

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, AUGUST 24, 2007

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The meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 9:30 a.m., Abigail Thernstrom, Vice Chairman, presiding.

PRESENT:

ABIGAIL THERNSTROM, VICE CHAIRMAN
JENNIFER C. BRACERAS, COMMISSIONER (via telephone)
GAIL L. HERIOT, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER (via telephone)
MICHAEL YAKI, COMMISSIONER

STAFF PRESENT:

MANUEL ALBA
DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
MAHA JWEIED
MONICA KIBLER
SOCK FOON MacDOUGALL
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
KARA SILVERSTEIN
KIMBERLY TOLHURST
AUDREY WRIGHT
MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
RICHARD SCHMELCHEL
KIMBERLY SCHULD

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P R O C E E D I N G S

9:40 A.M.

VICE-CHAIRMAN THERNSTROM: We have a quorum, evidently, with two Commissioners on the phone. The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights at 624 Ninth Street, Northwest, Room 540, Washington, D.C.

All of the Commissioners are -- well, that's not correct. We have present in the room Commissioners Heriot, myself, Thernstrom, and Commissioner Yaki. We have on the phone Commissioners Braceras and Melendez. So we do have a quorum.

First item on the agenda is the approval of the agenda.

I. Approval of the Agenda

VICE-CHAIRMAN THERNSTROM: Can I get a motion to approve the agenda?

COMMISSIONER HERIOT: So moved.

VICE-CHAIRMAN THERNSTROM: Commissioner Heriot has so moved. I need a second.

COMMISSIONER BRACERAS: Second.

VICE-CHAIRMAN THERNSTROM: Thanks. I can see we're all in slow motion this morning and that includes me.

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1 Can I have a motion to amend the agenda to
2 add the rechartering of the South Carolina Advisory
3 Committee and Section 7 and omit the Staff Director's
4 Report.

5 The Staff Director cannot be here due to
6 an illness in his family. I understand that
7 Commissioners have provided additional recommendations
8 for the Rhode Island and New Jersey Committees. That
9 question is being worked on, but there is no reason
10 why we can't go forward with South Carolina.

11 So a motion on this South Carolina -- on
12 rechartering the South Carolina SAC.

13 COMMISSIONER HERIOT: I don't have those
14 documents with me. Do we have copies of them?

15 VICE-CHAIRMAN THERNSTROM: What happened
16 to the documents on the South Carolina rechartering?

17 COMMISSIONER HERIOT: I'm happy to move to
18 amend the agenda as long as I get a copy.

19 VICE-CHAIRMAN THERNSTROM: Can we get
20 Commissioner Heriot a copy?

21 You've got one in your hand now?

22 COMMISSIONER HERIOT: I just have a list
23 of names now, but I'm happy to move -- I move to amend
24 the agenda as you've requested.

25 VICE-CHAIRMAN THERNSTROM: Second?

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1 COMMISSIONER BRACERAS: Second.

2 VICE-CHAIRMAN THERNSTROM: Jennifer, I'm
3 glad you're with us. I don't think there's anybody
4 awake enough to say "second" here.

5 All in favor of amending the agenda say
6 aye.

7 (Ayes.)

8 VICE-CHAIRMAN THERNSTROM: All opposed.

9 COMMISSIONER MELENDEZ: No.

10 COMMISSIONER YAKI: No.

11 VICE-CHAIRMAN THERNSTROM: So that's two
12 nos and two ayes, three ayes, is that correct, I
13 believe. The motion is amended or approved.

14 Okay, the second item is approval of the
15 Minutes of August 16, 2007.

16 **II. Approval of the Minutes of August 16, 2007**

17 VICE-CHAIRMAN THERNSTROM: Did I miss
18 something?

19 I'm sorry. All right, we have a motion to
20 approve the agenda. I'm sorry. I do not see this.

21 COMMISSIONER BRACERAS: So moved.

22 VICE-CHAIRMAN THERNSTROM: I will second
23 it myself.

24 All in favor of approving the agenda?

25 COMMISSIONER HERIOT: Aye.

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1 COMMISSIONER BRACERAS: Aye.

2 COMMISSIONER MELENDEZ: Aye.

3 VICE-CHAIRMAN THERNSTROM: Commissioner
4 Yaki, are you voting on this?

5 COMMISSIONER YAKI: Well, I am -- first we
6 approve the agenda and then we amend the agenda,
7 correct?

8 VICE-CHAIRMAN THERNSTROM: Yes, I mean I
9 thought we had done that and I'm sorry. I am really
10 tired this morning, but --

11 COMMISSIONER YAKI: I had a point of
12 information.

13 VICE-CHAIRMAN THERNSTROM: Yes.

14 COMMISSIONER YAKI: On the briefing
15 report.

16 VICE-CHAIRMAN THERNSTROM: I thought we
17 did approve the agenda.

18 No? Okay, I apologize to people. Yes, go
19 ahead.

20 COMMISSIONER YAKI: Point of information.

21 On the two items under Program Planning for the
22 briefing report, I have not seen in my materials, nor
23 have I seen in my emails either of the updated
24 versions of either report and last I heard the staff
25 was still working on incorporating additions and

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1 comments. Those reports are at a loss. I don't
2 understand how we can consider them today in the
3 absence of the documents.

4 VICE-CHAIRMAN THERNSTROM: They're being
5 tabled, I believe. Isn't that correct? They are
6 being tabled.

7 COMMISSIONER YAKI: Well, this is the
8 first I've heard of it, so thank you.

9 VICE-CHAIRMAN THERNSTROM: Well, first I
10 heard of it was last night. So we were equally in the
11 dark here.

12 All right, I'm sorry, where are we. Have
13 we approved the agenda? Have we had a vote to approve
14 the agenda? We did have a vote to approve the agenda,
15 didn't we?

16 COMMISSIONER YAKI: We just did.

17 VICE-CHAIRMAN THERNSTROM: Commissioner
18 Yaki, you didn't vote?

19 COMMISSIONER YAKI: Aye.

20 VICE-CHAIRMAN THERNSTROM: Okay. I
21 believe there is a unanimous vote to approve the
22 agenda.

23 I do not have to go back to the amendment
24 question I assume? No. Good. One of you said
25 something about that a minute ago.

