

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, August 26, 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, Chairperson, presiding.

PRESENT:

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

STAFF PRESENT:

JOHN BLAKELEY
 TERESA BROOKS
 CHRISTOPHER BYRNES
 DEBRA CARR, ESQ., Deputy General Counsel
 IVY DAVIS, Chief, Regional Programs Coordination Unit
 BARBARA DELAVIEZ
 TERRI DICKERSON, Assistant Staff Director
 PAMELA A. DUNSTON, Chief, Administrative Services and Clearinghouse Division
 BARBARA FONTANA
 GEORGE M. HARBISON, Chief, Budget and Finance Division
 SETH JAFFE
 SOCK-FOON MACDOUGALL
 TINALOUISE MARTIN, Director, Human Resources
 Division/Director for Management, Office of Management
 EMMA MONROIG, Solicitor/Parliamentarian

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS
 LISA NEUDER
 KIMBERLY SCHULD (via telephone)

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

9:36 a.m.

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

This meeting is taking place in the Commission's Washington D.C. headquarters. Commissioner Braceras is participating telephonically.

In response to a request from the State Advisory Committee members there is a special telephone connection for members of the public to listen into this meeting. This is done at this meeting as an accommodation because the Commissioners may discuss or will discuss some matters in which State Advisory Committee members have expressed particular interest, but it will not be done on a regular basis because of the expense involved.

This is a continuation of the meeting of July 22, 2005 that was recessed without concluding all the items on the agenda. On July 22nd we covered a number of items, including our announcements, the Staff Director's report, passage of our annual enforcement report and approval of our proposed budget for fiscal year 2007.

The meeting will resume with item VI Management and Operations. But before starting on that

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1 topic, I just want to mention that Commissioner
2 Braceras participated in an event, I believe
3 yesterday, Jennifer, at the National Press Club?

4 COMMISSIONER BRACERAS: Yes.

5 CHAIRMAN REYNOLDS: And I believe at least
6 one media source indicated that the U.S. Commission on
7 Civil Rights had taken a position with respect to the
8 nomination of --

9 COMMISSIONER BRACERAS: Oh, really?

10 CHAIRMAN REYNOLDS: Yes.

11 COMMISSIONER BRACERAS: I was very clear
12 that I was there in my individual capacity.

13 CHAIRMAN REYNOLDS: I have no doubt. I
14 just want to go on the record that Commissioners are
15 free to express their views on any and all issues in
16 their personal capacities. And yesterday Commissioner
17 Braceras exercised that right and the comments that
18 she made yesterday, while I agree with them personally
19 they were not made in any official capacity.

20 COMMISSIONER BRACERAS: No, they certainly
21 were not. I apologize. I did, I stated from the
22 outset and again during the question and answer period
23 that I was there in my individual capacity. And the
24 Commission was listed as one of several organizations
25 with which I'm affiliated or which I work for. So it

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1 was only used to identify what my jobs are and who I
2 am. But I made very clear that the only group I was
3 there representing officially was the Independent
4 Womens Group.

5 So, I apologize for that.

6 CHAIRMAN REYNOLDS: Well, no. There's no
7 apology needed. You didn't do anything wrong.

8 COMMISSIONER BRACERAS: Well, I don't
9 think I did.

10 CHAIRMAN REYNOLDS: Okay. I mention this
11 only to --

12 COMMISSIONER BRACERAS: Hello.

13 CHAIRMAN REYNOLDS: Hello, Jennifer?

14 COMMISSIONER YAKI: The brunch has begun
15 at the Braceras' residents.

16 COMMISSIONER BRACERAS: No, I don't know
17 what that is.

18 CHAIRMAN REYNOLDS: Oh, that's not on your
19 end?

20 COMMISSIONER BRACERAS: No, it's somebody
21 else's conference call.

22 CHAIRMAN REYNOLDS: Okay. Let's pause.
23 Let's adjourn until we straight this mess out.

24 (Whereupon, at 9:39 a.m. off the record
25 until 9:46 a.m.)

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1 VI. Management and Operations

2 CHAIRMAN REYNOLDS: Okay. Where were we?
3 Management and Operations.

4 VICE CHAIR THERNSTROM: Well, you were
5 saying, which is correct, that no apologies are needed
6 from Commissioner Braceras. The apology that is
7 needed is from CNN and any other media outlet that
8 misreported this.

9 CHAIRMAN REYNOLDS: Abby, if that's the
10 standard, that's going to cause problems because the
11 media gets it wrong on a regular basis, so --

12 VICE CHAIR THERNSTROM: I understand that.
13 But I'm just saying we do not hold Commissioner
14 Braceras responsible here.

15 CHAIRMAN REYNOLDS: Right. Okay. Back to
16 Management and Operations. Some items in this section
17 were already covered, such as approval of the 2007
18 budget. We will now deal with those items that have
19 not yet been addressed, specifically financial
20 corrective actions and website management.

21 Over the last several months several of us
22 have made the sacrifice of not hiring special
23 assistants for this fiscal year in order to bring our
24 fiscal house in order. The question has arisen as to
25 whether we would refrain from hiring new commissioner

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1 assistants for 2006. The Staff Director has advised
2 that we have now reached the point in light of recent
3 staff attrition where we would be able to defer
4 closure of our Denver and Kansas City offices until
5 fiscal year 2007 if we continue to refrain from hiring
6 commission special assistants through fiscal year 2006
7 as long as we receive approximately the level of
8 appropriations recently passed by the House of
9 Representatives.

10 Could I have a motion to retain the hiring
11 freeze on Commission special assistants through fiscal
12 year 2006.

13 VICE CHAIR THERNSTROM: So moved.

14 COMMISSIONER KIRSANOW: Second.

15 CHAIRMAN REYNOLDS: Okay. Discussion?

16 COMMISSIONER KIRSANOW: I mean I have a
17 special assistant, obviously, but I just wanted to
18 make sure that everybody is comfortable with the fact
19 that the Chair, Commissioner Yaki, Commissioner Taylor
20 would not be having special assistants?

21 VICE CHAIR THERNSTROM: Let me speak to
22 one aspect of that. My special assistant is
23 functioning as I am sharing her with Commissioner
24 Taylor. And to the extent to which the Chair needs
25 her, she is also working for the Chair. So I have

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1 spread my -- I've shared the wealth, as it were, in
2 asking her to do this.

3 CHAIRMAN REYNOLDS: Well, I'm not
4 comfortable with it, but this is where we find
5 ourselves. It makes my life a lot more difficult, and
6 I suspect that the same is true for the other
7 Commissioners who don't have a special assistant, but
8 this is the sacrifice that should be made so that we
9 can avoid reductions in staff and office closures for
10 2006.

11 Again, the game plan is to get our house
12 in order to put out some good reports, do some good
13 work and demonstrate that this agency is capable of
14 functioning in an effective manner. And at that point
15 we're going to put out our hand and say we need some
16 more money. And I say that as someone who is not all
17 enamored with the notion of big government. If we're
18 going to have the Commission, I think that the
19 Commission needs to receive a sufficient amount of
20 funds to effectively do its mission.

21 So, at that point, I guess unless there is
22 no other comments, we'll vote.

23 All in favor?

24 ALL: Aye.

25 CHAIRMAN REYNOLDS: All opposed? Okay. It

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1 passes unanimously.

2 The next we move on to deferral of the
3 regional office closures. May I have a motion to
4 postpone the regional office closures?

5 COMMISSIONER YAKI: So moved.

6 CHAIRMAN REYNOLDS: A second?

7 COMMISSIONER BRACERAS: Second.

8 CHAIRMAN REYNOLDS: Thank you.

9 Discussion? Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: I'd like to ask
11 the staff. I think we had this discussion in, maybe it
12 was the June meeting but I wanted to be clear as to
13 what the ramifications of this deferral are.

14 My recollection is that reframing from
15 hiring special assistants gives us a little bit of the
16 cushion necessary for this deferral, but it doesn't
17 vanquish the problem and it may be something that
18 needs to be revisited sometime in 2007. Is that
19 correct?

20 STAFF DIRECTOR MARCUS: That's correct,
21 Commissioner Kirsanow. Given the recent attrition, we
22 now project that the appropriations amount that the
23 House bill includes would provide us with enough money
24 to continue operations through 2006 as long as we
25 don't have special assistants and we would still be

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1 able to bring on a few additional people. We're
2 thinking of general counsel and a couple of people in
3 procurement and a budget and finance officer. We
4 project that we would fine until the end of 2006.
5 However, unless we receive a greater amount of
6 appropriations for 2007, we are projecting that we
7 would have a problem again during that year.

8 COMMISSIONER KIRSANOW: And then --

9 COMMISSIONER BRACERAS: I'm sorry. I
10 think there's static over the phone. I'm sorry to
11 interrupt. I'm getting some interface. I don't know
12 if it's that cross talk again or it's somebody
13 whispering in their microphone, but --

14 VICE CHAIR THERNSTROM: I'm sorry,
15 Jennifer. I believe that was me and I'm terribly
16 sorry. It did not occur to me that, of course, my
17 mike is on.

18 COMMISSIONER BRACERAS: Oh, I'm sorry. I
19 couldn't hear what was being said.

20 VICE CHAIR THERNSTROM: Okay. No, I
21 apologize.

22 COMMISSIONER BRACERAS: Okay. Thanks.

23 STAFF DIRECTOR MARCUS: For Commissioner
24 Kirsanow's benefit, let me just reiterate that we are
25 projecting that as long as the Commissioners refrain

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1 from hiring special assistants through the end of
2 2006, the 2006 House Appropriations figure should be
3 sufficient to allow us to continue operations through
4 2006 and still be able to bring on a few additional
5 staff members. And we're projecting new hires in the
6 areas of the procurement and budget and finance and to
7 general counsel. However, assuming that the salaries
8 of federal workers continue to rise, we would still
9 run into a problem in 2007.

10 COMMISSIONER KIRSANOW: And the
11 continuation of the operations presumes the
12 incorporation of our ability to continue to discharge
13 our reports?

14 STAFF DIRECTOR MARCUS: That's right.

15 COMMISSIONER KIRSANOW: Okay. Is there
16 any kind of compromise of those reports by virtue of
17 the attrition that we've experienced?

18 STAFF DIRECTOR MARCUS: We've experience
19 attrition over the last decade, and we certainly do
20 not have the capacity to product the number or
21 complexity of reports today that we were able to do
22 five or ten years ago. I don't know that there's a
23 significant difference in our projected ability to
24 complete reports in 2006 as compared to 2005. But we
25 certainly will continue to be in a very tight

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1 financial situation both with respect to national
2 reports and also with respect to our regional and
3 State Advisory Budget. So we'll be very tight.

