

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY,

JANUARY 7, 2005

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The Commission convened at 9:30 a.m. in Room 540 of the U.S. Commission on Civil Rights, 645 Ninth Street, N.W., Washington, D.C., Chairman Gerald A. Reynolds presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman

ABIGAIL THERNSTROM, Vice Chair

JENNIFER C. BRACERAS, Commissioner

PETER N. KIRSANOW, Commissioner

ELSIE M. MEEKS, Commissioner

ASHLEY L. TAYLOR, JR., Commissioner

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

TERRI DICKERSON, Assistant Staff Director

MANUEL ALBA

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STAFF PRESENT (Continued):

ROGER G. ANTHONY, Information Technology
Specialist

JOHN BLAKELEY

TERESA BROOKS

MARGARET BUTLER

DEBRA CARR, Esq., General Counsel

IVY L. DAVIS, Director, Eastern Regional Office

BARBARA DELAVIEZ

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

BARBARA FONTANA

LATRICE FOSHEE

DORELLE GRAY

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, via teleconference

JANICE MINOR

EMMA MONROIG, Solicitor/Parliamentarian

JENNY PARK

BERNARD QUARTERMAN

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STAFF PRESENT (Continued):

MICHELLE ROYSTER

DEBBIE VAGINS

AUDREY WRIGHT

TIFFANY WRIGHT

MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY

CHRISTOPHER JENNINGS

LISA NEUDER

KIMBERLY SCHULD

MELISSA SHARP

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P R O C E E D I N G S

(9:35 a.m.)

INTRODUCTIONS

CHAIRMAN REYNOLDS: Welcome. I would like to call this meeting to order. We have a quorum.

My name is Gerry Reynolds. I am the new Chairman of the Commission on Civil Rights.

And the first order of business I would like to announce for the record that on December 6th, 7th, and 8th, Assistant Staff Director Dickerson conducted a poll vote of the Commissioners, and the purpose was to obtain concurrence of the President's designation of me as Chairman, and Chairman Thernstrom as Vice Chair, and Kenneth Marcus as Staff Director.

Ms. Dickerson certified that the motion to concur with the President's appointments were approved by a vote of six in favor and two abstentions.

Having complied with the statutory requirements of concurrence, I have assumed my duties.

The Chairman and Vice Chair assumed their duties on December 8th, and the new Staff Director assumed his duties on December 13th.

Okay. I guess I'd like to start off by introducing myself. By day I am an energy lawyer. I work for a firm in Kansas City, and I have two

1 children, and my wife Renee is quite supportive of all
2 my endeavors, including this one.

3 I have served in the Bush Administration
4 initially as the Assistant Secretary of Education for
5 the Office for Civil Rights. After that stint, I
6 served as the Deputy Associate Attorney General at the
7 Department of Justice.

8 Now, I'm going to briefly talk about my
9 views on civil rights. This is a new Commission, a
10 reconstituted Commission I should say, and we have a
11 new Chairman and Vice Chair, and I think it's
12 important that we start off by briefly talking about
13 our views on civil rights.

14 First off, my view of civil rights begins
15 with the notion that it has always been about
16 expanding freedom. Initially the struggle was to end
17 slavery, and at another stage the struggle was to
18 dismantle a racial caste system that existed in this
19 country for most of its history.

20 The goal is the same. The goal is to
21 expand and maintain freedom for all Americans. A part
22 of that struggle involves the state, the federal,
23 state, and local governments, insuring that
24 individuals and companies do not distribute benefits
25 and burdens on the basis of race.

1 But that struggle is not limited to the
 2 states. There are also areas where we have to
 3 struggle, in areas of education, crime, and there are
 4 just a whole host of areas, and I think that the time
 5 has come for the nation and this Commission to expand
 6 the conversation.

7 Yes, we must continue to monitor
 8 discriminatory activities and to make sure that we
 9 take all steps to make victims whole and to penalize
 10 individuals who decide to discriminate on the basis of
 11 race. But we also need to look at cases where the
 12 government must play a role, but not a primary role.

13 I'm thinking about issues like education.
 14 Pardon me. Crime. We have a situation where the
 15 government does a fairly good job at putting people in
 16 jail, but I think that we need to do better. I think
 17 that we need to try to figure out how we can prevent
 18 young men from committing crime, especially in our
 19 urban communities.

20 We have far too many young black men
 21 wasting their lives away in prison. We need to see
 22 who in the community is best suited to reach these
 23 young men and to develop a relationship so that they
 24 can avoid a life -- we need to allow them to have a
 25 life. We need to encourage these young men to explore

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the freedoms that the Civil Rights Movement has wrought.

I believe that the government has a role to play in that particular conversation, but I think that it's extremely important that we recognize that that conversation has to include other people. We have to involve members of the community, such as churches, community organizations, and parents. Until we do that, many of the social ills that we see in especially our urban communities, they will continue.

So that is one of the goals that I want to do to expand the conversation, to expand the notion of civil rights.

Also, I have as a goal to create an environment where we can discuss issues that intersect with race, ethnicity, sex, disability. I think that it's extremely important that we discuss these issues in an atmosphere of trust. We need to assume that the person sitting across the table from us who disagrees with our position is a good man or woman who merely has a different point of view.

There are far too many Americans, both black and white, who shy away from certain discussions when it involves race. I think that's a mistake. No one organization, not this one, not any single

1 organization in the country can represent the diverse
2 viewpoints of America. So it's important that we
3 adopt an approach that embraces all views.

4 We talk about diversity, but we're going
5 to have to make this concept of diversity real in
6 terms of a willingness to exchange ideas in a frank
7 and open fashion. I believe that we have failed to do
8 that.

9 Well, I've taken up more than my allotted
10 time. I guess that's my prerogative as the Chairman,
11 but at this point though, I would like to introduce
12 Vice Chair Abigail Thernstrom. Abby, would you say a
13 few words for us?

14 VICE CHAIRMAN THERNSTROM: Absolutely.
15 Well, obviously I've been here for a while, and so in
16 a way people know me, but actually I never had a
17 chance to introduce myself, and I will say a couple of
18 words. I want to talk a little bit about what my
19 vision is as well, but I want to say a couple of words
20 about who I am.

21 A political scientist by training, author
22 of a book on minority voting rights called Whose Votes
23 Count that's now a little out of date, 1987. Co-
24 author of America in Black and White, One Nation
25 Indivisible, as well as the more recent volume called

1 No Excuses: Closing the Racial Gap in Learning, and
2 editor of a collection of essays called Beyond the
3 Color Line.

4 I have been writing exclusively on issues
5 of race and ethnicity since about 1980. People often
6 ask me why, and the answer seems to me very simple.
7 Race is still the American dilemma. Racial equality
8 is America's great unfinished business. It remains
9 our primary domestic issue, and I am delighted for
10 that reason to have become a member of the U.S.
11 Commission on Civil Rights.

12 I've been on the Commission now for four
13 years. This month marks my four-year anniversary.
14 This has been, as everyone knows, an acrimonious time.
15 There's been a lot of warfare on this Commission. I
16 think it has been needless. There's no reason why the
17 atmosphere should be so charged.

18 We all are devoted to the same goal, and
19 that is of racial equality, gender equality, and
20 racial-ethnic-gender equality in this country. There
21 are differences, of course. There will inevitably be
22 some differences. There will be differences amongst
23 the members of the majority. There will be
24 differences that split along partisan lines, as there
25 have been in the past.

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1 And, you know, I was looking in just the
2 last few days in a recent Rasmussen poll that gives a
3 little hint of kind of the origin of some of the
4 differences at least on the Commission in the past.
5 There were three interesting questions asked.

6 One, is American society generally fair
7 and decent? And Bush voters, 83 percent said yes and
8 Kerry voters, 46 percent yes. There is, you know,
9 kind of a real difference in perception of this
10 country there that I think kicks into some of our
11 disagreements around the table.

12 Another question, are most Americans
13 racists? Bush voters, 13 percent agree; Kerry voters,
14 30 percent agree. Still a minority in both camps. I
15 mean, it wasn't that long ago that the answer should
16 have been yes, not many decades ago, in my lifetime
17 obviously since I've gotten very old.

18 And the third question, would the world be
19 a better place if other countries would become more
20 like the United States? Bush voters, 83 percent;
21 Kerry voters, 41 percent.

22 Anyway, I went through that simply to say
23 that the partisan divides do reflect some underlying
24 values, vision of this country that differs a bit, but
25 there is no reason why there can't be a great deal of

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1 mutual respect around the table for the differences we
2 do have, and I hope on many issues we will come
3 together.

4 I want, as we have not had in the past,
5 civility, and mutual respect, and I cannot think of
6 anybody who has opposed me, anybody serious who has
7 opposed me, on substantive issues from whom I have not
8 learned, and that includes the members of the U.S.
9 Commission on Civil Rights with whom I disagreed.

10 I begged Christopher Edley to stay with us
11 until the end of his term, and I do hope and I'm
12 delighted to see Elsie Meeks here today. I do hope
13 that the Democrats will be appointing somebody as
14 articulate and knowledgeable as Christopher Edley to
15 replace him, and hope that that will happen soon.

16 And on every issue, I want all voices to
17 be heard. I do not want any more suppression of
18 dissenting voices. I think on every report we issue
19 there should be a chance for those who disagree to
20 write a dissent, and that dissent will go up on the
21 Web site and will be forthrightly acknowledged, and I
22 hope that we will have the time before reports are
23 issued.

24 I know we will have the time, but we'll
25 make it before reports are issued, to circulate them,

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1 to exchange views, to modify our own what we have to
2 say in light of those who disagree with us.

3 Gerry talked a little bit about his vision
4 of the Commission. I want to say just finally some of
5 the issues, a couple of words about how I see the job
6 of the Commission.

7 It seems to me and it has always been part
8 of our mandate, that the most useful thing the
9 Commission can do going forward is with whatever issue
10 we pick, whether it's set-asides or profiling or, you
11 know, education, you name it, to ask ourselves what
12 does the evidentiary landscape out there look like.
13 That is, what do scholars know? What are the main
14 questions asked? What are the main questions not
15 asked? How are the answers framed? What's the source
16 of disagreement amongst those who are scholarly and
17 non-scholarly, who are, you know, seriously writing on
18 such issues so that those who look to the Commission
19 for information can say, well, I can look at the
20 Commission Web site and get the outlines of an
21 intelligent outline of what the main arguments are,
22 what the main questions are, where the different
23 voices stand on the issues, what evidence they use to
24 support their findings, and, by the way, therefore, be
25 in a position to judge the quality of that evidence,

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1 and so forth.

2 There are lots of groups across the
3 American landscape that are functioning as watchdogs.
4 There is nobody who is doing what I'm suggesting, and
5 I think it would be a real service to the nation, and
6 it's one that the Commission hasn't performed, in my
7 view, up till now.

8 So thank you for listening, and that's it.

9 CHAIRMAN REYNOLDS: Okay. Thank you,
10 Abby.

11 Next I'd like to introduce Ashley Taylor
12 as our newest commissioner.

13 COMMISSIONER TAYLOR: Thank you, and good
14 morning to everyone.

15 Again, my name is Ashley Taylor, and I'm a
16 partner with the law firm of Troutman, Sanders, and
17 I'm a practicing lawyer, a civil litigator with a
18 focus on regulatory issues.

19 And what I hope to bring to this
20 Commission is what I view as something that has been
21 lacking in our public discourse, and that is what I
22 would describe as discussions that take place at my
23 family reunions and the discussions that take place
24 when I'm home with my uncle in Norfolk who is the
25 older brother of my grandmother who is 90. My uncle

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1 is about 92 years old, and when we have discussions,
2 he has a very different perspective, a very different
3 history, but I think after our discussions we both
4 learn something.

5 I certainly learn something every time I
6 talk to him, and I have a better understanding when he
7 describes certain stories to me of walking to school
8 and having rocks thrown at him. I understand his
9 perspective, and then I explain to him how from my
10 perspective, having grown up at a certain time, I have
11 a different tool I'd like to reach for in a tool box.

12 And I think we come away again from every
13 one of those discussions -- I certainly do -- having
14 learned something. And I respect my uncle. I love
15 him. I named my second son after him, and it's a
16 discussion I hope to again insert into our public
17 discourse because I think we could all benefit from
18 that discussion, and it's a discussion that I know
19 that happens at family reunions and among normal black
20 folks all the time, and it's something we don't talk
21 about in public, and that I think is a shame, and it's
22 what I hope to bring to this Commission.

23 CHAIRMAN REYNOLDS: Thank you, thank you,
24 Commissioner Taylor.

25 Next I'd like to introduce our Staff

1 Director, Ken Marcus. I had the pleasure of working
2 with Ken at the Department of Education, and that's
3 why I knew when he was selected for the job that my
4 job would be a lot easier.

5 Ken.

6 STAFF DIRECTOR MARCUS: Thank you, Mr.
7 Chairman, Commissioners.

8 It's a pleasure to work with you again, to
9 work again with those with whom I've worked in the
10 past, and it's a pleasure to meet those Commissioners
11 whom I'm meeting for the first time this morning.

12 Prior to coming here, I had the privilege
13 of serving as head of two of the largest federal civil
14 rights enforcement agencies, the Office for Civil
15 Rights at the Department of Education and the Office
16 of Fair Housing and Equal Opportunity at the
17 Department of Housing and Urban Development. And I
18 have also served as a partner in the law firm of
19 Holland and Knight and also at the law firm of Cooper,
20 Carvin & Rosenthal. I've been associated with the law
21 firms of Kaye Scholer and Morrison & Foerster, and I
22 served in the Brown v. Board of Education Commission
23 as a Commissioner. That was a commission which,
24 incidentally, Chairman Reynolds co-chaired for a
25 period of time.

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1 So I have had significant involvement in
2 civil rights enforcement, in civil rights policy over
3 time, but the opportunities and the challenges that I
4 have seen before are nothing like what we face here at
5 this Commission.

6 Today certainly is a new day for civil
7 rights. What we have here is really something
8 historic. We have for the first time today a majority
9 of the Commission who are Republican and independents,
10 and for that reason the eyes of the world are on us
11 today. We have an opportunity to demonstrate the way
12 in which we view civil rights and the seriousness with
13 which we view the major problems in our society today
14 dealing with issues of civil rights.

15 If we lead with passion and moral purpose,
16 we can restore the public confidence in the noble
17 mission of this agency. I believe we have the
18 opportunity to do that today, and I believe that given
19 the talent that you are seeing here among the eight-
20 member bipartisan panel that we do truly have the
21 opportunity to do this.

22 This is a panel that has an illustrious
23 history. During the 1950s and 1960s, this panel
24 developed a reputation as the moral conscience of the
25 nation. Its work led to landmark legislation,

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1 including the Civil Rights Act of 1964, the Voting
2 Rights Act, and the Fair Housing Act.

3 There is no question that the work of this
4 Commission has transformed this country and the way we
5 deal with and the way that we understand civil rights.

6 It is no secret that this Commission has
7 had ups as well as downs. We will be talking later
8 today about issues such as management and financial
9 control of the agency, and we know that there have
10 been quite a number of problems at this agency beyond
11 the issues of contentiousness that were alluded to
12 earlier.

13 We have enormous challenges. At the same
14 time we know that the problems in this country are
15 great and that we have the opportunity to meet them,
16 as well as the personnel here who are able to meet
17 that challenge.

18 There are some who have argued in recent
19 days, just as there have been some who have argued
20 over many years, that the Civil Rights Commission
21 should be abolished, but I believe that we have the
22 opportunity now to demonstrate the strength of our
23 resolve, the seriousness of our purpose in the fact
24 that we have here persons who are of the seriousness,
25 the dedication, the talent, intelligence, experience,

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1 industry and skill to show to America that there is
2 another way of looking at civil rights. You've heard
3 a little bit about that from the Chairman and Vice
4 Chair, and I think we will have some more as well.

5 As this is an historic moment today, I
6 will say to you that I am extraordinarily honored and
7 privileged to be serving with you to the
8 Commissioners, and I will say to those members of the
9 staff who I see among the audience that I welcome your
10 cooperation and look forward to working with you as
11 well.

12 Thank you.

13 **ANNOUNCEMENTS**

14 CHAIRMAN REYNOLDS: Okay. I'd like to
15 make an announcement. January 20th, that's the date
16 on which the nation celebrates Martin Luther King's
17 birthday. Every year I get out the letter from the
18 Birmingham jail. It is a powerful, powerful essay
19 written by Dr. Martin Luther King while he was in
20 jail.

21 I would recommend that everyone go back
22 and dust off their copy of that essay. If you want to
23 see what one man can do, if you want to see what
24 someone who is intellectually honest, who is dedicated
25 to expanding freedom, you can do no better than to

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1 start with that letter.

2 As I learn more about the man, my
3 admiration and pride in Dr. Martin Luther King
4 increases. His legacy is still unfolding. We all
5 understand his greatness, but I don't think that we
6 understand the full scope of his greatness.

7 And, again, I would just recommend that we
8 all not just celebrate the holiday in the usual
9 fashion, but to actually spend some time increasing
10 our knowledge of his contribution to the nation.

11 Do we have any additional announcements?

12 VICE CHAIRMAN THERNSTROM: I would like
13 personally, but on behalf, I know, of other
14 Commissioners to thank Terri Dickerson for the
15 professionalism of her work in a very difficult
16 transition period, and in thanking Terri, I do not
17 neglect the fact that this Commission's staff is
18 filled with people who are professional and will serve
19 us in a professional way, and I hope that we can have
20 going forth a relationship that is a working
21 relationship in which there is more collegiality with
22 the staff and more exchange of views because Terri,
23 for instance, her staff worked very hard on the Bush
24 civil rights record. We wanted to go back and see if
25 we could get a document that we could all sign.

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1 I think we could have done that, and of
2 course, that was not to be, but again, Terri, thank
3 you for your professionalism, and I thank the other
4 staff members, most of whom I do not know, for the
5 professionalism of their work, and I look forward in
6 the coming months and years to a collaborative
7 relationship.

8 COMMISSIONER BRACERAS: I'm just wondering
9 if Commissioner Thernstrom was going to introduce her
10 new assistant.

11 VICE CHAIRMAN THERNSTROM: I'm sorry.
12 Thank you, Jennifer.

13 I do have a new assistant. Stand. Lisa.

14 Her name is Lisa Neuder. She comes over
15 qualified for this job, as my last assistant did.
16 Lisa has both a J.D. and an M.B.A., and have you got
17 your Master's of Law in taxation as well?

18 MS. NEUDER: I'm working on my Master's of
19 Law in taxation at Georgetown.

20 VICE CHAIRMAN THERNSTROM: At Georgetown,
21 and she's going to be a tremendous asset not only to
22 me, but to everyone on the Commission, to all
23 Commissioners and to the staff, I think, as well.

24 So welcome, Lisa.

25 CHAIRMAN REYNOLDS: Okay. Pete.

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1 COMMISSIONER KIRSANOW: Mr. Chair, I just
2 wanted to make note of something which the Vice Chair
3 had alluded to earlier in her remarks, and that is
4 that Commissioner Edley, who had served on this
5 Commission for nearly six years, resigned effective
6 January 3rd, a couple of months before his term would
7 have expired ordinarily.

8 All of us who have been on the Commission
9 for a few years and had an opportunity to work with
10 Christopher Edley found him to be intellectually
11 engaging. We disagreed with him on a number of
12 matters. I had the pleasure of debating him at the
13 Cleveland City Club once about a year ago, an
14 extraordinarily energetic and entertaining debate. I
15 think I learned something. I hope he learned
16 something, although I doubt it.

17 (Laughter.)

18 COMMISSIONER KIRSANOW: We're going to
19 miss his contribution significantly. I know that
20 Boalt Hall, where he is currently the dean, is going
21 to benefit significantly from his full-time attention
22 to those duties.

23 I hope he continues to engage the
24 Commission in debates from time to time. We look
25 forward to his both solicited and unsolicited

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1 contributions, and we're going to miss him.

2 CHAIRMAN REYNOLDS: Okay, and before we go
3 on, you'll have to pardon my informality. I've known
4 Commissioner Kirsanow for quite some time. So that
5 "Pete" just slipped. I'll try to behave.

6 Any other announcements?

7 COMMISSIONER TAYLOR: Mr. Chair.

8 CHAIRMAN REYNOLDS: Yes, Chairman Taylor -
9 - I'm sorry -- Commissioner Taylor. Got a promotion.

10 COMMISSIONER TAYLOR: I'd like to take a
11 few minutes to recognize, and I know I speak on behalf
12 of all the members of this Commission, the passing of
13 Shirley Chisholm, a woman of firsts, the first black
14 woman elected to Congress; the founding member or the
15 first member of the Congressional Black Caucus; and
16 the 1972 candidate for the Democratic Party's
17 presidential nomination.

18 As noted by our Chair, the press release I
19 think you all have received. She blazed a trail for
20 all of us, and it's important that we recognize the
21 debt of gratitude that we owe her.

