

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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OPEN SESSION

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Friday, December 3, 2010

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The Commission convened in Room 540 at 624
Ninth Street, Northwest, Washington, D.C. at 11:12
a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman

ABIGAIL THERNSTROM, Vice Chairman

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

ARLAN D. MELENDEZ, Commissioner

ASHLEY L. TAYLOR, JR., Commissioner

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, ESQ., General Counsel, OGC

TERESA BROOKS

MARGARET BUTLER

CHRISTOPHER BYRNES

IVY DAVIS

DEMETRIA DEAS

LILLIAN DUNLAP

PAMELA DUNSTON, Chief ASCD

TINA LOUISE MARTIN, Director, Office of Management

ALFREDA GREENE

LATRICE FOSHEE

PETER MINARIK, RPCU

JOHN RATCLIFFE, Chief, Budget and Finance

EILEEN RUDERT

DAVID SNYDER

KIMBERLY TOLHURST

VANESSA WILLIAMSON

AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COULTEN

ALEC DEULL (via telephone)

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SCHMAUCH

KIMBERLY SCHULD

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

2 9:32 a.m.

3 CHAIRMAN REYNOLDS: Okay. This meeting will
4 come to order. This is a meeting of the U.S. Civil
5 Rights--Commission on Civil Rights. It's 9:30 a.m.,
6 Eastern Standard Time, on December 3rd, 2010.

7 All commissioners are present. First off,
8 is Commissioner Kirsanow on the line?

9 COMMISSIONER KIRSANOW: I am.

10 CHAIRMAN REYNOLDS: All commissioners are
11 present, with the exception of Commissioner Kirsanow--

12 COMMISSIONER YAKI: It's snowing in
13 Cleveland, Peter?

14 COMMISSIONER KIRSANOW: Just a few
15 flurries.

16 CHAIRMAN REYNOLDS: Okay. Commissioners are
17 present at 624 9th St. NW. Everyone is at
18 headquarters, with the exception of Commissioner
19 Kirsanow, who's participating by phone. First item on
20 the agenda is the approval of the agenda.

21 III. APPROVAL OF AGENDA

22 CHAIRMAN REYNOLDS: I move to approve the
23 agenda. Is there a second?

24 COMMISSIONER GAZIANO: Second.

25 CHAIRMAN REYNOLDS: Okay. I would like to

1 make a few amendments to the agenda. The first would
2 involve adding as roman numeral III, to appear before
3 State Advisory Committee issues, which would become
4 numeral IV, an item on management and operations to
5 discuss continuity of operations at the Commission
6 through the impending transition period.

7 Then, I'd like to amend the--the item on
8 the State Advisory Committee issues to include votes
9 to re-charter the, the Idaho, Alaska, and Louisiana
10 State Advisory Committees.

11 The packets for those states were
12 distributed with your reading materials and a staff
13 Director sent an email to all Commissioners to notify
14 you that we would consider those today.

15 I would also like to add for approval the
16 application of the candidate whose material we
17 received yesterday to fill the Louisiana S.A.C. We
18 would take those items up after the approval of the
19 Wisconsin S.A.C. and before the update on the status
20 of the remaining S.A.C. charters. Is there a second?

21 COMMISSIONER GAZIANO: Second.

22 CHAIRMAN REYNOLDS: Discussion?

23 COMMISSIONER GAZIANO: Should we vote on
24 that before further amendments? Because I would like
25 to offer an Amendment to the agenda as well--Okay.

1 That's fine.

2 CHAIRMAN REYNOLDS: Okay, okay--let's vote
3 on this crop and then we'll do the second crop.

4 COMMISSIONER HERIOT: I've got some, too.

5 CHAIRMAN REYNOLDS: Okay. All those in
6 favor, please say aye. Objections? Abstentions?

7 COMMISSIONER YAKI: I abstain.

8 CHAIRMAN REYNOLDS: With the exception of
9 Commissioner Yaki, who abstains, the Commission, the,
10 the Commissioners vote in favor of the motion.
11 Additional amendments? Commissioner Yaki?

12 COMMISSIONER YAKI: Yes. I would like to
13 remove from the agenda the eminent domain briefing
14 concept paper. I think that we've already approved in
15 the last meeting two other potential briefings and I
16 think that given, given our budget constraints and the
17 fact that we had in the past year or so, dealt with
18 the fact that we needed to prioritize and, our, our
19 budget.

20 In terms of how much, how much time we
21 could devote toward briefings and followup, that we
22 are approving essentially a third new briefing, given
23 the fact that the Commission will be changed
24 substantially by January of next year. And I don't
25 think it's a, it's a good use of staff time and

1 resources to go spinning down a road.

2 If, if the new Commissioners feel that
3 they would like input as well in terms of how to
4 prioritize what they would like on, on the agenda for
5 the Commission for the, for the coming year.

6 CHAIRMAN REYNOLDS: Commissioner
7 Thernstrom?

8 VICE CHAIR THERNSTROM: I, on the question
9 of the eminent domain, I'm in the, that's an issue
10 near and dear to my heart when I've been on the
11 institute for justice Board now for more than ten
12 years.

13 But I did talk to the President of IJ
14 yesterday about this topic and he said, he said a
15 couple of things, the most important thing of which
16 was, gee, if you would have, have, have this--

17 COMMISSIONER HERIOT: Point of order. This
18 goes to substance of, of the argument, not to the
19 agenda item.

20 VICE CHAIR THERNSTROM: Well, I, I, it does
21 go to the question of whether to even discuss it as a,
22 as a--

23 COMMISSIONER HERIOT: It is a discussion.

24 VICE CHAIR THERNSTROM: Well--

25 COMMISSIONER HERIOT: Point of order--

1 CHAIRMAN REYNOLDS: Let's, let's, vice
2 chair, please continue.

3 VICE CHAIR THERNSTROM: He said, gee, well
4 if you would have this briefing three or four years
5 ago, would have been a meaningful topic. But at this
6 point, it's not. And wouldn't really further the kind
7 of National debate on eminent domain which he says has
8 really disappeared.

9 The issue has come and gone for a lot of
10 reasons, including IJ's impact but also because of the
11 economy. He said it's a nonissue by now. And, I, you
12 know, I think, I think we should factor that in in
13 considering whether to, as again, as interested as
14 I've been in this topic.

15 CHAIRMAN REYNOLDS: Is that your opinion as
16 well?

17 VICE CHAIR THERNSTROM: Yes. I think--well,
18 I think I hold the same impression as IJ. As, I think,
19 they have been, you know, they brought the Kilo case,
20 they opinion lead National leaders on this issue, and
21 if he says at this point--

22 CHAIRMAN REYNOLDS: Mic.

23 VICE CHAIR THERNSTROM: Oh, I'm sorry. And
24 if he says at this point we, he can't think of any way
25 in which the Commission could contribute to further

1 understanding of this issue or further, you know,
2 pushing it nationally, I, I have to respect that.

3 CHAIRMAN REYNOLDS: Commissioner Heriot?

4 COMMISSIONER HERIOT: Again, to discuss
5 this, at the, feelings, its taken off the agenda, it's
6 taken off the agenda. But a discussion of this is out
7 of order.

8 VICE CHAIR THERNSTROM: Well, my argument
9 was for taking to off the agenda.

10 CHAIRMAN REYNOLDS: Any more comments?

11 COMMISSIONER GAZIANO: I'm not convinced by
12 that, I'd like it on the agenda. But let's vote.

13 COMMISSIONER HERIOT: Could we have a
14 second for the motion?

15 CHAIRMAN REYNOLDS: Okay.

16 VICE CHAIR THERNSTROM: I'm sorry, what was
17 the motion?

18 COMMISSIONER YAKI: Second to my, second to
19 my motion to--

20 VICE CHAIR THERNSTROM: I second it.

21 CHAIRMAN REYNOLDS: Okay. All those in
22 favor, please say aye. Objections?

23 COMMISSIONER TAYLOR: Object. No.

24 COMMISSIONER HERIOT: No.

25 COMMISSIONER KIRSANOW: No.

1 COMMISSIONER TAYLOR: No, we just want to,
2 this is a vote to take it off the agenda?

3 COMMISSIONER GAZIANO: I voted in favor of
4 the motion.

5 CHAIRMAN REYNOLDS: We have three votes in
6 favor of it, the remaining Commissioners were against
7 it. The item stays on the agenda. Any other
8 amendments? We're closed amendments. Commissioner
9 Gaziano?

10 COMMISSIONER GAZIANO: I have about three
11 minor housekeeping clarification issues that may
12 receive unanimous consent or may need motions
13 regarding the new black panther report that has now
14 been posted on our website and is being prepared for
15 printing.

16 I'd like to put a discussion of those
17 items on the agenda. I would suggest in program
18 planning maybe after the discussion of the eminent
19 domain concept paper.

20 CHAIRMAN REYNOLDS: Okay. Anything else?

21 COMMISSIONER GAZIANO: That's it. Should we
22 vote on that one separately?

23 CHAIRMAN REYNOLDS: Okay, I second it.
24 Discussion? All those in favor, please say aye.
25 Opposition?

1 COMMISSIONER YAKI: No.

2 COMMISSIONER MELENDEZ: No.

3 VICE CHAIR THERNSTROM: No.

4 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

5 COMMISSIONER KIRSANOW: I am in favor.

6 CHAIRMAN REYNOLDS: Okay. The motion

7 passes. Commissioners Yaki, Melendez, and Thernstrom

8 voted against the motion. Any other amendments?

9 COMMISSIONER HERIOT: I've got, I've got a
10 couple here. I would like to amend the agenda to
11 include consideration of the motion to amend the
12 findings and recommendations in the English language
13 report that we did last time.

14 Some changes were made at the last minute
15 to that, and upon conferring with Commissioner
16 Kirsanow, we've agreed that they weren't quite what
17 we, what we wanted to say.

18 And so I would like to move to, to include
19 a motion to amend those findings and recommendations.
20 Do you want me to make the other motion at the same
21 time? There's two things I wanted--do you want to
22 attach to something?

23 CHAIRMAN REYNOLDS: Yes.

24 COMMISSIONER HERIOT: The other would be to
25 amend the agenda to include a discussion of a possible

1 letter on the Akaka bill to send to members of the
2 Senate.

3 COMMISSIONER YAKI: Another one?

4 VICE CHAIR THERNSTROM: Is the Akaka bill
5 still a bill?

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER GAZIANO: It was reintroduced,
8 a new version, two weeks ago.

9 COMMISSIONER HERIOT: A new--a very new
10 version was, with quite a bit of new material in it,
11 was reintroduced a couple of weeks ago and the belief
12 is that it is going to be appended to an omnibus
13 spending bill next week or the week after.

14 CHAIRMAN REYNOLDS: Okay. I second the
15 motion. Additional discussion? All those in favor,
16 please say aye. Those in opposition?

17 COMMISSIONER YAKI: Oppose.

18 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

19 COMMISSIONER KIRSANOW: Aye.

20 CHAIRMAN REYNOLDS: Okay. We have--oh, vice
21 chair Thernstrom?

22 VICE CHAIR THERNSTROM: And I'm abstaining.

23 CHAIRMAN REYNOLDS: One abstention, vice
24 chair Thernstrom. Two votes in opposition,
25 Commissioners Melendez and Yaki. The remaining

1 Commissioners voted in favor of the motion, the motion
2 passes.

3 VICE CHAIR THERNSTROM: I mean, this was
4 just a proposal to send a letter?

5 COMMISSIONER GAZIANO: To discuss sending
6 a letter.

7 VICE CHAIR THERNSTROM: Discuss sending a
8 letter.

9 CHAIRMAN REYNOLDS: Okay. On Wednesday,
10 Commissioner Heriot circulated some minor amendments
11 to the recently adopted English language briefing
12 report, findings and recommendations. Commissioner
13 Heriot, would you like to walk us through these
14 proposed amendments?

15 COMMISSIONER HERIOT: Let me see if I can
16 find them here. Basically, the proposed amendments go
17 through each time we referred to--gosh, I don't have
18 it here--do you have it?

19 COMMISSIONER GAZIANO: I have it.

20 COMMISSIONER HERIOT: Okay. Yes. Rather
21 than, than discriminating or harassing or
22 embarrassing, we have for each of those occasions
23 harassing, embarrassing, or excluding employees or
24 applicants for employment. The reason for that is that
25 harassing and embarrassing would be a sub, a subgroup

1 that comes within discriminating, since the statute
2 only bans discrimination.

3 We can't talk about, about discriminating
4 or harassing or embarrassing, because harassing and
5 embarrassing can be included as discriminating. And
6 they're illegal only up here, they are a form of
7 discrimination.

8 I do not believe that any form of
9 discrimination is possible as a result of, of English
10 only. I think we talked, we're talking about here, the
11 kinds of discrimination that might actually come up in
12 connection with English only in the workplace, being
13 harassing, embarrassing, or excluding employees or
14 applicants for employment.

15 I think it's better this way and it's just
16 the same, it's the same change in three different
17 places, I think.

18 CHAIRMAN REYNOLDS: Okay. I second it.
19 Discussion?

20 COMMISSIONER YAKI: I am totally at a loss
21 here. Is basically Commissioner Heriot saying that if
22 you, if you harass or embarrass someone, it's okay?

23 COMMISSIONER HERIOT: No. I'm saying that
24 if you harass or embarrass someone, it isn't okay.

25 COMMISSIONER YAKI: Then why did you take

1 out the word discrimination?

2 COMMISSIONER HERIOT: Because
3 discrimination is the overarching category. Because
4 otherwise, it was saying discriminate or harass or,
5 the statute only applies to discrimination.

6 CHAIRMAN REYNOLDS: And, and this is the,
7 if you recall, there was a discussion at the last
8 meeting, there were some minor changes made, I believe
9 they were offered by Commissioner Kirsanow--

10 COMMISSIONER HERIOT: Yes. Commissioner
11 Kirsanow was trying to fix a problem that was indeed
12 a problem, but I think the way he fixed it was not
13 helpful.

14 CHAIRMAN REYNOLDS: Well--

15 COMMISSIONER YAKI: I think, I think, you
16 know, to the, to the, let me just respond to this. I
17 mean, I think I said it the last, at the last meeting.
18 This idea that we're going to rewrite section 1606.7
19 to create a, a what I think is a lesser standard for,
20 for people who are filing claims that English only
21 policies discriminate against them on the basis of
22 National origin is, I think, unshown in our record and
23 are very feeble and very thin record.

24 I think that the idea of what constitutes
25 harassing and embarrassing behavior is very loose, and

1 I don't understand why we're, we're treading in this
2 territory so cavalierly when we clearly had a hearing
3 that barely touched upon the, this, that particular,
4 that particular section and it's application.

5 And instead, We're simply using that to
6 sort of go after the way the law is enforced rather
7 than asking questions about what is the law intended
8 to do, which we never really did in, in that hearing
9 that we had.

10 CHAIRMAN REYNOLDS: Other comments?

11 VICE CHAIR THERNSTROM: Look, Mr. Chairman,
12 I wasn't here for the last, obviously, for the last
13 meeting, but I--employers who wish to adopt English
14 only rules just for the purpose of harassing or
15 embarrassing employees, well, I, it's a totally opaque
16 statement to me, what, under what, what would be the
17 evidence that an employer would purposefully,
18 intentionally adopt an English only rule for no other
19 reason than harassing or embarrassing employees?

20 And, and what constitutes embarrassing and
21 harassing? I'm, I'm lost on this. I mean, when English
22 only rules are adopted, they're never for that reason.
23 They're, you know, they're a business judgment, good
24 or bad.

25 Calling discriminatory or not, but this

1 seems to me, this is a language that I'm, I'm having
2 trouble with.

3 CHAIRMAN REYNOLDS: Other comments? All
4 right. All those in favor, please say aye.
5 Abstentions?

6 COMMISSIONER YAKI: Opposed. I'm opposed.

7 CHAIRMAN REYNOLDS: Okay. One abstention.
8 Vice Chair Thernstrom.

9 VICE CHAIR THERNSTROM: I guess I'll
10 abstain on this since I wasn't here last time. But, as
11 I say, I can't understand this language.

12 CHAIRMAN REYNOLDS: And, Commissioner Yaki
13 opposes. So we have two abstentions, Commissioners
14 Melendez and Thernstrom. One vote against the motion,
15 Commissioner Yaki. The remaining Commissioners vote in
16 favor of the motion. The motion passes. Is there any
17 other changes, are there any other changes?

18 COMMISSIONER HERIOT: They're all on this
19 sheet.

20 COMMISSIONER GAZIANO: Those were on two--
21 did we just vote on two? On, both together? Both
22 findings together?

23 COMMISSIONER HERIOT: I thought we were
24 voting on all, all, the same, it's the same change in
25 three different findings and recs.

1 II. PROGRAM PLANNING

2 PANEL 1: APPROVAL OF SCHOOL CHOICE, THE BLAINE
3 AMENDMENT, AND ANTI-CATHOLICISM BRIEFING REPORT

4 CHAIRMAN REYNOLDS: Okay. Okay. Okay. On
5 November 26th, the staff directed distribute the final
6 draft of the school choice, the Blaine Amendment, an
7 anti-Catholicism briefing report. I move that the
8 Commission approve for publication part A of the draft
9 enforcement report produced by staff and reflecting
10 Commissioner input on school choice, the Blaine
11 amendments, and anti-Catholicism, part A, as
12 distribute in draft form to Commissioner contains a
13 brief overview and summary of the issue and why the
14 Commission chose to conduct this briefing.

15 A summary of the proceedings consisting of
16 synopses of eight panelist's oral statements during
17 the briefing and a synopsis of the, the question and
18 answer sessions, as well as copies of the panelist's
19 written statements. Under this motion, if the majority
20 of the Commission votes to adopt part A of the
21 briefing report, the Commission will then open
22 discussions on part B.

23 If part A fails to obtain a majority of
24 votes, the discussion of part B, becomes moot. Is
25 there a second?

1 COMMISSIONER GAZIANO: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 COMMISSIONER GAZIANO: I'm not entirely
4 comfortable with the proposed findings and
5 recommendations for this report. I wasn't on the
6 Commission when this briefing took place, but I do
7 think the testimony is valuable and I'd like other
8 Commissioners input on this.

9 But I think what I would suggest rather
10 then try to slog through the findings and
11 recommendations individually is that we post the
12 testimony prominently on our website together with the
13 transcript of the hearing and that we not move forward
14 with formal adoption of and publication of this
15 report.

16 In part because, it's an important issue,
17 but in part because it's somewhat of an old report.
18 Are other Commissioners agreeable with that?