4 CHAIRMAN REYNOLDS: I'd just like to add
5 I agree with everything the Staff Director said, but
6 I'd like to add that our problem is a structural
7 problem and it does not go away. We face this issue
8 year after year. And basically we're in a vise. Every
9 year salaries go up and our budget remains, more or
10 less, the same. And so every year we're going to have
11 to deal with these fiscal issues.

12 What we have on the table today is a fix;
13 it's a temporary fix and it will get us through 2006
14 without having to close offices or to have a reduction
15 in force. But the problem will remain so long as we
16 have flat budget while expenditures increase.

17 Vice Chair Thernstrom?

18 VICE CHAIR THERNSTROM: Well, there is
19 going to be a motion down the road here that we shift
20 to more briefings and fewer reports, and we'll discuss
21 that at the time the motion is made. But I assume that
22 that will mean some savings to us; that briefings and
23 posting the briefings and posting Commissioners'
24 responses to those briefings is a savings over having
25 to put out reports, when really given our staff

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1 limitations here we would need to be contracting work
2 and so forth.

3 STAFF DIRECTOR MARCUS: The way I would
4 put it is that the shift from a report model to a
5 briefing model if that's what's voted on today, would
6 give us greater budget flexibility. It would give us
7 greater flexibility in the event that we have either
8 increases or decreases.

9 The greatest part of our expense in terms
10 of putting together a report is staff time. Briefings
11 can be done with either less or more staff time, which
12 is to say they can be very complex briefings that have
13 a lot of staff involved or they could be more
14 streamline. So a shift to briefings, if that's what
15 we're going to do, would give us greater flexibility
16 in that regard.

17 CHAIRMAN REYNOLDS: Well, when I think
18 about it, it seems to me that salaries are salaries.
19 It's a fixed cost. And whether we do briefings or do
20 a gazillion reports, it really doesn't make a
21 difference if the primary cost is salaries.

22 For me, the benefit of doing this is that
23 we can get more content out, we can bring in experts
24 who have already done the work. I don't view this as
25 a means to achieve significant cost savings since

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1 we're not going to RIF. The salaries that we had
2 today are the salaries that we'll have through 2006.

3 COMMISSIONER BRACERAS: May I ask a
4 question?

5 CHAIRMAN REYNOLDS: Yes.

6 COMMISSIONER BRACERAS: Why have we
7 decided to prioritize keeping other offices open over
8 producing reports? In other words --

9 CHAIRMAN REYNOLDS: Well, I don't view it
10 that way. I don't believe that the shift to more
11 briefings is a --

12 COMMISSIONER BRACERAS: I'm going to shift
13 to more briefings, but as I understood the way this
14 was framed is that because of the attrition in staff
15 we really don't have enough people to do as many high
16 quality written reports as we did in the past, and
17 we're not going to be replacing people because we want
18 to keep offices open.

19 So I guess I'm asking how that choice was
20 made and just what the analysis is and the pros and
21 cons of that. Because it seems to me that without
22 having further information I would come down more on
23 the side of hiring people at headquarters to do
24 reports than keeping offices open. And I know there's
25 a whole host of political considerations and the

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1 members of Congress in those areas are up in arms.
2 But putting aside the politics of it, on the merits I
3 think that it's more valuable for our organization to
4 be putting out reports than just to be having offices.

5 CHAIRMAN REYNOLDS: Well, Jennifer, again
6 I view those two issues separately. I believe that
7 the briefings, for me doing more briefings will not
8 result in a significant cost savings. And I don't
9 view it as a method for increasing our fiscal
10 stability.

11 COMMISSIONER BRACERAS: I understand that
12 part. It's just that the way the Staff Director keyed
13 up the issue of the attrition and the ability to
14 replace, it seemed to me that that's the way it was
15 keyed up. Did I misunderstand him?

16 CHAIRMAN REYNOLDS: Well, we be hiring
17 people during 2006. But, Ken, jump in there.

18 STAFF DIRECTOR MARCUS: Commissioner
19 Braceras, I don't think you entirely misunderstood.
20 There is a connection, of course, between the regional
21 offices and reports in a sense that staff in the
22 regional offices are involved in preparing State
23 Advisory Committee reports.

24 COMMISSIONER BRACERAS: I know. I
25 understand that. But that brings us to another

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1 problem which we'll discuss later, which is that the
2 Commission headquarters in Washington has very little
3 control over either the content or the quality of
4 those reports. And basically, as I've understood
5 things, we have only voted to accept or reject the
6 reports that they submit to us based on whether or not
7 the proper procedures were used to put out the
8 reports. So in other words, we've had no ability to
9 reject a report based on what we believe to be either
10 poor quality or inappropriate findings of fact or
11 inappropriate recommendations.

12 And so I guess I'm wondering what the
13 better value for our money is, whether it's to have a
14 decentralized system where we have very little control
15 or a more centralized system where we have more
16 control, not simply over the topic and the content but
17 over the quality. And I know that comes under the
18 heading of SAC reform, but in terms of this discussion
19 and in terms of the budget it seems to me that a
20 decision has been made to allow us to remain open even
21 if that's at the expense of us having resources at
22 headquarters to do our own reports. Is that correct?

23 CHAIRMAN REYNOLDS: Well, okay. I guess I
24 have a better understanding of where you're going.

25 Speaking just for myself, I think that

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1 staff has basically been absorbing the cost associated
2 with the structural deficit. Each year the head count
3 is reduced. Hell, I understand at one point that we
4 had 200 employees. Every year we lose more and more
5 employees. And I think that the Commissioners making
6 a sacrifice by refraining from hiring special
7 assistants, I think that it's time for the
8 Commissioners, in my view, to suffer some of the
9 pain.

10 COMMISSIONER BRACERAS: No, I understand
11 that. And, again, maybe I completely misunderstood.
12 But I thought that the Staff Director had raised the
13 issue of attrition amongst, not special assistants but
14 regular Commission staff.

15 CHAIRMAN REYNOLDS: Yes.

16 COMMISSIONER BRACERAS: And I thought that
17 he had said we were not currently in the process of
18 replacing people in order so that we could be able to
19 keep regional offices open. Am I totally wrong that
20 that's what he said?

21 STAFF DIRECTOR MARCUS: I would not put it
22 in exactly that way, Commissioner.

23 COMMISSIONER BRACERAS: Okay. Correct me
24 then.

25 STAFF DIRECTOR MARCUS: Well, we've had

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1 attrition over a period of years. And in response to
2 Commissioner Kirsanow's question I addressed not just
3 the attrition over the last few months, but the
4 attrition over a longer period of time. Some of the
5 attrition we've been able to compensate for by
6 backfilling positions. Most of it we have not been.

7 For instance, we recently lost our
8 information technology professional and webmaster. We
9 will need to replace him, and we will replace him.
10 But most of the attrition we have not been able to
11 replace --

12 COMMISSIONER BRACERAS: Because of budget
13 reasons?

14 STAFF DIRECTOR MARCUS: Because of budget
15 reasons.

16 COMMISSIONER BRACERAS: Right.

17 STAFF DIRECTOR MARCUS: Now, it is true
18 that there is a policy decision to be made to the
19 extent that when we close an office we save both
20 salary money and leasing money. We could have a
21 greater number of analysts in headquarters if we have
22 office --

23 COMMISSIONER BRACERAS: Right. Yes.
24 That's a good point. And my only question at this
25 juncture wasn't really to open up the merits of that,

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1 but was just to ask has that decision been made or is
2 that something -- I just sort of forgot where we are
3 with that?

4 I got the impression from what you said,
5 Ken, that you had made that choice and I just wanted
6 clarification on whether that choice had already been
7 made or whether that's something we're being asked to
8 decide.

9 STAFF DIRECTOR MARCUS: I would not say
10 that I've made that choice. I would say that the
11 question of whether to keep the offices open has been
12 discussed by the working group on the budget. And I
13 thought that there was a consensus there. It has not
14 yet been discussed by the Commissioners. And so that
15 decision is up for discussion right now.

16 As for backfilling some of the other
17 attrition, I suppose that's something that I would
18 have to look at in connection with the decision that's
19 made by the Commission during today's meeting.

20 COMMISSIONER BRACERAS: Yes. I'm not sure
21 there was a consensus on the working group on that
22 issue.

23 CHAIRMAN REYNOLDS: Okay. Vice Chair
24 Thernstrom?

25 VICE CHAIR THERNSTROM: I just want to,

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1 just for clarification purposes, restate the
2 correction I had before which is, Mr. Chairman, you
3 said salaries are salaries and those are fixed costs.
4 But if we're short on a staff as a consequence of
5 attrition, we can't because of budgetary constraints
6 fill positions that are now empty; my question was
7 simply are there not additional savings from holding
8 briefings over putting out the kind of full scale
9 reports that we had in the past? Because those full
10 scale reports certainly would require either
11 additional staff or contracting work out.

12 CHAIRMAN REYNOLDS: Okay. I think that
13 we're dancing around a nuance.

14 VICE CHAIR THERNSTROM: Okay.

15 CHAIRMAN REYNOLDS: The way I view it is
16 that the shift to briefings increase productivity.

17 VICE CHAIR THERNSTROM: Okay.

18 CHAIRMAN REYNOLDS: But it doesn't
19 increase our budget. It doesn't bring us more money.
20 It doesn't reduce the money we have.

21 COMMISSIONER YAKI: It's more bang for the
22 buck?

23 CHAIRMAN REYNOLDS: Yes.

24 VICE CHAIR THERNSTROM: It's more bang for
25 the existing. Okay. Anyway, it was just a

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1 clarification because of what you said before.

2 Let's move on.

3 CHAIRMAN REYNOLDS: Okay. And, Jennifer,
4 whether we have a consensus I believe that this vote
5 will decide that issue.

6 Any additional comments?

7 STAFF DIRECTOR MARCUS: Mr. Chairman, I
8 think it is worth on the record having some
9 clarification of the time table. Because I don't know
10 that the motion was specifically clear.

