

## U.S. COMMISSION ON CIVIL RIGHTS

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## MEETING

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Friday, July 10, 2009

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The Commission convened in Room 540 at 624  
Ninth Street, N.W., Washington, D.C., at 9:30 a.m.,  
Gerald A. Reynolds, Chairman, presiding.

## PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)

ABIGAIL THERNSTROM, Vice Chairman

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (by telephone)

ARLAN D. MELENDEZ, Commissioner (by telephone)

ASHLEY L. TAYLOR, JR., Commissioner

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director (by  
telephone)

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## STAFF PRESENT:

DAVID BLACKWOOD, General Counsel

MARGARET BUTLER

DEMITRIA DEAS

PAMELA A. DUNSTON, Chief, ASCD

LATRICE FOSHEE

ROBERT LERNER, Asst. Deputy Staff Director

EMMA MONROIG, Solicitor

LENORE OSTROWSKY

EILEEN RUDERT

KIMBERLY TOLHURST

## COMMISSIONER ASSISTANTS PRESENT:

ALEC DUELL

TIM FAY

DOMINIQUE LUDVIGSON (by telephone)

ALISON SCHMAUCH

RICHARD SCHMECHEL

KIMBERLY SCHULD

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P R O C E E D I N G S

(9:32 a.m.)

CHAIRMAN REYNOLDS: Let's get started with the preliminaries.

And someone, please send them an E-mail letting them know that we've started.

Okay. The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights. It is 9:30 Eastern Standard Time on July 10th, 2009. The meeting is being held at 624 Ninth Street, N.W., Room 540, in Washington, D.C.

The following Commissioners are participating by phone. That would be Commissioners Melendez, Kirsanow, and myself. Commissioners Taylor and Thernstrom are not present, but they are on the way, and the remaining Commissioners are participating there at Headquarters.

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

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: I move that we approve the agenda. Is there a second?

COMMISSIONER GAZIANO: Second, but I have two amendments to propose.

CHAIRMAN REYNOLDS: Yes, there are a

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1 number of amendments. Commissioner Gaziano, Kirsanow,  
2 and Yaki have amendments. Let's start with Todd.

3 COMMISSIONER GAZIANO: My first amendment  
4 is to advance consideration of the Virginia SAC  
5 somewhere before Program Planning.

6 CHAIRMAN REYNOLDS: Is that due to the --

7 COMMISSIONER GAZIANO: Let me just put  
8 mine, I suppose, together. Let's just combine them  
9 unless someone wants to divide them. My other  
10 suggestion is to delete a discussion or approval of  
11 the briefing report on Title IX.

12 COMMISSIONER HERIOT: Second.

13 CHAIRMAN REYNOLDS: Second?

14 COMMISSIONER HERIOT: Second.

15 CHAIRMAN REYNOLDS: Any discussion?

16 COMMISSIONER MELENDEZ: Yes. Commissioner  
17 Melendez.

18 Why are we changing this? I didn't  
19 totally understand.

20 COMMISSIONER GAZIANO: My reasoning,  
21 anyway, is that sometimes we lose a quorum,  
22 unfortunately, for rechartering the SACs, and given  
23 that's an important statutory duty, I just want to  
24 make sure that we take care of that, and there has  
25 been some strange press interest in the Virginia SAC

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1 in particular. So we should satisfy the public by  
2 taking action.

3 On briefing report on Title IX, if the  
4 majority of Commissioners are eager to take it up,  
5 that's fine, but I believe with the press of other  
6 business that at least I and maybe some others aren't  
7 prepared to take it up today.

8 I have no reason to think that I have a  
9 substantive objective to it one way or the other.

10 CHAIRMAN REYNOLDS: Okay. Let's take the  
11 Virginia SAC issue first. Are there any more --

12 COMMISSIONER HERIOT: It's one motion,  
13 Jerry.

14 CHAIRMAN REYNOLDS: I'm sorry?

15 COMMISSIONER HERIOT: It's all one motion  
16 so that we can get through this more quickly.

17 CHAIRMAN REYNOLDS: Oh, okay. All those  
18 in favor please say aye.

19 (Chorus of ayes.)

20 CHAIRMAN REYNOLDS: Any nays?

21 (No response.)

22 CHAIRMAN REYNOLDS: Any abstentions?

23 COMMISSIONER YAKI: I abstain.

24 COMMISSIONER MELENDEZ: One abstention,  
25 Melendez.

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1 CHAIRMAN REYNOLDS: Okay. Let the record  
2 reflect that Commissioner Melendez abstains, and --

3 COMMISSIONER YAKI: Commissioner Yaki  
4 abstains as well.

5 CHAIRMAN REYNOLDS: Okay. Thank you.

6 Commissioners Yaki and Melendez abstained,  
7 and the remaining Commissioners, with the exception of  
8 Vice Chair Thernstrom and Taylor, voted in favor of  
9 the motion.

10 Okay. Commissioner Kirsanow, do you want  
11 to talk about your proposed amendment to the agenda?

12 COMMISSIONER KIRSANOW: Yes. I would  
13 simply propose -- and I'm not partial as to where it's  
14 placed, but I would suggest right after discussion of  
15 the National Civil Rights Conference -- discussion of  
16 a draft letter to the legislature in Ohio concerning  
17 their directive related to set-asides.

18 CHAIRMAN REYNOLDS: Okay. Discussion?

19 COMMISSIONER MELENDEZ: Yes, Commissioner  
20 Melendez here.

21 Has anything been sent out to us  
22 pertaining to that topic prior to this discussion?

23 STAFF DIRECTOR DANNENFELSER: This is the  
24 Staff Director.

25 That letter was included in the materials

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1 that were sent out prior to the meeting, with the  
2 expectation that it might be added to the agenda.

3 CHAIRMAN REYNOLDS: Any other comments?

4 (No response.)

5 CHAIRMAN REYNOLDS: Okay. All in favor,  
6 please say aye.

7 (Chorus of ayes.)

8 CHAIRMAN REYNOLDS: Objections?

9 COMMISSIONER MELENDEZ: Commissioner  
10 Melendez votes no. I just don't know enough about the  
11 issue.

12 CHAIRMAN REYNOLDS: Understood.

13 Commissioner Yaki, how do you vote?

14 COMMISSIONER YAKI: I abstain.

15 CHAIRMAN REYNOLDS: Okay. The motion  
16 passes.

17 COMMISSIONER GAZIANO: Mr. Chair, let the  
18 record reflect that Commissioners Taylor and Vice  
19 Chair Thernstrom have arrived and are in place.

20 CHAIRMAN REYNOLDS: Okay. Did they vote  
21 on this matter?

22 VICE CHAIR THERNSTROM: No, because I  
23 don't know what you're voting on.

24 CHAIRMAN REYNOLDS: Okay. Next up,  
25 Commissioner Yaki.

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1 COMMISSIONER YAKI: What?

2 CHAIRMAN REYNOLDS: You have an amendment  
3 to the agenda?

4 COMMISSIONER YAKI: Oh, I thought we were  
5 -- okay. Kirsanow and I vote.

6 Yeah, I just wanted to put in the agenda  
7 discussion of temporary hiring authority.

8 CHAIRMAN REYNOLDS: All right. Second.

9 Discussion?

10 (No response.)

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

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Any objections?

15 (No response.)

16 CHAIRMAN REYNOLDS: Any abstentions?

17 COMMISSIONER KIRSANOW: Where on the  
18 agenda?

19 COMMISSIONER YAKI: Yeah, where on the  
20 agenda, Mr. Chairman?

21 CHAIRMAN REYNOLDS: After discussion of  
22 Commissioner Kirsanow's letter, which will be after  
23 the discussion of the national conference.

24 COMMISSIONER HERIOT: Where does the SAC  
25 go then?

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1 CHAIRMAN REYNOLDS: I'm sorry?

2 COMMISSIONER HERIOT: Where is Virginia  
3 SAC now?

4 CHAIRMAN REYNOLDS: That's up next.

5 COMMISSIONER GAZIANO: So first.

6 VICE CHAIR THERNSTROM: Mr. Chairman, is  
7 it first?

8 CHAIRMAN REYNOLDS: Yes.

9 COMMISSIONER YAKI: You snooze, you lose.

10 CHAIRMAN REYNOLDS: Okay.

11 VICE CHAIR THERNSTROM: I was doing very  
12 important business.

13 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
14 would you like to lead the discussion regarding the  
15 alleged leak?

16 II. STATE ADVISORY COMMITTEE ISSUES,  
17 VIRGINIA SAC

18 COMMISSIONER GAZIANO: Oh, yeah, I can  
19 explain that, but that could come before or after we  
20 approve the slate.

21 I was contacted, as I understand our  
22 Commission staff was, by the story that was published  
23 by a Website that had the erroneous story on Hans von  
24 Spakovsky last August, and it was seeking confirmation  
25 that two on the slate for the Virginia SAC would be

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1 voted on.

2 I confirmed that we were going to take up  
3 the Virginia SAC; that we do not release the name of  
4 the slate publicly because there are often changes  
5 that are made if we find out that someone is  
6 ineligible or withdrawn or to have an intellectually  
7 balanced slate. So I was not going to violate our  
8 rules by confirming that the two individuals were or  
9 were not on any proposed slate.

10 And then I tried to explain to the  
11 reporter, that I would be glad to discuss that and who  
12 recommended, that it was part of our public record who  
13 recommended different people to these SACs, that it  
14 was the Commissioners' responsibility to try to make  
15 recommendations to every single SAC, and that I  
16 certainly made recommendations to the state SAC that I  
17 live and that I used to serve on.

18 So it bothers me that someone on our  
19 payroll or fellow Commissioner thought it necessary --  
20 by the way, the reporter only was aware of these two  
21 individuals that someone objected to, without  
22 disclosure of the rest of the SAC. It's a SAC that I  
23 served on until recently, and as we will see in a few  
24 minutes, the slate hasn't changed. It's a very  
25 balanced slate, and it includes a lot of people who

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1 are being reappointed or whose nominations are being  
2 reappointed.

3 So I do wish we had some clarification of  
4 whether Commissioners and staff should leak to the  
5 press non-public information.

6 CHAIRMAN REYNOLDS: Well, Todd, I think  
7 that officially everyone will agree that that should  
8 not occur, but Washington being Washington, the  
9 probability that we will show self-restraint,  
10 discipline -- it's highly unlikely in my view, but  
11 your point is well taken.

12 COMMISSIONER YAKI: I have a point of  
13 information.

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER YAKI: Mr. Chair?

16 CHAIRMAN REYNOLDS: Yes. Commissioner  
17 Yaki.

18 COMMISSIONER YAKI: Yes, I just wanted to  
19 ask the General Counsel what are the rules concerning  
20 whether or not the names on the list are, for lack of  
21 a better word, under seal until they come up through  
22 the Commission publicly before the vote.

23 MR. BLACKWOOD: This is David Blackwood  
24 for the record.

25 Certainly under seal is not the analogy I

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1 would use. I was unaware that I would be asked this  
2 particular question. So I haven't gone through the  
3 rules, but I would say that I'm unaware of any  
4 specific rule. It is simply non-public information  
5 until it's revealed at the meeting. That's it.

6 COMMISSIONER YAKI: Okay. I don't  
7 understand what you mean by "non-public information."

8 MR. BLACKWOOD: It's not released to the  
9 public.

10 COMMISSIONER GAZIANO: Is it analogous to  
11 a draft report --

12 COMMISSIONER YAKI: It is -- is it -- I  
13 haven't finished yet.

14 COMMISSIONER GAZIANO: -- that  
15 Commissioners are reviewing?

16 COMMISSIONER YAKI: I haven't finished  
17 yet. Is it non-public information simply because we  
18 have chosen not to make it public or is there some  
19 rule that says it is not to be made available to the  
20 public?

21 Commissioner Gaziano seems to imply that  
22 there is some -- there is some malfeasance or law  
23 breaking going on, and I would like to know whether or  
24 not, in fact, there is any existing rule that says  
25 that this particular type of information which we have

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1 chosen, and I didn't even know if we chose or  
2 whatever, not to release this information or not, if  
3 there is an actual prohibition against it within our  
4 rules or under any federal statute that I am unaware  
5 of.

6 MR. BLACKWOOD: Well, I would be glad to  
7 research the issue. I would note, however, that these  
8 do involve employment issues, which are generally  
9 covered under our CFR as confidential issues. Until  
10 the individuals, my impression would be, they actually  
11 become employees, it would be --

12 COMMISSIONER YAKI: Wait, wait.

13 MR. BLACKWOOD: Commissioner Yaki --

14 COMMISSIONER YAKI: Are they employees?  
15 Are they --

16 MR. BLACKWOOD: They are special  
17 government employees, SGEs.

18 COMMISSIONER HERIOT: Even so, that  
19 doesn't make sense to me. You know, there has to be  
20 some way that the public would have input on who was  
21 on the SAC and who isn't on the SAC, and if we can't  
22 talk about it until they've been approved, that can't  
23 be the right rule.

24 VICE CHAIR THERNSTROM: If people  
25 themselves have been contacted, I mean, it isn't

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1 really private information. They aren't told, "Don't  
2 tell anybody."

3 COMMISSIONER YAKI: Right. I mean, I've  
4 never seen any prohibition in any forms that go out  
5 that says, "By the way, do not tell the press. Don't  
6 tell your friends or anything like that."

7 VICE CHAIR THERNSTROM: Yeah. I mean, you  
8 can't even tell your spouse, by the way.

9 COMMISSIONER GAZIANO: Mr. Chairman, let  
10 me just give my thoughts on it. I don't think that --  
11 there are two issues here. First of all, the fact  
12 that someone who can reveal their own private salary  
13 and employment history information doesn't mean that  
14 we should be free to reveal such.

15 But I'm just talking about a workable  
16 practice. The practice -- and this would apply to our  
17 draft report. There have been issues before about  
18 whether a draft report should be made public before we  
19 all vote on it and it becomes final, and I think it  
20 will be unfortunate, and it will interfere with our  
21 deliberative process if proposed slates are made  
22 public for nitpicking before we have a chance to  
23 provide our input to each other and to the staff when  
24 there is a proposed slate.

25 The opportunity for us to influence a

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1 proposed slate will be interfered with if we as a  
2 practice just allow those to be released.

3 But if that's the view of the majority of  
4 the Commissioners, I can live with it. It's one that  
5 I -- but certainly I understood that unless our  
6 non-public documents are clearly -- there's an  
7 exception made for them, that we should keep those  
8 matters that are not public not public until there's  
9 some sort of release or some sort of vote of the  
10 Commission.

11 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
12 you make a good point. It does have -- these  
13 premature disclosures have the potential to affect our  
14 deliberations, but that was the point of the  
15 disclosure. That was the purpose of the disclosure.

16 It's no mistake that the whole slate of  
17 names was not released to the reporter. There are two  
18 individuals. They have a public profile, and there  
19 are some individuals who don't particularly care to  
20 see them serve on the SAC. At least that's my  
21 interpretation of what's happened, and as I said  
22 before, I wish it weren't the case, but I suspect that  
23 even if we had a rule in place leaks would occur.

24 COMMISSIONER GAZIANO: We've got to  
25 enforce our rules.

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1 COMMISSIONER HERIOT: Mr. Chairman --

2 COMMISSIONER GAZIANO: I would rather we  
3 allow this material to be released whenever and always  
4 than that we ignore our rule. We've got to have some  
5 rules. We've got to have some respect, and we've got  
6 to have some common courtesy among Commissioners,  
7 special assistants and other employees about whether  
8 we're going to keep drafts confidential or not.

9 So if you don't care if this is -- if a  
10 majority doesn't care. I understand, Mr. Chairman,  
11 you're agreeing with me that it may interfere with our  
12 actually working out compromises.

13 CHAIRMAN REYNOLDS: That's correct.

14 COMMISSIONER GAZIANO: But if we believe  
15 we can't enforce this rule, we ought to change this  
16 rule. We ought to at least make it clear that it's a  
17 violation of the rule.

18 COMMISSIONER HERIOT: But we don't know  
19 that it is yet.

20 CHAIRMAN REYNOLDS: Let's let the General  
21 Counsel review and our AIs and any other relative  
22 rules and see where we stand in terms of whether  
23 there's a prohibition in place right now.

24 COMMISSIONER GAZIANO: Well, again,  
25 whether this is a rule, we ought to have -- we don't

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1 necessarily need an AI to have an understanding  
2 amongst each other. So whether we need to create a  
3 formula, we ought to just discuss this.

4 COMMISSIONER HERIOT: Well, find out what  
5 the rule is first. Let's, you know, have the General  
6 Counsel do that. It is not clear at all to me that  
7 draft reports and SAC membership should be treated the  
8 same. You know, sometimes we may actually want public  
9 input on these things.

10 But at any rate, first up, let's have the  
11 General Counsel check into what the rule is, and we'll  
12 discuss it at the next meeting.

13 COMMISSIONER YAKI: This is Commissioner  
14 Yaki. I just want to state for the record that  
15 regardless of what the rule is or is not, even if  
16 there was a rule, I don't see how transparency in our  
17 process is nitpicking, to quote my fellow  
18 Commissioner. I don't see how public access and input  
19 is nitpicking, again to quote my fellow Commissioner.

20 Certainly on issues such as this that  
21 involve appointments to a state entity, that is a  
22 creature of the Commission. The fact that people may  
23 have some feelings about them and want to express them  
24 should not be done -- I just don't think that we  
25 should play hide the ball on things such as this.

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1           And, again, I actually agree with  
2 Commissioner Heriot that there's a distinction that  
3 can be made between -- to lump this into a draft  
4 report is, I think, not quite the same, although at  
5 some point I also do believe that our reports prior to  
6 being approved by the Commission should also be made  
7 public for people to comment on as well.

8           COMMISSIONER GAZIANO: Okay. One final  
9 thought, Mr. Chairman, and I hope that -- you know, I  
10 might even be persuaded for a public release process,  
11 but I do find -- found it interesting that the  
12 reporter, while I was trying to get an answer as to  
13 whether this was public, I was told by staff,  
14 confirmed that it was not public information. So I  
15 didn't want to confirm it, but the reporter was trying  
16 desperately to get me or someone at the Commission to  
17 confirm it.

18           So the leaker believed it was wrong. The  
19 leaker, whoever it was, would not go on the record to  
20 -- I asked the reporter, by the way, who revealed  
21 this, and the reporter laughed and said, of course,  
22 that was confidential.

23           So there is a sense, whoever leaked this  
24 information understood that it was improperly being  
25 leaked or at least there was a serious issue as to

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1 whether it was improperly leaked.

2 But if we want to take this up at another  
3 time, I might be persuaded at releasing the slate. I  
4 just wasn't going to release the names myself when  
5 staff indicates that it was non-public, and I still  
6 think there's a pretty good reason for that.

7 VICE CHAIR THERNSTROM: Let me say one  
8 last thing here or maybe, Commissioner Yaki, you have  
9 something to say. Well, let me say this one thing  
10 briefly.

11 The distinction that Commissioner Heriot  
12 made, however, is extreme -- however we resolve the  
13 SAC appointments matter, the distinction that  
14 Commissioner Heriot made between SAC slates and drafts  
15 of reports is extremely important. I mean, I may with  
16 any one subject want to take, let's say, you know, a  
17 part of it, a particular aspect of the data collection  
18 or the argument to somebody I trusted, you know, on an  
19 advisory basis and say, "Look. Does this make sense  
20 to you? Do these data look right to you?" et cetera.

21 I mean, we can't not use outside  
22 resources.

23 COMMISSIONER HERIOT: That's very  
24 different from taking it to the press, which is what  
25 Todd is talking about.

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1 VICE CHAIR THERNSTROM: Yes, absolutely,  
2 absolutely. Well, I'm just reinforcing your  
3 distinction here.

4 CHAIRMAN REYNOLDS: Commissioner Yaki, do  
5 you have a final comment?

6 COMMISSIONER YAKI: Yeah. I was just  
7 going to say that despite the fact that I was not the  
8 source of the leak, at the same time it has never been  
9 my view that this has been information under lock and  
10 key until the time that we brought it forward. So I  
11 can assure you that if I had been the one who had done  
12 it, I would have done it simply by giving out the  
13 information without saying that it was not to be made  
14 public.

15 COMMISSIONER HERIOT: Can I interject  
16 something here?

17 We're off agenda. We never did actually  
18 approve the agenda, nor did we approve the minutes.  
19 We skipped ahead.

20 COMMISSIONER GAZIANO: Oh, didn't we have  
21 a final vote on the --

22 COMMISSIONER HERIOT: No, we voted on the  
23 amendment to the agenda.

24 COMMISSIONER GAZIANO: Okay. Well, let's  
25 --

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1 COMMISSIONER HERIOT: We actually have to  
2 vote on the agenda then. I mean, this --

3 CHAIRMAN REYNOLDS: Okay. Let's clean it  
4 up.

5 I move that we approve the agenda, as  
6 revised, and that the -- well, is there a second?

7 COMMISSIONER HERIOT: You don't need to do  
8 that because there was an original motion to adopt the  
9 agenda. We then amended the agenda. All we have to  
10 do is vote on the agenda now.

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

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Objections?

15 (No response.)

16 CHAIRMAN REYNOLDS: Any abstentions?

17 COMMISSIONER YAKI: Me.

18 VICE CHAIR THERNSTROM: I abstain because  
19 I don't know what the agenda is now.

20 COMMISSIONER YAKI: Commissioner Yaki  
21 abstains.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER GAZIANO: Well, I think the  
24 Chairman put the approval of the SAC and the  
25 discussion before the minutes. We can do that, I take

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1 it.

2 COMMISSIONER HERIOT: Okay, okay.

3 COMMISSIONER GAZIANO: So let's --

4 COMMISSIONER YAKI: Point of information.

5 CHAIRMAN REYNOLDS: Okay. At this point,  
6 I'm just - -

7 COMMISSIONER YAKI: Point of information,  
8 Mr. Chairman.

9 CHAIRMAN REYNOLDS: -- just want to take  
10 care of the Virginia SAC.

11 COMMISSIONER YAKI: Point of information,  
12 Mr. Chair, on the agenda vote. I did not hear  
13 Commissioner Melendez's vote being recorded

14 COMMISSIONER MELENDEZ: I abstained.

15 COMMISSIONER YAKI: Thank you.

16 CHAIRMAN REYNOLDS: Okay. The Virginia  
17 Advisory Committee was last rechartered on June 11th,  
18 2007. A package was sent to each Commissioner  
19 recommending an advisory committee of 13 members.  
20 Eight previous members are returning, and there are  
21 five new appointees. Recommended Advisory Committee  
22 members are selected in compliance with State Advisory  
23 Committee membership selection guidelines specified in  
24 AI 5-9, Section 7, following the lean sigma -- six  
25 sigma process approved by the Commissioners in January

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1 of 2008.

2 Commission staff reached out to the  
3 Commissioners, current SAC members, the entire  
4 Virginia Congressional Delegation, Governor Kaine, all  
5 Virginia state senators, various mayors, educational  
6 institutions, business and labor organizations, civil  
7 rights organizations, media, and religious groups.

8 I move that the Commission recharter the  
9 Virginia State Advisory Committee. Under this motion,  
10 the Commission appoints the following individuals to  
11 that committee based on the recommendations of the  
12 Staff Director:

13 Linda Chavez

14 Angela Ciccolo

15 Edmund Cooke

16 Hal Due (phonetic)

17 Louise Greevis (phonetic)

18 Alex Gulotta

19 Curt Levey

20 Miriam Moore

21 Cameron Quinn

22 Jeanene Sims

23 Ryung Suh -- I apologize for butchering  
24 his name.

25 Hans von Spakovsky. I apologize to Hans

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1 also.

2 And also Lacy Ward.

3 Furthermore, the Commission appoints Linda  
4 Chavez as Chair of the rechartered State Advisory  
5 Committee. These members will serve as uncompensated  
6 government employees.

7 Under this motion the Commission  
8 authorizes the Staff Director to execute the  
9 appropriate paper work for the appointment.

10 Is there a second?

11 COMMISSIONER GAZIANO: Second.

12 CHAIRMAN REYNOLDS: Question?

13 COMMISSIONER GAZIANO: And I may have  
14 missed one name. Was Cameron Quinn included in that  
15 list?

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER GAZIANO: Okay. Thank you.

18 VICE CHAIR THERNSTROM: I have a question,  
19 Mr. Chairman.

20 CHAIRMAN REYNOLDS: Yes.

21 VICE CHAIR THERNSTROM: Were all of the  
22 people, members who are being reappointed, where they  
23 all contacted to make sure that they, indeed, want to  
24 be reappointed?

25 COMMISSIONER GAZIANO: I think Peter --

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1 Peter are you on the line?