22 CHAIRMAN REYNOLDS: Thank you.

23 Any other announcements? Yes.

24 COMMISSIONER KIRSANOW: Yes, Mr. Chair. I
25 think it's appropriate to make note of the fact that

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1 just in the last couple of days the State Department's
 2 Bureau of Democracy, Human Rights and Labor issued,
 3 pursuant to a statute and bill that has been passed by
 4 Congress and signed by President Bush, a report on
 5 global anti-Semitism, which I commend to everybody to
 6 read. It documents, among other things, the frequency
 7 and severity of anti-Semitic acts across the globe,
 8 including the United States.

9 And I think it's very instructive and,
 10 especially in these times, very informative to keep in
 11 mind the fact that these kinds of incidents
 12 unfortunately still occur, and we're going to do our
 13 best to eradicate them.

14 CHAIRMAN REYNOLDS: Okay. Any additional
 15 announcements? Chairman or -- I'm sorry --
 16 Commissioner Meeks.

17 COMMISSIONER MEEKS: No, not at this time.

18 CHAIRMAN REYNOLDS: Commissioner Braceras?

19 COMMISSIONER BRACERAS: Not at this time.

20 CHAIRMAN REYNOLDS: Ken.

21 STAFF DIRECTOR MARCUS: Not at this time.

22 CHAIRMAN REYNOLDS: Okay. At this point
 23 we will turn to the Staff Director's report.

24 COMMISSIONER BRACERAS: Do we have to
 25 approve the agenda first?

1 CHAIRMAN REYNOLDS: I'm sorry?

2 COMMISSIONER BRACERAS: Do we have to --

3 CHAIRMAN REYNOLDS: Oh, thank you. Thank
4 you.

5 **APPROVAL OF AGENDA**

6 May I have a motion to approve the agenda?

7 VICE CHAIRMAN THERNSTROM: So moved.

8 COMMISSIONER KIRSANOW: Second.

9 CHAIRMAN REYNOLDS: Okay. Any discussion?

10 (No response.)

11 CHAIRMAN REYNOLDS: Okay. I guess we can
12 vote. All in support?

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Any opposition?

15 (No response.)

16 CHAIRMAN REYNOLDS: Any abstentions?

17 (No response.)

18 CHAIRMAN REYNOLDS: Okay. The motion is
19 passed.

20 **APPROVAL OF MINUTES**

21 VICE CHAIRMAN THERNSTROM: The minutes?

22 CHAIRMAN REYNOLDS: Okay. Next on the
23 agenda, may I have a motion to approve the minutes of
24 the last Commission meeting?

25 VICE CHAIRMAN THERNSTROM: So moved.

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1 COMMISSIONER KIRSANOW: Second.

2 CHAIRMAN REYNOLDS: Okay. Any discussion?

3 There being none --

4 COMMISSIONER BRACERAS: Wait a minute.

5 I'm sorry. I'm just checking something.

6 That's fine. Go ahead.

7 CHAIRMAN REYNOLDS: Okay. Any other or

8 any comments?

9 (No response.)

10 CHAIRMAN REYNOLDS: Okay. At this point

11 we can vote. All in favor?

12 (Chorus of ayes.)

13 CHAIRMAN REYNOLDS: Any in opposition?

14 (No response.)

15 CHAIRMAN REYNOLDS: Any abstentions?

16 (No response.)

17 CHAIRMAN REYNOLDS: Okay. The motion is

18 passed.

19 Next we move to the Staff Director's

20 report. Ken.

21 **STAFF DIRECTOR'S REPORT**

22 STAFF DIRECTOR MARCUS: Thank you, Mr.

23 Chairman.

24 I have been asked to insure that there is

25 reporting on the financial condition of the

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1 Commission, the status of GAO recommendations, and
2 compliance with the GAO audit.

3 As the Chairman indicated earlier, I was
4 sworn in as Staff Director shortly before the
5 holidays, and for that reason, the remarks that I make
6 at this point will be necessarily preliminary, and I
7 will defer in some regard to the members of the staff
8 who deal with these issues and who will be speaking a
9 little later.

10 Staff reports this morning will include
11 comments from George Harbison, who is our Budget and
12 Finance Chief; Pamela Dunston, who is the head of
13 administrative services; TinaLouisa Martin, who
14 oversees management and human relations and who will
15 be appearing telephonically; Debra Carr, our General
16 Counsel; and Terri Dickerson, who is the head of civil
17 rights evaluation.

18 Overall the picture is not good. The
19 agency is now managerially and in terms of financial
20 controls at a low point, lacking many of the basics in
21 terms of internal controls that most agencies have and
22 are expected to have. Many of these matters are
23 detailed in GAO audits, but most GAO recommendations
24 have not been implemented.

25 Congress has understandably taken note of

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1 these problems and requested a large number of
 2 documents to be produced from the Commission. I will
 3 be speaking about congressional compliance in a few
 4 moments, but I would say that I have no reason for
 5 confidence in the extent to which congressional
 6 requests have been complied with in the past.

7 It is clear that significant reform is
 8 necessary, and I'm delighted that it is on the agenda
 9 for today.

10 With respect to the financial condition,
 11 records, and controls, we inherit an agency that has
 12 become notorious over the last few years for poor
 13 fiscal control and management. A few years ago, the
 14 United States General Accounting Office characterized
 15 this Commission as an agency in disarray.

16 Over the last few weeks since my arrival,
 17 I have found little to indicate that the GAO's
 18 assessment does not remain true today. Financially,
 19 managerially, we inherit an agency that has been in
 20 crisis characterized by poor financial controls and
 21 weak record keeping and management.

22 What is fortunate, however, as has been
 23 suggested a few moments ago, is that I have also found
 24 a number of dedicated, hard working, career
 25 professional staff members who are eager to work with

1 us to improve conditions at this agency.

2 Unfortunately, my immediate predecessor,
3 the Honorable Mr. Jin, refuses to cooperate with the
4 agency in any way as we attempt to assess the agency's
5 current financial condition. He has refused to engage
6 in any communication with me concerning the condition
7 of the agency, and in many instances staff report to
8 me that certain actions material to the financial
9 status of the Commission were within the knowledge of
10 Mr. Jin and are not known to them.

11 Currently, the agency's general accounting
12 and payroll processing services are provided by the
13 Booth Management Corporation. I understand that the
14 Commissioners are not all aware of the reasons for
15 which we have turned to Booth Management Corporation,
16 and I believe that this is a story that needs to be
17 understood as one indication of the conditions within
18 the management and finances of the agency over the
19 last few years.

20 The Treasury Department's Bureau of Public
21 Debt previously provided accounting services to the
22 agency. That bureau of the Department of the Treasury
23 terminated its relationship with the Commission during
24 fiscal year 2004. It did so citing concerns regarding
25 the agency's financial responsibility.

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I know there have been comments as to whether the parting of ways had to do with costs involved or the price of providing accounting services.

The Department of Treasury made the following statement in a September 9, 2003, letter to Mr. Jin which was provided to me by the Department of Treasury.

"After much consideration, we regret to inform you that we will not be renewing our interagency agreement with the U.S. Commission on Civil Rights for accounting services in fiscal year 2004. As an accounting service provider, we are assuming a high level of responsibility for management and control of federal government resources. To effectively perform our services, we must rely upon a strong system of internal controls, which includes prudent oversight and management of budgetary resources by our customer agencies."

"Based upon our experience in servicing your agency, we believe there is inadequate management and control oversight of your agency's funds. For that reason, this federal agency determined that it needed to terminate its relationship with the Commission on Civil Rights. At the time, the

1 Department of the Treasury was particularly concerned
2 about the Commission's over obligation of its fiscal
3 year 2003 budget authority and its failure to take
4 adequate corrective action to avoid violating the
5 Anti-deficiency Act."

6 In other words, the Commission's financial
7 controls had deteriorated to the point last fiscal
8 year that another agency of the federal government
9 refused to continue to service its account.

10 Now, the specific matters referred to in
11 that letter may have been corrected, but we know that
12 this is one of many issues that had been of serious
13 public concern to other agencies of the federal
14 government, including not only the Treasury
15 Department, but also the GAO.

16 Due to the Treasury Department's decision
17 to terminate its relationship with the agency last
18 year, the agency entered into an agreement with an
19 outside company in the middle of the fiscal year.
20 That agency is a small company which was challenged by
21 the difficulties of entering into a relationship in
22 the midst of a fiscal year.

23 For many years this agency did not have an
24 independent audit of its books. The agency now
25 finally is currently in the process of obtaining its

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1 first independent audit. The Parker, Whitfield firm
2 is conducting the audit, which is limited to the
3 agency's balance sheet and which currently does not
4 include an audit of any other financial sheets of the
5 agency.

6 We will need to consider expanding the
7 scope of that audit and need to ask ourselves whether
8 it is sufficient merely to have a limited scope audit
9 in light of the problems that we have seen
10 historically in the audit.

11 Mr. Parker of the Parker, Whitfield firm
12 is taking charge of the audit personally. He has
13 informed me that the audit originally scheduled for
14 completion within a three to four-week time frame is
15 now in its third month, and his firm is not able to
16 predict the length of time required to conclude the
17 audit.

18 He has attributed his firm's difficulty in
19 completing the audit to the agency's failure to be
20 forthcoming with financial records, and he attributed
21 that not specifically to employees of the agency, but
22 to at least one outside firm working on behalf of the
23 agency.

24 Needless to say, this cannot be allowed to
25 continue.

1 Mr. Parker has also indicated that he is
2 concerned about various aspects of the financial
3 condition, but his audit remains underway.

4 The fiscal year '05 budget authority for
5 the Commission is \$9,096,000. This amount is reduced
6 by a rescission of \$72,768, which leaves an available
7 spending amount of \$9,023,232.

8 As you know, the Commission's budget has
9 been essentially flat for many years, while its
10 primary expenditures, such as salary and related
11 expenses, have steadily risen. Mr. Harbison will
12 speak more to the current finances of the Commission.

13 Generally speaking, we have been very
14 conservative regarding expenditures since my arrival
15 in light of the serious concerns regarding financial
16 controls and the challenges which this agency has
17 faced in the past.

18 The Government Accounting Office has
19 issued three reports regarding the Commission since
20 1997. The titles of these reports indicate the
21 substance of their observations and the seriousness of
22 the matters which they have addressed.

23 July 1997, agency lacks basic management
24 controls.

25 October 2003, more operational and

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1 financial oversight needed.

2 October 2004, management could benefit
3 from improved strategic planning and increased
4 oversight.

5 In addition, in September 2004, the GAO
6 prepared a draft report entitled improvements are
7 needed in financial management and internal controls,
8 although I understand that that draft is in some sense
9 considered void and continuing conversations are
10 scheduled with GAO regarding the matters in that
11 report.

12 Most recently the GAO notified the
13 Commission in December 2004 that it is now initiating
14 a study to address, first, factors that facilitate and
15 impeded the Commission's functioning as a high
16 performing organization and, second, the processes in
17 place to assure the quality and integrity of the
18 Commission's reports and how the Commission can
19 improve and strengthen those processes.

20 The July 1997 report found broad
21 management problems at the Commission, including
22 limited awareness of how its resources were used. The
23 GAO used blunt language to describe the status of this
24 agency announcing that, quote, the Commission appears
25 to be an agency in disarray with limited awareness of

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1 how its resources are used.

2 The October 2003 report found that the
3 Commission lacks good project management and
4 transparency in its contracting procedures.

5 The October 2004 report found that the
6 Commission has not fully complied with the
7 requirements of the Government Performance and Results
8 Act of 2003, also known as GPRA. For example, the
9 October report found that the Commission has not
10 updated or revised its strategic plan since 1997.

11 The September 2004 draft of the upcoming
12 review of the Commission's internal controls will be
13 very important to see when it is available to us in
14 public format. Each of these reports will be
15 summarized later this morning by the staff manager
16 with responsibility for the subject matter discussed
17 in this report.

18 In general, the GAO's reports paint a
19 portrait of an agency that was allowed to run out-of-
20 control with little financial control, weak
21 management, and little accountability. They are a
22 wake-up call for this agency that we must implement
23 substantial change and reform in order to meet our
24 fiscal responsibilities and to restore public trust
25 and confidence.

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1 The Commission has not yet implemented
2 many of the recommendations of the GAO. The
3 recommendations made and the action taken will be
4 further described by the respective managers.

5 I was also asked to say a few words about
6 compliance with congressional requests. Prior to
7 December 17, 2004, the Office of the Staff Director
8 under my predecessor was solely responsible for
9 overseeing, coordinating, and producing documents
10 pursuant to the July 22, 2004 request from the
11 Chairman of the Commission's House Oversight
12 Committee. None of the current staff members is able
13 to vouch for the accuracy or completeness of the
14 production that took place during that period for that
15 reason.

16 For that reason, we cannot have full
17 confidence in the extent of prior compliance.

18 Shortly after arriving, I designated
19 Barbara Fontana as the custodian of records for the
20 purpose of coordinating compliance with the
21 congressional requests and instituted a system to
22 insure that the integrity of our responses would be
23 maintained. Ms. Fontana, of course, is working
24 closely with counsel to insure legal compliance, and
25 all work is subject to review of the office of the

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1 Staff Director.

2 I have recently assigned the counsel
3 function with respect to the primary aspects of this
4 congressional compliance to solicitor Emma Monroig,
5 although some of the early transitional work was
6 conducted through the Office of General Counsel.
7 Debra Reid in that office will continue to handle
8 review of documents relating to EEO matters.

9 Our goal is both to insure that we are
10 adequately adhering to the schedule for future
11 production of documents and also to determine whether
12 prior productions were based on an adequate review of
13 our records to insure not only that we are meeting the
14 future schedule, but also to see whether there are any
15 documents which we should have produced earlier that
16 need to be produced now.

17 To the extent that we determine that any
18 aspect of our prior production was deficient, we will
19 supplement the prior production with additional
20 documents discovered.

21 We have a system in place now to insure
22 that the custodian of records is working with all
23 department heads in order to gather the documents that
24 are necessary whether they may be in paper form or in
25 electronic form.

1 In general, we have our work cut out for
2 us.

3 Those are my comments.

4 CHAIRMAN REYNOLDS: Okay. Thank you.

5 COMMISSIONER BRACERAS: Are we
6 entertaining questions or comments?

7 CHAIRMAN REYNOLDS: Yes, we are.

8 COMMISSIONER BRACERAS: Okay.

9 CHAIRMAN REYNOLDS: Yes, we are. I'd like
10 to start out by saying it really doesn't matter who is
11 responsible; at least in one sense it doesn't matter
12 who is responsible for the lack of internal controls,
13 the problems just described. This Commission, these
14 Commissioners have an affirmative obligation to
15 identify all problems and to fix them in a speedy
16 manner, and that is one of our highest priorities
17 going forward.

18 Now, at this time, Pete.

19 COMMISSIONER KIRSANOW: Moving forward,
20 really?

21 Mr. Staff Director, yesterday I had a
22 brief discussion with you, and I was chagrined to
23 find that the Commission had not even maintained a
24 general ledger. And I also understand that the
25 current audit is limited in scope, is not a full

1 audit, and I think you just indicated is only confined
2 to a balance sheet audit.

3 Can you, if you know this -- and I know
4 that you've only been on the job for a few weeks
5 now -- do you know why it is that or how it came to be
6 that we engaged in only a limited audit and if you
7 expect that we will expand this to a more full scope
8 audit, when will that occur?

9 STAFF DIRECTOR MARCUS: Let me first
10 address Commissioner the question with respect to the
11 general ledger and then move on to the question with
12 respect to the independent audit.

13 Yes, I have also within the last few weeks
14 heard from our auditor that when they arrived at the
15 Commission, they found that there was no general
16 ledger whatsoever. That is not to say that there had
17 not been a general ledger kept at prior historical
18 points, and it is my understanding that a ledger has
19 been put together subsequently.

20 But you are right to be concerned that at
21 any point in time an agency of the federal government
22 might not have a general ledger in place.

23 With respect to the limitations on the
24 scope of the independent audit, I think that that is a
25 reason for concern. As I have not been here, I can't

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1 speak at depth to that. It is possible that Mr.
2 Harbison will be able to speak to it during his
3 period, but it is my understanding that much of the
4 decisions regarding the scope of the audit were made
5 by the prior management that is no longer in place.

6 The decision to conduct an audit was based
7 on a statutory requirement recently imposed. It is my
8 understanding that an agreement was reached between
9 the prior management of this agency and the Office of
10 Management and Budget, according to which the agency
11 would be permitted to conduct an audit that is limited
12 in scope to the balance sheet, and that would not look
13 at other aspects of the records of the agency for
14 fiscal year 2004 in exchange for which the agency
15 agreed that it would conduct one in 2005.

16 That is how it was permitted to do so.
17 Why the prior management decided that it would be
18 prudent to do so I cannot tell you.

19 COMMISSIONER KIRSANOW: And just as a
20 follow-up, Mr. Chair.

21 CHAIRMAN REYNOLDS: Sure.

22 COMMISSIONER KIRSANOW: And this goes back
23 to the nature of the audit. I think you indicated
24 that you expect the audit to conclude some time in the
25 next month or so; is that fair to say?

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1 STAFF DIRECTOR MARCUS: Commissioner, no,
2 I did not say that, and I'm not sure by any means that
3 that can be said. In fact, the auditor has indicated
4 to me that he cannot predict the time at which he
5 concludes his audit, although it was intended
6 originally to be concluded in November. It is not
7 clear when he can finish it, and that depends in part
8 on the speed with which he can get the documents.

9 We're going to have to look into the
10 * impediments to providing him with the documents. He
11 * did indicate that it would take him approximately
12 three to four weeks after he received all of the
13 documents.

14 COMMISSIONER KIRSANOW: It's unclear to me
15 also when you indicate that at least in the last
16 fiscal year no general ledger had been maintained, you
17 also followed up by saying a ledger had been put
18 together. What do you mean by that? Was something
19 created or is this on a go-forward basis? What did
20 you mean by that?

21 COMMISSIONER KIRSANOW: I'm going to have
22 to defer much of that to staff, but it has been my
23 understanding that in response to the concerns
24 expressed by the independent auditors, the staff
25 working closely with a consulting company have created

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1 the records on a going forward basis.

2 That work would primarily have been done
3 by the outside firm which is currently providing
4 general accounting services to the agency.

5 COMMISSIONER KIRSANOW: Thank you.

6 CHAIRMAN REYNOLDS: Yes, Commissioner
7 Braceras.

8 COMMISSIONER BRACERAS: Well, first of
9 all, I just want to welcome the openness with which
10 the Staff Director has discussed the financial and
11 management problems of this agency. I think that
12 other Commissioners and observers of this agency know
13 that for a long time we've been asking for just this
14 type of information and haven't received it, and
15 frankly, the extent of the problem is much more than I
16 had ever expected it to be.

17 I knew when I came on board three years
18 ago that there were financial and management problems.

19 The GAO reports confirmed that, but what I'm hearing
20 from the Staff Director here today is that the
21 problems are even more serious than I had anticipated.

22 Many of the things he said we're hearing
23 for the first time. I'm sure that the staff of the
24 congressional oversight committee is also hearing it
25 for the first time, and I think that that's deeply

1 disturbing since they had a right to this information,
2 and it seems that they have not received all of it as
3 they should have.

4 Again, to repeat what the Staff Director
5 said, this is not about blaming anybody. One of the
6 reasons I joined this Commission was to try to reform
7 some of the problems, and we want to move forward
8 affirmatively and try to fix them without casting
9 blame.

10 The request for information and the desire
11 to fix the problem is not a partisan issue, and for
12 all that has been written about this Commission, about
13 partisan in-fighting, this is one area which certainly
14 is not partisan and shouldn't be treated as such by
15 either of the members of the minority or the majority
16 or the staff. This is simply an issue of sound
17 financial management and good government and
18 accountability.

19 And I want to commend Ken for taking on
20 this difficult, difficult task, and I know that the
21 issues that he raises are not issues that we can fully
22 address today or even in any business meeting, I
23 think, of the Commission, and so that's why those of
24 you who have a copy of the agenda will see that later
25 on in the meeting I'm going to propose establishing a

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1 working group on reform that can involve both the
2 senior staff of the Commission and a subcommittee of
3 Commissioners in finding out what's going on and
4 making recommendations for reform so that we can dig
5 ourselves out of this hole.

6 The only other comment I would make or
7 question I would make is I'm not sure. It seems that
8 we have a full agenda here for the business meeting,
9 and I don't know. It might be better to move up that
10 item on the agenda earlier to propose the working
11 groups just because it's hard to tell how long this
12 meeting is going to last, but I may have to leave
13 before we get to that agenda item.

14 So we could do it now or we could just see
15 how things go, and if it's getting close to the time,
16 I can bring it up later. But I just wanted to say
17 that at some point if it's getting close, I may ask to
18 change the agenda around a little bit.

