR THERNSTROM: There is a very
8 good discussion, by the way, in parents involved.

9 COMMISSIONER BRACERAS: It's the forwarded
10 part of it in that footnote.

11 VICE-CHAIR THERNSTROM: No, I'm talking
12 about Judge Carlos Baez 9th Circuit dissent.

13 COMMISSIONER HERIOT: Baez.

14 COMMISSIONER BRACERAS: Baez.

15 VICE-CHAIR THERNSTROM: I never knew how
16 you pronounced his name. Thank you. Baez's 9th
17 Circuit dissent in which she has a long discussion at
18 that point and it's worth quoting.

19 COMMISSIONER BRACERAS: I agree. So just
20 looking at the findings and some of these might seem
21 nitpicky but what can I say. I'm a lawyer. I'm just
22 going to give you my comments. In the first finding,
23 I guess the first suggestion I would make is that that
24 really seems like two findings, not one, and I would
25 separate them after "life" and before "1954."

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1 The second comment I would make about that
2 finding is I would delete the last sentence, "This
3 segregation is both unconstitutional and morally
4 repugnant." That doesn't seem to me to be a finding
5 of fact. That's more of an explanation or a
6 description. I mean, the fact is that the court did
7 what it did in 1954. I think the last sentence is
8 sort of extraneous. So those are two recommendations.

9 VICE-CHAIR THERNSTROM: Yes, and -- should
10 be changed to "unconstitutional."

11 COMMISSIONER BRACERAS: Exactly.

12 VICE-CHAIR THERNSTROM: And by the way,
13 somebody has put a comma outside of the quotation
14 marks.

15 COMMISSIONER BRACERAS: Yes. That's
16 offending to somebody's eyes.

17 (Laughter.)

18 COMMISSIONER BRACERAS: Going back to the
19 first sentence of the finding, again just the grammar,
20 "The parts of the United States operated under harsh
21 state-sponsored schemes." It's not as bad as what I
22 referred to before, but I would simply say I just
23 don't like the term "operated under."

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1 VICE-CHAIR THERNSTROM: And I don't like
2 "parts of the United States." We're not talking about
3 Kansas and Utah here.

4 COMMISSIONER HERIOT: We are talking about
5 Kansas.

6 COMMISSIONER BRACERAS: We are talking
7 about Kansas.

8 (Off the record comments.)

9 (Laughter.)

10 COMMISSIONER BRACERAS: But we're not
11 talking about Maine.

12 VICE-CHAIR THERNSTROM: We're not talking
13 about Maine and Utah. That is really an embarrassing
14 slight.

15 COMMISSIONER BRACERAS: So I would be more
16 specific and I would sort of change the grammar of
17 that. I'm just trying to remember. Is it in Brown
18 vs. Topeka Board of Education?

19 STAFF DIRECTOR MARCUS: Yes.

20 COMMISSIONER BRACERAS: Or is it Board of
21 Education of Topeka?

22 COMMISSIONER KIRSANOW: Of Topeka.

23 VICE-CHAIR THERNSTROM: It's Of Topeka.

24 COMMISSIONER BRACERAS: Yes. And
25 throughout this document, it says "Topeka Board of

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1 Education." So I would cite check and I don't know
2 that I'm right, but please --

3 (Off the record comments.)

4 COMMISSIONER KIRSANOW: I think it says
5 Topeka.

6 VICE-CHAIR THERNSTROM: On the --

7 COMMISSIONER BRACERAS: So that's what I
8 have on Finding No. 1.

9 On Finding No. 2, again "Many school
10 districts after Brown especially in the South fell
11 under judicial supervision." They didn't fall under
12 anything. There wasn't an accident. There was a
13 lawsuit and supervision was part of the remedy.

14 VICE-CHAIR THERNSTROM: It was Brown, et
15 al v. Board of Education of Topeka, et al.

16 COMMISSIONER BRACERAS: Yes. So that's
17 cited correctly. So again Finding 2, I don't like the
18 term "fell under judicial supervision." Like I said,
19 it wasn't an accident. I'll leave it to the staff to
20 figure out exactly how to phrase it.

21 VICE-CHAIR THERNSTROM: "Were placed."

22 COMMISSIONER BRACERAS: "Were placed" is
23 fine.

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1 COMMISSIONER HERIOT: -- there's a wrong
2 and a remedy to make sense here to say, "In order to
3 remedy this constitutional wrong..." blah, blah, blah.

4 COMMISSIONER BRACERAS: I think it wasn't
5 -- because it wasn't if the Supreme Court acknowledged
6 the constitutional wrong and then lower courts reached
7 out to remedy those situations.

8 VICE-CHAIR THERNSTROM: Right.

9 COMMISSIONER BRACERAS: People had to
10 enforce Brown v. Board of Education with a lawsuit.
11 So the whole structure of the sentence is wrong.

12 VICE-CHAIR THERNSTROM: And after Brown, I
13 mean it took 14 years before you really had in the
14 deep South any desegregation of schools.

15 COMMISSIONER BRACERAS: I would change it
16 to read something to the effect of "After Brown,
17 litigants brought lawsuits to enforce Brown."

18 VICE-CHAIR THERNSTROM: Yes, and it isn't
19 vestiges anymore. I mean they just --

20 COMMISSIONER BRACERAS: It wasn't
21 vestiges. It was out and out segregation.

22 VICE-CHAIR THERNSTROM: It was out and out
23 segregation until --

24 COMMISSIONER BRACERAS: It wasn't
25 vestigates.

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1 VICE-CHAIR THERNSTROM: -- Until Green
2 comes along in `68.

3 COMMISSIONER BRACERAS: Right. So I think
4 the point is made and I'll leave it to the staff to
5 address it.

6 Okay. No. 3, I would just delete the
7 whole first sentence, "At the time judicial
8 intervention was implemented, the assertion of equal
9 rights by African Americans was met by hostility,
10 oppression and violence." And I would instead say
11 something to the effect of, starting with the second
12 sentence, "In some instances, court orders to
13 integrate met with massive resistance."

14 And then school districts weren't closed.
15 Schools were closed.

16 VICE-CHAIR THERNSTROM: Yes.

17 COMMISSIONER BRACERAS: So I would say,
18 "In some instances, court orders to integrate met with
19 massive resistance. Some schools were closed to avoid
20 integration or to avoid integrating, or semicolon,
21 whatever. In other cases, Federal troops..."

22 COMMISSIONER YAKI: Wasn't Prince George's
23 County closed?

24 COMMISSIONER BRACERAS: The district, you
25 can't close the district. The district is a political

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1 entity. You're closing the operations of the schools.
2 I mean you can't say --

3 COMMISSIONER HERIOT: The school board
4 still exists.

5 COMMISSIONER BRACERAS: The school board
6 still exists. You can't say Massachusetts was closed
7 or the United States was closed. You would say the
8 government was shut down or whatever the --

9 COMMISSIONER YAKI: Then the accurate
10 thing would be the school districts closed the schools
11 rather than integrated them.

12 COMMISSIONER BRACERAS: Correct.

13 VICE-CHAIR THERNSTROM: Correct.

14 COMMISSIONER BRACERAS: Yes. Even better
15 because the whole "were closed," who were the
16 mysterious people who were closing them? I mean,
17 there were people on the school board who were
18 racists. Let's just say it. So just to read it
19 again, "In some instances, court orders to integrate
20 met with massive resistance."

21 COMMISSIONER YAKI: I think it's important
22 to add there was resistance included more than just we
23 don't want it to happen. There were consequences to
24 integration that included violent measures, including
25 shooting, bombing, what have you.

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1 VICE-CHAIR THERNSTROM: That was the
2 reference in the first sentence and that fact could be
3 incorporated into the second one.

4 COMMISSIONER BRACERAS: Yes. My objection
5 to it, Michael, was not the content but the grammar.
6 And I wanted it to be clear that the hostility,
7 opposition and violence were in response to court
8 orders to integrate.

9 VICE-CHAIR THERNSTROM: So, Michael, what
10 about massive resistance which included --

11 COMMISSIONER BRACERAS: Including
12 violence.

13 VICE-CHAIR THERNSTROM: -- included
14 violence.

15 COMMISSIONER YAKI: That's fine.

16 COMMISSIONER BRACERAS: Or something to
17 that effect. So then, for example --

18 COMMISSIONER YAKI: I got your theme and
19 we can wordsmith that.

20 VICE-CHAIR THERNSTROM: All right. But
21 somebody on the staff has to wordsmith this.

22 COMMISSIONER BRACERAS: And again, school
23 districts weren't closed. Schools were closed by
24 school board members.

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1 COMMISSIONER YAKI: I think we're missing
2 a 3A here, aren't we?

3 VICE-CHAIR THERNSTROM: I don't see a 3A.

4 COMMISSIONER YAKI: That's what I'm
5 saying. Of course, there's not a 3A. That's what I'm
6 saying. We're missing a 3A. I think just as you're
7 going through this in chronological order I think that
8 -- just in the interest of self-promotion, should talk
9 about the creation of the Commission and what its role
10 was with regards -- because it was post Civil Rights
11 Act and because it was to look at these types of
12 issues.

13 VICE-CHAIR THERNSTROM: All right. That's
14 a good idea.

15 CHAIRMAN REYNOLDS: I think it's a good
16 idea. However, I just want to make sure that there is
17 something in the record. I don't know if we've
18 discussed it. It's a fact, but I know that folks have
19 been sticklers about this type of issue in the past,
20 making sure that whatever finding or recommendation we
21 have is in the record.

22 COMMISSIONER BRACERAS: All right. The
23 staff can look into that and see if it is or it's
24 appropriate to do.

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1 CHAIRMAN REYNOLDS: Or if it's damned
2 plain, that it's --

3 COMMISSIONER KIRSANOW: -- articulate
4 judicial notice.

5 COMMISSIONER HERIOT: Judicial notice of
6 our own existence.

7 COMMISSIONER KIRSANOW: Yes.

8 VICE-CHAIR THERNSTROM: And do you know
9 what? This shouldn't be the first time that the role
10 of the Commission is referred to. It could be
11 referred to --

12 COMMISSIONER BRACERAS: In the Executive
13 Summary.

14 VICE-CHAIR THERNSTROM: -- in the
15 Executive Summary and we're simply picking up that
16 thread. I think it's a very good idea.

17 COMMISSIONER YAKI: Thank you.

18 COMMISSIONER BRACERAS: In No. 4 --

19 VICE-CHAIR THERNSTROM: It's been your
20 only one in all these months.

21 (Laughter.)

22 COMMISSIONER YAKI: I understand that. I
23 need to a report that you actually accepted a moment
24 of deep --

25 COMMISSIONER KIRSANOW: Deep sorrow.

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1 COMMISSIONER YAKI: Feeling like crying --
2 (Laughter.)

3 COMMISSIONER BRACERAS: No. 4, again I
4 wouldn't say "Legislation was adopted." It all seems
5 very mysterious as who adopted. I would just say,
6 "Congress adopted."

7 VICE-CHAIR THERNSTROM: Do we even need
8 that? "In response, Congress passed the Civil Rights
9 Act of 1964..."

10 COMMISSIONER BRACERAS: Right.

11 VICE-CHAIR THERNSTROM: "... and the
12 Elementary and Secondary Education Act of 1965."

13 COMMISSIONER BRACERAS: Correct. And then
14 No. 5 where it says, I have several comments, but
15 where it says, "while necessary to address past
16 discriminatory practices." Again, they weren't past.
17 They were ongoing discriminatory practices. So I
18 would delete the word "past."

19 And then in the last sentence, "Many of
20 these court orders have remained in place, even after
21 several decades," I would just say "for several
22 decades." "Even after" is --

23 VICE-CHAIR THERNSTROM: Wait a minute.
24 We're on six, are we?

25 CHAIRMAN REYNOLDS: Five.

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1 VICE-CHAIR THERNSTROM: Five.

2 COMMISSIONER BRACERAS: "Many of these
3 court orders have remained in place for several
4 decades." That's a factual statement. But if you say
5 "Even after several decades" you're adding a tinge of,
6 I think, bias to it because the implication is that
7 they shouldn't remain in place and if it's a factual
8 finding, you know, it shouldn't be embracing that
9 opinion.

10 VICE-CHAIR THERNSTROM: Well, if you go
11 back to the first one, I seems to me the same point
12 applies to the first sentence. You don't need to say
13 "came at a cost." You can just state the facts.

14 COMMISSIONER BRACERAS: Yes. That's
15 right.

16 VICE-CHAIR THERNSTROM: So that you're not
17 making a mental call on violation of federalism,
18 expectations and so forth but simply state the facts
19 that you have a transfer and a legitimate transfer of
20 authority from local school districts to the courts
21 where necessary.

22 COMMISSIONER BRACERAS: I agree with that.

23 VICE-CHAIR THERNSTROM: It's too loaded
24 the way it's put.

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1 COMMISSIONER BRACERAS: It's very loaded.

2 And No. 6 --

3 VICE-CHAIR THERNSTROM: "Social
4 conditions" is wrong.

5 COMMISSIONER BRACERAS: Yes.

6 VICE-CHAIR THERNSTROM: It's racial. The
7 racial facts on the ground, the racial --

8 CHAIRMAN REYNOLDS: Demographics.

9 COMMISSIONER BRACERAS: Well, you know
10 what? I was going to recommend deleting that whole
11 sentence because -- Or making two separate findings
12 because the first sentence of that paragraph seems as
13 if it's attempting to address cultural changes in
14 society and the second sentence in that paragraph
15 seems like it's talking about remoteness in time. So
16 I think the point is that today in 2007 things are
17 both different culturally and temporally and they're
18 two separate points.

19 VICE-CHAIR THERNSTROM: Well, they could
20 be merged into one by simply making the first sentence
21 a reference to a considerable racial change over the
22 decades which is reflected in these numbers.