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1 Announcements, for the month of August.

2 **III. Announcements**

3 VICE-CHAIRMAN THERNSTROM: The President
4 has issued a proclamation commemorating August 26 as
5 Women's Equality Day. This day commemorates the
6 passage of the 19th Amendment, the Women's Suffrage
7 Amendment to the U.S. Constitution which gave U.S.
8 women full voting rights in 1920. A struggle for
9 women's suffrage began modestly at the Seneca Falls
10 Convention in 1848 when a small band of women drafted
11 a declaration of sentiments proclaiming they had the
12 same rights as men.

13 In 1916, Jeannette Rankin of Montana
14 became the first American woman elected to the U.S.
15 House of Representatives despite the fact that her
16 fellow women would not be able to vote nationally for
17 four more years. Today, American women are leaders in
18 business, government, law, science, medicine, the
19 arts, education and many other fields. Women-owned
20 businesses account for nearly half of all privately-
21 held firms and are opening at twice the rate at male-
22 opened businesses.

23 Colleges, of course, and universities, of
24 course, have a gender imbalance, more women than men.

25 Law schools now, I believe, on average, more women

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1 than men. I could be wrong on that.

2 COMMISSIONER HERIOT: It's about 50-50.

3 VICE-CHAIRMAN THERNSTROM: Fifty-50.
4 That's a big change from my youth. Medical schools
5 definitely more women than men.

6 So you've come a long way, baby, as it
7 were.

8 Anniversary of the --

9 COMMISSIONER YAKI: Madam Chair?

10 VICE-CHAIRMAN THERNSTROM: Yes.

11 COMMISSIONER YAKI: I just wanted to add
12 two comments. One, that you rightly noted that women
13 are in government. I want to recognize my former
14 boss, now Speaker of the House of Representatives
15 Nancy Pelos; and also to recognize Irene Morgan
16 Kirkaldy who was the first African-American woman, at
17 least in recorded history, who refused to give up her
18 seat in the back of the bus and prompted one of the
19 first bus boycotts in the South in the late 1940s who
20 died within the last two weeks.

21 VICE-CHAIRMAN THERNSTROM: Very good.
22 Good additions.

23 This month also marks the forty-second
24 anniversary of the signing of the Voting Rights Act.
25 The Act was signed into law by President Lyndon

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1 Johnson on August 6, 1965. The Voting Rights Act
2 suspended literacy, understanding, character tests
3 designed to keep blacks from registering and voting in
4 the South. It authorized the federal registrars,
5 officially called examiners in the Act.

6 Unlike the resistance to Brown v. Board,
7 there really was no significant resistance to black
8 enfranchisement, which skyrocketed immediately
9 following the passage of the Act and permanently
10 altered the political status and therefore the status
11 of blacks in the South and ended a regime of apartheid
12 that was very, was really the final nail in the coffin
13 of that regime and in some ways, the Voting Rights Act
14 is more important than the 1964 Civil Rights Act.

15 So we celebrate the passage of that Act in
16 August every year. But that's not the order here.
17 Yes, well it was not. In the script I have, that is
18 not -- it is. It is. I apologize. I am so tired it
19 is not to be believed. I have been unpacking --
20 packing and then unpacking a house kind of non-stop
21 for the last three weeks and I am just flattened by
22 the process.

23 We did not approve the minutes and I need
24 a motion to approve the minutes.

25 COMMISSIONER YAKI: Okay, I'll do it.

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1 COMMISSIONER BRACERAS: Second.

2 COMMISSIONER HERIOT: I just had a
3 question about the minutes. I was confused. I hadn't
4 peeled it off my computer before I could look at the
5 transcript. I thought the minutes said that
6 Commissioner Melendez voted against the motion on what
7 to do with Commissioner statements. But since he has
8 made a motion to do that, I believe that he voted for
9 it and I'm not just sure.

10 VICE-CHAIRMAN THERNSTROM: Can somebody
11 enlighten us as to -- Commissioner Melendez, maybe you
12 can start.

13 COMMISSIONER MELENDEZ: I'm trying to find
14 my minutes here. Could somebody read what it pertains
15 to?

16 VICE-CHAIRMAN THERNSTROM: We're just
17 waiting to get the documentation here.

18 COMMISSIONER HERIOT: At the bottom of the
19 page, the Commissioners approved a motion 4-2 that
20 Commissioners wanted to provide fact-finding, finding
21 by finding and recommendation by recommendation
22 statements. Must include those statements within
23 their dissent or concurrence. My recollection was
24 that Commissioner Melendez had made a motion to
25 reconsider that vote, which he could only have done if

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1 he had voted for it and I pointed that out at the
2 time.

3 COMMISSIONER YAKI: No, I made that
4 motion.

5 COMMISSIONER HERIOT: Is that right?

6 COMMISSIONER YAKI: Yes.

7 COMMISSIONER HERIOT: Okay, okay. Then
8 that is fine.

9 VICE-CHAIRMAN THERNSTROM: Okay, can we
10 proceed with the approval of the minutes? Has anybody
11 else got any discussion of the minutes?

12 COMMISSIONER BRACERAS: Yes, I was unable
13 to be on the call, but I just happened to notice that
14 it says it was convened at 6 p.m., and at the bottom
15 it says it was adjourned at 5:50.

16 (Laughter.)

17 VICE-CHAIRMAN THERNSTROM: Jennifer,
18 what's wrong with that?

19 COMMISSIONER YAKI: Yes, we've always said
20 that we've been in the twilight zone for more than
21 once.

22 COMMISSIONER BRACERAS: Well, okay. Do
23 with it what you will. I was saying I wasn't on the
24 call so I don't know whether --

25 VICE-CHAIRMAN THERNSTROM: Whether that

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1 happened.

2 (Laughter.)

3 COMMISSIONER YAKI: We actually had a
4 private plane, Jennifer, flying backwards across the
5 time zone so that's what basically happened.