19 CHAIRMAN REYNOLDS: Vice chair Thernstrom?

20 VICE CHAIR THERNSTROM: I definitely am
21 agreeable with that. This is, I mean, it's very
22 telling, this briefing was held before you were even
23 on the Commission. And--

24 COMMISSIONER GAZIANO: And I've grown old
25 since I've been on the Commission.

1 VICE CHAIR THERNSTROM: Hey, I've grown,
2 I've grown older. I, I, you know, the age of the, the
3 amount of time lapsed really bothers me as well and
4 I'm perfectly happy with your recommendation. But I
5 would like to add a sentence of explanation saying,
6 this briefing was held on the following date.

7 So, you know, it's more than three and a
8 half years old--

9 COMMISSIONER GAZIANO: I assume that would
10 be the, plain somewhere anyway--

11 VICE CHAIR THERNSTROM: No, it's not,
12 because, because We're not, We're no longer putting
13 these, I believe, the dates of the briefings,
14 briefings is not correct.

15 COMMISSIONER GAZIANO: My motion was to
16 include somewhere prominently on our website the
17 testimony and the transcript of the briefing--

18 VICE CHAIR THERNSTROM: Okay.

19 COMMISSIONER GAZIANO: --which would
20 include the date thereof--

21 VICE CHAIR THERNSTROM: Okay. We should
22 include the date, fine. That's fine. Okay. I, I am in
23 agreement with this. It's too old--

24 COMMISSIONER HERIOT: But that's already
25 up, right? The transcript is already up--

1 COMMISSIONER GAZIANO: The transcript is up
2 and ordered but no one would find it, no one would see
3 that it's--

4 COMMISSIONER HERIOT: Yes, it's not marked,
5 it needs to be marked by what it is.

6 CHAIRMAN REYNOLDS: Commissioner Yaki.

7 COMMISSIONER YAKI: This briefing is so
8 old, we would basically have to burn white pieces of
9 paper in the chimney in order to get people to notice
10 it. So, I, I would, I would, I would, actually, I am
11 speaking in support of Commissioner Gaziano's motion
12 that we just take the testimony, get it out there, and
13 move on.

14 CHAIRMAN REYNOLDS: Any other comments?

15 MR. BLACKWOOD: The testimony of statements
16 is something you're talking about, because I wasn't
17 used.

18 CHAIRMAN REYNOLDS: Okay. Let's be precise.
19 What do we, what are we talking about?

20 COMMISSIONER GAZIANO: The written
21 statement--

22 CHAIRMAN REYNOLDS: Testimony, written
23 statements, the hearing--the hearing transcript all
24 together in one nice little link or something.

25 COMMISSIONER YAKI: Essentially,

1 essentially part A, right?

2 COMMISSIONER HERIOT: No, part A is not,
3 not--

4 COMMISSIONER GAZIANO: There's a little
5 extra summary, but I don't think, know that we need
6 to--

7 COMMISSIONER HERIOT: Well, wait, part A--
8 part A is the report.

9 COMMISSIONER YAKI: Forget it. Do it Todd's
10 way.

11 VICE CHAIR THERNSTROM: I agree.

12 COMMISSIONER GAZIANO: Boy, I like the
13 sound of that.

14 CHAIRMAN YAKI: Just remember that, Todd.
15 It's going to be very rare--

16 VICE CHAIR THERNSTROM: Or, come through
17 with more things that everybody can agree on.

18 CHAIRMAN REYNOLDS: Before, before any
19 Commissioners decide to change their mind, let's,
20 let's vote. All in favor, please say aye. Any
21 abstentions? Any votes against the motion, as--well,
22 any votes against the motion? The vote is unanimous.

23 COMMISSIONER YAKI: You should probably
24 send a note to Jennifer Braceras saying, sorry, we'd
25 like you to make a statement but we can't. This is her

1 briefing.

2 CHAIRMAN REYNOLDS: Okay. I move that the
3 next up is the eminent domain briefing concept paper
4 and scheduling of a briefing.

5 PANEL 2: APPROVAL OF EMINENT DOMAIN BRIEFING CONCEPT
6 PAPER AND SCHEDULING OF BRIEFING

7 CHAIRMAN REYNOLDS: I move that the
8 Commission approve a concept paper on the civil rights
9 implications of eminent domain abuse. This proposal
10 was distributed to Commissioners on Commissioner
11 Kirsanow's behalf by email this past Wednesday.

12 As a part of this motion, a briefing on
13 this topic would be held on the date of March 2011 in
14 person meeting, which is March 11--March 11th, 2011.
15 Is there a second?

16 COMMISSIONER GAZIANO: Second.

17 CHAIRMAN REYNOLDS: Discussion? Vice chair
18 Thernstrom.

19 VICE CHAIR THERNSTROM: Okay, let me go
20 back to saying a few things more about this. Again,
21 Commissioner Kirsanow, I am wedded to the topic of
22 eminent domain. I mean, you know, it's been a huge
23 topic for the Institute for Justice.

24 Obviously, they were national leaders on
25 this issue. But, when the President of IJ tells me

1 that at this point a U.S. Commission on Civil Rights
2 briefing would not in any way further--I mean, the,
3 the movement is, has really come and gone.

4 That would not be, it would not be a
5 contribution. I have to take that seriously. He had a
6 couple of other things to say which is that, you know,
7 the, the language of, of the IJ report victimizing the
8 vulnerable is a little bit squishy.

9 I mean, we've got, yes, in the project
10 areas, 58% minority on average as opposed to 45% in
11 the surrounding community. But, there isn't here a
12 kind of systemic--you, you can't look at the pattern
13 of where eminent domain cases have been brought and
14 argued. These are, this is clearly a case of disparate
15 impact in general on minorities.

16 So, I've got a little bit of a problem on
17 whether this is quite the topic for this Commission,
18 again, as much as eminent domain cases have bothered
19 me, more than bothered me--appalled me. So, I, I would
20 like us to seriously consider whether this is a topic
21 whose time has come and gone, and whether we shouldn't
22 leave the door open for more profitable hearings in
23 the future where we can have, really can have a
24 National impact.

25 And, Chip Mellor was saying, again, you're

1 not going to have any National impact at this point
2 with this briefing. Too late.

3 CHAIRMAN REYNOLDS: Commissioner Gaziano?

4 COMMISSIONER GAZIANO: With due respect to
5 my friend Chip Mellor, I, I, I, I would be very
6 surprised if he would say those things. And, and I
7 may--

8 VICE CHAIR THERNSTROM: Well, I'm sorry--

9 COMMISSIONER GAZIANO: Let me, let me--I
10 didn't interrupt you.

11 VICE CHAIR THERNSTROM: Okay. But don't
12 accuse me of lying.

13 COMMISSIONER GAZIANO: No, I'm not accusing
14 you of lying, I'm just saying that maybe there's an
15 issue of interpretation. But I, I'm looking at the
16 Institute for Justice's website, Castle Coalition.
17 They are, continue to put out all sorts of very
18 interesting new--can you get this to reappear here? I
19 wanted to read one of their, their, their, their, new,
20 newest, new--new--why can't I--what do these fancy
21 phones do?

22 They continue to develop their website,
23 the Castle Coalition, which is singularly devoted to
24 this issue. They continue--one of their newest
25 entries, this new survey shows Americans still opposed

1 to eminent domain abuse.

2 Now, it is possible that Chip Mellor
3 believes that while it's extremely important to him
4 and everyone else present that the Commission has
5 nothing to contribute on that issue. But I think we're
6 in a better position to judge whether the Commission
7 is in a position to help on this issue.

8 But I would also note that the briefing
9 paper cites the amicus briefs of the NAACP, and the
10 NAACP seem to be quite concerned that this was an
11 important civil rights issue. And I think we're in a
12 good position to determine whether we still have some
13 bearing on this issue, that IJ and the NAACP and the
14 Heritage Foundation and Ilya Somin and so many other
15 people find very important.

16 CHAIRMAN REYNOLDS: Commissioner Yaki?

17 COMMISSIONER KIRSANOW: Mr. Chair?

18 COMMISSIONER YAKI: I'll, I'll defer, I'll
19 defer to the author. No, I'll defer to Peter.

20 CHAIRMAN REYNOLDS: Okay. Pete?

21 COMMISSIONER KIRSANOW: Thank you,
22 Commissioner Yaki. I simply wanted to approve what
23 Commissioner Gaziano said. I have a lot of respect for
24 IJ but I do note that eminent domain, untethered from
25 any implications related to this renewed act, is one

1 of their big concerns.

2 Now, having said that, is there a
3 discriminatory effect of some of these eminent domain
4 decisions? I don't know that. That's I think what we
5 would like to find out. But there is evidence out
6 there of that effect.

7 I know there are, Alabama S.A.C. chair
8 thinks this is the biggest issue down there, and he
9 has cited numerous occasions where it appears, where
10 it is discriminatory intent, there was clearly
11 discriminatory impact, of such decisions.

12 And, I think Commissioner Gaziano cited
13 some scholarly work by others, Somin for example, and
14 others who indicated that, you know, there may be some
15 discriminatory concerns here, and what I think, what
16 we'd like to do is deduce whether or not, deduce
17 evidence as to whether or not that in fact is the
18 case.

19 CHAIRMAN REYNOLDS: Okay. Commissioner Yaki
20 and then Vice Chair Thernstrom.

21 COMMISSIONER YAKI: Yes, I just wanted to
22 reiterate this point, we are, we have a, we have an
23 agenda on management and operations to deal with the
24 transition to what will be a different, a different
25 Commission in terms of it's, in terms of it's makeup.

1 In the coming, in the coming weeks, we
2 have issues that We're going to have to deal with
3 probably in the near future regarding budgetary items
4 and the budget for the Commission. I think that, that,
5 this isn't, this is an item that, while I think
6 probably has some merit, deserves to be discussed and
7 debated amongst, with the new members in tow and not
8 to basically be spending our money on briefings for
9 the first three months of the year while these people
10 are playing, are playing catch up.

11 This basically sets an agenda three months
12 out for folks who are going to be here possibly in two
13 weeks. So I think that, that this is premature. I
14 think that it's unfair to them and to their
15 willingness to be invested and participate in the
16 Commission at a time when we have the opportunity and
17 the ability to wait to move forward.

18 And, given the holiday season, et cetera,
19 and I think that it, it's unfair, premature, and
20 something that we need to, we need to look at from a
21 total picture regarding our budget for FY 2011,
22 because we're not too sure whether there may not be
23 some retroactive cuts or what have you in whatever
24 spending bills that may be coming down the road.

25 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

1 VICE CHAIR THERNSTROM: Number one, I am
2 not in the habit of misrepresenting what other people
3 say to me. I am scrupulous on that account, and so I
4 accurately reported what Chip Mellor said to me, and
5 I, as I always accurately report conversations.

6 I have no, there's nothing at stake for me
7 in, in not, I am not opposed to holding the briefing.
8 I just am raising legitimate questions, and because I
9 have legitimate questions, I called Chip Mellor to
10 discuss it with him.

11 Of course there's still a Castle
12 Coalition, of course it's still an issue of, of
13 interest and, in which by the way, has been a, of
14 course, has in many ways put IJ on the, on the map.

15 And, and a lot of its supporters have, are
16 very appreciative of the national role that IJ has
17 taken here, and I mean, of course, they're not going
18 to kill the Castle Coalition and they shouldn't. But,
19 having said that, I, I mean, my question here is one
20 of priorities, given what I heard from the President
21 of IJ.

22 Am I opposed to having this briefing? No,
23 I just think, you know, I would agree with
24 Commissioner Yaki, let's put it in the mix down the
25 road because of, of the message I get, got from Chip

1 Mellor, which is, you know, three years ago, this
2 would have been great. Today, it's, the issue has kind
3 of ground to a halt.

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
5 would you support this if Chip Mellor had given you a
6 different response--

7 VICE CHAIR THERNSTROM: Absolutely.

8 CHAIRMAN REYNOLDS: Okay. Commissioner
9 Melendez?

10 COMMISSIONER MELENDEZ: Yes, thank you, Mr.
11 Chairman. My concern also would be, you know, it
12 depends on how much time we have to actually hold
13 this, if this is the first briefing of the new year.

14 I, I know one of the issues was, how many
15 briefings are we going to have for the whole year.
16 It's not like we're going to have one every month. I'm
17 still, in relationship to the budget, which I would
18 always try and get a handle on, how we're spending,
19 that kind of dictated how many briefings we're going
20 to have, because how much staff, whether or not we
21 would have this briefing in March or April or even
22 June, just depends on how many we're kind of looking
23 at for the year.

24 And if we are thinking about new
25 Commissioners would actually be in place in January,

1 you know, maybe they should weigh in to, you know,
2 whether this briefing should go first or something
3 else should arise to take its place. And, I think I'm
4 kind of looking at, you know, all of us having input
5 into what briefings we should push to the forefront.

6 We all had votes on it, I had certain
7 ones. Everybody here, and then if, then if
8 Commissioner Thernstrom was one of the main advocates
9 on this and she's kind of pulling back away from it,
10 then I'm kind of respecting the, you know, the, the
11 chief advocate on this issue.

12 And I, I understand others have jumped on
13 to kind of push this forward, but I, I just don't
14 feel--I'd, I'd, I'd like to see some input from new
15 Commissioners. I know that, you know, with my
16 position, I talked to Senator Reid's Office, and
17 they're going to have somebody, maybe in the next
18 couple days, so that person should hopefully be on,
19 right away. So that person hasn't been put in, but
20 what, what briefings we start to see, kind of the, the
21 new year. That's just my opinion. Thank you.

22 CHAIRMAN REYNOLDS: Commissioner Heriot?

23 COMMISSIONER HERIOT: I just wanted to
24 return to why we, We're trying to set up the briefings
25 in the first place. Now, there is a risk that there

1 will not be a quorum for the next couple of months,
2 and if we are going to have any kind of a meeting, the
3 only kind of meeting we could have would be one where
4 there is no Commission business. I think it makes
5 sense to have these things lined up, and I intend to
6 vote for the motion.

7 CHAIRMAN REYNOLDS: Commissioner Gaziano,
8 then Commissioner Yaki.

9 COMMISSIONER GAZIANO: Yes. I want to
10 respond as well to, to a comment Commissioner Yaki
11 made, and he said that this would be a pretty
12 interesting topic but thought that the new
13 Commissioners should pass on all this. I don't think
14 we should presume, it's not our place to presume that
15 they would not be interested in this.

16 When many of us cycled on, there were
17 about two year's worth of briefings on the schedule.
18 They, they probably were not the ones I would have
19 chosen but many of them were quite interesting to me,
20 and it might have been a bigger burden on me to try to
21 figure out the whole universe of civil rights issues
22 and reopen every hearing.

23 There were some that I--briefing--some
24 that I did want to reopen, but it was actually--

25 CHAIRMAN REYNOLDS: I, I, was about, I was

1 about to remind you of some of those conversations--

2 COMMISSIONER GAZIANO: There was one--but,
3 it took six months, until six months into the, into my
4 service, and I actually appreciated that, that there
5 were some briefings, and I could just study the
6 briefing at issue. So, if Commissioner Yaki is correct
7 that they are so opposed to any of the topics that
8 they want to affirmatively set them aside, that will
9 be the next Commission's prerogative.

10 But we should neither, we should not
11 assume that they will not find this as interesting as
12 Commissioner Yaki thinks, and we think, and that we
13 should also be mindful of resources and have our staff
14 have something to do.

15 So, I, I think that the argument that
16 there will be new Commissioners and they will need to
17 get up to speed, cuts in favor of approving a series
18 of topics right now, and, and, and, and letting them
19 override that decision if they so choose.

20 CHAIRMAN REYNOLDS: Commissioner Yaki?

21 COMMISSIONER YAKI: I'm sort of puzzled by
22 a comment that Commissioner Heriot made, which was, we
23 may not have quorum, so therefore we should have
24 briefings to go forward, because they don't need
25 quorum. I, I just find that to be an astounding waste

1 of Commission time and resources.

2 The fact of the matter is, is that, I, I
3 hate to, I hate to disabuse you of this, of this, but
4 the fact is that we are going to have a brand new
5 Commission seated in the first week of, first week of
6 January. There's not going to be holdovers, there's
7 not going to be danglings until February or March.

8 There will be, there will be at least
9 three new Commissioners sitting at this, sitting at
10 this table, come--two, three. I can't, I can't count
11 anymore. Three. Three new Commissioners sitting at
12 this table by January of, of this year.

13 And, I believe that they are going to--I
14 just see no point in wasting Commission time and
15 resources chasing something that is probably going to
16 be changed or could be changed. Or, maybe could not
17 be, or maybe it won't be changed. But it still, I
18 don't want us--there, there is plenty for, to do at
19 this Commission.

20 We have a serious backlog still of reports
21 that are out there, that need to get put done. We've
22 still got work on S.A.C. issues. The idea that--and,
23 as much as I, am going to say this, and it may sound
24 rather cavalier, I'm also not interested in working
25 our staff to death with make work during the Christmas

1 holiday season given how hard they've all been working
2 this year to keep up with the tremendous amount of
3 resources and time that we've had to deal with, the
4 New Black Panther fiasco, and apparently it will not
5 be ending depending on what Commissioner Gaziano has
6 coming forward.

7 So, you know, to me, piling on work and
8 saying, you know, merry Christmas, ho ho ho, We're,
9 we're trying to get all this done before the new
10 people come in, is ridiculous and, you know, all I can
11 say is, that, that, is that this kind of tone is not
12 the kind of tone that I hope we see with the new
13 Commission.

14 But, the more that some of the old
15 Commission believes that they should simply do what
16 they want to do and set the agenda and, for the new
17 folks, the more it's, it's not going to be as trouble
18 free in the transition as, as one would hope.

19 CHAIRMAN REYNOLDS: Well, Commissioner
20 Yaki, I assure you that when the new Commissioners
21 arrive, harmony will descend upon this building. There
22 will be a new change in the tone of the Commission.

23 COMMISSIONER YAKI: It's the holidays. You
24 never know.

25 VICE CHAIR THERNSTROM: Just one last word,

1 Jerry, from me, on this. Look, I want to make it
2 crystal clear, eminent domain has been a, a favorite
3 topic of mine over at the Institute for Justice. I've
4 been on that Board, and supporting that topic for ten
5 years.

6 The Little Pink House, if nobody has, is
7 interested in a book on the Kelo decision, is a
8 delightful read. Kelo, of course, did not involve a
9 minority neighborhood at all, but, so, my, you know,
10 my question here doesn't go to the word, the questions
11 I've raised don't go to the worth of the, of this, of
12 exploring this topic.

13 But, simply, to the question of looking
14 at the spectrum of, of topics we might be considering
15 down, down the road with the new Commissioner--
16 Commissioners, looking at them with the new
17 Commissioners.

18 And, again, weighing whether, whether we
19 can as a Commission at this point contribute something
20 to what has been an important national debate and a
21 National debate that even though IJ lost that case, in
22 a way, it has won, because there have been so many
23 changes in the law in response to the Kelo decision.