23 COMMISSIONER BRACERAS: You know, I would
24 simply say my recommendation would be to delete the
25 first sentence altogether and to have a completely

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1 factual statement that just says, "Of the districts
2 place" --

3 VICE-CHAIR THERNSTROM: That's fine.

4 COMMISSIONER BRACERAS: -- "Eighty percent
5 were placed under court order in the `60s, 18 percent
6 in the `70s and one percent in the `80s and `90s."

7 VICE-CHAIR THERNSTROM: You could.

8 COMMISSIONER BRACERAS: No one could argue
9 that.

10 VICE-CHAIR THERNSTROM: Yes, you could
11 have if you wanted to add one sentence saying, "This
12 drop in these numbers reflected changes in racial
13 attitudes and racial practice" or whatever. You could
14 say something about America has changed if you wanted.

15 COMMISSIONER HERIOT: I would just delete
16 the word "social" because certainly conditions have
17 obviously changed within each case.

18 VICE-CHAIR THERNSTROM: It's too vague
19 "conditions."

20 COMMISSIONER BRACERAS: I seriously --

21 COMMISSIONER HERIOT: It lets the reader
22 know what they should be thinking about here, what
23 kind of conditions.

24 VICE-CHAIR THERNSTROM: I would prefer a
25 sentence at the end saying, "These numbers reflect

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1 dramatic changes in racial attitudes and the status of
2 blacks over the decades" or something, whatever. If
3 you want to put something in, I would prefer that.
4 Anyway, we can let the staff fiddle. Go on.

5 COMMISSIONER BRACERAS: I have no strong
6 views. I'm just pointing out that there should be a
7 change.

8 VICE-CHAIR THERNSTROM: I agree.

9 COMMISSIONER BRACERAS: And in what
10 direction.

11 VICE-CHAIR THERNSTROM: I agree.

12 COMMISSIONER BRACERAS: I'll leave it to
13 the staff.

14 Okay. No. 7, where it says, "Over this
15 period..." I would define specifically the period
16 that's being referred to and these are the years.

17 VICE-CHAIR THERNSTROM: And the fact is
18 that it's fairly recent. It is not starting in 1954
19 if you had massive integration.

20 COMMISSIONER BRACERAS: Right. And then I
21 think the last sentence is all sort of vague. You
22 know, "The Latino share of public school enrollment
23 has increased dramatically." What does that mean? Do
24 we have data on in that's part of the record that's
25 relevant?

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1 VICE-CHAIR THERNSTROM: Yes and, of
2 course, that's easy to obtain, the data.

3 COMMISSIONER BRACERAS: Right, and so it's
4 a completely vague sentence and as it is, somewhat
5 meaningless I think.

6 VICE-CHAIR THERNSTROM: Right. I mean,
7 there can be a specific reference to the portion of
8 Latinos today in urban school systems today versus a
9 few decades ago. I mean, the Los Angeles Unified
10 School District is now over 70 percent Latino. It
11 wasn't two decades ago.

12 COMMISSIONER YAKI: And in certain areas
13 of the country, the Asian American population has
14 drastically changed.

15 VICE-CHAIR THERNSTROM: Absolutely.

16 COMMISSIONER YAKI: The makeup of the
17 school population --

18 VICE-CHAIR THERNSTROM: Absolutely.

19 COMMISSIONER BRACERAS: That's right.

20 VICE-CHAIR THERNSTROM: Absolutely. You
21 have, what, ten percent in California of the school
22 population is now Asian.

23 COMMISSIONER YAKI: Right, but a lot of it
24 is concentrated in certain areas where they make up
25 50, 60, 70 percent of the population.

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1 VICE-CHAIR THERNSTROM: Right. Yes, I
2 mean, I think if we're going to say this kind of
3 thing, this kind of vague mushy language doesn't tell
4 the reader anything.

5 COMMISSIONER YAKI: Yes.

6 COMMISSIONER BRACERAS: Yes. No. 9, I
7 would delete the first clause. Again, I think it adds
8 bias to it where it says "Despite these decisions, the
9 Department of Justice reported as of 2000
10 approximately 400 school districts remained under
11 court order." I would just state the facts that "As
12 of 2000, the Justice Department reports that there are
13 approximately 400 school districts under court order"
14 and let the reader draw their conclusions about what
15 that means.

16 (Several speaking at once.)

17 COMMISSIONER YAKI: With regard to bias,
18 (Inaudible) I've been concerned about the entire
19 wording of Finding No. 5 as one that we know no
20 supporting evidence as to it's very bias --

21 VICE-CHAIR THERNSTROM: I would say -- I
22 got distracted by -- Lisa needed to ask me something.
23 Could you repeat what you're saying?

24 COMMISSIONER YAKI: I was just going on
25 about Jennifer's issue with bias and the first clause

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1 of No. 9 and I was saying that it seemed to me that
2 Finding No. 5 is bias because --

3 COMMISSIONER BRACERAS: I agree.

4 COMMISSIONER YAKI: -- no substantive
5 documenting for any of the statements made in that
6 finding.

7 COMMISSIONER BRACERAS: Right. We did
8 talk about that a little bit. I completely agree with
9 Michael.

10 VICE-CHAIR THERNSTROM: Yes, I do, too.

11 COMMISSIONER BRACERAS: And I think there
12 was a suggestion made by the Vice Chair to say
13 something to the effect, something more factual to the
14 effect, that there simply was a transfer of power, a
15 necessary one, from local school boards to the
16 judiciary in order to address the unconstitutional
17 violations.

18 VICE-CHAIR THERNSTROM: The persistent
19 unconstitutional violations.

20 COMMISSIONER YAKI: I like that. Okay.
21 Thank you. That's twice we agree on something.

22 COMMISSIONER BRACERAS: That's right.

23 COMMISSIONER YAKI: Let's keep that for
24 the record.

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1 COMMISSIONER BRACERAS: Okay. So No. 9,
2 again, I would delete "Despite these decisions" and
3 just state the fact. No. 10.

4 VICE-CHAIR THERNSTROM: Wait a minute.
5 No. -- Oh, "Despite these decisions." All right.

6 COMMISSIONER BRACERAS: I would just say,
7 "The Justice Department reports that as of 2000" --

8 VICE-CHAIR THERNSTROM: Yes.

9 COMMISSIONER BRACERAS: -- "there were 400
10 school districts under court order."

11 No. 10, "Efforts were made" by whom? Who
12 are the mystery people making the efforts? I don't
13 know. Maybe we delete the sentence. Maybe we just
14 restructure it. But we need to say -- If we're going
15 to include it, we need to say who it is that's making
16 the efforts to --

17 VICE-CHAIR THERNSTROM: Yes. I mean, we
18 can just delete that first sentence.

19 COMMISSIONER BRACERAS: Yes. I don't think
20 the sentence is necessary.

21 And then No. 11, I'm not really sure where
22 this comes from. I know that in the literature review
23 there's reference to this, but it's not something in
24 my view that seems appropriate as a finding of fact.
25 I think it's perfectly appropriate in the narrative

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1 because we've decided as a commission not to seek
2 evidence on this and not to ask districts why they
3 were choosing not to apply to the courts for a finding
4 of unity status and therefore since we didn't ask
5 those empirical questions, I don't think we should
6 make findings on that. But again, I think it's
7 perfectly appropriate as part of a narrative citing
8 the secondary literature. I just don't think it
9 should be a finding.

10 VICE-CHAIR THERNSTROM: I second that.

11 COMMISSIONER BRACERAS: And then in
12 Finding 14, again, this is just a stylistic grammar
13 thing. I would just say -- I would delete "for each
14 of the seven states examined" and I would simply say,
15 "As of June 2007:" that's all we need to say and then
16 instead of phrasing each one as "the number of Alabama
17 school districts that have been declared unitary are
18 71," I mean, that's very awkward, I would simply say,
19 "Seventy-one" --

20 VICE-CHAIR THERNSTROM: So it's
21 grammatically incorrect "is 71".

22 COMMISSIONER BRACERAS: Right.

23 VICE-CHAIR THERNSTROM: The number is 71.

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1 COMMISSIONER BRACERAS: I would simply say
2 "Seventy-one Alabama school districts have been
3 declared unitary."

4 VICE-CHAIR THERNSTROM: Yes. I do think,
5 Jennifer, just going back to the first, the opening
6 sentence to this that it is useful to remind the
7 reader that we are only looked at seven states.

8 COMMISSIONER BRACERAS: But it's not for
9 each of the seven states examined because each of
10 these things listed applies only to one state. So
11 it's not true that for each of the seven states there
12 are 71 school districts under court order in Alabama.

13 VICE-CHAIR THERNSTROM: That's true.

14 COMMISSIONER BRACERAS: And it makes no
15 sense.

16 VICE-CHAIR THERNSTROM: Yes. You're
17 absolutely right.

18 COMMISSIONER BRACERAS: So I would just
19 say -- Or if you want to remind people that we looked
20 at seven states, you could say something to the effect
21 of "Our review" --

22 VICE-CHAIR THERNSTROM: "Of seven states."

23 COMMISSIONER BRACERAS: -- "of the
24 documentation of seven states indicates" --

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1 VICE-CHAIR THERNSTROM: -- "the
2 following:" --

3 COMMISSIONER BRACERAS: -- "as of June
4 2007: 71 Alabama school districts have been declared
5 unitary;"

6 VICE-CHAIR THERNSTROM: Yes.

7 COMMISSIONER BRACERAS: -- "53 are still
8 under court order;" --

9 VICE-CHAIR THERNSTROM: Yes.

10 COMMISSIONER BRACERAS: -- "seven have
11 never been subject to litigation."

12 VICE-CHAIR THERNSTROM: Yes, and "19 for
13 other school districts," etc. Absolutely.

14 COMMISSIONER BRACERAS: Right. And they
15 should all read that way.

16 VICE-CHAIR THERNSTROM: Yes. And I don't
17 know why the passive voice is used here at all.

18 COMMISSIONER BRACERAS: Right.

19 VICE-CHAIR THERNSTROM: As well as in
20 other places.

21 COMMISSIONER BRACERAS: The passive voice
22 is throughout the document.

23 VICE-CHAIR THERNSTROM: Right. Exactly.

24 COMMISSIONER BRACERAS: That's one of the
25 problems.

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1 VICE-CHAIR THERNSTROM: And for anybody
2 going through this, your spell and grammar check will
3 put some kind of green underline or something under
4 passive voices.

5 COMMISSIONER BRACERAS: All right. In
6 Finding 17 where it says "Larger school districts are
7 more likely to achieve judicial recognition of unity
8 status" I would simply say "to seek and obtain a
9 finding of unity status." And again, the same
10 comments that I've made throughout, I think if the
11 staff just looks at the rest of the findings in the
12 document with an eye towards those comments without me
13 going through every nitpicky single word.

14 VICE-CHAIR THERNSTROM: You know -- Yes.
15 They're more likely to achieve judicial recognition
16 as if the courts are overlooking other school
17 districts which --

18 COMMISSIONER BRACERAS: But they're not
19 achieving it. They're seeking it and they either
20 obtain it or they don't.

21 VICE-CHAIR THERNSTROM: Exactly. So
22 "declared unitary" is the right phrase here. -- "have
23 declared unitary" or "courts have declared unitary" or
24 something.

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1 COMMISSIONER BRACERAS: All right. So
2 moving to the recommendations just so I can stick with
3 sort of the bigger picture things and not be too
4 nitpicky at this point, Recommendation No. 2, the last
5 sentence, it's just totally gratuitous. "It has been
6 over 50 years since the decision of Brown and there is
7 no excuse for school districts that have not long ago
8 addressed de jure discrimination and its effects." I
9 mean, obviously, I don't think it's necessary.

10 VICE-CHAIR THERNSTROM: Right. Anyway,
11 there is no de jure discrimination.

12 COMMISSIONER BRACERAS: I think what the
13 recommendation is aimed at is really the first
14 sentence that "The Department of Justice should
15 increase certain efforts." That last part, the last
16 sentence I would recommend deleting.

17 VICE-CHAIR THERNSTROM: I agree.

18 COMMISSIONER BRACERAS: Recommendation No.
19 3, I think is problematic because the sentence again -
20 - Well, first of all, the first sentence I would say -
21 - Well, forget that. The second sentence I would
22 delete completely. "The Department should provide
23 information on the advantages and disadvantages of
24 remaining under court order."

25 VICE-CHAIR THERNSTROM: Right.

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1 COMMISSIONER BRACERAS: It shouldn't be a
2 choice. If you're no longer in violation of the law,
3 the court really has no basis to continue to supervise
4 you.

5 VICE-CHAIR THERNSTROM: Right. It's not a
6 weighing process to --

7 COMMISSIONER BRACERAS: I understand the
8 political reality is that it is a weighing process.

9 VICE-CHAIR THERNSTROM: Well --

10 COMMISSIONER BRACERAS: Wait. But let me
11 finish.

12 VICE-CHAIR THERNSTROM: Yes.

13 COMMISSIONER BRACERAS: The politicians
14 will weigh the pros and cons and make a decision.
15 That's fine. That's political reality. But the
16 notion of the Department of Justice should make a list
17 of pros and cons and advantages and disadvantages as
18 if it's okay by the Department of Justice --

19 VICE-CHAIR THERNSTROM: Right. That's my
20 point, too.

21 COMMISSIONER BRACERAS: The Department of
22 Justice shouldn't be political about it. I mean,
23 obviously the politicians are going to be political
24 and that is what it is. But I would delete that
25 entire sentence. I really don't want the Justice

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1 Department providing information on advantages and
2 disadvantages if remaining under court order.

3 VICE-CHAIR THERNSTROM: And I have a
4 question.

5 COMMISSIONER BRACERAS: You either need to
6 be under it or you don't.

7 VICE-CHAIR THERNSTROM: I have a question
8 about the first sentence. Isn't the Justice
9 Department already providing technical assistance
10 policies and procedures? Blah, blah, blah. Would
11 this be a new turn of events? Or is not the Justice
12 Department the Civil Rights Division of the Department
13 of Education?