2 MR. MINARIK: Yes, I am. Peter Minarik.

3 CHAIRMAN REYNOLDS: Peter, did you hear  
4 the question?

5 MR. MINARIK: Yes. They were all  
6 contacted by the Eastern Regional Office.

7 VICE CHAIR THERNSTROM: Okay.

8 CHAIRMAN REYNOLDS: Any other questions or  
9 comments?

10 COMMISSIONER MELENDEZ: Yes. My concern  
11 on whether some people that wanted to be returned but  
12 were denied.

13 CHAIRMAN REYNOLDS: Peter?

14 MR. MINARIK: This is Peter Minarik again.

15 The answer to that question is I was  
16 informed by the Director of the Eastern Regional  
17 Office that, indeed, one member did indicate the  
18 desire to return. According to AI 5-9, Section 7,  
19 submitted paper work was considered, and they thought  
20 there was a superior candidate, and the candidate was  
21 put forth.

22 COMMISSIONER YAKI: Who was that?

23 CHAIRMAN REYNOLDS: I hear school  
24 children.

25 VICE CHAIR THERNSTROM: We've got them

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1 here, Mr. Chairman.

2 COMMISSIONER YAKI: Who are the  
3 individuals that Mr. Minarik just referenced?

4 VICE CHAIR THERNSTROM: I think it was  
5 one; is that correct?

6 COMMISSIONER YAKI: Oh, you say that there  
7 was one?

8 CHAIRMAN REYNOLDS: Peter?

9 MR. MINARIK: Peter Minarik.

10 Yes, one, only one submitted paperwork.

11 COMMISSIONER YAKI: So I'm asking --

12 COMMISSIONER HERIOT: Who was that?

13 COMMISSIONER YAKI: -- who was that person  
14 and who was the person considered superior to that  
15 person?

16 MR. MINARIK: I apologize. I'm in Kansas  
17 City. I don't have the exact name in front of me.

18 CHAIRMAN REYNOLDS: Well, and also I don't  
19 think it's appropriate to have a conversation about  
20 which candidates were superior to others.

21 COMMISSIONER YAKI: Well, since that  
22 judgment, Mr. Chair, was not made by us, I would like  
23 to know.

24 CHAIRMAN REYNOLDS: Well, that's fine, but  
25 again, I think that it's wholly inappropriate to say

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1 that Individual X was superior to Individual Y.

2 COMMISSIONER HERIOT: Yeah, but it has  
3 already been said, and it's supposed to be our  
4 judgment. So we need to know.

5 CHAIRMAN REYNOLDS: I have no problem with  
6 anyone having the information, but we can do it off  
7 line.

8 VICE CHAIR THERNSTROM: Well, Commissioner  
9 Heriot is perfectly right. Commissioner Heriot, I  
10 don't think you were heard. Would you -- can you  
11 repeat it?

12 COMMISSIONER HERIOT: I forget what I  
13 said.

14 VICE CHAIR THERNSTROM: You said --

15 COMMISSIONER HERIOT: This is supposed to  
16 be our judgment that's being made here, and so we need  
17 to know this information.

18 COMMISSIONER GAZIANO: If we can go into  
19 executive session -- I made some inquiries, and I used  
20 to serve on this subcommittee, but I don't think that  
21 it would necessarily be appropriate to -- I may or may  
22 not be right. I had no other involvement until after  
23 the slate was sent out to other commissioners other  
24 than making my own recommendation.

25 COMMISSIONER YAKI: Well, before we do

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1 anything, such as going into executive session, the  
2 question is: does Mr. Minarik have the information  
3 before him in order to do this?

4 If he does not because he's in Kansas  
5 City, we need to know that.

6 CHAIRMAN REYNOLDS: Peter, can you answer  
7 the question?

8 MR. MINARIK: Which question, Mr.  
9 Chairman? Peter Minarik.

10 CHAIRMAN REYNOLDS: They want to know the  
11 names of the two individuals that we just discussed.

12 MR. MINARIK: I didn't hear about two  
13 names. Peter Minarik again.

14 VICE CHAIR THERNSTROM: No, there are --

15 COMMISSIONER HERIOT: It's the one and one  
16 who's superior to the one.

17 VICE CHAIR THERNSTROM: The rejected and  
18 the substituted name. That's two names.

19 MR. MINARIK: Thank you.

20 I can get that information from the  
21 Eastern Regional Office. It was one person I  
22 understood that submitted a letter -- it's my  
23 understanding, to Ms. Davis in the Eastern Regional  
24 Office. I don't have that information out here in  
25 Kansas City. I can --

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1 COMMISSIONER HERIOT: Can you get on the  
2 phone and get it right now and then we'll come back to  
3 this later?

4 COMMISSIONER GAZIANO: I think the back of  
5 our hearing room we have an employee who might be able  
6 to speak to that, but I am a little concerned about  
7 whether we should go into executive session given the  
8 --

9 CHAIRMAN REYNOLDS: Let's push this to the  
10 end of the agenda and move on.

11 COMMISSIONER HERIOT: Well, if she's here,  
12 let's not. Let's just do it right now.

13 VICE CHAIR THERNSTROM: Yeah. But I also  
14 have a question.

15 COMMISSIONER HERIOT: This is the most  
16 important thing on our agenda.

17 VICE CHAIR THERNSTROM: Who is the  
18 decision-maker here to substitute one name for the  
19 other? Who's ultimately making this decision?

20 CHAIRMAN REYNOLDS: These decisions are  
21 made by generally staff.

22 COMMISSIONER YAKI: So was it made by  
23 Peter or was it made by the Staff Director?

24 COMMISSIONER GAZIANO: Ultimately -- is  
25 the Staff Director on the line today? I know he's --

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1 STAFF DIRECTOR DANNENFELSER: Yes, I am.

2 COMMISSIONER GAZIANO: Okay. Ultimately I  
3 have --

4 STAFF DIRECTOR DANNENFELSER: I do have  
5 the name of the person, but again, I don't believe it  
6 would be appropriate in a public session to start  
7 talking about an individual person --

8 COMMISSIONER HERIOT: Well, let's go into  
9 executive session right now.

10 STAFF DIRECTOR DANNENFELSER: -- but I can  
11 go into executive session.

12 VICE CHAIR THERNSTROM: Do you have the  
13 name of both?

14 STAFF DIRECTOR DANNENFELSER: It would be  
15 -- it would be helpful probably to have the Eastern  
16 Regional Director in that session if we do go into  
17 executive session.

18 COMMISSIONER GAZIANO: I move that we go  
19 into executive session now with -

20 COMMISSIONER YAKI: I have a threshold  
21 question before we do that. Point of privilege. So  
22 before we go into executive session, to reiterate  
23 Commissioner Thernstrom's question, who made the  
24 determination that one person should get in over the  
25 other? Was it Peter or was it the Staff Director?

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1 I think we can at least have that in  
2 public before we go in --

3 STAFF DIRECTOR DANNENFELSER: The Eastern  
4 Regional Director made the decision -- made the  
5 recommendation that the individual should not be  
6 reappointed, and I accepted her recommendation.

7 CHAIRMAN REYNOLDS: Let's be clear, folks.

8 COMMISSIONER GAZIANO: That's what I  
9 thought.

10 CHAIRMAN REYNOLDS: These types of  
11 decisions are made all the time, and there is nothing  
12 unusual or sinister about this.

13 COMMISSIONER HERIOT: Yes, but there's  
14 nothing wrong with us finding out about it either.

15 CHAIRMAN REYNOLDS: We always have a --  
16 problems.

17 COMMISSIONER YAKI: I don't think there  
18 was any imputation of anything sinister, Mr. Chair.  
19 We just wanted to know.

20 COMMISSIONER GAZIANO: Well, I move, with  
21 assistance of our able counsel here, to close a  
22 portion of the meeting pursuant to regulations  
23 implementing the Sunshine Act. I believe I'm seeking  
24 the General Counsel and Solicitor to certify that we  
25 can do so. I believe Exemption 6 applies because we

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1 might -- our discussion might involve disclosing  
2 information of a personal nature where disclosure  
3 might constitute a clearly unwarranted invasion of  
4 personal privacy.

5 Do you concur?

6 And let's discuss first who we should  
7 have. We should have the Eastern Regional Director,  
8 the Staff Director, and Peter Minarik.

9 VICE CHAIR THERNSTROM: Well -- and let me  
10 ask a question. Does the Staff Director have both  
11 names, that is, the person whose application --

12 COMMISSIONER GAZIANO: I think we will  
13 have all of the decision makers. We will have all of  
14 the decision makers with all of the information.

15 VICE CHAIR THERNSTROM: No, no, no, but we  
16 need both names.

17 MR. MINARIK: It's my --

18 COMMISSIONER GAZIANO: We can find out if  
19 we go into executive session. There may be some other  
20 information, too.

21 CHAIRMAN REYNOLDS: Let's go into  
22 executive session and have this discussion.

23 COMMISSIONER GAZIANO: Okay. I call for a  
24 vote on going into executive session.

25 COMMISSIONER YAKI: Wait, wait, wait.

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1 COMMISSIONER HERIOT: Don't you make a  
2 motion?

3 COMMISSIONER GAZIANO: I did.

4 COMMISSIONER YAKI: Personal privilege.  
5 Don't we have to excuse -- don't we have to exempt  
6 certain individuals who normally would not be privy to  
7 executive session?

8 MR. BLACKWOOD: This is David Blackwood.

9 Yes, we have to decide now who's going to  
10 be in on the call. We also, because this is a  
11 telephonic conference, determine who's on the line,  
12 and then we're going to have to decide after we've off  
13 executive session how these people that have had to  
14 get off get back on.

15 CHAIRMAN REYNOLDS: Folks, this is not an  
16 important issue. If we're going to do this, let's do  
17 it at the end. It is disruptive. We have people on  
18 the line listening, and it will cause procedural  
19 problems.

20 COMMISSIONER HERIOT: Then how are we  
21 going to vote on the Virginia SAC?

22 VICE CHAIR THERNSTROM: We're going to  
23 lose people by the end of the meeting. I think we  
24 need to do this now. This is -- this is an issue some  
25 people care about.

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1 CHAIRMAN REYNOLDS: That's obvious.

2 Okay. Let's vote. All in favor please  
3 say aye.

4 (Chorus of ayes.)

5 VICE CHAIR THERNSTROM: What are we voting  
6 on?

7 COMMISSIONER GAZIANO: I'd like to -- I'd  
8 like the --

9 VICE CHAIR THERNSTROM: To go into  
10 executive session?

11 COMMISSIONER GAZIANO: Yeah, but before we  
12 do so can I just ask? I suppose I'd like the General  
13 Counsel as well and the -- can you -- and, say, Ivy,  
14 Peter and Marty, plus Commissioners. Does anyone have  
15 -- so that we're clear on that vote?

16 MR. BLACKWOOD: That is fine. This is  
17 David Blackwood, General Counsel. And the Solicitor  
18 and I both agree it should be closed.

19 I have another issue, talking with Ms.  
20 Dunston. We are really going to have a technological  
21 problem about how to get people off. Is that correct?  
22 And confirming who got off. Because we -- do we have  
23 any records?

24 CHAIRMAN REYNOLDS: If we can't confirm  
25 that -- if we can't confirm that this conversation is

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1 limited to the appropriate people, we should not have  
2 the conversation.

3 VICE CHAIR THERNSTROM: Well, then we  
4 should --

5 COMMISSIONER HERIOT: Well, who's on the  
6 line that we wouldn't have anyway?

7 MR. MINARIK: Can we clear the line and  
8 have the approved people call back in?

9 COMMISSIONER HERIOT: All of the telephone  
10 line people are approved people, aren't they?

11 COMMISSIONER YAKI: Well, you would assume  
12 so.

13 COMMISSIONER HERIOT: We've got  
14 Commissioners, Marty, Peter Minarik. Is there anybody  
15 else on the line there?

16 DOMINIQUE LUDVIGSON: Can you hear me  
17 Gail?

18 COMMISSIONER GAZIANO: I have a proposed  
19 solution or a partial proposed solution. At most  
20 there may be one or so person we can add to this  
21 Virginia SAC. I think the slate is certainly a very  
22 solid slate. How many is -- what is the total?

23 STAFF DIRECTOR DANNENFELSER: Thirteen.

24 COMMISSIONER GAZIANO: Thirteen. What is  
25 the maximum we can put on the SAC?

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1 STAFF DIRECTOR DANNENFELSER: Nineteen.

2 VICE CHAIR THERNSTROM: All right.

3 COMMISSIONER GAZIANO: We can potentially  
4 add some. Can we vote on the -- I propose we vote on  
5 the SAC, we get some input, and at a subsequent  
6 meeting if we think it's warranted, we can add one,  
7 two, or three people to the SAC.

8 VICE CHAIR THERNSTROM: Right. I was  
9 going to -- this is Vice Chair Thernstrom. I was  
10 going to raise the same point. If we had somebody  
11 apply to be on the SAC and we've got room on the SAC,  
12 we didn't need to substitute. Just include that  
13 person.

14 COMMISSIONER GAZIANO: That may be. There  
15 are some -- as I understand, certainly staff on our  
16 behalf try to come up with a certain number of balance  
17 of political party, of other intellectual factors, and  
18 so sometimes I think that they do have to make these  
19 calls. I don't know what the factors went into these  
20 calls. So I'm interested, too, but I think they do  
21 sometimes have to make that kind of a call.

22 VICE CHAIR THERNSTROM: All right, but  
23 this is not exactly. These SACs are not -- you know,  
24 we're lucky to have people wanting to serve on them.

25 COMMISSIONER YAKI: This is Commissioner

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1 Yaki. I have a question for the Staff Director.

2 STAFF DIRECTOR DANNENFELSER: Yes.

3 COMMISSIONER YAKI: Would the addition of  
4 this person who was -- now, was this person appointed  
5 to the SAC two years ago who was not reappointed?

6 STAFF DIRECTOR DANNENFELSER: Well, yeah,  
7 he is an incumbent member.

8 COMMISSIONER YAKI: Okay.

9 STAFF DIRECTOR DANNENFELSER: But I'm not  
10 sure if he was only on two years ago or if he had been  
11 on longer than that. I'd have to confirm that point  
12 with the Regional Director.

13 COMMISSIONER YAKI: This person has been  
14 on the SAC before.

15 COMMISSIONER GAZIANO: Let me just state  
16 --

17 COMMISSIONER YAKI: I'm not yet finished  
18 yet, please. So my question is whether or not the  
19 addition of this person, who was previously on the  
20 SAC, would in your judgment throw off any of the lean  
21 six sigma criteria or AIs, whatever in the heck it is,  
22 we have with regard to the membership of the Virginia  
23 SAC. Because I would say that in the only way that I  
24 would support this would be if we just simply allow  
25 this individual back on the Commission.

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1 COMMISSIONER GAZIANO: Would the  
2 Commissioner yield?

3 COMMISSIONER YAKI: I will.

4 COMMISSIONER GAZIANO: I don't know which  
5 one individual we're talking about, but I do know  
6 since I served on the SAC that there were two  
7 conservatives who I assume are Republicans who were  
8 previously on it who aren't. Be careful what you ask  
9 for. You may get a much -- if you're asking for  
10 automatic inclusion, you may end up with two more  
11 Republican conservatives. That may very well be.

12 That's my base of knowledge right now.

13 COMMISSIONER YAKI: Commissioner Gaziano,  
14 I can deal with you. I can deal with another one on  
15 the Virginia SAC. It's not a problem.

16 MR. BLACKWOOD: This is David Blackwood.

17 I just spoke with the Director for ERO,  
18 who indicated that in her opinion it would affect the  
19 balance.

20 COMMISSIONER YAKI: Okay. Then we won't  
21 do it.

22 VICE CHAIR THERNSTROM: Which balance? Is  
23 it the party balance?

24 MR. BLACKWOOD: I didn't ask which  
25 balance. She just said it would affect the balance.

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1 COMMISSIONER YAKI: Then why don't we just

2 --

3 STAFF DIRECTOR DANNENFELSER: Well, this  
4 is the Staff Director.

5 I believe that the SAC is very well  
6 balanced with these 13 members. If we were to  
7 consider this person who was not reappointed, then we  
8 would have to look at that person and consider how  
9 that person affected the balance. There would always  
10 be the possibility if there was a determination to put  
11 that person back on the SAC that we would then want to  
12 add a second person in order to maintain the balance.  
13 That's something that the Commission could consider.

14 COMMISSIONER YAKI: Why don't we just do  
15 this in the interest of moving this thing along,  
16 rather than go into executive session and all of these  
17 other rigmaroles? Let's just move ahead with this.  
18 Let's have a report by the Staff Director at the next  
19 meeting over this contretemps was had about who was  
20 picked and who wasn't picked so that we at least  
21 understand how this was done.

22 Because I think I agree with Commissioner  
23 Heriot. We're the ones who ultimately put our staff  
24 on this. It would be nice to know how it came about  
25 internally in some ways because if someone comes and

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1 complains to us one way or another and we are left  
2 with the "I don't know; that's just the list that was  
3 given to us," that's not really sufficient for us as  
4 Commissioners to be able to explain to any member of  
5 the public.

6 COMMISSIONER GAZIANO: I concur in that.

7 COMMISSIONER HERIOT: I would also say  
8 that --

9 CHAIRMAN REYNOLDS: Okay, folks. What are  
10 we entertaining --

11 COMMISSIONER HERIOT: -- that is  
12 unacceptable to come in here and --

13 CHAIRMAN REYNOLDS: -- at this point? Are  
14 going to vote on the slate as currently configured?

15 COMMISSIONER YAKI: We're going to vote on  
16 it.

17 CHAIRMAN REYNOLDS: I'm sorry?

18 COMMISSIONER YAKI: This is Commissioner  
19 Yaki saying we're going to vote on it.

20 COMMISSIONER GAZIANO: I hope we can vote  
21 on it, but I still --

22 CHAIRMAN REYNOLDS: Okay, fine.

23 COMMISSIONER GAZIANO: -- But I want -- I  
24 would like the clarification as well.

25 CHAIRMAN REYNOLDS: Okay. Staff Director,

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1 please provide the requested information.

2 At this point let's vote. All in favor  
3 please say aye.

4 COMMISSIONER YAKI: Of what?

5 (Chorus of ayes.)

6 COMMISSIONER YAKI: Of what?

7 CHAIRMAN REYNOLDS: Objections?

8 COMMISSIONER YAKI: I'm sorry. I don't  
9 know. What are we voting on? Point of information.

10 COMMISSIONER GAZIANO: The approval --

11 CHAIRMAN REYNOLDS: The Virginia SAC.

12 COMMISSIONER YAKI: Because I was going to  
13 -- you have not called for any discussion and say we  
14 were discussion process rather than discussing  
15 anything in particular.

16 CHAIRMAN REYNOLDS: I'm sorry. Michael?

17 COMMISSIONER YAKI: We didn't -- you did  
18 not allow substantive discussion. We were only  
19 discussing procedural matters up until this point.

20 CHAIRMAN REYNOLDS: Okay, okay. Very  
21 good. Let's continue the discussion.

22 COMMISSIONER HERIOT: Can I say something?  
23 I still think we should go into executive session and  
24 deal with this. I think that we should -- if the idea  
25 is that we can never really talk about these cases

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1 unless we go into executive session, then we should  
2 always be prepared to go into executive session, and  
3 the staff should understand that there's a good chance  
4 that's going to happen.

5 COMMISSIONER YAKI: Well, once we read the  
6 names out, that's -- you know, closed, right?

7 VICE CHAIR THERNSTROM: I am really in  
8 agreement with Commissioner Heriot here. I want to go  
9 into executive session. I don't want to vote on this  
10 slate with limited information. You know, I would  
11 prefer to postpone the whole item until the next --

12 COMMISSIONER HERIOT: I think we should go  
13 into executive session now.

14 VICE CHAIR THERNSTROM: That's fine. I  
15 agree. I'm support that.

16 COMMISSIONER YAKI: Point of information.  
17 Now we go back to the problems enunciated by the  
18 General Counsel regarding --

19 VICE CHAIR THERNSTROM: There's nobody on  
20 the phone who --

21 COMMISSIONER HERIOT: All we have to do is  
22 to up into Marty's office and do a conference call  
23 from there.

24 CHAIRMAN REYNOLDS: Folks, unless we are  
25 sure that only the appropriate people would be on the

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1 line, we should not move forward.

2 COMMISSIONER GAZIANO: Gail has --

3 COMMISSIONER HERIOT: Gerry, Gerry, wait.  
4 All we have to do is adjourn from this room, go up to  
5 Marty's room, and we'll get you and Pete and get the  
6 people that we need on the phone up there, and then we  
7 come back.

8 MR. BLACKWOOD: There's also the matter of  
9 the court reporter.

10 STAFF DIRECTOR DANNENFELSER: You have to  
11 have the court reporter present even in executive  
12 session.

13 VICE CHAIR THERNSTROM: Is the conference  
14 bridge operator on the line so that we can --

15 STAFF DIRECTOR DANNENFELSER: The way to  
16 do that is to clear the line, let everyone call back  
17 in, and only accept the calling back in of people who  
18 are approved to be on the line.

19 VICE CHAIR THERNSTROM: That's fine with  
20 me. I think this should be cleared up. I think going  
21 ahead with the vote on the SAC now is a mistake  
22 without going into executive session.

23 COMMISSIONER HERIOT: And putting off the  
24 SAC is also a mistake. So that gives us one choice.

25 CHAIRMAN REYNOLDS: Okay. Folks, I'm

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1 trying to get a sense of where the consensus is, and  
2 what limitations that we have in terms of the fact  
3 that we may discuss sensitive information.

4 Is there a consensus that we should go  
5 into executive session?

6 COMMISSIONER YAKI: No.

7 Commissioner Yaki has a question for the  
8 General Counsel.

9 Once we read these names out in public, we  
10 can talk about them in any way we want, correct?

11 COMMISSIONER GAZIANO: We can talk about  
12 these names. There are certain Commissioners who want  
13 to talk about other names, other than the ones that  
14 have been read. We're still at that point, I think.

15 COMMISSIONER YAKI: What other names,  
16 other than the --

17 COMMISSIONER GAZIANO: The other -- the  
18 other people who were not on --

19 COMMISSIONER HERIOT: There are certain --

20 COMMISSIONER YAKI: I thought we had a  
21 consensus that we were going to ask for that to be  
22 brought back to us--

23 COMMISSIONER HERIOT: No.

24 COMMISSIONER YAKI: -- because there was  
25 still room on the Commission to deal with this one way

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1 or another.

2 COMMISSIONER HERIOT: No.

3 VICE CHAIR THERNSTROM: I don't think that  
4 makes -- I'm sorry. This is Vice Chair Thernstrom.

5 It doesn't make any sense. I want to look  
6 at the SAC as a package, you know, rather than having  
7 names dribble back another month.

8 COMMISSIONER GAZIANO: We've done that  
9 with other SACs though, Abby, and we have room, as I  
10 say, to try to maintain balance to have one, two or  
11 three more, and that seems to give us a fair amount of  
12 flexibility on this one.

13 COMMISSIONER YAKI: Oh, one other point  
14 that was raised, Mr. Chair.

15 CHAIRMAN REYNOLDS: Yes.

16 COMMISSIONER YAKI: In a previous E-mail  
17 around my request for the discussion on temporary  
18 hiring authority, it was hinted that that would be an  
19 item that might also be eligible for executive  
20 session. Rather than go into this thing and do it  
21 twice, which would be extremely disruptive, why  
22 wouldn't we add that also to the closed session  
23 agenda?

24 VICE CHAIR THERNSTROM: That's fine.

25 CHAIRMAN REYNOLDS: Well, I think that

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1 both ideas are bad. We are wasting time. This is  
2 disruptive. I mean, the exercise of discretion that  
3 folks are concerned about today have existed since the  
4 beginning of the Commission, and today this is the  
5 first time at least to my knowledge that anyone has  
6 these types of concerns about the minutia of how  
7 people are selected.

8 I mean, no one is suggesting that anything  
9 untoward has occurred.

10 COMMISSIONER GAZIANO: That's correct.

11 COMMISSIONER HERIOT: We don't know that,  
12 Jerry.

13 COMMISSIONER GAZIANO: I support, though,  
14 our being able to ask the decision makers. I think  
15 that we need to be able to ask the decision makers,  
16 but I don't --

17 COMMISSIONER HERIOT: We are the decision  
18 makers.

19 COMMISSIONER GAZIANO: Exactly, but I  
20 don't -- those who have proposed them to us.

21 COMMISSIONER YAKI: In the immortal words  
22 of the bank president, we are the deciders.

23 CHAIRMAN REYNOLDS: Isn't this the type of  
24 information that could be handled by sending an E-  
25 mail?

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1                   COMMISSIONER GAZIANO: Right, but I do not  
2 think that that -- if the majority disagree -- I hear  
3 two Commissioners disagree that we can vote on this  
4 slate, but if a majority want to consider it as a  
5 whole, that's fine, but I think we can vote on this  
6 slate and we can add names.