24 And, you know, a process that's, by now,
25 pretty much kind of gone into slow motion, so much has

1 been done, which I applaud, of course, so, you know,
2 just to clarify.

3 COMMISSIONER GAZIANO: Let's call the
4 question.

5 VICE CHAIR THERNSTROM: My, my position
6 here. Of course I, I've been as outraged as all of IJ,
7 the whole IJ Board has been with the abuse of the
8 eminent domain powers. But, you know, so I'm just
9 raising questions about deciding on this briefing at
10 this point.

11 CHAIRMAN REYNOLDS: Okay. One last
12 question. I hope it's the last question. Mr. Staff
13 Director, in terms of a back load, what is a work
14 load, work load look like in terms of briefing reports
15 that are still in the, the queue?

16 STAFF DIRECTOR DANNENFELSER: Well, the
17 briefing reports that are still pending are basically
18 the Commissioners statements and the rebuttals by the
19 Commissioners. We have approved the, the wage
20 disparity briefing, so there's work being done to line
21 up speakers on the wage disparity briefing. And also,
22 the school discipline briefing, there's work being
23 done on, on those two topics right now.

24 And, and, also there's work being done to
25 try to finalize the SACs that are still outstanding,

1 still need to be rechartered.

2 COMMISSIONER YAKI: Point, point of--what
3 happened to the age discrimination briefing?

4 STAFF DIRECTOR DANNENFELSER: And, then, of
5 course, the age discrimination and--I'm sorry, yes.
6 Age discrimination is one we still, we need, we need
7 to work on that report.

8 VICE CHAIR THERNSTROM: So, in other words,
9 the staff is not out of work.

10 STAFF DIRECTOR DANNENFELSER: But we also
11 have the, you know, the pending projects on the sex
12 discrimination in liberal arts college admissions and
13 the Cy Pres issue.

14 PANEL 3: UPDATE ON FY 2011 CY PRES ENFORCEMENT REPORT

15 CHAIRMAN REYNOLDS: Is OGC, is OGC
16 currently working on any topics? Well, what's, what's,
17 what's on your, what's on your plate?

18 VICE CHAIR THERNSTROM: And what other old
19 briefings are still in the--

20 MR. BLACKWOOD: Well, Cy Pres--this is
21 David Blackwood--OGC has turned over the information
22 they collected on the Cy Pres to Mr. Burns, maybe we
23 will play a role in that or maybe not. Right now we
24 have no active role. Our main focus is, with regard to
25 the Black Panther and completing that project.

1 CHAIRMAN REYNOLDS: Anything else?

2 MR. BLACKWOOD: No.

3 CHAIRMAN REYNOLDS: Okay. So, one issue
4 that we have to be concerned about also is ensuring
5 that the folks in OGC have some work.

6 VICE CHAIR THERNSTROM: Well, wait a
7 minute. Would eminent domain fall in that--

8 COMMISSIONER GAZIANO: I would certainly
9 propose that the General Counsel's Office take on the,
10 this is primarily a legal issue.

11 VICE CHAIR THERNSTROM: I don't think it
12 is--

13 COMMISSIONER GAZIANO: I think it is.

14 VICE CHAIR THERNSTROM: But legal issues--

15 COMMISSIONER GAZIANO: Call the question,
16 please.

17 CHAIRMAN REYNOLDS: Okay, let's, let's,
18 let's vote. All those in favor, please say aye.
19 Objections?

20 COMMISSIONER YAKI: I object, because we
21 basically, basically going to move to rip this
22 briefing out anyway.

23 CHAIRMAN REYNOLDS: Commissioner--
24 Commissioner Melendez?

25 COMMISSIONER YAKI: Just to let you know

1 what I'm going to do.

2 CHAIRMAN REYNOLDS: Okay. I'm not
3 surprised. Commissioner Melendez?

4 COMMISSIONER MELENDEZ: I'm opposed.

5 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

6 VICE CHAIR THERNSTROM: I'm abstaining on
7 this. I mean, I love this topic. I just don't love it
8 at this moment for the Commission.

9 CHAIRMAN REYNOLDS: Okay. Maybe the love
10 will return at some point. Okay. We have one
11 abstention, two objections. The motion passes. Next
12 up, New Black Panther Party.

13 COMMISSIONER GAZIANO: A few, few related
14 items. One, I want to ask the Staff Director and
15 general counsel first. I know that we have a version
16 of the report on the website, and I understood there
17 was going to be some links added to it. Has that been
18 done yet, or, what is the schedule for that?

19 MR. BLACKWOOD: This is the general
20 counsel. We are in the process, and working with an
21 editor, to install those links. We're not going to do
22 it piecemeal, We're going to do it all at once.

23 COMMISSIONER GAZIANO: That, that makes
24 sense.

25 MR. BLACKWOOD: But--

1 COMMISSIONER GAZIANO: I just wondered what
2 the schedule was.

3 MR. BLACKWOOD: --I, I think it was twenty
4 different items. When We're complete, some of those,
5 We're, we're digging up. Some of them We're going to
6 have to scan and add them to a specific site so we can
7 have them all, all the links in one place. I would say
8 in the next week or so. It's not going to take too
9 much longer.

10 COMMISSIONER GAZIANO: Okay. Just a, I have
11 a, one matter about the investigation itself, I'll get
12 to later. But let me just stick to the report for now.

13 We had a discussion last meeting about
14 whether Commissioners whose term are expiring should
15 have the extra time to submit statements and rebuttals
16 and those cycling off didn't want to, didn't think,
17 thought that there was some complications with that
18 and didn't' seek a vote on that.

19 But I want to know right now whether there
20 is agreement amongst us or if a motion is necessary to
21 allow Commissioners, this would be Commissioner
22 Melendez, Taylor, Reynolds, and Yaki, if he is not
23 reappointed, to join other Commissioner's statements,
24 even if those statements are filed after the date in
25 which their, their term expires, if they voted on the

1 underlying report. Is there any, any interest or
2 objection in that?

3 CHAIRMAN REYNOLDS: Please unpack this for
4 me. So you're saying that Commissioner Taylor and I,
5 well, Commissioners Melendez, Taylor, and I--

6 COMMISSIONER GAZIANO: If I don't get my
7 statement--as a hypothetical--or, let's say you want
8 to join Commissioner Yaki's statement on December
9 19th, and he files his on December 19th, you could, you
10 could join his statement, and all you would need to
11 say is yes.

12 CHAIRMAN REYNOLDS: Okay. My, my view is
13 that my, my ability to act in the capacity of a
14 Commissioner ends on my last day, which I believe is
15 the fifth of December.

16 MR. BLACKWOOD: Correct.

17 CHAIRMAN REYNOLDS: So, in terms of
18 submitting comments, provided the record is open, I
19 think that that's fine. Anyone in the public can do
20 that. But, to act in the capacity as a Commissioner
21 after my term has expired, to be gentle, I think that,
22 problematic.

23 COMMISSIONER HERIOT: Well, let me see if
24 I understand this. You're saying that you could file
25 a, a, a, a, a, a, a statement as a member of the

1 public, saying, I agree with Commissioner Yaki.

2 CHAIRMAN REYNOLDS: Submit my statement or
3 send in information--

4 COMMISSIONER HERIOT: But, you, you, you
5 could say, I agree with Commissioner Yaki, a document
6 like that?

7 VICE CHAIR THERNSTROM: Well, wait a
8 minute--

9 CHAIRMAN REYNOLDS: Am I acting in my
10 capacity as a Commissioner at this time?

11 COMMISSIONER HERIOT: I, I, I, I agree with
12 Commissioner Yaki. Signed, Gerald Reynolds. That's
13 okay, right?

14 CHAIRMAN REYNOLDS: If I'm acting in the
15 capacity of the Commission then I would say that
16 that's not all right.

17 COMMISSIONER HERIOT: Yes, but you can do
18 it as Gerald Reynolds, not Chairman.

19 CHAIRMAN REYNOLDS: I could submit
20 information provided the record is still open. Yes. I
21 would be able to do that.

22 STAFF DIRECTOR DANNENFELSER: It's not
23 open.

24 CHAIRMAN REYNOLDS: And--okay. I've been
25 informed that it's not open.

1 STAFF DIRECTOR DANNENFELSER: I mean, we,
2 it was open for a period of time, but now it's been
3 closed. I mean, Commissioners I guess could vote to
4 reopen it, but at this point it's not open.

5 COMMISSIONER GAZIANO: I, I--I don't, you
6 know, I think we could extend this, this courtesy and
7 it, and it wouldn't, but if, if certain Commissioners
8 don't want to avail themselves, Commissioner Taylor
9 and Melendez, are you interested in joining statements
10 of follow Commissioners?

11 CHAIRMAN REYNOLDS: After your term has
12 expired?

13 COMMISSIONER GAZIANO: You, you can clearly
14 submit one through whatever day it is, I forget when
15 your term is scheduled to expire. I know others are,
16 are, may expire on Sunday.

17 CHAIRMAN REYNOLDS: Is there, is there any
18 interest in this?

19 COMMISSIONER MELENDEZ: Not really, from
20 me. I mean, I'm fine with--

21 CHAIRMAN REYNOLDS: Okay, that's one.

22 COMMISSIONER TAYLOR: No, and I, I just
23 wouldn't want to be a part of setting that precedent
24 for the institution.

25 CHAIRMAN REYNOLDS: Okay.

1 COMMISSIONER GAZIANO: Okay. Well, then I
2 won't, then, then what I might request is a note in
3 lieu of this that Commissioners could not join other,
4 other statements. Is there any objection to that, that
5 explains when terms expire?

6 CHAIRMAN REYNOLDS: It's, a, a statement
7 saying what?

8 COMMISSIONER GAZIANO: That certain
9 Commissioners were not, because their term expired,
10 they could not join certain statements.

11 VICE CHAIR THERNSTROM: Well, they have
12 chosen, just chosen not to even discuss the question
13 of whether they could or not--

14 COMMISSIONER GAZIANO: No, there, there's
15 a statement that they believe they cannot do so, so
16 why don't we say that in the report?

17 CHAIRMAN REYNOLDS: In your statement, why
18 don't you just say that Jerry agreed with me--

19 COMMISSIONER GAZIANO: Fine, I will, and
20 you can't disagree with me. Okay, next, next question.
21 Because the Vice Chair was not present when we adopted
22 part A, the two findings and the recommendation, but
23 is free to, to, I assume she's free to add her own
24 statements, that's a clarification that, that we might
25 want to seek.

1 But, prior to getting to that issue, it,
2 since we had five Commissioners vote to approve it,
3 it wouldn't affect the actual issuance of the report
4 either way. If she records her vote but, I move at
5 this time to provide the Vice Chair an opportunity to
6 have her position recorded on part A, finding 1A,
7 finding 1B, and the recommendation.

8 PARTICIPANT: I got to--how can you--

9 CHAIRMAN REYNOLDS: Is there a second?

10 VICE CHAIR THERNSTROM: Second.

11 CHAIRMAN REYNOLDS: Discussion?

12 COMMISSIONER YAKI: From a parliamentary
13 viewpoint, from a procedural standpoint, how you can
14 reopen a vote way after the fact for someone who was
15 a member and did not participate at the time, I don't
16 know. I mean, I suppose--

17 COMMISSIONER GAZIANO: I could reopen the
18 entire vote. This is something much smaller than that.

19 COMMISSIONER YAKI: Let me finish. Let me
20 finish. But, if that's the position you want to take,
21 Todd, you know, whatever.

22 COMMISSIONER HERIOT: I just wanted to say
23 that I seconded the vote, but, I, I'm, I would only do
24 that in a case where it wouldn't affect the outcome.
25 I would oppose opening the vote if the vote could

1 affect the outcome, but this can't.

2 It, it just gives, gives--

3 CHAIRMAN REYNOLDS: Okay. Vice chair
4 Thernstrom, you were active in this issue. Do you have
5 any desire to take Todd up on his, on his offer?

6 VICE CHAIR THERNSTROM: I not only don't
7 have any desire to take Todd up on his offer, but it
8 would set a terrible precedent, as Commissioner Heriot
9 just said. We're now going to have the precedent that,
10 that votes can be reopened if they won't make any
11 difference, but if they will make any difference, the
12 votes can't be reopened, no, for goodness sakes, the
13 vote was taken. You can't be reopen--that is
14 procedurally an egregious step for--

15 COMMISSIONER GAZIANO: We could reopen it
16 if it would make a difference, too. This is, this is,
17 what we've done many times before is we've proposed a
18 letter and left open who was going to join that
19 letter.

20 VICE CHAIR THERNSTROM: That is quite
21 different.

22 COMMISSIONER GAZIANO: This is, this is,
23 this is very similar.

24 CHAIRMAN REYNOLDS: In fact, we, we, we
25 just, we just did it with the English Only language--

1 VICE CHAIR THERNSTROM: Yes. No, I think
2 that that is quite different. You have taken a vote,
3 I wasn't here to participate in the vote. And--

4 CHAIRMAN REYNOLDS: Well, if you don't, if
5 you don't care to, you know--

6 COMMISSIONER GAZIANO: Let me ask you this--
7 -if this motion passes over your objection, would you
8 record your vote, or would not record--

9 VICE CHAIR THERNSTROM: No, I don't think--

10 COMMISSIONER GAZIANO: Okay. All right. All
11 right.

12 VICE CHAIR THERNSTROM: --I'm telling you,
13 I think this procedurally absurd--

14 COMMISSIONER TAYLOR: This is a motion of
15 accommodation, if it's not necessary--

16 CHAIRMAN REYNOLDS: Right, right, I
17 thought, you were heavily involved in this discussion--
18 -

19 VICE CHAIR THERNSTROM: Yes, I would like,
20 I would--

21 CHAIRMAN REYNOLDS: And, and it was my
22 understanding, at least, the way I interpreted the
23 motion, he was offering an accommodation since this
24 was an important issue. And if you choose not to take
25 advantage of that, that's, that's fine.

1 COMMISSIONER GAZIANO: I'll withdraw, I'll
2 withdraw my motion.

3 VICE CHAIR THERNSTROM: Let me just further
4 state that of course, I will be submitting a statement
5 along, as other people will, and we will be proceeding
6 in, therefore, the normal fashion.

7 COMMISSIONER GAZIANO: That's fine. I
8 withdraw my motion. The final item--

9 VICE CHAIR THERNSTROM: And you knew from
10 the very beginning that I was going to say no to this,
11 so I don't understand what you were doing. But anyway,
12 that's all right. The mystery of Commissioner Gaziano.

13 COMMISSIONER GAZIANO: I can never predict
14 what you're going to do, Vice Chair Thernstrom. Since
15 you were for it before you were against it. I don't
16 know where you are right now. The, the--

17 VICE CHAIR THERNSTROM: I don't know what
18 I was for before I was against, but thanks.

19 COMMISSIONER GAZIANO: But anyway. My last
20 question is, and maybe I should just put it in the
21 form of a motion, that we have continued, we have
22 subpoenas outstanding to the Department of Justice.

23 We have, you know, various other document
24 requests. There's litigation from Judicial Watch,
25 there may be other litigation, news stories, releases.

1 I move that whether the current staff Director, future
2 staff Director, acting staff Director, whoever is
3 directing our staff or the general counsel's Office,
4 that, that we continue to receive the relevant
5 materials on this investigation pursuant to our
6 discover updates from judicial watch litigation until
7 the, the Commissioners vote otherwise.

8 CHAIRMAN REYNOLDS: Is there a second?

9 COMMISSIONER HERIOT: Second.

10 CHAIRMAN REYNOLDS: Discussion? All those
11 in favor, please say aye. Objections?

12 COMMISSIONER MELENDEZ: I will abstain.

13 COMMISSIONER YAKI: Abstain.

14 VICE CHAIR THERNSTROM: And I'm abstaining
15 as well.

16 CHAIRMAN REYNOLDS: Okay. We have three
17 abstentions, Vice Chair Thernstrom, Commissioners Yaki
18 and Melendez. The remaining Commissioners vote in
19 favor of the motion. The motion passes. Next up is a
20 discussion of the Akaka bill.

21 CHAIRMAN REYNOLDS: Commissioner Heriot,
22 would you care to--

23 COMMISSIONER HERIOT: Yes, my understanding
24 is, is, is that there is a very very good chance, in
25 fact, a likelihood, that the new version of the Akaka

1 bill, which I just printed up the day before
2 yesterday, will be attached to the omnibus spending
3 bill.

4 I assume that's not a certainty, you know,
5 that's, the information is such that, you know, we
6 can't have certainties. But, that it will be attached
7 and that will then go to a vote sometime in the next
8 week or so.

9 And, I would like to send a new letter,
10 basically just transmitting our previous letter to
11 members of the Senate and commenting very briefly on,
12 on the procedure and if we have time, I, I, I, and I,
13 I, I'm, I'm not sure that we will have time, on the
14 substance of the changes to that bill.

15 And, I would move that we act as we have
16 in the past, and that is, write the letter up, and
17 then if we can get a majority to sign onto the letter,
18 to send it out as promptly as we can. I don't think
19 it's going to take long to write this letter.

20 COMMISSIONER GAZIANO: The, the, the vote
21 approving the letter would be contingent on a majority
22 of Commissioners signing on to such letter, correct?
23 That's our usual procedure.

24 COMMISSIONER HERIOT: Yes.

25 COMMISSIONER TAYLOR: Just, friend,

1 friendly amendment since we don't have the language of
2 the letter in front of us, perhaps a notational vote?
3 That way we can vote when we actually see the language
4 of the transmittal--

5 COMMISSIONER GAZIANO: A notational--

6 COMMISSIONER HERIOT: No, that's--

7 COMMISSIONER GAZIANO: --vote takes a,
8 takes unanimous notice and--

9 COMMISSIONER TAYLOR: Does it, for purposes
10 of--

11 COMMISSIONER GAZIANO: What we've done--
12 what we've done in analogous situations is that it
13 requires a double majority. A majority now to
14 authorize a Commission letter, and a majority of
15 commissioners actually agreeing to the language of the
16 letter.

17 COMMISSIONER TAYLOR: That gets us to the
18 same point.

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

21 VICE CHAIR THERNSTROM: I kind of like to
22 see proposed legislation before I sign on to--

23 COMMISSIONER HERIOT: Yes, I would think
24 the members of the Senate would like to. That's part
25 of our objection, that this thing is very new. I've

1 got a copy of it here, but I, if I I have a copy of
2 it--but it's long. That's part of the problem. That's
3 part of where--

4 COMMISSIONER TAYLOR: But I guess the way
5 this motion is structure, all We're voting on now is
6 the opportunity to vote on a letter that will be
7 circulated.