14 COMMISSIONER BRACERAS: What is it?

15 STAFF DIRECTOR MARCUS: Mr. General
16 Counsel.

17 MR. BLACKWOOD: They do provide some
18 assistance obviously. They consult. As far as the
19 term "technical assistance," my understanding is they
20 do not at this time provide what they call "technical
21 assistance."

22 VICE-CHAIR THERNSTROM: Which would be
23 what? What is the definition?

24 COMMISSIONER BRACERAS: Manuals and the
25 like, right?

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1 MR. BLACKWOOD: Correct.

2 COMMISSIONER BRACERAS: Written
3 guidelines.

4 VICE-CHAIR THERNSTROM: All right. So
5 you're saying we are not asking for something that's
6 already being done.

7 MR. BLACKWOOD: That is correct. Now we
8 have met with Justice Department about affected agency
9 review and their responses, we're meeting again next
10 week, I will ask them to address that to see whether
11 they agree with the term.

12 COMMISSIONER BRACERAS: Okay.

13 COMMISSIONER TAYLOR: David, question. Do
14 they consider a counseling that they provide now to be
15 assistance, a more third party neutral assistance in
16 that respect rather than assistance to achieve a
17 particular goal?

18 MR. BLACKWOOD: I would say they would
19 characterize it the latter. But I can follow up on
20 that as well.

21 COMMISSIONER TAYLOR: Yes, just to
22 determine whether or not what we're recommending is
23 what they're doing now or whether -- When I read this,
24 just my general sense was that they like to be in the
25 position of being considered a neutral combatant.

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1 MR. BLACKWOOD: Correct.

2 COMMISSIONER TAYLOR: And we're suggesting
3 that they should not be a neutral combatant, that they
4 should side one way or the other and provide formal
5 assistance and help the school district achieve a
6 goal.

7 VICE-CHAIR THERNSTROM: Yes, but wait a
8 minute. You're providing formal assistance to help a
9 school district comply with the law.

10 MR. BLACKWOOD: I will say this. The
11 reason that first sentence is directed to small or
12 moderately sized school districts is that, and I guess
13 part of this is anecdotal. But when we communicated
14 with some of these school districts we got the
15 feeling, the direct feedback, that they didn't have
16 any knowledge and they weren't even considering
17 unitary status. It simply wasn't on their radar
18 screen and the thought was maybe they should at least
19 be aware that here are the factors. "Are you inclined
20 or should you be seeking -- Do I qualify for unitary
21 status or not?" Some, especially the very small
22 school districts, it wasn't even on their radar
23 screen.

24 VICE-CHAIR THERNSTROM: That is probably a
25 reflection of local politics.

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1 COMMISSIONER TAYLOR: I appreciate that.
2 I understand that. And actually, I agree with
3 providing the assistance. My only question is whether
4 it's DOJ or a state agency that's a more appropriate
5 agency you go to for formal assistance to achieve a
6 goal.

7 MR. BLACKWOOD: Okay.

8 COMMISSIONER TAYLOR: It's more of a
9 question than anything else, if we're really doing
10 something different.

11 MR. BLACKWOOD: Okay. I will check on
12 that.

13 COMMISSIONER BRACERAS: On Recommendation
14 No. 4, I think it can be deleted. To be blunt about
15 it, I think it's kind of a big duh. "School officials
16 should avail themselves with appropriate information
17 to make informed decisions." Shouldn't they always do
18 that?

19 And again, the whole question of whether
20 or not to seek unitary status, I would think that
21 you're either in violation or you're not. And if you
22 are unitary and you're not longer in violation, we
23 shouldn't be encouraging them not to seek a judicial
24 finding of that. So I might just say "take
25 appropriate steps to meet the standards established by

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1 the court in the cases of Green, Dow and Freeman."
2 But again, I'm not sure it's necessary to say that.

3 VICE-CHAIR THERNSTROM: I agree. Just
4 delete that fourth one.

5 COMMISSIONER BRACERAS: For now, those are
6 my basic comments that again I think you could look at
7 the whole document with an eye towards those. I don't
8 want to go through every page, but I think that
9 basically -- That's what my issues are.

10 VICE-CHAIR THERNSTROM: I have one more
11 general comment that I did pass along to the staff
12 which is that we know too little on the basis of this
13 document about the non-litigant districts. Were there
14 never civil rights complaints? What are the
15 characteristics of these districts? What are we
16 looking at and examining in that category and I --

17 COMMISSIONER BRACERAS: I didn't hear the
18 last thing that you said.

19 VICE-CHAIR THERNSTROM: What are we
20 looking and examining the category of non-litigant
21 districts? I mean, are these districts that never saw
22 --

23 COMMISSIONER BRACERAS: I think that
24 that's beyond the scope of this report. But I think
25 it's important.

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1 VICE-CHAIR THERNSTROM: Well, it's a
2 category that's undefined. Yes.

3 COMMISSIONER BRACERAS: Wait. Let me
4 finish. I think it's important to point out that it
5 is an undefined category and to make recommendations
6 for further research in that area.

7 VICE-CHAIR THERNSTROM: That's fine.

8 COMMISSIONER BRACERAS: Because those are
9 questions that aren't going to be answered by this
10 data, but we should point out --

11 COMMISSIONER YAKI: In fact, in the
12 hearing that we had on the subject, it was pointed out
13 that the inability to look at that dataset could skew
14 the results precisely because sometimes the mere
15 threat of litigation or intervention, whether at the
16 private attorney general or DOJ stage, can cause
17 school districts to change their practices.

18 COMMISSIONER BRACERAS: Correct.

19 VICE-CHAIR THERNSTROM: Correct.

20 COMMISSIONER BRACERAS: And that should be
21 pointed out as well.

22 VICE-CHAIR THERNSTROM: Yes. So there
23 needs to be some reference to the missing information
24 here.

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1 COMMISSIONER BRACERAS: Right. I think a
2 good role we can play is to have a paragraph on
3 unanswered questions or future research or areas not
4 explored and to be clear about what were not explored.

5 VICE-CHAIR THERNSTROM: Yes. That would
6 satisfy me.

7 CHAIRMAN REYNOLDS: Okay. Additional
8 comments? Okay. This was helpful and the staff will
9 rework this document with the changes and the concerns
10 that have been discussed in mind. Okay.

11 COMMISSIONER YAKI: Mr. Chair?

12 CHAIRMAN REYNOLDS: Yes.

13 COMMISSIONER YAKI: I just wanted to point
14 out that in lack of detailed response on my part and
15 probably due to the fact that I am unhappy with the
16 current situation, but more to the point that because
17 --

18 (Several speaking at once.)

19 COMMISSIONER YAKI: -- and because I am
20 somewhat skeptical of some of the information or lack
21 of information that was put or not put in the report,
22 I was going to have -- I'm glad that we are able in
23 this report because of the Justice Department
24 information coming in late because I was going to move
25 to do that simply because of the various statutes the

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1 Commission, the course of deadlines that were missed
2 during this process that may or may not have any fault
3 for anyone on the staff just because of volume of
4 information. I'm not going to make any conclusion
5 there, but for me to conduct my own assessment of the
6 data and was taking and is taking longer.

7 So my reluctance to address objections to
8 particular findings and recommendations at this
9 meeting, it does not mean that I will not have a full
10 play run-down when we go for approval during their
11 teleconference.

12 VICE-CHAIR THERNSTROM: Could you
13 circulate those to us beforehand so we have a chance
14 to think about what you're saying?

15 COMMISSIONER YAKI: If I can, I will.
16 Absolutely.

17 CHAIRMAN REYNOLDS: Okay. I guess at this
18 point we should look at our calendars once again to
19 see when we can schedule a teleconference.

20 COMMISSIONER MELENDEZ: Mr. Chairman.

21 COMMISSIONER YAKI: And in addition, we
22 have to give time built into that calendar for
23 dissent.

24 COMMISSIONER BRACERAS: Well, first, we're
25 just going to write on the report and then there will

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1 be subsequent time to draft a dissent to the approved
2 report.

3 CHAIRMAN REYNOLDS: Yes, the usual
4 procedure.

5 VICE-CHAIR THERNSTROM: Yes. Question
6 again for the staff director I can't remember the
7 answer to. When is our final, final deadline for
8 getting something to a printer?

9 COMMISSIONER KIRSANOW: The end of July.

10 CHAIRMAN REYNOLDS: The 31st.

11 VICE-CHAIR THERNSTROM: So that means the
12 dissents have to be written by the end of July?

13 COMMISSIONER KIRSANOW: No. It's not
14 correct, is it?

15 CHAIRMAN REYNOLDS: I don't think it's --
16 That's not feasible.

17 COMMISSIONER KIRSANOW: But in terms of
18 the logistics --

19 VICE-CHAIR THERNSTROM: That's not
20 feasible.

21 COMMISSIONER KIRSANOW: -- getting deduced
22 that may be a problem.

23 CHAIRMAN REYNOLDS: We can't meet the July
24 31st deadline and make the changes that we need to make

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1 and to give folks a sufficient amount of time for the
2 dissent.

3 VICE-CHAIR THERNSTROM: Yes. It's just
4 not doable.

5 COMMISSIONER BRACERAS: Ken just made a
6 suggestion. I don't know if this is possible to
7 submit an electronic version to Congress and then go
8 to the printer afterwards in order to meet our
9 obligations.

10 VICE-CHAIR THERNSTROM: Well, the
11 electronic version would not include dissents or would
12 we have --

13 COMMISSIONER BRACERAS: No. I'm just
14 talking about the two-month backup at the printing
15 office and the distribution backup.

16 STAFF DIRECTOR MARCUS: I suppose -- We've
17 never done that before, but I suppose we could send
18 all members of Congress a --

19 COMMISSIONER BRACERAS: A PDF.

20 STAFF DIRECTOR MARCUS: We can do it in
21 PDF and we can send them how to find it on our website
22 and we can let them know that --

23 COMMISSIONER BRACERAS: I thought we did
24 that anyway.

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1 COMMISSIONER YAKI: I thought that we were
2 pretty late and we did an electronic report and then
3 the published report came out later.

4 STAFF DIRECTOR MARCUS: It's true that we
5 did it electronically first and then the published
6 came out later. But it's also true that the published
7 version was distributed to Congress by the end of the
8 fiscal year.

9 COMMISSIONER KIRSANOW: Does any type of
10 public notice need to be disseminated with respect to
11 the electronic transmission so that the public can
12 access it or would know that it's available on the
13 website?

14 STAFF DIRECTOR MARCUS: I'm not aware of
15 any such requirement. But we would put it on our
16 website. So it would be available to the public also.

17 CHAIRMAN REYNOLDS: And we could issue --

18 COMMISSIONER KIRSANOW: That's true but my
19 question is don't we have to apprise the public of
20 location of that since it's not in hard copy form,
21 that it is on our website. Do we have to put
22 something in the *Federal Register*?

23 STAFF DIRECTOR MARCUS: No. It's not a
24 requirement and it's our custom or practice.

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1 COMMISSIONER BRACERAS: So that way we
2 could allow more time for the dissents to be written.

3 COMMISSIONER KIRSANOW: Does that satisfy
4 our statutory obligation in terms of "publishing"?

5 CHAIRMAN REYNOLDS: As long as we -- I
6 would argue the answer is yes. As long as we provide
7 them an electronic copy before the deadline, we should
8 be fine.

9 COMMISSIONER BRACERAS: If courts now
10 accept electronic filings, I see no reason why
11 Congress wouldn't accept an electronic submission. I
12 mean, obviously they would have to check it.

13 STAFF DIRECTOR MARCUS: We will find out
14 that.

15 CHAIRMAN REYNOLDS: So long as --

16 COMMISSIONER TAYLOR: It should be okay.

17 STAFF DIRECTOR MARCUS: We'll confirm
18 that. There are other context in which we consider
19 electronic transmission to be a form of publication.

20 COMMISSIONER YAKI: I'm sure we can obtain
21 clarification in relatively easy order.

22 STAFF DIRECTOR MARCUS: Yes.

23 CHAIRMAN REYNOLDS: Okay. So we have the
24 plan. Now what we need to do is select some dates.
25 So let's get our calendars.

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1 VICE-CHAIR THERNSTROM: We're talking
2 about July. Is that correct?

3 CHAIRMAN REYNOLDS: No. Yes.

4 VICE-CHAIR THERNSTROM: It would have to
5 be.

6 (Off the record discussion.)

7 CHAIRMAN REYNOLDS: Okay. I'll throw the
8 30th out. That's a Monday.

9 COMMISSIONER BRACERAS: I'm sorry. What
10 did you say?

11 CHAIRMAN REYNOLDS: Well --

12 COMMISSIONER KIRSANOW: You may recall
13 that the 30th and 31st got rejected in a previous --

14 COMMISSIONER HERIOT: Yes. Thirty and 31st
15 and the 1st were not --

16 COMMISSIONER BRACERAS: If I may. Ken has
17 made another good suggestion, I think, is that maybe
18 we should schedule a conference call for the
19 discussion and then vote notationally so that even if,
20 for example, I can't be on the call to go over the
21 document line by line, I would still have an
22 opportunity to cast a vote.

23 VICE-CHAIR THERNSTROM: That sounds like a
24 good idea to me.

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1 CHAIRMAN REYNOLDS: Any objections to that
2 approach?

3 (No response.)

4 CHAIRMAN REYNOLDS: Mr. Yaki.

5 COMMISSIONER YAKI: Vote notationally?

6 COMMISSIONER BRACERAS: Have a meeting
7 where we discuss the document, but then leave the
8 voting open or vote notationally or whatever --

9 COMMISSIONER KIRSANOW: So everyone can
10 vote.

11 COMMISSIONER BRACERAS: -- so that even
12 the people who can't be on the discussion call can
13 cast an up or down vote.

14 COMMISSIONER YAKI: My only concern is
15 that --

16 COMMISSIONER BRACERAS: We're supposed to
17 vote on each thing.

18 COMMISSIONER YAKI: -- I like to state my
19 reasons for why I'm voting no on a particular item and
20 notational votes don't allow you to do that.