19 CHAIRMAN REYNOLDS: That's fine.

20 Okay. I have a question. The audit is
21 limited to 2004. Have you given any thought to
22 whether we should expand the scope of the audit to
23 include other years?

24 STAFF DIRECTOR MARCUS: I know that idea
25 has been floated, but it is not something that we have

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1 seriously considered, and it's certainly something
2 that we can entertain if that is something in the
3 minds of the Commissioners.

4 CHAIRMAN REYNOLDS: Yes, Commissioner
5 Kirsanow.

6 COMMISSIONER KIRSANOW: Along the lines of
7 what Chair Reynolds has just asked, do we have a sense
8 for what a full scope audit would cost for one fiscal
9 year?

10 STAFF DIRECTOR MARCUS: For one fiscal
11 year, we have had a rough estimate that expanding the
12 scope of the audit to include all of the other areas
13 necessary to constitute a full audit would cost
14 approximately an additional \$12,000.

15 COMMISSIONER KIRSANOW: Mr. Chair, I'd
16 recommend not necessarily at this meeting, but we
17 seriously consider expanding the nature of the audit
18 to at least include a full scope audit for the
19 preceding fiscal year, and I'd be interested in
20 hearing from the Staff Director after he has an
21 opportunity to think about this and consider it a
22 little bit more fully whether or not we should expand
23 it beyond just one fiscal year.

24 CHAIRMAN REYNOLDS: Agreed. I'll have
25 some conversations with Ken off line, but we should be

1 prepared to discuss this issue at our next meeting.

2 All right. Are there any other questions,
3 concerns, comments?

4 (No response.)

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER KIRSANOW: Mr. Chair, are we
7 still on the Staff Director's report?

8 VICE CHAIRMAN THERNSTROM: Yes.

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER KIRSANOW: I just wanted to
11 raise one thing. I know the Staff Director had
12 circulated to Commissioners a letter that we had
13 received from the Florida State Advisory Committee
14 pertaining to the temporary protective status of
15 Haitians, and the letter makes the case that the
16 Commission should at least consider the implications
17 with respect to that.

18 The letter, although it was well drafted,
19 didn't provide me with enough information to make a
20 determination at this point and I don't know if it did
21 for any other Commissioners as to whether or not
22 that's something that the Commission should undertake,
23 but I would propose and I would move that the Staff
24 Director direct the appropriate staff to take a closer
25 look at this issue to determine whether or not the

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1 Commission should undertake that issue.

2 The Commission in the past has looked at
3 the status of Haitian refugees. It's a troublesome
4 issue. I don't know at this point whether or not we
5 have jurisdiction over that. That's a matter of
6 concern for me, but I think it's something that the
7 staff should take a closer look at to determine
8 whether or not we do, in fact, have jurisdiction and
9 should undertake that endeavor.

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

12 COMMISSIONER TAYLOR: Second.

13 CHAIRMAN REYNOLDS: Okay. Debate?

14 (No response.)

15 CHAIRMAN REYNOLDS: Okay. At this point
16 let's vote. All in favor say aye.

17 (Chorus of ayes.)

18 CHAIRMAN REYNOLDS: Any objections?

19 (No response.)

20 CHAIRMAN REYNOLDS: Any abstentions?

21 (No response.)

22 CHAIRMAN REYNOLDS: Okay. The motion is
23 passed.

24 Okay. Are there any other questions,
25 comments or concerns regarding the Staff Director's

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1 report?

2 (No response.)

3 **ADMINISTRATIVE POLICIES AND PROCEDURES**

4 CHAIRMAN REYNOLDS: Okay. In that case we
5 will move on down the line here or I should say list.

6 Next up is a discussion about the administrative
7 policies and procedures, and we have several motions
8 with respect to those issues. I believe they're your
9 motions, Commissioner Kirsanow.

10 COMMISSIONER KIRSANOW: Yes. Mr.
11 Chairman, for a while we've had some discussions with
12 respect to the nature of our staff reports, press
13 releases and other documents that the Commission
14 issues from time to time and the manner in which it's
15 released to the public, and I would like to move that
16 only those reports, any summaries, briefing papers,
17 press releases that have received majority support or
18 have been voted on by a majority of the Commission be
19 posted on the Commission's Web site, and this would
20 supersede any other policies or AIs, anything that we
21 have along these lines, and again, pertains to draft
22 reports, staff reports, press releases, any kind of
23 documents that are issued to the public by the agency.

24 CHAIRMAN REYNOLDS: Is there -- yes?

25 COMMISSIONER BRACERAS: I'm sorry, but

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1 somebody has to second it before there's discussion,
2 but --

3 VICE CHAIRMAN THERNSTROM: I'll second it.

4 COMMISSIONER BRACERAS: -- I would like to
5 discuss.

6 CHAIRMAN REYNOLDS: Okay. We have a
7 second, and Commissioner Braceras.

8 COMMISSIONER BRACERAS: A couple of
9 things. I support the spirit of the motion. I just
10 want to make clear, first of all, that if we're going
11 to be mandating that only Commission approved
12 documents be up on the Web site, that this is an
13 amendment to the administrative instructions, and this
14 becomes a formal policy. So I'd like that to be a
15 part of the motion.

16 The only question I have is whether press
17 releases are appropriately included in this motion at
18 this time. I do think we need to address the issue of
19 press releases after some discussion with the staff
20 and with all of the Commissioners, but many of the
21 press releases are very routine. For example, the
22 release that announced the meeting today, even a press
23 release that commemorates Martin Luther King Day, for
24 example, and I don't think need to necessarily be
25 brought before the full Commission for approval.

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1 So I would just suggest removing the press
2 release language from Commissioner Kirsanow's motion
3 today, and we can discuss that at another time, how
4 the Commission ought to handle press relations
5 generally and press releases in particular.

6 I think the important thing here is that
7 staff reports, Commission reports, legal analysis,
8 policy analysis, and other substantive documents not
9 be published to the Web without full Commission
10 approval. I want to make sure that the motion isn't
11 so broad that it scoops up, you know, Commissioners'
12 bios on the Web sites or, you know, other routine
13 press releases.

14 So I guess I would amend the motion in
15 that regard. Maybe I need to phrase it formally.

16 CHAIRMAN REYNOLDS: Okay. Well, I believe
17 there are at least two amendments to Commissioner
18 Kirsanow's motion, the first being insuring that the
19 administrative instructions reflect the changes
20 suggested by Commissioner Kirsanow, and that
21 Commissioner Kirsanow's motion not include press
22 releases.

23 COMMISSIONER BRACERAS: Correct, and we
24 can take that up as a body at another time.

25 CHAIRMAN REYNOLDS: Okay. I think that in

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1 terms of procedure, we would need to vote on the two
2 friendly amendments. Do we have a second for --

3 VICE CHAIRMAN THERNSTROM: Well, unless
4 Commissioner Kirsanow wants to amend it.

5 COMMISSIONER KIRSANOW: I would simply
6 amend my motion to include the comments made by
7 Commissioner Braceras, specifically that the
8 administrative instructions be amended to reflect the
9 fact that only those staff reports, state advisory
10 committee reports, and any other formal reports,
11 excluding press releases and bios, for example,
12 receive a majority vote of the Commissioners before
13 they are posted on the Web site.

14 COMMISSIONER BRACERAS: And I would just
15 add terms "legal analyses" or "policy analyses,"
16 because those --

17 COMMISSIONER KIRSANOW: So added.

18 COMMISSIONER BRACERAS: -- may not be
19 reports.

20 CHAIRMAN REYNOLDS: Okay. Any other
21 comments?

22 (No response.)

23 CHAIRMAN REYNOLDS: Okay. At this time we
24 can vote. All in favor of the motion say aye.

25 (Chorus of ayes.)

1 CHAIRMAN REYNOLDS: Any objections?

2 (No response.)

3 CHAIRMAN REYNOLDS: Any abstentions?

4 (No response.)

5 CHAIRMAN REYNOLDS: Okay. The motion is
6 passed.

7 My notes indicate that you're not
8 finished.

9 COMMISSIONER KIRSANOW: I've got another
10 motion. It's a correlative to the first one I have,
11 and that is that all such reports, staff reports,
12 state advisory committee reports, summaries, legal
13 analyses, in other words, the same predicate that we
14 used for the previous motion, that have not received a
15 majority vote by Commissioners be removed from the Web
16 site, that is, those current ones, those currently on
17 the Web site that have not received the majority
18 support of the Commissioners be removed from the Web
19 site.

20 CHAIRMAN REYNOLDS: Is there a second?

21 VICE CHAIRMAN THERNSTROM: I second that.

22 CHAIRMAN REYNOLDS: Discussion.

23 COMMISSIONER BRACERAS: Well, I'd like to
24 offer two friendly amendments, again. One is that we
25 set a time, that they be removed by close of business

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1 today, tomorrow, whatever. I don't know how long
2 these things take. I'm not a Web person.

3 And the other -- I'm sorry?

4 MR. ANTHONY: COB Monday.

5 COMMISSIONER BRACERAS: COB Monday.

6 Right. Tomorrow is Saturday. Sorry. COB Monday,
7 fine. That we add that.

8 And that we post a notation on the Web,
9 something to the effect of -- well, something to
10 explain why they're no longer there, and the language
11 I would propose would be as follows: "on January 7th,
12 2005, the Commission adopted a new policy on the
13 public release and posting of reports and Commission
14 documents. To comply with that new policy, the Web
15 site has been updated and several draft reports that
16 failed to receive a majority of Commissioners' votes
17 have been removed."

18 And then I would suggest listing what they
19 are, whatever is removed. And that's it, just an
20 explanatory thing on the Web.

21 CHAIRMAN REYNOLDS: Sure.

22 COMMISSIONER BRACERAS: You know, if
23 you're looking for these reports that were previously
24 here, they're not here, and here's why.

25 CHAIRMAN REYNOLDS: Now, Commissioner

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1 Kirsanow, is it your intention that these documents --
2 I assume that you intend for the public to be able to
3 get copies of these documents that are being removed
4 from the Web site.

5 COMMISSIONER KIRSANOW: Absolutely.
6 There's a means by which they can obtain the
7 documents, but I don't think that reports that have
8 not received majority support should be posted on the
9 Web site to give the impression to the public,
10 scholars, other who may utilize those reports, that it
11 has been ratified by the Commission.

12 As it's currently constructed, if you go
13 to our Web site, there are reports there that would
14 give the public, reasonably give the public, the
15 impression that these are reports that have been
16 considered and duly adopted by the Commission, given
17 our imprimatur.

18 Those then filter into the public
19 consciousness, whether it be in scholarly reports,
20 footnotes, what have you, and there's kind of
21 pollution of scholarly debate as a result.

22 So I think we want to make it abundantly
23 clear without necessarily depriving the public of the
24 work of the staff that may not have been approved.

25 CHAIRMAN REYNOLDS: Commissioner Braceras.

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1 COMMISSIONER BRACERAS: I have a question
2 about that, and I honestly don't know the answer. I
3 mean, what is the policy of other federal agencies
4 regarding releasing draft materials? I mean, it seems
5 to me that if they're not approved, they remain
6 drafts.

7 If as a matter of FOIA or just, you know,
8 public policy other agencies routinely disseminate
9 drafts, then I certainly have no problem with that,
10 provided that those documents are not on Commission
11 letterhead and provided that they are stamped "draft"
12 and that there's an indication at the top this report
13 fails to pass by a vote of blank to blank. It can say
14 the Commissioners' names. "The following
15 Commissioners voted for. The following Commissioners
16 voted against."

17 Without such a warning on it, you know,
18 "use with caution," you know, I would not want it
19 being cited in law reviews or anything of that nature.
20 But it makes me a little uncomfortable having them
21 released at all. And before I agree to that, I would
22 want to know what the rest of the federal government
23 does with respect to draft reports, and I would think
24 we'd want to be in conformity with a general federal
25 government policy, if any there be.

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1 CHAIRMAN REYNOLDS: Well, it seems to me
2 that close of business by Monday we may miss that
3 deadline, assuming that this motion passes.

4 COMMISSIONER BRACERAS: Well, no. They
5 could be taken off the Web first, and then we can
6 discuss what to do with them.

7 CHAIRMAN REYNOLDS: Okay. You're
8 absolutely right.

9 COMMISSIONER BRACERAS: Or how and if they
10 should be disseminated. So they can still be removed,
11 and maybe we need to discuss it another time --

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER BRACERAS: -- who in the
14 public or press has access to them.

15 I guess my recommendation for now would be
16 to freeze dissemination of the documents to the public
17 or the press until such time as the Commission as a
18 whole can decide how we want these documents and
19 future documents of this nature to be handled, and we
20 should take that up soon.

21 CHAIRMAN REYNOLDS: Commissioner.

22 COMMISSIONER TAYLOR: Can I make a
23 recommendation that we do remove those documents from
24 the Web site, but that we ask the Staff Director to
25 handle the documents which can be obtained pursuant to

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1 the standard FOIA request in such a way that we
2 conform to all of the applicable federal rules and
3 whether or not drafts can be released.

4 There's a process that the Staff Director
5 has in place now, I think, for handling documents that
6 may not be FOIAable, not public documents. So I would
7 suggest that we simply ask the Staff Director to
8 handle those documents again in conformity with the
9 federal rules which would apply to us in any event.

10 COMMISSIONER BRACERAS: I don't disagree
11 with that at all. My only caveat to that was I'd like
12 to be informed as to what that process is, and also if
13 there is some element of discretion as far as
14 documents that aren't covered by FOIA, I think that
15 should be addressed by the body as a whole.

16 COMMISSIONER TAYLOR: Yes. Perhaps we can
17 get a recommendation from the Staff Director --

18 COMMISSIONER BRACERAS: Exactly.

19 COMMISSIONER TAYLOR: -- as to how we
20 handle those documents.

21 CHAIRMAN REYNOLDS: Okay. We have a
22 number of amendments, and I --

23 COMMISSIONER BRACERAS: I can just restate
24 them, I think, more crisply.

25 CHAIRMAN REYNOLDS: Okay.

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1 VICE CHAIRMAN THERNSTROM: And I actually
2 have also something to say, but you can --

3 CHAIRMAN REYNOLDS: Well, in terms of
4 doing this in an orderly fashion --

5 COMMISSIONER BRACERAS: Feel free.

6 CHAIRMAN REYNOLDS: -- we need to slow
7 down a bit here.

8 VICE CHAIRMAN THERNSTROM: I just have
9 another friendly amendment, but what ever.

10 CHAIRMAN REYNOLDS: Okay.

11 VICE CHAIRMAN THERNSTROM: But you do take
12 the order here. I don't have Robert's Rules of Order
13 in my head.

14 COMMISSIONER BRACERAS: We need a
15 parliamentarian.

16 CHAIRMAN REYNOLDS: I thought we have one

17 COMMISSIONER BRACERAS: Okay. So maybe
18 she should tell us how to proceed.

19 CHAIRMAN REYNOLDS: Well, I don't think
20 it's necessary at this point.

21 VICE CHAIRMAN THERNSTROM: I have one
22 very, very small friendly amendment, and it comes out
23 of recent experience. I keep getting calls from the
24 press to this day about my asking for copies of my
25 dissent in the Florida 2001 report on disfranchisement

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1 in the presidential election, and that dissent has not
2 been -- should go up.

3 CHAIRMAN REYNOLDS: Let us -- I'm sorry
4 for interrupting. Let us handle this --

5 VICE CHAIRMAN THERNSTROM: Fine, fine.

6 CHAIRMAN REYNOLDS: -- initial motion and
7 --

8 VICE CHAIRMAN THERNSTROM: I was just
9 going to put it as a package and have Jennifer add it
10 to her package, a friendly amendment.

11 CHAIRMAN REYNOLDS: Okay. If you don't
12 mind, I'd like to handle that separately.

13 VICE CHAIRMAN THERNSTROM: That's fine.

14 CHAIRMAN REYNOLDS: Okay.

15 STAFF DIRECTOR MARCUS: Mr. Chairman, if I
16 may, as a recommendation, that we would use some sort
17 of general language "except as required by law," or
18 something of that sort, so that we can then sort out
19 issues like FOIA obligations with respect to future
20 documents, FOIA obligations with respect to documents
21 that have already been released into the public domain
22 and any other statutory or other legal requirements.

23 CHAIRMAN REYNOLDS: Well, I think that we
24 also need to spend a little time thinking about --
25 well, it was up there -- whether it should have gone

1 up without a majority of votes by this Commission,
2 that issue, we're going to fix that particular
3 problem, but the fact is the documents were on the Web
4 site. They have been in circulation, and I think that
5 limiting, taking a legalistic approach to the
6 dissemination of documents that have already been in
7 the public domain may not be the best approach.

8 I think that a better approach would be to
9 just let people know that if they want a document,
10 they should just contact the Commission and we will
11 provide them with a copy of the requested document,
12 with a caveat that the document was not approved by --
13 that it's not a Commission document; that it's a
14 draft; and going forward we could just comply with
15 FOIA.

16 But I think that it creates the appearance
17 that we don't want people to see the document, and
18 what we're talking about here is a procedural point,
19 but when we entertain the notion that we are not going
20 to provide the document unless someone has a right
21 under FOIA, I don't believe that that creates the
22 right atmosphere.

23 Yes.

24 COMMISSIONER BRACERAS: Well, I'm not sure
25 I entirely agree with that just because I don't think

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1 other agencies let policy drafts float around in the
2 public domain.

3 CHAIRMAN REYNOLDS: I agree
4 wholeheartedly.

5 COMMISSIONER BRACERAS: But your point is
6 that they've already been out there.

7 CHAIRMAN REYNOLDS: Yes.

8 COMMISSIONER BRACERAS: And I understand
9 that. So in light of that, let me just try to more
10 crisply restate what the three amendments are to
11 Commissioner Kirsanow's motion.

12 The first is that the reports and analyses
13 currently on the Web site that did not receive
14 majority support will be removed by close of business
15 Monday. That's the first amendment.

16 The second amendment to the motion is that
17 a notation will be placed on the Web site in lieu of
18 those reports -- and I can repeat the wording if it's
19 necessary -- but basically explaining why they were
20 removed.

21 And I guess the third amendment to the
22 motion would be that documents previously published to
23 the Web site but the documents that we're taking off
24 the Web site can be received by the public, and we
25 should put in our notation, which is Amendment 2, we

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1 should explain to the public how they can receive
2 copies of the documents, but my third amendment would
3 specifically be that those documents be not printed on
4 official Commission letterhead document when they go
5 out to the public, and that very clearly on the front
6 of the document it states, "This is a draft document
7 which was previously disseminated to the public. It
8 fails to pass by a majority of the Commission. X
9 number of people voted for. X number of people voted
10 against, and that it is not recommended for citation,"
11 in the same way, for example, that certain opinions of
12 the courts of appeals' summary orders and stuff where
13 they say, you know, "not for public citation."

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER BRACERAS: Or, I mean, "not
16 recommended for." I mean a scholar can do what they
17 want, but we can recommend that they not. So that
18 would be my third amendment.

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
20 do you accept those amendments?

21 COMMISSIONER KIRSANOW: I've got no problem with
22 it, although I would take note of what Mr. Marcus had
23 indicated in terms of acceptance, but I think that
24 should be a separate motion.
25

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1 So with respect to these particular
2 amendments I'm in full concurrence. I know that Vice
3 Chair has something to say on this.

4 VICE CHAIRMAN THERNSTROM: No, no. I was
5 about to say exactly what you did, that I think that
6 should be taken up separately.

7 And I'm also in agreement with the Chair's
8 remarks on the need for transparency, when in doubt,
9 as it were. That is there's no -- you know, these are
10 documents that have been out there. Let's err on the
11 side of transparency here.

12 CHAIRMAN REYNOLDS: Okay. Any other
13 questions, comments?

14 (No response.)

15 CHAIRMAN REYNOLDS: Okay. Let's vote.
16 All in --

17 COMMISSIONER BRACERAS: So the amendments
18 have been accepted?

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER KIRSANOW: Yes.

21 COMMISSIONER BRACERAS: Okay.

22 CHAIRMAN REYNOLDS: All in favor of
23 Commissioner Kirsanow's motion say aye.

24 (Chorus of ayes.)

25 CHAIRMAN REYNOLDS: Any objections?

1 (No response.)

2 CHAIRMAN REYNOLDS: Any abstentions?

3 (No response.)

4 COMMISSIONER MEEKS: Aye. I abstain.

5 CHAIRMAN REYNOLDS: Okay. We have one
6 abstention. Let the record reflect that Commissioner
7 Meeks abstains. The motion passes.

8 COMMISSIONER BRACERAS: So then I just, I
9 guess, would make another motion, piggybacking on
10 this, that -- well, I don't even know if it is a
11 motion, but just that we need some mechanism to
12 discuss how to handle further documents like this as
13 the Staff Director.