8 COMMISSIONER HERIOT: Right. Right.

9 COMMISSIONER GAZIANO: And I assume it will
10 be circulated before Sunday?

11 COMMISSIONER TAYLOR: That should give us
12 enough time to review the new bill and the letter.

13 VICE CHAIR THERNSTROM: Somebody would have
14 to summarize what, the difference between the old bill
15 and the new bill for this Commissioner since you just
16 told us it was very long. I mean, I think you--

17 COMMISSIONER YAKI: OGC should do that,
18 don't you think they need some work to do? Chairman
19 Reynolds?

20 CHAIRMAN REYNOLDS: Kim--Kim said she'll do
21 it.

22 VICE CHAIR THERNSTROM: I, I, I mean, I,
23 do, do you have the strong sense that these letters
24 from us have a, even a tiny impact?

25 COMMISSIONER HERIOT: Do I?

1 VICE CHAIR THERNSTROM: Yes.

2 COMMISSIONER HERIOT: Yes.

3 COMMISSIONER YAKI: Good, because in about
4 a week, there will be another letter signed by five
5 members of the Commission going the other way, so
6 let's, do what, continue wasting time and resources.
7 I mean, really, come on, guys.

8 CHAIRMAN REYNOLDS: Okay. Okay. At this
9 point, I don't believe that what we've had the
10 discussion and we know what we plan to do, and I am
11 glad that you mentioned that, well, you suggested that
12 this letter, in order to have certain members vote up
13 or down on it, it needs to be circulated by Sunday.
14 Okay.

15 VICE CHAIR THERNSTROM: Well, with, wait a
16 minute. With some explanation of the difference
17 between--

18 COMMISSIONER GAZIANO: Either you sign onto
19 the letter or not--if you think the letter--

20 COMMISSIONER YAKI: In other, in other
21 words, in other words, she's treating it like any
22 other member of the Senate. She's decided that, that
23 you can either look at it yourself, or not.

24 COMMISSIONER GAZIANO: No, it's up to the
25 Commissioner drafting the letter to try to be

1 persuasive. If the Commissioner drafting the letter is
2 not--

3 COMMISSIONER YAKI: I seem, I seem to
4 recall that we've had these last minute letters
5 before, where people make, make outrageous claims
6 about legislation that actually, actually do not,
7 actually occur in fact. So I'm think, out of courtesy
8 to, to Commissioner Thernstrom, who I believe would
9 be, you know, a potential vote for you folks, that you
10 would want to go through the trouble of, just seems to
11 be a recurring priority for certain members of this
12 Commission that, that you ask OGC to do a summary of
13 what the old bill was, what the new bill does, so we
14 know whether or not it's simply attaching the old
15 letter has any relevance to it at all, and, yes, I
16 think, I think that's the least you, you could do for
17 someone who is asking for that. Apparently that is too
18 much, too much to ask for and I don't understand why.

19 VICE CHAIR THERNSTROM: Yes, I mean
20 obviously I am--

21 CHAIRMAN REYNOLDS: Commissioner Heriot?

22 COMMISSIONER HERIOT: We could take three
23 weeks to do this if we don't mind if the letter
24 doesn't get out until after the bill is adopted. The
25 whole point here is that the United States Senate has

1 decided to move very quickly on this, and therefore we
2 have to move very--

3 COMMISSIONER YAKI: So you'd rather, you
4 would risk the reputation of the Commission at, at
5 sending a letter that talks about provisions that no
6 longer, further, I mean, let's, let's face it. When
7 you guys put out the healthcare reform letter and went
8 after a provision for the bill that was authored by
9 Bill Frist as if it was new and it had been put into
10 law for five years, that got a really good reaction
11 on, in the Senate and on the hill because they were
12 looking at it going, this was Bill Frist's section of
13 the bill, and now all of a sudden you're saying this
14 section that Bill Frist did with a, with a
15 overwhelming majority vote in the Senate, and a
16 bipartisan vote in the house, is somehow
17 unconstitutional, that, that had zero impact. But go
18 ahead, you know, if you want to keep on in your last
19 gasp, do this, be my guest. Make a fool out of
20 yourself.

21 CHAIRMAN REYNOLDS: Okay. Moving right
22 along.

23 VICE CHAIR THERNSTROM: Mr. Chairman, I am
24 a potential vote. Commissioner Yaki is perfectly
25 right, I just don't like to sign things that I'm a

1 little, that I don't know what I'm, really signing
2 here. I need to know the language that--

3 COMMISSIONER HERIOT: It's on THOMAS.

4 VICE CHAIR THERNSTROM: --and you had
5 confidence that this letter of--

6 COMMISSIONER HERIOT: It's on THOMAS.

7 VICE CHAIR THERNSTROM: Pardon me?

8 COMMISSIONER GAZIANO: The, the, the
9 assumption is--

10 COMMISSIONER HERIOT: You can't take, I
11 can't take, you know, insert it in your brain. You're
12 going to have to read it yourself.

13 VICE CHAIR THERNSTROM: No, it's not--

14 COMMISSIONER GAZIANO: I will make an
15 effort to--

16 CHAIRMAN REYNOLDS: Wait, wait, wait, wait,
17 wait, wait.

18 COMMISSIONER GAZIANO: --to see if I can
19 send you the--

20 CHAIRMAN REYNOLDS: It's publicly
21 available. The assumption is that the Commissioners
22 and or their special assistants will review the
23 publicly available document and decide whether they
24 want to support the letter or not.

25 COMMISSIONER GAZIANO: For the record, I

1 will try to see if I can send you some summaries of
2 the differences--

3 VICE CHAIR THERNSTROM: Call it
4 differences.

5 COMMISSIONER GAZIANO: --the, the, the,
6 procedure offends me either way. If it is the same as
7 prior bills, and I don't think it is, then it should
8 be considered in, then we have the same objections. If
9 it's different, then it ought to go through regular
10 order. Either way, I have a concern about the--

11 VICE CHAIR THERNSTROM: I signed the
12 previous --

13 COMMISSIONER GAZIANO: I understand.

14 VICE CHAIR THERNSTROM: Even though I was
15 not asked to sign, I sent--I signed it separately,
16 sending a separate letter.

17 COMMISSIONER GAZIANO: Either way, I have
18 an objection to them moving forward in the way that's
19 proposed. But I think there are some differences and
20 I will endeavor to, to, to have various--

21 CHAIRMAN REYNOLDS: Okay, so this is an
22 attempt to accommodate the concern expressed by the
23 Vice Chair?

24 COMMISSIONER GAZIANO: Yes.

25 CHAIRMAN REYNOLDS: Okay.

1 VICE CHAIR THERNSTROM: Thank you. A rare
2 moment.

3 CHAIRMAN REYNOLDS: Okay. Next up, Cy Pres.

4 COMMISSIONER HERIOT: No, we haven't voted.

5 COMMISSIONER YAKI: We need to vote.

6 COMMISSIONER GAZIANO: Vote to authorize
7 the letter.

8 CHAIRMAN REYNOLDS: Okay. All those in
9 favor, please say aye. Objections.

10 COMMISSIONER YAKI: No.

11 COMMISSIONER MELENDEZ: No.

12 VICE CHAIR THERNSTROM: I don't understand,
13 a vote to authorize a letter, I got to--abstaining.
14 I've got to see what we're--

15 CHAIRMAN REYNOLDS: Okay. Okay. Okay. Okay.
16 Okay. Vice Chair Thernstrom, abstain. We have two
17 votes in opposition, Commissioners Melendez and Yaki.
18 The remaining Commissioners voted for the motion, the
19 motion passes. Next up is the, an update on the Cy
20 Pres enforcement report.

21 CHAIRMAN REYNOLDS: Mr. Byrnes?

22 MR. BYRNES: I have no update at this time.
23 The subcommittee has not had a chance to meet yet.

24 CHAIRMAN REYNOLDS: Okay, I like that. That
25 was a quick--next up is a, an update on the briefing

1 on disparate impact of school discipline policies.

2 PANEL 4: UPDATE ON STATUS OF BRIEFING ON DISPARATE
3 IMPACT IN SCHOOL DISCIPLINE POLICIES

4 CHAIRMAN REYNOLDS: Mr. Staff Director?

5 STAFF DIRECTOR DANNENFELSER: Thank you,
6 Mr. Chairman. We have sent letters to 28 different
7 school districts. We have two speakers lined up right
8 now, one of them a high school teacher and another one
9 is a K-through-8 teacher, and we are continuing to
10 reach out to, to other potential speakers.

11 And, we, we have gotten two responses to
12 the letters, mostly for clarification about what kind
13 of information is being sought, and where, and We're
14 continuing to follow up on that topic.

15 CHAIRMAN REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: To whom are you sending the letters
17 to?

18 STAFF DIRECTOR DANNENFELSER: We've
19 identify--from the best information we can gather, the
20 school districts where we believe the Department of
21 Education has sent letters and also now we understand
22 that a Division within the Department of Justice may
23 be making inquiries of this nature as well, so we may
24 follow up in those areas.

25 COMMISSIONER GAZIANO: And is this--

1 STAFF DIRECTOR DANNENFELSER: And we also
2 sent letters to the Department of Education and we are
3 preparing to send something to the Department of
4 Justice.

5 COMMISSIONER GAZIANO: And have you
6 mentioned a particular briefing day? Does this the one
7 We're hoping to schedule for January?

8 STAFF DIRECTOR DANNENFELSER: This, we were
9 looking at February.

10 COMMISSIONER GAZIANO: February? Okay. Have
11 you mentioned that possible date?

12 STAFF DIRECTOR DANNENFELSER: Yes.

13 COMMISSIONER YAKI: And how are you
14 identifying the actual teachers themselves? I mean,
15 it's one thing to identify the school districts, but
16 how, how is it going down to the teacher principal,
17 superintendent, whatever level? How are those choices
18 being made?

19 STAFF DIRECTOR DANNENFELSER: They're not--
20 not necessarily always in the same districts. In some
21 cases, its reaching out to teachers in general to
22 discuss how they've dealt with discipline issues in
23 their schools--

24 COMMISSIONER YAKI: But how do you--

25 STAFF DIRECTOR DANNENFELSER: --but we are,

1 we are asking, yes, when we do go to the school
2 districts we are asking about the possibility of
3 teachers in those school districts participating as
4 well. But we are not limiting ourselves--

5 COMMISSIONER YAKI: How do, how do we find--
6 --so, how do we find the one teacher that's, that's on
7 the panel so far?

8 STAFF DIRECTOR DANNENFELSER: Reaching out
9 to different organizations that are involved in
10 education issues.

11 COMMISSIONER YAKI: Which organization?

12 STAFF DIRECTOR DANNENFELSER: I'd have to
13 check with staff on the particular ones--

14 COMMISSIONER YAKI: You're going to find
15 out? Thanks.

16 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

17 VICE CHAIR THERNSTROM: So, and this may
18 reflect the fact that I haven't been at recent
19 meetings. But, there is a huge literature on school
20 discipline. Are we bringing in scholars?

21 STAFF DIRECTOR DANNENFELSER: That, that
22 would be some of the people we'd look to bring in,
23 potentially bring in scholars as well.

24 VICE CHAIR THERNSTROM: I mean, I--

25 STAFF DIRECTOR DANNENFELSER: People who

1 have, you know, the big picture, not just necessarily,
2 we do want to look at the school districts in
3 particular. But, people have the kind of broader view
4 would certainly be considered for panelists.

5 VICE CHAIR THERNSTROM: I, I, I mean, I,
6 this is following up on what Commissioner Yaki, a
7 question he raised. I do feel a little bit of a
8 problem with thinking of any one particular teacher as
9 the voice of teachers.

10 Or, that teacher's experience as being
11 emblematic. I mean, there is a, there is a, a, there's
12 a problem here in the credibility of the information
13 that any one teacher or principal brings to the table.

14 STAFF DIRECTOR DANNENFELSER: We're always
15 limited by the number of people, you know, as we
16 surveyed every teacher in the country--

17 VICE CHAIR THERNSTROM: Yes, no, I
18 understand that, but that, but some topics lend
19 themselves better to, I mean, if we, briefing on
20 HBCUs, it was clear who to bring and they really did
21 speak for the people who had been engaged in a
22 conversation about the future of those institutions.

23 It's just that I've got problems seeing
24 any one, if I think of all the schools I've visited
25 and the teachers I've talked to about school

1 discipline, I, I think, I, you got a multiplicity of
2 voices dealing with a very difficult issue here and--

3 STAFF DIRECTOR DANNENFELSER: Well, this is
4 one where the Commission has adopted a concept paper
5 that is laid out, the anticipated structure of a
6 briefing, and that's always something that is open to--
7 -

8 VICE CHAIR THERNSTROM: All right.

9 STAFF DIRECTOR DANNENFELSER: --
10 modifications--

11 VICE CHAIR THERNSTROM: Yes, well, it is
12 true that I, that I wasn't here to raise the
13 objections when the concept paper was discussed. And,
14 so--

15 CHAIRMAN REYNOLDS: Any other comments?
16 Okay. Next up is an update on the, on sex
17 discrimination in liberal arts college admissions
18 project.

19 PANEL 5: UPDATE ON SEX DISCRIMINATION IN
20 LIBERAL ARTS COLLEGE ADMISSIONS

21 CHAIRMAN REYNOLDS: The Acting Assistant
22 Staff Director for Civil Rights Evaluation, Mr.
23 Byrnes, please provide us with an update.

24 MR. BYRNES: Thank you, Mr. Chairman.
25 Commission staff responded this week to technical

1 questions that the two local holdout schools had about
2 the latest steps of our analytical protocol. They are
3 still working with us.

4 We anticipate a response from these two
5 schools very soon. We are getting closer to asking
6 them to conduct a logistic regression analyses, which
7 will be the heart of, of the report.

8 With respect to the third holdout school,
9 Commission staff has provided a draft of the protocol.
10 The first steps to this third school, and we are still
11 awaiting a response.

12 CHAIRMAN REYNOLDS: Questions? Comments?

13 All right. Thank you, Mr.--

14 COMMISSIONER GAZIANO: Can I raise another
15 matter with those, it may be Mr. Byrnes and, and Mr.
16 Dannenfelser. Where, where are, are you all with
17 preparation for the pay disparity briefing, and is it
18 possible that that will be conducted in January?

19 MR. BYRNES: We are shooting for January
20 14th for that briefing. We have received some
21 recommendations for panelists, and we've begun to--

22 COMMISSIONER GAZIANO: You welcome others?

23 MR. BYRNES: Certainly. We always welcome
24 any recommendations from the Commissioners on
25 panelists.

1 But, we are reaching out to this sort of
2 initial slate of panelists we have received to gauge
3 their availability for January 14th, and I will let
4 you know as soon as I can on that.

5 COMMISSIONER GAZIANO: Thank you. Do they,
6 do they include potential academic economists who have
7 done serious studies of this--

8 MR. BYRNES: Yes. Yes.

9 COMMISSIONER GAZIANO: Okay.

10 CHAIRMAN REYNOLDS: Other questions?
11 Comments? Okay. Next up is management and operations.

12 CHAIRMAN REYNOLDS: With, We're about to
13 enter a transition period and it's critical that
14 Commissioners plan for continuity of operations so
15 that the agency can continue the function to ensure
16 continuity of operation at the agency in the event the
17 Staff Director is removed by the President and a new
18 Staff Director is either not appointed and confirmed
19 right away, or fails to receive the majority approval
20 by the Commission.

21 I move that we amend AI 1-18B Section 2.02
22 so that it reads as follows. "When the staff Director,
23 Deputy staff Director, or individuals serving as
24 acting Deputy staff Director and the assistant staff
25 Director for the Office, Office of Civil Rights

1 Evaluation, are absent, the individual serving as the
2 acting assistant staff Director for the Office of
3 Civil Rights Evaluation shall assume the duties and
4 authorities of the Acting Deputy staff Director". Is
5 there a second?

6 COMMISSIONER GAZIANO: Second.

7 CHAIRMAN REYNOLDS: Okay. The reason that,
8 that this may be necessary. I had a conversation with
9 the General Counsel and we had a, a debate, or
10 disagreement, over whether the current AI was clear
11 enough on this point.

12 And, at this point, I would ask the
13 General Counsel to come up to the table and, and, in,
14 in your view, in your view, does the, the, the current
15 AI adequately set forth the, the, well, what happens
16 in the event that the Staff Director is removed and
17 for whatever reason we don't have an immediate
18 replacement?

19 MR. BLACKWOOD: The, the, the problem is
20 that the existing AI, leaves ambiguities about the
21 current situation that we have and that we have no
22 official OCRE, someone who has that position
23 permanently.

24 We do have someone active as the acting
25 head of OCRE and I urge that that be clarified. I

1 think it can be said that the AI has the intent that
2 the Acting head of OCRE would take over his staff,
3 acting, well, no one is Acting Staff Director.

4 But, take over as the person acting, the
5 delegated authority of the Staff Director. So, no
6 issues arise because it would be chaotic if we have no
7 one. Got to be clarified so that the person who is
8 currently acting as the head of OCRE would have the
9 authority to act with the delegated authority of the
10 Staff Director.

11 CHAIRMAN REYNOLDS: Well, we have, I mean,
12 as it's drafted, the individual serving as acting
13 Deputy Staff Director would assume the authority of
14 the Staff Director.

15 MR. BLACKWOOD: I think that's where we
16 differed. I thought it, that was your interpretation.
17 My interpretation is, that can be read, but let's take
18 away the ambiguity so there's no question, Staff has
19 somebody they can absolutely look at without
20 challenge.

21 CHAIRMAN REYNOLDS: But doesn't it, it, it
22 state that? Maybe I'm--oh, I see. I see.

23 VICE CHAIR THERNSTROM: Jerry, I don't see.
24 So, whatever was just said, say it out loud.

25 CHAIRMAN REYNOLDS: Okay. There are two

1 provisions. The first one reads, when the staff
2 Director is absent, the Deputy staff Director or the
3 individual serving as acting Deputy staff Director--

4 VICE CHAIR THERNSTROM: Right. Right.

5 CHAIRMAN REYNOLDS: --shall assume the
6 authority to manage the office of the Staff Director.

7 VICE CHAIR THERNSTROM: Yes.

8 CHAIRMAN REYNOLDS: The following, the, the
9 following section does not contain a similar phrase
10 for someone in the acting, if someone was acting as
11 head of OCRE.

12 VICE CHAIR THERNSTROM: I get it.

13 CHAIRMAN REYNOLDS: Okay. That's the
14 reason. Discussion? All those in favor please--
15 Commissioner Yaki?

16 COMMISSIONER YAKI: My question was very
17 basic. How does this comport with civil service
18 requirements for any of these specific--specific
19 positions, namely, what, what grade or range do you
20 have to be in order to actually be at the staff
21 Director, even as an acting?