6 COMMISSIONER BRACERAS: Right. I hope you
7 had a good time.

8 VICE-CHAIRMAN THERNSTROM: I don't believe
9 that's correct. I believe that is correct that it
10 convened at 6.

11 All right, this needs to be amended so
12 that it reads that it convened at five. So without
13 objection to that amendment, can we have a vote on
14 approving the minutes? All in favor.

15 COMMISSIONER YAKI: Aye.

16 COMMISSIONER MELENDEZ: Aye.

17 VICE-CHAIRMAN THERNSTROM: Aye. They are
18 approved unanimously with that amendment.

19 COMMISSIONER BRACERAS: Well, I am
20 abstaining because I didn't take part in it.

21 COMMISSIONER YAKI: You weren't on the
22 plane.

23 COMMISSIONER BRACERAS: I wasn't on that
24 plane.

25 VICE-CHAIRMAN THERNSTROM: You want to a

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1 separate motion changing the time? I thought we did
2 not need that. Okay, staff director's report,
3 obviously we are not getting today so we move on to
4 the question of Management and Operations.

5 **V. Management and Operations**

6 VICE-CHAIRMAN THERNSTROM: The next item
7 being consideration of a Commission Quality
8 Information Guidelines.

9 COMMISSIONER YAKI: I move to table this
10 item until the next meeting, until the staff director
11 is present because I have a lot of questions. The
12 staff director was involved in the preparation of it.

13 I would rather do it at that time.

14 VICE-CHAIRMAN THERNSTROM: And David
15 Blackwood is not an adequate substitute for you in
16 terms of addressing questions? No.

17 COMMISSIONER MELENDEZ: I second the
18 motion.

19 COMMISSIONER YAKI: The name is from the
20 staff director, so I would prefer to do it with the
21 staff director.

22 VICE-CHAIRMAN THERNSTROM: Obviously,
23 substantial questions on your part. So we need a
24 motion to table it.

25 COMMISSIONER YAKI: I made the motion and

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1 it is seconded by Commissioner Melendez.

2 VICE-CHAIRMAN THERNSTROM: Okay. All in
3 favor?

4 COMMISSIONER YAKI: Aye.

5 COMMISSIONER HERIOT: Aye.

6 VICE-CHAIRMAN THERNSTROM: I am
7 abstaining.

8 COMMISSIONER YAKI: Commissioner Melendez?

9 COMMISSIONER MELENDEZ: Aye.

10 VICE-CHAIRMAN THERNSTROM: All right.
11 That item is tabled. Program Planning, briefing
12 report on racial categorization in the census.

13 **VI. Program Planning**

14 VICE-CHAIRMAN THERNSTROM: At the July 13,
15 2007 meeting, consideration of the briefing report on
16 racial categorization in the census was tabled until
17 this meeting to give the opportunity for Commissioners
18 to comment on the final draft. However, the final
19 draft has not been finalized or the draft report, I
20 should say, has not been finalized.

21 Can I have a motion to table approval of
22 this report?

23 COMMISSIONER YAKI: So moved.

24 COMMISSIONER MELENDEZ: Second.

25 VICE-CHAIRMAN THERNSTROM: All in favor.

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1 (Chorus of ayes.)

2 VICE-CHAIRMAN THERNSTROM: Passes
3 unanimately. Briefing report on educational
4 effectiveness of Historically Black Colleges and
5 Universities. This briefing report was scheduled for
6 a vote at the July 13, 2007 meeting. However, the
7 Commissioners voted to table the vote on the same
8 until today in order to examine a study suggested by
9 Commissioner Heriot and to submit comments.

10 This study was incorporated as Appendix A,
11 and when appropriate it is cited in the report itself.

12 However, the staff have still not received
13 significant Commissioner comments. We have all been
14 quite delinquent on this. Can I have a motion to
15 table this report until the Commissioners have the
16 opportunity to finalize their comments?

17 COMMISSIONER YAKI: So moved.

18 COMMISSIONER MELENDEZ: Second.

19 COMMISSIONER MELENDEZ: Second.

20 VICE-CHAIRMAN THERNSTROM: All in favor.

21 (Chorus of ayes.)

22 VICE-CHAIRMAN THERNSTROM: All
23 opposed? Motion is unanimously approved.

24 Okay, Discovery plan and outline for FY
25 2008. As required by the Commission's administration

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1 of instructions, the Office of the General Counsel,
2 the OGC, and the Office of Civil Rights Evaluation,
3 OCRE, submitted to you a discovery plan and a project
4 outline for the Commission's project entitled 2008
5 Statutory Report Enforcing Prohibitions of Religious
6 Discrimination in Prisons. This project will examine
7 the extent and severity of religious discrimination in
8 federal and state prisons throughout the United
9 States, federal and state laws and regulations
10 relating to the religious freedom of prisoners and the
11 ability of faith-based organizations to participate in
12 traditional programs for prisoners.

13 Can I have a motion to approve this
14 project proposal as well as the discovery plan?

15 COMMISSIONER BRACERAS: So moved.

16 COMMISSIONER HERIOT: Second.

17 VICE-CHAIRMAN THERNSTROM: All in favor?

18 VICE-CHAIRMAN THERNSTROM: Discussion.
19 Sorry. Sorry, discussion.

20 COMMISSIONER YAKI: I have a question for
21 staff on this. Our definition of prisons. What are
22 we basing that on? In other words, are we also --
23 there are sort of different types of levels in terms
24 of prisons in the United States. I am wondering to
25 what extent, for example, Guantanamo would be

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1 considered a prison, whether military prisons would be
2 included, whether detention centers for immigrants are
3 included. I would just like some explanation on that.

4 VICE-CHAIRMAN THERNSTROM: Is a detention
5 center a prison?

6 COMMISSIONER YAKI: It depends on how you
7 -- the definition of prison is sometimes unique within
8 each state.

9 MR. BLACKWOOD: If I may, this is David
10 Blackwood. In response to your question,
11 Commissioner, no, we were not looking at anything
12 beyond civilian prisons. No detention centers, not
13 Guantanamo.