14 In other words, these documents that we're
15 talking about have already been in the public domain.

16 So we have agreed to continue to allow the public to
17 have them with the warning to be placed on them, if
18 you will.

19 But I think we still need to discuss at
20 some point that there are going to be future drafts,
21 first drafts, second drafts, third drafts, final
22 drafts of documents produced and how those are to be
23 handled, and I would just propose, I guess, that that
24 discussion occur by the working group that I'm going
25 to propose, and that we can figure out how to deal

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1 with that as we go along.

2 So I guess that's not a motion. It's just
3 a suggestion.

4 VICE CHAIRMAN THERNSTROM: I have a
5 request. I'm not sure it needs to be a motion. I'm
6 tired of sending out my dissent on the E-mail, and it
7 was part of -- it should have been part of the
8 original Florida report. It should go up.

9 CHAIRMAN REYNOLDS: Okay. So are you
10 moving that we amend the Florida report to include
11 the --

12 VICE CHAIRMAN THERNSTROM: To include the
13 dissent. It should have been included to begin with.

14 CHAIRMAN REYNOLDS: Do we have a second?

15 COMMISSIONER KIRSANOW: Second.

16 CHAIRMAN REYNOLDS: Discussion?

17 COMMISSIONER BRACERAS: I would only add
18 that it be not just posted on the Web, but amended to
19 the future publication in the hard copy.

20 VICE CHAIRMAN THERNSTROM: Right.

21 COMMISSIONER BRACERAS: If it's being
22 republished.

23 VICE CHAIRMAN THERNSTROM: If it's
24 republished.

25 CHAIRMAN REYNOLDS: Do you accept it?

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1 VICE CHAIRMAN THERNSTROM: I do accept it.

2 COMMISSIONER BRACERAS: Or that if the
3 hard copy is being mailed out, it may not be cost
4 effective to re-publish the document.

5 VICE CHAIRMAN THERNSTROM: Right.

6 COMMISSIONER BRACERAS: But that it be
7 inserted as part of the mailing

8 CHAIRMAN REYNOLDS: Yes?

9 COMMISSIONER MEEKS: The only thing I
10 would say is: was that report not already approved by
11 the majority?

12 VICE CHAIRMAN THERNSTROM: Yes, the report
13 will go up.

14 COMMISSIONER KIRSANOW: The report had
15 been approved, but the dissent had never been
16 published.

17 COMMISSIONER MEEKS: And so was the report
18 approved with the dissent already?

19 COMMISSIONER TAYLOR: Well, that's a new
20 document.

21 CHAIRMAN REYNOLDS: I'm not --

22 COMMISSIONER MEEKS: Well, the report was
23 approved as is.

24 CHAIRMAN REYNOLDS: That's correct.

25 COMMISSIONER MEEKS: So the dissent would

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1 have changed the document, so to speak, and so then
2 that would.

3 CHAIRMAN REYNOLDS: Well, Commissioner
4 Meeks, I'll just throw this idea on the table. Would
5 you feel comfortable if there was a link to the
6 dissent?

7 I mean, again, this goes back to my firm
8 belief that to the extent that a report lacks
9 consensus, that all views be reflected.

10 COMMISSIONER MEEKS: And I have no
11 disagreement going forward with that at all. I mean,
12 I think do whatever you want, but I'm just saying that
13 when it has already been voted on by the majority of
14 the Commissioners as is, then no matter what, whose
15 views were what or who disagreed with whose views,
16 it's still was voted on by the majority of the
17 Commissioners.

18 CHAIRMAN REYNOLDS: That's true. -

19 COMMISSIONER MEEKS: So the report in my
20 mind should stand as it is.

21 CHAIRMAN REYNOLDS: Vice Chair.

22 VICE CHAIRMAN THERNSTROM: Well, this was
23 a very complicated story because it is not that the
24 dissent was rejected. There were and maybe somebody -
25 - maybe Commissioner Kirsanow will have a better

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1 memory of the details here.

2 COMMISSIONER BRACERAS: He wasn't there.

3 VICE CHAIRMAN THERNSTROM: Oh, you weren't
4 there. Of course.

5 COMMISSIONER BRACERAS: Russell.

6 VICE CHAIRMAN THERNSTROM: It's Russell,
7 right. It's Russell Redenbaugh who was there.

8 But this was a very complicated story in
9 which at the end of the day -- and, you know, this was
10 a routine dissent in the sense that dissents are
11 routine -- at the end of the day the chair decided
12 that it would publish, and it is on the Web site, I
13 believe, the first draft of the dissent, which was
14 part of the Senate record hearings at the time.

15 And so what's up on the Web site is an
16 early draft of the dissent. In other words, --

17 COMMISSIONER MEEKS: So there is --

18 VICE CHAIRMAN THERNSTROM: Yes, but not in
19 its final form. It's full of errors. I have to keep
20 sending it out to people because that is what the
21 Chair chose to do, was to include only the draft that
22 was submitted to the Senate for hearings purposes. So
23 yeah?

24 COMMISSIONER BRACERAS: Well, I just have
25 a question that maybe can be answered by the counsel

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1 or the parliamentarian. I don't want to rehash, you
2 know, what happened or the substance of the
3 Thernstrom-Redenbaugh dissent and why it's there and
4 why it's not.

5 Just procedurally, can you amend a
6 document that has already been approved, as
7 Commissioner Meeks suggested? And if so, how do we do
8 that?

9 Is it technically ever --

10 VICE CHAIRMAN THERNSTROM: It was never
11 approved. It was put up anyway.

12 COMMISSIONER BRACERAS: No, no, but the
13 document was approved, and I think Commissioner Meeks'
14 question speaks to whether or not adding the dissent
15 is changing the document or whether they're separate
16 documents or just what the rules say about that.

17 And I think that's a technical question.
18 I don't think that a counsel or a parliamentarian
19 might have the answer to. So I'm just asking them for
20 their counsel on that.

21 COMMISSIONER MEEKS: Can we hear from the
22 counsel on that?

23 CHAIRMAN REYNOLDS: Yes. But I would
24 really like to try to resolve this amongst ourselves
25 if possible. It seems to me that if the dissent is

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1 already up on the Web site, an earlier draft is on the
2 Web site, does that increase your comfort level, the
3 fact that this is not a new document or new dissent
4 going up? It is merely placing the final version of a
5 dissent that's already on the Web site?

6 COMMISSIONER MEEKS: Well, I mean, it was
7 approved as we voted on it, with that dissent being
8 published, and so I think for us to have -- I mean, I
9 don't know if the whole report with that newer dissent
10 could be put before the Commission again. I mean
11 possibly, but I would, I guess, not be able to vote
12 for a motion that said that now that we have put up
13 that dissent.

14 CHAIRMAN REYNOLDS: Well, let me work on
15 it trying to get a better understanding of your
16 discomfort. I mean, if the dissent is already up
17 there, and we're merely talking about putting up a
18 final version and Vice Chair Thernstrom has pointed
19 out that it contains errors, we're just improving the
20 document like any other document that was on the Web
21 site that we wanted to improve.

22 COMMISSIONER MEEKS: Well, I think I've
23 stated what I think.

24 CHAIRMAN REYNOLDS: Okay, okay.

25 COMMISSIONER MEEKS: I mean, again, I

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1 would defer to the counsel to give us the right answer
2 here if I'm not. I just wanted to do it --

3 VICE CHAIRMAN THERNSTROM: Right. It
4 would also be good to go back to the record.

5 COMMISSIONER BRACERAS: I agree with the
6 substance of Commissioner Thernstrom's motion and the
7 spirit of it. I just want to do it in a technically
8 correct way.

9 VICE CHAIRMAN THERNSTROM: Absolutely.

10 COMMISSIONER BRACERAS: If that requires
11 repealing the entire thing and then voting on the
12 entire thing again, so be it. I would like to see it
13 done. I just want to see it done --

14 VICE CHAIRMAN THERNSTROM: I'm in
15 agreement with that.

16 COMMISSIONER BRACERAS: -- in accordance
17 with the rules.

18 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

19 COMMISSIONER KIRSANOW: Mr. Chairman, I
20 agree. There's really an informational vacuum here.
21 I don't recall, and I have gone through the transcript
22 a couple of times with respect to this, but I don't
23 recall whether or not, as Commissioner Meeks
24 indicated, the consent was formally part of the
25 approval of the document known as Report of 2000.

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1 I think it might be helpful if we went
2 through that. That would obviate all of this. If it
3 was part of the approval, then it's part of the
4 motion. If not, the motion as amended would exclude
5 it unless we had another vote that a majority passed
6 this. Then it would be posted.

7 I agree with Commissioner Braceras. I
8 think we need to be correct with respect to the
9 motion.

10 VICE CHAIRMAN THERNSTROM: I do, too.

11 COMMISSIONER KIRSANOW: And we're in an
12 informational vacuum, and maybe what we should do for
13 the moment, if the Vice Chair agrees, is table this
14 discussion --

15 VICE CHAIRMAN THERNSTROM: I agree with
16 this.

17 COMMISSIONER KIRSANOW: -- until staff has
18 an opportunity to go back and see where we stand.

19 VICE CHAIRMAN THERNSTROM: I agree with
20 this. I was just about to suggest it. Let us table
21 this for the moment. Let us fill in the vacuum that
22 now exists on information and see where we are and
23 what makes sense.

24 CHAIRMAN REYNOLDS: Okay. Okay. We have
25 another motion?

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1 COMMISSIONER KIRSANOW: Yes, Mr. Chair.
2 I've got one more motion.

3 CHAIRMAN REYNOLDS: You've been busy.

4 COMMISSIONER KIRSANOW: And this has to do
5 or it piggybacks on a report that we got from the
6 Staff Director, but it has other reasons for it, too,
7 but I'd like to be sure that on a go-forward basis
8 that meetings of the Commission are conducted in
9 Washington, D.C., unless we have received as
10 Commissioners at least 60 days' prior notice that
11 there may be some circumstance under which a meeting
12 should be conducted elsewhere.

13 The Commission obviously has certain
14 financial concerns, and I don't know that we can't
15 conduct all of the business of the Commission in
16 Washington, D.C. in a logistically expeditious
17 fashion.

18 CHAIRMAN REYNOLDS: Commissioner Braceras?

19 COMMISSIONER BRACERAS: I'll defer to the
20 Vice Chair.

21 VICE CHAIRMAN THERNSTROM: Well, refresh
22 me on the existing rule. I believe there is a 60-day
23 notice rule.

24 CHAIRMAN REYNOLDS: Do we have a second
25 for --

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1 VICE CHAIRMAN THERNSTROM: Oh, second.

2 CHAIRMAN REYNOLDS: Yes.

3 COMMISSIONER BRACERAS: Now discussion,
4 yes.

5 VICE CHAIRMAN THERNSTROM: We do have a
6 60-day rule for moving -- what is the change here?
7 I'm sorry.

8 COMMISSIONER KIRSANOW: That in the past
9 what we've done is there was a presumption that the
10 Chair in consultation with the Staff Director could
11 decide we're going to go elsewhere, and unless there
12 was a majority in support of staying here, we would go
13 elsewhere.

14 VICE CHAIRMAN THERNSTROM: I understand.

15 COMMISSIONER KIRSANOW: Here the
16 affirmative is switched.

17 VICE CHAIRMAN THERNSTROM: I understand.
18 Okay.

19 COMMISSIONER BRACERAS: I don't think that
20 was actually said in the first.

21 COMMISSIONER KIRSANOW: You don't like my
22 motions, do you?

23 COMMISSIONER BRACERAS: No, I do like your
24 motions. I'm just trying to be precise.

25 COMMISSIONER KIRSANOW: Always amending.

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1 COMMISSIONER BRACERAS: No, I don't think
2 you -- you talked about the 60-day thing, but I just
3 wanted to be clear that we meet in Washington unless a
4 majority of Commissioners vote to do otherwise.

5 COMMISSIONER KIRSANOW: Good.

6 COMMISSIONER BRACERAS: And I would
7 encourage the staff, through the Staff Director, to
8 propose travel. I think it's a good idea, but I think
9 it needs to be proposed with the policy objective and
10 with the cost breakdown as to whether it's more cost
11 effective or it costs more or less to travel or to
12 meet here.

13 Sometimes, when Commissioners are coming
14 from all over the country anyway to be here, it may
15 not cost significantly more to meet elsewhere, but I
16 think we need to have that information before we
17 decide whether to take a trip to investigate one
18 problem or another.

19 So I would just state that you have to
20 have a majority vote to go forward, but that it could
21 be suggested at any time and the information provided
22 as to why we should do it.

23 CHAIRMAN REYNOLDS: And do you also want a
24 discussion of the cost? Is that a part of your
25 friendly amendment?

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1 COMMISSIONER BRACERAS: I don't even think
2 it has to be an amendment. I think it's just a
3 suggestion that when the Staff Director comes to us
4 and says, "We'd like to go to Michigan to investigate
5 X," that that be on the table for discussion, the
6 cost, that he be prepared to discuss whether that's a
7 cost effective trip in light of important policy
8 considerations. It may be that it costs money, but
9 for policy reasons it's very important that we do it,
10 but we just have to have that discussion.

11 The problem with the procedure before was
12 that we weren't allowed to have that discussion. So,
13 yeah, it just has to be a majority vote of the
14 Commissioners, and again, I would want this reflected
15 in the administrative instructions as a written
16 policy.

17 CHAIRMAN REYNOLDS: That would be a
18 friendly amendment.

19 COMMISSIONER BRACERAS: Correct.

20 Yes, Vice Chair.

21 VICE CHAIRMAN THERNSTROM: And for those
22 who haven't been here before, on the question of
23 costs, there have been a number of trips in which the
24 question has arisen whether when we're having
25 hearings, whether it would be more cost effective to

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1 simply bring witnesses to Washington instead of our
2 traveling to them.

3 There are obviously situations in which it
4 is important for us to appear on the ground in certain
5 settings, but it is those -- those considerations
6 have not been discussed before and the question framed
7 that way, and so it's just an elaboration, you know,
8 on Commissioner Bracer's point for those who haven't
9 had experience with this.

10 CHAIRMAN REYNOLDS: Any other comments?

11 (No response.)

12 CHAIRMAN REYNOLDS: Okay. All those in
13 favor of the -- I'm sorry. Pete, do you accept the
14 friendly amendment --

15 COMMISSIONER KIRSANOW: Absolutely.

16 CHAIRMAN REYNOLDS: -- with respect to the
17 administrative instructions?

18 COMMISSIONER KIRSANOW: I don't think I
19 articulated it as clearly as I should have. It is a
20 "but for."

21 In other words, that unless there is a
22 majority vote, Commission meetings will be conducted
23 here. The 60 days' notice if there is some discussion
24 that we are going to go elsewhere.

25 CHAIRMAN REYNOLDS: And you also accept

1 the amendment that we amend the administrative
2 instructions?

3 COMMISSIONER KIRSANOW: Absolutely, yes.

4 VICE CHAIRMAN THERNSTROM: Well, I'm
5 sorry. I have one more question. There are times
6 when there are fewer than 60 days between two
7 Commission meetings. How is this going to work?

8 COMMISSIONER KIRSANOW: Well, I think what
9 we should do is maybe adopt an amendment that if there
10 are exigent circumstances that dictate that fewer than
11 60 days' notice be given before there be a Commission
12 meeting conducted outside of D.C., then we can have
13 such a vote.

14 VICE CHAIRMAN THERNSTROM: But it has to
15 be clear that we don't -- if there are fewer than 60
16 days between two meetings, it doesn't mean we have to
17 have three meetings in order, you know, for this to
18 work.

19 CHAIRMAN REYNOLDS: Okay. Any additional
20 comments?

21 (No response.)

22 CHAIRMAN REYNOLDS: Okay. Let's vote.
23 All in favor please say aye.

24 (Chorus of ayes.)

25 CHAIRMAN REYNOLDS: Any objections?

1 (No response.)

2 CHAIRMAN REYNOLDS: Any abstentions?

3 (No response.)

4 CHAIRMAN REYNOLDS: Okay. The motion pass
5 -- you would like to abstain?

6 COMMISSIONER BRACERAS: No, no, no. The
7 motion passes.

8 CHAIRMAN REYNOLDS: Okay. The motion
9 passes.

10 Yes, Commissioner Braceras.

11 COMMISSIONER BRACERAS: I may need some
12 education on how this has been done in the past, but
13 it seems to me that going forward when we have motions
14 that are going to change policies where we want to
15 amend the administrative instructions, that
16 Commissioners should come with a written proposal, and
17 that we vote on the precise language that's going into
18 the AIs.

19 None of this is to undo what we have
20 already done, but I don't know if that has already
21 been our practice or if I need to move for that to be
22 a requirement, but I think it would just be much
23 easier if somebody comes, hands out the motions, and
24 then when they're approved, whoever is responsible for
25 administratively compiling the AIs has the exact

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1 language. They don't have to go back through the
2 transcript, and amendments can be written onto the
3 document and then handed to the person that does the
4 AIs.

5 It just doesn't seem very efficient, and
6 I'm not sure how we can make it more efficient.

7 CHAIRMAN REYNOLDS: Okay. Could that be
8 addressed long term in the working group to come up
9 with formal procedures, but during the interim what we
10 do is just if there is a motion to amend the
11 administrative instructions, that we just arrive with
12 the language?

13 COMMISSIONER BRACERAS: Yes, but I'm
14 asking a question right now, and if someone on the
15 staff could answer what's previously been done or if
16 there already is a policy on this --

17 STAFF DIRECTOR MARCUS: If I may, Mr.
18 Chairman.

19 COMMISSIONER BRACERAS: -- can I ask
20 someone to answer it?

21 STAFF DIRECTOR MARCUS: We have a great
22 deal of flexibility, and I can defer to people who
23 have been here for a while, but generally speaking,
24 the administrative instructions have been prepared by
25 the Staff Director, and typically do not require a

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1 vote by the Commission.

2 Now, if you want to prepare a motion to
3 change an AI, of course, that's acceptable, but it has
4 not been required and has not -- it has not typically
5 been followed.

6 COMMISSIONER BRACERAS: So when these
7 things that I've requested go into the AIs will go in,
8 but in the past, when Commissioners have made a policy
9 change or voted on an internal policy, they haven't
10 ordinarily gone into the AIs or where have they been
11 catalogued? How do we know what our policies are?

12 STAFF DIRECTOR MARCUS: I will start on
13 this, and then if the Chair prefers, we can also go to
14 a member of the staff, but generally speaking, the AI
15 is a compilation of instructions provided by the Staff
16 Director. The volume does include delegations of
17 authority provided by the Commission, - but the
18 instructions themselves are instructions provided by
19 the Staff Director through the staff.

20 COMMISSIONER BRACERAS: Right. What I'm
21 saying is there's also -- I understand what you're
22 saying the AIs are composed of, but there are other
23 things outside the AIs, and I'm just wondering where
24 they're catalogued or who's the record keeper of those
25 policies.

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1 For example, the prior Chair would always
2 say things like, well, it's longstanding Commission
3 policy that yaddy-yaddy-yadda. Where does one go to
4 find the longstanding Commission policies or does one
5 have to prune the transcripts to find that on January
6 7th, 2005, Commissioner Kirsanow moved that these
7 things be taken off the Web site and it was approved?

8 Where is someone to go to understand the
9 rules of the Commission, such as the ones we've passed
10 today?

11 STAFF DIRECTOR MARCUS: It's my
12 understanding that there is, in addition to the
13 administrative instructions that we've discussed, a
14 separate volume that contains motions passed by the
15 Commission.

16 COMMISSIONER BRACERAS: Okay, and is that
17 something that Commissioners can have a copy of?
18 Because we never had a copy of that in the past, and
19 it would be helpful. I'm not trying to be difficult.
20 I just want to know what the rules are.

21 VICE CHAIRMAN THERNSTROM: There's no
22 reason for knowing the rules. We're about to change
23 them.

24 COMMISSIONER BRACERAS: It's basic.

25 CHAIRMAN REYNOLDS: Okay. You bring up a

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1 complicated issue.

2 COMMISSIONER BRACERAS: Why is it
3 complicated?

4 CHAIRMAN REYNOLDS: Well, as you pointed
5 out, the rules have not been widely disseminated, and
6 we need to have some conversations with staff to get
7 our arms around it, but I think that all Commissioners
8 should receive copies of the administrative
9 instructions, and to the extent that there are other
10 written policies, written policies that have been
11 adopted by the Commission, those, too, should be
12 disseminated to the Commissioners. But --

13 COMMISSIONER BRACERAS: I know that I have
14 the AIs. It's just other written policies I don't
15 have copies of, but more to the point, unwritten
16 policies, things that we voted on that are formally
17 approved policies of the Commission that may have
18 never been committed to writing or maybe they have and
19 they're just not in one file and maybe someone could
20 collect them, but it seems to me appropriate that we
21 have a working rule book.

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER BRACERAS: Or a collection.
24 When the Commission votes to approve A, B, and C, that
25 should be catalogued somewhere and available to the

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1 public as well as the Commissioners.