22 MR. BLACKWOOD: We addressed this
23 situation, you might recall, when we went through the
24 transition after Staff Director Marcus left. And, I
25 addressed both issues, and got information from OPM,

1 worked with Ms. Martin, et cetera, and I have two
2 memoranda that were dated back in 2007 and 2008 that
3 specifically addressing that issue.

4 Mr. Byrnes in his current position is able
5 to take over temporarily, I believe it's 120 days,
6 plus 120 days. But, presumably, a new staff Director
7 will be named, and this will just be a temporary--

8 COMMISSIONER YAKI: Can I--could you send
9 me copies of those letters?

10 MR. BLACKWOOD: Absolutely.

11 COMMISSIONER YAKI: Thank you.

12 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

13 VICE CHAIR THERNSTROM: And, do you have
14 any indication at this moment that your term of Office
15 is about to end?

16 MR. BLACKWOOD: President Obama has not
17 contacted me yet, but. We are working under the
18 assumption in some of the comments here today that
19 there will be a transition in the very near term, next
20 several weeks.

21 VICE CHAIR THERNSTROM: Okay, but that has
22 to do with Commissioners, that has been what the
23 conversation has been about.

24 CHAIRMAN REYNOLDS: Staff Director is also
25 in play.

1 MR. BLACKWOOD: The Staff Director and the
2 General Counsel serve at the pleasure of the
3 President.

4 VICE CHAIR THERNSTROM: Right, but those
5 appointments do not have to be contemporary--
6 simultaneous with the, with the appointment of new
7 commissioners. They are a separate question--

8 CHAIRMAN REYNOLDS: That's correct.

9 VICE CHAIR THERNSTROM: --so, we do know
10 that, okay, you've just said, their appointments are
11 in play at this point. I mean, is it possible, this
12 is, I just want to know, is it possible this is a non
13 issue for the next few--

14 COMMISSIONER GAZIANO: It is possible. It
15 is possible. My suggestion is, we should have probably
16 done this a year ago, if we didn't have a Deputy Staff
17 Director anyway. So, it's always prudent to clarify
18 our order of succession, whether, whether or not it's
19 likely that, to, to come into play.

20 CHAIRMAN REYNOLDS: Okay. All those in
21 favor, please say aye. Objections?

22 COMMISSIONER YAKI: I object.

23 COMMISSIONER MELENDEZ: Abstain.

24 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

25 VICE CHAIR THERNSTROM: Oh. Yes. Yes. Yes.

1 Sorry, I should have asked this and, instead, Mr. Fay
2 just reminded me that I should ask it. I'd like to see
3 the final language that we're going to be voting on
4 here.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER GAZIANO: You're just--we are
7 adding the word acting before--

8 CHAIRMAN REYNOLDS: We're, we're--we want
9 the, the second section, 2.02 through track 2.01, 2.01
10 has a phrase, Acting Deputy Staff Director. The second
11 phrase would be amended so that we add the phrase,
12 acting--

13 COMMISSIONER GAZIANO: The assistant staff
14 Director of the--

15 CHAIRMAN REYNOLDS: Yes, or--

16 COMMISSIONER GAZIANO: The individual
17 serving as--

18 CHAIRMAN REYNOLDS: Acting--

19 COMMISSIONER GAZIANO: --as acting Director
20 of the Office of--

21 VICE CHAIR THERNSTROM: Okay. Got it,
22 thanks.

23 CHAIRMAN REYNOLDS: How do you vote?

24 VICE CHAIR THERNSTROM: Yes.

25 CHAIRMAN REYNOLDS: Okay. I'm sorry--okay,

1 we have one abstention, from Commissioner Melendez.
2 Commissioner Yaki voted against the measure. Remaining
3 Commissioners voted for it. The motion passes. Next
4 up--

5 COMMISSIONER YAKI: I have a question.

6 CHAIRMAN REYNOLDS: Yes?

7 COMMISSIONER YAKI: Since we're on the,
8 say, was not too sure what exactly was on, comes to
9 management and operations--

10 COMMISSIONER GAZIANO: I have another item
11 too, before we move on--

12 CHAIRMAN REYNOLDS: Yes. Yes.

13 COMMISSIONER GAZIANO: --you should go,
14 Commissioner Yaki, first.

15 COMMISSIONER YAKI: Well, thank you, since
16 I spoke first. The, the question I have for the staff
17 Director is, I heard, I, I've been led to believe
18 that, that there is some closure of a regional Office
19 that is being done. I just wanted to ask, is it true
20 that the southern regional office is being closed and
21 the person there being transferred to the west coast
22 office? If so, why and--

23 STAFF DIRECTOR DANNENFELSER: The southern
24 regional Director had, for some period of time,
25 requested that a transfer to the western regional

1 office. He has been serving as the acting regional
2 Director for the west, so he would then become the
3 Director of the western regional office, but remain
4 the acting Director of the southern regional office.

5 The, because of the continuing resolution
6 and the fact that the administrative support staff in
7 the southern regional office is, is a temporary
8 employee, we've been advised by a budget officer that
9 we should probably, effectively have to lay that
10 person off for the time being until there's a
11 resolution of the, the budget situation.

12 So, what the southern regional Director
13 will be continuing to, the acting Director of the
14 southern Region will be continuing to monitor and the
15 plan is that he would be going back down there. He's
16 going to, plans to go to Los Angeles for the next
17 week, but then he would be back in Atlanta for the
18 remainder of December.

19 COMMISSIONER YAKI: Where--just a question.
20 Where, where right now is the person in question
21 domiciled? Is he domiciled in, in California? Is he
22 domiciled in Atlanta, or elsewhere?

23 STAFF DIRECTOR DANNENFELSER: He has been
24 domiciled in Atlanta. He intends to change his
25 domicile to Los Angeles.

1 COMMISSIONER YAKI: So, so we will have no-
2 -

3 STAFF DIRECTOR DANNENFELSER: No, we don't
4 have any expenses. He's doing all of that at his own
5 expense.

6 COMMISSIONER YAKI: But I'm saying, if he,
7 we will have no office in the southern Region of the
8 United States other than someone who is based in
9 California, acting in, in a way, there will be no more
10 office space, is there going to be office space? Is
11 there going to be any phone, phone machine, anything
12 like that?

13 STAFF DIRECTOR DANNENFELSER: No, the
14 office will still be--We're still going to have the
15 office, and he, he in fact, he will be back in that
16 office for several weeks in December, and hopefully
17 Congress will resolve this budget issue before they
18 leave in December.

19 So, hopefully that will become a moot
20 point. But he will, the phone will still be there. He
21 will be monitoring the phone. He will continue to be
22 the Federal official for meetings that take place in
23 the south. So, he's, he's been wearing two hats.

24 Actually, three hats because he's been the
25 acting head of RPCU as well, so he'll be continuing to

1 wear the same three hats. He'll just be the official
2 person for the west and the acting person for the
3 south as opposed to the official person for the south
4 and the acting person for the west.

5 CHAIRMAN REYNOLDS: I would just, I just
6 want to express my, my reservations about anything
7 that looks as if We're, we're closing, closing up
8 shop, figuratively or literally, in Atlanta. I think
9 that that office has been a place that has had
10 historic and continuing importance with regard to
11 civil rights in this country.

12 I think--I believe that the lack of a, the
13 lack of a continuing presence there is, I think,
14 sending a message that, unintentionally or not, that
15 we may not want to send. I would hope that we do
16 everything we can to ensure that we have a viable
17 functioning Southern Regional Office that does not
18 rely on the travel schedules of someone who's going to
19 be covering a whole bunch of other states on the west
20 coast that require lots of travel and lots of time
21 away.

22 STAFF DIRECTOR DANNENFELSER: Well, it is
23 possible once this resolution of the budget question,
24 there's also the possibility of hiring, certainly
25 having the secretarial support in the, in the south,

1 but perhaps hiring someone as the regional Director in
2 the south, if only, perhaps, if only as a temporary
3 assignment, would be a one year appointment and
4 because of the uncertainty about the budget going
5 forward into 2012.

6 Right now, we are anticipating a 5% cut in
7 the budget for 2012, and as you noted earlier, there
8 is certainly the possibility that Congress will make
9 further cuts in the budget, perhaps even retroactively
10 for 2011, but that remains to be seen.

11 CHAIRMAN REYNOLDS: I'd just like to say
12 that I share wholeheartedly Commissioner Yaki's
13 concerns. This, I was not aware of these changes.
14 Symbolism has it's place, and at times, it's important
15 and this very well may be one of those times. I think
16 that the south needs an office. Vice Chair Thernstrom?

17 VICE CHAIR THERNSTROM: If we have to
18 choose between the south and California, is there, is
19 there an argument for California rather than the
20 south?

21 CHAIRMAN REYNOLDS: I can imagine, well,
22 one, we shouldn't choose if we can avoid it.

23 VICE CHAIR THERNSTROM: Well, but this is
24 really in effect choosing.

25 COMMISSIONER GAZIANO: Yes. We, the, the,

1 I can understand the tradeoffs. The south may be more
2 easily served by Washington, D.C. than, than
3 California. I, I'm, I'm, I don't take an opinion. I'm
4 just saying, there seems, there could be arguments
5 made either way.

6 CHAIRMAN REYNOLDS: Okay. Commissioner
7 Melendez, did you--was your hand up earlier?

8 COMMISSIONER MELENDEZ: Yes. I would like
9 to--

10 CHAIRMAN REYNOLDS: And then Commissioner
11 Heriot.

12 COMMISSIONER MELENDEZ: I'm really
13 disgusted with where the budget goes. I always thought
14 that the Commission should actually be updated as to
15 whether or not, what the staffing is on all of these
16 regions, because I always felt that the, all regions
17 are just as important.

18 So, it's, it's, should have been fully
19 staffed. But, even though making a decision like this,
20 it almost sounds like the people, the Director who's
21 working in eastern, is he the person that decides to
22 go out to California to get some sun.

23 And it's really not the, it's really not
24 the, it's really not the Commission that kind of looks
25 at where the, where the staffing is needed the most,

1 and we kind of dictate the budget? Or, who is it?

2 It almost sounds like it's dictated by
3 the, by the people moving around because they decide
4 to go out to California while they tell the Staff
5 Director and they're gone.

6 So I always felt that it should be a frank
7 discussion by this Commission to kind of look at the
8 workload and make a decision on it. So, kind of
9 working at the--

10 STAFF DIRECTOR DANNENFELSER: Let me just
11 say, that the individual cannot unilaterally make the
12 decision and just inform the Staff Director he
13 requested that, and I considered it and approved it.
14 He has gotten that, the west has been an area, I know
15 there's been concern about the lack of a person in the
16 west for a good period of time.

17 And it's been an area where we've had a
18 number of S.A.C.s that have not been chartered, and
19 now, if we approve Alaska and Idaho today, we will for
20 the first time in a very long time have every single
21 S.A.C. in the western region chartered.

22 So, I think that this individual deserves
23 credit for being very aggressive in getting that done.
24 He also has every region in the south chartered, so,
25 and the south has been going very actively.

1 So, he is, he has been wearing these hats
2 and really working on both regions. And I think he'll
3 continue to do that unless there's an opportunity to
4 hire additional staff and perhaps somebody can be full
5 time in both places as the Director.

6 But that's, of course, a difficulty we've
7 had with the budget and it may be that it's going to
8 become even more challenging with future budget
9 decisions that Congress might be making.

10 CHAIRMAN REYNOLDS: Commissioner Heriot was
11 next, then Vice Chair Thernstrom.

12 COMMISSIONER HERIOT: I just wanted to say
13 that, that I am not a big fan of very thinly staffed
14 regional offices. I have thought that the L.A. office
15 given they only had one clerical employee and it
16 probably we were better off closing it down.

17 But as for Atlanta, I agree that there's
18 a symbolism there and I would think that if we are
19 going to have a regional office, having, keeping the
20 one in Atlanta would be a priority with me.

21 STAFF DIRECTOR DANNENFELSER: We fully
22 intend for the office to remain. It's then, that
23 person, is the, acting, will be acting as the acting
24 head of the southern region and we do hope that the,
25 the lack of the secretarial support will be as

1 temporary as possible.

2 We, we have that as a priority as soon as
3 the budget officer can assure me that we will not be
4 in an anti-deficiency situation, we will try to get
5 that person back on Board in Atlanta.

6 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

7 VICE CHAIR THERNSTROM: Well, I, I think
8 Commissioner Melendez spoke--he put his finger on the
9 problem here, and spoke very eloquently. And, I mean,
10 it really, this has got to be an administrative, well
11 thought out administrative decision by us.

12 And not, kind of a response to an, and not
13 something in accommodation to where somebody wants to
14 live. And, I, I, I do think the symbolism point is
15 very, very important.

16 STAFF DIRECTOR DANNENFELSER: Well, again,
17 I think there's a sense of a closing office, there's
18 no, no decision to close an office--

19 VICE CHAIR THERNSTROM: Well, there is
20 knowledge that we're going to, we're heading into
21 budgetary, you know, thin times.

22 STAFF DIRECTOR DANNENFELSER: Well, the
23 west has nine states, the south has six states. And
24 some of the states in the west are very, very large so
25 you have that presence of a senior person in the west,

1 seems to make sense.

2 CHAIRMAN REYNOLDS: I, I, I am loathe to
3 choose between areas of the country, but I think the
4 analysis should also include the history of the south.
5 So, please, Commissioner Yaki.

6 COMMISSIONER YAKI: I mean, just, just,
7 from, again, from a symbolic and practical point of
8 view, yes, we may have an office there. But the fact
9 that there's no one there 70% of the time I think is
10 a problem. It, it, that's, that to me is just as
11 problematic.

12 I understand, I'm with everyone, how can
13 we choose one or the other. But, I had always been, in
14 my own mind, although, although I was not happy about
15 the fact that we never had a Western Regional
16 Director, I was happy that we had someone in the
17 south.

18 As well, and to take that, to, to change
19 that equation, given, given, given history, given the
20 history of this organization, and make that now the
21 part time place and, and, and not, and, versus the
22 other. I just, I just have problems.

23 I came with, articulating, just like the,
24 the Chair, the Chair is having to record, but I think
25 it's, it's something about what this organization is

1 and what it stands for, and the city of Atlanta and
2 all that, all that it means.

3 VICE CHAIR THERNSTROM: Well, I can, I can
4 articulate it, you know, African Americans may be, the
5 state of America remains, the American dilemma, the
6 wound that has not gotten, has not been healed.

7 And, there is no other group with a
8 comparable history, and with precisely comparable
9 problems that are so related to that history. And, I,
10 I think that the Atlanta Office is a recognition of
11 that.

12 CHAIRMAN REYNOLDS: Okay. Where are we, I
13 mean, has this gentleman packed his bags? Because,
14 what I am hearing is a rare instance of unanimity, and
15 I think that we may decide, I may offer to, make a
16 motion to undo this, but before doing so, where, where
17 are we?

18 STAFF DIRECTOR DANNENFELSER: The plan is
19 for him to report to Los Angeles in the office there
20 this Monday.

21 CHAIRMAN REYNOLDS: This coming Monday?

22 STAFF DIRECTOR DANNENFELSER: This Monday.
23 He'd spend a week there but he would then be back--

24 CHAIRMAN REYNOLDS: Did he terminate his
25 lease in Atlanta?

1 STAFF DIRECTOR DANNENFELSER: No, no,
2 again, this, I don't, you know, we have not terminated
3 the lease in Atlanta--

4 CHAIRMAN REYNOLDS: No, no. No, his
5 personal lease.

6 STAFF DIRECTOR DANNENFELSER: I, I don't
7 know what he's done. But his intention is to move to
8 Los Angeles. Yes, he, he plans to terminate his
9 personal residence in Atlanta, yes.

10 CHAIRMAN REYNOLDS: So I assume that he has
11 a home, so he has signed another lease, and in, in
12 L.A.--

13 STAFF DIRECTOR DANNENFELSER: He has, he
14 has housing in the area, I don't know--yes. Yes, I
15 don't--

16 MR. BLACKWOOD: Can we have this kind of--
17 in the hallway or something? Otherwise, we have to go
18 into closed session.

19 VICE CHAIR THERNSTROM: I don't understand
20 why this wasn't discussed before he packed his bags.

21 COMMISSIONER YAKI: Okay--I'd just like to
22 make, I'd like to make a motion that the Chairman,
23 given the sense of the Commission, confer with the
24 staff Director, Director, with the purpose of
25 determining whether or not it's still feasible and

1 practical to ensure that the Southern Regional Office-
2 -sorry.

3 I thought, I thought you were, I thought
4 you were having like, angina or something. I'd like to
5 make a motion that the Chair, that the Chair of the
6 Commission in his waning, waning hours, take, take the
7 sense of this, take the sense of the Commission and
8 confer with the Staff Director on, on, on our concerns
9 and, and determine whether it is possible to reverse
10 the decision and keep the Atlanta, the Southern
11 Regional Office as the, as the full time position
12 rather than the--

13 CHAIRMAN REYNOLDS: Okay, how about this.
14 I think that we should go into closed session. What I
15 have to say is not going to take much time, but it is
16 of a sensitive nature, so all the magic words.

17 COMMISSIONER YAKI: Question. Is there
18 anything else in closed session we can add to it so we
19 don't do it twice?

20 CHAIRMAN REYNOLDS: I--

21 COMMISSIONER YAKI: Do we need to go into
22 closed session for anything else, David?

23 MR. BLACKWOOD: Not that I'm aware of.

24 COMMISSIONER YAKI: No? Okay. Okay. I move
25 we go into closed session.

1 CHAIRMAN REYNOLDS: Second. All in favor,
2 please say aye. Any objections? Any abstentions?

3 COMMISSIONER HERIOT: I abstain. Abstain.

4 COMMISSIONER GAZIANO: Abstain. I'm not
5 sure I--

6 CHAIRMAN REYNOLDS: Okay, we have to
7 abstentions. Commissioners Heriot and Gaziano.

8 VICE CHAIR THERNSTROM: The Chairman has to
9 ask for closed session. I think we should give it to
10 him.

11 STAFF DIRECTOR DANNENFELSER: I'd like to
12 add that John Ratcliffe, the budget officer, be in the
13 meeting.

14 COMMISSIONER GAZIANO: Should special
15 assistants stay, go?

16 MR. BLACKWOOD: No, they really shouldn't.
17 I mean, this, I, it's you all that's making the
18 decision.

19 COMMISSIONER GAZIANO: Which, what's--
20 that's fine. Just asking.

21 MR. BLACKWOOD: Yes, you could stay. If you
22 feel strongly. We've got to wait until the special
23 assistants leave.

24 VICE CHAIR THERNSTROM: Who's he waiting
25 for?

1 COMMISSIONER GAZIANO: John.

2 (Whereupon, the above entitled matter
3 entered closed session to resume in Open Session at
4 11:56 a.m.)