11 I believe that the motion was to defer
12 closure of these two offices until fiscal year 2007.

13 CHAIRMAN REYNOLDS: 2007. Yes.

14 STAFF DIRECTOR MARCUS: Is that the intent
15 of the motion?

16 CHAIRMAN REYNOLDS: Yes.

17 STAFF DIRECTOR MARCUS: Okay. Thank you.

18 CHAIRMAN REYNOLDS: Okay. Unless there
19 are other comments or questions, we'll vote now.

20 All in favor?

21 ALL: Aye.

22 CHAIRMAN REYNOLDS: All in opposition?

23 COMMISSIONER BRACERAS: I'd like to
24 abstain.

25 CHAIRMAN REYNOLDS: Okay. Please let the

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1 record reflect that Commissioner Braceras has
2 abstained.

3 Next up?

4 COMMISSIONER BRACERAS: Again, just to
5 clarify for the reasons that I'm not sure about the
6 resources as opposed to hiring more staff people in
7 Washington.

8 CHAIRMAN REYNOLDS: Okay. Next up is the
9 deferral --

10 VICE CHAIR THERNSTROM: Go ahead.

11 CHAIRMAN REYNOLDS: Okay. All right. May
12 I have a motion to postpone the regional office
13 closures?

14 VICE CHAIR THERNSTROM: So moved.

15 CHAIRMAN REYNOLDS: May I have a second.

16 COMMISSIONER BRACERAS: Well, didn't we
17 just do that? What did we just vote on?

18 CHAIRMAN REYNOLDS: No. That was for --
19 oh, I'm sorry.

20 VICE CHAIR THERNSTROM: We did. We did.

21 CHAIRMAN REYNOLDS: I'm sorry. I need to
22 flip the page. Thanks.

23 VICE CHAIR THERNSTROM: I'm not thinking
24 either.

25 CHAIRMAN REYNOLDS: Thanks, Jennifer.

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1 Okay. Next up is website management. May
2 I have a motion to post the July 5th letter by
3 Commissioners Thernstrom, Braceras, Kirsanow, Taylor
4 and me to the Secretary of Education on the Commission
5 website.

6 VICE CHAIR THERNSTROM: So moved.

7 CHAIRMAN REYNOLDS: Is there a second?

8 COMMISSIONER KIRSANOW: Second.

9 CHAIRMAN REYNOLDS: Discussion? Okay.
10 All in favor?

11 ALL: Aye.

12 CHAIRMAN REYNOLDS: Any in opposition?
13 The motion passes unanimously.

14 Next up may I have a motion that the
15 letter from Commissioner Yaki to the Secretary of
16 Education be posted to the Commission website?

17 VICE CHAIR THERNSTROM: So moved.

18 CHAIRMAN REYNOLDS: Is there a second?

19 COMMISSIONER KIRSANOW: Second.

20 CHAIRMAN REYNOLDS: Discussion? All in
21 favor?

22 ALL: Aye.

23 CHAIRMAN REYNOLDS: All opposed?

24 CHAIRMAN REYNOLDS: The motion passes
25 unanimously.

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1 VII. State Advisory Committee Issues

2 CHAIRMAN REYNOLDS: Okay. At this point
3 I would like to announce that the New Mexico State
4 Advisory Committee report entitled "The Farmington
5 Report: Civil Rights for Native Americans 30 Years
6 Later" and the Arizona State Advisory Committee
7 entitled "Civil Rights Along the U.S. Mexican Border:
8 A Need for Immigration Reform" that were sent to the
9 Commissioners for review will be considered at the
10 September Commission meeting. This is in accordance
11 with the policy of administrative instruction 5.7 and
12 section 13.02 that Commissioners will receive SAC
13 reports two months before taking action on them.

14 What's next?

15 VICE CHAIR THERNSTROM: Working group.

16 CHAIRMAN REYNOLDS: Yes. May I have a
17 motion to establish a working group on State Advisory
18 Committees? Pretty please?

19 COMMISSIONER YAKI: Is that a
20 parliamentary motion?

21 CHAIRMAN REYNOLDS: It's in the appendix
22 of *Robert's Rules*.

23 VICE CHAIR THERNSTROM: Mr. Chairman, I so
24 move. But I do think that the entire motion needs to
25 be read.

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1 I move that the Commission establish a
2 working group on State Advisory Committees. The
3 mission of the working group on State Advisory
4 Committees will be to make specific recommendations to
5 the full Commission for implementing the State
6 Advisory Committee administrative and policy reforms
7 which may include: Rechartering of the State Advisory
8 Committees; State Advisory Committee member selection;
9 Commissioner involvement in State Advisory Committee
10 activities; cost effective ways to conduct State
11 Advisory Committee management and operations.

12 CHAIRMAN REYNOLDS: Okay. Is there a
13 second?

14 COMMISSIONER YAKI: Second.

15 CHAIRMAN REYNOLDS: Discussion?

16 COMMISSIONER YAKI: Question, Mr.
17 Chairman. How does this relate to the subsequent
18 motion on membership criteria if it talks about
19 membership selection in this motion?

20 CHAIRMAN REYNOLDS: Well, assuming that
21 the second motion passes, the Working Group Committee
22 will get together and work through all of the issues
23 associated with the topic.

24 STAFF DIRECTOR MARCUS: If I may further
25 clarify, the motion to be discussed later deals with

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1 State Advisory Committee member selection criteria.
2 There may be other issues relating to membership
3 selection procedures, so on and so forth, that are not
4 otherwise subject to a vote today.

5 COMMISSIONER YAKI: Mr. Chairman, I think
6 that we're doing a little parsing here. And I would
7 say that if we're going to be doing a working group on
8 State Advisory Committees, we should include in that
9 rather than preclude any options, we should include in
10 that the discussion of criteria and term limitations.
11 I think that if I would read this correctly, and maybe
12 I'm not, that the working group on State Advisory
13 Committees might actually meet with individuals from
14 State Advisory Committees to seek their input and
15 their feedback on any changes or criteria that we will
16 be looking at. And I think that it would be very
17 incongruous for us given our charter and our history
18 to just engage in top down decrees with regard to the
19 State Advisory Committees, which are a part of our
20 congressional charter, have been part of the historic
21 mission of the Commission for many years. And I would
22 want to amend that the motion include consideration of
23 the membership criteria and the term limitations and
24 defer those two items as actual votes until this
25 working group reports back.

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1 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

2 VICE CHAIR THERNSTROM: Well, are there
3 any time constraints here that make that postponement
4 problematic?

5 CHAIRMAN REYNOLDS: Well, I just want to
6 get some time to have some time to absorb this.

7 I guess my first comment is that reading
8 the motion that Vice Chair Thernstrom read, I didn't
9 see that as limiting the working group's ability to
10 interact with members of SACs, to get input from SACS
11 and other folks.

12 Now, the other questions, I think that
13 that causes a problem because we have a backlog. And,
14 you know, when the Commission was reconstituted we had
15 a backlog and it's just grown since then. I think
16 that we should vote to amend the selection criteria as
17 soon as possible so that we can start working on the
18 backlog.

19 We've had a teleconference with SAC
20 chairs. We've gotten their input. And, you know,
21 it's not clear to me that there's going to be new
22 arguments and new evidence provided the working group
23 that would alter any minds.

24 COMMISSIONER YAKI: May I respond?

25 CHAIRMAN REYNOLDS: Yes.

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1 COMMISSIONER YAKI: I understand what you
2 said, but what you said to me precisely goes to the
3 point that I'm making.

4 First of all, I mean an old politician so
5 you got to forgive me for this. But it seems to me
6 that with regard to the backlog, that by changing the
7 criteria I don't see we're doing anything more than
8 just simply adding to the backlog. All the committees
9 that have submitted their membership and are in line
10 right now at the Commission are going to have to go
11 back and redo that. All the other people who along
12 the way for there, are going to have to go back and do
13 that.

14 I, quite frankly, given I think the
15 importance that this Commission is placing upon this
16 reform effort, I don't see why we couldn't make some
17 sort of provision -- I wouldn't call it a deal -- but
18 a provision that would provide for one year renewals
19 of these charters just to get them out of the way
20 while we go through the process of looking at
21 revisions, if they are warranted, to the State
22 Advisory Committees. Because I just think that one of
23 the things you're going to find is that the imposition
24 of term limit issue is very vague because if there are
25 people on there who are serving ten years and have

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1 been just nominated for a new term, many of those
2 people are in the leadership of the state chairs. And
3 if we adopt that, they go or maybe they don't go. I
4 don't know. I don't know if it means if they have
5 been nominated, they get to complete it or not. But
6 if they do go, then you have lost institutional memory
7 in terms of being able to move the machinery to get
8 those charters back up in a timely manner.

9 And I just think, I understand that the
10 majority on this Commission wants to look at
11 reforming, relooking at -- Commissioner Bracer has
12 made it very clear that she has very strong views on
13 this -- the SACs. But I think that to do that and at
14 the same time -- I think that there's a transparency
15 issue here and an openness issue here that I think
16 would be undermined if in one motion we say we're
17 doing a working group of State Advisory Committees to
18 look at all these different questions and on the other
19 hand we're saying oh, and by the way, for all you
20 State Advisory Committees this is a new membership
21 criteria that we decided we're going to do.

22 And with all due respect, there was a
23 phone call about this. But this phone call was in
24 response to the fact that the State Advisory chairs
25 had absolutely not notice that this thing was coming

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1 up on the agenda. And it was through a lot of sabre
2 rattling by them, by myself, by the members of the
3 Congressional Black Caucus, the Asian-Pacific American
4 Caucus, the Hispanic Caucus, the Disability Caucus and
5 the Women's Caucus on Capitol Hill who sent us a
6 letter asking us to defer any of these decisions for
7 further study. And I think that the further study is
8 embodied in the first motion. So why preempt what
9 could be a more complete package of reforms by
10 approving the second two, which I think will simply
11 engender hostility and suspension between any
12 participating SAC members and the working group on
13 reform? I don't think it'll get anything done. I
14 think that the SAC chairs who have any contact with me
15 and have been working Capitol Hill are going to, for
16 lack of a better word, go nuts over the idea that
17 there's a working group that we've established, but at
18 the same time we've also said to them by the way, we
19 want you to work with us but we're throwing back the
20 entire membership in your face right now and we're
21 doing term limits, and we don't know how that's going
22 to impact you. But, sorry, that's the way we're going
23 to do.

24 I just think that there's a better way of
25 doing it. And I think a combined motion that looks at

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1 all these things maybe with provisional approval of
2 one year charters for these other organizations
3 pending the resolution of the working group would be
4 a more effective compromise that creates transparency,
5 that creates openness and provides integrity to this
6 process.

