

U.S. COMMISSION ON CIVIL RIGHTS

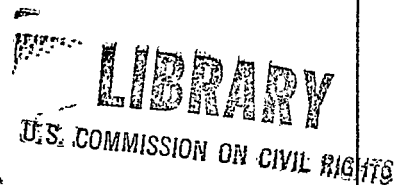
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MEETING

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Friday, September 16, 2005

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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
ABIGAIL THERNSTROM, Vice CHAIRMAN
JENNIFER C. BRACERAS, Commissioner
PETER N. KIRSANOW, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner (via telephone)
KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

TERESA BROOKS
CHRISTOPHER BYRNES
DEBRA CARR, ESQ., Associate Deputy Staff Director
IVY DAVIS, Director ERO/Acting Chief, Regional
Programs Coordination Unit

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STAFF PRESENT (Continued):

TERRI DICKERSON, Assistant Staff Director

PAMELA A. DUNSTON, Chief, Administrative Services and
Clearinghouse Division

BARBARA FONTANA

LATRICE FOSHEE

DORELLE GRAY

GEORGE M. HARBISON, Director, Human Resources

Division/Acting Chief, Budget and Finance
Division

SETH JAFFE

SOCK-FOON MACDOUGALL

TINA LOUISE MARTIN, Director for Management, Office
of Management

EMMA MONROIG, Solicitor/Parliamentarian

AONGHAS ST. HILAIRE

AUDREY WRIGHT

MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS

LISA NEUDER

KIMBERLY SCHULD

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P R O C E E D I N G S

(9:33 a.m.)

CHAIRMAN REYNOLDS: Okay. This meeting will come to order.

This is a meeting with most of the Commissioners participating here in Washington. There's an exception. Commissioner Yaki is participating by telephone.

Commissioner Yaki, are you there?

COMMISSIONER YAKI: Yes.

I. Approval of Agenda

CHAIRMAN REYNOLDS: Very good. Okay. The first item on the agenda is the approval of the agenda. Section 3 of the agenda should be amended in order to postpone until further notice the briefing on the Patriot Act as it relates to anti-Arab and anti-Muslim intolerance.

May I have a motion?

VICE CHAIRMAN THERNSTROM: So moved.

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion.

COMMISSIONER YAKI: I just want to thank the rest of the Commission for allowing this to be postponed so that I could participate in person when I am actually in Washington, D.C. So thank you very

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1 much.

2 CHAIRMAN REYNOLDS: Okay. Let's vote. All
3 in favor, please indicate by saying aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Any in opposition?

6 (No response.)

7 CHAIRMAN REYNOLDS: Okay.

8 VICE CHAIRMAN THERNSTROM: I was just
9 going to say if they were what would happen.

10 CHAIRMAN REYNOLDS: Well, we just want to
11 have it on the record.

12 Okay. The motion passes unanimously.

13 **II. Approval of Minutes**

14 CHAIRMAN REYNOLDS: Now, the agenda. We
15 have some additional amendments. There is a motion to
16 postpone a vote on the state advisory reports so that
17 the SAC working group can continue its work.

18 VICE CHAIRMAN THERNSTROM: So moved.

19 CHAIRMAN REYNOLDS: Thank you.

20 Second?

21 COMMISSIONER TAYLOR: Second.

22 CHAIRMAN REYNOLDS: Thank you.

23 Discussion?

24 (No response.)

25 CHAIRMAN REYNOLDS: All in favor please

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1 say aye.

2 (Chorus of ayes.)

3 CHAIRMAN REYNOLDS: Any in opposition?

4 (No response.)

5 CHAIRMAN REYNOLDS: Okay. The motion
6 passes unanimously.

7 Please let the record reflect that
8 Commissioner Braceras has joined us.

9 The second item is the approval of the
10 minutes of the July 22nd and August 26th meetings.
11 May I have a motion?

12 COMMISSIONER TAYLOR: So moved.

13 CHAIRMAN REYNOLDS: May I have a second?

14 COMMISSIONER KIRSANOW: Second.

15 CHAIRMAN REYNOLDS: Any discussion?

16 (No response.)

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

19 (Chorus of ayes.)

20 CHAIRMAN REYNOLDS: Any in opposition?

21 (No response.)

22 CHAIRMAN REYNOLDS: The motion passes
23 unanimously.

24

25

III. Announcements

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1 Okay. At this point next up are
 2 announcements. I'd like to take a minute on behalf of
 3 the Commission to acknowledge the victims of Hurricane
 4 Katrina in Louisiana, Mississippi, and Alabama.
 5 Although these people have experienced unbearable
 6 hardships and may continue to do so for some time, we
 7 all can take solace in the amazing outpouring of
 8 support these individuals have received from their
 9 fellow citizens in surrounding states and from all
 10 over the United States.

11 On behalf of the U.S. Commission on Civil
 12 Rights, I encourage all who are here today, as well as
 13 all people, to contribute to Katrina relief efforts in
 14 any way you see fit.

15 Finally, on February -- September 2nd, a
 16 special message was sent to SAC members in Alabama,
 17 Louisiana, and Mississippi expressing the Commission's
 18 best wishes on behalf of the Commissioners, Staff
 19 Directors and staff, as well as asking that they
 20 report to the central regional office any allegations
 21 of discrimination in the recovery efforts.

22 This week is National Historical Black
 23 Colleges and Universities Week. HBCUs have educated
 24 many American leaders and continue to play an
 25 instrumental role in providing educational

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1 opportunities for all people.

2 This Commission is dedicated to insuring
3 that these valued institutions continue to maximize
4 their ability to contribute to our intellectual and
5 cultural progress, and we'll conduct a briefing in the
6 coming year to investigate the best ways to achieve
7 this goal.