21 VICE-CHAIR THERNSTROM: But your dissent
22 will make it perfectly clear why you were doing so.
23 Is that correct?

24 COMMISSIONER YAKI: My dissent may go into
25 fields different than that on the findings and

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1 recommendations. So not necessarily. I'm just simply
2 -- I just like the idea that in a public record of
3 vote on the statutory report that I would be allowed
4 to make comments as to why or why not I support or do
5 not support.

6 COMMISSIONER BRACERAS: Okay. That's
7 fine.

8 CHAIRMAN REYNOLDS: Okay. So,
9 Commissioner Yaki, you are supportive of this approach
10 if you are confident that you'll participate. If we
11 select a date where you can participate, then a
12 notational vote will be fine with you.

13 COMMISSIONER YAKI: What?

14 COMMISSIONER KIRSANOW: As long as you are
15 able to voice your objection to any particular vote,
16 you would be okay with other commissioners voting
17 notationally.

18 COMMISSIONER BRACERAS: What would
19 probably happen is we'd go through each finding and
20 recommendation. There would be votes on each one.
21 But there might also be edits made at that time on
22 those. No, you go through each one and if somebody
23 made an edit to one, then you'd have to vote on the
24 change.

25 COMMISSIONER YAKI: Right.

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1 COMMISSIONER BRACERAS: And then the whole
2 thing, each one, would be submitted for a notational
3 vote with the new language and then the person who
4 wasn't on the call would have a chance to vote on each
5 item as amended.

6 COMMISSIONER HERIOT: And could submit a
7 couple sentence explanation the same way they would if
8 they'd been on the conference call.

9 COMMISSIONER YAKI: So far as I know
10 notational votes don't allow for us to submit
11 statements accompanying our votes. They're pretty
12 much a piece of paper that comes up with yes or no
13 without "by the way attach blankety-blank with
14 blankety-blank."

15 CHAIRMAN REYNOLDS: Michael --

16 COMMISSIONER YAKI: And I don't know how
17 that gets in access to the public record. I just need
18 that clarified because even though -- Particularly
19 which I have found out, when last minute edits are
20 made to findings and recommendations after the fact
21 for the final vote, frequently these are edits or
22 recommendations that I may not be particularly fond of
23 and would like to voice my objection to the new
24 changes that were made in response to the discussion.
25 So I just don't see why we just can't --

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1 COMMISSIONER BRACERAS: All right. Let's
2 just find a date then. Then forget my idea. Scratch
3 it. Let's move forward with a date.

4 CHAIRMAN REYNOLDS: Okay. Commissioner
5 Yaki, do you want to throw a date out?

6 COMMISSIONER BRACERAS: Do you know what?
7 Let me just revise something. I had said that the
8 last week of July was not good for me. But if we were
9 to do it in the evening, I think I said before, if we
10 were to do it in the evening Eastern Time, say, any
11 time after 3:00 p.m. Pacific Time, I would be
12 available.

13 CHAIRMAN REYNOLDS: Okay.

14 COMMISSIONER BRACERAS: Or probably any
15 time after 2:00 p.m. Pacific Time.

16 CHAIRMAN REYNOLDS: With that information,
17 Commissioner Yaki, would you like to throw some dates
18 out?

19 VICE-CHAIR THERNSTROM: Are you with us?

20 COMMISSIONER YAKI: Pardon me.

21 VICE-CHAIR THERNSTROM: Are you with us?

22 COMMISSIONER YAKI: Yes. I'm in different
23 parts of the house and I'm trying to get ready for a
24 court hearing that's appearing in about five minutes.

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1 VICE-CHAIR THERNSTROM: But you're looking
2 at your calendar.

3 COMMISSIONER YAKI: No.

4 VICE-CHAIR THERNSTROM: We were asking --

5 COMMISSIONER KIRSANOW: -- any dates that
6 you would suggest.

7 COMMISSIONER YAKI: Within which time
8 frame are we talking about?

9 VICE-CHAIR THERNSTROM: It has to be July.

10 COMMISSIONER YAKI: Why does it have to be
11 July if we're going to be doing an e-transmission of
12 the report possibly anyway?

13 VICE-CHAIR THERNSTROM: Because you want
14 some time to write your dissent, I assume.

15 COMMISSIONER YAKI: Yes.

16 VICE-CHAIR THERNSTROM: We're trying to
17 give --

18 COMMISSIONER BRACERAS: We're trying to
19 give you as much time as possible.

20 COMMISSIONER YAKI: Well --

21 COMMISSIONER BRACERAS: Since the
22 substance of the report isn't going to change that
23 much, we might as well vote on it so you can start
24 writing.

25 (Laughter.)

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1 COMMISSIONER YAKI: I've already started
2 writing.

3 (Laughter.)

4 COMMISSIONER BRACERAS: You can tell he's
5 alive.

6 COMMISSIONER YAKI: I started writing two
7 years ago.

8 VICE-CHAIR THERNSTROM: I was going to say
9 how many years ago have you started writing.

10 (Laughter.)

11 COMMISSIONER YAKI: Okay.

12 VICE-CHAIR THERNSTROM: In fact, you don't
13 need to see the changes, right?

14 (Laughter.)

15 COMMISSIONER KIRSANOW: That's true.

16 COMMISSIONER YAKI: I need to see the
17 changes. I need to know which particular brand of
18 evil I'm combating. Okay. So next week, the next
19 two weeks are out. I'm going to travel most of those
20 two weeks. So now I'm looking at the -- I can do the
21 afternoon or evening of the 30th or the afternoon or
22 evening of the 31st.

23 COMMISSIONER BRACERAS: The 30th is
24 Thursday.

25 VICE-CHAIR THERNSTROM: No, it's a Monday.

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1 COMMISSIONER YAKI: Monday.

2 COMMISSIONER BRACERAS: That's right. The
3 30th is a Monday. So if we did it after 2:00 p.m. Yaki
4 time.

5 COMMISSIONER HERIOT: Those are the two
6 days I can't do it.

7 COMMISSIONER BRACERAS: You can't. Okay.

8 COMMISSIONER HERIOT: Those are the only
9 two days that I can't do it.

10 COMMISSIONER BRACERAS: And the only two
11 days that he can do it.

12 VICE-CHAIR THERNSTROM: Commissioner Yaki,
13 those are the only two days that Commissioner Heriot
14 can't do it. Come up with a third one.

15 COMMISSIONER YAKI: Amazing how I could
16 pick those two days. You can't do that day.

17 COMMISSIONER BRACERAS: What about
18 Wednesday or Thursday of that week after 2:00 p.m.?

19 COMMISSIONER YAKI: That's going into the
20 first week of August. I thought we're supposed to go
21 into August.

22 COMMISSIONER BRACERAS: It's one week
23 though. I mean, it's a bridge week.

24 COMMISSIONER YAKI: Wednesday is okay.

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1 COMMISSIONER BRACERAS: The 1st, August
2 1st.

3 COMMISSIONER YAKI: Yes.

4 COMMISSIONER BRACERAS: Wednesday, August
5 1st what --

6 COMMISSIONER HERIOT: I'm still gone.

7 COMMISSIONER BRACERAS: You're gone?

8 COMMISSIONER HERIOT: That's my -- Those
9 were the three days I can't do it.

10 COMMISSIONER BRACERAS: I'm sorry. I
11 thought it was July. That's August.

12 CHAIRMAN REYNOLDS: Okay. How about the
13 2nd, Michael?

14 COMMISSIONER YAKI: The 2nd is okay.

15 VICE-CHAIR THERNSTROM: And the previous
16 week is no good for you.

17 COMMISSIONER YAKI: The previous week I am
18 on trial all week.

19 CHAIRMAN REYNOLDS: Okay. Commissioner
20 Melendez.

21 COMMISSIONER MELENDEZ: That's fine.

22 CHAIRMAN REYNOLDS: Mr. Taylor.

23 COMMISSIONER TAYLOR: It has to be just
24 afternoon. I'm traveling in the morning, but I'm back
25 --

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1 COMMISSIONER HERIOT: Yes, I'm traveling
2 in the morning.

3 CHAIRMAN REYNOLDS: So afternoon of the
4 2nd?

5 COMMISSIONER TAYLOR: Eastern time.

6 CHAIRMAN REYNOLDS: 3:00 p.m. California
7 time.

8 COMMISSIONER YAKI: That would be good. I
9 won't have lunch. So I'll be grouchy. That will be
10 good.

11 COMMISSIONER TAYLOR: 3:00 p.m. California
12 time.

13 COMMISSIONER KIRSANOW: How will we
14 discern the difference?

15 COMMISSIONER TAYLOR: 6:00 p.m. Eastern
16 Time.

17 CHAIRMAN REYNOLDS: Yes. Okay.

18 COMMISSIONER BRACERAS: Thursday, August
19 2nd, 6:00 p.m. Eastern Time.

20 COMMISSIONER YAKI: With all this extra
21 money, you can do a teleconference at Citronelle.

22 COMMISSIONER BRACERAS: At what?

23 COMMISSIONER YAKI: Citronelle, a
24 restaurant in Georgetown. Anyway.

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1 COMMISSIONER TAYLOR: Chik Fil A is the
2 only one I know.

3 VICE-CHAIR THERNSTROM: I will say you are
4 uniquely knowledgeable about expensive restaurants in
5 Washington.

6 COMMISSIONER YAKI: Pretty much
7 everywhere.

8 CHAIRMAN REYNOLDS: So that would get us
9 the dissents would be due two weeks after that
10 meeting. That puts us -- Where does that put us?

11 STAFF DIRECTOR MARCUS: August 15 which is
12 a Wednesday.

13 CHAIRMAN REYNOLDS: Yes. So the dissents
14 would be due on the 15th of August. Are we settled?

15 COMMISSIONER HERIOT: That's dissents and
16 concurrences I assume.

17 CHAIRMAN REYNOLDS: Yes. I'm sorry.

18 COMMISSIONER BRACERAS: Whatever they're
19 called.

20 COMMISSIONER HERIOT: Statements.

21 COMMISSIONER BRACERAS: All Commissioners
22 statements.

23 **V. PROGRAM PLANNING - UPDATE: BRIEFING ON**

24 **MINORITIES IN FOSTER CARE AND ADOPTION**

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1 CHAIRMAN REYNOLDS: All right. Moving
2 right along, we are about to receive an update on the
3 proposed briefing on minorities in foster care and
4 adoption from the Staff .

5 STAFF DIRECTOR MARCUS: Thank you, Mr.
6 Chairman. That is the briefing that's currently
7 planned for August. I know there's been some
8 sentiment about whether we should have a briefing in
9 August or not. But on the assumption that we would
10 be, we are trying to develop a panel of experts who
11 will be balanced on both questions, both sides of the
12 question of the appropriateness of a transracial
13 adoption in the NEPA statute. The groups that we've
14 reached out to include the Department of Health and
15 Human Services, the North American Council on
16 Adoptable Children, the National Association of Black
17 Social Workers, the National Council for Adoption,
18 Professor Rita Simon and the Children's Defense Fund
19 as well as the Child Welfare League of America. Not
20 all of these are available, but some of these groups
21 are available and we are interested to see if there
22 are further ideas. One commissioner suggested
23 Professor Randall Kennedy and we will see if he is
24 available for it as well.

25 CHAIRMAN REYNOLDS: Commissioner Braceras.

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1 COMMISSIONER BRACERAS: Yes, two things.
2 One, I was going to just suggest Professor Randall
3 Kennedy who as many of you know is a professor at
4 Harvard Law School and one of the foremost experts on
5 this topic. I believe he testified in front of
6 Congress on this topic and is written widely on it.
7 He has written on occasion with Professor Elizabeth
8 Bartholet who is also from the Harvard Law School on
9 this topic. So she might be a possibility as well.
10 But Randy Kennedy, I think, would be my first choice
11 for this panel for a variety of reasons.

12 That being said, I think I would recommend
13 maybe postponing this briefing because it seems like
14 we will have -- Will we have the census report to
15 discuss at this time?

16 STAFF DIRECTOR MARCUS: We will have the
17 census report.

18 COMMISSIONER BRACERAS: And it seems like
19 we have a large number of business matters and as I've
20 repeatedly said, I think it's important to close out
21 the briefings we've done and issue those reports
22 before moving along and sort of accruing a larger and
23 larger stockpile of things we haven't gotten out the
24 door.

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1 But I'm very interested in this topic and
2 I really want to see it go forward. If there's any
3 wiggle room though, I think maybe we should postpone.

4 CHAIRMAN REYNOLDS: Commissioner
5 Thernstrom.

6 VICE-CHAIR THERNSTROM: Yes, I would like
7 to make a formal motion to that effect. We're just
8 much too behind and we keep having these briefings
9 without the reports being issued in a timely fashion.
10 I'm also extremely interested in the topic, but I
11 think we should postpone it and I so move.

12 CHAIRMAN REYNOLDS: I'll second.

13 COMMISSIONER BRACERAS: Can somebody
14 refresh me as to what we have on tap for September,
15 October, November, December? I just don't have my
16 calendar with me.

17 STAFF DIRECTOR MAMRCUS: I believe
18 September is a business meeting.

19 COMMISSIONER HERIOT: Yes.

20 COMMISSIONER BRACERAS: What, Michael?

21 COMMISSIONER YAKI: Pretty packed with
22 briefings around that time.

23 STAFF DIRECTOR MARCUS: It's every other
24 month. So I believe September and November are

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1 business meetings and that October and December are
2 briefings.

3 VICE-CHAIR THERNSTROM: But if we turn
4 August into a business meeting, then presumably we
5 might be able to turn September into the briefing.