14 COMMISSIONER YAKI: And when we define
15 prisons, are we also including, for example, jails
16 like county jails?

17 MR. BLACKWOOD: No, this would be federal
18 and state prisons, not jails.

19 COMMISSIONER YAKI: Even though jails are
20 a frequent source of the overflow under most consent
21 decrees and allow the states that have prison
22 overcrowding conditions?

23 MR. BLACKWOOD: That's correct.

24 VICE-CHAIRMAN THERNSTROM: Aren't there
25 limitations on the gathering of data if we start to

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1 include county jails?

2 COMMISSIONER YAKI: Well, some of these
3 county jails are pretty big operations. I mean, what
4 you see is a lot of counties are under -- I know,
5 because we ran a bond in San Francisco for our county
6 jail precisely because of overcrowding issues. Some
7 of these folks couldn't be held in prisons pending
8 trial and they are ending up in county jail for
9 anywhere from six months to more than a year.

10 So the question, I would just simply say
11 that if I would like staff to take a look at any
12 county jails of any significant size where as you are
13 going to find some prisons of some size, but county
14 jails of other size. I would also like to make a
15 motion that -- well, I will start with that motion
16 first.

17 VICE-CHAIRMAN THERNSTROM: Let me ask you
18 a question, Commissioner Yaki, on that. Would it not
19 be the case that a state would have a uniform policy?

20 I mean, you know something about the subject and I
21 don't. A state would have a uniform policy with
22 respect to respecting religious rights of prisoners in
23 whatever context and that we are not likely, given the
24 additional difficulties with gathering those data, we
25 are not likely to find a pattern different in the

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1 county jails than we would find in the state prison?

2 COMMISSIONER YAKI: I would say that given
3 the way in which resources in most of these
4 institutions are stretched, you actually might find
5 the difference in the way in the administration of
6 justice between a state correctional institution and a
7 county jail, number one. Number two, and I forgot to
8 mention this, there's a -- are we also including in
9 this the so-called civilian private prisons that are
10 operated by contract with state correctional
11 authorities? of which there are actually a substantial
12 number with substantial populations and actually in
13 many of those institutions you will actually find some
14 of the more interesting and difficult issues of
15 accommodation because unlike a state institution which
16 might be drawn from the state population, some of the
17 more private, contracted-for institutions actually
18 contract with many different states to fill their
19 beds, and therefore the population that is drawn from
20 there is much different and accommodation issues are
21 much -- how should I say, trickier.

22 So are we including --

23 VICE-CHAIRMAN THERNSTROM: Aren't they
24 subject as well to whatever guidelines the state
25 issues?

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1 COMMISSIONER YAKI: It's an interesting
2 question because sometimes they are to a certain
3 extent, but to the extent you have -- there are -- for
4 example, private correctional institutions that have
5 prisoners from multi-states by contract. And then the
6 question is what state does a state get to dictate how
7 its inmates are treated when the warden, for example,
8 may feel that in order to accommodate for safety or
9 whatever, move people around, so you can't actually
10 have here's the Indiana part of the population, here's
11 the Colorado part of the population, here's Oklahoma
12 part of the population. I think that's actually an
13 area that is very tricky and worth looking into.

14 I didn't know if we were looking into the
15 private prison context as well.

16 MR. BLACKWOOD: At this stage, I can't
17 tell you we were including or excluding. It's an
18 interesting definitional issue that you have raised.
19 Whether it's someone who is out of state is still
20 defined though as say an Arizona prisoner even though
21 he's housed in Nebraska. I don't know the answer to
22 that.

23 VICE-CHAIRMAN THERNSTROM: I don't have
24 any substantive objectives to what you're saying.
25 Indeed, I find it very, very interesting and obviously

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1 would enrich the study, if we could address the
2 questions you're raising.

3 I'm very reluctant and this is a question
4 only the staff can answer, I am very reluctant to
5 define and expand, redefine and thus expand the
6 project in a way that we can see overall quality
7 simply because we can't that relevant --

8 COMMISSIONER YAKI: I understand, but let
9 me add one point which I think would clarify this a
10 little bit.

11 There are smaller states and smaller
12 territories of the United States that do not have the
13 means to construct a prison and staff it adequately,
14 much less fund it adequately. These places and I will
15 name the State of Hawaii for one. Hawaii has a fair
16 number of its prisoners exported to, for lack of a
17 better word, to private institutions housed in other
18 parts of the country.

19 You can't really get a meaningful check
20 about how any religious practices or beliefs or
21 cultural beliefs for that matter, but that's not quite
22 the subject of this report, are accommodated, unless
23 you go to some of these other places to see whether or
24 not -- because certainly one could argue, in Hawaii,
25 for Hawaii prisoners, there probably would be pretty

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1 good accommodation. But what happens to a native
2 Hawaiian prisoner with their own beliefs who is sent
3 to an institution in Oklahoma which actually I know is
4 where some of them go and where there actually have
5 been some fairly substantial problems because of
6 racial and religious and other kinds of conflicts.

7 So I think if we overlook that section of
8 the prison population, we are overlooking actually a
9 very good place where perhaps the intervention of our
10 guidance may be needed the most.

11 VICE-CHAIRMAN THERNSTROM: David
12 Blackwood, what do you think?

13 MR. BLACKWOOD: Well, let me give you some
14 background as far as what we're finding, number one.
15 There is no centralized database which is what we were
16 hoping for and therefore could slice and dice the
17 information. Okay, what about this? What about that?

18 And do some sort of analysis. That simply doesn't
19 exist.

20 As I say, you raise an interesting
21 definitional issue about whether a private prison for
22 purposes of legal analysis is a private prison or is
23 it viewed as an agent of the state, of the prisoners
24 that are located --

25 VICE-CHAIRMAN THERNSTROM: Yes, I would

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1 think the latter, by the way.