8 Yesterday marked the beginning of Hispanic
9 Heritage Month. This is a month which we celebrate
10 the tremendous contributions of Latinos to our
11 country. On behalf of the U.S. Commission on Civil
12 Rights, I call upon all people of the United States to
13 observe the month with appropriate ceremonies and
14 activities.

15 Yesterday, September 15th, marked the 42nd
16 anniversary of the 1963 bombing of the 16th Street
17 Baptist Church in Birmingham, Alabama by the Klu Klux
18 Klan. This tragic bombing carried out by cowardly
19 racists killed four young black girls. Events such as
20 this one hopefully can teach us to remain ever
21 vigilant to assure that those who attempt to impose
22 their will on their fellow Americans by force or
23 coercion are never allowed to do so.

24 Next up we will discuss some personnel
25 matters. First I'd like to announce that Jenny Park,

1 an attorney advisor at the Commission for over five
 2 years, left the Commission earlier this week to accept
 3 a position with the Patent and Trademark Office. On
 4 behalf of the Commission, I want to acknowledge her
 5 excellent contributions to the Commission over these
 6 past years. We all wish her the best in her new
 7 position.

8 Cecilia Towns, who cannot be here today,
 9 began an internship with the Office of Civil Rights
 10 Evaluation earlier this week. Cecilia is a senior at
 11 Howard University majoring in African American
 12 studies. She will be with the Commission through
 13 December 6th.

14 And at this point we'll hear from the
 15 Staff Director.

16 COMMISSIONER KIRSANOW: Mr. Chair.

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER KIRSANOW: I just wanted to
 19 make one brief note that the Roberts civil rights
 20 record that my assistant had prepared and we
 21 distributed at the last meeting was introduced into
 22 the record of the Roberts confirmation hearing, and I
 23 think that's a good thing. It, I think, fleshes out
 24 the record of Judge Roberts. I think it's good for
 25 the Commission to have weighed in in some fashion

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1 without, you know, an opinion.

2 And, again, I appeared in my personal
3 capacity yesterday, and we may want to think at some
4 point about, as part of our clearing house function,
5 making that report available generally to the public.

6 CHAIRMAN REYNOLDS: Okay. I think that we
7 should prepare a motion and at our next meeting have
8 discussions on -- Commissioner Braceras?

9 COMMISSIONER BRACERAS: I haven't received
10 a copy of it yet.

11 CHAIRMAN REYNOLDS: That's amazing.

12 COMMISSIONER BRACERAS: I've asked several
13 people several times. Remember I E-mailed you back
14 that I couldn't open it and could I have a hard copy?
15 It's okay.

16 And I mentioned it to Chairman Reynolds.

17 CHAIRMAN REYNOLDS: And I asked someone to
18 do it. Okay, okay.

19 COMMISSIONER BRACERAS: So I have --

20 CHAIRMAN REYNOLDS: Let's do magic.

21 COMMISSIONER BRACERAS: Thank you. I
22 will do so now.

23 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

24 VICE CHAIRMAN THERNSTROM: Neither
25 Commissioner Braceras nor Commissioner Kirsanow

1 testified yesterday speaking for the Commission. They
2 went there speaking for themselves, but I want to
3 commend both of them on the superb job that they did,
4 and it was nice to see two faces of the Commission
5 even in an unofficial capacity do as well as both of
6 them did.

7

8 COMMISSIONER KIRSANOW: Thank you.

9 CHAIRMAN REYNOLDS: Okay. At this point
10 we'll hear from the Staff Director.

11 **IV. Staff Director's Report**

12 MR. MARCUS: Thank you, Mr. Chairman,
13 Madam Vice Chairman, Commissioners.

14 If it please the Commission I'd like to
15 extend my written Staff Director's report with brief
16 additional remarks regarding agency reform and
17 Hurricane Katrina.

18 I'll begin with agency reforms. We
19 continue to work toward meeting the goal of
20 implementing all pending GAO recommendations,
21 resources permitting, by mid-January 2005.
22 Considerable progress has been made over the course of
23 the summer.

24 For example, we have recently issued
25 administrative instructions establishing new controls

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1 for procurement management. These AIs address general
 2 GAO concerns regarding over centralization of
 3 contracting functions within the office of the Staff
 4 Director and the specific recommendation regarding
 5 greater controls over contracting activities.

6 We plan to provide more agency reforms
 7 regarding procurement over the coming months.

8 We've also recently submitted our budget
 9 estimate to OMB based on the figures recently approved
 10 by the Commission. The budget estimate incorporates
 11 new proposed strategic goals that have been
 12 distributed to the Commissioners and on which we are
 13 now seeking stakeholder input.

14 The inclusion of strategic goals reflects
 15 the work that we are doing to revamp the agency's
 16 strategic planning.

17 We currently are preparing both a five-
 18 year strategic plan and a human capital strategic plan
 19 which we plan to have available in proposed final form
 20 in time for the December meeting. This also responds
 21 to a series of GAO recommendations.

22 We have also recently established a formal
 23 policy on telework. Our new telework policy is part
 24 of a general federal program designed to reduce
 25 traffic and improve the environment, improve employee

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1 morale and commitment, improve productivity and
2 quality of work, help hire and retain employees, and
3 enable employees to better arrange their use of leave.
4 It is also required by federal law.

5 Yesterday, we submitted a report to
6 Congress describing the significant steps that the
7 agency has undertaken to reform our financial
8 operational project planning, strategic planning, and
9 communications processes. In this report we describe
10 both the significant progress that we have made over
11 the last nine months, as well as significant reform
12 activities still underway.

13 This report is required by the House
14 appropriations bill committee report. A similar
15 report will be required by the end of this month to
16 the Senate appropriations committee.