7 COMMISSIONER BRACERAS: This is
8 Commissioner Braceras.

9 So, Michael, if I hear you correctly, your
10 proposal is to establish the working group but to
11 retire everybody now and let the working group sort
12 out the other issues?

13 COMMISSIONER YAKI: Well, I would say I
14 mean we meet once a month. We have a lot of things on
15 the calendar. We already found last month that
16 combining a briefing and large amounts of work
17 resulted in having a continuation meeting and
18 including one over the phone, which no one was happy
19 about.

20 COMMISSIONER BRACERAS: Right.

21 COMMISSIONER YAKI: It just seems to me
22 that it isn't that -- it actually would probably work
23 out better for us in terms of -- at least my opinion.
24 I'm not speaking on behalf of the entire Commission.

25 But given the workload that we're going on

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1 and the fact that we may have briefings in September
2 and October, January and February which will entail
3 work. As the Staff Director said, they don't
4 necessarily result in cost savings, but as the Chair
5 said we get a lot more bang for our buck. We're
6 visible. We're out there. We're doing things. We're
7 showing things that are going on.

8 I think that the SAC thing, the SAC issue
9 is one where there are a lot of different
10 constituencies involved, as can be evidenced by the
11 number of letters that we received just on the
12 regional office issue which was generated in large
13 part by the SACs. And that if we were to see if we
14 could provide one year provisional rechartering of all
15 those veteran line to get those out of the way, we
16 could engage in a much more fully integrated and
17 deliberate process of looking at SAC reforms that,
18 quite frankly, may end up with the same result that
19 you folks want but from my point of view has more
20 integrity in the process such that I won't be writing
21 a 500 page dissent.

22 COMMISSIONER BRACERAS: I'm not opposed to
23 what you're saying, but what I would like to do is
24 hear from the Staff Director, I would like to hear
25 from Ken on what he thinks and the pros and cons of

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1 doing it both ways.

2 CHAIRMAN REYNOLDS: Okay. Well, before
3 Ken goes, I'd like to jump in.

4 It seems to me that the selection
5 criteria, that there are not many unknowns left on
6 that particular issue. The issue has been discussed
7 amongst the Commissioners. We have had a slue of
8 letters from members of SACs and from members of
9 Congress. So there, I don't anticipate with this
10 process that we set forth additional information to be
11 provided on the selection criteria issue. And that's
12 why I believe that that issue should be voted on
13 today.

14 Will it entail a delay? The answer is
15 yes, but I think it's worth it. I don't believe that
16 the additional inconvenience that's generated because
17 of a change in our selection criteria, I don't think
18 it outweighs the importance of the issues.

19 And so that we are clear, the issues and
20 what we want to do is to increase and expand the
21 diversity of ideas that we get from our SAC
22 membership. And we believe that this change will
23 result in an increased diversity in ideas. And also
24 it's also a reaction to a notion of proportional
25 representation that's in our current rules.

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1 So Vice Chair Thernstrom?

2 VICE CHAIR THERNSTROM: I am rather
3 sympathetic to the process argument that Commissioner
4 Yaki is making. And I wonder if the one year, if we
5 need a year here for the rechartering and how long we
6 can envision working group; when might it come in with
7 its findings and how expeditiously could we act upon
8 its recommendations so that we can satisfy the
9 concerns of the Chair and the concerns of Commissioner
10 Yaki both.

11 COMMISSIONER TAYLOR: I want to hear the
12 answer before I say anything.

13 CHAIRMAN REYNOLDS: Well, I guess my
14 response is it really depends on how it's structured.
15 If we're going to go down this road, it seems to me
16 that I would the selection issue to be dealt with
17 first so that we can get whatever additional input
18 we'll get and so that we can vote on it as soon as
19 possible. Now how much time that requires, I don't
20 know.

21 STAFF DIRECTOR MARCUS: My concern would
22 be to get State Advisory Committees moving as quickly
23 as possible and doing their work as soon as we can.
24 So from the point of view of making sure that the
25 State Advisory Committees are effective instruments,

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1 my hope would be that we very quickly can either
2 charter or recharter them. There's already been, of
3 course, a significant amount of time.

4 I would imagine that the answer to how
5 quickly could this be done is that the soonest that we
6 could get a recommendation from the working group
7 would be in time for the September meeting, depending
8 on the amount of either deliberation that the working
9 group wanted to do or gathering of input. So there is
10 some question. If the working group were going to do
11 a lot of discussions with other groups, factfinding,
12 it would take a significant amount of time. But the
13 shortest possible would be in time for the September
14 meeting.

15 VICE CHAIR THERNSTROM: Well if it's in
16 time in fact for the September meeting. then we have
17 lost nothing by going along with Commissioner Yaki's
18 recommendations, it seems to me. But --

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

20 COMMISSIONER KIRSANOW: Yes. I think I'm
21 sympathetic toward what Commissioner Yaki raised
22 conjoined with a need for being as expeditious as
23 possible.

24 And I think what I would like to see is if
25 the working group on reform is going to convene and

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1 address certain issues relates to SACs, then the
2 matter of membership be the first thing placed on the
3 agenda, that be considered and reported back to the
4 Commission as soon as September. We're not
5 reinventing or building the space shuttle here. But
6 I think we've had some preliminary discussions on
7 this. And I think Commissioner Yaki's right that for
8 a variety of different reasons, some of which are
9 political, some of which are substantive in terms of
10 how we go forward with this Commission, it makes sense
11 to bring in some input from the SACs also. Also from
12 the standpoint of transparency. But if we defer this
13 for at last month, and I don't see there being a great
14 downside.

15 Commissioner Yaki's probably correct that
16 it's not going to change anything. But I think
17 process and the ability to participate on the part of
18 SACs, at least a need to have input, is important.

19 Does this make any sense?

20 COMMISSIONER BRACERAS: I'm just confused.
21 Because it sounded like what Commissioner Yaki was
22 proposing was more than a one month delay, am I
23 correct? Or would a one month delay satisfy your
24 concern?

25 CHAIRMAN REYNOLDS: If we're saying that

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1 by adopting at least portions of Commissioner Yaki's
2 recommendations that it will result in a one month
3 delay, that's one thing.

4 COMMISSIONER BRACERAS: I guess I want
5 some clarification from both Commissioner Yaki and
6 then again, I'd like some more input from the Staff
7 Director. Because the Staff Director and the people
8 of the staff are the ones that work with the SACs on
9 a regular basis. So I want input from the Staff
10 Director on this.

11 I thought that Commissioner Yaki was
12 proposing a one year return rate of the vote that we
13 already have while the working group discusses all of
14 these things. So that it would be basically a year
15 long time period in which we would just go forward
16 with, I guess, the current place? That's how I
17 understood his proposal. Maybe I'm wrong.

18 COMMISSIONER YAKI: Commissioner Braceras,
19 I don't think that it's clear yet.

20 COMMISSIONER BRACERAS: Okay. Well, I'm
21 asking. I'm asking Commissioner Yaki to clarify and
22 I'm asking the Staff Director to tell us his view.

23 VICE CHAIR THERNSTROM: Well, but in any
24 case, Jennifer, whatever your initial proposal of
25 Commissioner Yaki, it seems to me --

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1 COMMISSIONER BRACERAS: No, I understand
2 that.

3 VICE CHAIR THERNSTROM: -- we're not
4 locked into the one year.

5 COMMISSIONER BRACERAS: I understand that.
6 I'm trying to understand if a shorter time period
7 satisfies his concerns or not.

8 COMMISSIONER YAKI: Commissioner Braceras,
9 this is Commissioner Yaki.

10 I put out the one year simply because it
11 sounded good, for lack of a better word. But
12 seriously the issue is I believe that taking on the
13 rechartering, taking on a whole new look at the State
14 Advisory Committees, especially in the manner that you
15 have suggested and others have suggested or hinted at
16 as well, is something that I don't believe can or
17 should be done in a hurry. Just as it took the
18 working group on rules several months minimum to come
19 up just with changing the rules of how this Commission
20 behaves and puts out reports, here we're dealing with
21 a congressionally mandated part of the duties and
22 powers of the Civil Rights Commission.

23 COMMISSIONER BRACERAS: No. I understand
24 the concern.

25 COMMISSIONER YAKI: So all I was saying is

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1 by one year I was trying not to give too long a time
2 line, but at the same time I didn't also want to
3 create artificial deadlines given that this is
4 serious, this is important. And we're dealing with a
5 situation involving SACs in states where they may or
6 may not have significant political contacts and
7 support, this process is going to have to be done I
8 think deliberately, delicately and in a way that best
9 shows the process that you helped put -- reforms that
10 you helped put together, Commissioner Braceras, is
11 followed in other areas as well.

12 And so when someone says well we can rush
13 through the selection criteria in one month, I think
14 okay, I think we have a briefing in September. We've
15 already had problems with combining briefings and
16 meetings already --

17 COMMISSIONER BRACERAS: So you don't think
18 that --

19 COMMISSIONER YAKI: I'm just saying
20 practically -- I was trying to be practical in giving
21 it an outside time limit. And if the working group
22 came back sooner, I think people would just have to
23 judge whether they thought and how fast they came back
24 whether they did an adequate job or not. I just
25 wanted to put an outside time line as a compromise

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1 just to get this thing rolling. And that's where I
2 am.

3 COMMISSIONER BRACERAS: Can I hear from
4 the Staff Director?

5 VICE CHAIR THERNSTROM: Commissioner
6 Taylor has something he wanted to ask.

7 COMMISSIONER BRACERAS: Oh, I'm sorry. I
8 can't see that.

9 CHAIRMAN REYNOLDS: Okay. Commissioner
10 Taylor?

11 COMMISSIONER TAYLOR: If you could, I
12 would be very impressed.

13 COMMISSIONER YAKI: Get those little Apple
14 video things and just turn it around.

15 COMMISSIONER TAYLOR: Right.

16 I, too, am very sympathetic to the process
17 concerns. I do, however, see a significant difference
18 between the large body making a decision relative to
19 the selection criteria and the issues that are
20 proposed to be worked on by the working group, which
21 I view as more mechanical in how the working groups
22 relate to the Commission. These are all important
23 issues, but I think they are very different. Because
24 I know that I'm not the only Commissioner that has
25 been concerned about the overall approach in ensuring

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1 that, as our Chair has stated, we get a diversity of
2 views from the SACs. And I view that as the issue we
3 would be addressing if we were to vote on these other
4 motions, which again I view as different from how the
5 SACs interact with the Commission which appears to be
6 really the point of the working group.