6 COMMISSIONER BRACERAS: Correct. That's
7 what I would recommend.

8 STAFF DIRECTOR MARCUS: We could just
9 shift everything back a month.

10 COMMISSIONER TAYLOR: Yes.

11 COMMISSIONER HERIOT: (Inaudible.)

12 STAFF DIRECTOR MARCUS: I can't think of
13 any problem with simply shifting everything back a
14 month.

15 COMMISSIONER HERIOT: No, just flip them.

16 STAFF DIRECTOR MARCUS: I'm sorry.
17 Flipping?

18 COMMISSIONER HERIOT: Flipping September
19 with October or instead August rather than pushing
20 everything back.

21 CHAIRMAN REYNOLDS: Business meeting in
22 August and briefing in September.

23 STAFF DIRECTOR MARCUS: I guess we could.
24 That would mean that we would be going a few months
25 without a business meeting. So that would be the only

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1 question of whether we would have a substantial amount
2 of business backing up in the fall.

3 VICE-CHAIR THERNSTROM: But wait a minute.
4 We now have August business meeting and October
5 business meeting. Is that correct?

6 COMMISSIONER MELENDEZ: I have a question
7 about -- Isn't October the Border Town Discrimination
8 briefing scheduled?

9 STAFF DIRECTOR MARCUS: Okay.

10 CHAIRMAN REYNOLDS: I believe so.

11 COMMISSIONER BRACERAS: Yes, and I don't
12 think anybody is suggesting changing that.

13 STAFF DIRECTOR MARCUS: Yes. October is
14 Discrimination Against Native Americans and Border
15 Towns. December is Minorities and Special Education.
16 So if we pushed Minority Children in Foster Care and
17 Adoption to September, we would have back-to-back
18 briefings in September and October which means that we
19 would not have a business meeting.

20 COMMISSIONER BRACERAS: That's okay. I
21 mean, in my view, that's okay. I think it's more
22 important to clear out some of the backlog now before
23 we go further.

24 CHAIRMAN REYNOLDS: And I guess it will
25 depend on if a pressing issue, business issue,

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1 presents itself and at that time, we'll have the
2 flexibility. Yes, we can deal with it.

3 VICE-CHAIR THERNSTROM: We can't go so
4 many months without a business meeting.

5 COMMISSIONER BRACERAS: Well, we did for
6 five years on this Commission. This is all new as of
7 this year. The fact that we're getting these business
8 meetings at all regardless of what order.

9 COMMISSIONER HERIOT: We can still do
10 business after a briefing.

11 COMMISSIONER YAKI: I still think we
12 should do some business meetings on Thursdays, but
13 that's my own opinion.

14 CHAIRMAN REYNOLDS: No, I share it. I
15 think that's --

16 COMMISSIONER BRACERAS: I'm for that.

17 COMMISSIONER HERIOT: I'm for that.

18 VICE-CHAIR THERNSTROM: I'm for that.

19 COMMISSIONER BRACERAS: Who is not for
20 that?

21 COMMISSIONER HERIOT: Briefings on
22 Fridays, business meetings on Thursdays.

23 CHAIRMAN REYNOLDS: Kirsanow.

24 VICE-CHAIR THERNSTROM: Michael, this is
25 the 3rd thing we agree on today.

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1 COMMISSIONER YAKI: If one more, then the
2 apocalypses will come. The -- will have risen. The
3 third seal will be broken.

4 COMMISSIONER KIRSANOW: You're making me
5 nervous now.

6 CHAIRMAN REYNOLDS: So we're going to flip
7 in sort of pushing the calendar back and if need be,
8 we will have business meetings on Thursdays.

9 VICE-CHAIR THERNSTROM: Yes.

10 COMMISSIONER BRACERAS: Yes.

11 CHAIRMAN REYNOLDS: Okay. All in favor?

12 (Chorus of ayes.)

13 CHAIRMAN REYNOLDS: Any in opposition?

14 (No response.)

15 CHAIRMAN REYNOLDS: Any abstentions?

16 (No response.)

17 CHAIRMAN REYNOLDS: Motion passes
18 unanimously.

19 COMMISSIONER BRACERAS: Also, I think
20 you'll have better luck getting speakers in September
21 than August when everyone is on vacation.

22 CHAIRMAN REYNOLDS: Yes. Good point.

23 STAFF DIRECTOR MARCUS: I guess the one
24 thing I would say is that there is a potential that
25 there would be a number of interesting speakers and I

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1 would be interested to know if there is an objection
2 to having more than the usual four and the possibility
3 of having two panels rather than one if it worked out
4 that way.

5 COMMISSIONER BRACERAS: If it's balanced,
6 that's okay with me.

7 STAFF DIRECTOR MARCUS: Okay. If there
8 are no objections --

9 COMMISSIONER YAKI: If we could do that
10 with a business meeting on Thursday so they're not
11 wasting their time and at 9:30 a.m. hit the ground
12 running.

13 STAFF DIRECTOR MARCUS: And we appreciate
14 the flexibility.

15 VICE-CHAIR THERNSTROM: And the Thursday
16 business meetings I assume would not be in the
17 morning, but in the afternoon.

18 COMMISSIONER BRACERAS: Yes.

19 CHAIRMAN REYNOLDS: Okay. And I would
20 like to remind the Commissioners that in addition to
21 Jennifer if you have any recommendations for folks who
22 will be good on the panel please just send that
23 information to Ken.

24 VICE-CHAIR THERNSTROM: Just one comment
25 on that. I would think, Jennifer, that if Randy

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1 Kennedy cannot do it, that we should try very hard to
2 get Bartholet.

3 COMMISSIONER BRACERAS: I think just
4 having Harvard Law School sort of raises the profile.

5 VICE-CHAIR THERNSTROM: I'm just saying
6 she is the substitute for him.

7 COMMISSIONER BRACERAS: Right. Absolutely.

8 VICE-CHAIR THERNSTROM: If we cannot get
9 him.

10 COMMISSIONER BRACERAS: Right and --

11 COMMISSIONER YAKI: This thing about
12 Harvard Law School, I don't get it.

13 (Off the record comments.)

14 CHAIRMAN REYNOLDS: Okay. Next up State
15 Advisory Committee Issues. I move that the Commission
16 re-charter the Hawaii State Advisory Committee under
17 this motion. The Commission appoints the following
18 individuals to that committee.

19 COMMISSIONER HERIOT: Wait a minute.

20 COMMISSIONER BRACERAS: Wait.

21 COMMISSIONER HERIOT: Hold on. We never
22 did the briefing report on HBCUs.

23 CHAIRMAN REYNOLDS: That was --

24 COMMISSIONER BRACERAS: We neither tabled
25 --

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1 VICE-CHAIR THERNSTROM: We tabled that.

2 COMMISSIONER HERIOT: No, we tabled the
3 census one.

4 COMMISSIONER KIRSANOW: There was no
5 motion to do the HBCUs.

6 VICE-CHAIR THERNSTROM: I thought we
7 earlier tabled that.

8 COMMISSIONER KIRSANOW: No, we didn't.

9 COMMISSIONER HERIOT: Because I had some
10 things I wanted to say about that and we were doing
11 census consent.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER HERIOT: Do you want me to
14 move --

15 CHAIRMAN REYNOLDS: No.

16 COMMISSIONER BRACERAS: Well, we have to
17 take a vote one way or the other. We can't just --

18 VICE-CHAIR THERNSTROM: I thought we had
19 at the outset of the meeting.

20 CHAIRMAN REYNOLDS: How about this? Let's
21 vote to table a vote on it and just open it for
22 discussions.

23 VICE-CHAIR THERNSTROM: Okay. That's
24 fine.

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1 COMMISSIONER HERIOT: What I wanted to do
2 was to move to include a few additional studies.

3 CHAIRMAN REYNOLDS: Okay. I'm sorry. I
4 forget about that. Okay. I move that we table the
5 vote on the HBCU briefing report, but we open it up
6 for discussion. Is there a second?

7 COMMISSIONER BRACERAS: Second.

8 CHAIRMAN REYNOLDS: All in favor please
9 say aye.

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Any objections?

12 (No response.)

13 CHAIRMAN REYNOLDS: Abstentions?

14 (No response.)

15 CHAIRMAN REYNOLDS: The motion passes
16 unanimously.

17 COMMISSIONER YAKI: Discussion,
18 discussion. Sorry. I haven't eaten a freakin' thing.

19 COMMISSIONER KIRSANOW: Your freakin'
20 thing.

21 COMMISSIONER YAKI: My freakin' thing,
22 yes. Technology. There are like three different mute
23 buttons and I'm using one versus the other and I'm
24 punching them and wondering what's going on. Anyway,
25 I would support it. I would support the motion to the

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1 extent that discussion is limited. It does not take
2 the place of further discussion particularly if
3 further studies are being added because it was made
4 clear early on that if it was going to be tabled. I'm
5 not 100 percent prepared to do a full discussion on
6 this report. So if there are discussions I would vote
7 for it only on the reservation that additional
8 discussion would be permitted at the time that we take
9 a vote on it.

10 COMMISSIONER BRACERAS: Agreed.

11 COMMISSIONER HERIOT: That's fine.

12 COMMISSIONER YAKI: Okay.

13 VICE-CHAIR THERNSTROM: That's fine.

14 COMMISSIONER HERIOT: Yes. I just wasn't
15 at the briefing and I read through the report and I
16 thought of a couple of studies that I thought probably
17 ought to go into the report and I just wanted to --
18 academic studies --

19 CHAIRMAN REYNOLDS: Sure.

20 COMMISSIONER HERIOT: -- that I think
21 would be useful to put in there. And I also thought
22 that some of these studies are interesting in
23 themselves and perhaps more interesting than the
24 testimony that I saw and might be made part of the
25 report. I don't know what sort of copyrights there

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1 might be there, but that made sense to me anyway to
2 put them into the report.

3 CHAIRMAN REYNOLDS: Okay. How about this?
4 I guess we will wait until the reports are
5 distributed. We'll take a look at them and we'll see
6 how we want to incorporate these reports into the
7 document, either the usual way or just --

8 COMMISSIONER HERIOT: Yes, I can just sort
9 of get hard copy of documents and give them to whoever
10 should receive them and then we can figure out what to
11 do with them after everyone sees them and then allow
12 time for comments and that.

13 COMMISSIONER BRACERAS: And we've tabled
14 this until when? Is this something that we would try
15 to address in August?

16 (Off the record discussion.)

17 (Pause.)

18 CHAIRMAN REYNOLDS: I suggest that we
19 place this on the agenda for August, the August
20 meeting.

21 COMMISSIONER BRACERAS: So right now, we
22 are poised to discuss at the August meeting the census
23 report and HBCUs.

24 CHAIRMAN REYNOLDS: Yes.

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1 VICE-CHAIR THERNSTROM: And also the
2 question of SACs that we've postponed. Is that not
3 correct?

4 COMMISSIONER KIRSANOW: I think that's
5 right.

6 COMMISSIONER HERIOT: The SACs are going
7 to be on the teleconference, aren't they?

8 CHAIRMAN REYNOLDS: That's right.

9 VICE-CHAIR THERNSTROM: That's right.
10 Okay.

11 COMMISSIONER BRACERAS: So in August,
12 we'll be discussing two reports.

13 VICE-CHAIR THERNSTROM: That's good.

14 COMMISSIONER KIRSANOW: And any additional
15 business too.

16 COMMISSIONER HERIOT: And I wouldn't be
17 surprised if the statutory report doesn't have certain
18 aspects of it.

19 VICE-CHAIR THERNSTROM: And I would say
20 that if other people have material that they wanted to
21 add in addition to Commissioner Heriot's material that
22 we should be looking at that as well. I think some
23 meat on the bones of this report is necessary or
24 additional meat.

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1 CHAIRMAN REYNOLDS: Okay. Any other
2 comments about the HBCU report.

3 **VI. STATE ADVISORY COMMITTEE ISSUES - HAWAII**

4 CHAIRMAN REYNOLDS: If that's the case,
5 then we are up to the State Advisory Committees
6 Issues. I move that the Commission re-charter the
7 Hawaii State Advisory Committee. Under this motion,
8 the Commission appoints the following individuals to
9 that committee based on the recommendations of the
10 Staff Director: Michael Lilly as Chair, Amy Agbayani,
11 Robert Alm, Kheng See Ang, Daphne Barbe-Wooten,
12 Jennifer Benck, William Burgess, Vernon Char, Linda
13 Colburn, Michelle Fujimori, Rubellite Johnson, James
14 Kuroiwa, Thomas MacDonald, Kelahoaa Pisciotta, I
15 apologize for mangling folks names, also Paul
16 Sullivan, Wayne Tanna and Jackie Young.

17 Under this motion, the Commission appoints
18 Michael A. Lilly as Chairman as the newly re-chartered
19 Hawaii State Advisory Committee. These members will
20 serve as uncompensated government employees. Under
21 this motion, the Commission authorizes the Staff
22 Director to execute the appropriate paperwork for the
23 appointment. Is there a second?

24 COMMISSIONER KIRSANOW: Second.

25 CHAIRMAN REYNOLDS: Discussion?

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1 COMMISSIONER MELENDEZ: Yes. Commissioner
2 Melendez here. I have some discussion on this issue.
3 First of all, in the memorandum of the re-charter, it
4 says that four of the five previous SAC members were
5 interested for reappointment but only three were
6 recommended and I think some of these people were
7 historically on the committee before. So I was just
8 wondering why not all of them were actually
9 reappointed since their terms didn't expire.

10 STAFF DIRECTOR MARCUS: Yes, Commissioner,
11 it's my understanding that of the five there were two
12 others. One of them did not respond to our request
13 and there was one whom I am not recommending based on
14 my conversation with them because it was my conclusion
15 that there were other potential members who could
16 bring to bear a greater degree of information and
17 value to the committee.

18 COMMISSIONER MELENDEZ: How long was that
19 person on the committee before, the one you're not
20 recommending?

21 STAFF DIRECTOR MARCUS: I don't recall.
22 He was one of the Republicans. We can check. It
23 hadn't been a very short period of time.

24 COMMISSIONER MELENDEZ: The other thing is
25 did we get recommendations from other groups like the

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1 Office of Hawaiian Affairs. It's my understanding
2 they submitted a number of names and nobody off of
3 that list actually was appointed.