17 I'd also like to say a few words about
18 Hurricane Katrina. As the Chairman has indicated, our
19 regional office coordinator at my request sent a
20 special message to State Advisory Committee members in
21 Alabama, Louisiana, and Mississippi shortly after
22 Hurricane Katrina, and then additional messages were
23 sent to other State Advisory Committees around the
24 country.

25 These messages expressed best wishes on

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1 behalf of the Commissioners, the Staff Director and
 2 staff of the agency. They also requested that State
 3 Advisory Committee members report to the central
 4 regional office any allegations of discrimination in
 5 the recovery effort. We have received only a few
 6 responses from State Advisory Committee members,
 7 although our regional offices are tracking media
 8 reports.

9 Last week Louisiana and Alabama SAC
 10 members emphasized the following concerns.

11 One, that needed assistance is not getting
 12 to the rural areas; and

13 Two, that there are reports that Southern
 14 Baptist Convention churches are restricting their
 15 efforts to affiliates only.

16 This week our central regional office
 17 received two additional messages from SAC members.
 18 First, one SAC member in Baton Rouge, Louisiana said
 19 the following: "I'm volunteering with the Red Cross
 20 here. We have one parish that is known for being very
 21 segregated, and that is putting it politely. They
 22 have essentially told the Red Cross that they do not
 23 want 'those people' in their parish. They have made
 24 us consolidate our evacuees to one location and
 25 indicated that they did not want any new evacuees once

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those were gone."

Another SAC member in Jackson, Mississippi said the following: "The generosity and support for Katrina victims within Jackson has been amazing. Fortunately, I am unable to report any racial problems."

Those are the responses that we've gotten from SAC members. To the extent that we get additional reports over the coming weeks and months we will continue to pass them along to the Commission members. That is my report.

CHAIRMAN REYNOLDS: Okay. Could you shed some additional light on this move in the Senate to reduce our budget by \$96,000?

MR. MARCUS: Yes, Mr. Chairman. The House of Representatives had recently passed an appropriations bill which provided funding for this agency for fiscal year 2006 at a level of \$9.096 million, which is consistent with our 2005 funding and is also consistent with the amount requested in the President's budget.

Recently the Senate has been debating an appropriations bill that would provide funding to the agency of only \$9 million even, which is a \$96,000 reduction from our current budget.

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1 CHAIRMAN REYNOLDS: And it's my
 2 understanding that the folks in the Senate believe
 3 that this is not a reduction in our budget; is that
 4 correct?

5 MR. MARCUS: The language in the committee
 6 report indicated that the \$9 million even would
 7 represent a slight increase of, I believe, \$25,000
 8 over 2005 levels. We're trying to determine why they
 9 believe that it would be an increase when it appears
 10 to be a decrease in the amount of \$96,000, and we'll
 11 be communicating appropriately with congressional
 12 staff.

13 CHAIRMAN REYNOLDS: Okay. Any other
 14 questions or concerns?

15 COMMISSIONER KIRSANOW: Yes. Mr. Staff
 16 Director, a couple of things. One is where are we
 17 right now with respect to getting on line for the
 18 audit or can we implement an audit at this point?

19 MR. MARCUS: We have now issued two
 20 requests for proposals. The first time we issued a
 21 request for proposals there were a number of responses
 22 by outside accounting firms who were interested in
 23 submitting a bid, but in the end none of them did.

24 We then went back to them to ask why they
 25 did not submit a bid. They had various reasons. Some

1 of them indicated that they simply did not have enough
 2 time. Others indicated that they didn't think they
 3 would have enough resources to do it. At least one
 4 indicated that they did not think that we would be
 5 auditable for the 2005 fiscal year.

6 Based on the fact that some of the
 7 accountants suggested that they might have submitted a
 8 bid if they had had more time to do so, we then issued
 9 a second RFP. The deadline for responding to that RFP
 10 passed approximately a week ago.

11 We received three bids and a few non-bid
 12 responses. We have contacted at least one of the
 13 nonbidders to find out why they hadn't bid, and we
 14 found out that it was not based on a concern that we
 15 were not auditable.

16 So we now have three bids to choose among,
 17 and we are currently in the process of assembling a
 18 technical panel to review them, including making
 19 contacts to persons outside the agency who have
 20 sufficient technical expertise that they could assist
 21 us in choosing among the panelists in determining to
 22 what extent the bids are appropriate and could provide
 23 the services we require.

24 COMMISSIONER KIRSANOW: Mr. Chair, just a
 25 suggestion. You know, for a while we have suspended

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1 the regular meetings of the Budget Committee mainly
 2 because there wasn't a whole lot to report. We may
 3 want to revisit whether or not we should have a couple
 4 of meetings as matters develop so that we don't take
 5 up time here talking about it.

6 CHAIRMAN REYNOLDS: Okay. Did you have
 7 any conversations? My concern is that we have at
 8 least one firm that has concluded that because of our
 9 lack of documentation we cannot be audited. I don't
 10 want to spend money and then at the end of the process
 11 have whichever firm that is selected reach the same
 12 conclusion.

13 I don't know if this is possible, but on
 14 the front end could we ask the three companies that
 15 have submitted bids to render an opinion as to whether
 16 it's possible to audit our books if we were to provide
 17 them with a description of the type of documentation
 18 we have in our possession?

19 Based on that information, they could give
 20 us an indication whether they were confident that at
 21 the end of the process, you know, that they would not
 22 tell us that an audit is not possible.

23 MR. MARCUS: We can certainly review both
 24 with our legal staff and also with our outside
 25 procurement consultant, to the extent that's

1 permissible within the rules, and if it is, then we
2 can certainly speak to them about it.

3 It is my understanding that those three
4 bidders did believe that we were auditable, and at
5 least one of the non-bidders did explicitly state that
6 they believed that we are auditable. They're just not
7 sure the amount of time and resources that would be
8 required to audit us.