2 CHAIRMAN REYNOLDS: Well, that is an issue
3 that the Working Group on Reform will tackle.

4 COMMISSIONER BRACERAS: Okay. I didn't
5 even realize it had to be in there because I didn't
6 realize it didn't exist.

7 CHAIRMAN REYNOLDS: Well, it sounds like
8 it's an issue that should be discussed and explored by
9 this subcommittee.

10 COMMISSIONER BRACERAS: Okay. So in the
11 meantime --

12 CHAIRMAN REYNOLDS: In the meantime, all
13 Commissioners should have a copy of the AI and any
14 other written procedures or written policies.

15 COMMISSIONER BRACERAS: Okay, but I guess
16 what I would also suggest in the meantime with respect
17 to what we've done here today is that --

18 CHAIRMAN REYNOLDS: That it should be
19 memorialized in some fashion?

20 COMMISSIONER BRACERAS: It should be
21 memorialized in some fashion other than just the
22 transcript.

23 CHAIRMAN REYNOLDS: Right.

24 COMMISSIONER BRACERAS: And included --
25 maybe the administrative instructions is not the

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1 place, but we voted to put some things there, and
2 that's fine. I just want them memorialized in writing
3 and --

4 CHAIRMAN REYNOLDS: The body of the policy
5 that you --

6 COMMISSIONER BRACERAS: Right, and it can
7 be included with the minutes for the next meeting, but
8 that these specific reforms that we voted on should be
9 committed to writing and handed out to the
10 Commissioners and staff and kept somewhere in a binder
11 for all to consult.

12 VICE CHAIRMAN THERNSTROM: Mr. Chair, I am
13 still confused about this because some of what we are
14 adopting modify the AIs. So to hand the AIs out and
15 then to have, as Commissioner Braceras suggested as
16 one possibility, simply what we voted on as, you know,
17 an appendix or something to the minutes of the
18 meeting, no, the AIs themselves need to reflect
19 modifications that have been voted on.

20 CHAIRMAN REYNOLDS: Okay. Well, I must
21 apologize. I made an assumption that to the extent a
22 motion that's been approved that modifies, revoked an
23 AI, that someone would automatically go back and
24 review the AIs and make the needed changes.

25 I don't know if that's past practice. If

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1 it isn't, it should because if not, then the AIs won't
2 reflect what the current rules are.

3 COMMISSIONER BRACERAS: Would it be okay
4 if I just asked to briefly hear from Ms. Carr?
5 Because she seems to be wanting to say something, and
6 just to illuminate the situation? Could we give her a
7 minute?

8 CHAIRMAN REYNOLDS: Well, actually --

9 COMMISSIONER BRACERAS: She may have some
10 knowledge of this that would be helpful to my
11 understanding.

12 CHAIRMAN REYNOLDS: Yes, but --

13 COMMISSIONER BRACERAS: No?

14 CHAIRMAN REYNOLDS: -- at this time I
15 think that we should just leave it where it is now,
16 and we will have further discussions about this at a
17 later date.

18 COMMISSIONER BRACERAS: Okay, but what are
19 we doing with the reforms that we have passed today?
20 How are they being committed to writing and
21 catalogued?

22 VICE CHAIRMAN THERNSTROM: Let us trust
23 the Staff Director to work that out.

24 COMMISSIONER BRACERAS: Okay, okay.

25 VICE CHAIRMAN THERNSTROM: They aren't

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1 going to disappear into thin air.

2 CHAIRMAN REYNOLDS: And we will take this
3 discussion up at our next meeting so we can --

4 COMMISSIONER BRACERAS: Okay.

5 CHAIRMAN REYNOLDS: -- let the
6 Commissioners know the procedure.

7 Okay. Would someone please tell me where
8 we are?

9 VICE CHAIRMAN THERNSTROM: We are at the
10 Staff Director report.

11 COMMISSIONER KIRSANOW: No, we are beyond
12 that.

13 Mr. Chair, I'd move that we move on to the
14 Working Group Reform.

15 VICE CHAIRMAN THERNSTROM: Well, wait a
16 minute. We have not got -- I'm sorry staff progress
17 reports.

18 COMMISSIONER BRACERAS: Right, and I would
19 also move at this point, in light of our past
20 conversation, that we reorder the agenda to bring
21 Roman numeral seven up. It may not even be seven
22 anymore, but so that we discuss the establishment of a
23 Working Group on Reform before we hear from the staff.

24 CHAIRMAN REYNOLDS: Okay. Do we need a
25 motion for this or do we have consensus?

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1 COMMISSIONER BRACERAS: Well, I move it.

2 CHAIRMAN REYNOLDS: Okay. I don't think
3 that's necessary.

4 COMMISSIONER BRACERAS: Okay.

5 CHAIRMAN REYNOLDS: Okay. Let's talk
6 about it.

7 COMMISSIONER BRACERAS: Okay. So my
8 motion is a written motion. It has been passed out, I
9 believe, to all of the Commissioners and the staff.
10 Do you have a copy? Does everybody have a copy?

11 CHAIRMAN REYNOLDS: Actually I don't.

12 VICE CHAIRMAN THERNSTROM: And I don't
13 have one in front of me for some reason. We'll share
14 it.

15 COMMISSIONER BRACERAS: It's dated January
16 7th, 2005.

17 VICE CHAIRMAN THERNSTROM: Oh, no, I've
18 got it right here. I've got it here.

19 COMMISSIONER BRACERAS: For purposes of
20 the transcript, I'll read it into the record.

21 CHAIRMAN REYNOLDS: Before you start,
22 Commissioner Meeks?

23 VICE CHAIRMAN THERNSTROM: Yes, she said
24 she had one.

25 COMMISSIONER TAYLOR: She has one. Dated

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1 January 7th?

2 CHAIRMAN REYNOLDS: Yes.

3 COMMISSIONER BRACERAS: Do you have it?

4 COMMISSIONER TAYLOR: Yes.

5 COMMISSIONER BRACERAS: Commissioner
6 Meeks, do you have a copy?

7 COMMISSIONER MEEKS: Yes, I do.

8 COMMISSIONER BRACERAS: Yes, okay. Okay.

9 So I'm going to read it into the record so that the
10 audience and the court reporter can get it, and I'm
11 happy to entertain amendments. This is just a draft
12 for discussion.

13 Basically I move that --

14 CHAIRMAN REYNOLDS: I move that we have an
15 adjournment for about five minutes. I don't believe a
16 motion is necessary, but let's take a five-minute
17 break.

18 VICE CHAIRMAN THERNSTROM: Good. I agree.

19 (Whereupon, the foregoing matter went off
20 the record at 11:17 a.m. and went back on
21 the record at 11:28 a.m.)

22 CHAIRMAN REYNOLDS: I would like to call
23 this meeting back in session. And, Jennifer, you have
24 the floor.

25 **ESTABLISHMENT OF A WORKING GROUP ON REFORM**

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1 COMMISSIONER BRACERAS: Okay. So I am
2 moving that we establish a working group on reform.
3 I've handed out a draft proposal, which I am going to
4 read into the record because I am going to alter it
5 slightly from what is written before us. So I think
6 it is important that I say it out loud. And then I am
7 happy to entertain suggestions.

8 The proposal is that we establish a
9 committee comprised of four commissioners, the staff
10 director, and the staff director's designee from each
11 of the following three offices, the Office of General
12 Counsel, the Office of Civil Rights Evaluation, and
13 the Office of Budget and Finance, and that one
14 commissioner will be selected to co-chair the
15 committee, the working group subcommittee, or whatever
16 we want to call it, along with the staff director. So
17 the staff director and a commissioner will chair it.

18 The mission of the working group on reform
19 would be to make specific recommendations to the full
20 Commission for implementing administrative and policy
21 reforms. And, in particular, the working group is
22 charged with considering reforms in the following
23 areas.

24 I'm actually going to pare this down from
25 what is written here because I think maybe we should

1 start off small and not bite off more than we can
2 chew. So I'm going to move that the working group be
3 charged with considering reforms in the areas of
4 internal communications, which means between staff and
5 commissioners and whatnot; number two, external
6 relations, which is to include both media relations
7 and relations with the public and other branches of
8 government; and, third, project process and planning,
9 and that would encompass the whole scope of how we
10 propose projects, everything from how we propose
11 projects to how we approve projects, how we approve
12 projects and reports and everything in between, the
13 staff, what template they use, what processes they use
14 as they go through the project planning, and what the
15 commissioners' role is, both in suggesting and
16 recommending projects and in implementing and
17 approving them.

18 So I am going to eliminate numbers four
19 and five from my list, which were budget and
20 implementation of GAO reforms, because it seems,
21 particularly from Ken's presentation this morning,
22 that budget and finance issues, I think we've got the
23 audit going on, we've got other things. And we do
24 need to address that, but it may be larger than I want
25 to propose right now. And we may want to think about

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1 how to structure that.

2 So I would also move that the time line
3 and process for this working group be as follows. The
4 working group shall confer as much as necessary,
5 either in person or by conference call. And at the
6 March 2005 meeting, the working group shall submit in
7 writing a list of specific recommended reforms and
8 accompanying motions to be voted on by the full
9 Commission.

10 It's my hope that the working group will
11 be able to reach consensus on the recommendations that
12 they put forward, but even where there is no
13 consensus, I think that all recommendations from
14 members of the working group should be committed to
15 writing and submitted to the full Commission for
16 discussion.

17 And along with those written proposals
18 should be a notation of which members of the working
19 group support or do not support the recommendation so
20 that we can have a full and open discussion of the
21 recs. at the March meeting.

22 CHAIRMAN REYNOLDS: Okay. Is there a
23 second?

24 VICE CHAIR THERNSTROM: Second.

25 CHAIRMAN REYNOLDS: Discussion? Yes,

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1 Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: Yes, Mr. Chairman.

3 I support the motion. A couple of comments with
4 respect to it. The members of the working group on
5 reform, number four commissioners and the staff
6 director's designee from the specified offices, we
7 want to be very sure.

8 I think this is being assumed in the
9 motion. I just want to make it very clear that all
10 deliberations of this working group on reform fully
11 comply with our own regulations related to Sunshine
12 Act provisions.

13 I think Commissioner Braceras understands
14 that and it's incorporated in here, but I just want to
15 make it clear for everyone since we have been talking
16 about transparency, which is something that I think
17 all of us agree with.

18 Also, with respect to budget and
19 information of GAO reforms, which Commissioner
20 Braceras had originally had on her motion, I think
21 those are extremely important and we should be
22 addressing those at some point in the future once the
23 audit is concluded, once GAO has been concluded with
24 whatever it is doing, and oversight responsibilities
25 that are being discharged are concluded so that we may

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1 incorporate whatever recommendations come from those,
2 whatever lessons we may learn from those into any
3 reform group. But that is something that can be done
4 in a future basis.

5 COMMISSIONER BRACERAS: Just to note, this
6 isn't the only mechanism for reform or for suggestions
7 or making recommendations. Obviously any commissioner
8 can come with a motion or proposal any time they want,
9 and we can vote on it.

10 But I just thought it would be helpful if
11 we had a working group to at least discuss these three
12 issues. And the staff will be very helpful in
13 providing the institutional knowledge and the history
14 and the background of what we already have or don't
15 have. And I think it's important for commissioners to
16 hear from the staff in an informal setting as to what
17 works and what doesn't work.

18 So I don't mean this in any way to be an
19 exclusive means of making proposals or reforms. It's
20 just one avenue to address these issues?

21 CHAIRMAN REYNOLDS: Commissioner Meeks?

22 COMMISSIONER MEEKS: Yes. And I was going
23 to bring up the same point that Commissioner Kirsanow
24 did, that I think I don't have any objections to this
25 working group. However, under the Sunshine Act,

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1 doesn't it require that you have so many days notice,
2 public notice, if you're going to be meeting and --

3 COMMISSIONER KIRSANOW: Well, to the
4 extent -- I'm sorry.

5 COMMISSIONER BRACERAS: Only if there's a
6 certain number of commissioners present, right?

7 COMMISSIONER KIRSANOW: It also requires
8 that the deliberations result in action on the part of
9 a commissioner, something that we are discharging
10 business. If it's simply something where there are
11 discussions going on and no action is taken, for
12 example, if they come up with proposals, they are
13 submitted to the full Commission and the Commission
14 acts upon it, it isn't necessarily subject to the
15 Sunshine Act.

16 You have to understand also that these are
17 our own regs with respect to the Sunshine Act. It is
18 not the over-arching Sunshine Act. There is
19 considerable authority that would indicate that we are
20 not governed by the Sunshine Act per se, but I think
21 we have to take it upon ourselves to be as transparent
22 as possible.

23 So, again, I think we could do those
24 things --

25 COMMISSIONER BRACERAS: I have no problem

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1 with that if you want to do this publicly and announce
2 it or however. I leave that to the staff director and
3 the counsel's office to figure out what we need to do
4 to comply with whatever --

5 CHAIRMAN REYNOLDS: Well, the bottom line
6 is to the extent there is a statute or an internal
7 regulation that governs this issue, the rules that are
8 on the books will apply.

9 Any other discussion?

10 (No response.)

11 CHAIRMAN REYNOLDS: I would like to
12 suggest that this subcommittee be comprised of
13 Commissioner Braceras, Commissioner Redenbaugh, Vice
14 Chair Thernstrom, and also Commissioner Meeks. I
15 throw that on the table. And I haven't discussed this
16 with anyone prior to this point. So my --

17 COMMISSIONER BRACERAS: Russell is not
18 here.

19 (Laughter.)

20 CHAIRMAN REYNOLDS: That will teach him.

21 VICE CHAIR THERNSTROM: That will teach
22 him. I would say, Mr. Chairman, that Russell
23 Redenbaugh if we're having a chair to this working
24 group, he should be the chair.

25 CHAIRMAN REYNOLDS: Didn't Commissioner

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1 Redenbaugh discuss this issue, bring this issue up in
2 a previous --

3 VICE CHAIR THERNSTROM: He did. And this
4 has been something he has long been --

5 COMMISSIONER BRACERAS: Well, he was
6 specifically -- although he is very interested in
7 budgetary issues as well, he did have a specific
8 proposal several months ago about the project process
9 and planning. So we would benefit from his guidance
10 on that because he's thought about it a lot.

11 CHAIRMAN REYNOLDS: Okay. Well, should
12 this motion pass, I'm going to take great pleasure in
13 calling him up and informing him of his new
14 responsibilities.

15 Any discussion? Any more discussion?

16 COMMISSIONER KIRSANOW: Second.

17 COMMISSIONER BRACERAS: Do Commissioners
18 Meeks and Thernstrom accept?

19 VICE CHAIR THERNSTROM: Yes, we'll accept.

20 COMMISSIONER MEEKS: Sure.

21 COMMISSIONER BRACERAS: I accept.

22 CHAIRMAN REYNOLDS: Okay. At this point,
23 we have had the discussion. Let's vote. All of those
24 in favor, say "Aye."

25 (Whereupon, there was a chorus of "ayes.")

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1 CHAIRMAN REYNOLDS: Any objections?

2 (No response.)

3 CHAIRMAN REYNOLDS: Any abstentions?

4 (No response.)

5 CHAIRMAN REYNOLDS: The motion has passed.

6 COMMISSIONER BRACERAS: And I guess the
7 staff director will need to let us know as soon as
8 possible who is designated from the senior staff to
9 participate.

10 VICE CHAIR THERNSTROM: And I would assume
11 the staff director will kind of create a mechanism by
12 which we can, you know, meet and discuss this.

13 COMMISSIONER BRACERAS: Coordinate.

14 VICE CHAIR THERNSTROM: Coordinate.

15 **STAFF PROGRESS REPORTS**

16 CHAIRMAN REYNOLDS: Okay. At this point
17 we're going to discuss staff progress reports. The
18 first step is Ms. Dickerson. Actually, Mr. Harbison,
19 Ms. Martin, and Ms. Dunston, please come to the table.

20 STAFF DIRECTOR MARCUS: Ms. Martin should
21 be appearing by phone.

22 MS. MARTIN: Yes, I'm here.

23 STAFF DIRECTOR MARCUS: Or from the
24 heaven.

25 VICE CHAIR THERNSTROM: Where are you, Ms.

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1 Martin, physically?

2 MS. MARTIN: I'm at home recuperating. I
3 had surgery a couple of weeks ago.

4 VICE CHAIR THERNSTROM: I see. Well, I
5 hope you are doing well.

6 MS. MARTIN: Thank you. I am.

7 CHAIRMAN REYNOLDS: Okay. First up is Mr.
8 Harbison. I don't know if I had an opportunity to
9 meet you yet. So please introduce yourself and then
10 begin your report.

11 MR. HARBISON: Mr. Chairman, Vice Chair,
12 commissioners, staff director, my name is George
13 Harbison. I am the Chief, of the Budget and Finance
14 Division. I have held that position for the last 14
15 years.

16 VICE CHAIR THERNSTROM: Are you miked up?
17 I'm sorry. Your voice sounds very soft. Thank you.

18 MR. HARBISON: Again, my name is George
19 Harbison. I am the Chief, of the Budget and Finance
20 Division. And I have held that position for the last
21 14 years. Budget and Finance Division is generally
22 responsible for management of the Commission's fiscal
23 resources.

24 The staff director has covered most of
25 what I had intended to say in a brief way. So I am

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1 just going to elaborate on some of the things that he
2 said and then go into further detail and expand some
3 of the things that he said in terms of historical and
4 recent history and current history in terms of fiscal
5 operations here at the Commission on Civil Rights or
6 in the Budget and Finance Division.

7 Briefly, in fiscal year 2004, at the
8 conclusion of 2004, the Commission spent approximately
9 \$8.9 budget of its \$9 million budget. With regards to
10 current operation this fiscal year, we have a budget
11 of approximately -- to continue, the 2005 budget of
12 the Commission on Civil Rights again was \$96,000. We
13 were immediately assessed a rescission amount of
14 \$72,768. It comes right off the top. And that
15 essentially left a balance of \$9,032,000 available to
16 spend this fiscal year.

17 We are currently in the process of
18 developing an operating plan to cover how we're going
19 to spend those funds. We hope to have that available
20 shortly in terms of some of the major expense
21 categories that you can anticipate for this fiscal
22 year. These would include transit subsidies.

23 Some of these are not extraordinary
24 expenses in that they are not new. These are
25 recurring expenses: Lexis Research Services, office

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1 space rental, upgrading ADP systems in the regional
2 offices. That's a new one.

3 Accounting, budgeting, disbursement, and
4 procurement services, not new, but it's an extension
5 of the process that we're already in. Communications,
6 auditing services. There's some temporary employment
7 to take care of some interim gaps and press
8 activities.

9 I'll now skip to some issues relative to
10 the GAO audit of fiscal year 2002 that were relative
11 or related to the Budget and Finance Division or to
12 fiscal operations. And I'll address the
13 recommendations and the actions taken as previously
14 reported.

15 The first recommendation was that among
16 the adequacy and time limits of project cost
17 information by the staff director, that will soon be
18 provided to the commissioners to make necessary
19 adjustments, which should include providing
20 information on a monthly, rather than a quarterly,
21 basis as necessary. It was determined that that
22 information would be provided on a quarterly basis, as
23 initially requested. And that's what we have done.

24 The second recommendation was to take
25 steps immediately in order to meet the financial

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1 statement preparation and audit requirements of the
2 Accountability of Tax Dollars Act, fiscal year 2004.

3 These steps toward audited statements
4 could include, for example, identifying the skills and
5 resources necessary preparing financial statements or
6 at least balance sheet with related note disclosures,
7 fiscal year 2003, and ensuring that the evidence is
8 available to support the information in those
9 financial statements.

10 The Commission contracted with an auditing
11 firm, Parker, Whitfield and Company, to accomplish
12 this, at least the balance sheet portion of that
13 audit. I will say one thing with regards to the --
14 I'll cover that later.

15 The GAO audit for fiscal year 2003, which
16 is the one that is currently in progress, is still in
17 progress. We anticipate that it is nearing
18 completion. This is the one which the staff director
19 referred to as the draft essentially being in a voided
20 state.

21 The draft finding, recommendations are
22 anticipated this month. It should be noted that the
23 previous drafts of findings and recommendations based
24 on this audit were voided after the parties agreed
25 that more time would be allowed for us, Commission, to

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1 gather additional supporting data.

2 There was a period of time there where all
3 of the resources of the Commission on Civil Rights --
4 not the Commission -- I'm sorry -- Budget and Finance
5 Division was being directed towards other projects;
6 for example, the gathering of data for the
7 congressional request, in addition to providing as
8 much as we could to support to the GAO auditors, in
9 addition to doing our regular day-to-day business.
10 And the basis for that, then, was that they allowed us
11 additional time to support and provide data to support
12 our positions.