7                   STAFF DIRECTOR DANNENFELSER: This is the  
8 Staff Director.

9                   I would sort of like to second  
10 Commissioner Gaziano's suggestion and keep open the  
11 idea of the executive session, that if at the next  
12 meeting there's a desire for an executive session to  
13 deal with this, that we have a balanced package and we  
14 can add perhaps the individual who was not included  
15 and any other individuals who might be recommended --

16                   COMMISSIONER HERIOT: The point is here  
17 with these SACs --

18                   STAFF DIRECTOR DANNENFELSER: -- to  
19 consider them at the next meeting and then have an  
20 executive session --

21                   COMMISSIONER HERIOT: -- it's going to be  
22 routine that there will be questions.

23                   STAFF DIRECTOR DANNENFELSER: -- to  
24 explain why that person was not included.

25                   COMMISSIONER HERIOT: You know, this issue

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1 is going to come up over and over again. You know,  
2 this is a decision the Commission has to make, and  
3 therefore, the Commission has to be prepared to go in  
4 executive session on these matters on a routine basis.  
5 We cannot have a rule that says that we never can go  
6 into executive session for SACs. It has got to be  
7 something that the staff is prepared to handle every  
8 time.

9 COMMISSIONER GAZIANO: I agree, but  
10 because the issue that relates to the executive  
11 session is whether we should add a person, I don't  
12 think we need to necessarily do it at this session.

13 CHAIRMAN REYNOLDS: Okay, folks. Let's --  
14 we've entertained a number of proposals. One is that  
15 we vote on the slate, and then we add names insuring  
16 that there's balance by the next business meeting.  
17 Well, I move that we adopt that approach. Is there a  
18 second?

19 COMMISSIONER GAZIANO: Second.

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

22 (Chorus of ayes.)

23 CHAIRMAN REYNOLDS: Okay. All objections.

24 (No response.)

25 CHAIRMAN REYNOLDS: Abstentions.

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1 COMMISSIONER MELENDEZ: I abstain.

2 COMMISSIONER HERIOT: I abstain.

3 COMMISSIONER YAKI: I abstain.

4 COMMISSIONER MELENDEZ: Melendez.

5 CHAIRMAN REYNOLDS: I'm sorry.

6 COMMISSIONER MELENDEZ: Melendez abstains.

7 COMMISSIONER HERIOT: Heriot abstains.

8 COMMISSIONER YAKI: Yaki abstains.

9 VICE CHAIR THERNSTROM: Thornstrom  
10 abstains.

11 COMMISSIONER HERIOT: But it was an  
12 unnecessary motion anyway.

13 CHAIRMAN REYNOLDS: Okay, and --

14 COMMISSIONER HERIOT: You can just go  
15 ahead and do what you're going to do.

16 CHAIRMAN REYNOLDS: Hold on.

17 COMMISSIONER GAZIANO: Yeah, he was  
18 seeking to know where his majority was.

19 COMMISSIONER TAYLOR: We can just call the  
20 question on the SAC.

21 COMMISSIONER HERIOT: Yeah.

22 COMMISSIONER GAZIANO: Okay. After  
23 discussion, now Commissioner Yaki may want to express  
24 his thoughts on the slate that we're going to vote on.

25 COMMISSIONER YAKI: I have a question.

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1 Was there a majority?

2 COMMISSIONER HERIOT: No.

3 COMMISSIONER GAZIANO: A majority of those  
4 voting, yes.

5 COMMISSIONER YAKI: Of those voting?

6 CHAIRMAN REYNOLDS: It's a tie.

7 COMMISSIONER GAZIANO: A majority of those  
8 voting.

9 VICE CHAIR THERNSTROM: No, it's not.

10 COMMISSIONER HERIOT: There were no no  
11 votes. There were no no votes at all.

12 COMMISSIONER YAKI: Oh, then I'd move to  
13 reconsider.

14 PARTICIPANT: You can't. You abstained.

15 COMMISSIONER YAKI: That was an  
16 abstention. It wasn't a no.

17 COMMISSIONER GAZIANO: You can't vote to  
18 reconsider when you abstain.

19 CHAIRMAN REYNOLDS: Okay. So we have four  
20 abstentions and four in favor. The motion passes.

21 VICE CHAIR THERNSTROM: I don't think we  
22 had four in favor even.

23 CHAIRMAN REYNOLDS: Okay. Commissioner  
24 Kirsanow, how did you vote?

25 COMMISSIONER KIRSANOW: Aye.

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1 CHAIRMAN REYNOLDS: Commissioner Taylor.

2 COMMISSIONER TAYLOR: Aye.

3 CHAIRMAN REYNOLDS: Commissioner Gaziano.

4 COMMISSIONER GAZIANO: Aye.

5 COMMISSIONER HERIOT: You've got it. The  
6 motion passed.

7 COMMISSIONER GAZIANO: The motion passed.  
8 Okay. Let's have discussion on the slate and let's  
9 vote on it.

10 CHAIRMAN REYNOLDS: Okay. Discussion.

11 (No response.)

12 CHAIRMAN REYNOLDS: Hearing none, all in  
13 favor please say aye.

14 COMMISSIONER HERIOT: Oh, no, wait.

15 COMMISSIONER YAKI: Commissioner Yaki is  
16 putting his microphone on.

17 VICE CHAIR THERNSTROM: There is  
18 discussion.

19 COMMISSIONER YAKI: I have some serious  
20 reservations about some of the individuals being  
21 appointed to the Virginia SAC. I think it probably  
22 goes without saying that -- well, first of all, in  
23 order to protect all of us, why don't we first read  
24 off the names so that then we know they are in the  
25 public.

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1 COMMISSIONER GAZIANO: We've done so.

2 COMMISSIONER HERIOT: That's been done.

3 COMMISSIONER YAKI: Have we mentioned all  
4 of the names?

5 COMMISSIONER HERIOT: Yes.

6 COMMISSIONER GAZIANO: Yes.

7 COMMISSIONER HERIOT: Gerry did it.

8 COMMISSIONER YAKI: I have serious  
9 reservations about the appointments of Hans von  
10 Spakovsky and Cameron Quinn. First of all, apart from  
11 anything on their ideological viewpoints, which is  
12 really in some ways immaterial but really not so, they  
13 are in many ways the exact same person, given that  
14 their background in terms of -- is very similar. They  
15 both served at the same position within the DOJ Civil  
16 Rights Division, and I think that there's a redundancy  
17 between the two in terms of that kind of experience  
18 when it comes to the kind of balance and differing  
19 strengths that one is supposed to bring to the  
20 Commission.

21 But in particular, I've just got to tell  
22 you that I just have serious problems with Mr. von  
23 Spakovsky being appointed to this. I have read his  
24 writings. I believe that in my opinion -- and I am  
25 certain there will be disagreement on this -- but I

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1 just do not believe him to be someone qualified to be  
2 on the Virginia SAC, who will work well with the other  
3 members there, given the writings that he has done  
4 recently that I've been privy to look at, and I will  
5 be voting against his confirmation.

6 CHAIRMAN REYNOLDS: Two quick questions.  
7 Mr. Staff Director, did you state earlier that overall  
8 the proposed slate was balanced?

9 Marty, are you still on the line?

10 (No response.)

11 COMMISSIONER TAYLOR: He's in executive  
12 session.

13 COMMISSIONER GAZIANO: Mr. Chair, may I  
14 respond on the merit of the SAC?

15 CHAIRMAN REYNOLDS: Well, I have another  
16 question, and actually the question is directed at  
17 you, Commissioner Gaziano.

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN REYNOLDS: Mr. Gaziano, overall,  
20 do you share many of the first principles expressed by  
21 Hans?

22 COMMISSIONER GAZIANO: Yes. He is a  
23 colleague of mine at the Heritage Foundation, in fact,  
24 and I am very pleased with his writing of late,  
25 although I certainly don't agree with him on

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1 everything.

2 I wanted to comment on the slate as a  
3 whole, too, since I did formerly serve on this SAC. I  
4 would say not only are each of the individuals that I  
5 know of -- I don't know some of the new folks, but I  
6 will also admit since it's a matter, I think, a matter  
7 of our public record, that I recommended Hans and  
8 Cameron Quinn for inclusion because I think they are  
9 exceedingly and obviously well fit to serve on the  
10 SAC.

11 But I also want to say I really enjoyed  
12 the strong and constructive liberal SAC members that I  
13 used to serve on who are being reappointed. I think  
14 that there are no wallflowers on this Virginia SAC  
15 slate that I am aware of. It may be because I know it  
16 I'm biased, and it is my home state, but there are  
17 some very strong and constructive liberals,  
18 libertarians, conservatives from a variety of racial,  
19 ethnic and religious backgrounds. It's a SAC slate  
20 I'm very proud to vote for.

21 CHAIRMAN REYNOLDS: Commissioner Yaki, you  
22 said something that suggested that Hans would not work  
23 well with the other Commissioners. Would you care to  
24 expand on that?

25 COMMISSIONER YAKI: No. I said what I

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1 wanted to say.

2 CHAIRMAN REYNOLDS: Yes. I'm just trying  
3 to get some additional information to weigh the  
4 strength of your argument. If he can't conduct  
5 himself in a civil manner, that's a consideration that  
6 we should take into account.

7 COMMISSIONER YAKI: I did not necessarily  
8 say he would conduct himself in an uncivil manner. I  
9 simply said that the viewpoints that he advocates in  
10 his latest writings are ones that I find to be  
11 alienating and extreme in my point of view, and which  
12 might not lend itself to a well functioning body, but  
13 that is my opinion.

14 CHAIRMAN REYNOLDS: You may be right since  
15 a number of the Commissioners share his views, and  
16 looking at how we get along, you may very well be  
17 right.

18 COMMISSIONER YAKI: Just going by  
19 experience, Mr. Chair.

20 COMMISSIONER HERIOT: Mr. Chairman. Mr.  
21 Chairman, can I comment just for a second?

22 CHAIRMAN REYNOLDS: Sure.

23 COMMISSIONER HERIOT: Number one, if  
24 you're concerned about --

25 VICE CHAIR THERNSTROM: You have to

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1 identify yourself.

2 COMMISSIONER HERIOT: I'm still Gail.

3 Number one, on Mr. van Spakovsky's  
4 temperament, I've always found him to be extremely  
5 polite when speaking to people of differing views.

6 Second, a lot of the criticism that Mr.  
7 van Spakovsky has had over the years has been for the  
8 stand he has taken on voting rights issues,  
9 particularly voter ID issues, and it's worth pointing  
10 out that the Supreme Court has essentially agreed with  
11 Mr. van Spakovsky and not with those who have  
12 criticized him.

13 CHAIRMAN REYNOLDS: So in other words, his  
14 offensive views are the law of the land as defined by  
15 the Supreme Court.

16 COMMISSIONER HERIOT: That's my  
17 understanding.

18 COMMISSIONER GAZIANO: And they have the  
19 support of the great majority of the American people  
20 for voter ID.

21 At this point rather than explain my  
22 support for Hans, I submitted a statement for the  
23 record. I believe it was in our September business  
24 meeting. I think that stands to reflect why I think  
25 his views are certainly very helpful and worthy.

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1 I would also add that the Chair -- am I  
2 correct that Linda Chavez is being appointed again to  
3 chair this SAC?

4 COMMISSIONER HERIOT: Yes.

5 CHAIRMAN REYNOLDS: That is correct.

6 COMMISSIONER GAZIANO: I think she, as a  
7 former Staff Director, is a -- leads the SAC in a  
8 wonderful and constructive way, and I would be  
9 surprised if she did not think that this was a  
10 wonderful SAC to work with.

11 VICE CHAIR THERNSTROM: And I have one  
12 more comment on this. This is Vice Chair Thernstrom.

13 I mean, if it is -- I assume by balanced  
14 is meant that there is ideological diversity, that it  
15 is not skewed in one political direction or another,  
16 and so, you know, I would not be in the position -- I  
17 wouldn't even think of objecting to somebody whose  
18 views on the left I strongly disagreed with.

19 I mean, I don't -- I'm puzzled by  
20 objecting to Hans on the ground that his views are not  
21 one's own, and I would like further clarification,  
22 Commissioner Yaki, on this because we all celebrate  
23 diversity of opinions, I hope, on these bodies.

24 COMMISSIONER YAKI: Commissioner  
25 Thernstrom.

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1 VICE CHAIR THERNSTROM: Yes. I mean,  
2 isn't he within a range of acceptable opinion?

3 COMMISSIONER YAKI: The questions go to  
4 issues that go far beyond what his ideological  
5 viewpoints may be, what his writings may be. It  
6 includes criticisms of his conduct when he was at the  
7 Justice Department, which go into a whole different  
8 set of issues.

9 VICE CHAIR THERNSTROM: I don't think any  
10 of us are aware of those.

11 COMMISSIONER YAKI: Well, I mean, I have  
12 statements from Senator Kennedy and --

13 VICE CHAIR THERNSTROM: Yeah, I know, but  
14 when we're voting.

15 COMMISSIONER YAKI: -- others on this  
16 issue. So those to me, all in all, give me pause. It  
17 is, indeed, one thing to say to have a diversity of  
18 ideological viewpoints. I have no objection to that.  
19 I think that you have some of that already here with  
20 the presence of former Staff Director Chavez and  
21 others. Certainly you have it in other SACs as well.

22 But I will just be honest with you in  
23 saying that I just have concerns about this individual  
24 that in the totality make me uncomfortable with having  
25 our imprimatur on his appointment to a body that is an

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1 officially sanctioned part of the United States  
2 Commission on Civil Rights.

3 That is the basis of my objection. It is  
4 a totality analysis. It is not simply because he's  
5 like, over here, although some of his wording has been  
6 rather interesting of late, but that aside, because  
7 all of our wording does go one way or the other, but  
8 in the totality, in looking at his record at DOJ and  
9 review his statements by people who dealt with him  
10 other than myself, I have reservations. I have  
11 concerns about this individual being part of who we  
12 are now, but that is me, and there is --

13 VICE CHAIR THERNSTROM: Well, it's also a  
14 record that probably --

15 COMMISSIONER GAZIANO: Mr. Chair, I --

16 VICE CHAIR THERNSTROM: -- none of the  
17 rest of us know, or at least I don't.

18 COMMISSIONER GAZIANO: Mr. Chair, this is  
19 Commissioner Gaziano.

20 Since I would have preferred Commissioner  
21 Yaki to not -- I'm not casting aspersion on him -- to  
22 just respect his general statement -- and I didn't  
23 necessarily want to say more, except since he alluded  
24 to some matters, I believe that any of the false  
25 ethical charges that were raised against Hans have

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1 been completely cleared up and he has been exonerated,  
2 and my statement of last September, I think, should  
3 reflect that I think he has only served honorably and  
4 served our country well.

5 I don't want to have to go into more  
6 detail on that. I think it's fine that we just  
7 registered our --

8 COMMISSIONER YAKI: Well, I just want to  
9 assure Commissioner Gaziano that I was not referring  
10 to any ethical issues in terms of the criticism that  
11 was raised by his performance at that agency. This  
12 was substantive, done through the committee hearing  
13 process, a public view with public statements made by  
14 --

15 COMMISSIONER GAZIANO: I understand, and  
16 there were responses to those of the committee that I  
17 think completely exonerated --

18 COMMISSIONER YAKI: Well, then we  
19 disagree.

20 COMMISSIONER GAZIANO: -- Mr. van  
21 Spakovsky's behavior.

22 COMMISSIONER TAYLOR: Mr. Chairman, I'm  
23 going to vote for the slate for a number of reasons.  
24 First of all, to your question, Marty did indicate we  
25 were having a discussion about going into executive

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1 session, that he did view this to be a balanced slate.

2 So I wanted to bring that issue back up  
3 because it's important, and it's consistent with my  
4 review of the resumes. I don't know all of these  
5 individuals personally, but on paper it does appear to  
6 be a balanced slate, and that view is confirmed by  
7 Marty's statement this morning.

8 I don't know Hans personally. I've met  
9 him a couple of times, but while I know he is a  
10 controversial figure in some quarters, he has done  
11 nothing in my view to disqualify himself from an  
12 appointment of this nature, and he can make a  
13 meaningful contribution based on everything I have  
14 seen.

15 I do know Cameron Quinn personally. I  
16 have worked with her. She is a recognized expert in  
17 state election laws, and she has been recognized as an  
18 expert in cases on such issues, particularly as they  
19 pertain to protecting the rights of minorities and  
20 ensuring that a process is fair with respect to  
21 carrying out election.

22 So I can speak to her personally that she  
23 is someone who is respected in legal communities in  
24 Virginia, and I know she will make a meaningful  
25 contribution as well.

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1           But, again, I tend to be one who asks  
2 whether someone has done something to disqualify  
3 themselves. I don't think Hans has done that, and I  
4 respect to the right of Commissioners, certainly, to  
5 look at the totality of his record and disagree, and  
6 that's why we all have a vote.

7           So with that I am done.

8           COMMISSIONER GAZIANO: Can we call the  
9 question?

10          CHAIRMAN REYNOLDS: Yes, indeed.

11          COMMISSIONER YAKI: I move to --

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

14          COMMISSIONER YAKI: Wait just a second --  
15 move to sever. That's a privileged motion.

16          CHAIRMAN REYNOLDS: Sorry?

17          COMMISSIONER YAKI: Mr. Chairman,  
18 Commissioner Yaki.

19           I move to sever Mr. van Spakovsky's name  
20 for a separate vote.

21          CHAIRMAN REYNOLDS: Is there a second?

22          COMMISSIONER YAKI: It doesn't need a  
23 second, Mr. Chair.

24          CHAIRMAN REYNOLDS: Okay. Discussion?

25           (No response.)

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1 CHAIRMAN REYNOLDS: Okay. All in favor of  
2 Commissioner Yaki's motion please say aye.

3 COMMISSIONER GAZIANO: What is your motion  
4 to sever, just Hans?

5 COMMISSIONER YAKI: Yes.

6 VICE CHAIR THERNSTROM: No.

7 COMMISSIONER YAKI: And it's a privilege  
8 motion. It's automatic on any main motion that if you  
9 wish to sever one individual from a package under  
10 Robert's Rules.

11 COMMISSIONER GAZIANO: I don't know that  
12 that's right.

13 COMMISSIONER YAKI: It is right.

14 COMMISSIONER GAZIANO: I don't know that  
15 it's right, but let's just allow the separate vote. I  
16 don't care.

17 COMMISSIONER HERIOT: Well, on the  
18 severing.

19 COMMISSIONER TAYLOR: Why don't you Google  
20 that under Robert's Rules?

21 VICE CHAIR THERNSTROM: Now, wait a  
22 minute. Is it right or not?

23 COMMISSIONER TAYLOR: Google it.

24 COMMISSIONER GAZIANO: Let's not. Let's  
25 not.

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1 COMMISSIONER TAYLOR: Give him the vote.

2 COMMISSIONER GAZIANO: Let's not argue  
3 about it.

4 COMMISSIONER YAKI: Just for the record,  
5 this did happen in some of the early SAC votes in 2000  
6 and whatever it was when --

7 COMMISSIONER GAZIANO: My only question is  
8 whether it's automatic or whether we vote, but let's  
9 sever it.

10 COMMISSIONER YAKI: Okay.

11 COMMISSIONER GAZIANO: Let's give  
12 Commissioner Yaki his separate vote.

13 COMMISSIONER HERIOT: To vote on whether  
14 to sever or to --

15 COMMISSIONER YAKI: No, now to vote on --

16 COMMISSIONER TAYLOR: Just let him.

17 COMMISSIONER YAKI: -- to vote on the  
18 balance of appointments and then Mr. van Spakovsky.

19 COMMISSIONER GAZIANO: I move that we vote  
20 on the slate that Chairman read minus Mr. van  
21 Spakovsky first.

22 COMMISSIONER YAKI: I'll second that.

23 CHAIRMAN REYNOLDS: Discussion?

24 VICE CHAIR THERNSTROM: Well, I mean, I  
25 think it's important to vote for a whole slate, the

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1 slate as a package, and --

2 COMMISSIONER TAYLOR: We will.

3 COMMISSIONER GAZIANO: Okay. I vote that  
4 we --

5 COMMISSIONER HERIOT: You vote or you  
6 move?

7 COMMISSIONER GAZIANO: I move that we vote  
8 to approve Hans in the slate, but on that first.

9 VICE CHAIR THERNSTROM: I will second  
10 that. So we are voting on the entire package first.

11 COMMISSIONER GAZIANO: To include Hans in  
12 the slate that we will eventually vote on.

13 VICE CHAIR THERNSTROM: Okay. I second  
14 that.

15 COMMISSIONER YAKI: Let's vote.

16 CHAIRMAN REYNOLDS: All in favor please  
17 say aye.

18 (Chorus of ayes.)

19 CHAIRMAN REYNOLDS: Any objections?

20 COMMISSIONER YAKI: No.

21 COMMISSIONER MELENDEZ: Opposed.  
22 Melendez.

23 CHAIRMAN REYNOLDS: I'm sorry. Who  
24 objected?

25 COMMISSIONER YAKI: Yaki and Melendez.

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1 COMMISSIONER MELENDEZ: Melendez. I voted  
2 no.

3 CHAIRMAN REYNOLDS: And Commissioner Yaki?

4 COMMISSIONER YAKI: I voted now.

5 VICE CHAIR THERNSTROM: Two nays.

6 CHAIRMAN REYNOLDS: Yeah, the motion  
7 passes.

8 Okay. So now we're going to have the  
9 vote.

10 COMMISSIONER GAZIANO: I now move to  
11 approve the entire slate with Mr. van Spakovsky.

12 COMMISSIONER YAKI: I'd like to note for  
13 the record that if we had done it my way, I would have  
14 actually probably voted for the balance of the slate,  
15 but now since he has been re-added back to the slate  
16 I'll be voting no.

17 CHAIRMAN REYNOLDS: Okay. Time to vote.  
18 Well, was there a second?

19 COMMISSIONER TAYLOR: Second.

20 CHAIRMAN REYNOLDS: Is there any need for  
21 discussion?

22 Okay. All in favor, please say aye.

23 (Chorus of ayes.)

24 CHAIRMAN REYNOLDS: Any objections?

25 COMMISSIONER YAKI: No.

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1 COMMISSIONER MELENDEZ: No. Melendez.

2 CHAIRMAN REYNOLDS: Okay. We have two  
3 noes.

4 Okay. Very good.

5 COMMISSIONER HERIOT: I abstained.

6 CHAIRMAN REYNOLDS: Okay. So we have one  
7 abstention, two noes. And the abstention is from  
8 Commissioner Heriot.

9 COMMISSIONER HERIOT: Yes, and it's based  
10 not on any view of the people who have been nominated  
11 here, all of whom seem very good to me, but on the  
12 basis of not having had the executive session to be  
13 able to discuss how this was arrived at, and I will  
14 abstain from any SAC where we don't have the  
15 opportunity to discuss things.

16 Also I don't understand why we could have  
17 a discussion about Hans van Spakovsky without having a  
18 - - without an executive session, and you know, needed  
19 an executive session for the others. I don't  
20 understand that at all.

21 CHAIRMAN REYNOLDS: Okay. Next up is the  
22 Civil Rights Conference.

23 IV. PROGRAM PLANNING

24 (a) NATIONAL CIVIL RIGHTS CONFERENCE

25 CHAIRMAN REYNOLDS: Everyone has received

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1 the draft proposal, which is titled "A New Era" --  
2 "Defining Civil Rights in the 21st Century."

3 VICE CHAIR THERNSTROM: Mr. Chairman, have  
4 we approved the minutes of June 12th yet?

5 CHAIRMAN REYNOLDS: No, but that's fine.  
6 We're going out of order.

7 VICE CHAIR THERNSTROM: No, I think that  
8 that is the next item in order. This is a little  
9 ridiculous.

10 CHAIRMAN REYNOLDS: Well, most of what has  
11 transpired has been ridiculous. So just add this to  
12 the list.

13 Okay. Everyone has received a draft of  
14 the proposal titled "A New" --

15 VICE CHAIR THERNSTROM: Wait a minute.  
16 When are we going to approve the minutes?

17 CHAIRMAN REYNOLDS: Yes, we are, but I'm  
18 going to finish what I started here.

19 Okay. The proposal consists of the  
20 following elements: a conference overview of the  
21 conference's relationship to the Commission's  
22 statutory mission and strategic plan; proposed subject  
23 matter of the panels, as well as recommended panelists  
24 and moderators; a discussion of two leading venues for  
25 the conference; discussion of budget options; a

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1 proposed conference schedule; and suggested conference  
2 attendees or invitees.

3 The tentative date for the conference is  
4 September 24th. The two possible venues that are  
5 available on that date are the National Press Club and  
6 the National Transportation Safety Board's Conference  
7 Center.

8 On pages 11, 12 and 13 of the proposal  
9 you'll find a discussion of the advantages and  
10 disadvantages of each venue. A larger number of  
11 speakers have been suggested for each panel than are  
12 necessary, and we'll add additional names. I assume  
13 that we'll add additional names once we open up the  
14 discussion.

15 At this point I open up the floor for  
16 discussion.

17 COMMISSIONER HERIOT: Mr. Chairman, I  
18 think this is going to be a great conference. I hope  
19 we can pull it off on the schedule that you're  
20 shooting for.