5 CHAIRMAN REYNOLDS: Okay. We are back on
6 the record. Commissioner Yaki?

7 COMMISSIONER YAKI: Thank you very much,
8 Mr. Chair.

9 I would like to make a motion that we
10 authorize the Chair to discuss with the Staff Director
11 and General Counsel consistent with the sense of the
12 Commission how we best deal with this situation. It
13 is clear that the sense of the Commission is that we
14 want to keep the Southern regional office open and
15 staffed with a professional staff position. Based
16 upon that sense, we authorize you to use your
17 discretion to work with the Staff Director and the
18 General Counsel to resolve the situation the best way
19 that you see fit.

20 CHAIRMAN REYNOLDS: Can I offer a friendly
21 amendment?

22 COMMISSIONER YAKI: Yes.

23 CHAIRMAN REYNOLDS: Something along the
24 lines that I will confer with the Staff Director and
25 the General Counsel and then will be authorized by the

1 Commission to make the decision.

2 COMMISSIONER YAKI: Absolutely.

3 CHAIRMAN REYNOLDS: Okay. Is there a
4 second?

5 VICE CHAIR THERNSTROM: Second.

6 CHAIRMAN REYNOLDS: Discussion?

7 (No response.)

8 CHAIRMAN REYNOLDS: All in favor please
9 say "Aye." (Whereupon, there was a chorus of
10 "Ayes.")

11 CHAIRMAN REYNOLDS: Objections?

12 (No response.)

13 CHAIRMAN REYNOLDS: Abstentions?

14 (No response.)

15 CHAIRMAN REYNOLDS: Moving right along,
16 next up, State Advisory Committees.

17 COMMISSIONER GAZIANO: I have another
18 operation issue.

19 CHAIRMAN REYNOLDS: Yes, you are right.

20 COMMISSIONER GAZIANO: Okay. Our next
21 in-person meeting is January 14. And we have been --

22 CHAIRMAN REYNOLDS: Is it the 17th or the
23 14th?

24 COMMISSIONER GAZIANO: Our next in-person

25 --

1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER GAZIANO: -- meeting is
3 January 14th. And we have been informed by an
4 informed source that we will have new commissioners at
5 that time. I don't know whether we will necessarily
6 have a full quorum of available commissioners on the
7 telephone meeting, which is scheduled for December
8 17th. And I know that the convening authority would
9 be the Vice Chair. And the Vice Chair has expressed
10 displeasure with telephonic meetings. And I would
11 suggest that it is particularly inappropriate before
12 we meet new colleagues to do so.

13 So I would wonder whether there is
14 unanimous consent to cancel the December 17th
15 telephonic meeting.

16 CHAIRMAN REYNOLDS: I second the motion.

17 COMMISSIONER HERIOT: Do we have any SACs
18 that would be coming up at that time?

19 CHAIRMAN REYNOLDS: Mr. Staff Director?

20 STAFF DIRECTOR DANNENFELSER: Potentially.
21 It's not certain. We have a few that need some more
22 work. I don't think we have any that would be urgent
23 that we deal with at that time that could not wait
24 until January.

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

1 COMMISSIONER YAKI: Believe it or not, I
2 am going to oppose the motion and say that I would
3 like to keep the flexibility open for that meeting
4 should, in fact, we have new commissioners for the
5 purposes of ensuring adequate orientation, talking to
6 them, et cetera.

7 They're probably going to be coming in
8 here to get sworn in, to get the lay of the land. And
9 I think even a brief meeting for the purposes of some
10 organization would be useful.

11 So I, for one, have never been a big fan
12 of telephonic meetings, but in this case, I am going
13 to withdraw my objection in this one instance because
14 I want to at least keep that option open, although I
15 think, in all probability, it won't happen. But in
16 the case that it does and there is a sense from you
17 that they would like to get the ball rolling, I would
18 like to keep that option open.

19 CHAIRMAN REYNOLDS: Other comments?

20 VICE CHAIR THERNSTROM: I actually have a
21 question. The process of swearing in, it's not really
22 -- it's only -- tell me the process of bringing in new
23 commissioners. I can't remember.

24 MS. MARTIN: Well, sometimes the new
25 commissioners come with --

1 STAFF DIRECTOR DANNENFELSER: Tina, come
2 up and get a microphone.

3 MS. MARTIN: Sometimes commissioners come
4 with their oath already, someone has already sworn
5 them in, the appointment is by a judge or someone of
6 that sort. If not, the Chair can swear them in. The
7 Staff Director can swear them in. And I can swear
8 them in.

9 COMMISSIONER YAKI: I got sworn in by
10 Tina.

11 COMMISSIONER GAZIANO: I don't think the
12 swearing in is the major reason. I just think the
13 first time we do business with new commissioners we
14 ought to deal with them face to face. And given that
15 there is some expense in noticing a meeting, there is
16 some time spent possibly preparing, possibly not, we
17 should just -- it's more prudent to cancel that
18 particular meeting and just look forward to seeing
19 them on January the 14th.

20 CHAIRMAN REYNOLDS: Commissioner Yaki?

21 COMMISSIONER YAKI: I think that it is
22 ironic that, all of a sudden, the motion of expense
23 comes up in --

24 COMMISSIONER GAZIANO: Not so much --

25 COMMISSIONER YAKI: -- in the statement by

1 Commissioner Gaziano. I am going to be very blunt
2 about this. I think that the meeting on the 17th
3 should be made available. I think it should be up to
4 the new commissioners if they want to convene at that
5 time.

6 COMMISSIONER GAZIANO: The Vice Chair
7 would have to convene.

8 COMMISSIONER YAKI: Well, then it's up to
9 the Vice Chair if they want, if she or he or whoever
10 is designated by the President wants to convene at
11 that time.

12 COMMISSIONER GAZIANO: No, no. It has to
13 be confirmed. Until we can confirm someone, no one is
14 the Chair.

15 COMMISSIONER YAKI: I can see it in your
16 heart, Mr. Gaziano, in which case I will say that it
17 is my desire that we have the option to meet in
18 December. And you may choose to cancel it, but I can
19 assure you that we will do everything we can to
20 uncancel it and have a meeting in December if we so
21 choose.

22 So you can go through this motion or
23 exercise and reveal yourself to just simply be someone
24 who wants to push this off as much as possible or you
25 can give --

1 COMMISSIONER GAZIANO: I am really
2 confused by all of that.

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER GAZIANO: I just know that --

5 CHAIRMAN REYNOLDS: Folks, folks, folks,
6 let's --

7 COMMISSIONER GAZIANO: -- this possibly
8 exists now.

9 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

10 VICE CHAIR THERNSTROM: It does seem to me
11 that there is no harm --

12 CHAIRMAN REYNOLDS: Well, then help me
13 out.

14 VICE CHAIR THERNSTROM: Okay. There is no
15 harm in sticking with the 17th at this point. And, as
16 Commissioner Gaziano knows, I don't like telephonic
17 meetings, but we can --

18 COMMISSIONER GAZIANO: What was the last
19 one you participated in?

20 CHAIRMAN REYNOLDS: Let her finish. Let
21 her finish.

22 VICE CHAIR THERNSTROM: But we do have an
23 uncertain picture on our hands here. I would like to
24 have the pieces in place. We can cancel this meeting
25 at any time. I will be happy to answer because I

1 don't like telephonic meetings. But I think, as a
2 courtesy to incoming people, simply for that reason,
3 we should stick with it in case, for some reason, they
4 want it.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER GAZIANO: Now I think we have
7 to have the meeting. Once it's set, you can't
8 unilaterally cancel the meeting unless there is some
9 process. This is the point of having a process now
10 when we're all together.

11 CHAIRMAN REYNOLDS: Whoa. I don't think
12 that's true.

13 COMMISSIONER YAKI: I would seriously beg
14 to differ given how we have canceled meetings in the
15 past.

16 CHAIRMAN REYNOLDS: All those in favor
17 please say "Aye."

18 VICE CHAIR THERNSTROM: In favor of what?
19 What is the --

20 CHAIRMAN REYNOLDS: The motion is that we
21 --

22 COMMISSIONER GAZIANO: It's to cancel the
23 meeting. You may be right that somehow the meeting
24 will be called. I think it's better to cancel now and
25 then --

1 COMMISSIONER YAKI: I think it costs more
2 to cancel and uncanceled than it would be just to
3 cancel.

4 CHAIRMAN REYNOLDS: Okay. There is not
5 much value left --

6 COMMISSIONER YAKI: Sorry. Sorry.

7 CHAIRMAN REYNOLDS: -- in this discussion.
8 All of those in favor please say "Aye."

9 VICE CHAIR THERNSTROM: By the way, I
10 would come in, rather than do it telephonically if I
11 go on.

12 COMMISSIONER GAZIANO: Aye. All those in
13 favor.

14 COMMISSIONER HERIOT: Aye.

15 COMMISSIONER YAKI: No.

16 COMMISSIONER MELENDEZ: No.

17 COMMISSIONER TAYLOR: Abstain.

18 VICE CHAIR THERNSTROM: No.

19 CHAIRMAN REYNOLDS: I will abstain also.

20 COMMISSIONER GAZIANO: Pete?

21 COMMISSIONER KIRSANOW: Aye.

22 CHAIRMAN REYNOLDS: Okay. How many is
23 that? Three?

24 COMMISSIONER YAKI: A tie. The motion
25 fails.

1 CHAIRMAN REYNOLDS: One, two, three.

2 COMMISSIONER YAKI: One, two, three. Two
3 abstentions.

4 CHAIRMAN REYNOLDS: All right. Motion
5 fails.

6 COMMISSIONER YAKI: Next item.

7 III. STATE ADVISORY COMMITTEE ISSUES

8 - NORTH CAROLINA SAC

9 CHAIRMAN REYNOLDS: The meeting binder
10 distributed by the Staff Director on November 26
11 contained a recommended list of candidates for the
12 North Carolina State Advisory Committee.

13 I move that the Commission recharter the
14 North Carolina State Advisory Committee. Under this
15 motion, the Commission appoints the following
16 individuals to that Committee based on the
17 recommendations of the Staff Director: Marian
18 Ackerman, Philip Bazemore, Michael Gerhart, Stephen
19 Greene, Matty Lazo-Chadderton --

20 COMMISSIONER YAKI: Which state are we
21 doing first again?

22 CHAIRMAN REYNOLDS: North Carolina.

23 COMMISSIONER YAKI: Okay.

24 CHAIRMAN REYNOLDS: -- George Leef, Kevin
25 Leonard, Rick Martinez, Thealeeta Monet, Robert

1 Numbers, Willie Ratchford, Sarah Taylor, and Olga
2 Wright.

3 Pursuant to this motion, the Commission
4 appoints Marian Ackerman as the chair of this
5 rechartered North Carolina State Advisory Committee.
6 These members will serve as uncompensated government
7 employees.

8 Under the motion, the Commission
9 authorizes the Staff Director to execute the
10 appropriate paperwork for the appointment. Is there
11 a second?

12 COMMISSIONER TAYLOR: Second.

13 CHAIRMAN REYNOLDS: Discussion?

14 (No response.)

15 CHAIRMAN REYNOLDS: All those in favor
16 please say "Aye."

17 (Whereupon, there was a chorus of "Ayes.")

18 CHAIRMAN REYNOLDS: Abstentions?

19 (No response.)

20 CHAIRMAN REYNOLDS: All those who oppose?

21 (No response.)

22 CHAIRMAN REYNOLDS: Pete?

23 COMMISSIONER KIRSANOW: Aye.

24 CHAIRMAN REYNOLDS: Okay. If I have got
25 this right, we have --

1 VICE CHAIR THERNSTROM: You didn't
2 abstain?

3 CHAIRMAN REYNOLDS: No, we don't.

4 COMMISSIONER YAKI: No, no.

5 VICE CHAIR THERNSTROM: Oh, sorry.

6 CHAIRMAN REYNOLDS: I'm sorry. Did you
7 abstain or did you oppose the motion?

8 COMMISSIONER YAKI: I opposed.

9 CHAIRMAN REYNOLDS: Okay. Commissioner
10 Yaki opposed the motion. The remaining commissioners
11 voted for it. The motion passes.

12 - VERMONT SAC

13 CHAIRMAN REYNOLDS: Next up, Vermont. The
14 meeting binder distributed by the Staff Director on
15 November 26 contained a recommended list of candidates
16 for the Vermont State Advisory Committee.

17 I move that the Commission recharter the
18 State Advisory Committee. Under this motion, the
19 Commission appoints the following individuals to that
20 Committee based on recommendations of the Staff
21 Director: Francine Bazluke, John Bloomer, Luther
22 Brown, Ann Hagman Cardinal, Ellen Mercer Fallon,
23 Leslie Ann Holman, Gary Kowalski, Terrance Martin,
24 Marion Milne, Cheryl Mitchell, Tara O'Brien, Curtiss
25 Reed, Eric Sakai, Stefanie Sidortsova, Diane Snelling,

1 Tracey Tsugawa, and the Right Rev. R. Steward Wood.

2 Pursuant to this motion, the Commission
3 appoints Curtiss Reed as chair of the rechartered
4 Vermont Advisory Committee. These members will serve
5 as uncompensated government employees.

6 Under the motion, the Commission
7 authorizes the Staff Director to execute the
8 appropriate paperwork for the appointments. Is there
9 a second?

10 COMMISSIONER TAYLOR: Second.

11 CHAIRMAN REYNOLDS: And I move to sever
12 the consideration of Curtiss Reed from the rest of the
13 package, as we have done for other individuals in the
14 past. I understand that he submitted a response to
15 our request at the last meeting that I would like to
16 discuss separately.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER TAYLOR: Second.

19 CHAIRMAN REYNOLDS: Okay.

20 VICE CHAIR THERNSTROM: What did you just
21 say?

22 COMMISSIONER YAKI: What you just said is
23 true. It just happens as a motion. It just happens
24 automatically. You don't need a second on it.

25 CHAIRMAN REYNOLDS: Okay. So let's vote

1 on the slate of minus Mr. Reed. All in favor please
2 say -- I'm sorry. Discussion?

3 (No response.)

4 CHAIRMAN REYNOLDS: All in favor please
5 say "Aye."

6 (Whereupon, there was a chorus of "Ayes.")

7 COMMISSIONER HERIOT: What does that that
8 mean with regard to the chairman?

9 COMMISSIONER GAZIANO: If we don't approve
10 him, I suppose we need to subsequently approve someone
11 else as chairman --

12 VICE CHAIR THERNSTROM: That's correct.

13 COMMISSIONER GAZIANO: -- or add someone
14 in --

15 VICE CHAIR THERNSTROM: That is correct.

16 CHAIRMAN REYNOLDS: Okay. All in favor
17 please say "Aye."

18 (Whereupon, there was a chorus of "Ayes.")

19 CHAIRMAN REYNOLDS: Any abstentions?

20 COMMISSIONER GAZIANO: I abstain.

21 CHAIRMAN REYNOLDS: Objections?

22 (No response.)

23 CHAIRMAN REYNOLDS: Let the record reflect
24 that Commissioner Gaziano abstained. The remaining
25 commissioners voted for the slate of candidates.

1 Next up is Mr. Reed.

2 VICE CHAIR THERNSTROM: I have a question
3 about the Reed response. It was all about this
4 article that he had written, but maybe it's only me.
5 I don't have a copy of the article. So I don't know
6 what we are talking about here and what he is talking
7 about.

8 CHAIRMAN REYNOLDS: Does anyone have a
9 copy of the article?

10 COMMISSIONER GAZIANO: There were two
11 things that were circulated to him for comment. And
12 I believe the Staff Director sent it to all of us.

13 STAFF DIRECTOR DANNENFELSER: Yes. The
14 link to the article and to the radio interview in
15 question were in the e-mail that I sent to him that
16 was circulated to all commissioners.

17 VICE CHAIR THERNSTROM: I'm sorry. I
18 somehow missed those links because I stared at this
19 and thought, what is this? Can somebody just tell me
20 what the issue is, then?

21 CHAIRMAN REYNOLDS: Okay. There were two
22 events, I believe. One was an interview he gave on
23 NPR. And there was discussion about the rechartering
24 of Vermont and other State Advisory Committees. And
25 he -- where is the statement?

1 He suggests that there was an intent by
2 the Bush administration to curtail civil rights. At
3 least that is how I have interpreted it. And he
4 basically says that -- when the eyes and ears of the
5 states; i.e., the SACs, have been rendered inoperable
6 because they are not rechartered or you have budget
7 restrictions that restrict travel of Washington, D.C.
8 staff or SAC members and the state, is this a part of
9 the evil empire? He says, "I don't want to go there.
10 However, there is a sense of a concerted systematic
11 effort to restrict the activities of the SACs. The
12 source of this is arguable, but the effect has been
13 insufficient with the civil rights abuses and
14 discrimination." That was one of the --

15 COMMISSIONER YAKI: And the date?

16 COMMISSIONER GAZIANO: April 29, 2008.

17 CHAIRMAN REYNOLDS: Right.

18 COMMISSIONER GAZIANO: One of the things
19 that I thought was odd about that, about that
20 particularly, was the conspiratorial conclusion that
21 because we are not well-funded at this Commission and
22 we don't provide the level of resources that he deems
23 appropriate to his activity on the SAC, that there
24 somehow is a purpose in harming civil rights.

25 But I had a concern as well regarding an

1 op. ed. that he titled that he was criticizing the
2 Republican Lieutenant Governor Brian Dubie's Pure
3 Vermont Plan. His op. ed. was titled "Pure Vermont is
4 Pure Invalidation," where he compared the Lieutenant
5 Govern's plan to eugenics laws, Jim Crow, the Khmer
6 Rouge, and Nazi Germany. Those kind of invectives or
7 ad hominem labels are troubling. So that's why I
8 wanted him to respond.

9 And, instead of responding in a serious
10 way -- you know, I'm not sure which way I might have
11 voted if he had responded in a more thoughtful way,
12 but his response seems to really confuse First
13 Amendment law to attack us for even asking whether his
14 comments are intemperate, seeming to imply that we
15 would be censoring him if we did not automatically
16 reapprove him, regardless of what hateful speech he
17 said.

18 I mean, I think his response is more
19 troubling to me than -- I possibly -- you know, I have
20 approved other people who have explained their views.
21 I was glad to support one of Commissioner Yaki's
22 recommended people who attacked me personally when
23 that individual explained themselves. But I think the
24 explanation raises more questions and suggests than
25 suitability to work with others and to represent the

1 Commission than even the original statement.

2 CHAIRMAN REYNOLDS: Commissioner Yaki?

3 COMMISSIONER YAKI: Well, I cannot defend
4 everything that anyone says. Who knows what goes on
5 in their minds when they say it? But I will say this.
6 We do have this document in the record. And that is
7 a letter from every member of the SAC urging his
8 reappointment and continued presence as chair. I
9 think that that, given the fact that this comes from
10 everyone in the SAC, not just liberals, not just
11 conservatives, but everyone, speaks to his ability to
12 work well with others.