13 The F.Y. 2004 financial audit, this audit
14 is the annual audit that is now required by the
15 Accountability of Tax Dollars Act. This is the first
16 time that the Commission or the first audit of the
17 Commission's specific financials. And this particular
18 audit is limited to balance sheet verifications.

19 I cannot give you the specific details on
20 balance sheet versus full-blown audit. I can say that
21 the approved part of that process -- and it was, in
22 fact, a recommendation that we do it that way. And
23 the basis for that was that we had literally not had
24 time to prepare the documentation and the statements
25 for the financial audit. That was one of the bases

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1 for doing a balance sheet audit. It's an abbreviated
2 form of the full audit.

3 I will go into a few of the issues
4 regarding our physical status with regards to our
5 contracting and basically some historical perspective
6 as well as where we are now, how we got there.
7 Essentially or generally, the Commission prior to
8 October 1st, 2002 was serviced by the National Finance
9 Center, which was at that time a division of the U.S.
10 Department of Agriculture.

11 During fiscal year 2002, we were advised
12 that if we were going to remain with them, the costs
13 would be astronomical, much more so than the
14 Commission literally could afford to do. We banded
15 with a group of other smaller agencies, who were at
16 the same time being given the same instructions to
17 find another service provider who could provide the
18 requirements that we needed for full-service
19 accounting.

20 And that process after going through
21 several federal agencies, GSA, EPA, Department of
22 Interior, resulted in us selecting the Bureau of the
23 Public Debt to provide accounting services for the
24 Commission.

25 BPD, Bureau of Public Debt, which is why

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1 it's BPD, turned over our accounts. NFC turned over
2 our accounts October 1st, 2002, which was fiscal year
3 2003. And considering the normal growing pains and
4 learning curves associated with the turnover, I feel
5 that BPD more than met the terms of the agreement
6 under that contract. It included advisory services,
7 accounting, reporting, budgeting, travel management,
8 auditing, and ad hoc reporting, to name a few.

9 We dissolved that relationship with BPD
10 for a number of reasons. One of the more express
11 reasons was because of cost considerations. It was
12 stated that costs would be more than the Commission
13 would be willing to pay.

14 As the staff director reiterated
15 previously, there was concern by the Bureau of the
16 Public Debt with regards to how well the Commission
17 was managing its finances.

18 Also, there was concern that we could go
19 antideficient. I want to emphasize that that was a
20 good possibility. It was not one that wasn't known,
21 but it could happen. We did not go antideficient in
22 fiscal year 2003, nor in 2004 or any other year that
23 I'm aware of since I have been here.

24 That was a grave concern of the Bureau of
25 Public Debt because they felt that we weren't placing

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1 sufficient emphasis on managing the funds of the
2 Commission.

3 It was realized by management that the
4 antideficient condition could exist late in the fourth
5 quarter of fiscal year 2003. And it was at that time
6 that a series of actions were taken to bring the
7 budget back into alignment with the appropriation.
8 These included things like canceling out obligations,
9 renegotiating contracts. There was also some
10 employees who took leave without pay.

11 The net result of all of this with regards
12 to the thought processes of the Bureau of Public Debt
13 was that there did not appear to be a sufficient
14 amount of emphasis placed on addressing the issue of a
15 potential Antideficiency Act violation.

16 And one of the ways that they thought to
17 address this, to the best of my knowledge, one of the
18 ways, was that they thought we need additional
19 resources dedicated specifically to fiscal controls.
20 That, in turn, is what generated the additional cost
21 that was being proposed.

22 I don't know what the exact cost was, but
23 the resource itself would be dedicated to the
24 Commission assigned either here in Washington or
25 traveling between Washington and the Bureau of Public

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1 Debt.

2 It was sometime during this period when
3 these discussions were taking place that the Bureau of
4 the Public Debt issued its notice of intent to end the
5 agreement with the Commission on Civil Rights.

6 And that agreement actually ended. It was
7 initially scheduled to end December 3rd, 2003.
8 Actually, they allowed us additional time in order to
9 find and select a new service provider. The actual
10 transition conversion occurred on or about March 1st,
11 2004. At that point, in the process of identifying a
12 new service provider, we had -- well, do you want to
13 address this?

14 MS. DUNSTON: Sure.

15 MR. HARBISON: All right.

16 MS. DUNSTON: Good morning. At the time
17 when we had to select a new provider, the --

18 CHAIRMAN REYNOLDS: I'm sorry. Before you
19 go on, please introduce yourself.

20 MS. DUNSTON: I'm sorry. I'm Pamela
21 Dunston. I'm Chief of Administrative Services and
22 Clearinghouse Division. I've been chief of the
23 division one year, prior to that acting for a year
24 before that. I've been with the agency for a little
25 bit over 16 years.

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1 COMMISSIONER BRACERAS: I'm sorry. Before
2 you continue, I have to leave at this point, but I
3 will be very carefully reading your comments in the
4 transcript. And I really appreciate everybody coming
5 forward and giving us updates on their offices.

6 So I will be reading that. And I wanted
7 to thank you and apologize for cutting out.

8 MS. DUNSTON: When we had to select a new
9 vendor, the previous staff director decided to go with
10 a small firm. We did complete the transaction. There
11 was a request for quotes issued to 11 vendors. Out of
12 those 11 vendors, we had 2 responses.

13 After those responses came in, there was a
14 technical evaluation that occurred. There were two
15 parts to that: the price evaluation team, which
16 consisted of the staff director as the sole member.
17 And then there was a technical team, which consisted
18 of George Harbison, myself, and Alex Sun.

19 We looked at those proposals and either
20 ranked them acceptable, outstanding, marginal, so
21 forth, and then provided these ratings to the staff
22 director, who, in turn, made the final selection.
23 After the selection, we were informed that Booth
24 Management Consulting would be the firm providing full
25 accounting services to the agency.

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1 MR. HARBISON: As I said, Booth Management
2 is still currently providing those services to us on
3 the agreed contract. To the best of my knowledge, in
4 terms of how well they perform the contract, the
5 contracting officer was initially very pleased with
6 the company. Later on in the year, roughly in the
7 fourth quarter, he did indicate some displeasure with
8 how well they were performing. Specifics I don't know
9 at this point.

10 CHAIRMAN REYNOLDS: And who is the
11 contracting officer?

12 MR. HARBISON: The contracting officer is
13 the former staff director, Les Jin.

14 In summary, with regards to the staff
15 director's presentation, I would literally say that
16 while I agree with his conclusions, I am not totally
17 in agreement with some of the characterizations of
18 that conclusion. The conclusions exist, nonetheless.

19 I do agree with the conclusions.

20 The system is not broken, but it is badly
21 in need of repair. And the specific areas that are in
22 need of repair, significant repair, are internal
23 controls certainly. And we recognize that, as does
24 GAO. And we have indicated that in a number of
25 reports.

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1 The human capital aspect of Fiscal
2 Resources Division certainly is in some need of
3 attention as well as fiscal resources itself for the
4 Commission on Civil Rights because certainly we need
5 the funds in order to obtain the resources to do the
6 job right.

7 So, in summary, what I would say is that
8 we are aware that there are certainly improvements
9 that can be made and there are significant
10 improvements that need to be made. As I said, the
11 system is not broken, but it's badly definitely in
12 need of repair.

13 CHAIRMAN REYNOLDS: Okay. Thank you very
14 much.

15 Out of the box first is the vice chair.

16 VICE CHAIR THERNSTROM: Mr. Harbison,
17 thank you very much for coming and being in the hot
18 seat, as it were.

19 MR. HARBISON: I waited ten years for
20 this.

21 VICE CHAIR THERNSTROM: I don't have a
22 crystal clear sense from the report that you just gave
23 of the respect in which you disagree with the staff
24 director's report. There have got to be
25 disagreements.

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1 I, speaking just for myself, but I suspect
2 that some other commissioners will join in, would not
3 mind from you or would welcome from you, I should say,
4 a bulletpoint summary, as it were, of the main points
5 that you want to get across and your responses to the
6 staff director's report and the GAO, point by point
7 response, because some very serious statements have
8 been made.

9 And I would like to see crystal clear in
10 writing "Here is my response. You are right on this.

11 You are wrong on that. This needs a little
12 elaboration," whatever. That would be very helpful to
13 me in going forward.

14 MR. HARBISON: I understand your point.
15 As I said, I am not disagreeing with his conclusions,
16 just perhaps some of the ways of getting there that
17 I'm not in complete agreement with.

18 For example, I think one of the areas was
19 from one of the GAO reports where it was we were not
20 complying with the finding or recommendations. In an
21 across-the-board sense, that may be true; on an
22 individual basis, perhaps not so true. I can do that.

23 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: Thank you. Thank
25 you, Ms. Dunston and Mr. Harbison. I just want to

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1 note that this is the first time I've heard from
2 either one of you in this kind of capacity since I've
3 been on the Commission for nearly three years now.

4 I had several questions. Maybe you could
5 address those in writing at a later time. I don't
6 want to burden us with all of the details right now.
7 But, first, if I could just raise maybe two or three
8 questions?

9 MR. HARBISON: Sure.

10 COMMISSIONER KIRSANOW: You mentioned the
11 Antideficiency Act on a couple of occasions. Do you
12 know where we stand currently with respect to whether
13 or not we might violate the Antideficiency Act in the
14 current fiscal year? How does it look to you right
15 now?

16 MR. HARBISON: Not under my watch.

17 COMMISSIONER KIRSANOW: Okay. Second is I
18 had asked a number of times with respect to previous
19 years, not of you but of others on the Commission,
20 whether or not anyone had a handle on what our travel
21 expenses had been in preceding years.

22 I have been given several different
23 explanations of what those were. If you have any
24 idea, for example, in fiscal 2003 what our travel
25 expenses were --

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1 MR. HARBISON: I don't have an exact
2 figure, but the information --

3 COMMISSIONER KIRSANOW: Could you provide
4 that to us?

5 MR. HARBISON: -- is available, yes.

6 COMMISSIONER KIRSANOW: Okay. I
7 appreciate that.

8 You also made mention -- I'll display my
9 ignorance here -- of due to a rescission of
10 approximately \$72,000, our total amount was down to I
11 think 9 million, 26.

12 MR. HARBISON: Twenty-three, I believe.

13 COMMISSIONER KIRSANOW: Twenty-three
14 thousand dollars? What is the nature of the
15 rescission? Why is that?

16 MR. HARBISON: It's generally a reduction
17 across the board for all agencies. It's a general
18 deduction, generally to fund some special project. In
19 this case, it could be to provide additional funds for
20 the Iraqi effort, to support that effort.

21 COMMISSIONER KIRSANOW: Ours was?

22 MR. HARBISON: Ours was \$72,768.

23 COMMISSIONER KIRSANOW: Okay. And is it
24 the outside accounting firm's obligation to maintain a
25 general ledger?

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1 MR. HARBISON: Yes.

2 COMMISSIONER KIRSANOW: Did we ever
3 maintain a general ledger prior to fiscal year 2003?

4 MR. HARBISON: Yes.

5 COMMISSIONER KIRSANOW: I don't have any
6 questions at this point.

7 CHAIRMAN REYNOLDS: Commissioner Meeks?

8 COMMISSIONER MEEKS: Yes. I certainly
9 agree that financial controls and accountability and
10 all of that are really serious issues, but after the
11 staff director's sort of presentation of the financial
12 management, I mean, that almost made me think of there
13 was no budget control even in place.

14 And, yet, we came in, \$9 million budget,
15 came in at 8.9. And there was a large number of
16 reports that have been produced. And I think most all
17 of the work that we had on our agendas got done.

18 So I just want to state that for the
19 record, that there certainly could be controls that
20 aren't in place and some documentation that is not
21 there. But I think overall on a budget like nine
22 million that has been flat-lined for a long time now
23 and so that means inflation but decreasing number of
24 staff, that overall I think this agency has actually
25 accomplished a great deal. But I agree that there are

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1 probably controls and some accountability issues that
2 need to be strengthened.

3 CHAIRMAN REYNOLDS: Vice Chair?

4 VICE CHAIR THERNSTROM: What percentage of
5 the budget goes to salaries?

6 MR. HARBISON: Approximately 70 to 75
7 percent.

8 VICE CHAIR THERNSTROM: Is it correct that
9 -- I mean, I was not at the meeting yesterday. And
10 maybe Commissioner Kirsanow wants to speak to this.
11 There is a bit of a mystery on the salary question.

12 COMMISSIONER KIRSANOW: I think that is
13 best to go to at another time.

14 VICE CHAIR THERNSTROM: Okay. That's
15 fine.

16 COMMISSIONER KIRSANOW: But I do have kind
17 of a question along the lines of what Commissioner
18 Meeks had raised or maybe not a question but a
19 comment.

20 I think the Commission has done remarkable
21 things given the amount of money, the appropriations
22 it's afforded. And I commend staff for all that they
23 have done with that money.

24 I think saying that is different from the
25 inquiry with respect to how the money is spent. It's

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1 even conceivable that we could have done more had we
2 had internal controls. I'm not an accountant.

3 I don't know if we have any reportable
4 conditions with respect to the manner in which monies
5 are disbursed, but it is troubling that we don't have
6 certain fundamental financial controls in place
7 because then we can't determine, for example, if money
8 was appropriately expensed in a certain -- we are a
9 federal agency.

10 I think we have an obligation to the
11 people of the United States. We have an obligation to
12 our clients, meaning Congress and the Executive
13 Branch. We have an obligation to staff to make sure
14 that we husband the funds correctly so that we can
15 discharge our functions in the most efficacious
16 fashion possible.

17 So I think this is something we clearly
18 have to get a handle on. And if this outside agency
19 that is currently conducting most of our accounting
20 practices isn't getting the job done, we have to take
21 a good, hard look at that.

22 And I would look very much forward to what
23 our audit says. And, again, I would reiterate I would
24 hope that this is expanded to a full scope audit and
25 not just simply a balance sheet audit.

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1 CHAIRMAN REYNOLDS: Okay. Mr. Harbison,
2 could you spend some time discussing your unit? It
3 appears as if the budgeting function, at least a piece
4 of it, has been outsourced. I'm interested in your
5 staff. It's my understanding that it's just you.

6 MR. HARBISON: That's correct.

7 CHAIRMAN REYNOLDS: How long has that been
8 the case? I mean, you've been with the agency for ten
9 years. Did the agency always outsource? Has this
10 been in place since you have been here?

11 MR. HARBISON: That is correct. Just
12 prior to my arrival here, we were with the General
13 Services Administration. I think at that point in
14 time or just prior to that, we had undergone a RIF, at
15 which point we contracted, the agency contracted, with
16 the National Finance Center to provide these services.

17 And, as I said previously, the National
18 Finance Center after a number of years, we could no
19 longer afford their services. And, in addition to
20 that, there were some aspects of the National Finance
21 Center where that was not at the time compliant with
22 all of the general ledger requirements.

23 So those were motivating factors for us to
24 migrate to another service provider. We literally
25 could not afford to bring it in-house.

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1 CHAIRMAN REYNOLDS: Now, it's my
2 understanding that Booth Management recently came on
3 board. Was it January of '04 or --

4 MR. HARBISON: Approximately I think they
5 started working in February, but the actual conversion
6 from the Bureau of Public Debt to Booth Management
7 occurred on March 1st.

8 CHAIRMAN REYNOLDS: Are you satisfied with
9 the amount of information and the working relationship
10 with Booth Management? Because I am assuming that you
11 are the contact point for the Commission with respect
12 to Booth Management.

13 MR. HARBISON: The answer to your question
14 is no and no. Booth Management is I think a very
15 capable provider of what they do. I think that there
16 are issues that are involved with federal accounting
17 that they could perhaps do better.

18 With regards to the reporting officials,
19 the contracting officer, as I said, was the former
20 staff director and his special assistant. My contact
21 with Booth Management was through the contracting
22 officer. So they reported essentially to the
23 contracting officer.

24 CHAIRMAN REYNOLDS: Okay. So they report
25 to the contracting officer. And the contracting

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1 officer would then funnel the relevant information to
2 you?

3 MR. HARBISON: In many instances. There
4 are other instances where information was not
5 funneled.

6 CHAIRMAN REYNOLDS: So in terms of our
7 institutional knowledge, we have a situation where the
8 contracting officer, the former staff director, was
9 the primary repository for information and that when
10 he left, much of the information went along with them.

11 MR. HARBISON: That is correct. As I say,
12 we are still working with Booth Management obviously.

13 And one of the things that they did to address some
14 of the issues that we're concerned about was to put an
15 individual on site to assist us sort of as a liaison,
16 that the institutional knowledge with regards to the
17 management of that contract is not here, as far as I
18 know.

19 CHAIRMAN REYNOLDS: Has that affected your
20 ability to respond to GAO requests, requests from
21 Capitol Hill?

22 MR. HARBISON: There have been, to my
23 knowledge, no requests from the Hill with regards to
24 this. And in terms of responding to requests for
25 information, generally those requests -- well,

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1 currently those requests would probably come through
2 me. And then I would, in turn, go to the Booth
3 Management representative and get that response.

4 CHAIRMAN REYNOLDS: Okay.

5 MR. HARBISON: Prior to that, it would go
6 to the staff director's office. And he would go to
7 Booth Management to get the responses.

8 CHAIRMAN REYNOLDS: Okay. So we're in a
9 position to respond to inquiries regarding our
10 finances by going to --

11 MR. HARBISON: Yes.

12 CHAIRMAN REYNOLDS: Yes, Commissioner
13 Kirsanow?

14 COMMISSIONER KIRSANOW: Well, Mr.
15 Harbison, you indicated that at one point, there were
16 certain things that needed to be improved. And one of
17 those was human capital with respect to budget and
18 finance. What did you mean by that? Could you
19 elaborate on that?

20 MR. HARBISON: That means I need help.

21 (Laughter.)

22 MR. HARBISON: In all honesty, that's what
23 it means. As I said once before, last year, when we
24 were engaged in the GAO audit and we were engaged in
25 the process of trying to collect what was an absolute

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1 humongous amount of material, whether or not that is
2 what they actually required, I don't know, but the
3 instruction that we were given was to collect. And so
4 we did.

5 And we were in the process of collecting
6 somewhere in the neighborhood of 20-25 file drawers
7 full of data. And we just didn't have the resources
8 to do it.

9 COMMISSIONER KIRSANOW: Absent requests
10 from Oversight, GAO, what have you, would you still
11 require more personnel within your department?

12 MR. HARBISON: Yes, not a whole lot of
13 personnel perhaps but certainly some assistance.

14 COMMISSIONER KIRSANOW: And how would you
15 quantify that? One person? Two people?

16 MR. HARBISON: I would not want to do that
17 at this point, but I would say certainly not less than
18 one.

19 COMMISSIONER TAYLOR: Mr. Chairman?

20 CHAIRMAN REYNOLDS: Commissioner? Ashley?
21 Commissioner Taylor?

22 COMMISSIONER TAYLOR: I apologize. I am
23 not as familiar with the normal operating procedure
24 for a small federal agency as others. I am assuming
25 that it is not unusual for an agency of this size to

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1 engage the services of an outside contractor.

2 MR. HARBISON: It's not unusual to engage
3 an outside contractor, but I think it might depend on
4 what you are engaging the contractor to do.

5 COMMISSIONER TAYLOR: The level of
6 service.

7 MR. HARBISON: Yes.

8 COMMISSIONER TAYLOR: I guess going
9 forward, as of today -- well, let me back up a step.
10 And, again, I apologize I am bringing a different
11 perspective. This outside service, they provide
12 recommendations regarding internal protocols that we
13 can adopt and follow or what? Do they have regular
14 interaction with someone here in the absence of the
15 staff director, who was the point of contact, now?
16 Are they now communicating with you?

17 If they see a red flag, who do they call?

18 I guess I want to ask basic, very simple questions.
19 If they had a problem today or they wanted to make a
20 recommendation, who would they call?

21 MS. DUNSTON: Do you want me to take that,
22 George? All right. In the past, as you said, the
23 staff director, previous staff director, was the
24 direct contact. And most of that contact was then
25 delegated to his assistant.

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1 Since they have departed from the agency,
2 we have had a couple of meetings in trying to work
3 with the vendor and restructuring that responsibility
4 from the staff director to Tina Martin, who is now the
5 Director of Office of Management, and essentially
6 e-mailing if we're doing the communication, all three
7 of us receiving that e-mail, in addition to Ken. So
8 that they were working more directly with them.

9 And we're bringing in the Director of the
10 Office of Management. George and I fall under their
11 umbrella. So under the Director of Management, you
12 have Budget and Finance, Administrative Services, and
13 Human Resources.

14 COMMISSIONER TAYLOR: So you have more
15 people now collecting the information, at least
16 receiving information.

17 MS. DUNSTON: We have more people in the
18 process directly related to the process, and will also
19 be directly communicated. So, therefore, we know more
20 about what is going on on a day-to-day basis versus
21 coming in later in the process or not at all in the
22 process.