9 We have heard from some outsiders that the
10 issue in their mind is not so much whether we were
11 auditable as the amount of time and resources
12 necessary to complete the job, but we'll be happy to
13 consult with legal and procurement consultants to
14 determine whether we can seek additional statements
15 from the bidders.

16 CHAIRMAN REYNOLDS: Okay. Commissioner
17 Kirsanow.

18 COMMISSIONER KIRSANOW: Thank you.

19 Mr. Staff Director, I don't know if you
20 know this. With respect to the Senate appropriations,
21 do we have any kind of a timetable for when this all
22 goes to conference?

23 MR. MARCUS: We've not heard a timetable,
24 but we can certainly make inquiries and pass the
25 information along to the Commissioners.

1 COMMISSIONER KIRSANOW: I mean, as we all
2 know, we spoke with a number of people on the
3 congressional side several months ago, and it may be a
4 good idea to revisit that procedure.

5 MR. MARCUS: The matter was still being
6 debated by the Senate yesterday. They may have passed
7 it yesterday. If not, I expect it imminently and we
8 can find out when it will go to conference.

9 CHAIRMAN REYNOLDS: Any other questions,
10 concerns, comments?

11 (No response.)

12 **V. State Advisory Committee Issues**

13 CHAIRMAN REYNOLDS: Okay. We have some
14 additional motions. Here I'll read the next motion.
15 It reads:

16 "I move that the Commission request that
17 the State Advisory Committees in the regions and
18 states to be identified by the General Counsel take up
19 the desegregation status of public school districts
20 within their jurisdiction as a research project. This
21 project will support the work of the Office of General
22 Counsel in producing the 2007 statutory enforcement
23 report on the same topic.

24 "As of 2001, there were 400 school
25 districts still under federal supervision with respect

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1 to desegregation. The Commission's statutory
 2 enforcement report on the desegregation status of
 3 elementary and secondary schools would examine the
 4 unitary status of the schools and possibly others to
 5 determine the success or failure of desegregation. It
 6 would be helpful to have State Advisory Committees in
 7 all states affected by court desegregation orders
 8 collect data on the relevant school districts within
 9 their respective jurisdictions."

10 May I have a motion?

11 COMMISSIONER KIRSANOW: So moved.

12 CHAIRMAN REYNOLDS: A second?

13 COMMISSIONER TAYLOR: Second.

14 CHAIRMAN REYNOLDS: Discussion?

15 VICE CHAIRMAN THERNSTROM: Go ahead, Jen.

16 COMMISSIONER BRACERAS: No. You, Madam
 17 Vice Chair.

18 VICE CHAIRMAN THERNSTROM: Give us a
 19 little background on this. Has there been a
 20 conversation with the regional offices, the State
 21 Advisory Committees as to their capacity to do exactly
 22 what?

23 MR. MARCUS: Mr. Chairman, if I may.

24 CHAIRMAN REYNOLDS: Yes.

25 MR. MARCUS: There have been a few

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1 conversations in some regions, but not with all
 2 potentially affected regions. The southern regional
 3 office has already developed a number of ideas about
 4 how this can be done and, in fact, has been
 5 communicating with State Advisory Committees in their
 6 region and has done a considerable amount of work on
 7 some states to look into the current status of
 8 desegregation efforts in their states.

9 Within the central regional office, there
 10 has been some discussion at a preliminary level,
 11 although I don't believe that there has been work
 12 done.

13 There are other regional offices that are
 14 potentially implicated around the country where I
 15 don't believe work has been done.

16 We are now at a point where I expect that
 17 there would be work by some State Advisory Committees,
 18 but this is certainly something where we could profit
 19 from having views of a larger number, and if so, have
 20 nationwide coordination to insure that the data is as
 21 consistent as possible.

22 There are precedents for requests by the
 23 Commission that State Advisory Committees look into
 24 matters. Since under FACA they are independent
 25 entities, they can look at issues that they choose to,

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23
1 but the Commission has, for instance, after September
2 11 recommended that State Advisory Committees look
3 into post 9/11 issues, and State Advisory Committees
4 have done so.

5 This is already an issue that is being
6 looked into by some SACs, and the question is whether
7 it would be helpful to urge that a greater number of
8 them look into it.

9 Currently, as the Commissioners recall,
10 there is a project that has been approved for the
11 Office of General Counsel for 2007 regarding
12 elementary and secondary desegregation. It will be
13 the statutory enforcement report for this year.

14 The Office of General Counsel, of course,
15 is far smaller now than it was a few years ago. It
16 was only a few years ago that there were more than ten
17 attorneys in the Office of General Counsel. We
18 currently have two attorneys. So they are now under a
19 challenge to be able to do meaningful analyses at the
20 same time they are doing the legal work of the agency.

21 By having the State Advisory Committees
22 look at things first and then provide that by way of
23 support to the Office of General Counsel, we could
24 satisfy a few different goals. One is we could insure
25 or at least recommend that State Advisory Committees

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1 are working on issues that have been identified as
2 national priorities by this Commission when it votes
3 on these projects.

4 Second, it can be a way of compensating
5 for a lack of resources both at a regional level and
6 at the Office of General Counsel by having a greater
7 degree of cooperation between the Office of General
8 Counsel, the regional offices, and the State Advisory
9 Committees.

10 Third, it can enrich both the work of the
11 State Advisory Committees and the Office of General
12 Counsel by having an interchange between the two.

13 With respect to the State Advisory
14 Committees, they have a capacity to bring a great deal
15 of local information and knowledge to issues that
16 really are local in nature, and when it comes to these
17 desegregation agreements, we see a great deal of local
18 variations even within particular states.

19 At the same time, our regional staff does
20 not include any attorneys so that by involving the
21 regional offices with the Office of General Counsel,
22 we have a natural way to combine the local information
23 in connection with the State Advisory Committee, the
24 social scientific expertise that we have at the
25 regional level, as well as the legal expertise within

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1 the Office of General Counsel.