13 With regard to the statements that he
14 made, I can only say this. And that is if that were
15 the basis for qualification of everything -- and I do
16 believe that there are obviously some boundaries that
17 can't be crossed, but in the rhetoric that he was
18 speaking to, it was not rhetoric that -- it was
19 perhaps very colorful rhetoric at the very least, but
20 certainly there have been a lot of instances when a
21 lot of us have engaged in extremely colorful rhetoric,
22 both here at the Commission and in writings outside,
23 that would have made anyone -- give anyone pause as to
24 whether or not they had the ability or the temperament
25 to work with other people.

1 People will have their opinions. People
2 will have their particular expressions. Commissioner
3 Reynolds and I have gone toe to toe on some people I
4 was not too keen on, won some, lost some. That's just
5 the nature of the game.

6 But I think that, rather than get into any
7 defense of anything that he has said in his personal
8 capacity as an activist in the State of Vermont -- and
9 anybody who knows Vermont -- and I have in-laws in
10 Vermont. I have friends in Vermont. It's a unique
11 state, to say the least.

12 The fact that you have a letter signed by
13 every member of the SAC commending his stewardship as
14 chair and urging that we keep him on speaks volume to
15 me, to his ability to work well with others, keep
16 everyone's viewpoints at the forefront and not impose
17 his will, no matter what his personal beliefs may or
18 may not be on the operation of the SAC.

19 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

20 VICE CHAIR THERNSTROM: Is it correct to
21 say that every other member of the SAC has threatened
22 to resign if we do not reappoint him?

23 CHAIRMAN REYNOLDS: I believe many have.
24 I'm not sure if each member of the SAC has threatened
25 to resign.

1 COMMISSIONER HERIOT: Can we clarify that?

2 STAFF DIRECTOR DANNENFELSER: I believe
3 several have threatened to resign. And, as
4 Commissioner Yaki has pointed out, all have urged that
5 he be reappointed, but not all of them have made
6 explicit statements that they would resign if he was
7 not reappointed but several. I have been told by our
8 person in the Eastern Regional Office that there have
9 been some members who have expressed that sentiment.

10 COMMISSIONER GAZIANO: Can I assume unless
11 someone wants to challenge me that we all agree his
12 statement of First Amendment is rather bizarre that
13 somehow if we consider his hateful speech and don't
14 reappoint him, that that offends the First Amendment,
15 that he has a First Amendment right to be reappointed?
16 Isn't that a bizarre statement?

17 VICE CHAIR THERNSTROM: He doesn't have a
18 First Amendment right to be reappointed. I think we
19 can all agree on that.

20 CHAIRMAN REYNOLDS: Well, it --

21 COMMISSIONER GAZIANO: The reason it
22 troubles me is it suggests an entitlement to make
23 possibly more outrageous statements were we to
24 reappoint him. If he had said, "All that I wrote I
25 thought about, you know. I retract it. I see how it

1 might cast unfavorable light on my other position in
2 the Commission," but he is taking this defiant stance
3 that somehow he has a First Amendment right to
4 reappointment. That raises additional concerns.

5 VICE CHAIR THERNSTROM: But on the other
6 side of the ledger is the fact that the entire SAC,
7 every member, supports the job he has been doing,
8 applauds it.

9 CHAIRMAN REYNOLDS: Commissioner?

10 COMMISSIONER HERIOT: Yes. That actually
11 worries me. That makes me want to withdraw my yes
12 vote.

13 STAFF DIRECTOR DANNENFELSER: I just
14 wanted to clarify that the first issue that came to my
15 attention was about the op. ed. And the Vermont
16 Public Radio interview came up a little bit later.
17 And that was forwarded to my attention a little bit
18 later.

19 Upon reading the op. ed., I did ask our
20 person in the regional office to contact Mr. Reed and
21 to ask if he would write a letter to the editor of
22 that newspaper where the op. ed. appeared to clarify
23 the statements as they related to Mr. Dubie,
24 associating him with Nazis in the Khmer Rouge and the
25 like. And he declined to write such a letter to the

1 editor.

2 CHAIRMAN REYNOLDS: Okay. I thought that
3 we were asking him to contact us and to --

4 STAFF DIRECTOR DANNENFELSER: Well, that
5 was the step I took before that --

6 COMMISSIONER GAZIANO: So he has had two
7 opportunities to withdraw that.

8 CHAIRMAN REYNOLDS: I don't think that we
9 should have asked him to withdraw his statement.

10 COMMISSIONER GAZIANO: I agree. I agree.

11 CHAIRMAN REYNOLDS: But for me, I find his
12 statements interesting. It suggests a temperament
13 that may not be suited to work. He may work well with
14 his fellow SAC members, but it's not clear to me that
15 he is going to interact well with folks here in
16 Washington.

17 And also this notion of threats and this
18 sentiment that he somehow is -- it's unfortunate for
19 him because I was willing to hold my nose and vote for
20 him before I got the e-mails from him where he once
21 again demonstrated, in my view, a lack of judgment.
22 He would have been much better off. At least he would
23 have garnered at least one vote had he just remained
24 quiet.

25 But, in any event, Vice Chair Thernstrom?

1 VICE CHAIR THERNSTROM: Can we ask the
2 Eastern Regional Office what their experience has been
3 in working with him? Would that be helpful?

4 CHAIRMAN REYNOLDS: Not to me.

5 Commissioner Yaki?

6 COMMISSIONER YAKI: I was concerned about
7 the statement made by another commissioner that
8 somehow -- yes. He certainly has no First Amendment
9 right to be appointed. On the other hand, his
10 appointment should not be conditioned on prior
11 restraint as well.

12 This is something where I think it is very
13 unique to -- I don't know the person. He's never
14 contacted me. I've never spoken to him. But I have
15 received the correspondence from the members of the
16 SAC who seem to be in agreement on both sides that,
17 however intemperate his written remarks may have been,
18 his commitment to the SAC had been admirable and
19 something that they wish to see continue.

20 And I think that there are a lot of people
21 that this Commission has approved who I don't know if
22 we would even go that far coupled with some of the
23 statements that they have made and done in public
24 life, not that that is saying that two wrongs make a
25 right, but in this case, we do have someone who has

1 been given a great degree of responsibility and care
2 with regard to a State Advisory Committee, where there
3 is unanimous support for him to be reappointed in as
4 chair. I think that we ought to consider that very,
5 very carefully and not simply impose our own political
6 ideologies with regard to whether or not -- because if
7 that were the case, I probably wouldn't vote for him
8 either.

9 But does he have a commitment to civil
10 rights? Does he have a commitment to the State
11 Advisory Committee? Does he work well with others?
12 Yes, yes, yes. Does he say things that are colorful?

13 COMMISSIONER GAZIANO: Offensive.

14 COMMISSIONER YAKI: But I will tell you
15 this. As per his NPR interview, everything he said on
16 NPR I've said twice over, 5 times over, maybe 20 times
17 over, and during the New Black Panther hearing
18 probably 100 times over. So, you know, if you want to
19 use the NPR in your view, which I --

20 COMMISSIONER GAZIANO: Not exactly.

21 COMMISSIONER YAKI: Pardon?

22 COMMISSIONER GAZIANO: Not exactly.

23 COMMISSIONER YAKI: Absolutely exactly.
24 Absolutely exactly. From the very beginning on the
25 State Advisory Committees, if you want to know where

1 he got that perception from, it was from me talking on
2 NPR in 2007 about how the SACs I believe and still are
3 being manipulated, run over, and otherwise packed.
4 And I don't withdraw any statement I have ever made
5 about the SACs.

6 CHAIRMAN REYNOLDS: Commissioner Heriot?

7 COMMISSIONER HERIOT: I just wanted to say
8 that for me I am looking for two things that I am not
9 finding with this candidate for the SAC. One, I look
10 for someone who has a temperament that allows them to
11 deal with complex and difficult issues.

12 Two, I am looking for someone who actually
13 has some expertise on civil rights. And what I am
14 seeing here in this record -- and I am thinking
15 particularly about the article in the Brattleboro
16 Reformer. I am actually less concerned with the NPR
17 issue.

18 But, number one, he doesn't understand
19 First Amendment law. That is not a good thing.
20 Number two, even Commissioner Yaki agreed that there
21 are limits. And you haven't reached the limit when
22 you are accusing a candidate for governor of having a
23 program that raises the spectra of Hitler's Aryan
24 nation and the Khmer Rouge. You know, if that's not
25 overkilling, I don't know what is.

1 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

2 VICE CHAIR THERNSTROM: Well, it is over
3 the top, but it seems to me that the question here is
4 how telling are the views of the other members of that
5 SAC? And do we want the chaos that might ensue if we
6 have to reconstruct that whole SAC?

7 And I wonder if some compromise would be
8 possible that would be unprecedented, give him a year
9 and not two years? And let's see how the SAC function
10 and how he function.

11 CHAIRMAN REYNOLDS: Commissioner Heriot?

12 COMMISSIONER HERIOT: I just wanted to add
13 it's not clear to me that members of the SAC have any
14 particular knowledge of this guy. They probably have
15 very limited exposure to him.

16 I think if you want to get a sense of what
17 Curtiss Reed thinks, the easiest way to do it is to
18 look at Curtiss Reed's words and not ask someone who
19 may have only seen --

20 VICE CHAIR THERNSTROM: Well, how many
21 meetings have they had? And how much work have they
22 done with him?

23 COMMISSIONER HERIOT: My guess is very
24 little. I don't think SACs meet that often.

25 VICE CHAIR THERNSTROM: Well, I mean, they

1 do have a strong opinion here about him. So, you
2 know, do we take that into account or not?

3 Is it possible? Does my idea appeal to
4 anybody of giving him a year, not two, and coming back
5 again?

6 COMMISSIONER GAZIANO: I think that we
7 gave him an opportunity. And what seems to me to --
8 I can't I think in good conscience vote for him now,
9 regardless of -- it's not that the views of the other
10 SAC members are irrelevant. I just don't know what
11 the basis of them is. I have no idea whether they
12 have read his op. ed. If they agree with him, I might
13 vote against some of them. So that's why I abstained.

14 VICE CHAIR THERNSTROM: It's not so easy
15 to find SAC --

16 COMMISSIONER GAZIANO: Let me finish. But
17 his own sort of defiant, crazy, legally flawed defense
18 of his action is what troubles me more. And so I
19 think it's his own actions that have clarified which
20 way I should vote and I would think have clarified
21 which way others should vote.

22 He did not when given another chance
23 acknowledge that some hateful things, some outrageous,
24 hateful things he said might affect his duty in the
25 future. He took the opposite approach, which suggests

1 that he thinks that if we reconfirmed him on the --
2 reappoint him on the SAC, he thinks there are no
3 limits.

4 He disagrees with Commissioner Yaki, it
5 seems to me, that there are any limits to what he
6 might say privately as it affects his job on the SAC.
7 So I think that is enough.

8 COMMISSIONER YAKI: I move to table the
9 whole Vermont SAC issue, just --

10 VICE CHAIR THERNSTROM: Well, the rest of
11 the SAC is --

12 COMMISSIONER YAKI: I want to revisit it.
13 I voted on the prevailing side. So I want to cancel
14 the vote on the Vermont SAC and just kill it because
15 I think that there have been strong sentiments
16 expressed here, some of which I agree with.

17 I also believe that he did ask for more
18 time to respond. He did not get that time. I think
19 that --

20 COMMISSIONER HERIOT: He responded.

21 COMMISSIONER YAKI: He did after --

22 COMMISSIONER GAZIANO: The combined motion
23 would not be in order. If he --

24 COMMISSIONER YAKI: Sure it.

25 COMMISSIONER GAZIANO: If Commissioner

1 Yaki moved to table, that is a privilege motion. That
2 takes precedence over my motion that we're considering
3 this gentleman.

4 We have already voted. He can reopen it
5 later. And that is a separate motion. But a tabling
6 motion takes two-thirds.

7 So the motion before us right now is
8 whether to approve this guy. I call the question and
9 intend to vote no.

10 CHAIRMAN REYNOLDS: All in favor please
11 say "Aye."

12 COMMISSIONER HERIOT: Wait. What are we
13 saying "aye" to?

14 COMMISSIONER GAZIANO: To approve him for
15 the SAC.

16 COMMISSIONER HERIOT: Tabling I thought
17 was his motion.

18 COMMISSIONER GAZIANO: If he wants to
19 offer that just on this gentleman, then it needs
20 two-thirds. But otherwise we can't combine it with
21 reopening everything else up at the same time.

22 So the motion before us right now unless
23 Commissioner Yaki wants to table the motion on Mr.
24 Reed is voting on Mr. Reed.

25 COMMISSIONER YAKI: No. I was offering a

1 substitute motion. A substitute motion if you had
2 bothered to --

3 COMMISSIONER GAZIANO: You didn't offer --

4 COMMISSIONER HERIOT: It's not a
5 substitute. It's not --

6 COMMISSIONER YAKI: I first started with
7 the tabling. Once I get into this --

8 CHAIRMAN REYNOLDS: Folks, let's make it
9 simple. Let's just vote.

10 COMMISSIONER YAKI: I want to reconsider
11 the entire Vermont SAC because I do --

12 COMMISSIONER GAZIANO: You can do so after
13 --

14 COMMISSIONER HERIOT: The motion is to
15 table this motion.

16 COMMISSIONER GAZIANO: He has withdrawn
17 that.

18 COMMISSIONER YAKI: -- about whether or
19 not --

20 CHAIRMAN REYNOLDS: Is there a second?

21 COMMISSIONER YAKI: -- when it happens
22 what happens.

23 CHAIRMAN REYNOLDS: Is there a second?

24 COMMISSIONER GAZIANO: To what?

25 COMMISSIONER YAKI: To reconsider the vote

1 on the Vermont SAC how --

2 COMMISSIONER HERIOT: That is not a
3 privilege motion.

4 COMMISSIONER GAZIANO: That is not a
5 privilege motion.

6 COMMISSIONER YAKI: It is a substitute.

7 COMMISSIONER GAZIANO: Okay. Let's vote
8 that one down so we can vote on Mr. Reed.

9 CHAIRMAN REYNOLDS: Is there a second?

10 COMMISSIONER HERIOT: I will second that.
11 It is a motion to substitute.

12 CHAIRMAN REYNOLDS: A motion to
13 reconsider.

14 COMMISSIONER HERIOT: A motion to
15 substitute is the only thing that is in order.

16 VICE CHAIR THERNSTROM: The one thing I
17 want to know is if everybody is going to resign.

18 CHAIRMAN REYNOLDS: Okay. That issue has
19 been brought up and put on the table. And everyone is
20 aware of the specter of the members resigning. Some
21 of them are en masse. So we --

22 COMMISSIONER YAKI: Forget it. Let's just
23 vote on this guy. They're going to resign. We're
24 going to have to do this whole process over again.

25 CHAIRMAN REYNOLDS: Thank you. Thank you.

1 Okay. All in favor please say "Aye."

2 COMMISSIONER GAZIANO: We are voting on?
3 Whether to put him on the SAC?

4 CHAIRMAN REYNOLDS: That is correct.

5 COMMISSIONER YAKI: I abstain.

6 COMMISSIONER MELENDEZ: Abstain. No.

7 VICE CHAIR THERNSTROM: I am going to
8 abstain. I think it's a total mess.

9 CHAIRMAN REYNOLDS: All right? No.

10 COMMISSIONER GAZIANO: No.

11 COMMISSIONER HERIOT: No.

12 CHAIRMAN REYNOLDS: Okay. We have --

13 COMMISSIONER HERIOT: Peter?

14 CHAIRMAN REYNOLDS: Pete?

15 COMMISSIONER HERIOT: Pete?

16 COMMISSIONER KIRSANOW: No.

17 (Laughter.)

18 CHAIRMAN REYNOLDS: Okay. So abstention?
19 Two abstentions?

20 COMMISSIONER YAKI: Three abstentions.

21 CHAIRMAN REYNOLDS: That's right. We have
22 three abstentions from Commissioners Melendez, Yaki,
23 Thernstrom. The remaining commissioners voted for.

24 COMMISSIONER HERIOT: Voted no.

25 CHAIRMAN REYNOLDS: Voted against. So the

1 motion falls.

2 - WISCONSIN SAC

3 CHAIRMAN REYNOLDS: Next up is Wisconsin.
4 The meeting binder distributed by the Staff Director
5 on November 26 contained a recommended list of
6 candidates for the Wisconsin State Advisory Committee.

7 I move that the Commission recharter the
8 Wisconsin State Advisory Committee. Under this
9 motion, the Commission appoints the following
10 individuals to that Committee based on the
11 recommendations of the Staff Director: Adel Mekraz,
12 Naheed Bleeker, Jeffrey Cooper, Anneliese Dickman,
13 Maria Gamez, Rebecca Grassl-Bradley, Lee Hansen,
14 Daniel Kelly, Desmond Means, Frederic Mohs, Arthur
15 Pontyen, Dawn Shelton-Williams, and William Tisdale.

16 Pursuant to the motion, the Commission
17 appoints Adel Mekraz as chair of this rechartered
18 Wisconsin Advisory Committee. These members will
19 serve as uncompensated government employees.

20 Under the motion, the Commission
21 authorizes the Staff Director to execute the
22 appropriate paperwork for the appointment. Is there
23 a second?

24 COMMISSIONER GAZIANO: Second.

25 CHAIRMAN REYNOLDS: Discussion?

1 (No response.)

2 CHAIRMAN REYNOLDS: All in favor please
3 say "Aye."

4 (Whereupon, there was a chorus of "Ayes.")

5 CHAIRMAN REYNOLDS: Objections?

6 COMMISSIONER YAKI: Abstain.

7 CHAIRMAN REYNOLDS: Objections? Any
8 objections?

9 COMMISSIONER YAKI: Abstain. Abstain.
10 Abstain.

11 CHAIRMAN REYNOLDS: Abstentions?

12 COMMISSIONER YAKI: Abstain.

13 COMMISSIONER TAYLOR: Abstain.

14 CHAIRMAN REYNOLDS: I'm sorry.

15 Commissioner Melendez, how did you vote?

16 COMMISSIONER MELENDEZ: I voted for it.

17 CHAIRMAN REYNOLDS: Okay. Vice Chair
18 Thernstrom?

19 VICE CHAIR THERNSTROM: I abstain.

20 CHAIRMAN REYNOLDS: Me, too.

21 COMMISSIONER GAZIANO: Yes. I said yes.

22 CHAIRMAN REYNOLDS: Okay. We have three
23 abstentions: Commissioners Taylor, Vice Chair
24 Thernstrom, and who was the third? Commissioner Yaki.
25 The motion passes.