23 COMMISSIONER TAYLOR: Are they making
24 recommendations? I mean, what are they doing?

25 MS. DUNSTON: They perform the actual work

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1 in most of these. When George says he's a lone
2 person, they actually make sure the payment gets to
3 GSA. They are putting those entries into the general
4 ledger.

5 COMMISSIONER TAYLOR: Are they what I
6 would call the back office operation? Is that what
7 they are?

8 MS. DUNSTON: George, would you call them
9 the back office?

10 COMMISSIONER TAYLOR: Or are they
11 consulting?

12 MS. DUNSTON: They provide a full service.
13 So in that sense, actually, they are the full service
14 behind our scenes, behind for most of our customers to
15 us. But for us, they are providing a majority of the
16 support.

17 COMMISSIONER TAYLOR: They do both. Okay.

18 MR. HARBISON: They essentially manage the
19 books, general ledgers.

20 MS. DUNSTON: Prepare reports.

21 MR. HARBISON: Financial statements.

22 COMMISSIONER TAYLOR: As part of their
23 contract, would it be normal for them, for example, to
24 provide reports to us at meetings?

25 MR. HARBISON: No.

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MS. DUNSTON: Not to you but through us to

--

COMMISSIONER TAYLOR: Right, right.

That's what I mean, prepare reports for you all --

MS. DUNSTON: Yes.

COMMISSIONER TAYLOR: -- so that we could review them, whether quarterly or whatever the case may be. I want to get a sense of the scope of the contract.

MR. HARBISON: Essentially, we term it as full service.

COMMISSIONER TAYLOR: Okay.

MR. HARBISON: Anything we want relative to fiscal management, fiscal operations, or accounting, they would provide.

COMMISSIONER TAYLOR: No further questions right now, but may I have a recommendation?

CHAIRMAN REYNOLDS: Sure.

COMMISSIONER TAYLOR: Later on, not right now. Maybe later on.

CHAIRMAN REYNOLDS: Okay. Any other questions?

(No response.)

CHAIRMAN REYNOLDS: Okay. At this point, we will hear from Ms. Dunston.

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1 MS. DUNSTON: Good morning again. Like I
2 already stated, I have been here for 14 years. Other
3 areas of procurement that would fall in my area would
4 be things like security, mail management, supply
5 management, space, telecommunications, property. Also
6 falling in my area would be library operations and NP
7 functions.

8 I've been asked to speak to the GAO
9 recommendation from the 2003 report. And the
10 recommendation essentially said that the agency needed
11 to establish greater controls over its contracting
12 activities in order to be in compliance with the
13 federal acquisition regulation.

14 These controls could include putting in
15 place properly qualified personnel to oversee
16 contracting activities, properly collecting and
17 analyzing information about capabilities within the
18 market to satisfy the Commission's needs and properly
19 administering activities undertaken by a contractor
20 during the time from contract award to contract
21 closeout.

22 At the time the previous staff director
23 did not agree with GAO's assessment. However, they
24 did contract a procurement personnel to assist the
25 agency with its procurement activities.

1 That vendor is Brace Management. They are
2 providing services to us not limited to the following,
3 providing independent advice and counsel to the staff
4 on the full procurement process to make sure we're in
5 compliance with the procurement regulations and rules;
6 a simpler competition, which has been an issue I think
7 some of the commissioners have been concerned about,
8 competition including posting publications, preparing
9 administrative paperwork that goes along with
10 competition. They draft or prepare paperwork such as
11 statements of work, contract language, request for
12 proposals, and so forth. Okay?

13 Brace Management is a small minority 8(a)
14 business. The contract was awarded under 8(a) of the
15 Small Business Act in the memorandum of understanding
16 for streamlined 8(a) contracting.

17 The agency consulted with SBA's PRO-Net
18 database to select vendors under 8(a). They were
19 contacted, at least two firms, prior to requesting
20 from SBA permission to negotiate and directly contract
21 for services with Brace Management. They actually
22 started December of 2003. And then this year, for
23 F.Y. '05, they opted to retain their service for
24 another fiscal year.

25 CHAIRMAN REYNOLDS: You've referenced

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1 Brace. Is it Brace Management?

2 MS. DUNSTON: Brace, yes. I know we have
3 a couple of B's: Brace Management and Booth
4 Management.

5 CHAIRMAN REYNOLDS: Okay.

6 MS. DUNSTON: Brace Management is the
7 contractor for procurement, and Booth Management is
8 the contractor for accounting firm.

9 CHAIRMAN REYNOLDS: Okay. Thank you.

10 MS. DUNSTON: Okay.

11 CHAIRMAN REYNOLDS: I'm sorry? Go ahead.

12 VICE CHAIR THERNSTROM: Do you have more?

13 CHAIRMAN REYNOLDS: No. I noticed that
14 you wanted to say something.

15 VICE CHAIR THERNSTROM: So who is
16 responsible for reviewing the contracting and
17 procurement?

18 MS. DUNSTON: Well, that's kind of been
19 split.

20 VICE CHAIR THERNSTROM: Reviewing and
21 auditing?

22 MS. DUNSTON: Reviewing and auditing?

23 VICE CHAIR THERNSTROM: Yes.

24 MS. DUNSTON: Parker, Whitfield.

25 VICE CHAIR THERNSTROM: Okay. For both?

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1 They're responsible for both?

2 MS. DUNSTON: No. The procurement aspect,
3 the contractor is Brace Management. You're talking
4 about the auditor?

5 VICE CHAIR THERNSTROM: For both
6 contracting and procurement, who is reviewing?

7 MS. DUNSTON: Okay. My office essentially
8 does. However, the staff director delegates a portion
9 of that responsibility. He has the same authority in
10 hire that I would have. I have a warrant. He has a
11 warrant. Okay? But the overall responsibility falls
12 under Administrative Services and Clearinghouse
13 Division.

14 VICE CHAIR THERNSTROM: I'm not sure
15 whether this is a question properly addressed to you.
16 And if not, I'd like to address it to somebody else,
17 obviously.

18 By statute, the Commission is authorized
19 to issue public service announcements, which used to
20 occur. I remember them well. They seemed to have
21 disappeared.

22 Who is in charge of that function? When
23 did they disappear? Can they be up and running once
24 again?

25 MS. DUNSTON: I can't give you the exact

1 date when the last one was printed, but I think some
2 of the reasons why we have not in recent times would
3 be funding for obvious reasons.

4 We have not had -- I guess staffing has
5 been an issue in order to get some of the work done.
6 And maybe as to the staff director, he decided to
7 defer certain portions of that. But I don't have it.

8 VICE CHAIR THERNSTROM: Part of our
9 statutory mandate --

10 MS. DUNSTON: Right, but the office
11 responsible for that would be, the function itself, is
12 the Public Affairs Unit.

13 STAFF DIRECTOR MARCUS: And, if I may add,
14 the Public Affairs Unit currently has no staff.

15 VICE CHAIR THERNSTROM: I was going to
16 say, but the Public Affairs Unit doesn't exist.

17 MS. DUNSTON: Well, that's true to some
18 degree, yes. There is no staff.

19 VICE CHAIR THERNSTROM: We have a little
20 bit of an Alice in Wonderland world here.

21 CHAIRMAN REYNOLDS: It has one employee:
22 Ms. Dickerson.

23 MS. DUNSTON: Acting.

24 STAFF DIRECTOR MARCUS: She's serving in
25 an acting capacity.

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1 VICE CHAIR THERNSTROM: She's acting, yes.

2 And, again, I don't know whether this is
3 on your desk or not. What has ever happened to the
4 Civil Rights Journal? Is it alive?

5 MS. DUNSTON: That's also part of Public
6 Affairs office.

7 COMMISSIONER TAYLOR: So it's equally
8 alive.

9 VICE CHAIR THERNSTROM: It's equally
10 alive. Okay. Are there plans to revive the Public
11 Affairs? This is a question for the staff director,
12 really. What is going to happen with the Public
13 Affairs Office?

14 CHAIRMAN REYNOLDS: Actually, that's a
15 conversation that we have to have.

16 VICE CHAIR THERNSTROM: Yes. It's a
17 conversation we have to have. Okay.

18 CHAIRMAN REYNOLDS: Okay. Ms. Dunston?

19 MS. DUNSTON: Well, all right. Then I
20 have just three more comments. I was asked to look at
21 three contracts --

22 VICE CHAIR THERNSTROM: You were asked to
23 look at what? I'm sorry?

24 MS. DUNSTON: Three contracts to provide
25 us some information, three major contracts. Going

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1 back to your statements about press, in the last few
2 years, you know we have had a vendor called McKinney
3 and Associates providing press services to the agency.

4 Last fiscal year, there was a contract
5 written in the amount of \$95,000. It was extended
6 this year in the same amount. For the current year so
7 far, we have paid them \$30,732 and change. And we
8 don't have any outstanding invoices currently.

9 Last fiscal year, it is my understanding
10 we paid them a little over \$100,000 for such services.

11 Okay? That contract for F.Y. '04 was also conducted
12 from the Small Business Administration 8(a) program as
13 well as the Booth Management contract.

14 The other contract we looked at, Booth
15 Management, we have talked about already. In terms of
16 fiscal responsibilities in F.Y. '05, we have a
17 contract. We have exercised an option in the amount
18 of \$220,000-plus. We have paid them so far \$36,000
19 and change for F.Y. '05. And I understand we will be
20 looking at whether we want to deal with that contract
21 and so forth just in terms of what we have paid them
22 for this current year. Okay?

23 I think the question was raised whether we
24 could end a contract and how we would be able to do
25 that. The General Counsel's Office -- and I have had

1 discussions with our procurement contractor -- talked
2 about a way which we could get out.

3 It is my understanding that the term will
4 be used to terminate for convenience. And that means
5 that the government can cancel that contract if it is
6 in the best interest for the government to do so. We
7 would have to notify that vendor, provide a case as to
8 why we are canceling it, and then essentially
9 negotiate terms and pay them for allowable costs, such
10 as preparing for continuing the contract work they
11 have already done for their current year so far.
12 Okay?

13 The last contract would be Parker,
14 Whitfield. This contractor is the contractor who is
15 doing our balance sheet audit. The contract actually
16 started at the end of F.Y. '04 and will go into
17 completion sometime in F.Y. '05, obviously.

18 The contract was issued in the amount of
19 \$23,820 with a partial funding in F.Y. '04, the
20 balance being in F.Y. '05. To date, we have one
21 invoice outstanding, which is in the amount of \$10,971
22 and change.

23 That vendor again was selected through the
24 SBA's 8(a) Small Business Act. We looked at the GSA
25 Advantage schedule, where they have vendors listed and

1 selected, firms in the D.C. area for D.C., Maryland,
2 and Virginia under 8(a) selection.

3 The contract was originally offered to
4 another vendor. It is not clear according to the file
5 why that vendor was not selected. Afterwards, the
6 staff director then had discussions with Parker,
7 Whitfield and Company and requested from SBA authority
8 to negotiate and contract directly with Parker,
9 Whitfield, who is currently doing our audit.

10 That's all I have.

11 CHAIRMAN REYNOLDS: Okay. Thank you.

12 Any additional questions?

13 (No response.)

14 CHAIRMAN REYNOLDS: Okay, Ms. Dunston, Mr.
15 Harbison, thank you very much.

16 VICE CHAIR THERNSTROM: Thank you very
17 much.

18 MR. HARBISON: Thank you all.

19 MS. DUNSTON: Tina is on the phone.

20 CHAIRMAN REYNOLDS: Okay. Ms. Martin?

21 MS. MARTIN: Yes. Hi. I'm Tina Martin.
22 I'm currently the Director of Management. I've been
23 the director for approximately four months. I'm also
24 serving as the HR Director. And I've been the
25 director for about two years. And I've been with the

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1 Commission for about 16 years.

2 I've been asked to speak on three areas in
3 my division, one being hiring and promotions, another
4 being buyouts, and then recommendations from the 2004
5 GAO audit. Basically, on hires and promotions, during
6 the course of fiscal year '04 and '05, we hired five
7 new employees and we promoted five employees.

8 In F.Y. '04, the Commission offered
9 buyouts. And we granted 3 buyouts, each at \$25,000,
10 totalling \$75,000. On the GAO recommendations, the
11 2004 report entitled "Management Could Benefit From
12 Improved Strategic Planning and Increased Oversight,"
13 basically what they were looking for was to see to
14 what extent the Commission was in compliance with the
15 requirements of the Government Performance and Results
16 Act, also known as the GPRA Act.

17 GAO makes six recommendations. And I'm
18 just going to give you a brief overview of those
19 recommendations and what action has been taken or has
20 not been taken, the first recommendation being update
21 to its five-year strategic plan according to GPRA's
22 required schedule and include all elements required
23 under GPRA and OMB guidance. No action has been
24 taken.

25 The second, ensure the future annual

1 performance plans include all elements required under
2 GPRA and OMB guidance. There was no action taken.

3 Recommendation number three, ensure that
4 annual performance reports include all elements
5 required under GPRA. No action has been taken.

6 Recommendation number four, implement all
7 of the recommendations in OPM's and GAO's previous
8 reports. GAO looked at some of the recommendations
9 that OPM had recommended. And there were about 16 of
10 them. GAO determined that out of those 16, 5 still
11 needed to be implemented. And there is still work to
12 be done in those five areas.

13 Recommendation number five, include the
14 status of the Commission's effort to implement OPM's
15 and GAO's recommendations in the GPRA plans and
16 reports. No action has been taken.

17 And recommendation number six, seek the
18 services of existing inspector generals in other
19 agencies to help keep the Commission and the Congress
20 informed of problems and deficiencies and to conduct
21 and supervise necessary audits and investigations. No
22 action has been taken in that area.

23 CHAIRMAN REYNOLDS: Excuse me. Ms.
24 Martin, could you explain why we have done so little
25 in terms of implementing the recommendations? I mean,

1 have we reviewed the recommendations and concluded
2 that they were inappropriate or is this something that
3 fell through the cracks?

4 MS. MARTIN: Well, this area was basically
5 given to the former staff director's special
6 assistant. He was in charge of all of the GPRA
7 reporting.

8 Now, I believe that they sent a response
9 back saying that they basically didn't agree with most
10 of the recommendations of this report, but I can't
11 tell you why we haven't taken any action. I just know
12 that no action has been taken.

13 CHAIRMAN REYNOLDS: Okay. Thank you.
14 Please continue.

15 MS. MARTIN: Oh, that's it. If you have
16 any questions, I will be happy to answer.

17 CHAIRMAN REYNOLDS: Any additional
18 questions? Yes?

19 COMMISSIONER KIRSANOW: Ms. Martin, this
20 is Commissioner Kirsanow. Thanks very much for
21 participating by speaker phone.

22 MS. MARTIN: You're welcome.

23 COMMISSIONER KIRSANOW: Do you have any
24 idea why the buyouts were executed?

25 MS. MARTIN: To my knowledge, it's because

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1 we needed to save some money.

2 COMMISSIONER KIRSANOW: The total amount
3 was 75,000?

4 MS. MARTIN: Yes.

5 COMMISSIONER KIRSANOW: Okay. And to
6 which fiscal year did that apply?

7 MS. MARTIN: Fiscal Year '04.

8 COMMISSIONER KIRSANOW: That's all.

9 CHAIRMAN REYNOLDS: Okay. Thank you.

10 MS. MARTIN: Thank you.

11 CHAIRMAN REYNOLDS: Okay. Up next is Ms.
12 Carr.

13 MS. CARR: Good afternoon. As you know, I
14 am Debra Carr, the General Counsel for the Office of
15 General Counsel for the Commission.

16 Currently within the Office of General
17 Counsel, we have six attorney advisers and a general
18 counsel. And we are currently understaffed. I
19 believe that our full-time allotted slots would total
20 approximately ten, and our total staff is seven at the
21 moment.

22 VICE CHAIR THERNSTROM: Debra, I'm sorry
23 to interrupt you, but when was it last ten? Is this
24 something new, something longstanding?

25 MS. CARR: No. I think it was last ten

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1 probably about ten years ago.

2 VICE CHAIR THERNSTROM: I see. Okay.

3 MS. CARR: So we have been understaffed
4 for a significant period of time. I have been with
5 the Office of General Counsel for three years. And in
6 my three-year tenure, we have never been at full
7 staffing level.

8 I am going to speak to two areas that
9 relate to either the legal or the program functions of
10 the Office of General Counsel. The program management
11 area is an area that GAO reviewed in its 2003 report.

12 And in that 2003 report as it relates to OGC, there
13 really was one recommendation. And that
14 recommendation related to the process created for
15 commissioner input into projects and reports that are
16 produced by the agency.

17 In the Commission's formal reply to GAO
18 that was submitted by the former staff director, it
19 was the position of the Commission that there were, in
20 fact, existing mechanisms that would ensure
21 commissioner input into these areas.

22 The staff director specifically noted in
23 his response on behalf of the agency that the existing
24 systems included the process of project planning that
25 occurs annually at the Commission in January and

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1 February.

2 During this process, commissioners debate
3 and discuss project proposals that have been submitted
4 by the program offices, of which OGC is one, and OCRE,
5 the Office of Civil Rights Evaluation, is the other.
6 So commissioners review, discuss, and vote on project
7 proposals.

8 An additional area or mechanism in which
9 the staff director believed that the Commission
10 created an appropriate level of participation and
11 input was the opportunity for commissioners to request
12 meetings with the program office manager or program
13 office manager team, in addition to the staff
14 director. And he specifically noted that on an
15 occasion concerning a report written by OCRE, that
16 that mechanism seemed to be very successful as it
17 related to a report on federal funding.

18 The former staff director also noted that
19 the Commission has a history of commissioners debating
20 on a page by page or paragraph by paragraph basis
21 draft reports submitted by staff for Commission
22 approval as yet another mechanism where he believed
23 there was sufficient input.

24 And I believe he noted the existence of an
25 administrative instruction, 1.6, that governed the

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1 overall management of Commission projects and programs
2 as it relates to project proposals, project concept,
3 project design, draft reports, and the completion of
4 the entire report-writing process.

5 Those and other comments were, as I said,
6 submitted by the staff director as part of the
7 official agency report. And it's attached to the
8 final report issued by GAO.

9 It should be noted that the single
10 recommendation that would touch on any aspect of OGC's
11 performance, in fact, relates to Commission policy, as
12 opposed to a management issue. In fact, the former
13 staff director noted that the current process created
14 for commissioner input has been something that the
15 commissioners in the past created and continue to
16 maintain.

17 Specifically, I think there was a vote in
18 January of '04 on reforming the manner in which
19 Commission projects are executed in terms of
20 commissioner input. That reform proposal, which I
21 believe was submitted by Commissioner Redenbaugh, was
22 rejected on a four-four vote. And after that
23 rejection of a reform proposal, there was no
24 additional action as to that specific GAO
25 recommendation.

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1 CHAIRMAN REYNOLDS: I'm sorry. Ms. Carr,
2 before you go on, you've made quite a few references
3 to the letter written by the former staff director.
4 I'm trying to get a sense.

5 During the question and answer session, I
6 suspect that you will be asked whether you agree with
7 these assessments. So do you embrace the views
8 contained in the response submitted by the staff
9 director or are you just relating the exchange, the
10 chronology, "GAO said" X and "The staff director
11 responded by saying" Y?

12 MS. CARR: I am basically relating to you
13 what the recommendations are and what the official
14 agency position was as to those recommendations,
15 specifically as they relate to my office.

16 Those that I have laid out in terms of how
17 the process worked as reported by the staff director,
18 his report of the process is correct. It seems that
19 there was disagreement between the sufficiency of the
20 existing process in response to the recommendation,
21 but everything that he laid out in his response is, in
22 fact, correct.

23 CHAIRMAN REYNOLDS: Okay.

24 MS. CARR: So what I am saying, for
25 example, is if you go to that AI. AI 1.6 does exist.

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1 AI 1.6 does outline how Commission projects and
2 reports should be produced.

3 CHAIRMAN REYNOLDS: Yes.

4 MS. CARR: And the only issue is whether
5 the staff director and GAO agree about whether that AI
6 is completely sufficient in response to that
7 recommendation.

8 CHAIRMAN REYNOLDS: Right, right.

9 MS. CARR: And on the issue of whether
10 this is a management issue, it is correct that the
11 policy not set by office heads does exist about how
12 and whether there should be commissioner exchange or
13 interaction with staff. And that's set by the
14 Commission, implemented by the staff director but not
15 by office heads.

16 So I'm relaying to you that that policy
17 exists and should it be changed would have to be done
18 at the commissioner level, not at the management
19 level.

20 CHAIRMAN REYNOLDS: Okay.

21 MS. CARR: Prior to the October 2003
22 report that I just reviewed, there was a report in
23 1997, well before my tenure here, that also made three
24 recommendations to the Commission. Some of the
25 recommendations relate to the management of OGC.

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1 The three recommendations included the
2 Commission updating its Code of Federal Regulations
3 because they had been out of date for a significant
4 period of time.