2 VICE CHAIRMAN THERNSTROM: You know, I
3 appreciate everything that you're saying, but -- there
4 is a "but" here -- before I am willing to urge a large
5 number of SACs to work on this, I'd like to see
6 something of the work that the SACs that area already
7 engaged in this issue have done so that I have some
8 sense of whether I think the questions they're asking
9 are the right ones, the way they're collecting data is
10 correct, what we're likely to get at the end of the
11 day.

12 I wonder if this can't be done in stages
13 so that we have a little bit more information before
14 we sign onto a kind of blanket request here.

15 MR. MARCUS: What I would propose is as
16 follows. I have already asked the Office of General
17 Counsel to expedite their work in developing the
18 discovery plan in conceptual phase for the elementary
19 and secondary projects. Since it's a 2007 project,
20 they would normally not be doing that for a
21 considerable length of time, but I would like to get
22 at a national level a model working with the regional
23 offices so that we can get Commissioner input at an
24 early stage that can guide the State Advisory
25 Committees.

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1 What I'm concerned about is that if we
 2 don't do that and the State Advisory Committees go too
 3 far too quickly, since some of them are already
 4 looking at the issue, we may be deprived of the
 5 opportunity to get SAC input on the issues and
 6 methodologies that the Commissioners choose to have.

7 VICE CHAIRMAN THERNSTROM: Okay, but if we
 8 were to give those SACs that are already working on
 9 the issue input rather than extending the invitation
 10 for everybody to join in the effort, then we would be
 11 developing guidelines for SACs that will subsequently
 12 be looking at the issue.

13 I mean, you know, I would just like to see
 14 up front what's been done so far, again, what the
 15 questions being asked, et cetera, are and so that they
 16 get our input at this stage before we've got an awful
 17 lot of SACs working on the same issue.

18 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
 19 so you don't think there will be sufficient time to
 20 revise or redirect the efforts after we have prepared
 21 a document that lays out the process and the
 22 questions, the methodology?

23 VICE CHAIRMAN THERNSTROM: It just seems
 24 to me the earlier we deliver messages about how we
 25 would like to see the issue framed, obviously they are

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1 independent, but how we would like to see the issue
2 framed, the better off we are, and the best way to do
3 that is to look at the work of SACs who have already
4 started down this road.

5 CHAIRMAN REYNOLDS: Okay. Any other
6 comments?

7 (No response.)

8 CHAIRMAN REYNOLDS: All right. So, Ken,
9 at this point who started work on the project?

10 MR. MARCUS: Work has been started and
11 considerable work has been done within the Southern
12 Regional Office.

13 VICE CHAIRMAN THERNSTROM: Good. Can we
14 look at that? Is there anything to look at?

15 MR. MARCUS: I can certainly provide a
16 description of the methodology that they're following,
17 certainly.

18 CHAIRMAN REYNOLDS: Have they collected
19 any data at this point?

20 MR. MARCUS: Yes.

21 CHAIRMAN REYNOLDS: Okay. All right. So
22 if I understand, Vice Chair Thernstrom, the concerns
23 that you've just expressed, that what you would like
24 to do is to table this issue until we've had an
25 opportunity to review the work or at least some of the

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1 work that has been done.

2 VICE CHAIRMAN THERNSTROM: That's correct.

3 I would like to table the motion as currently
4 written, yes, until we've had an opportunity to get
5 our arms around what's been done.

6 CHAIRMAN REYNOLDS: Okay. This would not
7 affect our timetable; is that correct?

8 MR. MARCUS: If we postpone it, then the
9 soonest we could vote on this is a month from now, and
10 the only issue is whether in the intervening months
11 there are State Advisory Committees that would vote to
12 undertake different projects for the incoming year and
13 so they wouldn't be looking at that. That's the only
14 clarification.

15 CHAIRMAN REYNOLDS: Okay. We have what I
16 will treat as a motion to table.

17 VICE CHAIRMAN THERNSTROM: Yes. Let me
18 just ask a question about that. Is there some way of
19 communicating to the SACs that we will be in a month
20 taking up this issue and they might keep in mind that
21 we have a particular interest, but we have not yet
22 voted on the matter?

23 MR. MARCUS: I suppose we could, although
24 at this point I think that we wouldn't be asking them
25 to look at elementary and secondary. All that I could

1 tell them at this point without further guidance is
2 that the Commissioners are considering whether or not
3 to make a recommendation that --

4 VICE CHAIRMAN THERNSTROM: Okay. Well,
5 that's fine. At least it alerts them that this is an
6 issue of potential interest to us.

7 MR. MARCUS: We could certainly pass that
8 along.

9 CHAIRMAN REYNOLDS: Okay. Is there a
10 second?

11 COMMISSIONER BRACERAS: Second.

12 CHAIRMAN REYNOLDS: Additional discussion?

13 COMMISSIONER YAKI: I have a question.
14 Did we have (unintelligible) Voting Rights Act?

15 CHAIRMAN REYNOLDS: I'm sorry,
16 Commissioner Yaki. I didn't understand you.

17 VICE CHAIRMAN THERNSTROM: It's not
18 because you ---

19 COMMISSIONER YAKI: Am I incomprehensible
20 or you --

21 VICE CHAIRMAN THERNSTROM: No, no, no.

22 CHAIRMAN REYNOLDS: Okay. That's much
23 better.

24 VICE CHAIRMAN THERNSTROM: It's purely an
25 electronic problem.

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1 COMMISSIONER YAKI: I've heard that excuse
2 before.

3 Just asking did we ever ask the SACs to do
4 anything similar with regard to the Voting Rights Act.

5 CHAIRMAN REYNOLDS: Does anyone recall?

6 MR. MARCUS: I don't believe so. We had
7 not done this very frequently in the past, although
8 this is a model that, if successful, I think we should
9 consider doing for projects in the future.