21 VICE CHAIR THERNSTROM: Mr. Chairman, I  
22 would like some review on your part of how this  
23 document was arrived at, who was consulted. I mean,  
24 this is a -- obviously, this Commission is not a one  
25 person show, and to the best of my knowledge, at

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1 least, I wasn't consulted at any point to the best of  
2 my knowledge.

3 This was not a collaborative effort, and  
4 I'd like kind of a history and an explanation.

5 CHAIRMAN REYNOLDS: An explanation of  
6 what?

7 VICE CHAIR THERNSTROM: Well, I mean,  
8 normally in putting together a conference involving  
9 the whole Commission and an important project like  
10 this, the normal thing I would expect was from the  
11 very outset for this to be a collaborative process in  
12 which there was a Commission-wide discussion on day  
13 one and a continuing discussion, and instead this has  
14 been developed behind closed doors and with a very  
15 late look on the part of -- I mean that in itself  
16 troubles me -- but and a very late look on the part  
17 of appointed Commissioners whose, you know, job it is  
18 to work together on such projects -- a very late look  
19 at what has been handed to us as the work of only the  
20 Chairman and his assistant.

21 And I would like some kind of discussion  
22 of why this was done this way and what the history is  
23 here.

24 CHAIRMAN REYNOLDS: The history is that in  
25 2007 there was a working group that was convened to

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1 put together a conduct paper. Some preliminary work  
2 was done. I took a look at what was produced. It  
3 would not -- let's back up.

4 The sponsor of this idea, it belongs, I  
5 supposed, to both Commissioner Kirsanow and me. I  
6 took a look at the initial document. It was not  
7 capturing the idea that I had when I had made this  
8 recommendation along with Pete.

9 I with the able assistance of -- undertook  
10 the task of creating a concept paper. This shouldn't  
11 be new to anyone since this has been discussed on the  
12 record in the past. This is not unprecedented. It  
13 was done as recently as the recent health care  
14 briefing. That conference was based on a concept  
15 paper that was prepared by a Commissioner.

16 There's no prohibition against it, and I  
17 guess I'm curious as to how you were or anyone else  
18 was disadvantaged by this approach. In all instances  
19 Commissioners receive a concept paper. Ordinarily  
20 it's done by the staff, but there are times when it is  
21 not. In each case Commissioners have an opportunity  
22 to debate, to revise, to make suggestions, and I don't  
23 see how that process has been altered, and I don't see  
24 -- and I would like to hear how you were  
25 disadvantaged.

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1                   VICE CHAIR THERNSTROM: Well, I think the  
2 entire Commission has not been well served by this  
3 process, and the opportunity to debate should have  
4 occurred on day one, not on -- not at this point.  
5 This is a very late stage, but I would have liked at  
6 each stage -- and briefings are different than this  
7 kind of conference.

8                   I'm sorry. I interrupted Commissioner  
9 Yaki.

10                  COMMISSIONER YAKI: No, no. I'm at a  
11 little bit of a loss with the statement that you just  
12 made, Mr. Chairman. Are you saying that this concept  
13 paper was distributed prior to this at some other  
14 meetings that we're unaware of?

15                  CHAIRMAN REYNOLDS: No, I did not say  
16 that.

17                  COMMISSIONER YAKI: Okay.

18                  CHAIRMAN REYNOLDS: What I said was that  
19 the fact that I was putting together the content paper  
20 was discussed on the record at previous meetings.

21                  COMMISSIONER YAKI: Well, I would just  
22 like to go on record as stating that I had stated both  
23 on the record and in meetings, including with the  
24 Staff Director, the idea that if, indeed, we were  
25 going to be going down the pathway of a national

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1 conference proposal, it would probably be wise to  
2 ensure that the minority was included in those initial  
3 discussions simply because this is -- and I think it  
4 is borne out by the scope that you have put together  
5 here in terms of insuring that this was an effort of  
6 the Commission as a whole rather than, as Commissioner  
7 Thernstrom has pointed out, an effort by you and  
8 perhaps - Commissioner Kirsanow, this is not to, this  
9 is not to --

10 CHAIRMAN REYNOLDS: Whether the document  
11 reflects the views of a single Commissioner, and that  
12 would be me, or whether it reflects the overall sense  
13 of the Commission, that is yet to be determined. If  
14 we can have a discussion of the document, we can  
15 determine whether the document that I put together  
16 reflect the expectation of the Commissioners as a  
17 whole.

18 COMMISSIONER MELENDEZ: Mr. Chairman.

19 COMMISSIONER YAKI: With all due respect,  
20 Mr. Chairman, the fact that you have already picked  
21 some dates in September, this being July, we're having  
22 one meeting in August, does not really lend itself to  
23 the kind of knife sharpening that needs to be done in  
24 terms --

25 CHAIRMAN REYNOLDS: Commissioner Yaki,

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1 everything in the document is up for debate, including  
2 the date.

3 COMMISSIONER YAKI: Mr. Chairman.

4 CHAIRMAN REYNOLDS: Yes

5 COMMISSIONER GAZIANO: On the procedural  
6 issue, I would like to speak to the, I think, strength  
7 and merits of having the conference as the document is  
8 outlined a little later, but I'm not sure I understand  
9 some of the procedural arguments. As I understood,  
10 the Commission was committed to this national  
11 conference before I was a member a year and a half  
12 ago. Commissioners have been aware that you were  
13 going to propose a concept paper, and I thank you and  
14 any staff that helped you with it.

15 I've helped put on a lot of conferences.  
16 This is an ambitious one, but it's an important one,  
17 but 12 weeks or whatever, 11 weeks, however many, is  
18 not too fast, but if we need updates along the way, I  
19 was going to propose maybe we get updates, you know,  
20 at different stages every few weeks, but I certainly  
21 don't see why there's any problem with proposing it  
22 at this time for September 24th, nor, I think, you  
23 should be -- you and your staff should be thanked for  
24 checking out proposed dates, coming out with concrete  
25 proposals of venues.

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1 I support the National Press Club venue  
2 for a variety of reasons that I'll discuss in a few  
3 minutes, but I really am at a loss for --

4 COMMISSIONER KIRSANOW: Mr. Chairman.

5 COMMISSIONER GAZIANO: Mr. Chairman.

6 COMMISSIONER YAKI: -- for how this could  
7 have been done differently other than we can always do  
8 things a little bit differently.

9 COMMISSIONER TAYLOR: Mr. Chairman, can I  
10 ask a couple of questions? This is Commissioner  
11 Taylor.

12 CHAIRMAN REYNOLDS: I believe Commissioner  
13 Kirsanow was ahead of you.

14 COMMISSIONER KIRSANOW: Thank you, Mr.  
15 Chairman.

16 I would adopt the statements made by  
17 Commissioner Gaziano also. This was something that  
18 we've been talking about for more than two years now.  
19 It was part of strategic planning. We've had several  
20 votes on the concept of this, the fact that the  
21 Chairman and whatever it would take to draft the  
22 concept paper, I think, is something that should be  
23 commended. It's one of the better concept papers I've  
24 seen on a very ambitious topic, admittedly ambitious  
25 and aggressive in terms of its time frame.

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1           But, frankly, the Commission regularly  
2 receives information, documents, reports, proposals,  
3 concept papers, in a time frame that is aggressive or  
4 somewhat ambitious or some would say late, and we  
5 nonetheless can go forward. Everyone to my knowledge  
6 was aware that we were doing this. Everyone to my  
7 knowledge was aware that, unfortunately for his sake,  
8 the Chairman decided to undertake drafting the concept  
9 paper, and it's not unusual for a Commissioner to  
10 draft a concept paper.

11           I think Commissioner Taylor drafted the  
12 concept paper on health care disparities, if I'm not  
13 mistaken, and I can't recall a time -- and maybe I'm  
14 remiss for having done so -- I can't recall a time in  
15 which I've collaborated with other commissioners in  
16 fashioning a concept paper. So that's not unusual.

17           I think the only thing that separates this  
18 from other concept papers is, number one, the scale of  
19 the project, admittedly large, and how good the  
20 concept paper is.

21           CHAIRMAN REYNOLDS: Commissioner Taylor.

22           COMMISSIONER TAYLOR: Mr. Chairman, a  
23 single question all to you: is everything in this  
24 concept paper from your perspective open for debate  
25 and discussing -- timing, panelists, issues, et

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1 cetera? Is it all up for discussion?

2 CHAIRMAN REYNOLDS: Correct.

3 COMMISSIONER TAYLOR: I mean, and with all  
4 due respect, you know, you are a member of the  
5 Commission who has put a concept paper on the table,  
6 and frankly, if folks want to pick it apart, let's  
7 pick it apart. If folks don't think we can do it in  
8 this time frame, I mean, let's consult the staff and  
9 ask.

10 But I don't think we should spend a lot of  
11 time, candidly, discussing how we got here and who  
12 shot John. Let's deal with it as it presents itself.

13 My second proposal, frankly, would be  
14 that, Mr. Chair, that as we discuss this, my sense  
15 that when the subcommittee was created a couple of  
16 years ago, it included Commissioner Yaki, that he be  
17 formally assigned, if he would agree to do so, to work  
18 with you on this going forward.

19 CHAIRMAN REYNOLDS: At this point everyone  
20 is.

21 VICE CHAIR THERNSTROM: Well, but,  
22 Commissioner, Mr. Chairman, I just don't understand  
23 why Commissioner Yaki wasn't working with you from the  
24 beginning on this, I mean, so that every Commissioner  
25 had ownership of this enormous project.

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1 COMMISSIONER GAZIANO: We have now.

2 COMMISSIONER HERIOT: That's what we're  
3 here for. We're now supposed to get ownership. We're  
4 all working on this now.

5 VICE CHAIR THERNSTROM: It's very, very  
6 late.

7 COMMISSIONER YAKI: No.

8 COMMISSIONER HERIOT: It's being done  
9 exactly the way it should be done.

10 COMMISSIONER YAKI: This is -- this is --  
11 this is Commissioner Yaki.

12 Let's think about this in its real  
13 context. This is something that -- and I'm going to  
14 be the first to say this because I remember saying  
15 this in one of my first days, meetings on this  
16 Commission, which was the idea of having a conference  
17 to redefine the issues of civil rights for the 21st  
18 Century. I think I said that three years ago, four  
19 years ago. How long have I been on this thing?

20 VICE CHAIR THERNSTROM: We've all been  
21 here too long.

22 COMMISSIONER YAKI: We've all been here  
23 too long.

24 So in some ways I take ownership of this  
25 idea. The problem, though, that I see is that this is

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1 something that is of a magnitude different than a  
2 briefing. It is a quantum magnitude difference, of a  
3 quantum magnitude difference than a briefing. It is  
4 in some ways equal to, if not superior to, the process  
5 that we would need to go through for a national  
6 report, which, as we all know, has been a many  
7 multi-month process just to figure out what the stated  
8 goals and objectives were going to be to get that  
9 done.

10 We received this a week ago. It is July.  
11 This proposal is done for September. We have one  
12 meeting in August to deal with this. Quite frankly,  
13 between last Thursday or whatever it was when I  
14 received this binder and now, I went through this, but  
15 obviously there has been a lot of work done by  
16 Commissioner -- by the Chair, and to your credit, Mr.  
17 Chair, it reflects a large amount of work and time and  
18 effort, including I know that your special assistant  
19 was very active in that.

20 Now, you know, I'll say this once, which  
21 is one of the reasons why I have been agitating for a  
22 special assistant for such a long time, was to be able  
23 to essentially compete on an even playing field in  
24 resources to deal with situations such as this. If I  
25 had been able, and even without one, if I had been

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1 able to, and it's suggested -- again, I suggested this  
2 last year to the Staff Director -- that given the  
3 nature and scope of this meeting, given the fact that  
4 there would be a desire to make this as inclusive as  
5 possible and to ensure, more importantly, the  
6 attendance of those who have in the past years or so  
7 lost faith in the U.S. Commission on Civil Rights, it  
8 would probably be a strategically smart and  
9 politically wise move to ensure that this move forward  
10 in lock-step as much as possible in a bipartisan  
11 manner.

12 That has not happened, and it has not  
13 happened. It's late in the day. You're asking us now  
14 to take this entire thing and, okay, yes, sure, it's  
15 on the table. Rewrite the whole thing, whatever it is  
16 that you want us to do, but it is a little late in the  
17 day, given the fact that it is, as I said, July. This  
18 is sketched for August. We only have one meeting  
19 between and --

20 COMMISSIONER GAZIANO: We have two.

21 COMMISSIONER YAKI: -- then --

22 COMMISSIONER GAZIANO: We have a meeting  
23 scheduled for September.

24 COMMISSIONER YAKI: Commissioner Gaziano,  
25 would you please not interrupt me?

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1           The point of this and the importance of  
2 what I am saying is that as of right now, at this  
3 point in time, I cannot support this. I will not  
4 support this. I had asked to be part of this. I had  
5 begged to be part of this process. This had been on  
6 the agenda twice before and been removed at the  
7 request of the Chair because it was not ready, what  
8 have you.

9           During those times I reiterate again to  
10 the Staff Directors and others a serious concern about  
11 how this was going forward in a non-bipartisan manner.  
12 So you know, you're asking me to close the barn door  
13 after all the animals have left, and I just don't know  
14 if I'm willing to do it at this point, Mr. Chair, with  
15 all due respect to the work that you did and the  
16 effort that you and Dominique put into this. The fact  
17 that it did not go forward in the bipartisan manner  
18 that I thought we were going to gives me grave  
19 concerns, and at this point in time, I'm not prepared  
20 to support this, much less start taking ownership of  
21 it and making changes to it.

22           CHAIRMAN REYNOLDS:     Very good.     Any  
23 comments on substantive manners?

24           COMMISSIONER KIRSANOW:   The only comment I  
25 have, Mr. Chair -- this is Kirsanow -- is the timing

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1 of it. I understand that we're going to try to get  
2 this done within this fiscal year. If we can do it,  
3 I'm all in favor of it, but it is something that is  
4 considerably ambitious from a timing standpoint, and  
5 I'd like to hear if the Staff Director is still on and  
6 anyone else, whether or not this is feasible within  
7 the time frame that we're looking at.

8 VICE CHAIR THERNSTROM: And this is Vice  
9 Chair Thernstrom.

10 I have not had a chance to go through the  
11 substance of this in the way that I need to do, and so  
12 I can't comment on that, but I'm sure I'll have lots  
13 of comments on it. In terms of the dates that are  
14 floating around, I mean, there has been a rumor mill  
15 in this building. The dates that are floating around,  
16 I believe they conflict with a conference on Lincoln  
17 that I'm out of town. I would have to check. I  
18 thought that the date that you were talking about was  
19 the 26th. You now said the 24th. I would need to  
20 doubt check on the Lincoln conference.

21 But in any case, I'm not prepared today to  
22 have a line by line, substantive discussion of the  
23 document that has come to us so very late.

24 COMMISSIONER GAZIANO: Mr. Chairman, I'd  
25 like to address the timing issue in response

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1 particularly to Commissioner Kirsanow. I certainly  
2 think that 10 or 11 weeks or however many it is is  
3 ambitious, but certainly doable, and again, I thank  
4 the Chair for checking on available dates in this  
5 fiscal year, since that's what our Commission plan  
6 required us to do.

7 If we don't set an ambitious date, and we  
8 just kick the can down the road, we'll have this same  
9 issue over and over and over again, but there's a way,  
10 I think, to deal with that. I think that if a  
11 majority of the Commission supports the idea and wants  
12 to try to meet our goals, which ought to be important  
13 to all of us, our strategic plan ought to be, then I  
14 think we need to put the effort that's necessary to  
15 try to make it happen in the next few weeks. There's  
16 a lot of stuff we can do off the line as far as  
17 polishing the suggestions, the concept paper the  
18 Chairman has made, and we can get to those as well.

19 But as far as -- I'd like the date to be  
20 September 24th. That's my preference. I don't see  
21 why if the Commission and its staff can't make that  
22 date.

23 If we later find out that we, you know,  
24 need to move that by a month or so, we ought to then  
25 pick another date certain, but we don't need to make a

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1 final decision on that, except to move forward.

2 CHAIRMAN REYNOLDS: Okay. Commissioner  
3 Gaziano and Kirsanow, the date was selected because  
4 that's the date that those two venues were available.  
5 So we didn't just pull the date out of a hat.

6 COMMISSIONER GAZIANO: Of course.

7 CHAIRMAN REYNOLDS: Also, I think that  
8 Commissioner Kirsanow raises -- well, first, yes, this  
9 is an ambitious undertaking, and whether this is  
10 feasible, I believe that it is, but right now we have  
11 to continue digging into this, provided that there's a  
12 consensus that this is something that we should do,  
13 especially in light of the commitment we made in the  
14 strategic plan.

15 But I propose that we also have every two  
16 weeks or so an update, just providing information to  
17 Commissioners that would essentially provide progress  
18 reports on how we're doing, and if at some point in  
19 time we conclude that it's not feasible within the  
20 time frame, then we would have to revisit the issue of  
21 a date.

22 COMMISSIONER KIRSANOW: Mr. Chair, I think  
23 that's a good idea. My only concern with respect to  
24 the ambitious nature of this -- I'm all in favor of  
25 doing ambitious things frankly, and I think this is an

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1 important matter. Commissioner Yaki is right. I  
2 remember specifically having a conversation with  
3 Commissioner Yaki prior to the beginning of the  
4 Commission meeting. This was about three years ago,  
5 about the merits of doing precisely this type of  
6 conference. I think it's well overdue.

7 I simply suggest that in my mind the major  
8 concern is nailing down the participants as quickly as  
9 possible.

10 CHAIRMAN REYNOLDS: Right.

11 COMMISSIONER KIRSANOW: I think with more  
12 than two months' notice that's doable. I would  
13 suggest that we begin making phone calls now. Even if  
14 the slate of speakers is changed or amended by  
15 recommendation of other Commissioners, I think we  
16 nonetheless should begin with the current slate now,  
17 and then if we amend it, we amend it, but I think  
18 that's the most important thing in my mind in order to  
19 make this thing go.

20 Otherwise, I think I agree with  
21 Commissioner Gaziano. This is doable.

22 COMMISSIONER HERIOT: I agree with  
23 Commissioner Kirsanow. This is Heriot here. The main  
24 thing here is getting these speakers nailed down, and  
25 if it's not going to work, we'll figure that out

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1 really rapidly because we'll get a lot of people that  
2 can't do it. But if we start inviting people now, we  
3 can do this. You know, we've got a good chance.

4 COMMISSIONER GAZIANO: I was going to  
5 suggest that we invite the Attorney General to give  
6 him a prominent place since he has said that America  
7 is shy about talking about race, that we ask him to  
8 expand upon his remarks, and that then some of our  
9 panels can comment on his remarks.

10 VICE CHAIR THERNSTROM: Two things. One,  
11 I don't understand what happens in this kind of rushed  
12 process with all the other work that is on the plate  
13 of the staff here at the Commission. We've got --

14 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
15 if you'd like, I'll take care of it.

16 VICE CHAIR THERNSTROM: What do you mean  
17 you'll take care of it? You're going to get the  
18 briefing reports out the door? Are you going to get  
19 the statutory report up and running?

20 I mean there is a great deal of other --

21 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
22 I'm talking about the work involved in pulling this  
23 together, the conference.

24 VICE CHAIR THERNSTROM: Well, look.  
25 Again, I don't think this should have been a one

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1 person show from the beginning, and to have it  
2 continue to be so doesn't seem to me a very good idea.

3 I also --

4 CHAIRMAN REYNOLDS: I can lick stamps just  
5 as well as anyone else.

6 COMMISSIONER KIRSANOW: Mr. Chairman, I'll  
7 volunteer to assist also so that it's not just a one  
8 person show. I'm sure others would assist also.

9 COMMISSIONER HERIOT: yeah, I'd be happy  
10 to help.

11 CHAIRMAN REYNOLDS: There you go.

12 COMMISSIONER GAZIANO: Ditto.

13 VICE CHAIR THERNSTROM: All right.

14 COMMISSIONER HERIOT: Yeah, we can do  
15 this. Just, you know, elbow grease.

16 VICE CHAIR THERNSTROM: Well, the other  
17 thing is, you're going to invite people when the  
18 Commission as a whole has not agreed on the slate of  
19 people to be invited?

20 COMMISSIONER MELENDEZ: I have a question.  
21 Commissioner Melendez.

22 Is this a one-day conference? I think if  
23 it is, it's going to be real difficult. I've been on  
24 some panels where it was an hour long and, you know,  
25 half the people didn't even get a chance to even speak

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1 or they were very limited, and it didn't really  
2 accomplish anything.

3 So I don't know how we're going to try to  
4 do this in one day is one of my concerns.

5 CHAIRMAN REYNOLDS: Okay. Is that a  
6 suggestion that this be a two-day event?

7 COMMISSIONER MELENDEZ: I would think it  
8 -- I don't think you can do it in one day is my  
9 opinion, based on some of my involvement in being part  
10 of panels and where we had an hour for certain topics.

11 And the other issue is I think we're  
12 supposed to be trying to get information of where  
13 people think that civil rights should be going,  
14 basically trying to put them in a certain topic where  
15 these people that are invited to the panel kind of  
16 speak on certain boxed-in areas, where they should be  
17 free to speak a little more openly on where they think  
18 civil rights should be going.

19 And then the other thing, it seems like  
20 we're kind of narrow on just talking about race and  
21 ethnicity when we should be talking about maybe gender  
22 and religion and age, disability, national origin,  
23 some of the other mandates that we have. So does this  
24 conference seem to kind of leave those parts out?

25 CHAIRMAN REYNOLDS: Each of the panels --

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1 well, first of all, thank you for the suggestion, and  
2 if you have recommendations on individuals and  
3 particular topics that you would like to see  
4 addressed, please phone me or send your comments by  
5 E-mail.

6 COMMISSIONER GAZIANO: Maybe to make the  
7 work a little bit more manageable, could I suggest  
8 that we try to discuss first which Commissioners might  
9 have a primary responsibility for which panels, and  
10 then they will focus perhaps on that panel's speakers,  
11 circulating it to other Commissioners, of course, but  
12 that might be a way of dividing up the work to make  
13 sure that we move expeditiously.

14 VICE CHAIR THERNSTROM: I have to repeat,  
15 Mr. Chairman. I don't think -- but I am not positive  
16 since I was misinformed as to the date. I believe  
17 that I am out of town on a two-day Lincoln conference,  
18 but that may be incorrect because I had thought that  
19 the recommended date was the 26th, but I don't have my  
20 calendar with me.

21 CHAIRMAN REYNOLDS: Okay. Let us know  
22 once you confirm.

23 Commissioner Gaziano, I think that's an  
24 excellent idea. I will volunteer to handle Panel 1.  
25 Are there any other volunteers?

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1                   COMMISSIONER MELENDEZ:    Mr. Chairman, I  
2    have a question.    It seems, you know, the date of  
3    September 20 -- this is Commissioner Melendez -- the  
4    24th or whenever, that is very -- it's already July.  
5    We have one month to August, and then September is  
6    right upon us.    Are there any options of delaying this  
7    further into the future?

8                   CHAIRMAN REYNOLDS:    It is an option, but I  
9    think that this is doable.    It's going to take quite a  
10   bit of work, but if we reach the point where it's  
11   clear that it's not feasible to put together this  
12   conference within the time frame, then at that point,  
13   I think that you're right.    The date should be  
14   revisited.

15                  COMMISSIONER GAZIANO:    Mr. Chair, can I  
16   ask the budget, a budget sort of question on that?    I  
17   imagine we can find money for this in next fiscal  
18   budget, but we can't carry forward money from this  
19   year's budget for this, can we?

20                  CHAIRMAN REYNOLDS:    That's correct.

21                  COMMISSIONER GAZIANO:    So if we've set  
22   aside some money for it this year, and we're nearing  
23   the end of the year, that's going to create an issue,  
24   won't it?

25                  CHAIRMAN REYNOLDS:    We would possibly hand

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1 money back to the Treasury.

2 COMMISSIONER GAZIANO: Or hire special  
3 assistants is my -- but I think we can do that, too.  
4 I know Commissioner Yaki is going to support me in  
5 that.

6 VICE CHAIR THERNSTROM: Mr. Chair, I just  
7 looked at the calendar here. I don't have my person  
8 calendar with me, but I just looked at the calendar  
9 and saw the 24th was the Thursday. I believe that is  
10 the date I cannot make. I can't make the 24th or  
11 25th, I believe.

12 CHAIRMAN REYNOLDS: Well, again, will you  
13 confirm and let's revisit this conversation after you  
14 confirm that that is, indeed, true?