4 STAFF DIRECTOR MARCUS: We received a very
5 large number of recommendations from different groups.
6 In fact, in my experience, we got far more
7 recommendations from outsiders for the Hawaii SAC than
8 for any of our other SACs and it's possible that we
9 received substantially more for the Hawaii SAC than
10 for everything put together. It was a very large
11 volume and some of the people who were recommended to
12 us were put on.

13 For instances, we got a recommendation
14 from Senator Akaka who is in the packet and whom I'm
15 recommending. There was another person recommended
16 who was identified by Senator Inouye and I'm
17 recommending that person. Also Representative Hirono
18 had a person that was identified and I'm recommending
19 that person. And also as I recall there were people
20 identified by, and perhaps staff can correct me if I'm
21 wrong, the Hawaii State Chapter of the NAACP, the
22 Hawaii Disability Rights Center and the Grass Roots
23 Institute who are in the charter package. If we were
24 to include everyone who was recommended from all of
25 the different groups we would end up having a

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1 committee that had certainly several dozen people on
2 it.

3 COMMISSIONER MELENDEZ: Okay. Could you
4 tell me a little bit about Michael Lilly who you
5 recommended as chair because many times, I personally
6 always look for somebody that's been on the commission
7 prior, one of the remaining board members to maybe you
8 consider for chair. But this Mr. Lilly, I've never
9 heard of or didn't really seem to have a lot of
10 experience as to becoming a chair. Why was he chosen
11 to be the chair?

12 STAFF DIRECTOR MARCUS: Michael Lilly was
13 the Attorney General of Hawaii. We're really
14 delighted that we have in this group some very
15 distinguished people with a very strong background
16 within the state and he was the Attorney General for
17 the State of Hawaii. He also, I believe, was a Deputy
18 Attorney General. He is a partner at a law firm
19 within Hawaii. I believe it's called Ning, Lui and
20 Jones and he does a substantial amount of civil rights
21 and employment litigation currently. Having someone
22 of that stature I think will help strengthen the
23 credibility of the committee.

24 COMMISSIONER MELENDEZ: I guess the other
25 issue or my concern is that because the issue in

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1 Hawaii on the issue that came in front of this
2 commission on the recognition of the Native Hawaiians,
3 I think that what the Commission is charged with is
4 trying to basically have balanced point of views as
5 far as who sits on this committee as we look at that
6 whole issue and what I find in looking at many of
7 these people that are pointed to this committee or the
8 proposed people that many of them have taken a real
9 strong opposition against the Akaka bill, for example,
10 but yet, I think there's, I'm not sure how many, eight
11 or nine people that, even I think there are two or
12 three that have actually mentioned the issue in their
13 application to sit on the committee. Then if you look
14 at the backgrounds of some of the other people, the
15 other five or six people, they actually are basically
16 against the Akaka bill. But when you look at the
17 remaining people, you don't really find a position as
18 far as supporting the Akaka bill. My main concern is
19 that you have eight that are basically adamantly
20 against the Akaka bill. You have the other eight
21 people that really haven't taken a support position or
22 anything. So you have no idea what those people are
23 thinking. It's just my concern that it's really --
24 That's not the only issue I'm dealing with, but it
25 just seems like it's a focal issue and there's a lot

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1 of people on here that basically are kind of biased in
2 that position of this issue.

3 COMMISSIONER BRACERAS: I think I would
4 disagree. It seems from looking through the materials
5 that there are at least four people who are strong
6 advocates of the Akaka bill and maybe there are even
7 more. But I think there certainly are people on here
8 who will support it.

9 STAFF DIRECTOR MARCUS: It is my sense
10 that there are a number of people who support the
11 Akaka bill. That's not something that I asked all
12 members, but I would expect there to be a
13 substantially greater balance on that issue now than
14 there has been in the past and certainly people on
15 both sides and again, there are people here who were
16 recommended by Senator Akaka, Senator Inouye and
17 others who are supportive of the legislation.

18 COMMISSIONER MELENDEZ: So is there a
19 total of 16? Is that what you're saying?

20 STAFF DIRECTOR MARCUS: I believe it's 17.

21 COMMISSIONER MELENDEZ: So in your
22 opinion, you think it's pretty well balanced on that
23 issue.

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1 COMMISSIONER BRACERAS: I don't think the
2 Senator Akaka is going to be recommending people who
3 are against his bill, do you?

4 COMMISSIONER MELENDEZ: I don't know. I'm
5 just asking a question. Do we think it's balanced? I
6 know there are a few people that you can presume that
7 support the Akaka bill. I'm just saying do we think
8 it's pretty well balanced that there's eight and
9 eight.

10 CHAIRMAN REYNOLDS: Overall, I'm confident
11 that the slate of candidates, their views represent
12 the full spectrum of thought and policy positions. We
13 have some folks who are passionately against the Akaka
14 bill and others who are passionately for it. I'm sure
15 that the debate will not be one-sided if that issue is
16 debated within the SAC.

17 COMMISSIONER YAKI: I would disagree. I
18 think that based on what Charles has said, in light of
19 the members who were appointed that a majority of the
20 members have already expressed outwardly a view
21 against the Akaka bill. I'm just wondering why we
22 would choose to have a committee that was already
23 stacked publicly against the Akaka bill?

24 CHAIRMAN REYNOLDS: Well, Michael, we were
25 -- The point that I made is that the full range of

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1 views will be represented. You're making a different
2 point. You will presume that this committee was put
3 together primarily to have a majority of individuals
4 who will be against the Akaka bill. That is not the
5 case.

6 COMMISSIONER YAKI: That's exactly what
7 I'm saying.

8 CHAIRMAN REYNOLDS: Yes, and I am
9 disagreeing with your assertion.

10 COMMISSIONER YAKI: The numbers count and
11 I think the numbers don't lie. I mean, we say we're
12 always worry about this or that, but to me, there are
13 no coincidences in politics when it comes to selecting
14 people on the committee and when a clear majority have
15 outwardly and publicly expressed their opposition to a
16 position, I think that is not a coincidence that if
17 it's a majority that has been selected.

18 CHAIRMAN REYNOLDS: Well, it's not a
19 coincidence that we selected individuals who support
20 it and there's not a coincidence that we selected
21 people who oppose it. We believe that it's important
22 that that SAC have a vigorous debate over the issue
23 and the slate of candidates that are on the table
24 right now ensures that we will have that vigorous

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1 debate. It is not one-sided. It is not how it was in
2 the past.

3 COMMISSIONER MELENDEZ: Okay.

4 Commissioner --

5 COMMISSIONER YAKI: It is not reflective
6 of the general population of Hawaii. It is not
7 reflective of the fact that there is a small band of
8 people who are opposed to this and not get equal
9 representation. The committee does not reflect the
10 statewide view of the Akaka bill--

11 COMMISSIONER HERIOT: I've seen the polls.
12 I say it does.

13 CHAIRMAN REYNOLDS: Actually, if we are
14 just counting noses, we probably should add more
15 people who opposed the Akaka bill. As Gail pointed
16 out, there are a number of polls that show that a
17 majority of Native Hawaiians oppose the Akaka bill.

18 COMMISSIONER HERIOT: Hawaiians.

19 CHAIRMAN REYNOLDS: What did I say?

20 COMMISSIONER HERIOT: Native Hawaiians.

21 COMMISSIONER YAKI: Those aren't all the
22 recent polls I've seen. I'll have to take a look at
23 them.

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1 COMMISSIONER HERIOT: I published it in an
2 article in the *San Diego Union Tribune* I think it was
3 last year. You can check it.

4 COMMISSIONER YAKI: As I don't usually
5 read that periodical, perhaps you can --

6 COMMISSIONER HERIOT: You probably can get
7 it on the internet.

8 CHAIRMAN REYNOLDS: Okay.

9 COMMISSIONER MELENDEZ: I have a couple
10 other questions.

11 CHAIRMAN REYNOLDS: Yes.

12 COMMISSIONER MELENDEZ: As far as the
13 individual appointments. Referring to Jennifer Benck,
14 B-E-N-C-K, when I looked at her application, basically
15 I don't see that she has demonstrated an experience in
16 civil rights adequate for this appointment or activism
17 in civil rights issues. The only thing that she's
18 done is that she worked for Mr. Burgess in reading
19 this and we all know pretty much where he stands as he
20 testified here as far as in opposition to the Native
21 Hawaiian position. So I'm just saying the only thing
22 I see about her is that she's an understudy to Mr.
23 Burgess and I'm not sure why we would consider her as
24 far as on this advisory committee.

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1 CHAIRMAN REYNOLDS: Just briefly looking
2 at her application, she spent some time working for a
3 judge. She spent some time working at the Department
4 of Justice. Apparently, she's a member of the Hawaii
5 Chapter of the ACLU. She is, and I didn't know this,
6 but apparently she's been involved in the debate over
7 the Akaka bill.

8 COMMISSIONER HERIOT: She's also been
9 active in child abuse issues.

10 COMMISSIONER MELENDEZ: The other point
11 that I had a question about was James Kuroiwa. I'm
12 not sure how to pronounce that. But my concern about
13 Mr. James Kuroiwa is that he's made some really, I
14 guess, really taken a challenging stance as far as
15 what he says in his application. He says that "The
16 leadership of the Native Hawaiians is not doing the
17 Hawaiians justice." So he's already pretty biased on
18 what he thinks of Native Hawaiians. He also says --

19 COMMISSIONER BRACERAS: But I think he is
20 Native Hawaiian.

21 COMMISSIONER MELENDEZ: But what he also
22 says is that --

23 COMMISSIONER BRACERAS: He's not biased on
24 what he thinks of Native Hawaiians. He's biased on
25 what he thinks of the leadership which he apparently

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1 feels doesn't speak for him which is a legitimate
2 position for a member of an ethnic group's take.

3 COMMISSIONER MELENDEZ: Okay.

4 COMMISSIONER HERIOT: And that's not
5 biased to have an opinion.

6 VICE-CHAIR THERNSTROM: Yes. It's not
7 biased to have an opinion. It's biased to the fact
8 that people have opinions of people we are in general
9 putting on SACs.

10 COMMISSIONER HERIOT: But the last thing
11 we would want is somebody with no opinion on these
12 things and that's a person that's out to lunch.

13 COMMISSIONER MELENDEZ: But the other part
14 of this is he also says that he strongly opposes same
15 sex marriages and provides special rights to
16 homosexuals and says MSB medical and scientific
17 replicated results that concludes that one is born
18 homosexual and that it is not a choice. He takes
19 really strong views.

20 VICE-CHAIR THERNSTROM: Do you take no
21 strong views in life on matters that are
22 controversial?

23 COMMISSIONER MELENDEZ: The other thing
24 I'm saying is that it sounds like he is real prejudice
25 against other people.

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1 VICE-CHAIR THERNSTROM: It sounds like he
2 has some strong views which many people hold. I don't
3 happen to hold them myself, but I mean, what's wrong
4 with strong views. You hold them. I hold them.
5 Everybody at this table holds them and everybody we
6 would want to be on a SAC has views strongly held.

7 CHAIRMAN REYNOLDS: Some of them we agree
8 with. Some of them we don't. But I think that it's
9 imperative that we have a full spectrum of debate,
10 that all the voices are represented at the table.

11 COMMISSIONER MELENDEZ: My only concern is
12 that would be his willingness to consider different
13 points of view. He obviously knows his views of these
14 issues and this is the Commission on Civil Rights.
15 It's not like we're some --

16 VICE-CHAIR THERNSTROM: You could make
17 that charge about any of us. I can make it about you.
18 You can make it about me. It's -- I mean, people who
19 are educated on these issues generally have points of
20 view.

21 COMMISSIONER MELENDEZ: So that's my --
22 You know, those two and then the other thing is that
23 with Mr. Lilly since I believe that the chair has an
24 tremendous influence in issues, I still don't know
25 where he stands since it seems to be that everybody

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1 has taken a position on the Akaka bill which is Mr.
2 Lilly's position?

3 VICE-CHAIR THERNSTROM: Is that a litmus
4 test?

5 COMMISSIONER MELENDEZ: I'm just asking.
6 I mean, we're talking about positions on this issue
7 which is a major issue. It seems to be within this
8 that will probably come up in this discussion as to
9 why. So I'm just saying what's your position on Mr.
10 Lilly since you probably have talked to him on that
11 issue.

12 STAFF DIRECTOR MARCUS: As a general rule,
13 I did not ask any of the candidates their position on
14 that bill. It is my sense from things that people
15 volunteered to me that there are a number of people
16 who passionately support it and a number who
17 passionately oppose it and I do not have any reason to
18 believe that the representatives that you've made
19 about the membership are correct. If some of the
20 things that you have said are true, it's not known to
21 me and I'm not sure what your source is.

22 With respect to Mr. Lilly, I'm not sure.
23 I believe that he opposes the Akaka bill, but I don't
24 think I know that for a fact because I didn't
25 specifically ask him. And so I suppose I would want

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1 to leave myself room to make a correction in the event
2 that he says otherwise. But it is my belief that he
3 is opposed and that many of the others are in support.

4 COMMISSIONER MELENDEZ: Okay. All right.
5 Thank you.

6 COMMISSIONER BRACERAS: I just want to say
7 I stand corrected that Mr. Kuroiwa appears to be
8 Japanese although raised by Native Hawaiians. So I
9 believe I misspoke before.

10 CHAIRMAN REYNOLDS: Okay. All in favor.

11 COMMISSIONER YAKI: I would just like to
12 state for the record that I was reading the polls
13 referred to by Professor Heriot and I think that the
14 methodology of those polls -- the cleaner question
15 then asked by the poll were present in the bulletin
16 for the position of the Akaka bill --

17 COMMISSIONER HERIOT: Okay. Noted and
18 logged.

19 COMMISSIONER YAKI: So I'll let you know.

20 CHAIRMAN REYNOLDS: Okay. All in favor
21 please say aye.

22 (Chorus of ayes.)