7 Having said that, I would not be opposed
8 to some compromise. I think a year is too long. I
9 would not be opposed to an outside date of five or six
10 months with the expectation that our working group is
11 going to come back. And I would expect it to come
12 back in a few months, possibly four months. So I would
13 not be opposed to that if that were a workable
14 compromise and we were all committed to making sure
15 that the working group came back with recommendations
16 that we indeed voted on in that time period to include
17 criteria, term limits and all the other mechanical
18 issues addressed in our motion here.

19 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

20 VICE CHAIR THERNSTROM: I'd like to come
21 up with a compromise as well. And, again, I think the
22 Staff Director's got a bunch of questions on his plate
23 to answer. I'm not sure why this has to be a total
24 package, why we can't break this into separate pieces
25 and the working group move much more quickly on the

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1 issues that we are postponing today, which is the
2 issue of the membership. Because for many of us the
3 lack of diversity on the SACs is very important.

4 So one of the questions is can we break
5 the work of the working group into separate parts and
6 have them come back more quickly on the question of
7 the membership?

8 CHAIRMAN REYNOLDS: Well, it seems to me
9 that the flash point has been the proposal to change
10 the membership criteria. . And we've had lots of input
11 on that particular issue. I don't think that there's
12 anyone who objects to the notion of increasing the
13 diversity of views and skills. I believe it was the
14 balancing in terms of race, ethnicity and whatever
15 effect. That is the flash point in my view.

16 And so, Commissioner Yaki, do you believe
17 that further discussions on that issue is likely to
18 yield useful information?

19 COMMISSIONER YAKI: I do. I do for a
20 couple of reasons.

21 One, I believe at the conference call with
22 the SACs, was I the only Commission present along with
23 you? You know, just with the SAC chairs. Was anyone
24 else --

25 CHAIRMAN REYNOLDS: I think that another

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1 Commission may have been on.

2 COMMISSIONER TAYLOR: I was on there.

3 COMMISSIONER YAKI: I think it's important
4 that the other Commissioners hear what's been said.

5 Number two is that because it was done in
6 the context of a very rush basis, from what I've been
7 told there are SAC chairs who would have a more
8 analytical or quantitative presentation that they
9 would want to make to the Commission that should help
10 illuminate and maybe address some of the concerns
11 involved in selection criteria.

12 So I think that there is merit to it. If
13 it's the Commission's will to push it to September,
14 you know I would take that over doing it today. I just
15 think that there's an overall package here to what
16 we're trying to do. And as much as I respect
17 Commissioner Taylor, I think that the issues involved
18 in the working group are not nearly mechanical. Not
19 especially if I read what Commissioner Braceras has
20 been talking about in terms of content control or
21 content format; that is not a mechanical issue.

22 COMMISSIONER BRACERAS: Yes, but nobody's
23 talking about doing that today.

24 COMMISSIONER YAKI: No. No one is talking
25 about doing it today. But I was just addressing

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1 Commissioner Taylor's remarks that the working group
2 on SAC reform, I presume, that would take up that
3 issue that you would raise, correct?

4 COMMISSIONER BRACERAS: Yes, I suppose it
5 would.

6 COMMISSIONER YAKI: So therefore it's a
7 content which are more than mechanical.

8 COMMISSIONER BRACERAS: But that wouldn't
9 preclude it from discussing the --

10 CHAIRMAN REYNOLDS: Well, how about this?
11 I detect a consensus that we need to work out some
12 type of compromise to address the concerns expressed
13 by Commissioner Yaki. What do you think of having a
14 vote on the membership criteria in, say, October? And
15 if need be, if we believe that it was necessary to
16 have two meetings during October; one for regular
17 business and if you wanted to, and this is addressed
18 to you, Commissioner Yaki, especially but we could
19 have a separate meeting. We can come in and have a
20 meeting on a Thursday and a Friday. Because
21 apparently this is a very important issue. And by
22 that time the SAC members who are putting together
23 different analyses would have an opportunity to
24 provide it to us, and we can discuss it.

25 VICE CHAIR THERNSTROM: Can we hear from

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1 the Staff Director on this whole thing?

2 CHAIRMAN REYNOLDS: Sure.

3 STAFF DIRECTOR MARCUS: Certainly. I
4 don't know that I have a whole lot to add beyond the
5 points that have already been mentioned.

6 I suppose there are two points on timing
7 worth keeping in mind. One is that the motion to
8 change selection criteria, if it's made whenever it
9 would be made, would presumably be a motion that would
10 entail sending proposed criteria to the *Federal*
11 *Register* for notice and comment, which would commence
12 a period of public comment and discussion, after which
13 the Commission would have the ability to review the
14 public comment and make a final decision. So the
15 vote, whether it's made now, September or October,
16 would not necessarily be the end of the discussion but
17 rather the beginning of a public phase of comment.

18 And the second point that I would make is,
19 and I don't know to what extent the Commissioners will
20 be concerned to keep this in mind or not, but we do
21 currently have the benefit of an ongoing government
22 accountability audit that focused in significant part
23 on the SAC process. If the SACs were rechartered
24 sooner rather than later while the audit is ongoing,
25 that we might have the benefit of comments from the

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1 auditors on the new process, which would be in place,
2 as opposed to the alternative which is that we're
3 still in the process of changing things at the time
4 that the audit is completed. So that timing issue
5 might also play in Commissioners' considerations.

6 VICE CHAIR THERNSTROM: I have a question.

7 COMMISSIONER BRACERAS: So, Ken, what is
8 your preference besides when we vote on the selection
9 criteria portion?

10 STAFF DIRECTOR MARCUS: Well, what I would
11 say is that sooner rather than later is more helpful
12 in terms of getting the State Advisory Committees
13 going and having them do their work and getting
14 whatever benefit we can from the ongoing audit.

15 VICE CHAIR THERNSTROM: I have a
16 question.

17 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

18 VICE CHAIR THERNSTROM: So, look, I had
19 not thought about the fact that, of course, we are
20 facing a public phase here and I'm about to perhaps
21 shift my position here. Why is it not possible to
22 vote on the selection criteria today, the membership
23 criteria, go into the public phase, have the working
24 group functioning simultaneously during that public
25 phase and as part of the package of response that

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1 occurs at the end of that public phase, have the
2 working group's findings be part of the response? So
3 that we don't in fact lose anything by voting today a
4 proposed motion to amend the Commission's regulation
5 regarding membership criteria because we've now got
6 this public phase in which the working group can
7 function as well?

8 CHAIRMAN REYNOLDS: I think that that's a
9 good idea. The working group have access to the
10 public comments.

11 Commissioner Yaki?

12 COMMISSIONER YAKI: Based upon having
13 responded to 3,000 public comment requests in the
14 *Federal Register* by agencies of every ilk and stripe,
15 I can tell you that --

16 VICE CHAIR THERNSTROM: What a waste of
17 your time.

18 COMMISSIONER YAKI: -- there is a far, far
19 different view of a regulation promulgated in the
20 *Federal Register* in terms of process, especially
21 regarding the SACs and their relationship to this
22 Commission, than it would be if the SACs were involved
23 at least in the front end in the rule that went out
24 into the *Federal Register*. It is a gigantic
25 distinction of process. It is a gigantic distinction

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1 in terms of how we say to the SACs that we value their
2 input versus simply putting it in the *Register* and
3 saying join the cast of thousands, write us comments,
4 we'll ignore them like every other federal agency does
5 and then approve them in 45 days.

6 COMMISSIONER BRACERAS: But didn't we
7 already seek their input? And so what additional
8 input would we be getting?

9 COMMISSIONER YAKI: But, Commissioner
10 Braceras, what I had said in response to that point is
11 that we did not seek their input in the development of
12 this criteria. The criteria came down and only after
13 they read it and it was headed for the -- I can't
14 remember, June or July -- the July meeting was a
15 conference call put together in a very hurried fashion
16 to try and deal with it. And what I had said earlier
17 is that several SAC chairs have said to me that they
18 did not feel that that gave them adequate time to
19 adequately present more compelling qualitative and
20 quantitative data that might help us, might shift, may
21 not. But at least allow them the time to make their
22 case in a more coherent manner than it would be -- I
23 mean, we'd essentially be repeating the same process
24 by proving it to the *Federal Register*, which is okay,
25 we approve it top down. Sorry about that. You got one

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1 phone call with us. Goes to the *Federal Register*.
2 You got 45 days to comment back on it. And the
3 chances of us making any change at that and then back
4 and reposting it all over again, which would be even
5 more time consuming, I think is nil.

6 COMMISSIONER BRACERAS: I mean, I'm
7 certainly willing to listen to whatever data and
8 argument they can muster. However, my initial support
9 for the motion, for the proposed motion is my reading
10 of the law and not having a quota system in place. So
11 they might want to consider addressing their comments
12 to that because that is one of the reasons I think it
13 is necessary a rule change in addition to the fact
14 that I think it's just good practice to have a wider
15 array of ideological viewpoints on the SACs.

16 COMMISSIONER YAKI: Just to respond. The
17 quota system, as you referred to, was an
18 administration instruction not in the *Federal Register*
19 regulation that we have been following for years.

20 CHAIRMAN REYNOLDS: Well, I wouldn't
21 restrict Commissioner Braceras' argument to the
22 existence of a quota. Just the use of a racial
23 classification. That for me is the issue.

24 COMMISSIONER BRACERAS: Yes, I agree with
25 the Chair. And whatever you want to say is that --

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1 COMMISSIONER YAKI: Well, we can have a
2 good fight about that in a few minutes.

3 CHAIRMAN REYNOLDS: Commissioner Taylor?

4 COMMISSIONER TAYLOR: Where are we in the
5 process? Because I'd like to make a substitute
6 motion, if I can. I think we're in the discussion
7 phase.

8 CHAIRMAN REYNOLDS: Yes.

9 COMMISSIONER TAYLOR: So I'd like to make
10 a substitute motion. Okay. I think I can do that
11 under *Robert's Rules*.

12 CHAIRMAN REYNOLDS: Yes, you can. Yes.

13 COMMISSIONER TAYLOR: I thought I could.

14 Let me propose that we combine the motions
15 related to modifying our selection criteria and term
16 limits, and add that to the agenda of the working
17 committee with a specific charge, however, that the
18 working committee back with specific recommendations
19 on those two points that we will vote on in our
20 October meeting. That will allow us to then trigger
21 the public comment period. Having been a part of the
22 conference call with some of the SAC chairs, I sensed
23 their frustration with the shift which, while I
24 disagreed with, I could sense their frustration
25 nevertheless. And I want to give them an opportunity

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1 to present some more cogent arguments than they were
2 able to present just given the short time frame. So I
3 think that's a fair request.