15 VICE CHAIR THERNSTROM: I will. I have to  
16 get to my calendar.

17 COMMISSIONER GAZIANO: And one of the  
18 things I would suggest is if we're signing or we're  
19 nearing a contract with, let's say, the National Press  
20 Club, which I -- let me explain why I support that.  
21 They can serve lunch during the conference, whether  
22 it's going to be one day or two day. It's a high  
23 profile, all of the other reasons that you identified  
24 in your concept paper, but if we're negotiating with  
25 them, why don't we negotiate a sort of tentative date,

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1 whatever it is, the 23rd, 24th, and with an option  
2 with certain notice to bump it by a month or two?

3 CHAIRMAN REYNOLDS: Well, we have placed a  
4 hold on the date. So if the 24th works, we've already  
5 reserved the space there.

6 COMMISSIONER GAZIANO: I'm just saying if  
7 we --

8 CHAIRMAN REYNOLDS: I haven't discussed  
9 with Dominique whether we reserved an option to select  
10 other dates.

11 COMMISSIONER GAZIANO: Sure. Well, all I  
12 meant is, if at some point they want a deposit, and  
13 they may want a deposit, we ought to be --

14 CHAIRMAN REYNOLDS: They did not require a  
15 deposit.

16 COMMISSIONER GAZIANO: Okay. Very good.

17 COMMISSIONER HERIOT: You had mentioned a  
18 minute ago, Mr. Chairman, that you were willing to be  
19 the first mover on Panel 1. I just wanted to say I'd  
20 be happy to be active especially on Panel 4.

21 CHAIRMAN REYNOLDS: Okay.

22 COMMISSIONER TAYLOR: Mr. Chairman.

23 CHAIRMAN REYNOLDS: Yes.

24 COMMISSIONER TAYLOR: In many ways as I  
25 look through this concept paper -- someone made this

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1 comment earlier -- I really viewed, frankly, the  
2 participants as the key. If you just ask Shelby  
3 Steele and Professor Gates for their available dates,  
4 to me that's the key. We can fill in the details  
5 later. I think they're two critical people who would  
6 be more than willing, I think, to present competing  
7 viewpoints and ideas, and frankly, you know, the draw  
8 will not be the Civil Rights Commission. It will be  
9 the individuals that we persuade to attend.

10 COMMISSIONER HERIOT: You're hurting our  
11 feelings.

12 COMMISSIONER TAYLOR: So, again, I'm less  
13 concerned about contracts and --

14 MS. LUDVIGSON: I have to put a deposit  
15 down because there are other groups that want it.

16 COMMISSIONER TAYLOR: No, I mean, I  
17 understand the practical realities. It's just I think  
18 we'll know fairly quickly if the folks we need can  
19 attend. This is the type of conference where, you  
20 know, a poor man's version of Shelby Steele will not  
21 suffice.

22 COMMISSIONER GAZIANO: yeah, but there are  
23 a few others, I think, like Shelby, not many.

24 COMMISSIONER TAYLOR: There's just not  
25 many of them. That's all.

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1 COMMISSIONER GAZIANO: But there's a few  
2 of them. So if Shelby can't --

3 COMMISSIONER TAYLOR: You've got to call  
4 him.

5 COMMISSIONER HERIOT: Yeah, but that's  
6 key, getting the right people here.

7 COMMISSIONER TAYLOR: That's all. To me  
8 that's what all of this is about.

9 COMMISSIONER GAZIANO: True, but it's also  
10 helpful, in my somewhat more frequent than I want  
11 experience planning a conference, that having a date  
12 focuses the mind and --

13 COMMISSIONER TAYLOR: I don't disagree.

14 COMMISSIONER GAZIANO: -- you sometimes  
15 get them to move their things and you can -- because  
16 just asking people when they're available and then  
17 trying to merge them is --

18 COMMISSIONER TAYLOR: I don't disagree.

19 COMMISSIONER GAZIANO: -- an ongoing venue  
20 -- it's very difficult.

21 COMMISSIONER TAYLOR: I don't disagree at  
22 all.

23 COMMISSIONER GAZIANO: It's very  
24 difficult. I don't want to take someone else's pride  
25 and joy. There's several panels that I'm interested

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1 in. The nonprofits in Panel 3, I suppose I have some  
2 knowledge of, but I would be glad to take another  
3 panel.

4 CHAIRMAN REYNOLDS: Todd, why don't we  
5 work on Panel 3 together. We could split the work.

6 COMMISSIONER GAZIANO: And it says I'm to  
7 work with Commissioner Yaki. I'm happy to do so.

8 COMMISSIONER YAKI: Commissioner Yaki is  
9 not participating.

10 COMMISSIONER GAZIANO: What do other  
11 Commissioners think about inviting the Attorney  
12 General?

13 VICE CHAIR THERNSTROM: Well, wait a  
14 minute.

15 COMMISSIONER KIRSANOW: Kirsanow here. I  
16 think that's a good idea.

17 VICE CHAIR THERNSTROM: Let us stop.

18 COMMISSIONER KIRSANOW: I don't know if he  
19 will attend, but I think he should be extended an  
20 invitation since it was the focus of his first big  
21 speech as Attorney General, and this is, you know, the  
22 discussion on civil rights, as Commissioner Yaki had  
23 indicated years ago that we need to have.

24 My quick math says we have 76 days in  
25 which to get this done. That's about 11 weeks. Those

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1 of us who are in law firms know that we can put on  
2 panels maybe not quite as ambitious as this, but  
3 almost, with people from diverse areas of the country  
4 with very, very full agendas and get it done, and  
5 we've been able to do it here, and I know that others  
6 have been able to do it. It's just a function of  
7 committing to do it right now.

8 A number of us, by the way, I think  
9 should, in fact, get involved in this as we have  
10 volunteered because I would get the suggested  
11 panelists here, and a number of them are people that I  
12 know. And putting aside whether or not they've got  
13 conflicts, if they don't have conflicts, I would use  
14 my good offices to try to convince them that this is  
15 something that really needs their A game.

16 So I would suggest others who have got  
17 other friends on this list do the same.

18 VICE CHAIR THERNSTROM: Mr. Chairman, I  
19 have a question here. We have just heard again from  
20 Commissioner Yaki that he is not participating. Is it  
21 not a little sobering to you the idea that we may be  
22 going forward with a conference when it's not a  
23 bipartisan conference?

24 CHAIRMAN REYNOLDS: Any Commissioner is  
25 free to participate or not. The conference --

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1 whether a broad spectrum of views are represented will  
2 be determined by the panelists that we ultimately  
3 select. If a particular individual chooses not to  
4 participate, I respect that individual's choice.

5 VICE CHAIR THERNSTROM: Well, it's not  
6 simply a question of effect. It's a question of any  
7 kind of legitimacy and importance of this conference -  
8 - if it's not a bipartisan one when this is a  
9 bipartisan Commission.

10 CHAIRMAN REYNOLDS: The Commission is not  
11 -- the question about the Commission is: did we put  
12 together a panel that reflects a single point of view.  
13 I haven't heard anyone make that accusation yet, but  
14 there's still time. Again, if someone wants to,  
15 again, absent themselves from participation, you know,  
16 it's unfortunate, but it's not my fault.

17 COMMISSIONER KIRSANOW: Kirsanow here.

18 I'm looking at --

19 COMMISSIONER YAKI: Mr. Chairman, this is  
20 Commissioner Yaki.

21 COMMISSIONER KIRSANOW: -- the calendar,  
22 and I don't --

23 COMMISSIONER YAKI: It is most certainly  
24 your fault that I was not consulted during this entire  
25 proceeding.

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1 COMMISSIONER GAZIANO: Could we have one  
2 Commissioner talk at a time.

3 VICE CHAIR THERNSTROM: We have to have  
4 one Commissioner talk at a time.

5 COMMISSIONER HERIOT: And in a civil --

6 COMMISSIONER YAKI: This is a civil tone.

7 VICE CHAIR THERNSTROM: You have to choose  
8 between who can talk, Mr. Chairman --

9 COMMISSIONER GAZIANO: It most certainly  
10 isn't.

11 COMMISSIONER YAKI: It certainly was.

12 VICE CHAIR THERNSTROM: -- but we had two  
13 Commissioners talking at the same time, and I could  
14 not follow it.

15 CHAIRMAN REYNOLDS: -- I hear some family  
16 background noise.

17 COMMISSIONER YAKI: I think Commissioner  
18 Kirsanow was speaking first.

19 CHAIRMAN REYNOLDS: Okay. Commissioner  
20 Kirsanow, were you finished making your comments?

21 COMMISSIONER KIRSANOW: Yeah, I'm simply  
22 saying that it appears to be in terms of, if you're  
23 going to assign, you know, viewpoints to people and  
24 where they stand, many of these people's views are  
25 fairly well known, and from that perspective, I would

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1 think that at least numerically it seems to be  
2 balanced, and I'm not saying this is necessarily the  
3 final list.

4 You know, I hope that if these invitations  
5 are extended to these individuals, that we get  
6 participation from many, if not all, of them, and I do  
7 strongly believe that many people, if not most of  
8 them, will participate because this is the opportunity  
9 to have the discussion that the Attorney General had  
10 been talking about.

11 If we're going to have a discussion about  
12 race, if we are not cowards in formulation of the  
13 Attorney General, then people should participate. If  
14 they're not going to participate, then, you know, I  
15 have -- that's their determination, as you said, Mr.  
16 Commissioners. If these panelists don't want to show  
17 up, then they're going to have to consult with the  
18 Attorney General as to what the appropriate  
19 appellation will be.

20 COMMISSIONER YAKI: Mr. Chair, this is  
21 Commissioner Yaki.

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER YAKI: Could you read back  
24 the last statement that the Chair said?

25 CHAIRMAN REYNOLDS: I'm sorry. I didn't

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1 hear you.

2 COMMISSIONER YAKI: I'm asking that the  
3 court reporter, prior to Commissioner Kirsanow and I  
4 talking over each other --

5 CHAIRMAN REYNOLDS: Commissioner Yaki,  
6 please speak into the mic.

7 COMMISSIONER YAKI: I am speaking into the  
8 mic.

9 (Whereupon, the record was read.)

10 CHAIRMAN REYNOLDS: Commissioner Yaki, I'm  
11 having difficulty understanding it.

12 COMMISSIONER YAKI: Well, that's not  
13 unusual given the circumstances here today.

14 Can you hear me now, Mr. Chair?

15 CHAIRMAN REYNOLDS: Yes, yes.

16 VICE CHAIR THERNSTROM: It was the  
17 statement to which you were beginning to object from  
18 the Chair that you had been involved from the outset  
19 in planning this, something like that.

20 COMMISSIONER YAKI: No, no, no, no. I  
21 think it was about choosing, not -- I mean, the fact  
22 is that I was not involved in this, and, I'll state  
23 again for the record, despite repeated attempts to  
24 ensure that this went forward in a bipartisan manner,  
25 -- the reason, and I think that we can posture all we

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1 want, but we can already see from statements by  
2 another Commissioner that now this has become a dare  
3 game, as in, well, if you decide not to talk to us  
4 about this, it's obvious that you're a coward.

5 That's clearly not what we're talking  
6 about. We're talking about whether or not this  
7 Commission in a bipartisan manner moves forward and  
8 hosts a national conference on these important issues  
9 in a way that wholly and fully addresses them, and, I  
10 might add, what bothers me probably the most -- well,  
11 no, there are many things that bother me about not  
12 being included in any of the planning, thought or  
13 otherwise behind this -- is that left vague and out  
14 there is what becomes of this. What is it that this  
15 conference is designed to achieve in terms of a  
16 written document by the Commission?

17 Because I can assure you that the fact  
18 that my participation was not solicited or included in  
19 this planning, given -- and this is no secret -- given  
20 my dissatisfaction with how briefings have been held  
21 and reported on, much less national reports and such -  
22 - that a topic of this magnitude and this importance,  
23 which has within it a throw-away line that the  
24 Commission will be producing findings and  
25 recommendations -- quite frankly, absent my

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1 participation in this planning development and  
2 understanding what all that means sends chills down my  
3 spine in terms of exactly what will come of this.

4 So I don't think it needs to be said, but  
5 I will say it anyway: that with regard to the civil  
6 rights community that I work with, there's great  
7 skepticism. There is great -- there's a jaundiced eye  
8 toward anything that we do or produce.

9 I have said this before in private  
10 meetings off line. I have said it in public. I make  
11 no bones about it. Now we are asking many of these  
12 people from these same groups to come forward to a  
13 conference, the outcome of which they are not aware  
14 of, nor of which I have been a part of, and trust that  
15 this outcome will be fair.

16 I'm not saying that it won't be, but  
17 certainly the fact that there's a distinct lack of  
18 bipartisan nature to the development of this makes  
19 that a difficult question to answer. So when a  
20 Commissioner says, well, people choose not - it --  
21 and use the word "cowards" or whatever other words  
22 that he was using, that's not the point.

23 The point is one of whether or not there  
24 was confidence that this Commission will take this  
25 information and treat it in a manner that, quite

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1 frankly, many folks in the civil rights community that  
2 I work with have not seen for the past few years.  
3 That was the whole point of why I wanted to be  
4 involved early, because perhaps we could overcome that  
5 skepticism. Perhaps we could overcome those issues  
6 involving the perceptions that are out there regarding  
7 this Commission.

8 That is why I was so concerned as this  
9 process moved forward, Mr. Chair, about what was going  
10 on, and instead I did not even know that this was at  
11 this kind of stage. I assumed at some point when we  
12 had it on the agenda for discussion, it would be for  
13 discussion about a broader participation and working  
14 amongst Commissioners to make this happen. I did not  
15 expect to receive a week ago a full-blown baked pie of  
16 which I had no participation in whatsoever.

17 CHAIRMAN REYNOLDS: Commissioner Yaki, I  
18 guess we'll need to consult the transcripts because  
19 the fact that I was drafting it and drafting it alone,  
20 I think that that was perfectly clear from the  
21 statements. I apologize for failing to get it done  
22 sooner on the record, during at least one meeting. I  
23 don't think anyone was entertaining the notion that  
24 staff was putting together the document or that we  
25 were going to use some other procedure.

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1           On that particular point, you know, I  
2           guess I'm somewhat surprised that when this issue was  
3           discussed, and that issue being the fact that I was  
4           putting the document together, that no one raised  
5           their hand when this issue was discussed at previous  
6           Commission meetings.

7           COMMISSIONER KIRSANOW: Mr. Chair, this is  
8           Kirsanow.

9           I knew that you were putting this  
10          together, and again, I'll have to check the  
11          transcripts, but I presume everybody knew you were  
12          putting it together. I didn't, frankly, volunteer to  
13          assist you because I had other things to do. I  
14          suppose others could have had input had they chosen to  
15          do so because it seems to me everyone was on notice  
16          that you were doing this.

17          It's not as if you were excluding people.  
18          It was not as if you were saying to everyone, "I'm the  
19          only one who's going to do this. No input required or  
20          no input wanted." I'm, frankly, bewildered.

21          Second point, with respect to Commissioner  
22          Yaki's statement about cowards, I didn't call anyone a  
23          coward. I'm not suggesting anyone is a coward. I do  
24          note, though, that statement was used by somebody.  
25          This is an opportunity for us to show that we are not

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1 cowards when it comes to discussions of race.

2 I firmly reject the suggestion by the  
3 Attorney General that we are a nation of cowards when  
4 it comes to race. It seems to me we've been trying to  
5 talk about race. We talk about race all the time, but  
6 every time we want to have a principal discussion of  
7 it, some of us get shouted down.

8 In addition, in the past we have had  
9 panels, when I was not a member of the majority, where  
10 on occasion those who were conservative or perceived  
11 to be conservative would come into what they perceived  
12 to be a hostile environment. They nonetheless came.  
13 I can't recall a single person who at that point had,  
14 as Commissioner Yaki indicates, some concerns about  
15 that particular iteration or management of the  
16 Commission, not showing up because of that fact. They  
17 all thought that the subject matter upon which they  
18 were going to testify was important enough that,  
19 however they were treated or they thought they were  
20 going to be treated, merited, nonetheless, their  
21 testimony.

22 In this particular case, I suspect that  
23 there are those who in good faith, in the traditional  
24 civil rights community, who have concerns about the  
25 management of this Commission. So be it. I'm not

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1 going to argue with them about that. But if this  
2 issue is important enough to them that they've devoted  
3 their lives to it, the mere fact that Jerry Reynolds  
4 is Chair or the bald guy with the moustache happens to  
5 be on the Commission, too, is going to deter them -- I  
6 can't believe that's going to happen. I do not accept  
7 that at all.

8 I say we go forward with this. I think  
9 your plan to make this kind of a work in progress to  
10 check on the progress of this on a bi-weekly or even a  
11 weekly basis to see whether it can get done is a smart  
12 thing. It could be that logistically we can't do it  
13 in 76 days. For the life of me, I can't understand  
14 why. Here in the private sector we do this repeatedly  
15 and do it well, and I am certain with the caliber of  
16 individuals we've got at the Commission, with the  
17 caliber of the Commissioners we have, with the  
18 importance of this particular subject, we will get it  
19 done if we have the desire to do so.

20 COMMISSIONER GAZIANO: Mr. Chair, I want  
21 to associate myself with the remarks of Commissioner  
22 Kirsanow as far as its doability. I probably have put  
23 on, organized more conferences than most of the rest  
24 of my colleagues in the past 10 years, and I'll be  
25 glad to lend my support in various ways.

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1           But I would ask if fellow Commissioners  
2 who aren't going to vote for this don't want to lend a  
3 lot of effort to it -- I'm disappointed, but I ask  
4 them now -- I ask them now to tell us substantively  
5 how they would have done it differently, and if they  
6 don't want to make this better, if they don't want to  
7 make the Commission better in their mind, anyway, then  
8 that will be apparent.

9           But I'd like to hear right now what  
10 substantively any Commissioner who opposes this going  
11 forward would do differently.

12           VICE CHAIR THERNSTROM:     Can you say  
13 substantively and procedurally? I mean --

14           COMMISSIONER GAZIANO:       Substantively.  
15 We're discussing the procedure. The procedure seems  
16 rather open. I want to know what different panels,  
17 what different topics --

18           VICE CHAIR THERNSTROM:     No, no, wait a  
19 minute.

20           COMMISSIONER GAZIANO:     -- what different  
21 speakers.

22           VICE CHAIR THERNSTROM:     But I --

23           COMMISSIONER GAZIANO:     I want to know what  
24 -- I understand and respect -- at least I think I  
25 understand some of your procedural objections --

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1 VICE CHAIR THERNSTROM: But they're --

2 COMMISSIONER GAZIANO: -- and others, and  
3 others, but what I'd like to hear now is -- and we can  
4 work through those, I think -- Commissioner Yaki said  
5 that, you know, he wished he were involved earlier.  
6 I'm sure that's often the case, but I'd like to know  
7 now what he thinks about this concept paper isn't a  
8 good idea or how it can be improved.

9 COMMISSIONER YAKI: Commissioner Gaziano,  
10 this has been a product of several months of work.  
11 I've had less than a week to look at it. There are  
12 any number of different issues that I wish to go into.  
13 I think Commissioner Melendez spoke about some of  
14 them, but the fact of the matter is that it is about  
15 process as much as it is about substance. It's not  
16 simply the end justifies the means.

17 This is a question of whether or not going  
18 forward in this development in an iterative process  
19 that I wish that -- and you know, whatever you want to  
20 say about whether you reported that you were working  
21 on this or not, the fact is that what exactly you were  
22 working on with regard to the conference was never  
23 really said with great specificity. And I will  
24 repeat: I made it very clear from day one that I  
25 thought it would be important for me to be involved.

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1           That is not my job at that point to  
2 continue knocking on a door that doesn't get opened,  
3 and you know, you can argue that all you want, Mr.  
4 Chair, and point to whoever, point in a transcript  
5 that you may have said, "Well, I'm doing it," blah,  
6 blah, blah, blah, blah. The fact of the matter is  
7 that there's a signal difference between, I'm working  
8 on this too, -- oh, by the way, I'm actually pulling  
9 together what the nature of each panel is going to be,  
10 et cetera, et cetera, et cetera, and not going into  
11 what I had hoped would be a much more bipartisan  
12 process.

13           Because certainly you more than anyone  
14 else and certainly I would hope the members of the  
15 Commission would understand the skepticism that is out  
16 there. And yes, you know, Commissioner Kirsanow can  
17 say, "Well, it's so important. How can they not  
18 participate?"

19           Well, I can tell you for a fact, and I  
20 think it is no secret, that there have been some  
21 briefings in the past before this Commission where it  
22 was difficult to find certain witnesses to appear who  
23 one would think would likely be wanting to appear  
24 before us to testify because they were not confident  
25 in the outcome.

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1 I remember specifically on more than one,  
2 more than two, more than three -- multiple occasions  
3 where the decline ratio from groups based here in  
4 Washington, D.C. was exceedingly high. That did not  
5 simply come because they had a conflict. I can tell  
6 you that. I can tell you that for a fact.

7 So I think the substance is -- I think the  
8 procedure is part and parcel --

9 CHAIRMAN REYNOLDS: Hold on. Someone turn  
10 their phone off.

11 VICE CHAIR THERNSTROM: I'm going to  
12 answer it, not turn it off. I will go out of the  
13 room.

14 COMMISSIONER YAKI: So I am just saying,  
15 once again, the procedure --

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER GAZIANO: I appreciate --  
18 could I just follow up a little?

19 I appreciate Commissioner Melendez's  
20 suggestions. I would encourage any Commissioner who  
21 has similar concerns and is willing to send an E-mail  
22 to all of us -- I intend to do so -- send an E-mail  
23 with how this can be polished, if that's your view,  
24 improved. I'm not sure that I quite understand why  
25 your disappointment over the process means that you

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1 won't tell us at all how you think it should be  
2 improved, but I --

3 COMMISSIONER YAKI: I just got the  
4 document last week, Commissioner. It's a little  
5 difficult -- it's a very dense document. It has a  
6 number of different people on it with regard to a  
7 different -- with a point of view of what the panels  
8 are going to be.

9 Rearranging an entire panel topic is not  
10 something that I'm just prepared to say willy-nilly,  
11 "Oh, I really think it should be this or that."

12 But I will say this. There is a distinct  
13 omission. When I talked about a national civil rights  
14 conference, I talked about it globally. I talked  
15 about the issues. I talked about not just the issues  
16 of race. I talk about it in issues of gender, sexual  
17 orientation, disability. That's what I was talking  
18 about.

19 COMMISSIONER GAZIANO: And I think there's  
20 room within this proposal to include those, and I  
21 thank you and Commissioner Melendez for raising those  
22 thoughts.

23 COMMISSIONER YAKI: Well, I'm very glad  
24 that you thank me, but the fact is that this is  
25 something that from the very beginning to me was

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1 supposed to be what this was all about. It somehow  
2 got routed a different way, and that's what I mean by  
3 not being involved in this process to begin with  
4 because now if you were to include those, if you do  
5 those, how you would do it, how you would stage it --  
6 I remember even talking about this with Commissioner  
7 Taylor at a meeting, about the fact that we may not  
8 know, and some of these groups may not know or be  
9 representatives of everything that we may want to  
10 discuss and bring up in terms of how these issues play  
11 out.

12 I mean, part of the - everyone, good or  
13 bad, left or right, conservative or liberal, comes at  
14 it from some point and from a certain perspective, and  
15 whether they would like to see --

16 COMMISSIONER GAZIANO: What in the heck is  
17 going on?

18 THE REPORTER: We are losing the record.

19 CHAIRMAN REYNOLDS: Excuse me. Marty, is  
20 that background noise coming from your end?

21 STAFF DIRECTOR DANNENFELSER: It is. Yes,  
22 I've been trying to cover up, move around to get away  
23 from it.

24 CHAIRMAN REYNOLDS: Do you have a mute  
25 button on your phones?

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1                   STAFF DIRECTOR DANNENFELSER: No, I don't.  
2 Unfortunately the palm of my hand is my mute button,  
3 unfortunately.

4                   CHAIRMAN REYNOLDS: Okay.

5                   COMMISSIONER MELENDEZ: This is  
6 Commissioner Melendez.

7                   I have one more comment. You know, I have  
8 to agree with what Commissioner Yaki is saying about  
9 if we could have done it over. You know, we have to  
10 tie this to the strategic plan in some way because I  
11 know that the strategic plan says that we're supposed  
12 to convene the conference, but attract 100 civil  
13 rights practitioners, expert, and it says we're  
14 supposed to issue a report based on the findings of  
15 the conference entitled "Civil Rights Priorities for  
16 the 21st Century" and then further enforce -- see our  
17 strategic plan identify six civil rights issues and  
18 research topics appropriate for incorporation into the  
19 Commission's programmatic planning cycles for 2010  
20 through 2012, and identify the civil rights issues and  
21 research topics that could lay the foundation for  
22 updating the Commission's strategic plan in 2011, and  
23 also, (e) identify where the Commission's powers and  
24 mission need to be expanded to respond to emergency  
25 challenge and publish these by 2011.