2 MR. BLACKWOOD: What we are looking at --

3 VICE-CHAIRMAN THERNSTROM: Not an agent of
4 the state?

5 COMMISSIONER YAKI: It's an agent of the
6 state for purposes of incarcerating their prisoners.
7 But it is not always an agent of the state --

8 VICE-CHAIRMAN THERNSTROM: I understand,
9 an agent of the --

10 COMMISSIONER YAKI: For regulatory --

11 VICE-CHAIRMAN THERNSTROM: For individual
12 --

13 COMMISSIONER YAKI: -- oversight and that
14 kind of thing.

15 VICE-CHAIRMAN THERNSTROM: Yes, I
16 understand.

17 MR. BLACKWOOD: That's simply a question I
18 haven't looked at. So I will tell you -- here's what
19 we're planning to do at this stage. After we have
20 spent a lot of time trying to determine if anybody had
21 a centralized database is to identify a sample size, a
22 direct discovery to those to find out what additional
23 information exists and perhaps we may be put in the
24 position of only having anecdotal evidence and if we
25 need to do that, the idea is to do it geographically

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1 dispersed and size dispersed. We were trying to
2 state, federal, big prison, small prison, because they
3 may have different resources available and therefore
4 may treat different prison populations differently.

5 Your issue, I simply don't know whether to
6 say --

7 COMMISSIONER YAKI: And again, the reason
8 why is in terms of scale, in some states in the Union,
9 a high percentage of prisoners are actually put in
10 these private institutions. Texas has a fair number
11 of them, Arizona does as well. And I just think that
12 it's a snapshot in terms of representativeness and how
13 a private contractor arguably under the aegis of -- or
14 acting under the color of state law or whether or not
15 it feels bound to accommodate the religious needs of
16 these folks.

17 And again, because it's an expanding area
18 of incarceration, a growth industry, for lack of a
19 better word, I think that it would be useful. And I
20 actually know the names of several of these
21 institutions. I could refer you to a website that has
22 them all that would make it easier to track and
23 perhaps if you were to select one or two for the
24 purposes of doing your surveys, that would help out a
25 bit.

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1 VICE-CHAIRMAN THERNSTROM: I do have to
2 say one of my reactions to this whole line of
3 questioning of yours is to wonder whether we're going
4 to be reduced to a lot of anecdotal stuff that I'm
5 going to be uncomfortable with as the basis of a solid
6 statutory report. And if that is the case, you know,
7 I don't -- then it will not be a report that the
8 Commission really can stand by.

9 COMMISSIONER YAKI: There already is no
10 centralized data base according to David.

11 VICE-CHAIRMAN THERNSTROM: Well, this is
12 the first I've heard of that. I didn't know that.
13 I'm bothered now by the project.

14 COMMISSIONER HERIOT: By the way, the
15 California SAC was not told that jails were not
16 included, so when we did our briefing, we did include
17 a witness from the L.A. County Jail. And I thought it
18 was valuable information.

19 MR. BLACKWOOD: I can tell you this. We
20 have done a survey of virtually all appellate opinions
21 dealing with RLUIPA. And it would cover virtually
22 every RLUIPA case since it got passed. So if there
23 were any cases involving private prisons, that should
24 come up as well. Now that's the legal section and
25 analysis.

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1 My bigger question and I just can't answer
2 it today as far as doing a survey or the more social
3 science and trying to gather data about how actual
4 applications for modifications or accommodation have
5 been addressed, including a private prison, one way or
6 the other.

7 COMMISSIONER HERIOT: David, is there a
8 definition of prison in the Religious Land Use and
9 Institutionalized Persons Act? And are we using any
10 definition of prison that's any different from what's
11 in the Act?

12 MR. BLACKWOOD: I'm sure there's a
13 definition and I haven't focused on it at all. I was
14 using more of a common sense view of -- that had not
15 come up on our radar screen as far as let's look at
16 that as opposed to the state and the federal prisons
17 and their normal operations.

18 COMMISSIONER HERIOT: If they include the
19 private prisons, then it doesn't make any sense for us
20 not to include them.

21 MR. BLACKWOOD: Certainly, they're covered
22 under RLUIPA.

23 COMMISSIONER YAKI: You should double
24 check that. I mean I know -- I used to do prison
25 litigation and I do know that in at least a couple

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1 instances in Federal Courts 1983 claims were turned
2 down because of the status of the prison as private.

3 So I just think if you do your RLUIPA
4 search or database, do one more cut to see if the word
5 "private" comes up to see whether or not they are
6 covered or not. Because if they're exempted from it,
7 again, it goes to the question of are prisoners in
8 certain types of institutions which are becoming
9 prevalent in the United States, outside the aegis of
10 federal protection? And what can we do about that?

11 MR. BLACKWOOD: What I can say is we will
12 look at that and report back by the next meeting. I
13 will also say understand that given from what we are
14 finding that there is, as I say, no centralized
15 database where we can look at the universe as a whole
16 and then slice and dice. Everything at this stage
17 looks like it will be anecdotal, so what it would be
18 is we're not going to look at -- we wouldn't be able
19 to look at all private prisons is my point. We might
20 be able to send discovery to one private prison.

21 COMMISSIONER YAKI: But there are BOP
22 guidelines I know that for sure.

23 MR. BLACKWOOD: Correct, correct,
24 absolutely. And we have talked with BOP and we have
25 talked to Justice and we have talked to private

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1 interest groups. We're just not finding anything that
2 creates a larger data base that we'd be able to use.

3 VICE-CHAIRMAN THERNSTROM: And I assume,
4 Commissioner Yaki, that you are not prepared to
5 approve this project as it currently stands. You want
6 further information about the scope of it, is that
7 correct?

8 COMMISSIONER YAKI: I mean --

9 VICE-CHAIRMAN THERNSTROM: What are we
10 going to do?

11 COMMISSIONER YAKI: To the extent that
12 there are things that -- there's nothing in here
13 inherently objectionable to going forward on those
14 grounds.

15 VICE-CHAIRMAN THERNSTROM: Right.

16 COMMISSIONER YAKI: I'm just concerned
17 that the scope is going to be missing this growing
18 segment of the prison population over here that may by
19 virtue of its private nature escape the kind of
20 scrutiny that we would want in terms of what our
21 report would cover.