10 COMMISSIONER YAKI: Well, obviously the
11 VRA is the big project for next year and probably the
12 member states that would be looking at this would be
13 limited by (unintelligible) to consider that as well.

14 I would, for the purposes of comity -- c-o-m-i-t-y,
15 not comedy -- acquiesce with Commissioner Thernstrom's
16 request for, I guess, a stay of this forum. I will in
17 the end be supporting the Staff Director
18 recommendation.

19 CHAIRMAN REYNOLDS: Additional comments?

20 (No response.)

21 CHAIRMAN REYNOLDS: Okay. All in support
22 of Vice Chair Thernstrom's motion please say aye.

23 (Chorus of ayes.)

24 CHAIRMAN REYNOLDS: Any in opposition?

25 (No response.)

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1 CHAIRMAN REYNOLDS: Okay. The motion
2 passes unanimously.

3 Next up. Here's the motion.

4 "I move that the Commission approve the
5 report produced by the Office of the Staff Director on
6 the briefing the Commission held on July 15th, 2005,
7 on the stagnation of the black middle class. The
8 report as distributed in draft form to Commissioners
9 includes an executive summary of the panelists'
10 testimony, their written statements and statements
11 from the Chairman" -- that's me -- "and Commissioner
12 Yaki."

13 May I have a motion?

14 VICE CHAIRMAN THERNSTROM: So moved.

15 CHAIRMAN REYNOLDS: A second?

16 COMMISSIONER BRACERAS: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 (No response.)

19 CHAIRMAN REYNOLDS: All in favor please
20 indicate by saying aye.

21 (Chorus of ayes.)

22 CHAIRMAN REYNOLDS: Any in opposition?

23 (No response.)

24 CHAIRMAN REYNOLDS: The motion passes
25 unanimously.

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1 Okay. Let's see what we have left.

2 Okay. I believe this is the last motion.

3 "In Adarand v. Pena, the Supreme Court
 4 quoting Richmond v. Croson stated that 'absent
 5 searching judicial inquiry into the justification for
 6 such race based measures, there is simply no way of
 7 determining what classifications are benign or
 8 remedial and what classifications are, in fact,
 9 motivated by illegitimate notions of racial
 10 inferiority or simple racial politics.' The Court
 11 went on to hold that federal programs that use racial
 12 classification are subject to strict judicial
 13 scrutiny.

14 "While the Court has not provided clear
 15 guidance on the contours of the strict scrutiny
 16 standard, it is clear that any state or federal agency
 17 that uses racial preferences must provide a strong
 18 basis in evidence for the conclusion that the use of
 19 racial preferences is necessary.

20 "In an attempt to comply with this
 21 constitutional requirement, federal and state agencies
 22 and contractors have commissioned disparity studies to
 23 demonstrate discrimination with the statistical
 24 analysis showing under representation of minorities or
 25 women among federal contractors. The briefing would

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1 feature academic experts, and the subject matter, who
2 can provide a wide range of viewpoints about the
3 methodological and empirical strength and quality of
4 disparity studies conducted since 1995 and the
5 relationship of these studies to federal agencies'
6 procurement activities."

7 May I have a motion in support?

8 VICE CHAIRMAN THERNSTROM: So moved, but
9 because I don't know my Robert's Rules the way I
10 should --

11 CHAIRMAN REYNOLDS: We're pretty informal
12 around here.

13 VICE CHAIRMAN THERNSTROM: -- it seems to
14 me the sentence "in an attempt to comply" should
15 include or it should read "federal and state agencies,
16 municipalities, and contractors." A lot of these
17 disparity studies have been commissioned by
18 municipalities.

19 CHAIRMAN REYNOLDS: Okay. I will take
20 that as an amendment. Is there a second to the
21 amended motion?

22 COMMISSIONER BRACERAS: Second.

23 CHAIRMAN REYNOLDS: Thank you.

24 Discussion?

25 COMMISSIONER YAKI: Discussion. What

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1 would be the timing?

2 CHAIRMAN REYNOLDS: Staff Director Marcus?

3 MR. MARCUS: I would recommend December
4 for it, the advantage being that it would be in the
5 same calendar year as two important studies. First,
6 the Adarand report that we're doing, and second, a
7 report by the National Academy of Science dealing with
8 disparity studies, and I would think that it would be
9 useful to have this briefing close in time and
10 preferably in the same calendar year as those two, as
11 the reports come out.

12 COMMISSIONER YAKI: Okay. Thank you.

13 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

14 VICE CHAIRMAN THERNSTROM: I'm just
15 looking at this same sentence again. I don't think
16 contractors themselves, but I could be wrong, have
17 commissioned disparity studies. It's really federal
18 and state agencies as well as municipalities. I don't
19 believe contractors are commissioning these, but I
20 could be wrong again. Other people here probably know
21 better.

22 CHAIRMAN REYNOLDS: Well, I don't know.
23 Out of an abundance of caution, how about if we just
24 leave that in. I don't think anything would turn on
25 it if we turn out to be wrong or if you turn out to be

1 right, I should say.

2 Commissioner Taylor.

3 COMMISSIONER TAYLOR: I just have a
4 question as to the direction. It seems rather narrow,
5 and I just want to make sure. Is that intentional?
6 We're going to focus on really the debate as to the
7 quality of the study. Is that what we're really
8 focusing on here rather than this third bullet point,
9 which to me personally is probably more important
10 relative to Adarand in the sense that even if you have
11 a study that is properly done and you demonstrate the
12 disparities, I mean, that's just the first question.

13 So are we intentionally being this narrow
14 or maybe it's just me that thinks it. I'm more
15 concerned about the second question than I am, quite
16 frankly, about the first.