1 - ALASKA SAC

2 CHAIRMAN REYNOLDS: Next up is the Alaska
3 State Advisory Committee. Once again, the binder was
4 distributed by the Staff Director on November 26. It
5 contained a recommended list of candidates for the
6 Alaska State Advisory Committee.

7 I move that the Commission recharter the
8 Alaska State Advisory Committee. Under this motion,
9 the Commission appoints the following individuals to
10 that Committee based on the recommendations of the
11 Staff Director: Robin Bronen, Dalee Dorough, Judith
12 Kleinfeld, Cecelia LaCara, Guadalupe Marroquin, Alice
13 Massie, Gerald McBeath, Elizabeth Medicine Crow,
14 Gerald McBeath, Kara Moriarty, Denise Morris, Rynnevia
15 Moss, and Melvin Williams.

16 Pursuant to the motion, the Commission
17 appoints Kara Moriarty as chair of this rechartered
18 Alaska Advisory Committee. These members will serve
19 as uncompensated government employees.

20 Under the motion, the Commission
21 authorizes the Staff Director to execute the
22 appropriate paperwork. Is there a second?

23 COMMISSIONER TAYLOR: Second.

24 CHAIRMAN REYNOLDS: Discussion? Yes?

25 COMMISSIONER MELENDEZ: Yes. There is

1 really an imbalance as far as -- I guess they couldn't
2 find any men up there in Alaska.

3 (Laughter.)

4 COMMISSIONER MELENDEZ: Usually it's the
5 other ways around, --

6 VICE CHAIR THERNSTROM: I was going to
7 say.

8 COMMISSIONER MELENDEZ: -- not enough
9 women, but this time I guess maybe they haven't done
10 an adequate job of --

11 COMMISSIONER GAZIANO: Maybe men up there
12 in Alaska need to just --

13 CHAIRMAN REYNOLDS: Okay, folks. Mr.
14 Staff Director, are you in a position to describe the
15 outreach?

16 STAFF DIRECTOR DANNENFELSER: I would just
17 say that there are some states where we have more men
18 and some states where we have more women and this
19 balance in a different direction this time.

20 CHAIRMAN REYNOLDS: I'm just trying to
21 make sure that we just didn't go to organizations,
22 women's organizations. I'm looking for you to say
23 assuming it's true that you use our usual outreach and
24 you tasked the next part of the line and went to
25 various organizations.

1 VICE CHAIR THERNSTROM: And the men were
2 sensible enough to say no.

3 STAFF DIRECTOR DANNENFELSER: That is
4 correct. And the memo does outline the outreach.

5 (Laughter.)

6 CHAIRMAN REYNOLDS: Okay. This is getting
7 ugly. Okay. Your concern is duly noted. You have
8 your response. Any other comments?

9 (No response.)

10 CHAIRMAN REYNOLDS: All in favor please
11 say "Aye."

12 (Whereupon, there was a chorus of "Ayes.")

13 CHAIRMAN REYNOLDS: Objections?

14 COMMISSIONER MELENDEZ: Abstain.

15 COMMISSIONER YAKI: Abstain.

16 VICE CHAIR THERNSTROM: Abstain.

17 CHAIRMAN REYNOLDS: Okay. Pete?

18 COMMISSIONER KIRSANOW: Aye.

19 CHAIRMAN REYNOLDS: Okay. Three
20 abstentions: Commissioners Yaki, Melendez, and
21 Thernstrom. The motion passes.

22 - IDAHO SAC

23 CHAIRMAN REYNOLDS: Next up is the Idaho
24 State Advisory Committee. Once again, the binder
25 distributed by the Staff Director on November 26

1 contained a recommended list of candidates for the
2 Idaho State Advisory Committee.

3 I move that the Commission recharter the
4 Idaho State Advisory Committee. Under the motion, the
5 Commission appoints the following individuals to that
6 Committee based on the recommendations of the Staff
7 Director: James Annest, Leslie Bock, Richard
8 Cummings, Louise Dixey, Maurice Ellsworth, Martha
9 Kawakami, Marshall Mend, Gladys Montoya, Stephen
10 Smith, Perry Swisher, Rudolph Wilson, and Scott Yenor.

11 Pursuant to the motion, the Commission
12 appoints Mr. Wilson as the chair of the newly
13 rechartered Idaho Advisory Committee. The members
14 will serve as uncompensated government employees.

15 And, as usual, the Commission authorizes
16 the Staff Director to execute the appropriate
17 paperwork.

18 CHAIRMAN REYNOLDS: Is there a second?

19 COMMISSIONER GAZIANO: Second.

20 CHAIRMAN REYNOLDS: Discussion?

21 (No response.)

22 CHAIRMAN REYNOLDS: All in favor please
23 say "Aye."

24 (Whereupon, there was a chorus of "Ayes.")

25 CHAIRMAN REYNOLDS: Objections?

1 (No response.)

2 CHAIRMAN REYNOLDS: Abstentions?

3 Commissioner Melendez?

4 COMMISSIONER MELENDEZ: Yes. I vote yes.

5 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

6 VICE CHAIR THERNSTROM: I'll vote yes on
7 this.

8 CHAIRMAN REYNOLDS: Okay. We have one
9 abstention: Commissioner Yaki.

10 (Pause.)

11 CHAIRMAN REYNOLDS: Why don't you put that
12 on the side for the moment? Let me get through
13 Louisiana first.

14 - LOUISIANA SAC

15 CHAIRMAN REYNOLDS: Okay. Louisiana is up
16 next. We need to add one member to the Louisiana SAC.

17 The Staff Director recently informed us
18 that a member of the Louisiana SAC resigned, bringing
19 the number of the SAC members to ten, which is below
20 the statutory minimum. Accordingly, the Staff
21 Director has recommended the appointment of Loyola
22 College of Law Professor James Viator.

23 I move to appoint Mr. Viator to the
24 Louisiana SAC. Is there a second?

25 COMMISSIONER GAZIANO: Second.

1 COMMISSIONER HERIOT: Wait, wait. We are
2 voting on the whole SAC or just --

3 CHAIRMAN REYNOLDS: It's already --

4 COMMISSIONER GAZIANO: It's fallen below
5 the statutory level.

6 COMMISSIONER HERIOT: Oh, okay.

7 COMMISSIONER GAZIANO: We're just adding
8 Professor --

9 COMMISSIONER HERIOT: No wonder I can't
10 find it in the book here. Okay.

11 CHAIRMAN REYNOLDS: Okay. Discussion?

12 (No response.)

13 CHAIRMAN REYNOLDS: All in favor please
14 say "Aye."

15 (Whereupon, there was a chorus of "Ayes.")

16 CHAIRMAN REYNOLDS: Any objections?

17 COMMISSIONER YAKI: Abstain.

18 CHAIRMAN REYNOLDS: Any abstentions other
19 than Commissioner Yaki's?

20 COMMISSIONER MELENDEZ: Abstain.

21 VICE CHAIR THERNSTROM: I will vote yes on
22 this.

23 CHAIRMAN REYNOLDS: Pete?

24 COMMISSIONER KIRSANOW: Yes.

25 CHAIRMAN REYNOLDS: Okay. We have two

1 abstentions: Commissioners Yaki and Melendez. The
2 motion carries.

3 - WISCONSIN SAC, PART II

4 CHAIRMAN REYNOLDS: Next up, Wisconsin.

5 (Pause.)

6 CHAIRMAN REYNOLDS: We did Idaho. Yes.
7 Okay. All right. With respect to Wisconsin before we
8 finish up, there is an issue. There is an individual,
9 Mark Block. There are some issues raised about some
10 of his activities. Since he is already on the SAC and
11 I believe entitled to reappointment, I think that we
12 should extend the same courtesy that we have extended
13 to other --

14 COMMISSIONER YAKI: I'm sorry. How does
15 that relate to Curtiss Reed?

16 CHAIRMAN REYNOLDS: Okay. I've been
17 corrected. He's not entitled to reappointment, but he
18 is --

19 COMMISSIONER GAZIANO: Entitled to
20 respond. That's what I was getting ready to say.

21 CHAIRMAN REYNOLDS: Right.

22 COMMISSIONER YAKI: Did he respond?

23 CHAIRMAN REYNOLDS: No. So what we are
24 going to do, we're going to move ahead with a slate of
25 candidates that does not include him. And legal

1 people can take it up in the future.

2 COMMISSIONER GAZIANO: We've got an
3 additional person.

4 CHAIRMAN REYNOLDS: For Wisconsin, we've
5 got an additional person: Thomas Powers. I neglected
6 to read his name. So I move that --

7 COMMISSIONER HERIOT: Where is his resume?

8 STAFF DIRECTOR DANNENFELSER: It was sent
9 around by e-mail.

10 COMMISSIONER GAZIANO: It was sent around
11 by e-mail.

12 COMMISSIONER YAKI: If we move on --

13 COMMISSIONER GAZIANO: I second your
14 motion to add him to the Wisconsin.

15 CHAIRMAN REYNOLDS: Discussion?

16 COMMISSIONER YAKI: No. Go ahead. Vote.

17 CHAIRMAN REYNOLDS: All in favor please
18 say "Aye."

19 (Whereupon, there was a chorus of "Ayes.")

20 COMMISSIONER YAKI: Abstain. I abstain.

21 CHAIRMAN REYNOLDS: Okay. Any other
22 abstentions?

23 COMMISSIONER MELENDEZ: Abstain.

24 VICE CHAIR THERNSTROM: I abstain.

25 CHAIRMAN REYNOLDS: Okay. We have three

1 abstentions: Thernstrom, Melendez, and Yaki.

2 Next up is an update of --

3 COMMISSIONER YAKI: Excuse me?

4 CHAIRMAN REYNOLDS: Yes?

5 COMMISSIONER YAKI: Four? I didn't see.

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER YAKI: Are you sure?

8 CHAIRMAN REYNOLDS: Yes.

9 COMMISSIONER YAKI: Positive?

10 CHAIRMAN REYNOLDS: Yes.

11 COMMISSIONER HERIOT: How many --

12 CHAIRMAN REYNOLDS: Yes, I am. Yes, yes,

13 yes.

14 COMMISSIONER YAKI: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Yes.

17 COMMISSIONER YAKI: There you go.

18 - UPDATE ON STATUS OF REMAINING SACs TO RECHARTER

19 CHAIRMAN REYNOLDS: All right. Next up,
20 update on the status of remaining SACs that need to be
21 rechartered.

22 STAFF DIRECTOR DANNENFELSER: Thank you,
23 Mr. Chairman.

24 We have received SAC packages for North
25 Dakota, Illinois, and Minnesota. We're still going to

1 probably try to do some additional recruitment for
2 those particular SACs.

3 I am expecting to receive a package for
4 the Montana SAC next week. And we'll see what kind of
5 shape that is in. I have also been told that I will
6 be receiving SACs for Delaware and Rhode Island.
7 Those have missed the deadlines that I was promised,
8 but I hope to receive them shortly.

9 And we also have West Virginia and New
10 York that remain to be chartered. And those may take
11 a couple of more months to have packages ready for
12 consideration.

13 CHAIRMAN REYNOLDS: Any questions or
14 comments?

15 VICE CHAIR THERNSTROM: Did we just lose
16 Pete? I heard a --

17 COMMISSIONER KIRSANOW: Here.

18 VICE CHAIR THERNSTROM: Yes.

19 IV. APPROVAL OF MINUTES OF NOVEMBER 19 MEETING

20 CHAIRMAN REYNOLDS: Okay. Next up is the
21 approval of the November 19th meeting minutes. They
22 were distributed by the Staff Director on December
23 1st.

24 I move that the minutes be approved. Is
25 there a second?

1 COMMISSIONER GAZIANO: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 (No response.)

4 CHAIRMAN REYNOLDS: All those in favor

5 please say "Aye."

6 (Whereupon, there was a chorus of "Ayes.")

7 CHAIRMAN REYNOLDS: Objections?

8 (No response.)

9 CHAIRMAN REYNOLDS: Abstentions?

10 (No response.)

11 CHAIRMAN REYNOLDS: The motion passes

12 unanimously.

13 V. ANNOUNCEMENTS

14 CHAIRMAN REYNOLDS: Okay. Under
15 "Announcements," as most of you know, Dr. Glenn Thurow
16 died recently. He was the Chair of the Oregon SAC.
17 And it is with genuine sadness that the Commission
18 notes his passing.

19 He was appointed to that position in June
20 2010. Prior to that appointment, Dr. Thurow had
21 served the Commission as a member of the Texas
22 Advisory Committee.

23 Dr. Thurow was an expert in the subjects
24 of equality, justice, and the Constitution, and for
25 more than four decades a professor of political

1 science. He instructed and guided the research of
2 thousands of students on these issues. Before his
3 retirement to Oregon in 2009, he was a professor of
4 politics at the University of Dallas in Texas.

5 Dr. Thurow was a renowned scholar on civil
6 rights. He made contributions critical to the
7 understanding of what makes people willing to protect
8 the rights of others as well as the history of the
9 attempts to strengthen and extend the civil rights,
10 both in this country and in other parts of the world.

11 Dr. Thurow had an extensive and impressive
12 record of public service. The Commission has lost a
13 valuable resource while the country has lost a
14 dedicated public servant. We extend our deepest
15 sympathy to his family along with our heartfelt
16 gratitude to Dr. Thurow for his generous contributions
17 to the Commission and to the advancements of civil
18 rights in this country.

19 Next, 55 years ago on December 1st, 1955,
20 Rosa Parks boarded a bus in Montgomery, Alabama,
21 refused to sit in the segregated rear of the bus, and
22 was arrested. Her acts brought a boycott of public
23 transportation by the civil rights community, led by
24 a young Rev. Martin Luther King.

25 The boycott lasted over a year and ended

1 with the U.S. Supreme Court decision striking down the
2 Montgomery, Alabama segregation law as
3 unconstitutional.

4 I would also like to add that the history
5 of that boycott is far more complex than my statements
6 suggest. There was far more strategy. This just
7 didn't happen. Ms. Parks was involved with the civil
8 rights community. And this was a piece of a grand
9 strategy and some hard-nosed thinking. And we all
10 enjoy the results today.

11 VICE CHAIR THERNSTROM: And she was very
12 well-trained. I'm very glad you added that because I
13 was going to add it.

14 CHAIRMAN REYNOLDS: December also marks
15 the anniversary of the ratification of the 13th
16 amendment in 1865, making slavery and involuntary
17 servitude unconstitutional.

18 Well, folks, this is my last Commission
19 meeting. It has been a very interesting journey. I
20 value the memories and the time that I have spent on
21 the Commission, but it is a good time for me to leave
22 so we can have some fresh blood. I suspect that
23 Commissioner Yaki will appreciate that.

24 In any event --

25 COMMISSIONER TAYLOR: Before you gavel --

1 CHAIRMAN REYNOLDS: Yes? Could you give
2 some --

3 COMMISSIONER TAYLOR: Sorry. Go ahead.

4 COMMISSIONER MELENDEZ: First of all,
5 since I have been here on the Commission, it's been a
6 rewarding experience. And it's --

7 CHAIRMAN REYNOLDS: I'm sorry. Okay.
8 Yes, yes. I'm not the only one going off.

9 (Laughter.)

10 CHAIRMAN REYNOLDS: I apologize.

11 COMMISSIONER MELENDEZ: I just want to
12 thank the Commissioner staff, Audrey and all of our
13 staff here. I think they work really hard. And I
14 also thank the special assistants, all of you that
15 have worked and really helped us out as commissioners.
16 You know, I wish you the best as you continue into the
17 new year. And I wish you a great holiday season, too.
18 So thank you very much.

19 VICE CHAIR THERNSTROM: And thank you for
20 playing the role that you have on the Commission. It
21 has been a privilege to know you and to have you here.

22 CHAIRMAN REYNOLDS: Yes, indeed.
23 Commissioner Melendez, you have no idea how I
24 appreciate how you have conducted yourself here.

25 (Laughter.)

1 CHAIRMAN REYNOLDS: I mean, you are a
2 gentleman. You disagree without being disagreeable.
3 And, under different circumstances, I would -- I look
4 forward to working with you again but not with these
5 jokers.

6 (Laughter.)

7 CHAIRMAN REYNOLDS: And, finally, I was
8 also remiss by not mentioning my special assistant,
9 Dominique. She has been just absolutely fantastic.
10 She has kept my life at the Commission in order and
11 worked hard to prevent me from walking over cliffs.
12 On some days, she has been successful. And others, I
13 have insisted on walking over the cliff, but I
14 appreciate her efforts.

15 COMMISSIONER TAYLOR: I have truly
16 appreciated my experience and the time here on the
17 Commission. And I want to thank the staff, first of
18 all. You all do a tremendous job collectively under
19 very difficult circumstances.

20 I want to thank my fellow commissioners
21 for dealing with me personally and my schedule as I
22 tried to balance this Commission with the private
23 practice of law. I know it has been frustrating at
24 times. And, again, for that I thank you for bearing
25 with me.

1 I want to thank Kim, my special assistant.
2 She is remarkable in many respects. And she is
3 underpaid, has always been, and is just critical. And
4 her talents are many.

5 Finally, let me say something about the
6 sometimes contentious nature of our meetings and this
7 group. In many ways, it is good in this respect.

8 CHAIRMAN REYNOLDS: Oh, please explain.

9 COMMISSIONER TAYLOR: It is a --

10 (Laughter.)

11 COMMISSIONER TAYLOR: It is a reflection
12 of the complex nature of civil rights in today's
13 society. It's not as simple as it once was. There is
14 no simple right answer. And these are more difficult
15 and nuanced questions. There are often two sides to
16 an issue. And, having eliminated illegal, obvious
17 state-sponsored, government-sanctioned and forced
18 discrimination --

19 CHAIRMAN REYNOLDS: In the main.

20 COMMISSIONER TAYLOR: -- we are now faced
21 with more difficult issues. And it will cause more
22 tensions in groups like this and not less because in
23 many cases, you can have two opposing philosophies
24 from people who are focused on the same goal.

25 And, as someone reminded me at our civil

1 rights conference, Martin Luther King apparently was
2 fond of saying that there are many paths to the ocean.
3 The question is whether or not we are all trying to
4 get to the ocean.

5 So with that, I will close and say thank
6 you.

7 VICE CHAIR THERNSTROM: Nicely said.

8 CHAIRMAN REYNOLDS: Meeting adjourned.

9 (Applause.)

10 (Whereupon, the foregoing matter was
11 concluded at 12:27 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Meeting

Before: US Commission on Civil Rights

Date: 12-03-10

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter

NEAL R. GROSS

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