4 COMMISSIONER YAKI: I'll second that.

5 COMMISSIONER TAYLOR: And that would be my
6 recommendation with the specific charge that we vote
7 on this in October.

8 COMMISSIONER YAKI: I'll second it.

9 CHAIRMAN REYNOLDS: Any other comments?
10 All in favor?

11 ALL: Aye.

12 CHAIRMAN REYNOLDS: All in opposition?
13 Okay. The substitute motion passes unanimously.

14 Okay. So we have made --

15 COMMISSIONER TAYLOR: Don't we need to
16 establish the members? Has that been established?

17 CHAIRMAN REYNOLDS: Oh, a good point.

18 I assume that, Commissioner Yaki, you
19 would want to be involved?

20 COMMISSIONER YAKI: I'm the only -- in
21 this entire thing?

22 VICE CHAIR THERNSTROM: You're going to be
23 on every working group we have, unless you can find
24 some --

25 COMMISSIONER YAKI: I'm hitting that hour

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1 limit real fast.

2 VICE CHAIR THERNSTROM: Oh, we all are.

3 CHAIRMAN REYNOLDS: In fact, I think that
4 we need to check to make sure that we're not bumping
5 up or maybe --

6 COMMISSIONER TAYLOR: We're getting very
7 close to the end of fiscal year.

8 COMMISSIONER YAKI: Well, my hours weren't
9 prorated for the entire year. Were they or were they;
10 I don't know.

11 CHAIRMAN REYNOLDS: Is it done by hours or
12 days?

13 STAFF DIRECTOR MARCUS: It's for the full
14 year. It's hours for the full year, and staff is
15 putting together a report on the number of hours that
16 Commissioners have reported to us that they have spent
17 and the number of hours left. So we can distribute
18 that when it's prepared.

19 CHAIRMAN REYNOLDS: Great. Because every
20 time I do a time sheet I get a little nervous.
21 Because I have no idea how close I am.

22 VICE CHAIR THERNSTROM: Yes. Well, I'm in
23 the same position.

24 COMMISSIONER TAYLOR: Well, there should
25 be an understanding. Because I've had that same

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1 thought. It was my assumption, maybe we should make
2 this clear, that to the extent a Commissioner submits
3 time in excess of the 600 hours, as I recall the
4 number being, that we're doing so only for purposes of
5 establishing for the record that we were working on
6 behalf of the Commission with not the expectation that
7 we would be compensated.

8 VICE CHAIR THERNSTROM: No, you can't do
9 that.

10 COMMISSIONER TAYLOR: Okay.

11 STAFF DIRECTOR MARCUS: I would advise
12 against that for the reason that our statute prohibits
13 Commissioners from providing uncompensated service.

14 COMMISSIONER TAYLOR: Okay. Well, I'm
15 glad I asked the question. I thought you were supposed
16 to do that. Okay.

17 VICE CHAIR THERNSTROM: No.

18 COMMISSIONER TAYLOR: Okay. Just to keep
19 the record straight. Okay. All right.

20 VICE CHAIR THERNSTROM: No. You have to
21 cheat yourself.

22 COMMISSIONER TAYLOR: Okay.

23 VICE CHAIR THERNSTROM: We have to keep
24 you--

25 COMMISSIONER TAYLOR: I apologize. Never

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1 mind.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER TAYLOR: I don't understand
4 that, but that's --

5 CHAIRMAN REYNOLDS: Will someone help me
6 with my train of thought here; where were we? Okay.

7 Commissioner Yaki, I'd like to be
8 involved. Volunteers? Okay --

9 COMMISSIONER BRACERAS: Well, I guess I'm
10 going to recommend, I guess, I mean Staff Director a
11 member of the committee?

12 CHAIRMAN REYNOLDS: Well, the Staff
13 Director participates in all subcommittees.

14 COMMISSIONER TAYLOR: I'll do it.

15 CHAIRMAN REYNOLDS: So that's Commissioner
16 Yaki, Reynolds and Taylor. One more?

17 COMMISSIONER BRACERAS: I'll do it.

18 CHAIRMAN REYNOLDS: Very good.

19 COMMISSIONER BRACERAS: Unless somebody
20 wants to.

21 CHAIRMAN REYNOLDS: Well, I see Pete is
22 chomping at the bit at this.

23 VICE CHAIR THERNSTROM: So am I.

24 CHAIRMAN REYNOLDS: Okay. All right.
25 Where are we? Okay. We can skip that motion. Okay.

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1 Am I correct in that we're up to future briefings?

2 COMMISSIONER YAKI: What happened to the
3 motions at the beginning of the packet that we have?
4 Are we going to deal with those?

5 CHAIRMAN REYNOLDS: What topics?

6 COMMISSIONER YAKI: Number of briefings
7 and hearings and the --

8 VICE CHAIR THERNSTROM: Well, that's what
9 we're up to.

10 COMMISSIONER YAKI: Okay.

11 VICE CHAIR THERNSTROM: It got re-ordered,
12 I think.

13 CHAIRMAN REYNOLDS: Yes, that's coming.

14 COMMISSIONER YAKI: Okay. Thank you.

15 COMMISSIONER BRACERAS: I'm sorry. I need
16 to be off the phone in about 20 minutes.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER BRACERAS: I just wanted to
19 let you know.

20 **VIII. Future Briefings**

21 CHAIRMAN REYNOLDS: Okay. I hope that we
22 can get through this in 20 minutes, but we'll see.

23 Okay. Mr. Staff Director, do you have an
24 update on future briefings?

25 STAFF DIRECTOR MARCUS: Certainly, Mr.

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1 Chairman. I'd be pleased to provide an update as to
2 the status of briefings previously approved by the
3 Commissioners.

4 I think many have indicated to me that
5 they agree that the briefing on the Stagnation of the
6 Black Middle Class was a success. Staff is preparing
7 a report on the briefing, which we hope to have ready
8 by the next Commission meeting in September. The
9 briefing report will consist of an executive summary,
10 the written statement of the panelists and written
11 comments from the Chairman and Commissioner Yaki.

12 The next briefing scheduled for the
13 Commission is a briefing on the Patriot Act as it
14 relates to alleged acts of anti-Muslim and anti-Arab
15 discrimination.

16 At a recent Commission meeting staff were
17 asked to make some changes to the concept paper
18 regarding this briefing. That concept paper as
19 amended has been distributed and there will be a
20 motion concerning it shortly.

21 Assuming that it is approved, the briefing
22 will go as described in that concept paper. It's
23 scheduled for September 16, 2005.

24 So far Mr. Parvez Ahmed of the National
25 Council for American-Islamic Relations and Andrew

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1 McCarthy, Senior Fellow at the Foundation for Defense
2 of Democracies and former Assistant United States
3 Attorney for the Southern District of New York have
4 agreed to speak at the briefings.

5 We have extended invitations to the
6 Federal Bureau of Investigation and to current and
7 former officials of other components of the Department
8 of Justice, but have not yet received definitive
9 responses from these invitees yet.

10 COMMISSIONER YAKI: Mr. Staff Director, I
11 just want to add that the President of the Arab
12 American Anti-Discrimination Committee, former
13 Congresswoman Mary Rose Oakar is interested in
14 appearing at the briefing as well.

15 STAFF DIRECTOR MARCUS: Thank you: That is
16 news to me. Delighted to hear of her interest. She,
17 of course --

18 COMMISSIONER BRACERAS: We've had her in
19 the past.

20 COMMISSIONER YAKI: Yes.

21 STAFF DIRECTOR MARCUS: She addressed, I
22 think, the Patriot Act at our last briefing.

23 COMMISSIONER BRACERAS: Yes.

24 STAFF DIRECTOR MARCUS: We have also begun
25 planning on the November briefing on campus anti-

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1 Semitism based on the speaker list set forth in the
2 concept paper previously approved by the Commission.
3 I will be able to provide more information on this in
4 September.

5 CHAIRMAN REYNOLDS: Okay. Any questions?
6 Additional questions or comments?

7 All right. The next issue deals with the
8 number of briefings and hearings conducted by the
9 Commission. The motion reads "The Commission will
10 adopt a new policy of issuing only one major national
11 report each year and of shifting the available
12 resources to conduct the greatest feasible number of
13 briefings and hearings.

14 The Commission has customarily drafted
15 approximately three to four major national reports on
16 civil rights issues each year, in addition to the
17 State Advisory Committee reports, briefing reports,
18 and other statements and analyses. These major
19 national reports are often lengthy, time-consuming,
20 and resource-intensive. Since the topics of the
21 reports are often approved two years in advance, the
22 major national reports are not always timely.

23 The Commission's national briefings and
24 hearing, on the other hand, which may be accompanied
25 by short printed briefing reports, have offered more

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1 timeliness and flexibility and do not impose as severe
2 strain on Commission resources. They can address a
3 broader range of civil rights issues and bring a
4 higher profile to them. They are cost effective,
5 requiring much less in terms of staff time and
6 preparation. They are easy to arrange in a short time
7 frame so that they may cover more timely civil rights
8 issues. Timeliness is especially important so that
9 the President, Congress and the public can act on any
10 recommendations that the Commission may make as a
11 result of a briefing or hearing."

12 May I have a motion to increase the number
13 of briefings and hearings conducted by the Commission.

14 VICE CHAIR THERNSTROM: So moved.

15 CHAIRMAN REYNOLDS: May I have a second?

16 COMMISSIONER YAKI: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 COMMISSIONER YAKI: For the Staff
19 Director. This would require us, this would
20 essentially supersede the process we went through in,
21 was it June when we were picking the enforcement
22 report and the other report, the one that Commissioner
23 Thernstrom was chairing at the end, so ably.

24 STAFF DIRECTOR MARCUS: Yes. Yes,
25 Commissioner. I think it would be neater to have an

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1 additional separate motion on the topic. But as I
2 understand this, it would require that we have only
3 one national report per year, which is the statutorily
4 mandated enforcement report.

5 COMMISSIONER YAKI: Okay.

6 STAFF DIRECTOR MARCUS: And any other
7 reports be converted into briefs or hearings.

8 COMMISSIONER BRACERAS: And do we need to
9 go through that process again and decide which of
10 those to make?

11 CHAIRMAN REYNOLDS: Sure, that and timing
12 issues. Yes, I believe that we have to address this.
13 We have to go back and take a look at the list and see
14 how we're going to reorganize --

15 COMMISSIONER BRACERAS: Well, we'd stick
16 with the same list, we'd just --

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER BRACERAS: -- choose from
19 that list which will be the statutory report?