17 CHAIRMAN REYNOLDS: Okay. Let me catch up
18 with you. I'm trying to find that bullet point that
19 you're referring to.

20 COMMISSIONER BRACERAS: Yeah, me, too.

21 VICE CHAIRMAN THERNSTROM: What bullet
22 point? What are you looking at?

23 COMMISSIONER TAYLOR: The scope.

24 CHAIRMAN REYNOLDS: Are you in Section 7?

25 COMMISSIONER TAYLOR: No. I'm sorry.

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1 Mine is maybe numbered a little differently than you
2 all.

3 VICE CHAIRMAN THERNSTROM: I don't have
4 any numbers at all. That's the problem.

5 COMMISSIONER TAYLOR: Lisa is going to
6 help here.

7 CHAIRMAN REYNOLDS: Okay. Does everyone
8 have the document?

9 COMMISSIONER BRACERAS: I don't have the
10 document.

11 CHAIRMAN REYNOLDS: Okay. Would you mind
12 reading the particular bullet that you're concerned
13 about?

14 COMMISSIONER TAYLOR: This relates to the
15 scope of the study, and the third bullet point reads,
16 "The relationship of these studies to federal
17 agencies' procurement activities," which is something
18 I agree with.

19 CHAIRMAN REYNOLDS: Okay, and your
20 concern?

21 COMMISSIONER BRACERAS: I'm sorry. Just
22 to clarify, is this the document that was prepared
23 just for your personal use?

24 CHAIRMAN REYNOLDS: No, it's in the
25 briefing book.

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1 VICE CHAIRMAN THERNSTROM: It is in the
2 briefing book.

3 COMMISSIONER BRACERAS: I don't have that.

4 VICE CHAIRMAN THERNSTROM: It's at the
5 very end, Jennifer, very end. In fact, it's the last
6 page.

7 COMMISSIONER BRACERAS: I didn't receive
8 it.

9 CHAIRMAN REYNOLDS: Did you look in
10 Section 8?

11 COMMISSIONER BRACERAS: I don't think I
12 have that section for some reason.

13 Okay. That's fine. I think for some
14 reason we either didn't receive that one or just
15 missed it. Okay. Thank you very much.

16 MR. MARCUS: Let me say that there was not
17 intended to be a discrepancy between the concept paper
18 and motion. The idea is that the briefing will look
19 primarily at the methodologies used in the disparities
20 studies, but that the briefing may be broad enough to
21 include not just the narrow methodological question,
22 but also as the bullet point points out, the
23 relationship of these studies to federal agencies'
24 procurement.

25 CHAIRMAN REYNOLDS: Yes, but that was a

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1 part of the motion also.

2 COMMISSIONER TAYLOR: It was. I just
3 wanted to get a sense of the body as to what folks
4 were most interested in and as we identified potential
5 panelists and speakers.

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER TAYLOR: It was more of a
8 question than anything else.

9 CHAIRMAN REYNOLDS: Well, you have kicked
10 up all of this dust here.

11 COMMISSIONER TAYLOR: Yeah, it was just a
12 general question. I mean, I'm just personally -- and
13 even if we agree that the study, again, has been
14 properly done and demonstrates disparities, I mean, I
15 just tend to be more focused on the next question.

16 CHAIRMAN REYNOLDS: Okay, and please
17 articulate that.

18 COMMISSIONER TAYLOR: From my perspective
19 at least the next question is rather simple, and
20 again, this is how I frame the issue. I tend not to
21 be as focused on whether or not there are disparities
22 since I can agree that there's a disparity and then
23 start to focus on the important policy issue, that is,
24 whether or not, again, as we addressed in our Adarand
25 report, whether or not we ask the agencies to do the

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1 hard work of identifying the hurdles in place that are
2 creating the disparities.

3 And then the second question is whether or
4 not they're really focusing whether in a race neutral
5 way or race conscious way on addressing those issues.

6 As it was read, at least, this sounded
7 narrowly crafted to address methodology, which is
8 important because we've also had discussions about
9 disparity generally, and if it's intended to touch
10 upon that for those studies, then I wanted to know
11 that versus that broader question.

12 CHAIRMAN REYNOLDS: Okay. I'm just going
13 to jump in here quickly. At least my view of this
14 proposal, it's first to assess the factual predicate
15 for using racial preferences, and also I hope that
16 this proposal would also look into whether -- well,
17 you may have a statistical disparity that has nothing
18 to do with discriminatory conduct, and for example, do
19 they disaggregate those types of statistical -- well,
20 that type of under representation versus under
21 representation that could be traced back to
22 discriminatory conduct.

23 So that's what I was thinking, and the
24 rest of the Commission will speak for themselves.

25 Vice Chair Thernstrom?

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VICE CHAIRMAN THERNSTROM: Yeah.

Commissioner Taylor, it seems to me we're not simply examining methodology here. I think we're also looking at the underlying assumptions, and this is really piggybacking on what the Chair just said.

And on the same page that you're looking at, one of the sentences says here the critiques point to a number of questions are listed, but the last one is the lack of a theory of discrimination underlying the study.

And I would hope that as we look at this issue we would talk precisely about that, that is, precisely about the relationship between disparities and discrimination.

COMMISSIONER TAYLOR: Okay, okay.

VICE CHAIRMAN THERNSTROM: And how do you know when there's a close connection and where the questions lie when the connection seems more tenuous.

CHAIRMAN REYNOLDS: Commissioner Taylor, thank you for kicking up the dust. It has helped clarify the issue.

COMMISSIONER TAYLOR: I just wondered what our other folks were reading. That's all.

MR. MARCUS: Mr. Chairman, if I may, I think there is one point where it would be useful to

1 have some clarity. While the issues that Vice
 2 Chairman Thernstrom indicated are part of this scope,
 3 as it was written the scope does not include and was
 4 not intended to include the question as to whether
 5 agencies assure us they're assuring race neutral
 6 alternatives.