5 GAO also recommended internal management
6 guidance be updated, meaning the AIs, that they also
7 be updated.

8 And the final recommendation related to
9 program management. And that recommendation included
10 instituting a tracking system to track the progress of
11 projects to ensure that reports were produced on time;
12 to ensure that projects were, in fact, completed; and
13 to provide office heads responsible for project
14 management cost data as it relates to projects staged
15 by them. I am going to speak to that issue first
16 because it more directly impacts the management of my
17 office.

18 In 1997, when GAO recommended that better
19 project management be instituted, it reported that
20 some projects in OGC in '96 and 1997 took 4 to 5 years
21 to complete and that there were projects that seemed
22 to never have been completed.

23 I report that since my tenure at the
24 Commission, I have been able to reduce project
25 completion time to 12 months, the outset limit being

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1 18 months depending on staffing issues and exigent
2 circumstances. So I report that we have greatly
3 improved in terms of project management there.

4 GAO also recommended that, again, we use a
5 tracking system. The Commission purchased in 1998 a
6 computerized tracking software, information management
7 system software.

8 And that software appeared over time to
9 have been used differently by different general
10 counsel. In the last three years, we have used the
11 management information software to prepare monthly
12 reports to the staff director that are presented to
13 the commissioners as a part of their monthly meeting
14 packet. And that management information software,
15 that report, identifies each project, provides a
16 baseline or projected start date for the project, a
17 baseline-projected completion date for the project,
18 and also provides baseline or projected markers for
19 significant activity for each project.

20 And it also allows commissioners to
21 compare baseline projections with actual completion
22 dates and times. I think that's a significant
23 improvement over what GAO found in 1997.

24 The issue of updating the management
25 guidance or the internal administrative instructions

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1 was something pointed to by GAO in 1997, but my office
2 has no direct authority to implement on our own. That
3 authority lies in the staff director's office.

4 So, for example, administrative
5 instructions can be withdrawn, revised, replaced by
6 the staff director. Office heads if they find an AI
7 that needs to be withdrawn or supplemented may note it
8 for the staff director. And the staff director may
9 act on it or he may task the responsible office with
10 doing so under his direction and guidance.

11 I would note that since the 1997 GAO
12 report asking that the Commission update its AIs, in
13 2004, the Commission's administrative instructions had
14 basically all been updated. There were 94 AIs, and
15 only 4 predate 1999. So out of these 94 AIs, 74 of
16 them were issued after the 1997 report asking that
17 they, in fact, be updated. The process of updating
18 then continued with additional AIs being issued or
19 updated in 2000, 2002, 2003, and again in 2004.

20 The final recommendation was that the
21 Commission update its Code of Federal Regulations. In
22 1998, after the 1997 GAO report, the commissioners
23 voted, in fact, to adopt and act on that
24 recommendation in September 1998.

25 Unfortunately, implementing the

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1 commissioner vote took several years. And the first
2 update of the Commission's CFRs was not completed
3 until late 2002. The Commission, however, proposed to
4 again update its CFRs in 2004. And those proposed
5 updates are currently pending as a result of the
6 transition at the Commission. So as to that
7 recommendation, some action has been taken and
8 continues to be taken.

9 I think this presentation speaks to those
10 two areas where OGC has primary responsibility: one,
11 its programming; and, two, providing legal assistance
12 as it relates to the CFRs, possibly the AIs.

13 If there are any questions, I will take
14 them. Yes, Commissioner Thernstrom?

15 VICE CHAIR THERNSTROM: I want to go to
16 the whole question of input by commissioners into
17 reports, which, as you said, the GAO is very concerned
18 with in its October 2003 report.

19 You listed, and, as you said, you were
20 simply listing what the response of the staff director
21 had been to that GAO concern. And it is true that in
22 the initial project planning, there was always a
23 Commission discussion.

24 You said, secondly, that commissioners
25 could request meetings. Well, it was not really --

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1 yes, in the abstract. In fact, that was really an
2 empty invitation in that the point of meetings would
3 have been to go over precisely the shape that projects
4 were taking, the questions that were being asked, the
5 evidence that was being gathered so that at the end of
6 the day, there was some possibility we could have a
7 report that we all could sign on to. And there was
8 literally no point to requesting meetings about
9 reports, to discuss reports about which we had zero
10 information.

11 On the page by page discussion of reports,
12 we got reports very late, same time they were issued
13 to the public, the drafts. There really was never the
14 time in my experience to go through the reports in the
15 way that they should have been gone through, but that
16 shouldn't have been a last-minute process anyway.

17 That should have been an ongoing process,
18 in my view, as the reports evolved. And I would hope
19 going forward, as I said in my opening remarks and
20 referred to just now, that there would be a
21 collaborative process that allowed us to work with
22 staff to shape projects so that at the end of the day,
23 we have a much better chance of having something we
24 could all sign.

25 And if we don't have something we can all

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1 sign, then we at least understand what our differences
2 are. Perhaps those differences can be, in fact, built
3 in to the substance of the report by saying, you know,
4 this is an area of disagreement.

5 And, of course, they should always be open
6 to dissents. There shouldn't be any reports that come
7 out of this Commission that don't allow for dissenting
8 views that would go up with the final report.

9 So, you know, I understand the staff
10 director's responses, but I, frankly, found them
11 woefully inadequate.

12 MS. CARR: I'm not sure what type of
13 response there needs to be to that, but I will just
14 note a couple of things. As to some of the matters,
15 some of the issues raised by the staff director, GAO
16 acknowledged that they served some purpose, but they
17 also wrote that much of the internal control or
18 process for commissioner involvement seemed to be very
19 general in nature or somewhat ad hoc.

20 I think after GAO responded to the staff
21 director's agency reply, it's at that time that he
22 noted that the most important -- I don't want to say
23 obstacle. It doesn't really capture it, but the most
24 important issue here is what policy the commissioners
25 ultimately put in place.

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1 I think Les Jin, the former staff director
2 and staff directors before him, would have argued that
3 the need for somewhat of a wall was to maintain the
4 integrity of independent career staff work and to let
5 the public feel confident that the work wasn't being
6 politicized.

7 If there is a different view, another
8 direction, different atmosphere, as Mr. Jin noted, as
9 it's reflected in the GAO report, this Commission can
10 take a different policy direction.

11 So I don't think we have a disagreement,
12 Commissioner Thernstrom. I'm just noting the history
13 of this process --

14 VICE CHAIR THERNSTROM: I think that is an
15 accurate history.

16 MS. CARR: -- in how the Commission has
17 responded.

18 VICE CHAIR THERNSTROM: Right. That is an
19 accurate history.

20 CHAIRMAN REYNOLDS: Any other questions or
21 comments?

22 (No response.)

23 CHAIRMAN REYNOLDS: Okay. Thank you, Ms.
24 Carr.

25 MS. CARR: Thank you very much.

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1 CHAIRMAN REYNOLDS: Okay. We're down to
2 the last agenda item, "Future Agenda Items." Oh, I'm
3 sorry. Okay. I guess I want to go to the beginning.

4 VICE CHAIR THERNSTROM: Yes. I want to
5 hear from Terri.

6 CHAIRMAN REYNOLDS: I'm sorry, Ms.
7 Dickerson.

8 MS. DICKERSON: Good afternoon, Mr.
9 Chairman, Vice Chair, commissioners, and staff
10 director. I'm Terri Dickerson. And I'm Assistant
11 Staff Director, Director of the Office of Evaluation
12 and Acting Public Affairs Chief. I'm cognizant that I
13 am the only agenda item between you and lunch. So --

14 CHAIRMAN REYNOLDS: Take your time.

15 VICE CHAIR THERNSTROM: Don't take your
16 time, Terri. I'm hungry.

17 (Laughter.)

18 MS. DICKERSON: I did want to use 30
19 seconds of the 4 minutes I was asked to present to
20 thank the Vice Chair for her comments about the staff.
21 We really appreciate that. I know that I speak for
22 many of us when I say that we look forward to working
23 with the commissioners in the context that you
24 described. So thank you very much.

25 In my remaining I guess four and a half

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1 minutes, I think I will remain more focused on the
2 Office of Evaluation. And then to the extent there
3 are questions about the Public Affairs Unit like the
4 two that the Vice Chair already had, I would be happy
5 to answer questions to the extent I can.

6 The Office of Civil Rights Evaluation as
7 well is understaffed, two down from when I started
8 four years ago and I believe four down from the past
9 six years. So we have, I believe, at present six
10 civil rights analysts, social science analysts, and a
11 secretary, and myself. So that comprises our staff.

12 In the 4 years I have been here, we have
13 produced 17 written reports. So I want to just note
14 some of the comments that were made earlier by Debra
15 that we have a project management process in place,
16 which appraises the staff director of project dates and
17 milestones. And I think that some of those came out
18 of the 1997 GAO recommendation.

19 And, as a consequence, we have been able
20 to produce our reports all in less than 12 months.
21 And, in addition to the reports, we have done about a
22 half dozen briefings in the 4 years that I have been
23 here.

24 I don't want to dwell on the complaints,
25 but that is a big part of our responsibility. We

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1 respond to the more than 3,500 complaints that the
2 agency receives from individuals. And we refer them
3 to the appropriate civil rights agencies that have
4 authority.

5 Nearly 15,000 civil rights complaints in
6 the 4 years since I have been here we have processed.

7 And I will say that when I came, there was an agency
8 backlog of complaints. But we have maintained that.
9 I think that you may note from your monthly reports
10 that that has been at zero for at least since 2002.

11 I will discuss our 2005 projects that Ken
12 asked me to note what we are working on. We have
13 three assignments in 2005. And I did give a written
14 summary of this information to the staff director that
15 I assume was passed on to the commissioners.

16 One of our projects is looking at ten
17 years after the Adarand decision, not so much from the
18 standpoint of assessing our analyzing the decision
19 itself but assessing what the government's role has
20 been to implement it in terms of the regulations and
21 programs that grew out of the decision.

22 We're planning to look at the effect of
23 the regulations on women and minority-owned firms and
24 their participation in federal procurement. That's
25 scheduled for March, April affected agency review and

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1 all of that so that the commissioners may discuss it
2 and review the draft that we prepare before their June
3 2005 meeting. This is our statutory report.

4 A couple of other points that we're going
5 to look at on that report, we are going to
6 specifically analyze Adarand's effect on the number of
7 women and minority-owned businesses that have received
8 federal contracts, analyzing the amount of federal
9 procurement funds awarded to women and minority-owned
10 businesses, examine whether the small disadvantaged
11 certification process has reached the levels initially
12 projected, whether certified businesses have
13 benefitted by securing federal contracts, and the role
14 of federal agencies, specifically SBA, the Department
15 of Commerce, and the Department of Justice in
16 implementing that decision.

17 We are running a little bit behind on
18 this. We have done all of our research. We started
19 in September. And I think it might have gotten a
20 little upset by the transition.

21 We only had allowed several days in which
22 the staff director would review the interrogatories
23 that would be going to agencies. And, of course, we
24 have a new staff director. And we gave him those
25 interrogatories when he arrived. And those are with

1 him still, but we are hoping to be able to make up the
2 time and keep that project on schedule.

3 We also as a second project this year were
4 assigned minority employment in the wealth gap. This
5 is an examination of employment participation rates,
6 income disparities, and the wealth gap that exists in
7 the country between minorities and whites.

8 Historically a sustained economy has had a
9 disparate effect on minorities versus whites. And so
10 we are looking into that particular question. That is
11 scheduled for submission to the staff director in
12 March. And that is running according to plan and
13 according to the schedule that we have laid out.

14 CHAIRMAN REYNOLDS: Okay.

15 MS. DICKERSON: We have a recurring
16 series, which has been mentioned a couple of times
17 this morning. And that is our annual report on
18 funding of civil rights agencies.

19 We look at the Departments of Education;
20 Justice; Health and Human Services; Labor; EEOC; and
21 the Office of Fair Housing and Equal Opportunity at
22 HUD, at Housing and Urban Development. And we track
23 the resources that each of these civil rights offices
24 receives.

25 This report is dependent on the release of

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1 the President's budget and, after that, the allocation
2 of budgets to those offices. We have begun our work
3 on that report, and it is going according to our
4 plans.

5 I am not going to get into the 2006
6 projects. I'll just mention them by name. One is
7 again the series on funding, federal civil rights
8 enforcement. Second is religious discrimination in
9 the workplace. And another is that one we're doing in
10 conjunction with the Office of General Counsel, which
11 is looking at the reauthorization of the Voting Rights
12 Act.

13 Ms. Carr and others already discussed some
14 of the recommendations that involve the Office of
15 Civil Rights Evaluation. In 1997, the GAO recommended
16 enhanced project tracking. This is something that we
17 have implemented for as long as I have been here. And
18 the tracking, including milestone dates, is something
19 that I report on regularly to the staff director.

20 In its 2003 report, the GAO also
21 recommended that the Commission adopt procedures for
22 increased commissioner involvement in project
23 implementation. And during the completion of our
24 funding report, the staff met with Commissioner
25 Redenbaugh and his assistant, Melissa Sharp, at

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1 several points during the preparation of that report.
2 Outside of that report, though, staff has not had the
3 opportunity to meet with commissioners in report
4 completion.

5 As I said, in the interest of time, I
6 won't get into the Public Affairs Unit. I would be
7 happy to, though, respond to any questions that
8 anybody might have about that. And if you would like
9 me to address the ones that I've already posed, I can
10 give some insight.

11 CHAIRMAN REYNOLDS: Okay. I have at least
12 one question.

13 MS. DICKERSON: Okay.

14 CHAIRMAN REYNOLDS: I view the Commission
15 as a bully pulpit. It's the message that matters.
16 And it concerns me that our Public Affairs Unit is,
17 well --

18 MS. DICKERSON: Understaffed.

19 CHAIRMAN REYNOLDS: Well, that's putting
20 it gently. In any event, please give some thought to
21 how we can improve the Public Affairs staff. Have
22 some conversations with the staff director. And we'll
23 take this issue up. We'll discuss this issue again.

24 MS. DICKERSON: Okay. I will.

25 STAFF DIRECTOR MARCUS: I will be happy to

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1 look into that, talk with Ms. Dickerson, and discuss
2 with you as well.

3 CHAIRMAN REYNOLDS: Thank you.

4 Vice Chair?

5 VICE CHAIR THERNSTROM: Terri, you said
6 you need more staff. What are your holes, as it were,
7 in terms of the skill sets the existing staff brings
8 to these projects? I mean, for instance, do you have
9 somebody who is well-trained in statistical
10 methodology and exploring social science questions?
11 That's one obvious.

12 MS. DICKERSON: Yes. In fact, we do have
13 on staff several people who have that expertise. We
14 have three social scientists presently. And they do
15 have that training and preparation.

16 I guess the staffing that I was alluding
17 to is that prior to my coming here, the staff worked
18 on one report, which was the statutory report, but
19 since then, we have had up to five or six projects and
20 reports.

21 VICE CHAIR THERNSTROM: So this is just a
22 manpower --

23 MS. DICKERSON: Exactly, yes.

24 VICE CHAIR THERNSTROM: It's not a
25 question of needing certain skills that are not --

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1 MS. DICKERSON: Not represented?

2 VICE CHAIR THERNSTROM: That your staff
3 does not have at the moment?

4 MS. DICKERSON: No. I wouldn't
5 characterize it that way at all. We get things done
6 through, especially when we're on deadline, weekends
7 and evenings to get things done.

8 VICE CHAIR THERNSTROM: If you're
9 short-staffed, it's a kind of obvious question.

10 MS. DICKERSON: Yes.

11 VICE CHAIR THERNSTROM: Are there people
12 with specific skills that you need?

13 MS. DICKERSON: Yes.

14 VICE CHAIR THERNSTROM: Okay.

15 CHAIRMAN REYNOLDS: Any other questions?
16 Yes, Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: This is not
18 directed to Ms. Dickerson, just an observation. I
19 wonder if it makes sense given some of the things we
20 have heard today in terms of the possibility that we
21 may be implementing certain reforms specifically
22 directed to the manner in which commissioners may or
23 may not be giving input during the course of
24 preparation of certain reports and also given that we
25 have had a significant transition in terms of the

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1 composition of the Commission, whether we may want to
2 take a look at, revisit these reports, in the time
3 frame in which they are completed and the manner in
4 which they are completed.

5 I guess I do have a question. I think you
6 indicated, Ms. Dickerson, that the Adarand report was
7 a little bit behind schedule but you expected, I
8 think, to have the effective agency review completed,
9 I think, in -- was it April or May or so?

10 MS. DICKERSON: Yes.

11 COMMISSIONER KIRSANOW: When do you think
12 that report will be complete based on what you know
13 right now?

14 STAFF DIRECTOR MARCUS: Mr. Chairman, may
15 I just interject one remark, that, in part, the delay
16 is entirely not the responsibility of Ms. Dickerson
17 because she does have some documents relating to that
18 which are under review in my office. So that has been
19 entirely in my review. And that hasn't been entirely
20 a responsibility. So it will depend, in part, on that
21 review.

22 CHAIRMAN REYNOLDS: Well, I will add that
23 we have to get our arms around the current projects
24 that are underway and decide what we are going to
25 keep, what we are going to modify, and what we are not

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1 going to use. And we have to do that I guess over the
2 next 30 or 40 days. In fact, I hope that at our next
3 Commission meeting we discuss this very issue.

4 COMMISSIONER KIRSANOW: And my comment had
5 nothing to do with whether or not Ms. Dickerson was
6 getting things done in a timely fashion. She always
7 does. I just want to get a sense for when Adarand was
8 coming out so we may have an understanding as to what
9 type of involvement we may have in that process.

10 MS. DICKERSON: The current project
11 management projected date is June, for discussion in
12 June of 2005.

13 CHAIRMAN REYNOLDS: Additional questions?

14 (No response.)

15 CHAIRMAN REYNOLDS: Okay. Thank you, Ms.
16 Dickerson.

17 MS. DICKERSON: Thank you.

18 CHAIRMAN REYNOLDS: On a related note,
19 Commissioner Kirsanow, at a previous Commission
20 meeting, I believe it was agreed that at the then
21 scheduled January 21st meeting, we would discuss the
22 report on financial ed and higher education. In
23 addition to that, at the February meeting, we were
24 supposed to discuss the minority census
25 under-representation and in March the Community

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1 Reinvestment Act.

2 I believe that we need to discuss whether
3 it makes sense to postpone a discussion of these
4 issues until after we have reviewed all of the
5 projects that are underway. So if anyone would be
6 willing to entertain a motion --

7 VICE CHAIR THERNSTROM: I so move that we
8 postpone discussion-specific projects until we have
9 had a chance.

10 COMMISSIONER KIRSANOW: And I second.

11 CHAIRMAN REYNOLDS: Discussion?

12 COMMISSIONER MEEKS: And the discussion
13 would be when?

14 CHAIRMAN REYNOLDS: My goal is to have
15 this discussion at the next Commission meeting.

16 VICE CHAIR THERNSTROM: Yes. Absolutely.
17 Has to be.

18 CHAIRMAN REYNOLDS: Any other questions or
19 comments?

20 (No response.)

21 CHAIRMAN REYNOLDS: Okay. At this point,
22 let's vote. All in favor, say "Aye."

23 (Whereupon, there was a chorus of "ayes.")

24 CHAIRMAN REYNOLDS: Objections?

25 (No response.)

1 CHAIRMAN REYNOLDS: Abstentions?

2 (No response.)

3 CHAIRMAN REYNOLDS: The motion passes.

4 **FUTURE AGENDA ITEMS**

5 CHAIRMAN REYNOLDS: Would someone like to
6 confirm that we are at the last agenda item? Did I
7 skip anyone?

8 STAFF DIRECTOR MARCUS: Future agenda?

9 CHAIRMAN REYNOLDS: Yes.

10 STAFF DIRECTOR MARCUS: All of the staff
11 reports have been conducted.

12 CHAIRMAN REYNOLDS: Great. Okay. Folks,
13 we're coming down the home stretch. The last item on
14 the agenda is a discussion of future agenda items. We
15 have discussed some already, a discussion of the
16 current projects underway. What else?

17 VICE CHAIR THERNSTROM: That's the main
18 thing, it seems to me. That is our immediate task.

19 CHAIRMAN REYNOLDS: Okay. So I think that
20 everyone should understand that if they have ideas,
21 they should just contact the staff director. And then
22 we will circulate suggested agenda items and then
23 discuss it and reach a decision.

24 At this point in time, if there's nothing
25 else to discuss, I would like to entertain a motion to

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1 adjourn.

2 VICE CHAIR THERNSTROM: So moved.

3 CHAIRMAN REYNOLDS: Second?

4 COMMISSIONER MEEKS: Second.

5 CHAIRMAN REYNOLDS: All right. Thank you.

6 (Whereupon, at 1:12 p.m., the foregoing
7 matter was adjourned.)

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