22 VICE-CHAIRMAN THERNSTROM: I understand.
23 I think, if I understand correctly, we need to vote on
24 approving this project at this meeting?

25 MR. BLACKWOOD: Yes, we do.

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1 COMMISSIONER HERIOT: I am very
2 sympathetic to what you're talking about, but can we
3 approve this report so the staff can get started and
4 then amend it.

5 COMMISSIONER YAKI: I wasn't objecting to
6 that. I was simply stating --

7 VICE-CHAIRMAN THERNSTROM: Then we can do
8 that.

9 COMMISSIONER YAKI: I would like to move
10 to approve it, but include a request that staff come
11 back at the next meeting or before the next meeting
12 with a written or oral report. I mean written report
13 would be fine, too, because I think next meeting is a
14 briefing which means it's going to take up a lot of
15 time and we've already tabled a lot of stuff for the
16 September meeting. So I mean if we can get back
17 something written that addresses the point about jails
18 and private prisons, that would help out a lot.

19 VICE-CHAIRMAN THERNSTROM: So --

20 MR. BLACKWOOD: We could do that. I can
21 you tell jails, my initial reaction would be that's
22 probably spanning this beyond our capabilities. The
23 private prisons I think we can definitely look at
24 relatively quickly and say yes, we can do that or not.

25 COMMISSIONER YAKI: But we should also

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1 take a look at whether or not, I mean, jails of a
2 certain size. I'm not talking about, you know,
3 Mayberry, RFD county jail with Barney Fife at the
4 desk. I'm talking about LA County, SF County, which
5 built a \$150 million county jail. LA which has jail
6 overcrowding such that people with DUIs who are
7 celebrities check-in in the morning and check-out 82
8 minutes later. I won't mention the name so we go
9 through a defame/degrade report.

10 (Laughter.)

11 But it is fact. You know -- and Maricopa.

12 VICE-CHAIRMAN THERNSTROM: All right, but
13 at some point there is a quality, a scope and quality
14 tradeoff.

15 COMMISSIONER YAKI: Sure.

16 COMMISSIONER HERIOT: But there may be
17 ways to include jails in certain parts of the report
18 with SACs taking testimony.

19 VICE-CHAIRMAN THERNSTROM: There may be.
20 There may be. I'm going to be very bothered if we are
21 entirely, again, I said this before, dependent on
22 anecdotal information.

23 Let us approve it as stated by
24 Commissioner Yaki that the motion includes an
25 expectation, an understanding that you will come back

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1 to us with a further discussion of the Commission's
2 ability to look into where obviously important
3 questions that Commissioner Yaki has raised.

4 MR. BLACKWOOD: We can do that. I suggest
5 that we will probably do it in writing.

6 COMMISSIONER YAKI: Okay.

7 VICE-CHAIRMAN THERNSTROM: I would prefer
8 it in writing actually. I have a preference for
9 staring at exactly what our plans are on a written
10 piece of paper.

11 MR. BLACKWOOD: Okay.

12 COMMISSIONER HERIOT: So is that a motion
13 to approve with that?

14 COMMISSIONER YAKI: Yes, I move to approve
15 with the amendment that staff report back for the next
16 meeting on jail and private prison coverage.

17 COMMISSIONER HERIOT: Second.

18 VICE-CHAIRMAN THERNSTROM: All in favor.

19 COMMISSIONER BRACERAS: Yes, aye.

20 VICE-CHAIRMAN THERNSTROM: Jennifer, what
21 you got you?

22 COMMISSIONER BRACERAS: Yes, aye.

23 VICE-CHAIRMAN THERNSTROM: Okay, anybody
24 opposed? It has passed. Okay, update on the briefing
25 on minorities and foster care and adoption. On

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1 September 21, 2007, the Commission will have a
2 briefing on minority children and state foster care
3 and adoption. Briefing will examine how effectively
4 the US Department of Health and Human Services is
5 enforcing the Multi-ethnic Placement Act of 1994 and
6 its prohibition that public child welfare agencies
7 delay or deny a child foster care or adoptive
8 placement on the basis of the child's or the
9 prospective parent's race, color, or national origin.

10 At this point, the following speakers are
11 at least tentatively lined up to present at the
12 briefing: Commission Joan Ohl; Thomas Atwood,
13 National Council for Adoption; Dr. Rita Simon,
14 American University; Professor Elizabeth Bartholet,
15 Harvard Law School; J. Toni Oliver, National
16 Association of Black Social Workers; Joe Kroll, North
17 American Council on Adoptable Children; the Children
18 Welfare League of America; and Ruth McRoy, who is not
19 identified as who is Ruth McRoy? Somebody got her
20 identification? Currently research professor and Ruby
21 Lee Piester Centellian Professor Emerita at the
22 University of Texas at Austin School of Social Work.

23 So, any discussion of those speakers? Any
24 discussion of the whole plans, the briefings? Any
25 comments? Okay, well there is no vote here. It was

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1 just a question of reporting this.

2 State Advisory Committee issues.

3 **VII. State Advisory Committee Issues**

4 VICE-CHAIRMAN THERNSTROM: Excuse me?

5 COMMISSIONER YAKI: Nothing.

6 VICE-CHAIRMAN THERNSTROM: Can I motion
7 that the Commission recharter the South Carolina SAC?
8 Under this motion, the Commissioner appoints the
9 following individuals to that committee based on the
10 recommendations of the staff director: Mignon Clyburn
11 recommended as chair; Daniel J. Cassidy, Wilfredo
12 DeLeon, James Gaillman, Wanda George-Warren, Roberta
13 J. King, Karyl H. Long, Joanne Metrick, Samuel J.
14 Tennebaum, Jesse Washington, Jr., and Caroline
15 Whitson.

16 Under this motion, Mignon Clyburn is
17 appointed as chair and these members serve as
18 uncompensated government employees and the Commission
19 appreciates the hard work that they will no doubt
20 contribute to this SAC.