20 CHAIRMAN REYNOLDS: That's my hope, unless
21 someone moves to add something or delete something.

22 STAFF DIRECTOR MARCUS: I believe that the
23 Commission made it easier a couple of months ago. As
24 I recall, there was already a designation of the
25 statutory enforcement reports in 2007.

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1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER BRACERAS: Oh, okay. And the
3 other topics will still be covered in the form of
4 briefings. We won't be dropping any topics, in other
5 words?

6 STAFF DIRECTOR MARCUS: That's right. And
7 just for clarification, the Voting Rights Act was
8 designated as the enforcement report for 2006. And I
9 believe that elementary and secondary degradation was
10 selected as the statutory enforcement report for
11 fiscal year 2007.

12 COMMISSIONER BRACERAS: Thank you.

13 CHAIRMAN REYNOLDS: Any other questions or
14 comments?

15 COMMISSIONER YAKI: One question. The
16 briefing in October won't supplant the enforcement
17 report?

18 VICE CHAIR THERNSTROM: No.

19 COMMISSIONER YAKI: Okay.

20 VICE CHAIR THERNSTROM: That's correct.

21 CHAIRMAN REYNOLDS: Okay. All in favor
22 say aye.

23 ALL: Aye.

24 CHAIRMAN REYNOLDS: All in opposition. The
25 motion passes unanimously.

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1 COMMISSIONER TAYLOR: Mr. Chair?

2 CHAIRMAN REYNOLDS: Yes.

3 COMMISSIONER TAYLOR: Just one question.
4 I apologize for asking this, but I just don't remember
5 the discussion as to the Patriot Act, how it appeared
6 on the radar. Did the Commission have a particular
7 interest?

8 COMMISSIONER YAKI: Me.

9 COMMISSIONER TAYLOR: Oh, okay. Okay.
10 All right. I just wanted to make sure I -- I just
11 didn't have a --

12 CHAIRMAN REYNOLDS: I just want to point
13 out this privileged position that Mr. Yaki has in that
14 one of the nice things about how we work -- well, the
15 reconstituted Commission, I think, is just doing an
16 excellent job. I think that you make very good points
17 and I think that despite the fact that we do have so
18 me fundamental differences, I think that we've done a
19 good job of trying to work through our differences.
20 And I've said this in the past, and I'll probably say
21 it again. It just amazes me at the community that we
22 have now. And, you know, I think that we do a very
23 good job of --

24 COMMISSIONER KIRSANOW: We had comedy
25 before, too; spelled differently.

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1 CHAIRMAN REYNOLDS: Well, I guess we need
2 to define our terms.

3 VICE CHAIR THERNSTROM: I thought that was
4 spelled C-O-M-E-D-Y.

5 CHAIRMAN REYNOLDS: Okay.

6 VICE CHAIR THERNSTROM: Well, let me add
7 something to that. I think you're perfectly aware
8 that all Commissioners with the exception of
9 Commissioner Yaki would have postponed the briefing on
10 the Patriot Act until we --

11 COMMISSIONER YAKI: 2010.

12 VICE CHAIR THERNSTROM: No. No. But until
13 we at least had some new information. I mean, there
14 have been a series of hearings now on the Patriot Act.
15 We're adding another. I would have had preference for
16 waiting until we see how the reauthorization of the
17 act, the reauthorization amendment of the act plays
18 out and so forth. But you felt very strongly about
19 having it now.

20 COMMISSIONER YAKI: I appreciate that.

21 VICE CHAIR THERNSTROM: And we have all
22 felt that it is important to respond to your
23 preference here.

24 COMMISSIONER YAKI: Thank you.

25 CHAIRMAN REYNOLDS: Okay. Next. The next

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1 motion is --

2 COMMISSIONER YAKI: Adjourn?

3 CHAIRMAN REYNOLDS: Yes.

4 COMMISSIONER TAYLOR: No, no. Don't
5 listen to him.

6 CHAIRMAN REYNOLDS: Okay. The next motion
7 involved converting previous approved reports into
8 briefings.

9 COMMISSIONER YAKI: WE did that.

10 VICE CHAIR THERNSTROM: We just did that,
11 Jerry.

12 CHAIRMAN REYNOLDS: Oh, gees.

13 VICE CHAIR THERNSTROM: The next motion is
14 to hold the briefing on the Voting Rights Act.

15 CHAIRMAN REYNOLDS: Okay.

16 COMMISSIONER YAKI: No, no. We didn't do
17 that one.

18 VICE CHAIR THERNSTROM: Well --

19 COMMISSIONER YAKI: No, we didn't do that.

20 CHAIRMAN REYNOLDS: Well, we sort of did,
21 but we didn't go into the specifics.

22 COMMISSIONER YAKI: No.

23 CHAIRMAN REYNOLDS: Okay. The motion
24 reads: "I move that the following topics which the
25 Commission decided to address in a future national

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1 reports during the Commission's May 13, 2005 meeting
2 be instead addressed in briefings to be held in 2006
3 and 2007. And the topics are: Representation of
4 Minorities in the Census; Assessment of Effectiveness
5 of Historically Black Colleges; School Choice, the
6 Blaine Amendment, and; Anti-Catholicism. And that's
7 one topic. Minority Children in State Foster Care &
8 Adoption.

9 And upon this motion the topics of
10 reauthorization of the temporary provision of the
11 Voting Rights Act and elementary and secondary school
12 desegregation would still be addressed in national
13 reports in 2006 and 2007 respectively."

14 COMMISSIONER TAYLOR: So moved.

15 CHAIRMAN REYNOLDS: Second?

16 VICE CHAIR THERNSTROM: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 COMMISSIONER KIRSANOW: One question, and
19 I think this was already addressed in previous
20 discussion but I just wanted to be clear on this. If
21 we're converting some of this to briefing, does that
22 have any impact on the budget submission that we made
23 earlier?

24 CHAIRMAN REYNOLDS: Off the top of my
25 head, I would say no, but I naturally defer to the

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1 Staff Director.

2 STAFF DIRECTOR MARCUS: We're going to
3 have to review that and see if further clarification
4 needs to be made to our Appropriations Committees. It
5 may well be since we indicated that we would be doing
6 reports, that we would need to clarify that. But
7 we'll have to review the specific language that was
8 made in our communications to Congress and take
9 whatever are required.

10 VICE CHAIR THERNSTROM: One other question
11 here. It's a little unclear under this motion, "the
12 topics of reauthorization the temporary provision of
13 the Voting Rights Act and elementary and secondary
14 school desegregation would be addressed in national
15 reports." But they are also the subject of briefing;
16 that is not clear from the language of the motion.

17 CHAIRMAN REYNOLDS: Okay.

18 VICE CHAIR THERNSTROM: It really should
19 read, the amendment here, will be --

20 STAFF DIRECTOR MARCUS: I'm sorry, Vice
21 Chair Thernstrom. I'm not sure I entirely heard. I
22 think that you indicated that under the vote that had
23 just been taken, we would be doing Voting Rights Act
24 as a national report, although we may also have a
25 briefing on it as well. Elementary and secondary

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1 desegregation would be the subject of a report --

2 VICE CHAIR THERNSTROM: Of course. Of
3 course. I'm sorry.

4 STAFF DIRECTOR MARCUS: But we had not yet
5 determined whether we will --

6 VICE CHAIR THERNSTROM: Have a briefing.
7 All right. It just needs to be clear. It's not clear.
8 Topics of reauthorization would still be addressed in
9 national reports, that is that topic is in addition a
10 briefing?

11 STAFF DIRECTOR MARCUS: That's right.
12 Elementary and secondary may or may not require an
13 additional hearing or briefing.

14 VICE CHAIR THERNSTROM: Right.

15 CHAIRMAN REYNOLDS: Okay. Where are we?
16 Have we voted?

17 VICE CHAIR THERNSTROM: No.

18 COMMISSIONER YAKI: No.

19 CHAIRMAN REYNOLDS: Okay. Additional
20 questions, comments? All in favor say aye.

21 ALL: Aye.

22 CHAIRMAN REYNOLDS: All in opposition?
23 The motion passes unanimously.

24 Next up motion to hold a briefing on the
25 Voting Rights Act. 2005 marks the 40th anniversary of

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1 the enactment of the Voting Rights Act. Debate has
2 already begun on reauthorization of the temporary
3 provisions of the Act due to expire in 2007.
4 Therefore, I move that the Commission hold a briefing
5 on the Voting Rights Act in October. That is the
6 motion.

7 VICE CHAIR THERNSTROM: October 2005?

8 CHAIRMAN REYNOLDS: Yes. Will someone
9 second this motion?

10 VICE CHAIR THERNSTROM: Yes, I second it.

11 CHAIRMAN REYNOLDS: Okay. Discussion?

12 COMMISSIONER YAKI: Yes. I would just
13 request that we ensure that an invitation to appear is
14 extended to the National Voting Rights Act Commission,
15 a nonprofit group that's been going around the country
16 holding hearings on this.

17 VICE CHAIR THERNSTROM: Sure. Sure.

18 CHAIRMAN REYNOLDS: Okay. Any additional
19 comments? Okay.

20 All in favor?

21 ALL: Aye.

22 CHAIRMAN REYNOLDS: All in opposition. The
23 motion passes unanimously.

24 Okay. Next up is a motion to approve a
25 revised scope for the Patriot Act and Anti-Arab and

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1 Anti-Muslim Intolerance. Okay. Here is the motion.
2 "I move that the scope of the Patriot Act and the
3 Anti-Arab and Anti-Muslim Intolerance briefing examine
4 alleged incidents of anti-Arab and anti-Muslim
5 backlash following 9/11. Prior Commission action
6 addressed whether efforts to combat terrorism and
7 secure our homeland affect immigration policies,
8 increase our concerns about racial/ethnic profiling or
9 raise issues of selective enforcement of laws
10 infringing on civil rights and civil liberties,
11 detention policies, access to counsel, and the use of
12 military and executive authority. This briefing would
13 address sections 215 and 505 of the Patriot Act, as
14 well as specific practices of the FBI under the
15 Patriot Act and/or other actions under color of law in
16 detaining and/or questioning Arab-Americans and
17 American Muslims. Section 215 provides that FBI
18 personnel may apply for a court order requiring the
19 production of business records relevant to an
20 investigation concerning international terrorism or
21 clandestine intelligence activities, provided that
22 investigation of a U.S. citizen or a legal permanent
23 resident may not be conducted solely on the basis of
24 First Amendment protected activities. Section 505
25 authorizes the use of an administrative subpoena of

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1 personal records relevant to an investigation
2 concerning international terrorism or clandestine
3 intelligence activities, without requiring probable
4 cause.