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1           And I think what Commissioner Yaki is  
2 saying is, as we started out in the very beginning,  
3 you really have to tie, you know, the different panels  
4 or the discussion topics to what we have said here.  
5 Right now, we're kind of like -- I'm not sure if it's  
6 tied to that, you know, and then it's almost as if  
7 we're just trying to rearrange panels and speakers,  
8 and so I can see how we're really in disarray in how  
9 we are proceeding.

10           If it were up to me, I would postpone this  
11 until 2010 if possible, the next year, and do it  
12 right. So just for the record, I just think that I'm  
13 not really supportive in the manner. I just don't  
14 think we're going to be able to do an adequate job.

15           Because then also, if we were to contact  
16 speakers like today and tell them in the spring of  
17 next year, "Mark this on your calendar," that we want  
18 you to be there -- when we contact people with a month  
19 in advance or even two months, you know, many times  
20 they grab other commitments and they can't make it.  
21 If it were me, I would have said, let them know in the  
22 spring that we need you here. Mark it on your  
23 calendar now. Then you were guaranteed to get all of  
24 the different participants, but I just think even that  
25 small aspect of getting all of these speakers is a

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1 challenge.

2 So my position would be to put this off if  
3 possible until next year and do it right.

4 COMMISSIONER GAZIANO: The -- the --

5 CHAIRMAN REYNOLDS: Hold it.

6 Commissioner Melendez, you said something  
7 that gives me the impression that you believe that all  
8 of the individuals, all of the recommended  
9 individuals, will participate. I don't know if that's  
10 your assumption, but the proposal states that the  
11 panels will be made up of four to five people. It's  
12 not going to be all of the individuals that we have  
13 listed in the proposal.

14 COMMISSIONER GAZIANO: The proposal also  
15 suggests that the participants will submit research  
16 papers possibly after. You know, Commissioner Heriot  
17 can speak to this because there's a lot of different  
18 ways academic conferences are organized, but sometimes  
19 there's a sort of working speech that's given or  
20 working paper that's presented, and then a polished  
21 paper is delivered, and that the proceedings of the  
22 conference would be potentially made available.

23 So it does seem like the framework that  
24 the Chairman has outlined can include many of the  
25 points that you read from our strategic plan.

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1 COMMISSIONER MELENDEZ: Have we already  
2 contacted any of these people or no?

3 CHAIRMAN REYNOLDS: I've had conversations  
4 with some of the individuals.

5 VICE CHAIR THERNSTROM: Could you tell us  
6 who?

7 CHAIRMAN REYNOLDS: Ted Shaw, Deborah  
8 Dickerson, Bill -- hold on -- Bill Stephany, and I'm  
9 sure that there's a few more of the folks here that I  
10 have discussed the -- at least at a high level I've  
11 had discussions with those individuals and maybe one  
12 or two more.

13 COMMISSIONER TAYLOR: Mr. Chairman.

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER TAYLOR: I think a conference  
16 of this nature is something we should do. The value  
17 for me, however, is a little bit different than what  
18 we have outlined in our strategic plan -- finding the  
19 recommendations, contingents, for me personally do not  
20 hold a lot of value, and I do think it will provide  
21 certain people with an explanation as to why they will  
22 not participate if we, as the conservative members of  
23 the Commission, quote, control the pen.

24 And so I would be inclined in terms of  
25 trying to improve this product, I would be inclined to

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1 not go in that direction at all with respect to  
2 findings and recommendations. To me that's not the  
3 value of this type of national discussion. The  
4 discussion in and of itself is the value, and getting  
5 the discussion out in the public domain.

6 I do want a Mary Frances Berry. I want to  
7 give her a podium. I want to give her an opportunity  
8 to say her piece, and I don't want her to be fearful  
9 that it will be summarized, mischaracterized in  
10 conclusions and findings. And then I want somebody to  
11 give a competing view on the same stage. To me that  
12 is the value, and so I would want us to give some  
13 thought to doing something like this without tying it  
14 to a final work product that would include us, again,  
15 controlling the pen in terms of drawing conclusions.

16 But I want to give the people in the  
17 traditional civil rights community a platform to air  
18 their views and have a competing point of view without  
19 anyone fearing that their views would be  
20 mischaracterized, summarized inaccurately. I think  
21 that's the value of this type of conference.

22 COMMISSIONER GAZIANO: Without us coming  
23 to findings and conclusions, would you oppose letting  
24 scholarly speakers like Shelby Steele and others  
25 submit papers for publication?

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1           COMMISSIONER TAYLOR: I have no objection  
2 to people submitting papers, but, again, the value of  
3 something like a discussion -- I won't use the term  
4 "debate" because I think it will be a discussion --  
5 between Steele and Gates is in and of itself valuable.

6           COMMISSIONER GAZIANO: Sure. And we  
7 should videotape this. C-SPAN hopefully would cover  
8 some or all of it, and we would put it on YouTube  
9 whether we --

10           COMMISSIONER TAYLOR: To me that --

11           COMMISSIONER GAZIANO: -- covers it or  
12 not.

13           COMMISSIONER TAYLOR: And I don't think we  
14 need -- my view is -- Mr. Chairman, I don't know if it  
15 may and if so I apologize. I hope it doesn't deviate  
16 too much from what you have in mind, but the value in  
17 what you proposed is to have a public discussion about  
18 these important issues. Again, that's my view. It's  
19 not so much, frankly, a working document that very few  
20 people read. It's the fact that we provide a platform  
21 to have these issues aired nationally, and that's what  
22 I hope we can do, and I want people to come.

23           Frankly, the best substantive suggestion  
24 I've heard would be to invite the Attorney General.  
25 I'd like -- Mr. Chairman, you would obviously begin

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1 the program, but I would like him to be the first  
2 speaker for purposes of simply setting the stage, for  
3 him to expand upon his comments, and I want him to  
4 come into an environment that's not a debate about his  
5 comments. I'd just like him to set the stage, and  
6 then he can leave or stay, but feel comfortable that  
7 it's not an ambush. It's not a trap, but it is a way  
8 to get the discussion started, and no one is going to  
9 mischaracterize anyone's remarks.

10 So, again, Mr. Chair, it may be a  
11 different direction than you had in mind, but that's a  
12 value I see in a conference of this nature, not our  
13 written work product afterwards.

14 COMMISSIONER YAKI: And, Mr. Chair, this  
15 is Commissioner Yaki. That's exactly the discussion  
16 that I had before we got interrupted by the background  
17 noise. I was about to say that that was exactly the  
18 discussion that I had with Commissioner Taylor about  
19 three years ago. I remember sitting down and saying:  
20 it's a place for people to come and talk and not to  
21 draw conclusions, but to lay out the issues, lay out  
22 the challenges from different perspectives on the  
23 issue of what are civil rights for the 21st century.

24 And which is why, you know, the omission  
25 of the whole spectrum is one that I find troubling.

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1       Could that be fixed?     Yes, but I think that  
2       Commissioner Taylor hit it right on the head, and I  
3       had said that earlier, that there is deep suspicion  
4       about what would be done with the results of this  
5       conference -- and if, indeed, there is to be no  
6       result of this conference other than the conference  
7       itself, a dialogue itself being an opportunity for  
8       people to come forward and use a national forum and  
9       use the Commission for what it was and always has been  
10      intended to be.

11                   I have much more comfort in that, but that  
12      was what I would have talked to you about if we had  
13      been invited into the party a little bit earlier, so  
14      that we could work through these types of issues and,  
15      you know -- much, much credit to Commissioner Taylor  
16      for bringing this up because it is --

17                   CHAIRMAN REYNOLDS: Well, --

18                   COMMISSIONER YAKI: -- very important.

19                   COMMISSIONER TAYLOR: Mr. Chairman, let me  
20      ask you a question before you go on because it's --  
21      and let's do something which I guess a governmental  
22      body should never do. Let's have an open and frank  
23      discussion on the record.

24                   Is the issue of findings and  
25      recommendations from your perspective critical? I

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1 mean, is that --

2 CHAIRMAN REYNOLDS: Well, I was about to  
3 respond to your recommendation. I don't have a  
4 problem with the approach that you just outlined. So  
5 I don't know if you, you know, require more discussion  
6 on the point, but if there is a consensus -- well,  
7 first of all, I will support your recommendation, and  
8 I would hope that we can reach a consensus on this  
9 issue.

10 COMMISSIONER HERIOT: Mr. Chairman.

11 COMMISSIONER KIRSANOW: Kirsanow here.

12 I read the proposal, and what Commissioner  
13 Taylor proposed, which I concur with, is I think what  
14 the concept paper, in fact, even states, that panels  
15 will submit research papers, will publish those.  
16 We're going to be discharging our clearing house  
17 function. There's the possibility of findings and  
18 recommendations, but you know, we don't have to do  
19 them.

20 I think I agree with -- I mean, I know  
21 that I concur with Commissioner Taylor that this is an  
22 opportunity to have a discussion. I concur. I want  
23 to give Mary Frances Berry a platform. She's had it  
24 for a long time, but I want to see what she has had to  
25 say more recently. Lani Guinier, Gwen Lowery, Harvey

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1 Mansfield, Stephan Thernstrom -- let's get some of  
2 the best minds and the most diverse thinkers and start  
3 the discussion that the Attorney General says we  
4 should be having.

5 And, frankly, this doesn't require, in my  
6 estimation, having gone through the concept paper a  
7 couple of times now, which is only seven pages long,  
8 frankly, this is not -- I think you did a very good  
9 job here, but it's not a magnum opus in terms of  
10 trying to digest this and come up with suggestions as  
11 to how to improve it or change it.

12 In my estimation, based on the current  
13 concept, this is something that really requires a good  
14 ability to dial the phone and not much else -- not  
15 much else -- making logistical arrangements in terms  
16 of flight arrangements, but if you get in touch with  
17 these people now or anyone else that any other  
18 Commissioners want to recommend, then this thing can  
19 go forward.

20 And as Commissioner Gaziano said, they can  
21 present something before the hearing if they wish to  
22 do so, but a more polished product afterwards.

23 COMMISSIONER HERIOT: Yeah, I would  
24 recommend giving them quite some time afterwards to  
25 get quite a polished product.

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1 I also agree with Commissioner Taylor  
2 that, you know, I'm perfectly happy to not have  
3 findings and recommendations here because I think  
4 we're talking about a subject that is sufficiently  
5 broad, and we're talking about it in a level of  
6 abstraction such that I'm not certain that findings  
7 and recommendations would have been all that useful  
8 anyway.

9 I would like individual Commissioners to  
10 have the ability to put statements in whatever written  
11 product is published. You know, maybe they would be  
12 writing articles of their own or maybe commenting on  
13 the article, but I think that's something that would  
14 be useful. But then each of us could do that in our  
15 individual capacity as Commissioners.

16 COMMISSIONER GAZIANO: Yeah, and if  
17 possible -- and this may not be possible -- but I have  
18 a slight preference that when you're moderating a  
19 panel, that's not necessarily the appropriate point  
20 to make -- time to make point -- but that the  
21 Commissioners other than the Chairman also might have  
22 an opportunity to provide some statements on one or  
23 more of these panels or separately, like members of  
24 Congress do as far as opening statements.

25 COMMISSIONER HERIOT: We're also dealing

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1 with some very high powered people here, and I  
2 wouldn't feel all that good about, you know, having an  
3 ultimate conclusion about what some of these witnesses  
4 have to say. Let them speak for themselves, and if  
5 they are persuasive to the American people, then they  
6 are.

7 CHAIRMAN REYNOLDS: Is there any  
8 Commissioner who feels that we should have findings of  
9 fact and recommendations?

10 (No response.)

11 CHAIRMAN REYNOLDS: Okay. Sounds like  
12 that issue is settled.

13 COMMISSIONER TAYLOR: Would it be fair  
14 then to characterize, as Commissioner Kirsanow said,  
15 that for purposes of gathering information and  
16 producing anything, we would be effectively exercising  
17 our clearing house functions with respect to the  
18 material produced and nothing more? So that we're all  
19 characterizing our function the same way, and by  
20 clearing house, it means we're gathering information,  
21 providing electronic platform for people.

22 COMMISSIONER GAZIANO: Right. We might  
23 not publish something that's slanderous, but we  
24 wouldn't exercise --

25 COMMISSIONER TAYLOR: Right.

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1                   COMMISSIONER GAZIANO: -- a substantive,  
2 heavy, substantive editorial control. We might give  
3 them some space limits or something.

4                   COMMISSIONER TAYLOR: Right. Space  
5 limits, but nothing where we change the content of  
6 what they submit.

7                   CHAIRMAN REYNOLDS: That's correct.

8                   COMMISSIONER HERIOT: You're comfortable  
9 with the notion of there being Commissioner  
10 statements?

11                  COMMISSIONER TAYLOR: Oh, I think we have  
12 an inherent right to do that at all times, but I think  
13 it's more important for purposes, again, of, you know  
14 -- if I were the Attorney General receiving an  
15 invitation like we're going to extend to him, that  
16 would be important to me, and it would be important to  
17 me to know that I'm not in a debate in that context.  
18 I'm there to give an opening statement and give you my  
19 thoughts and wish the group the best as they proceed  
20 with the discussion for the rest of the day. That  
21 would be important.

22                  And I think that's the way we can have a  
23 credible opportunity of getting him to come.

24                  VICE CHAIR THERNSTROM: Mr. Chairman, I  
25 have a question. Commissioner Melendez suggested that

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1 he would be much more comfortable with a longer  
2 planning time and having a conference in some time in  
3 2010. If, in fact, it doesn't look as if this is  
4 going to come together with the quality that you hoped  
5 for for September -- I still regard that as  
6 ridiculously soon -- would you be open to  
7 Commissioner Melendez's suggestion that we have this  
8 conference, but not as early as we expected?

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER KIRSANOW: Kirsanow here.

11 Having said that, Mr. Chairman, I will say  
12 that I agree with Commissioner Gaziano that we should  
13 really move toward doing it in September. The longer  
14 -- and I concur also with Commissioner Melendez. I  
15 understand that, you know, we want to put together a  
16 quality project. My concern is that it's human nature  
17 and happened in my realm that when you put something  
18 off, you start to lose traction.

19 I really do think this is imminently  
20 doable, provided that we get on the stick right now.  
21 It's a matter of making phone calls and getting people  
22 here.

23 CHAIRMAN REYNOLDS: Well, Pete, I agree  
24 with everything you just said, and I stated earlier  
25 that we are going to work towards the date. At any

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1 point in time that we feel that we cannot put on a  
2 quality conference, then we would have to revisit the  
3 date.

4 COMMISSIONER KIRSANOW: Right.

5 CHAIRMAN REYNOLDS: Now, after having said  
6 that though, I am fairly confident that this is  
7 achievable, especially with the number of  
8 Commissioners that have volunteered to do the heavy  
9 lifting.

10 COMMISSIONER KIRSANOW: Kirsanow here. I  
11 would suggest we may want to, maybe off line by E-mail  
12 or maybe in a separate conference call, assign or pick  
13 priorities in terms of Commissioners who can get in  
14 touch with these people or how we're going to assign  
15 those kinds of functions. Maybe staff will take a  
16 certain number of them. Those of us with  
17 relationships with others can do so.

18 I think given that this is an ongoing  
19 project or a work in process, maybe the other  
20 Commissioners can suggest other names or suggest that  
21 some of the names that are on here should be deleted  
22 or there should be substitutions, what have you.

23 But I think, at least at first blush, this  
24 is an impressive group of names. Whether we get them  
25 all or just a few of them is, you know, -- we'll see

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1 what happens with that, but again, the urgency of this  
2 is starting to make the phone calls as quickly as  
3 possible.

4 We can start to flesh this out fairly  
5 rapidly if we begin doing so at the beginning of next  
6 week.

7 COMMISSIONER GAZIANO: Some instruction, I  
8 think, does need to come from Marty, Gerry, with input  
9 from Dominique, who should be on maternity leave  
10 taking care of her baby, but I think is listening in.

11 CHAIRMAN REYNOLDS: She is.

12 COMMISSIONER GAZIANO: On just a few of  
13 the logistic things.

14 I move that we concentrate on the National  
15 Press Club. Is there any objection?

16 VICE CHAIR THERNSTROM: Well, I object  
17 because I don't think I can make the date. That's the  
18 --

19 COMMISSIONER GAZIANO: Well, the National  
20 Press Club is the venue, and that we then confirm the  
21 date.

22 COMMISSIONER YAKI: We already have a  
23 date.

24 CHAIRMAN REYNOLDS: And also, Todd, let me  
25 --

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1 COMMISSIONER GAZIANO: We might shift it.

2 CHAIRMAN REYNOLDS: -- revisit a comment  
3 that I made earlier about the deposit. It turns out  
4 that I was wrong. We will be required to make a  
5 deposit. Now, we have a hold on it, but within the  
6 next week or so we will have to make a decision to  
7 whether we are going to use the National Press Club,  
8 and if so we'll have to make a deposit.

9 COMMISSIONER GAZIANO: I suspect so, but  
10 that's why I mentioned that they asked for flexibility  
11 up front as far as when you could release it and carry  
12 forward the money.

13 And by the way, without doing it  
14 completely above board, it might even be required that  
15 we expend the money this fiscal year for a conference  
16 that isn't going to take place until next fiscal year.  
17 So there's a lot of interesting issues like that  
18 probably that need to be worked through.

19 COMMISSIONER YAKI: Before we start  
20 ordering placemats, can I ask a question? This is  
21 Commissioner Yaki.

22 There are two different themes running  
23 through -- well, I see two different themes running  
24 through this discussion. One is Commissioner  
25 Kirsanow's issue about confronting the question of

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1 race. The other is the title of this document, which  
2 is a little broader than that, which is defining civil  
3 rights in the 21st Century.

4           Again, I raise the point raised by  
5 Commissioner Melendez and myself, which is that where  
6 this tends to be a little light is in the issues of  
7 gender, sexual orientation and disability. Even  
8 within that, within sub-groups -- for example, within  
9 as a sub-issue within the Latino community there could  
10 be the issue of citizenship and immigration. There  
11 could be within this -- I'm sorry. There are people  
12 on the phone right now.

13           So my question is where are we. I'm still  
14 not clear where we are going with this, and they are  
15 two totally different. If you are truly talking about  
16 redefining civil rights in the 21st Century, we have  
17 to address the issues of gender, disability and sexual  
18 orientation.

19           COMMISSIONER KIRSANOW: Kirsanow here.

20           I agree with Commissioner Yaki. Our  
21 charge is to address matters related to discrimination  
22 on the basis of race, sex, age, color, national  
23 origin, so on and so forth. I am hopeful that we will  
24 have a panel, and I would look to everybody here,  
25 including Commissioner Yaki, to recommend names that

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1 would include discussions of those issues, either --  
2 maybe more than one panel, maybe a panel dealing with  
3 gender issues and another panel dealing with  
4 disability discrimination issues -- although I can  
5 see how, you know, some of the panels in the current  
6 construct of this paper would naturally lead to that  
7 because we are talking about civil rights in the 21st  
8 Century, a new vision for it.

9 I suspect many of the people currently on  
10 the panel will address these issues, but I do think it  
11 makes good sense to have a discrete panel dealing --  
12 or panels -- dealing with some of these other issues,  
13 and I would welcome a motion to do that.

14 COMMISSIONER YAKI: I noticed,  
15 Commissioner Kirsanow, that you left off sexual  
16 orientation.

17 COMMISSIONER KIRSANOW: Whatever. I mean,  
18 you know, there's a whole list of things, and frankly,  
19 I can't even keep them all in mind at the same time.

20 COMMISSIONER GAZIANO: As long as we're  
21 allowed to take up some related issues that aren't in  
22 our statutory jurisdiction. So we need to be a little  
23 careful about that, but otherwise I wouldn't mind.

24 COMMISSIONER HERIOT: Well, particularly  
25 in Panel 4, where we're talking about what the

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1 Commission should be.

2 COMMISSIONER GAZIANO: Sure. That's fine.

3 COMMISSIONER HERIOT: We can talk about,  
4 you know all of these things, even things that are not  
5 exactly --

6 COMMISSIONER GAZIANO: Well, we have the  
7 prohibition from even thinking about a certain topic  
8 that I probably shouldn't mention because I would  
9 violate the law.

10 COMMISSIONER HERIOT: Then we won't think  
11 about it, but I don't think that's the one that --

12 COMMISSIONER GAZIANO: We have the  
13 prohibition if I say the word.

14 COMMISSIONER HERIOT: Yes, that  
15 Commissioner Yaki is talking about.

16 COMMISSIONER GAZIANO: Okay.

17 COMMISSIONER KIRSANOW: Well, you know,  
18 Kirsanow here.

19 That one prohibition deals with abortion -  
20 - is a statutory prohibition. And if we're going to  
21 be talking about what the new Civil Rights Commission  
22 should be, should there be that prohibition? I think  
23 that's something worthy of discussion.

24 COMMISSIONER GAZIANO: You're dancing on a  
25 dangerous line there, but --

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1 COMMISSIONER KIRSANOW: Just like all the  
2 other things that are worthy of discussion.

3 COMMISSIONER GAZIANO: Maybe we can get a  
4 statutory exemption about it.

5 COMMISSIONER KIRSANOW: Right. I'm not  
6 holding my breath.

7 COMMISSIONER HERIOT: At any rate, you  
8 know, we can accommodate the need to talk to things  
9 other than race here, I think, pretty easily. That's  
10 not going to be a problem.

11 Mr. Chairman.

12 CHAIRMAN REYNOLDS: Yes.

13 COMMISSIONER HERIOT: Do you need a  
14 motion? Are we good just to have this conversation?

15 CHAIRMAN REYNOLDS: I'm sorry. Are you  
16 referring to a discussion of abortion?

17 COMMISSIONER HERIOT: Do you need a motion  
18 at this point, you know, to carry on? I'd be happy to  
19 move, you know, that --

20 COMMISSIONER GAZIANO: That we proceed  
21 according to all of the discussion that's preceded.

22 COMMISSIONER HERIOT: Yeah, that you be  
23 authorized to act.

24 CHAIRMAN REYNOLDS: Okay. Let's do it.  
25 Commissioner Heriot, may I please have a motion?

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1 COMMISSIONER HERIOT: Well, let's see if  
2 this is what you want. I move that the Chairman be  
3 authorized to proceed under the plan in the draft  
4 concept paper, as modified by our conversations today,  
5 to see whether you can, you know, get the speakers so  
6 that we can make the date as proposed.

7 CHAIRMAN REYNOLDS: I second it.

8 Discussion.

9 COMMISSIONER YAKI: This is Commissioner  
10 Yaki.

11 I have no idea what in the heck that  
12 motion means.

13 COMMISSIONER HERIOT: That -- that --

14 COMMISSIONER YAKI: I mean, I --

15 COMMISSIONER HERIOT: Here's what it  
16 means. It means that the Chairman is authorized to  
17 invite speakers as discussed in the concept paper.

18 COMMISSIONER GAZIANO: Or to delegate  
19 others to invite.

20 COMMISSIONER HERIOT: Or to delegate that  
21 authority to other members of the Commission or to the  
22 Special Assistants or to the staff members, and also  
23 that he be authorized to proceed with the National  
24 Press Club or to delegate that authority to the staff.

25 COMMISSIONER YAKI: And what about the

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1 issues that were brought up by myself and Commissioner  
2 Melendez regarding the --

3 CHAIRMAN REYNOLDS: It would be taken into  
4 consideration.

5 COMMISSIONER HERIOT: You know, making  
6 sure that those comments --

7 COMMISSIONER YAKI: What does "taken into  
8 consideration" mean, Mr. Chair?

9 CHAIRMAN REYNOLDS: That means that, as I  
10 understand the motion, that I would be charged with  
11 taking into account all of the issues that have been  
12 discussed during this meeting, including the concerns  
13 which I share, expressed by Commissioner Melendez and  
14 some of yours, as well as the other Commissioners.

15 COMMISSIONER YAKI: With all due respect,  
16 Mr. Chair, that's a little fuzzy.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER YAKI: I mean, you know --

19 CHAIRMAN REYNOLDS: I'm not in a position  
20 to tell you what the final product is going to look  
21 like.

22 COMMISSIONER HERIOT: That's always true  
23 of our briefings, too. There's nothing remarkable  
24 about this. We never have them set in stone.

25 COMMISSIONER YAKI: But don't get me

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1 started about the magical process that results in  
2 briefings, but at least are we -- does this motion  
3 include the confirmation that there will be no  
4 findings and recommendations to this conference?

5 COMMISSIONER HERIOT: I think there's a  
6 consensus on that.

7 CHAIRMAN REYNOLDS: I don't think that  
8 it's needed, but if that would provide you a  
9 sufficient comfort to participate in the process, I  
10 can get behind that.

11 COMMISSIONER YAKI: No, what would provide  
12 me sufficient comfort to participate in the process is  
13 to be participating in the process to begin with, but  
14 I'm wanting to know because this will be important in  
15 terms of what people ask me afterwards with regard to  
16 whether or not there is a definitive statement about  
17 whether there will be findings and recommendations or  
18 not.