21 Under this motion, the Commission
22 authorizes the staff director to execute the
23 appropriate paperwork for the appointment.

24 COMMISSIONER YAKI: Madam Chair?

25 VICE-CHAIRMAN THERNSTROM: Yes.

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1 COMMISSIONER YAKI: I would like to again
2 move to table this to the next meeting. There is a
3 question that I have about a nominee that comes from
4 the staff director and I prefer that the staff
5 director be present for my questioning?

6 VICE-CHAIRMAN THERNSTROM: Did you put
7 that in a formal motion? I'm sorry.

8 COMMISSIONER YAKI: Yes, I just did.

9 VICE-CHAIRMAN THERNSTROM: Yes. Anybody
10 seconded that motion?

11 COMMISSIONER MELENDEZ: I'll second it.
12 Commissioner Melendez. I agree. Usually the staff
13 director answers a lot of these questions that I
14 usually have.

15 VICE-CHAIRMAN THERNSTROM: Any other
16 discussion of this?

17 COMMISSIONER BRACERAS: Yes, it just seems
18 to me that people, you know, have come a long ways to
19 meet in August when we don't typically meet and
20 everything is being tabled. I wasn't able to come
21 because I have another commitment later on, but I'm
22 sure glad I didn't get on that plane.

23 COMMISSIONER YAKI: Well, I am regretting
24 that myself now, Jennifer.

25 COMMISSIONER HERIOT: Which member is it

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1 that you are concerned about, Commissioner Yaki?

2 VICE-CHAIRMAN THERNSTROM: What are you
3 regretting yourself now?

4 COMMISSIONER YAKI: No, flying all the way
5 out here for everything being knocked off. Usually,
6 Jennifer, when we fly out we get all this stuff on
7 Thursday. I presume that the briefing reports would
8 be sent Thursday or Wednesday as is normally. But
9 when they didn't show up, as of last night I knew that
10 I had a sinking feeling that I had flown a long way
11 for naught. If my motion is denied, I will talk about
12 the person, but I would rather not bring the person up
13 now.

14 COMMISSIONER HERIOT: Well, we can't vote
15 on it until we know what the issue is.

16 COMMISSIONER YAKI: Well, I think it is
17 unfair to the person involved --

18 COMMISSIONER HERIOT: You might get
19 somebody to vote with you.

20 VICE-CHAIRMAN THERNSTROM: But you're
21 going to bring that person's name up next time?

22 COMMISSIONER YAKI: Yes, but that is with
23 the staff director. I would rather not have that
24 person linger for a month wondering what I'm going to
25 be asking about that person.

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1 COMMISSIONER HERIOT: It is a lot harder
2 to persuade somebody to vote with you if you don't
3 have --

4 COMMISSIONER YAKI: Well, I am just simply
5 saying as a matter of principle, the staff director
6 has been involved in these proceedings. I have a
7 question about one of the members, at least one of the
8 members, I should say, of the proposed SAC. He has
9 always been responsive. Even if I don't always agree
10 with him, he has been responsive in terms of his
11 answers.

12 COMMISSIONER HERIOT: But you won't
13 disclose who it is even though --

14 COMMISSIONER YAKI: First of all, there
15 are a couple of people, but unfortunately -- do you
16 have the list over there?

17 COMMISSIONER HERIOT: I've got the resumes
18 here.

19 COMMISSIONER YAKI: Well, then I will need
20 to take a look at the resumes because there is more
21 than a couple, which is why I move to table in the
22 first place because --

23 COMMISSIONER HERIOT: Here is the list of
24 the names. The thing is you might not win your motion
25 unless you have something that you could persuade

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1 people with.

2 COMMISSIONER YAKI: Well, I mean if you
3 want me to go ahead and do it, then I'll do it.

4 COMMISSIONER HERIOT: Because you then
5 have to bring it up anyway.

6 VICE-CHAIRMAN THERNSTROM: Yes, I do think
7 that you are -- I mean, eventually it is going to
8 become no mystery as to whom you object.

9 COMMISSIONER YAKI: I need to see the
10 resumes. The names don't mean anything to me except
11 for one.

12 COMMISSIONER HERIOT: I need to check. We
13 need sets for everybody.

14 VICE-CHAIRMAN THERNSTROM: Can we have
15 resumes here? I just looked through my pile because I
16 do not have the resumes.

17 COMMISSIONER BRACERAS: Just so you know,
18 I need to step out of the room for one minute. I will
19 let you know when I am back.

20 VICE-CHAIRMAN THERNSTROM: Thanks,
21 Jennifer. The chaos of my recent life has meant,
22 because of having moved from one state to another, I
23 have not looked at resumes. Were these resumes sent
24 to us?

25 COMMISSIONER HERIOT: These are from a

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1 long time ago.

2 COMMISSIONER YAKI: Yes, these are from a
3 long time ago.

4 VICE-CHAIRMAN THERNSTROM: Yes, that's
5 what I thought.

6 COMMISSIONER BRACERAS: I have returned.
7 Sorry. Is everyone there?

8 VICE-CHAIRMAN THERNSTROM: Everybody is
9 here. We're waiting for -- I need a copy of the
10 resumes.

11 COMMISSIONER YAKI: Here, you can take
12 these. My questions go mainly to the nomination of a
13 Ms. Karyl Long. I would urge you to read Ms. Long's
14 statement before I begin speaking.

15 COMMISSIONER HERIOT: I think you have got
16 the only copy.

17 COMMISSIONER YAKI: She is toward the back
18 of the pile.

19 VICE-CHAIRMAN THERNSTROM: There is a
20 little consultation going on.

21 COMMISSIONER YAKI: How is the weather up
22 in Boston, Jennifer?

23 COMMISSIONER BRACERAS: It is beautiful
24 today.

25 (Whereupon, the above-entitled matter went off the

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1 record at 10:29 a.m. and resumed
2 at 10:33 a.m.)

3 VICE-CHAIRMAN THERNSTROM: Commissioner
4 Yaki, the last time where you had made a motion to
5 table this -- I'm sorry.

6 MR. BLACKWOOD: In your purse.

7 COMMISSIONER YAKI: Are you trying to make
8 off with a microphone again? Isn't there some D-
9 felony for walking off with the microphone from
10 federal property?