5 The Commission will seek information to
6 address the following issues:

7 Testimony identifying discrimination,
8 scapegoating, and profiling of Arab and Muslim
9 Americans in enforcement of sections 215 and 505 of
10 the Patriot Act;

11 Data collected by the Department of
12 Justice on civil rights complaints arising from
13 enforcement of the Patriot Act;

14 And other remedies for potential civil
15 rights problems arising from enforcement of the
16 Patriot Act."

17 The methodology: "The Commission will
18 host a briefing to address the above issues. Speakers
19 may include but are not limited to the following."
20 Speakers that would include the representatives from
21 the appropriate components offices of the Department
22 of Justice such as the Office of Legal Policy, Office
23 of Inspector General, etcetera, including someone
24 responsible for the Hate Crimes Statistic Act.

25 Speaker from the Federal Bureau of

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1 Investigation to describe their action and interaction
2 with the American Arab and Islamic communities; and
3 Georgetown Law Professor Viet Dinh.

4 Okay. The list is not over.

5 And also a speaker from the Arab American
6 Anti-Discrimination Committee.

7 A speaker from the Council on American-
8 Islamic Relations.

9 A resident of Lodi, California.

10 The briefing would last approximately 90
11 to two hours with four to six speakers allotted 10 to
12 15 minutes each, and the remaining time allotted for
13 questions. The projected costs would range from
14 approximately \$3600 to \$4500.

15 Questioned that dollar figure. Is that
16 staff time or does that include -- is that out-of-
17 pocket expense?

18 STAFF DIRECTOR MARCUS: That is out-of-
19 pocket.

20 CHAIRMAN REYNOLDS: Okay. That is the --

21 STAFF DIRECTOR MARCUS: And I would
22 clarify that there were some people on this list who
23 already invitations are extending. They may not be
24 able to come to the event. And that Mr. McCarthy has
25 also been invited.

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1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER BRACERAS: I need to go, so
3 I'd like to call the motion.

4 VICE CHAIR THERNSTROM: I just have one
5 question, Jennifer. Why have we listed in this motion,
6 why we have got this sentence "Speakers may include
7 but not limited to the following?" Is there some
8 point to this list? Because I would really prefer
9 that the staff director work out the list of speakers
10 in response to the availability of people and have a
11 great deal of flexibility.

12 CHAIRMAN REYNOLDS: Okay.

13 VICE CHAIR THERNSTROM: So that I would
14 prefer that that whole --

15 COMMISSIONER BRACERAS: I think "may
16 include."

17 VICE CHAIR THERNSTROM: I know it says may
18 include. But it doesn't seem to me to serve much of a
19 point to have this list.

20 COMMISSIONER YAKI: As Jennifer knows,
21 that's pretty standard lawyer-speak for whatever you
22 can think of.

23 VICE CHAIR THERNSTROM: Yes, well I know.
24 I know. So I'm suggesting that lawyer-speak for
25 whatever you can think of is not a very useful --

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1 COMMISSIONER BRACERAS: I'm very sorry.
2 I really do need to hang up.

3 VICE CHAIR THERNSTROM: Agree or disagree,
4 Jennifer, with what I just said?

5 COMMISSIONER BRACERAS: I don't think it
6 matters.

7 VICE CHAIR THERNSTROM: All right.

8 COMMISSIONER BRACERAS: It's a way to
9 phrase is the Staff Director's responsibility.

10 VICE CHAIR THERNSTROM: Okay.

11 CHAIRMAN REYNOLDS: Okay. Unless there
12 are additional comments, this is the last issue before
13 we adjourn. So if there are any additional comments
14 so we can allow Commissioner Braceras to scoot.

15 VICE CHAIR THERNSTROM: She's scooting
16 anyway.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER KIRSANOW: I do have one
19 additional comment. I would like to just alert
20 Commissioner Braceras that I would like the Commission
21 to -- I have distributed a little bit of work product
22 here that I'll make a mention of before we adjourn.

23 CHAIRMAN REYNOLDS: Okay.

24 COMMISSIONER KIRSANOW: Related to the
25 Roberts Supreme Court advocacy record.

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1 CHAIRMAN REYNOLDS: Okay.

2 VICE CHAIR THERNSTROM: Well, maybe it can
3 be mailed to Commissioner Braceras.

4 COMMISSIONER KIRSANOW: It will be.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER KIRSANOW: Move.

7 CHAIRMAN REYNOLDS: So second?

8 VICE CHAIR THERNSTROM: Second.

9 CHAIRMAN REYNOLDS: Very good. All in
10 favor?

11 ALL: Aye.

12 CHAIRMAN REYNOLDS: All in opposition?
13 The motion passes unanimously.

14 COMMISSIONER BRACERAS: Okay. Got to run
15 everybody. Thank you.

16 ALL: Thanks, Jennifer.

17 CHAIRMAN REYNOLDS: Okay. Thank you.

18 Okay. Commissioner Kirsanow?

19 **IX. Compendium of Roberts's Advocacy Record**

20 COMMISSIONER KIRSANOW: My assistant Chris
21 Jennings --

22 CHAIRMAN REYNOLDS: Has been very busy.

23 COMMISSIONER KIRSANOW: -- at my request
24 put together the impressive, I consider, a compendium
25 of the briefs and other written material related to

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1 the civil rights record of the Supreme Court nominee.

2 It is, without editorial comment, it is
3 simply a compendium of the facts of the case, the
4 issues presented, the briefs he wrote, a summary of
5 his advocacy position and the votes that were taken.
6 And all of them pertain to matters within the
7 jurisdiction of the Civil Rights Commission, that is
8 matters pertaining to race, sex, age, national origin,
9 religion, so and so forth.

10 This is presented to my at my request and
11 for my use. Having review it, I thought it was
12 something that the other Commissioners would be
13 interested in. I think it is the only place that I
14 have seen anywhere in the public domain, at least,
15 where a complete compendium of his advocacy record
16 before the Supreme Court pertaining to civil rights
17 has been put together.

18 In fact, if you take a look at the forward
19 that Chris presented, if you take a look at the table
20 of contents also, but if you take a look at the
21 forward it summarizes fairly adequately, I think, what
22 this is all about. Again, no editorial comment. He
23 didn't make any observations. This is simply raw data
24 pertaining to Robert's Supreme Court advocacy. You can
25 take it one way or anyway you wish, whether or not you

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1 think his advocacy positions were meritorious, whether
2 or not you disagree with them; they're there for
3 review.

4 And I would suggest that maybe this is
5 something that the Commission consider placing on its
6 website. And I'm not saying that's something that we
7 talk about today, but I think it's something that
8 satisfies our clearinghouse responsibilities under our
9 charter.

10 CHAIRMAN REYNOLDS: Sure.

11 COMMISSIONER KIRSANOW: And I think if you
12 review it, you'll see that, again, no editorial
13 comment. It's simply what it is. It's one plus one
14 equals two.

15 CHAIRMAN REYNOLDS: And Chris included it
16 appears transcripts.

17 COMMISSIONER KIRSANOW: Yes. As you can
18 see, this is nearly 500 pages long. He spent a lot of
19 time on this collating the data. And it is, again,
20 it's the raw information pertaining to his advocacy
21 record.

22 CHAIRMAN REYNOLDS: Excellent. Excellent.
23 Good work, Chris.

24 COMMISSIONER YAKI: How you did that and
25 do your bow tie?

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1 COMMISSIONER KIRSANOW: I'd like to
2 introduce for the record just the forward for this,
3 and then if the Commissioners wish, maybe at some
4 later point we could vote on whether this should be
5 included on the web site.

6 CHAIRMAN REYNOLDS: Oh no. I think that we
7 should, you know, go through the document over the
8 next few weeks and then make a decision as to whether
9 there's a consensus to put this on the website.

10 What I have seen of this looks excellent.
11 It's one-stop shopping here instead of having to go
12 online and trying to get particular documents. This
13 just saves a lot of time.

14 VICE CHAIR THERNSTROM: We'll definitely
15 have a vote on it.

16 CHAIRMAN REYNOLDS: Yes.

17 Once again, excellent work, Chris.

18 VICE CHAIR THERNSTROM: One last bit of
19 business. On the funding federal civil rights
20 enforcement, there are two errors. I know we've
21 already voted on this report. But there are two
22 errors that really need to be corrected.

23 The first is the first sentence of the
24 introduction, which reads "The year 2005 marks 60
25 years since Congress passed the Voting Rights Act of

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1 1965." Sixty years has not passed since 1965. Clearly
2 that has to read 40 years. That needs to be corrected
3 before this goes to press.

4 And the description of Voting Rights Act
5 enforcement is simply, incorrect. It leaves out the
6 preclearance function of the Voting Rights section,
7 which is the main business, that is administrative
8 preclearance. And that needs to be included in the
9 description of what the Voting Rights section is
10 responsible for.

11 CHAIRMAN REYNOLDS: Any other changes?

12 Well, it seems to me I don't think there
13 will be any disagreement over the first issue.

14 The second, I suggest that we develop the
15 language, circulate the language and if there are no
16 violent objections to the proposed addition, that we
17 just add it without a vote. If someone has a
18 substantive concern about the language, we try to work
19 out amongst ourselves. And if we're unable to, then
20 we'll have to vote on it.

21 COMMISSIONER YAKI: Yes. That's right.

22 VICE CHAIR THERNSTROM: Good.

23 CHAIRMAN REYNOLDS: All right. Meeting's
24 adjourned.

25 (Whereupon, the meeting was adjourned at 11:17 a.m.)

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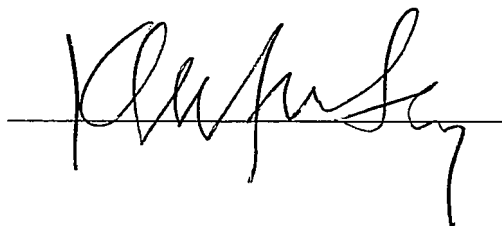
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Place: Washington, DC

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aforementioned matter, as reported and reduced to
typewriting.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "R. L. ...".