23 COMMISSIONER YAKI: I move to sever Bill
24 Burgess from the Hawaii State Advisory.

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1 COMMISSIONER HERIOT: You're a little late
2 on that, aren't you?

3 CHAIRMAN REYNOLDS: Okay. Commissioner
4 Yaki, this is a somewhat awkward point to make that
5 motion.

6 COMMISSIONER YAKI: I move to sever which
7 is a privileged motion which does not require a
8 second.

9 COMMISSIONER BRACERAS: But we were just
10 voting.

11 COMMISSIONER HERIOT: We've already voted.

12 COMMISSIONER KIRSANOW: The vote has been
13 conducted.

14 COMMISSIONER YAKI: When did you vote?

15 COMMISSIONER BRACERAS: Thirty seconds
16 ago.

17 CHAIRMAN REYNOLDS: Hold it.

18 VICE-CHAIR THERNSTROM: There was a vote
19 already?

20 (Laughter.)

21 (Off the record discussion.)

22 STAFF DIRECTOR MARCUS: Several people
23 said aye. Nobody said nay. We're in the middle of
24 the vote.

25 COMMISSIONER HERIOT: I completed my vote.

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1 CHAIRMAN REYNOLDS: I see your point now.
2 Michael, the argument is that you were about 30
3 seconds late since some of the commissioners have
4 already voted.

5 VICE-CHAIR THERNSTROM: It's not going to
6 be anything worse in the outcome.

7 COMMISSIONER YAKI: I'm making a motion.

8 COMMISSIONER HERIOT: We really ought not
9 be calling for motions in the middle of a vote.

10 CHAIRMAN REYNOLDS: Okay. All in favor of
11 Commissioner Yaki's motion.

12 COMMISSIONER YAKI: Wait. Wait.

13 VICE-CHAIR THERNSTROM: There is a vote.
14 You can't have suddenly a new motion.

15 COMMISSIONER YAKI: Here's the issue. The
16 issue is that when your speaker is -- it hard for me
17 to cut through going through the vote and I'm trying
18 to get your attention. It's hard to do so on the
19 phone.

20 (Off the record discussion.)

21 COMMISSIONER YAKI: When you're rolling
22 through that vote, I started saying, "Hello. Hello.
23 Wait. Wait. Wait." You had rolled through the vote
24 before I could express what it was that I was trying
25 to say. It's one of the crazy features of how these

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1 speaker phones, these conference call phones tend to
2 work. Sometimes depending on who is speaking or what
3 mike is on, I can't get through.

4 So if you choose to stand on the fact that
5 I was attempting to get through but could not because
6 the volume was dominated by everyone else on the
7 phone, I'm talking at the same time about getting the
8 vote through, then please be my guest. But apparently
9 there have been times when we have because other
10 people have referred back, we have either redone the
11 vote or refashioned the vote because someone missed it
12 for five seconds because of the way these particular
13 phones work. If you choose to stand on your ceremony
14 and do it, so be it. But you do whatever you do. I'm
15 just telling you the facts of how these phone systems
16 tend to work.

17 CHAIRMAN REYNOLDS: Okay. Folks, options?

18 COMMISSIONER TAYLOR: Vote on his motion.

19 COMMISSIONER HERIOT: Right.

20 VICE-CHAIR THERNSTROM: Okay. We were in
21 the middle of voting on another motion. I just want
22 to know procedurally. I want to follow correct
23 procedure here. So how is the fact that we were in
24 the middle of voting already undone?

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1 CHAIRMAN REYNOLDS: Okay. Let's call the
2 parliamentarian. Emma, would you please give us some
3 guidance here?

4 PARLIAMENTARIAN MONROIG: I think that you
5 were already voting. So that the time has passed to
6 making amendments to the vote.

7 CHAIRMAN REYNOLDS: Okay. All right.
8 Michael.

9 COMMISSIONER TAYLOR: Listen. I vote on
10 the prevailing side. Let's do it again. Can I get a
11 second?

12 (Off the record comment.)

13 VICE-CHAIR THERNSTROM: Wait a minute.

14 COMMISSIONER HERIOT: I don't think you
15 really can do anything other than take the no votes
16 now. You can then make a motion which then has to be
17 carried. It's not going to be one of those motions --

18 COMMISSIONER TAYLOR: No. That's why I'm
19 making -- Right.

20 VICE-CHAIR THERNSTROM: We have to finish
21 this vote and I just said --

22 COMMISSIONER TAYLOR: Okay. We finish the
23 vote. Go ahead.

24 COMMISSIONER KIRSANOW: No, we haven't
25 finished the vote. There was no --

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1 CHAIRMAN REYNOLDS: Any objections?

2 (No response.)

3 CHAIRMAN REYNOLDS: Anyone in opposition?

4 COMMISSIONER MELENDEZ: I am.

5 CHAIRMAN REYNOLDS: Commissioner Yaki?

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN REYNOLDS: Do you oppose this
8 motion?

9 COMMISSIONER YAKI: Which motion?

10 VICE-CHAIR THERNSTROM: Commissioner Yaki,
11 we are trying to -- The Parliamentarian has just told
12 us we have to go through this vote. It was already
13 begun. We will then deal with --

14 COMMISSIONER HERIOT: You can make a
15 motion to reconsider.

16 (Several speaking at once.)

17 COMMISSIONER MELENDEZ: Restate the
18 motion. Maybe he's not clear what we're voting on.

19 VICE-CHAIR THERNSTROM: We are voting on
20 accepting this SAC. You can then move after we have
21 had this vote to reconsider.

22 COMMISSIONER YAKI: I can't move to
23 reconsider because I won't be on the prevailing side.

24 COMMISSIONER TAYLOR: That's why I was
25 saying I would be on the prevailing side and I'll make

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1 the motion and you can second it. That's what I was
2 saying.

3 COMMISSIONER HERIOT: That will do it.

4 CHAIRMAN REYNOLDS: Is that satisfactory?

5 COMMISSIONER HERIOT: It doesn't matter.

6 COMMISSIONER KIRSANOW: Just do it.

7 CHAIRMAN REYNOLDS: Commissioner Yaki,
8 what's your -- How do you vote? Commissioner Yaki?

9 COMMISSIONER YAKI: Yes.

10 CHAIRMAN REYNOLDS: How do you vote?

11 COMMISSIONER YAKI: About what?

12 CHAIRMAN REYNOLDS: About the proposed --
13 Well, the state of candidates for the Hawaii SAC.

14 COMMISSIONER YAKI: No.

15 CHAIRMAN REYNOLDS: Is that a no?

16 COMMISSIONER YAKI: I think it's a no.

17 COMMISSIONER HERIOT: No. Okay.

18 CHAIRMAN REYNOLDS: Okay. All right. So
19 please let the record reflect that Commissioners
20 Melendez and Yaki voted against the motion. The
21 remaining commissioners voted in support of it. The
22 motion carries.

23 COMMISSIONER TAYLOR: I move to reconsider
24 having been on the prevailing side.

25 CHAIRMAN REYNOLDS: Is there a second?

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1 COMMISSIONER HERIOT: Second.

2 CHAIRMAN REYNOLDS: Discussion.

3 Commissioner Yaki, this is your opportunity.

4 COMMISSIONER YAKI: I move to sever
5 William Burgess from the State Advisory Committee for
6 a separate vote.

7 VICE-CHAIR THERNSTROM: Second.

8 CHAIRMAN REYNOLDS: Discussion.

9 COMMISSIONER YAKI: Yes. I think that
10 William Burgess as he testified before us testified in
11 ways that were not completely truthful. I believe
12 that he distorted facts. I would also move that we
13 disapprove his nomination to the Hawaii SAC.

14 CHAIRMAN REYNOLDS: I'm sorry --

15 COMMISSIONER HERIOT: I think we have to
16 vote on the motion to reconsider than to vote on for
17 him to make that motion. But you can make your
18 argument now as to the reason that we should
19 reconsider.

20 COMMISSIONER YAKI: We did the
21 reconsideration which is why the Chair was asking me.

22 COMMISSIONER HERIOT: No, we haven't done
23 the reconsideration vote. We have a motion to
24 reconsider now and arguing why we should reconsider.

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1 You can argue that we need to have this separate vote
2 on Burgess.

3 CHAIRMAN REYNOLDS: There was a second.
4 There was a motion for reconsideration.

5 (Several speaking at once.)

6 COMMISSIONER YAKI: Part of the problem is
7 doing over the phone and the part of the fact is that
8 I can't get there because I had another problem I had
9 to deal with is the fact that things get garbled in
10 the transmission especially when more than one person
11 is talking. I could not determine whether or not the
12 chair had said that the motion for reconsideration had
13 passed and then we had a further motion, especially
14 when you ask me when I'm not part of the motion for
15 reconsideration.

16 But if we're talking about the motion for
17 reconsideration, Professor Heriot, then I think that
18 we need to reconsider this because we need to consider
19 whether or not William Burgess is worthy of sitting
20 on the State Advisory Commission given the fact that
21 even though he was a panelist at our hearing. One of
22 the reasons why we stripped the statement of facts and
23 findings from the Hawaiian statutory report was
24 because much of what he said simply did not comport
25 with any truth as is known by the history books and I

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1 think a person of that caliber shouldn't be on the
2 state advisory committee. Hence the need to
3 reconsider this vote so we can sever him for a
4 separate vote and for removal from the SAC.

5 CHAIRMAN REYNOLDS: Do you have anything
6 else to add?

7 COMMISSIONER YAKI: Not that I know of.

8 CHAIRMAN REYNOLDS: Do you have anything
9 to add on the merits?

10 COMMISSIONER YAKI: We're not on the
11 merits. We're talking about a motion for
12 reconsideration.

13 CHAIRMAN REYNOLDS: Mr. Melendez.

14 COMMISSIONER MELENDEZ: I agree with
15 Commissioner Yaki. I think we need to remove Mr.
16 Burgess.

17 COMMISSIONER KIRSANOW: I'm curious as to
18 what specific inaccurate or untruthful statements he
19 made during the hearing.

20 COMMISSIONER YAKI: I would say that the
21 references to the -- one thing that I would add; that
22 there were several statements made with regard to the
23 reports issued by the U.S. Government regarding their
24 findings regarding the overthrowing of Queen
25 Lili'uokalani and I believe that if I recall correctly

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1 he was -- He kept on citing this so-called, I can't
2 remember what it was, Stanford or some other kind of
3 report that most historians find to be incredible at
4 best in terms of its captured rendition of what was
5 going on or wasn't going on during the time of the
6 overthrow of Queen Lili-uokalani.

7 CHAIRMAN REYNOLDS: Is that your sole
8 basis for wanting him off the -- for not including him
9 on the SAC?

10 COMMISSIONER YAKI: Since we're not going
11 to knock someone off because of the political
12 viewpoints, I think that integrity is certainly
13 something that I would have concerns about.

14 CHAIRMAN REYNOLDS: Well, it's not been
15 demonstrated, at least, to my satisfaction that he has
16 intentionally misstated any facts and --

17 COMMISSIONER YAKI: Then I would ask that
18 we hold his approval until next meeting at which time
19 I will present to you a document I believe were his
20 misstatements of fact at the time.

21 CHAIRMAN REYNOLDS: Any other comments?

22 (No response.)

23 CHAIRMAN REYNOLDS: Okay. At this point,
24 let's vote. All in favor of the motion -- Which
25 motion are we talking about now?

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1 COMMISSIONER HERIOT: We have to vote on
2 the motion to reconsider.

3 CHAIRMAN REYNOLDS: Okay. All those in
4 favor of the motion to reconsider please say aye.

5 (One aye.)

6 CHAIRMAN REYNOLDS: All voting against it?

7 (Chorus of nays.)

8 CHAIRMAN REYNOLDS: Any abstentions?

9 (No response.)

10 CHAIRMAN REYNOLDS: Let the record reflect
11 that --

12 COMMISSIONER HERIOT: Jennifer Braceras
13 has stepped out for a moment. So she did not vote.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER TAYLOR: And I'm going to
16 abstain having made the motion. I don't want to vote
17 against it. So I'll just abstain.

18 CHAIRMAN REYNOLDS: Let the record reflect
19 that Commissioners Yaki and Melendez voted in favor of
20 the motion. Commissioner Kirsanow, Vice Chair
21 Thernstrom and the Chairman voted against and
22 Commissioner Heriot voted against it and let the
23 record reflect that Commissioner Braceras was absent
24 from the vote.

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1 VICE-CHAIR THERNSTROM: She could add her
2 vote at this point.

3 COMMISSIONER TAYLOR: And Taylor abstains.

4 VICE-CHAIR THERNSTROM: The question is --
5 (Off the record comments.)

6 CHAIRMAN REYNOLDS: Okay. And
7 Commissioner Taylor abstained. So on to Indiana.

8 COMMISSIONER YAKI: Mr. Chair.

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER YAKI: Before we move to
11 Indiana, (1) I'm going to ask that on the agenda for
12 August that I be allowed to make a presentation on the
13 SAC membership; (2) I would like to be put on the
14 agenda that I be appointed to the California SAC.

15 CHAIRMAN REYNOLDS: I'm sorry. Please
16 repeat your statement.

17 COMMISSIONER YAKI: I would like a
18 discussion on the August agenda of the criteria for
19 SAC membership (1) and (2) I would like to be put on
20 the agenda, a motion for myself to be appointed to the
21 California State Advisory Committee.

22 CHAIRMAN REYNOLDS: Okay. The second
23 issue, I don't think you need a motion for that. The
24 first, do you want to discuss SAC issues in general?
25 Do you want to revisit the vote that we just had?

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1 COMMISSIONER YAKI: I just want to talk
2 about SAC membership criteria in general.

3 VICE-CHAIR THERNSTROM: But you, in
4 addition, as a separate matter want to be on the
5 California SAC.

6 CHAIRMAN REYNOLDS: Okay. Commissioner
7 Yaki, just make a motion to amend the agenda at the
8 next meeting and we'll deal with it then.