11 VICE-CHAIRMAN THERNSTROM: Probably. I've
12 been dying to be --

13 COMMISSIONER YAKI: Unless of course,
14 you've moved her to become -- assume some training at
15 Langley we didn't know about.

16 VICE-CHAIRMAN THERNSTROM: You just added
17 me?

18 (Laughter.)

19 VICE-CHAIRMAN THERNSTROM: I believe that
20 you have made a motion to table consideration of a
21 South Carolina SAC. Is that correct?

22 COMMISSIONER YAKI: Yes.

23 VICE-CHAIRMAN THERNSTROM: Can I have a
24 second on that?

25 It was seconded. All in favor?

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1 (Ayes.)

2 COMMISSIONER BRACERAS: Abstain.

3 VICE-CHAIRMAN THERNSTROM: All right, the
4 motion carries.

5 Future agenda items.

6 **VII. Future Agenda Items**

7 VICE-CHAIRMAN THERNSTROM: There doesn't
8 seem to be anything under future agenda items here.

9 COMMISSIONER YAKI: Everything was on this
10 list.

11 VICE-CHAIRMAN THERNSTROM: Further agenda
12 items. We have a long list of future agenda items.
13 Everything at this point.

14 COMMISSIONER YAKI: I would ask that the
15 chair look to make sure that we don't overload the
16 September meeting, given that we have a briefing with
17 a fair number of people.

18 VICE-CHAIRMAN THERNSTROM: I think we
19 should --

20 COMMISSIONER BRACERAS: That was the whole
21 reason for me to be --

22 COMMISSIONER HERIOT: Yes, we probably
23 need a telephone conference to do some of these SACs.

24 VICE-CHAIRMAN THERNSTROM: Either a
25 telephone conference or we need to meet the day

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1 before.

2 COMMISSIONER YAKI: I know that I cannot
3 do. I'm taking the red eye on Thursday to get here
4 for the meeting on Friday.

5 VICE-CHAIRMAN THERNSTROM: All right.

6 COMMISSIONER HERIOT: Do it as a telephone
7 conference.

8 VICE-CHAIRMAN THERNSTROM: We need to do
9 this.

10 David, what do you think?

11 MR. BLACKWOOD: I think it makes sense to
12 do it and I think we need to perhaps segregate the
13 SACs and do that as a telephone meeting.

14 VICE-CHAIRMAN THERNSTROM: A separate
15 telephone meeting.

16 MR. BLACKWOOD: Correct.

17 VICE-CHAIRMAN THERNSTROM: That's fine
18 with me.

19 Does this need to be in the form of a
20 motion?

21 COMMISSIONER YAKI: No, it's at the
22 discretion of the chair, I think.

23 VICE-CHAIRMAN THERNSTROM: Yes.

24 All right, let us do that. We can't pile all this
25 stuff into the next meeting when we've got a briefing

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1 as well. So we're going to have to go over some of
2 this business beforehand and to the extent to which
3 it's possible, Commissioner Yaki, it seems to me to
4 make sense for you to talk directly to the staff
5 director about -- you've had multiple concerns here
6 that where there are questions addressed specifically
7 to him. And then we can maybe expedite the process of
8 the meeting, the telephone conference meeting itself.

9 So the first -- obviously, there has to be
10 proper notification, so what are we talking about
11 potentially?

12 COMMISSIONER YAKI: We're not doing it the
13 first week of September.

14 VICE-CHAIRMAN THERNSTROM: I am away, but
15 I'm not away from a phone call, from a telephone. My
16 palm pilot is out of juice, so I don't have a
17 calendar.

18 Can we deal with this in terms of
19 scheduling with an email to Commissioners?

20 MR. BLACKWOOD: I would think so.

21 COMMISSIONER BRACERAS: What week in
22 September are we looking at?

23 COMMISSIONER YAKI: We don't know yet,
24 Jennifer. We're going to do an email blast for people
25 --

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1 VICE-CHAIRMAN THERNSTROM: But not the
2 first week of September. It's been suggested the
3 second week of September.

4 COMMISSIONER BRACERAS: We're all busy I
5 know, but the second, the third and fourth week of
6 September I'm extremely tied up with meetings related
7 to the chancellor search at UMass.

8 VICE-CHAIRMAN THERNSTROM: When is our
9 September meeting? I don't have my calendar with me?

10 COMMISSIONER YAKI: Friday, the 21st.

11 (Pause.)

12 VICE-CHAIRMAN THERNSTROM: Except for the
13 South Carolina. The reason that the other SACs, the
14 SACs, well, South Carolina is the exception, but the
15 other SACs, they had to be tabled because we do not
16 have the paperwork on the nominees and it's no use
17 discussing the other SACs until indeed -- is that
18 correct?

19 MR. BLACKWOOD: I believe so. What I
20 would suggest, right now we have two briefing reports
21 that are at issue and three SACs. Two of them as you
22 just pointed out don't have sufficient information.
23 That would leave it broad enough that the staff
24 director should explore the opportunity to set up a
25 telephonic conference, without directing him

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1 definitely to schedule one, but explore and
2 communicate with you all by email or however, about
3 whether it's practical to have one. Because right
4 now, I can't speak to the report. Definitely, we have
5 this SAC, the South Carolina SAC that should be voted
6 on beforehand.

7 VICE-CHAIRMAN THERNSTROM: All right, let
8 us leave it up to the good auspices of you and the
9 staff director to work this out.

10 And we will proceed from there, but can I
11 have a motion to adjourn the meeting?

12 COMMISSIONER BRACERAS: So moved.

13 VICE-CHAIRMAN THERNSTROM: I second it.
14 All in favor?

15 (Chorus of ayes.)

16 VICE-CHAIRMAN THERNSTROM: It's approved
17 unanimously. We are adjourned.

18 (Whereupon, at 10:39 a.m., the Commission
19 meeting was concluded.)
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