7 That, of course, is the main subject of
 8 the report, but it is not intended to be part of the
 9 briefing. I suppose it could be but that was not part
 10 of the scope. If Commissioners wanted a change, then
 11 we could make the change.

12 VICE CHAIRMAN THERNSTROM: No, no. I did
 13 not mean to indicate that that become part of the
 14 scope, but simply that we flesh out the underlying
 15 assumptions.

16 COMMISSIONER TAYLOR: I know our language
 17 has become rather loose. We now equate disparity with
 18 discrimination, and we're --

19 VICE CHAIRMAN THERNSTROM: Right, right.

20 COMMISSIONER TAYLOR: -- the issue.

21 VICE CHAIRMAN THERNSTROM: Exactly. This
 22 report should raise questions about the legitimacy of
 23 doing so, and if legitimate, in what context?

24 CHAIRMAN REYNOLDS: Okay. Any other
 25 questions or comments?

1 (No response.)

2 CHAIRMAN REYNOLDS: Okay. At this point
3 we'll vote. All in favor please indicate by saying
4 aye.

5 (Chorus of ayes.)

6 CHAIRMAN REYNOLDS: All in opposition?

7 (No response.)

8 COMMISSIONER YAKI: I'll abstain.

9 CHAIRMAN REYNOLDS: Okay. Please let the
10 record reflect that Commissioner Yaki abstained. The
11 motion passes.

12 All right. Well, we're at a close. Oh,
13 I'm sorry. Commissioner Braceras.

14 COMMISSIONER BRACERAS: Just before we
15 adjourn I wanted to ask about the status of the
16 Patriot Act briefing, if that was going to go forward
17 in November. What is the briefing schedule generally
18 for the next several months?

19 MR. MARCUS: October we are planning a
20 briefing on the Voting Rights Act.

21 COMMISSIONER BRACERAS: Okay.

22 MR. MARCUS: November we're trying to put
23 together the campus anti-Semitism briefing. December
24 I would anticipate being the disparity studies issues.

25 COMMISSIONER BRACERAS: So what did we

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1 decide to do with the Patriot Act?

2 CHAIRMAN REYNOLDS: We haven't decided yet
3 on a date. First we're going to have to circle around
4 and see if we can get the witnesses who we initially
5 secured. We have to check with their schedules, and
6 if everything goes according to plan, they'll be able
7 to participate. If not, we'll have to seek other
8 witnesses of the same caliber.

9 COMMISSIONER BRACERAS: Well, but we can't
10 see if they're available unless we have a date.

11 VICE CHAIRMAN THERNSTROM: Or some
12 alternative dates.

13 COMMISSIONER BRACERAS: Okay.
14 Commissioner Yaki, do you still want to go forward
15 with the Patriot Act briefing?

16 COMMISSIONER YAKI: Yes, I do.

17 COMMISSIONER BRACERAS: And what is your
18 sense of when it would be a good time to hold it?

19 COMMISSIONER YAKI: Ideally as soon as
20 possible, but I would hope as was suggested we give a
21 range of a couple of dates and see which ones best fit
22 the best panel that we can put together. I'll leave
23 that up to the Staff Director's discretion.

24 CHAIRMAN REYNOLDS: Do we have anything
25 planned for January? Do we have any briefings

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1 scheduled?

2 MR. MARCUS: The Commissioners voted to do
3 a briefing on the question of discrimination or racial
4 preferences at law schools, the subject of the
5 Professor Richard Sanders' article in either January
6 or February or March, and we've been talking with him
7 about availability, but we haven't specifically fixed
8 something for January.

9 CHAIRMAN REYNOLDS: Okay. Is there a --
10 Vice Chair Thernstrom.

11 VI. Future Scheduling

12 VICE CHAIRMAN THERNSTROM: I have one
13 other matter to bring up before we adjourn. The
14 practice of this Commission is to set the dates of
15 Commission meetings the following year very late in
16 the calendar year, that is, to set the meeting dates
17 for '06 very late in '05.

18 I find this very difficult since, you
19 know, I've got a calendar that's filling up. Can we
20 by the next Commission meeting put together a schedule
21 of meeting dates and in the future I hope do it
22 earlier?

23 CHAIRMAN REYNOLDS: There's no reason --
24 correct me if I'm wrong -- there isn't any reason that
25 we wouldn't be able to do it by the next meeting.

1 MR. MARCUS: We certainly can, and in
2 fact, staff were planning to propose some dates during
3 the October meeting.

4 VICE CHAIRMAN THERNSTROM: Thanks. I
5 think that's because I already asked before, but we
6 usually do it very late, and that's fine. Good.

7 CHAIRMAN REYNOLDS: Okay. So,
8 Commissioner Braceras, would you be comfortable if Ken
9 were to work on selecting a date so that at our next
10 meeting he could inform us where we stand with respect
11 to the briefing relating to the Patriot Act?

12 COMMISSIONER BRACERAS: Oh, yes. I was
13 just curious as to what had happened because I knew
14 that we needed to cancel it, and I had just never
15 heard anything further. So that's why I just wanted
16 the status update.

17 MR. MARCUS: Okay. So I can go ahead, and
18 I want to make sure that it's clear, and see whether
19 the panelist or people that are equivalent expertise
20 are available for January or February of 2006.

21 CHAIRMAN REYNOLDS: Yes.

22 VICE CHAIRMAN THERNSTROM: And I would
23 like to note that we had put together an excellent
24 panel, and the quality of that panel is our standard.

25 CHAIRMAN REYNOLDS: Okay. All right. We

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are adjourned.

(Whereupon, at 10:23 a.m., the Commission meeting was concluded.)