19 I think it should be part of the motion.  
20 I think it is in your interest to have that as part of  
21 the motion.

22 COMMISSIONER HERIOT: I'm happy to put it  
23 in.

24 CHAIRMAN REYNOLDS: Well, I don't have any  
25 concerns about putting in the motion, but,

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1 Commissioner Yaki, do want to point out that you are  
2 participating in this process.

3 COMMISSIONER YAKI: I am participating in  
4 this process now, Mr. Chair, simply because I'm  
5 dissatisfied and deeply disturbed by how this has been  
6 going on. So what -- if raising objections is  
7 participating in the process, then so be it, but I  
8 still reserve -- have serious reservations about what  
9 you mean by taking into consideration issues of  
10 gender, disability and sexual orientation in the  
11 planning of this conference unless you plan to change  
12 the title.

13 You know, that's apparently your  
14 discretion, the ball that you've been running with. I  
15 don't know, frankly, and part of me doesn't care  
16 because, again, despite my entreaties, I was not  
17 invited to the table.

18 But I need to know, and I think it's going  
19 to be very important for you to put on the record as a  
20 vote that there's going to be no report issued that  
21 will contain findings, recommendations or conclusions  
22 of the Commission.

23 CHAIRMAN REYNOLDS: If that's important to  
24 you, I can support it.

25 COMMISSIONER KIRSANOW: So can I.

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1                   COMMISSIONER HERIOT: I just want to state  
2 for the record that I didn't receive this proposal any  
3 sooner than Commissioner Yaki did. There seems to be  
4 some suggestion here that he got shut out of the  
5 process.

6                   COMMISSIONER YAKI: Except I got it later.

7                   COMMISSIONER HERIOT: If he was shut out  
8 of the process, so was I.

9                   COMMISSIONER YAKI: Well, perhaps you  
10 didn't ask to be in the process three years ago like I  
11 did. Perhaps you didn't reiterate that a year ago.  
12 Perhaps you didn't reiterate --

13                   COMMISSIONER HERIOT: I've always wanted  
14 to be involved in the process.

15                   COMMISSIONER YAKI: -- that months ago.

16                   COMMISSIONER HERIOT: That's incorrect.

17                   COMMISSIONER YAKI: Well, the fact is  
18 that, for better or worse, Commissioner Melendez and I  
19 represent the Democrats on this Commission. We  
20 represent the minority on this Commission. We  
21 represent a whole different constituency on the  
22 outside of this Commission. So the fact, that despite  
23 those requests, we were shut out is significant, and  
24 you can say all you want, "Well, I got it a week ago.  
25 What's the problem?" You know that's not how the game

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1 is played, Commissioner Heriot. You know that's not  
2 how the game --

3 CHAIRMAN REYNOLDS: The way the game has  
4 been played --

5 COMMISSIONER HERIOT: Wait a minute.

6 CHAIRMAN REYNOLDS: -- is the Commission  
7 is --

8 COMMISSIONER HERIOT: It may come as a  
9 shock to Commissioner Yaki, but we all got--

10 CHAIRMAN REYNOLDS: -- that you have been  
11 allowed to have the conversations that you're having  
12 now under previous configurations of the Commission.

13 COMMISSIONER YAKI: Well, let's not go  
14 back in ancient history, Mr. Chair, but --

15 CHAIRMAN REYNOLDS: Well, I would like to  
16 go back to ancient history.

17 COMMISSIONER YAKI: -- you know from the  
18 very beginning, Mr. Chairman --

19 COMMISSIONER KIRSANOW: This is Kirsanow.

20 One of the people I want on one of these  
21 panels is going to be the Chairperson of the previous  
22 Commission, and we'll see precisely what she thinks in  
23 terms of how the Commission should move forward.  
24 There are members of this Commission who clearly  
25 remember how business was conducted. I am here to

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1 tell you -- and you can go through the transcripts  
2 from 2001 to the present to see how Commission  
3 business was conducted. It is a bright line --

4 COMMISSIONER YAKI: Well, I'm sorry --

5 COMMISSIONER KIRSANOW: -- in favor of the  
6 minority these days as opposed to what it was in the  
7 past.

8 COMMISSIONER YAKI: Well, I'm sorry that  
9 you feel like an abused child in the situation.

10 COMMISSIONER KIRSANOW: It's a perfect --  
11 no, but you know what? That's Washington. We are a  
12 majority.

13 COMMISSIONER YAKI: But the fact of the  
14 matter is --

15 COMMISSIONER KIRSANOW: I have absolutely  
16 no problem including any panelists, and I would urge  
17 Commissioner Yaki and Commissioner Melendez to  
18 recommend panelists, to recommend substitutions, to  
19 recommend deletions, to recommend every panel. I have  
20 heard nothing from any other Commissioners thus far  
21 disagreeing with any of that.

22 It is impossible sometimes to agree with  
23 you, Commissioner Yaki.

24 COMMISSIONER YAKI: Commissioner Kirsanow,  
25 perhaps we should revisit history. When I first came

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1 on the Commission, one of the first things I did was  
2 got appointed to the subcommittee that worked on  
3 revising the rules and AIs to make this place work  
4 better than what you referred to as "the other days."  
5 I worked on that in a bipartisan manner with  
6 Commissioner Braceras, amongst others. Through the  
7 first year and a half, we tended to work along those  
8 ways. We formed subcommittees. We did this together.  
9 We participated.

10 That has changed. I don't know why it has  
11 changed, but it has changed, and I was a perfectly  
12 willing participant in the beginning to work in a  
13 bipartisan manner, to understanding the concerns that  
14 you raised and other people had raised during that  
15 time period. So don't start preaching to me about  
16 that kind of behavior, Commissioner Kirsanow, because  
17 I was on the -- people who worked in this Commission  
18 to try and change the rules and make it fairer and  
19 make it more bipartisan. You supported it as well,  
20 and I worked with you, in fact, on one of the  
21 subcommittees involving some of the finance issues.

22 I was hoping that would be the same kind  
23 of process for something this important and this  
24 significant for the Commission. That did not happen.  
25 That was my surprise. That was my disappointment.

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1 That was, in fact, my anger, that, despite asking for  
2 that early on, talking about this, in fact, bringing  
3 this initially up with Commissioner Taylor three years  
4 ago, that it never happened.

5 So part --

6 COMMISSIONER KIRSANOW: Commissioner Yaki,  
7 again, I'm perplexed. If this is the process you  
8 wanted to have, there's nothing at least to my  
9 knowledge that prohibited you or anyone else from  
10 suggesting that we have a subcommittee, just like the  
11 Finance Subcommittee, Strategic Planning Subcommittee,  
12 the AI Subcommittee, all the other subcommittees, to  
13 draft this concept paper or to work along with this.

14 COMMISSIONER YAKI: With all due respect

15 --

16 COMMISSIONER KIRSANOW: I had an  
17 opportunity to work with Commissioner Reynolds had I  
18 chosen to do so. I chose not to do so. I am  
19 absolutely certain that if you, Commissioner Heriot or  
20 anyone else had gone to Commissioner Reynolds and  
21 said, "I know you're working on this concept paper. I  
22 know it's heavy lifting. Let me assist you," -- I'm  
23 bewildered as to precisely what it is you were  
24 excluded from doing.

25 COMMISSIONER YAKI: Commissioner Kirsanow,

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1 then you --

2 CHAIRMAN REYNOLDS: Folks.

3 COMMISSIONER YAKI: -- were not privy to  
4 the conversations that I had.

5 CHAIRMAN REYNOLDS: We had this debate  
6 earlier. We're just going over old ground. At this  
7 point I think that we have a game plan. I believe  
8 that there's a motion pending. I believe that  
9 Commissioner Yaki asked whether the motion contained  
10 the understanding that there would be no findings of  
11 fact and recommendations.

12 I believe that there is agreement that the  
13 motion does contain that understanding. So at this  
14 point, folks, let's vote. All in favor say aye.

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: Objections.

17 COMMISSIONER YAKI: I object.

18 VICE CHAIR THERNSTROM: I'm sorry. My  
19 burglar alarm went off in my house, and therefore I  
20 haven't been part. I don't even know what we're  
21 voting on at this point. I'm sorry for having to  
22 leave the room.

23 CHAIRMAN REYNOLDS: Okay. So I'll treat  
24 that as an abstention. Commissioner Melendez?

25 COMMISSIONER MELENDEZ: Abstain, too. I'm

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1 not real convinced on this.

2 CHAIRMAN REYNOLDS: I understand. Okay.

3 The motion passes.

4 The next item on the agenda is a  
5 discussion of a letter that was drafted by  
6 Commissioner Kirsanow.

7 COMMISSIONER GAZIANO: Should we go back  
8 to approve the minutes or not?

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER GAZIANO: Should we is what  
11 I'm asking. It doesn't matter. I don't care. Just  
12 pointing out we haven't been there yet.

13 CHAIRMAN REYNOLDS: Okay.

14 COMMISSIONER GAZIANO: Let's go to the  
15 letter.

16 CHAIRMAN REYNOLDS: Okay. I move that we  
17 approve the June 12th, 2009 minutes.

18 II. APPROVAL OF MINUTES OF

19 JUNE 12, 2009 MEETING

20 CHAIRMAN REYNOLDS: Is there a second?

21 COMMISSIONER GAZIANO: Second.

22 CHAIRMAN REYNOLDS: Discussion?

23 (No response.)

24 CHAIRMAN REYNOLDS: All in favor, please  
25 say aye.

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1 (Chorus of ayes.)

2 COMMISSIONER YAKI: Discussion. The vote  
3 recorded on the letter does not gibe with the letter  
4 that was sent to the Washington Times, if you read it  
5 very carefully.

6 CHAIRMAN REYNOLDS: Commissioner Yaki,  
7 which document are you referring to when you said have  
8 you read it very carefully?

9 COMMISSIONER YAKI: You're talking about  
10 the minutes, right? The very last issue in the  
11 minutes had to do with the number five -- Justice  
12 Department, had a vote of five to one.

13 CHAIRMAN REYNOLDS: I show four-zero.

14 COMMISSIONER YAKI: I do not believe it  
15 was five to one. That's why I wanted to correct that.

16 CHAIRMAN REYNOLDS: I was under the  
17 impression that it was four to zero with Commissioner  
18 Yaki being -- the vote, and we had, I believe, one  
19 abstention.

20 COMMISSIONER KIRSANOW: That's correct.

21 COMMISSIONER GAZIANO: Okay. Let's  
22 correct then.

23 CHAIRMAN REYNOLDS: Okay. Well, Mr. Staff  
24 Director, please revisit that factual issue. I agree  
25 with Commissioner Yaki. I believe that that tally is

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1 incorrect.

2 STAFF DIRECTOR DANNENFELSER: The vote was  
3 four in favor and one abstention.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER YAKI: I move to have the  
6 minutes reflect that correction.

7 COMMISSIONER GAZIANO: Second.

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

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Okay. Now, as  
12 modified, let's vote on the minutes from June 12th.  
13 All in favor please say aye.

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Any objection?

16 (No response.)

17 CHAIRMAN REYNOLDS: Abstentions?

18 (No response.)

19 CHAIRMAN REYNOLDS: The motion passes.

20 Next up is a discussion of a letter  
21 drafted by Commissioner Kirsanow.

22 IV. PROGRAM PLANNING

23 (b) DRAFT LETTER TO OHIO LEGISLATURE

24 RE SET-ASIDES

25 CHAIRMAN REYNOLDS: Pete, are you ready to

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1 discuss your letter?

2 COMMISSIONER KIRSANOW: I am. It's very  
3 brief. This is a letter that will go to the Ohio  
4 State Legislature in response to a proposed bill that  
5 would require minority set-asides for colleges and  
6 universities. The bill is, frankly, perplexing  
7 because the Ohio Supreme Court, Federal District Court  
8 have all already ruled that these kinds of programs  
9 are unconstitutional, and we're simply advising them  
10 of that fact.

11 There's the Drabik case, there's the  
12 Buddie case, and in fact, in the Buddie case these  
13 individuals who would engage in such set-asides at the  
14 community college level, the college level, whatever  
15 you have, would be subject to personal liability. In  
16 other words, their sovereign immunity would be  
17 forfeited as a result. That should be their  
18 attention, but apparently the state legislature forgot  
19 about that.

20 So it's simply a letter that advises them  
21 of the fact that there is significant problems related  
22 to this proposed bill.

23 CHAIRMAN REYNOLDS: Response?

24 COMMISSIONER GAZIANO: A very good letter,  
25 but could we leave the final language open for a day

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1 just for some very minor wordsmithing, or would that  
2 create a problem?

3 COMMISSIONER KIRSANOW: I have no problem  
4 with that, Commissioner.

5 COMMISSIONER GAZIANO: I'd like to vote on  
6 the basic substance of it. I think it's a very good  
7 letter.

8 CHAIRMAN REYNOLDS: Additional comments,  
9 questions?

10 COMMISSIONER MELENDEZ: Commissioner  
11 Melendez.

12 I'd like to ask the General Counsel whether  
13 or not any letters like this need quality guidelines  
14 review.

15 MR. BLACKWOOD: This is David Blackwood.

16 And the answer is no.

17 COMMISSIONER MELENDEZ: Okay. So we're  
18 saying that, what, that statements to public officials  
19 that cite specific legal cases and draw legal  
20 conclusions about the meaning and applicability of  
21 those cases don't require that?

22 MR. BLACKWOOD: In this format of a letter  
23 by the Commission, that is correct.

24 COMMISSIONER MELENDEZ: Okay, all right.  
25 Just for the record.

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1 CHAIRMAN REYNOLDS: Additional questions,  
2 comments?

3 (No response.)

4 CHAIRMAN REYNOLDS: Hearing none, all in  
5 favor please say aye.

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: Any objections?

8 COMMISSIONER MELENDEZ: Opposed.  
9 Melendez.

10 COMMISSIONER YAKI: In the absence of the  
11 facts, I'm going to vote no.

12 CHAIRMAN REYNOLDS: Abstentions?

13 (No response.)

14 CHAIRMAN REYNOLDS: Okay. Let the record  
15 reflect that Commissioners Yaki and Melendez voted  
16 against the motion. The remaining Commissioners voted  
17 in favor. The motion passes.

18 Next up is discussion of the use of a  
19 temporary hiring authority.

20 IV. PROGRAM PLANNING

21 (c) DISCUSSION OF TEMPORARY HIRING AUTHORITY

22 CHAIRMAN REYNOLDS: Commissioner Yaki,  
23 this is your issue. Would like to frame the issue?

24 COMMISSIONER YAKI: Just a question to the  
25 Staff Director. When I --

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1 VICE CHAIR THERNSTROM: Is he still one?

2 COMMISSIONER YAKI: Is he still on?

3 STAFF DIRECTOR DANNENFELSER: Yeah, I'm on  
4 here. Hopefully my signal will hold.

5 CHAIRMAN REYNOLDS: And also, if we get  
6 into sensitive territory, we'll have to go into  
7 executive session.

8 COMMISSIONER YAKI: It was just a question  
9 about -- well, actually the General Counsel will  
10 actually be a part of it -- when I had initially put  
11 in for my special assistant, Alec, I understood that  
12 there might be some wait and review time and had asked  
13 if we could use temporary hiring authority to get him  
14 started right away so that I could utilize his skills  
15 on some dissents that were coming up. I made this  
16 request in writing and verbally to the Staff Director.

17 The response I got back was that they had  
18 gone to the appropriate people and had been shot down.

19 I subsequently learned that someone had  
20 been hired using temporary hiring authority, another  
21 person whose name had been in submission for a special  
22 assistant position, and had just wondered why my case  
23 seemed to be different than that of the other person.

24 And that's basically it.

25 CHAIRMAN REYNOLDS: Okay. Who would like

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1 to field this question? It seems to me --

2 VICE CHAIR THERNSTROM: Is the Staff  
3 Director not on?

4 STAFF DIRECTOR DANNENFELSER: No, I'm on  
5 the line. I wasn't sure that Commissioner Yaki posed  
6 the question to me or to the General Counsel.

7 COMMISSIONER YAKI: Well, it's to either.  
8 Your initial reply to me stated that it was on the  
9 advice of the General Counsel, which I don't -- well,  
10 I mean --

11 STAFF DIRECTOR DANNENFELSER: Let me try  
12 to explain it. There are two temporary hiring  
13 authorities, one of which we did approach the White  
14 House about, and they advised us not to use that  
15 temporary hiring authority.

16 The other hiring authority, I checked with  
17 the General Counsel and the Director of Management  
18 about, and they both advised against using it because  
19 of the experience that we have had in the past with an  
20 individual who had been put forward for a special  
21 assistant position but then was turned down by the  
22 White House.

23 CHAIRMAN REYNOLDS: In addition to that,  
24 that individual at the time had a pending piece of  
25 litigation. Is that right?

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1 STAFF DIRECTOR DANNENFELSER: Yes. Well,  
2 he had a pending appeal right that we were waiting to  
3 see if he was going to exercise it.

4 COMMISSIONER YAKI: I understand, you  
5 know, you don't want to take any action that would  
6 prejudice your case, but I had two questions, to  
7 follow up. One is, is his case now finally, totally,  
8 completely over. There's no other right of appeal, no  
9 other court of jurisdiction that you can go to?

10 MR. BLACKWOOD: He has filed a claim in  
11 the U.S. District Court. I sent a memo around a while  
12 ago.

13 COMMISSIONER YAKI: Right.

14 MR. BLACKWOOD: It is pending. It is  
15 heading towards staleness, but it is still alive.

16 COMMISSIONER YAKI: So I guess my question  
17 then is why would the hiring of Alec have been  
18 prejudicial in that proceeding but not the hiring of  
19 the other person?

20 I mean, I'm happy that they got the  
21 temporary hiring authority. I just want to know why,  
22 if it didn't work because of a legal case in my case  
23 and that legal case is still pending, why it didn't  
24 affect that one.

25 MR. BLACKWOOD: All I can answer is that

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1 there are - - it wasn't that that authority did not  
2 exist legally. The question was prudentially whether  
3 it should be exercised.

4 COMMISSIONER YAKI: Yeah, I know, but if  
5 the person still has a case and that case was in place  
6 at this time and that time, why was this time, my  
7 time, not hired and the other one was? That's all I'm  
8 asking.

9 CHAIRMAN REYNOLDS: David, was that the  
10 same piece of litigation pending? What does this --  
11 the case that you just referred to, what did that file  
12 -- after the decision was made, there was a subsequent  
13 appeal that was -- wasn't there an appeal that would  
14 extinguish?

15 MR. BLACKWOOD: No, here's what the  
16 sequence was. We knew that a decision had been  
17 rendered by the MSPB, and we were waiting for the  
18 appeal time.

19 There are two appeals. Normally you would  
20 get notice. We did not get any notice that the  
21 gentleman had pursued this alternative. So there was  
22 a time when we thought the time period -- in fact, I  
23 think I sent a memo around or an E-mail to everyone --  
24 the appeal time has expired.

25 What we subsequently learned is, without

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1 providing us notice, he had pursued a route through  
2 the U.S. District Court. I don't think it will be  
3 successful, but that's a different issue. At the time  
4 we did not know he had done that.

5 CHAIRMAN REYNOLDS: So at the time we  
6 thought that the time period for an appeal had  
7 expired?

8 MR. BLACKWOOD: That is -- well, as of  
9 what date? It all depends on what date. There was a  
10 time period where he had pursued this, and we did not  
11 know that.

12 COMMISSIONER YAKI: So what you're saying  
13 is that basically you then made a decision, based on  
14 the fact that appeal had not yet been finalized, to  
15 advise not to use special hiring authority for Alec,  
16 but then after that time period was over, unbeknownst  
17 to you, this other action had been filed, but in the  
18 absence of that knowledge, you then authorized the  
19 temporary hiring authority for this other person.

20 MR. BLACKWOOD: No, I'm not saying that at  
21 all.

22 COMMISSIONER YAKI: Okay. Then I --

23 COMMISSIONER GAZIANO: May I be  
24 recognized, Mr. Chairman?

25 VICE CHAIR THERNSTROM: No, I would like

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1 to hear what -- because I heard it the same way as  
2 Commissioner Yaki did.

3 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
4 proceed.

5 COMMISSIONER GAZIANO: I just want to --

6 VICE CHAIR THERNSTROM: Well, you won't  
7 let David Blackwood clarify this?

8 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
9 proceed.

10 COMMISSIONER GAZIANO: He can. I just  
11 want to say how this decision has adversely affected  
12 me, too. I was disappointed to hear that Commissioner  
13 -- that the decision was made not to extend the  
14 temporary hiring authority to Commissioner Yaki  
15 especially without at least pinging other  
16 Commissioners on this. It affects us all.

17 I have had a special assistant pending now  
18 for about 33 days. I don't want anyone to think I'm  
19 hiding behind the log. When I was -- TinaLouise  
20 Martin is out this week, so I couldn't verify the  
21 exact number of days.

22 I -- when I asked for the temporary, I was  
23 now told there may have been some change. I'm not  
24 sure I entirely agree with it, or I don't entirely  
25 agree with the decision that was made, but I did not

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1 press my case for a temporary until the period of time  
2 has expired, similar to what other Commissioners have  
3 had to wait for their special assistant, but I will at  
4 this point show my interest in that I will be asking  
5 the Staff Director on Monday, which will be about 35  
6 days, as best I can tell, to execute the temporary  
7 hiring authority for my special assistant to bring my  
8 special assistant on the payroll pending -- I also  
9 have some concerns that with regard to me, PPO review  
10 may not be entirely appropriate except perhaps to  
11 check a criminal background check, if that's what's  
12 going on, but I don't think it's appropriate to have  
13 to wait any longer for an assistant.

14 COMMISSIONER YAKI: But now my question --

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

16 VICE CHAIR THERNSTROM: I just didn't  
17 understand as Commissioner Yaki didn't. I didn't  
18 understand the General Counsel's response. I just  
19 wanted clarification of it.

20 MR. BLACKWOOD: Well, number one, that in  
21 my mind had nothing to do with why there is a  
22 difference in treatment between your special assistant  
23 and others. I continue to have -- I am the wrong  
24 person to ask.

25 COMMISSIONER YAKI: But there is now a

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1 case in the District Court, regardless of whether it  
2 may be stale or not. The fact is that this kind of  
3 action could be seen -- I'm just understanding -- it  
4 would be seen as -- my doing this would have been  
5 prejudicial to the appeal case. To a new case it's  
6 not seen as prejudicial?

7 MR. BLACKWOOD: Well, you're assuming that  
8 my advice was that there should be a difference in  
9 treatment.

10 COMMISSIONER YAKI: Oh, in that case, I  
11 guess I have to kick this upstairs then because what  
12 I'm hearing is that the General Counsel asked for the  
13 same treatment and a discretionary decision was made.

14 Was that made by you, Mr. Staff Director,  
15 to override the General Counsel's recommendation?

16 MR. BLACKWOOD: That's not the way to  
17 phrase it.

18 STAFF DIRECTOR DANNENFELSER: Well, I  
19 don't know that I would characterize it as overriding  
20 his recommendation.

21 CHAIRMAN REYNOLDS: Well, there was a  
22 sensitivity around some pending litigation, and I  
23 believe that the initial decision, the decision --  
24 well, the response that you received, Commissioner  
25 Yaki, was grounded in this sensitivity around pending

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1 litigation. Once I got involved in this issue, I did  
2 not share their view. There is nothing in the  
3 statutes or our rules that would prevent the use of  
4 this authority. I don't believe that the case has  
5 much merit, and I had a different assessment as to  
6 what the risk was in terms of using this authority.

7 So my strong recommendation was that the  
8 subsequent case be treated differently.

9 COMMISSIONER YAKI: Okay. So I just  
10 wanted to confirm that I was, indeed, treated  
11 differently. That's all I wanted to hear.

12 COMMISSIONER GAZIANO: And it is possible,  
13 Commissioner Yaki, that some of us on the Commission  
14 as Commissioners are being treated differently by the  
15 White House, which may or may not be true, but  
16 regardless of that, I hope fellow Commissioners will  
17 agree that there is no reason that the Staff Director  
18 ought not to hire my special assistant on a temporary  
19 basis while we wait further final approvals.

20 COMMISSIONER YAKI: I have no objection to  
21 that, as you would know.

22 COMMISSIONER GAZIANO: Thank you.

23 COMMISSIONER YAKI: That satisfies my  
24 inquiry.

25 VICE CHAIR THERNSTROM: And just to put my

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1 two cents in here, Mr. Chairman, this is obviously  
2 Vice Chair Thernstrom. I don't understand, and this  
3 is related to something that Commissioner Gaziano said  
4 before -- I don't understand when we're trying to  
5 switch one special assistant from one Commissioner to  
6 another, which is what has previously happened here,  
7 why this required White House approval. I mean, we've  
8 already done this with a previous special assistant.