9 COMMISSIONER YAKI: We haven't put the
10 agenda together. So why should I make a motion to
11 amend the agenda? I'm asking that I be made a part of
12 the agenda.

13 COMMISSIONER BRACERAS: Just take it under
14 advisement and move on.

15 COMMISSIONER YAKI: We've not set the
16 agenda for August yet.

17 CHAIRMAN REYNOLDS: Well, actually, we --

18 COMMISSIONER BRACERAS: Take it under
19 advisement. Move on.

20 CHAIRMAN REYNOLDS: Okay. Commissioner
21 Yaki, I'll take it under advisement and I will get
22 back to you.

23 **VI. STATE ADVISORY COMMITTEE ISSUES - INDIANA SAC**

24 CHAIRMAN REYNOLDS: Okay. I move to re-
25 charter the Indiana State Advisory Committee. Under

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1 this motion, the Commission appoints the following
2 individuals to that committee based on the
3 recommendations of the Staff : Paula Parker-Sawyers,
4 Teri Cardwell, Paul Chase, Elizabeth Cierznick,
5 Stephanie DeKemper, Christopher Douglas, Susan
6 Fuldaeur, David Hoffman, Jeffery Kimmell, Tony
7 Kirkland, Patti O'Callaghan and Caprisheus Oliver.
8 Out of this motion, the Commission appoints Paula
9 Parker-Sawyers as the Chairperson of the newly re-
10 chartered Indiana State Advisory Committee. These
11 members will serve as uncompensated government
12 employees.

13 Under this motion, the Commission
14 authorizes the Staff Director to execute the
15 appropriate paperwork for the appointment. Is there a
16 second?

17 VICE-CHAIR THERNSTROM: Second.

18 CHAIRMAN REYNOLDS: Discussion?

19 COMMISSIONER MELENDEZ: Yes. I have
20 discussion. Commissioner Melendez here.

21 CHAIRMAN REYNOLDS: Yes.

22 COMMISSIONER MELENDEZ: My understanding
23 is there is only two people that were reappointed from
24 the old advisory board. Is that right?

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1 STAFF DIRECTOR MARCUS: I believe that's
2 correct.

3 COMMISSIONER MELENDEZ: Okay. Elizabeth
4 Cierznick, I don't find a lot of demonstrated interest
5 in civil rights in her application also and could you
6 explain why she was actually put on the board?

7 STAFF DIRECTOR MARCUS: Let me look at her
8 paperwork.

9 (Off the record discussion.)

10 COMMISSIONER MELENDEZ: She may not have a
11 complete application also. We're looking through it
12 and it looks like there may be a page or two missing
13 or is that it?

14 STAFF DIRECTOR MARCUS: Ms. Cierznick is
15 an experienced attorney. She also does lobbying work
16 and is apparently knowledgeable about the state and
17 local government within that state. She has a legal
18 background as a summa cum laude graduate of Indiana
19 University School of Law. She has particular
20 expertise involving education issues. For instance,
21 she has represented Indianapolis Public School
22 District, the largest public school district in the
23 state. She also has significant involvement within
24 the community including with the Urban Mission YMCA,

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1 the Girl Scouts and other organizations within the
2 state.

3 COMMISSIONER YAKI: That means, of course,
4 she would recuse herself from petty any school related
5 issues that Ms. Cierznick would consider.

6 COMMISSIONER BRACERAS: Do the schools
7 recuse themselves?

8 COMMISSIONER YAKI: She represents them
9 for pay. She represents the school district and other
10 clients. I assume that any client which she
11 represents for pay that could be an issue before the
12 SAC she would have to recuse herself.

13 COMMISSIONER BRACERAS: But that would
14 also have to be true of people for the NAACP or other
15 groups would have to recuse themselves on issues that
16 those interest groups opine on because if they work
17 for them and are paid by them they should recuse
18 themselves.

19 COMMISSIONER YAKI: Okay.

20 CHAIRMAN REYNOLDS: These decisions should
21 be made on a case by case decision. We need to have a
22 concrete set of facts before us before we decide,
23 before the SAC decides, when a recusal is appropriate.

24 COMMISSIONER TAYLOR: And we are seeking
25 to reappoint the chair. Right?

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1 STAFF DIRECTOR MARCUS: The chair as I
2 recall is term limited and we are seeking to name as
3 chair a person who has previously served as a member
4 of the committee.

5 CHAIRMAN REYNOLDS: Commissioner Melendez.

6 COMMISSIONER MELENDEZ: Yes. Christopher
7 Douglas, can you tell me about him? I don't see a lot
8 of experience there also.

9 STAFF DIRECTOR MARCUS: Mr. Douglas does
10 have significant civil rights experience as I
11 understand it involving civil rights within the State
12 of Indiana. He was involved in advocating on behalf
13 of either hate crimes or related legislation within
14 the legislature. He was particularly concerned as I
15 understand it with gay and lesbian rights during that
16 discussion but has been more broadly active in the
17 community. He --

18 COMMISSIONER BRACERAS: He founded the
19 Rainbow Chamber of Commerce as well as the Indiana Log
20 Cabin Republicans. Is that good enough?

21 STAFF DIRECTOR MARCUS: He also is the
22 founding steering committee member of the Interfaith
23 Coalition on Nondiscrimination and I believe he has
24 additional civil rights background beyond what's here.

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1 He was a policy director of Justice, Inc. which is a
2 civil rights organization within the State of Indiana.

3 COMMISSIONER MELENDEZ: Okay. And the
4 last one, Caprisheus Oliver.

5 COMMISSIONER KIRSANOW: She was just added
6 arbitrarily.

7 COMMISSIONER HERIOT: We liked her name.

8 (Laughter.)

9 COMMISSIONER BRACERAS: It was capricious
10 decision.

11 STAFF DIRECTOR MARCUS: I can't say that I
12 have a -- I can't say that I recall speaking with her
13 or have much in-depth recollection. She does describe
14 her participation in the National Association of Black
15 Social Workers and other work with social workers and
16 --

17 CHAIRMAN REYNOLDS: She's worked with the
18 disability community.

19 STAFF DIRECTOR MARCUS: That's right.

20 CHAIRMAN REYNOLDS: Also she has been
21 involved with the Indianapolis Public School System.

22 STAFF DIRECTOR MARCUS: She's involved
23 with people including young people diagnosed with
24 mental health issues and has other knowledge and
25 involvement dealing with mental disability including

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1 schizophrenia and especially dealing with youth with
2 schizophrenia or dual diagnoses.

3 COMMISSIONER MELENDEZ: Kind of weak to
4 me, but anyway --

5 COMMISSIONER BRACERAS: How so?

6 COMMISSIONER MELENDEZ: Well, I don't
7 know. Because I was looking more for civil rights
8 experience. Some people are --

9 COMMISSIONER BRACERAS: Disability rights
10 aren't civil rights to you because that --

11 COMMISSIONER MELENDEZ: Some people work
12 as social workers and all those. That's their
13 occupation but not necessarily that they're civil
14 rights advocates.

15 COMMISSIONER BRACERAS: I got the
16 impression she was a disability rights advocate.

17 VICE-CHAIR THERNSTROM: Also there is a
18 problem here of what you would call an advocate and I
19 would call an advocate. You probably would not call
20 me an advocate. I would call me an advocate. So
21 we're getting into kind of semantic problems here.

22 COMMISSIONER YAKI: I'd call you a zealot,
23 Abby.

24 VICE-CHAIR THERNSTROM: I'll take that as
25 a compliment, Commissioner Yaki.

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1 COMMISSIONER YAKI: You should.

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

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Any abstentions?
6 Objections?

7 (Two opposed.)

8 CHAIRMAN REYNOLDS: Let the record reflect
9 that Commissioners Yaki and Melendez voted against the
10 motion. The remaining commissioners voted in favor.
11 The motion carries.

12 **VI. STATE ADVISORY COMMITTEE ISSUE-PENNSYLVANIA SAC**

13 CHAIRMAN REYNOLDS: Next up we have -- I
14 move to re-charter the Pennsylvania State Advisory
15 Committee. Under this motion, the Commission appoints
16 the following individuals to that committee based on
17 the recommendations of the Staff Director: James
18 Frazier, Richard Bockol, Imja Park Choi, Craig
19 Hymowitz, Steven Irwin, David Porter, Faye Ritter,
20 William Rothman, Anthony Stevens-Arouo, Connie Tarr
21 and Cameil Williams.

22 Under this motion, the Commission appoints
23 James Frazier as the chairperson of the newly re-
24 chartered Pennsylvania State Advisory Committee.
25 These members will serve as uncompensated government

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1 employees. Under this motion, the Commission
2 authorizes the Staff Director to execute the
3 appropriate paperwork for the appointment. Is there a
4 second?

5 COMMISSIONER KIRSANOW: Second.

6 CHAIRMAN REYNOLDS: Discussion?

7 COMMISSIONER MELENDEZ: This is
8 Pennsylvania?

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER MELENDEZ: Right. The only -
11 - David Porter doesn't look like he has a lot of civil
12 rights advocacy even though he's had a couple of
13 cases, occasional cases, but that's about it.

14 STAFF DIRECTOR MARCUS: Mr. Porter is an
15 experienced attorney who as I recall has --

16 COMMISSIONER KIRSANOW: Which firm was he
17 in? Buchanan Ingersoll.

18 STAFF DIRECTOR MARCUS: Buchanan
19 Ingersoll, yes.

20 COMMISSIONER KIRSANOW: I know Mr. Porter
21 and actually debated with him. He's done considerable
22 amount of work with respect to 14th Amendment cases,
23 school or I'm sorry. Collegiate level affirmative
24 action cases. He -- My understanding is --

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1 COMMISSIONER YAKI: Could you get closer
2 to your microphone because I can't hear you.

3 COMMISSIONER KIRSANOW: He's done as I
4 recall considerable amount of litigation with respect
5 to 14th Amendment cases. If I'm not mistaken, if I
6 recall this correctly and my recollection is I debated
7 him a few years ago and if his bio is as I presume, he
8 also clerked for Judge Rehnquist.

9 COMMISSIONER YAKI: Someone is rattling
10 papers and I cannot hear a word that you're saying.

11 STAFF DIRECTOR MARCUS: He clerked for
12 Judge Smith.

13 COMMISSIONER KIRSANOW: Okay. He's with
14 Buchanan Ingersoll. Correct?

15 STAFF DIRECTOR MARCUS: That's correct.

16 COMMISSIONER KIRSANOW: I'm pretty sure
17 this is the guy I'm talking about. I'm not sure if he
18 left that off, but I understood him to have
19 considerable civil rights experience.

20 STAFF DIRECTOR MARCUS: Yes. He handled
21 civil rights cases from both the plaintiffs and
22 defendants cases as well as election law matters and
23 Commissioner Kirsanow is correct that his litigation
24 has included 4th Amendment issues.

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1 COMMISSIONER BRACERAS: Fourteenth he
2 said.

3 COMMISSIONER YAKI: Fourteenth.

4 STAFF DIRECTOR MARCUS: Fourteenth, I
5 meant to say.

6 CHAIRMAN REYNOLDS: And he's also part-
7 time at the Justice Department on a voting rights act
8 project.

9 COMMISSIONER YAKI: Which one?

10 CHAIRMAN REYNOLDS: That I don't know.

11 CHAIRMAN REYNOLDS: Commissioner Melendez.

12 COMMISSIONER MELENDEZ: The last one is
13 Faye Ritter. Even though it says that she was a
14 member of the NAACP until 1989. It doesn't appear
15 that she's done anything, any activity, in the last 18
16 years.

17 STAFF DIRECTOR MARCUS: I believe she's a
18 member of the Hispanic Forum as well as National
19 Association of Women in Business and National
20 Conference for Christians and Jews where she serves on
21 the board of directors. So she has continued to do
22 work in issues that are related to the committee.

23 COMMISSIONER MELENDEZ: Okay. That's all
24 I had.

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

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: Any abstentions?

5 (One abstention.)

6 CHAIRMAN REYNOLDS: I'm sorry.
7 Commissioner Yaki, you abstained?

8 COMMISSIONER YAKI: I'm voting no.

9 CHAIRMAN REYNOLDS: Okay. And --

10 COMMISSIONER MELENDEZ: Yes, I'll vote no.

11 CHAIRMAN REYNOLDS: Okay. Please let the
12 record reflect that Commissioners Yaki and Melendez
13 voted against the motion. The remaining commissioners
14 voted for it. The motion passes.

15 At this point, we will go into the closed
16 portion of the meeting. So I would ask anyone who is
17 not an employee of the Commission to please leave the
18 room.

19 (Off the record discussion.)

20 STAFF DIRECTOR MARCUS: I believe that
21 there is a motion that will be made in public for the
22 record.

23 COMMISSIONER BRACERAS: This is an
24 Executive session.

25 CHAIRMAN REYNOLDS: Off the record.

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1 (Whereupon, at 12:40 p.m., the above-
2 entitled matter recessed to reconvene at 1:12 p.m. the
3 same day.)

4 CHAIRMAN REYNOLDS: On the record.

5 If there are not further questions or
6 comments, pursuant to 45 CFR 702.54, the Staff
7 Director within one working day of this vote, one
8 business day of this vote, shall make publicly
9 available in a place easily accessible to the public
10 a written copy of this vote reflecting the vote of
11 each commissioner. Okay. Am I done? We can adjourn
12 this meeting.

13 COMMISSIONER KIRSANOW: Let's go on the
14 record. I just want to correct the record with
15 respect to the question that Mr. Melendez raised with
16 David Porter of the Pennsylvania SAC. I did debate
17 him, not that that disqualifies him, but I was
18 mistaken as to the person who did that. He actually
19 set up the debate.

20 CHAIRMAN REYNOLDS: Okay. All right,
21 folks. We're done. Off the record.

22 (Whereupon, at 1:13 p.m., the above-
23 entitled matter was concluded.)

24

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