9 It wasn't quite the same facts, but  
10 almost. I mean, there's something -- pardon me?

11 COMMISSIONER HERIOT: I think it was  
12 pretty much the same facts. (Speaking from an unmiced  
13 location.)

14 VICE CHAIR THERNSTROM: Exactly.

15 COMMISSIONER HERIOT: I would just like to  
16 point out that Ken Marcus, the previous Staff  
17 Director, requested such a transfer. He thought that  
18 was something that --

19 VICE CHAIR THERNSTROM: I mean, I still  
20 want and I still think it makes sense, for Tim Fay to  
21 be transferred to me, and I don't know why that can't  
22 be an internal process.

23 STAFF DIRECTOR DANNENFELSER: Well, this  
24 is the Staff Director. The Schedule C appointments --  
25 any actions relating to the Schedule C appointees

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1 requires White House approval

2 VICE CHAIR THERNSTROM: Again, there --  
3 whatever. We'll continue. It's water under the  
4 bridge, I guess.

5 CHAIRMAN REYNOLDS: Okay. Let's go.

6 COMMISSIONER MELENDEZ: Melendez here.

7 I have a question.

8 CHAIRMAN REYNOLDS: Yes.

9 COMMISSIONER MELENDEZ: I'm not sure what  
10 you're talking about. Are you saying there's a new  
11 person on board right now that is already hired?

12 STAFF DIRECTOR DANNENFELSER: There's a  
13 temporary hire with the Commission's temporary hiring  
14 authority. The person is still pending as  
15 presidential personnel for the more permanent  
16 appointment as a special assistant.

17 COMMISSIONER MELENDEZ: Oh, so do you know  
18 who that is? Have we been introduced --

19 STAFF DIRECTOR DANNENFELSER: Yes.

20 COMMISSIONER MELENDEZ: -- to the person  
21 or what?

22 STAFF DIRECTOR DANNENFELSER: I know there  
23 were several E-mails during the past week that  
24 mentioned the person's name.

25 COMMISSIONER MELENDEZ: It's kind of top

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1 secret.

2 (Laughter.)

3 STAFF DIRECTOR DANNENFELSER: I noted you  
4 were copied on several of those E-mails --

5 COMMISSIONER GAZIANO: If you were here  
6 you could --

7 STAFF DIRECTOR DANNENFELSER: --  
8 originated with your special assistant, I believe.

9 COMMISSIONER GAZIANO: He's sitting behind  
10 Gail and I.

11 CHAIRMAN REYNOLDS: Has the new hire been  
12 introduced?

13 STAFF DIRECTOR DANNENFELSER: Well, it's a  
14 temporary hire. So I don't know that we've made any  
15 introduction at this point. That's a judgment call on  
16 your part, Mr. Chairman.

17 CHAIRMAN REYNOLDS: All right. Judging  
18 from the tone of your voice, I'm sure that you  
19 disapprove, but what the hell? You've disagreed with  
20 me before, and you'll disagree with me in the past.

21 Will someone please introduce our  
22 temporary hire?

23 COMMISSIONER HERIOT: I have my new  
24 special assistant on a temporary basis here. I think  
25 she's actually been introduced to everybody in the

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1 room here, almost everybody, but it's Alison Schmauch,  
2 and here she is.

3 VICE CHAIR THERNSTROM: May I correct you?  
4 I mean - - well, okay. Never mind.

5 CHAIRMAN REYNOLDS: Well, Alison, welcome  
6 aboard. I hope you have thick skin.

7 COMMISSIONER HERIOT: Yeah. Alison will  
8 be working for both Abby and for me, as Tim works for  
9 both Abby and for me, but Tim does most of the work  
10 for Abby, and Alison does most of her work for me  
11 right now. That could change, but that's the way it  
12 is right now.

13 CHAIRMAN REYNOLDS: All right. Next up is  
14 the status of the 2009 statutory report.

#### 15 IV. PROGRAM PLANNING

##### 16 (d) UPDATE ON STATUS OF 2009 STATUTORY REPORT

17 CHAIRMAN REYNOLDS: On June 2nd, the Staff  
18 Director sent the Commissioners a memorandum prepared  
19 by the General Counsel concerning changes made to the  
20 draft statutory report for 2009. I'd just like to say  
21 that I'd like to commend the Office of the General  
22 Counsel and the other staff folks and special  
23 assistants, the Commissioners who have contributed to  
24 the document. I think that it is looking mighty fine.

25 At this point will the General Counsel

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1 provide an update?

2 MR. BLACKWOOD: Thank you.

3 This is David Blackwood.

4 I appreciate the comments we have already  
5 received. I would remind everyone that comments from  
6 the Commissioners are due this Sunday, not close of  
7 business, but by midnight. I would appreciate any  
8 comments sooner rather than later, and some have  
9 already actually submitted comments.

10 Affected agency review is also coming in  
11 at the same time. We have received several  
12 statements. In fact, last night we got feedback from  
13 the Department of Justice. By Monday we're supposed  
14 to get affected agency review also from some of the  
15 larger entities that we have dealt with, including the  
16 Fed. and HUD.

17 So far of the three agencies that we have  
18 gotten kick-back from, there have only been small  
19 modifications, terms of art, things like that. We  
20 have not had any major changes.

21 That said, we are waiting for those  
22 reports. I made the decision, and I in retrospect  
23 should have put it in writing, that until we got the  
24 affected agency review it did not make sense to send  
25 out findings and recs. I hope to do that by next

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1 week, but with the comments that we're going to get  
2 from you all and with the various governmental  
3 agencies, I thought it made sense to make sure that we  
4 had a more final product and know what it said,  
5 including possibly getting different figures for this  
6 year, which could affect the report, especially with  
7 regard to, say, foreclosures because, as we all know,  
8 the foreclosure trends are telling, but we have not  
9 received those for the latest year.

10 Most importantly, too, is GAO, we were  
11 informed, is issuing a similar report by the middle of  
12 next week, on the 15th. The report is not the same as  
13 ours, but it does have overlap. Some of the agencies  
14 reported to us that they were having difficulty  
15 completing their affected agency review for us because  
16 they were also doing it for GAO at the same time.

17 I have met or talked with GAO, and the  
18 report is similar in that it looks at various  
19 enforcement issues, but it is not as broad as ours,  
20 nor does it directly address the mortgage crisis.

21 That said, GAO and I agreed that we would  
22 swap our reports as soon as they are issued. So I  
23 hope to have their report by Wednesday and hopefully  
24 can incorporate that to the degree that we are able to  
25 by the next draft that goes out, which should be the

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1 final draft.

2 And that is where things stand.

3 CHAIRMAN REYNOLDS: David, would you  
4 discuss the probability of completing your work in  
5 sufficient time for us to vote on it within the fiscal  
6 year?

7 MR. BLACKWOOD: Yes.

8 CHAIRMAN REYNOLDS: Are we on track  
9 basically?

10 MR. BLACKWOOD: We are on track. It's  
11 going to be tight, but it's always tight. The vote is  
12 scheduled for August 7th, or basically an editorial  
13 session as well. So you will have up until that time  
14 and at that date to change or suggest modifications or  
15 moving text or whatever.

16 If I can get out the findings and recs. by  
17 next week, that will allow you all three weeks to look  
18 at our findings and recs. You are certainly -- at any  
19 time, I would suggest, if you want to submit draft  
20 findings and recs., we will either include those  
21 directly or show those as alternatives, but I want to  
22 allow as much time as possible for you to see our  
23 draft of the findings and recs. because that is always  
24 usually the most or the matter of largest interest.

25 We are on schedule to complete it and have

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1 you at least three weeks of time to review it before  
2 the vote.

3 CHAIRMAN REYNOLDS: Additional questions?

4 COMMISSIONER MELENDEZ: Commissioner  
5 Melendez here.

6 I still have a concern that we still  
7 haven't collected enough information on the efforts of  
8 the federal enforcement agencies to stop  
9 discriminatory mortgage lending practices. Do we have  
10 enough information from the Department of Justice,  
11 Civil Rights Division, and I think one of the  
12 interrogatories that we're waiting for?

13 MR. BLACKWOOD: In fact, I got them last  
14 night.

15 Let's be clear. DOJ and other entities  
16 provided a great deal of information before they  
17 completed their interrogatories. The only process  
18 left with DOJ was, will you formally agree that what  
19 you submitted was all the information we had.

20 I received that information last night.  
21 Frankly, I did not have a chance to go through it.  
22 There was some additional information, but like I  
23 said, I haven't reviewed it. I'd say at this stage we  
24 are not likely to be in a position, other than the GAO  
25 report, to include additional information from any

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1 federal agencies.

2 If I thought some additional information  
3 is critical to the report though, I would allow it or  
4 I would inform you that additional time might be  
5 necessary if that information wasn't included in the  
6 report.

7 COMMISSIONER MELENDEZ: Okay. My concern  
8 is whether or not, you know, the federal enforcement  
9 efforts are effective or not. So I think that's a big  
10 part of what this report should say. So I'll just  
11 leave it at that.

12 COMMISSIONER GAZIANO: Mr. Chair.

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER GAZIANO: Gaziano for the  
15 record.

16 I predicted at the last meeting that my  
17 extended family vacation might prevent me to read it  
18 before this meeting, and I was correct in that, but I  
19 did skim it, and I just want to raise one matter, and  
20 I spoke to the General Counsel just for a few minutes  
21 before our meeting began to get clarification from  
22 other Commissioners.

23 I do see that the appendix on the Boston  
24 Fed. has been -- study has been rewritten, and I will  
25 read it with some more care in the next few days. But

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1 I thought at the last meeting I had also asked that,  
2 in addition to the specific criticisms of the Boston  
3 Fed. Study, that it be discussed in the text of the  
4 statutory report.

5 I don't think that staff was able to do  
6 that in the time that was allowed before it was shared  
7 with, again, you all. I didn't get it until a few  
8 days ago when I returned, and I would ask that that  
9 still be done. I intend to try to get my comments in  
10 on Sunday, but I also appreciate the General Counsel  
11 observation that, although we should meet these  
12 deadlines to help them work as efficiently as they  
13 can, that I'm glad that he and others are open to our  
14 further comment until we have a final draft to review.

15 I think there was general agreement. We  
16 moved other parts of the appendix into the text, and  
17 that seems to have been done. I think there was  
18 agreement at the last meeting that there would be a  
19 discussion of both the Boston Fed. study, the Boston  
20 Fed.'s lending standards into the text, and whether  
21 that, in fact, may have been an influence in the HUD's  
22 lending standards.

23 So unless there's any objection, I'd like  
24 to see that done in the next edition.

25 CHAIRMAN REYNOLDS: Mr. Blackwood, is your

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1 recollection of what the consensus was at the last  
2 meeting the same as Commissioner Gaziano?

3 MR. BLACKWOOD: It was roughly along the  
4 lines of what Commissioner Gaziano said. I think more  
5 along the lines of, he made that request, there was no  
6 response. I should have taken that since there was no  
7 objection to do it. We can certainly do that.

8 COMMISSIONER GAZIANO: Sure. I'll be glad  
9 to -- thank you for working with me further on that.

10 CHAIRMAN REYNOLDS: Additional comments?

11 (No response.)

12 CHAIRMAN REYNOLDS: Okay. Next up is the  
13 discussion of the 2010 statutory report.

14 IV. PROGRAM PLANNING

15 (e) DISCUSSION OF 2010 STATUTORY REPORT

16 CHAIRMAN REYNOLDS: The Commission has  
17 conducted program planning activities for 2010. The  
18 Commission staff and State Advisory Committee members  
19 submitted project recommendations and concepts to the  
20 staff director for the statutory report, briefing  
21 reports and clearing house reports. Concept  
22 suggestions were also sought from external groups as  
23 appropriate, including both governmental and  
24 non-governmental organizations.

25 The Staff Director sent a memo to

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1 Commissioners on June 29th with the following  
2 statutory reports topic for consideration. The first  
3 thing, federal and state enforcement of hate crimes  
4 laws; race neutral alternative to achieving diversity,  
5 and higher education; federal monitoring of  
6 discrimination against Native Americans in border  
7 towns; enforcement of Section 203 of the Voting Rights  
8 Act with respect to Native Americans; implementation  
9 of Individuals with Disabilities and Education Act;  
10 effectiveness of state civil rights agencies;  
11 employment discrimination on the basis of age and in  
12 the context of the economic crisis; and finally,  
13 minority youth and juvenile justice systems.

14 The Commissioners were asked to send  
15 additional suggestions by July 2nd, and the Staff  
16 Director sent these additional suggestions to  
17 Commissioners on the same date.

18 Vice Chair Thernstrom suggested a report that  
19 would examine the importance of Title VII and police,  
20 fire, and municipal employment following the Supreme  
21 Court's decision in the Ricci v. DeStefano case.

22 Commissioner Melendez has suggested a  
23 report on funding, staffing, and work load levels of  
24 federal agencies' civil rights enforcement in 2010.

25 I move that we discuss these topics. Is there a

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1 second?

2 VICE CHAIR THERNSTROM: Second.

3 COMMISSIONER GAZIANO: It is already on  
4 the agenda.

5 COMMISSIONER HERIOT: It's already on the  
6 agenda.

7 COMMISSIONER GAZIANO: I don't think we  
8 need to vote, but could I be recognized, Mr. Chairman,  
9 to discuss?

10 CHAIRMAN REYNOLDS: Of course.

11 COMMISSIONER GAZIANO: I think that  
12 obviously this discussion may be helpful just as a  
13 procedural matter, that we could possibly narrow down  
14 a few and then Commissioners, special assistants and  
15 staff can work on one, two, three or whatever  
16 competing concept papers for our August meeting.

17 One of the ones that I want to research  
18 further is a variation on Vice Chair Thernstrom's  
19 topic. I have already spoken to her a little bit. So  
20 she can correct me if I'm wrong, but the friendly  
21 amendment part to her recommendation is that our  
22 statutory report needs to examine a federal  
23 enforcement, and that the federal enforcement hook to  
24 the topic she suggested would be EEOC, and in  
25 particular, I'm interested in researching for the

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1 fellow Commissioners the effect that their guideline -  
2 - that the Supreme Court had no reason to question.  
3 The Supreme Court found that even with the existence  
4 of these guidelines -- believe that there would be a  
5 disparate impact. I think that it may be worthy of  
6 looking a little further at EEOC enforcement,  
7 particularly under the EEOC guidelines.

8 The other point that I may or may not  
9 raise, and I'd like other Commissioner input on just  
10 to develop as an option, is whether we should also  
11 look at the extent to which EEOC guidelines on  
12 disparate impact and their other enforcement affects  
13 private employers as well as public employers, and I  
14 don't have a strong feeling on what my thought is on  
15 that, but I'd propose to research that, and offer some  
16 suggestions, but I'd appreciate some feedback one way  
17 or the other if Commissioners have a feeling on that.

18 VICE CHAIR THERNSTROM: Mr. Chairman.

19 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

20 VICE CHAIR THERNSTROM: Yeah, I just want  
21 to say that Commissioner Gaziano and I have already  
22 discussed this, and I do regard it as a friendly  
23 amendment, and I accept it as such.

24 CHAIRMAN REYNOLDS: And I think that it's  
25 an excellent topic, the original and both -- and also

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1 the proposal as amended.

2 COMMISSIONER GAZIANO: If we're going to  
3 focus on that, if that's one of the ones we want to  
4 consider, I'll commit to circulating that as much  
5 before the next meeting as I can, one week at least,  
6 but do Commissioners have a thought right now, a  
7 reaction whether we should look at EEOC's enforcement  
8 or the effect of its guidelines on just public  
9 employers like police and fire, or should we examine  
10 the effect on private employers who might want to have  
11 employment testing?

12 I think this topic, by the way, is going  
13 to get a lot of attention next week at the Sotomayor  
14 hearings, and that's not in itself a reason to study  
15 this topic, but I think the opinion of the Supreme  
16 Court left a lot of questions unanswered where we can  
17 provide a lot of help.

18 VICE CHAIR THERNSTROM: I agree on that.  
19 A lot of questions unanswered left by Justice Kennedy.

20 COMMISSIONER HERIOT: Mr. Chairman.

21 CHAIRMAN REYNOLDS: Yes.

22 COMMISSIONER HERIOT: I just wanted to  
23 add, first of all, if we were to do such a topic, I  
24 very much believe we need to have a very narrow aspect  
25 of this, and we have to have in our proposal exactly

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1 what we're going to study and not simply, you know, a  
2 broad look at this topic.

3 I'd also like to add to the list here the  
4 topic that I think I mentioned last year about sex  
5 discrimination and higher education, and the impact  
6 that Title IX has had there, and I would like to do a  
7 write-up of that as a possible topic for a statutory  
8 report.

9 I'd also like to do a write-up of the hate  
10 crimes proposal as, again, a possible one. Now, I  
11 could also have those ready in August, and you know,  
12 if they don't get picked, maybe they can put into a  
13 briefing.

14 CHAIRMAN REYNOLDS: It sounds good.

15 Other comments?

16 COMMISSIONER YAKI: Mr. Chair,  
17 Commissioner Yaki.

18 I have actually two topics in mind, but  
19 I'll have them ready for the August meeting as well.

20 CHAIRMAN REYNOLDS: Okay.

21 VICE CHAIR THERNSTROM: Mr. Chairman, this  
22 is Vice Chair Thernstrom again.

23 I do agree with Commissioner Heriot that  
24 we have to do something manageable, and so with  
25 Commissioner Gaziano, with, I hope, a little input

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1 from me, we'll shape something manageable.

2 COMMISSIONER GAZIANO: We will try. I  
3 might convince myself it's not, but I want to try to  
4 see if --

5 VICE CHAIR THERNSTROM: Well, let's try  
6 anyway. I agree with that.

7 COMMISSIONER HERIOT: The metaphor I like  
8 is the cookbook. You know, we want a recipe. We want  
9 it step by step. Here's what we're going to do.

10 VICE CHAIR THERNSTROM: Well, but you  
11 know, that is difficult to do until the point at which  
12 we know what kind of information is going to be  
13 available. For instance, if we were to try to get  
14 into the question of the private sector, you know,  
15 we'd have to spend some time finding --

16 COMMISSIONER HERIOT: Yeah, but that's why  
17 I'm not in favor of doing anything that requires that  
18 we spend, you know, many weeks of time trying to  
19 figure out what's out there and then finding out that  
20 the data out there isn't what we expect it to be. You  
21 know, I think that's been a problem in the past. I  
22 think it's a problem with the current statutory  
23 report, and that's why I think it's important to do it  
24 as a cookbook.

25 VICE CHAIR THERNSTROM: Well, let us

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1 proceed. Commissioner Gaziano will proceed, and we'll  
2 see what we come up with.

3 CHAIRMAN REYNOLDS: Agreed.

4 Commissioners, in the past we have made selections  
5 where at the end of the day there has been -- when the  
6 issue is finally presented, there seems to have been  
7 an evaporation of support, and I think that that was  
8 due in part to the failure of most of it to give a  
9 long, hard look at the write-ups of the various  
10 recommendations.

11 I would urge all of us to look at this  
12 hard and to, you know, just give some thought to the  
13 various recommendations so that we don't find  
14 ourselves in a position, you know, at the end of the  
15 year, expressing regrets at the topic that was  
16 selected.

17 COMMISSIONER GAZIANO: Mr. Chairman, I'd  
18 like to ask Commissioner Yaki, if he doesn't mind --  
19 if he's not prepared at this point to mention the  
20 topics to us, I understand. That's fine. But if it is  
21 possible, Commissioner Yaki, to let us know beforehand  
22 -- the reason I mentioned my interest is to get your  
23 input and to get everyone's input on, right now, your  
24 initial reactions.

25 If you don't have them today, by the way,

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1 send me an E-mail tonight, tomorrow, next week, two  
2 weeks, but if you could share with us some of your  
3 ideas we might be able to help you modify a topic that  
4 we can all agree on.

5 Thanks.

6 CHAIRMAN REYNOLDS: Okay. Next up is the  
7 briefing report on Title IX. I have had --

8 COMMISSIONER HERIOT: We struck that.

9 COMMISSIONER GAZIANO: We struck that from  
10 the agenda.

11 CHAIRMAN REYNOLDS: Okay. Well, then,  
12 folks, we are -- one other matter. I don't know if  
13 you have been following this in the press, but there  
14 was a situation in Philadelphia where some minority  
15 kids were disinvited from using a pool. The  
16 organization is called Creative Steps Day Camp, and  
17 this issue has been discussed in the newspapers, and I  
18 would like to have the Office of the Staff Director  
19 monitor that situation and to report back to us on  
20 what the facts are and how this issue is developing.

21 COMMISSIONER GAZIANO: That reminds me.  
22 Mr. Staff Director, are you on the line?

23 STAFF DIRECTOR DANNENFELSER: I am, yes.

24 COMMISSIONER GAZIANO: Is the Washington  
25 Times correct that the DOJ has -- you can update us --

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1 as of today are you aware that the Department of  
2 Justice has answered our letter giving us answers to  
3 our questions on the dismissal of the new Black  
4 Panther lawsuit?

5 STAFF DIRECTOR DANNENFELSER: I have not  
6 seen a response to that letter yet.

7 COMMISSIONER GAZIANO: I would ask that  
8 you make serious efforts to get them to respond and to  
9 report back to us in two weeks, if there is a response  
10 or if there is not a response, because then I would  
11 propose at that two-week interval that we then be able  
12 to consider what we want to propose at our next August  
13 meeting to pursue the matter on our own.

14 I mean, it's really their job, of course,  
15 to engage in these law enforcement activities and to  
16 explain to the public what they've done, if there's  
17 these obvious serious questions of race. But if they  
18 won't help us, I still think that we need to pursue  
19 the matter and perhaps call witnesses and consider  
20 what our next step is to fulfill our duty and our  
21 obligation.

22 So can you --

23 STAFF DIRECTOR DANNENFELSER: Okay. Well,  
24 we'll look out for any response, and if we don't get  
25 one soon, we will follow up with them.

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1 COMMISSIONER GAZIANO: Okay, and you'll  
2 let us know in two weeks' time?

3 STAFF DIRECTOR DANNENFELSER: Yes.

4 COMMISSIONER GAZIANO: Thank you.

5 CHAIRMAN REYNOLDS: Okay, folks. That's it.

6 VICE CHAIR THERNSTROM: Motion to adjourn.

7 COMMISSIONER TAYLOR: Pete, this --

8 CHAIRMAN REYNOLDS: Question?  
9 Commissioner Melendez?

10 COMMISSIONER MELENDEZ: Yes, one thing.  
11 Next meeting in August? I wasn't sure.

12 CHAIRMAN REYNOLDS: August 7th, I believe.

13 VICE CHAIR THERNSTROM: August 7th, yes.

14 COMMISSIONER TAYLOR: Pete?

15 STAFF DIRECTOR DANNENFELSER: Mr.  
16 Chairman, I know we have had some discussion about the  
17 possibility of having an interim meeting before August  
18 7th to possibly consider some State Advisory Committee  
19 packages. Is that something --

20 CHAIRMAN REYNOLDS: yes. How many  
21 packages will be completed over the next, say, two to  
22 three weeks?

23 STAFF DIRECTOR DANNENFELSER: It looks  
24 like it could be as many as five that will be ready,  
25 that could be ready within two weeks.

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1                   CHAIRMAN REYNOLDS: Okay. How about this?  
2                   That we just circulate some dates to have a quick  
3                   teleconference with the only issues that would be  
4                   discussed would be the rechartering of the SACs and  
5                   would also include an update on where we are with the  
6                   conference.

7                   COMMISSIONER TAYLOR: Makes sense.  
8                   Pete.

9                   CHAIRMAN REYNOLDS: Yes.

10                  COMMISSIONER TAYLOR: I have given some  
11                  revisions on the Ohio letter that you will be  
12                  receiving soon. So - -

13                  CHAIRMAN REYNOLDS: Okay.

14                  COMMISSIONER KIRSANOW: Thank you.

15                  I have one question, Mr. Chair, of the  
16                  Staff Director if he's still on, and that is that we  
17                  had asked for certain documentation related to  
18                  requests to various agencies. I'm wondering if there  
19                  has been any update on that.

20                  STAFF DIRECTOR DANNENFELSER: Yes. We  
21                  have received several responses, and we're in the  
22                  process of following up with a few other agencies, but  
23                  I can get you more detailed response. I did send a  
24                  response about a week or a week and a half ago.

25                  COMMISSIONER KIRSANOW: I got that. Thank

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1 you very much.

2 STAFF DIRECTOR DANNENFELSER: But I will  
3 give you an update beyond that.

4 COMMISSIONER HERIOT: Are we going to get  
5 that update at the next meeting or sooner than that?

6 STAFF DIRECTOR DANNENFELSER: We should be  
7 able to get something before that. Certainly if we  
8 have a meeting in the next two weeks or so I should be  
9 able to have an update by then.

10 COMMISSIONER HERIOT: Yeah, I'd certainly  
11 like to get it as soon as possible.

12 CHAIRMAN REYNOLDS: Any other business?

13 (No response.)

14 CHAIRMAN REYNOLDS: All right. Thank you  
15 folks.

16 (Whereupon, at 12:59 p.m., the Board  
17 meeting was concluded.)

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