

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY,

APRIL 8, 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 Chairman

JENNIFER C. BRACERAS, Commissioner, via  
teleconference

PETER N. KIRSANOW, Commissioner

ELSIE M. MEEKS, Commissioner

ASHLEY L. TAYLOR, JR., Commissioner

MICHAEL YAKI, Commissioner

KENNETH L. MARCUS, Staff Director

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STAFF PRESENT:

JOHN BLAKELEY

TERESA BROOKS

MARGARET BUTLER

CHRISTOPHER BYRNES

DEBRA CARR, Esq., General Counsel

IVY L. DAVIS, Director, Eastern Regional  
Office

BARBARA DELAVIEZ

TERRI DICKERSON, Assistant Staff Director

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

BARBARA FONTANA

LATRICE FOSHEE

DORELLE GRAY

GEORGE M. HARBISON, Director, Human Resources  
Division/Acting Chief, Budget and  
Finance Division

SETH JAFFE

SOCK-FOON MacDOUGAL

TINALOUISE MARTIN, Director for Management,  
Office of Management

JANICE MINOR

EMMA MONROIG, Solicitor/Parliamentarian

ANA MARIA ORTIZ

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STAFF PRESENT:

- JENNY PARK
- BERNARD QUARTERMAN
- MICHELLE ROYSTER
- EILEEN RUDERT
- DEBBIE VAGINS
- VANESSA WILLIAMSON
- AUDREY WRIGHT
- TIFFANY WRIGHT
- MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

- PATRICK DUFFY
- CHRISTOPHER JENNINGS
- LISA NEUDER
- KIMBERLY SCHULD

P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN REYNOLDS: Okay. We have a quorum. The meeting will come to order.

**I. Approval of Agenda**

The first item on the agenda is the approval of the last meeting's agenda.

VICE CHAIRMAN THERNSTROM: So moved.

CHAIRMAN REYNOLDS: May I have a second?

COMMISSIONER MEEKS: Second.

CHAIRMAN REYNOLDS: All in favor indicate by saying aye.

COMMISSIONER BRACERAS: Excuse me, Jerry. This is Jennifer.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: I just wanted to table the discussion of the Working Group on Reform until May until we have all of the proposals and we can consider them all together.

CHAIRMAN REYNOLDS: Okay. I guess that will require a motion.

COMMISSIONER BRACERAS: Okay. So I move that we remove the report of the Working Group on Reform from today's agenda.

CHAIRMAN REYNOLDS: A second?

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1 VICE CHAIRMAN THERNSTROM: Second it.

2 CHAIRMAN REYNOLDS: Okay. All those in  
3 favor please indicate by saying aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Any in opposition?

6 (No response.)

7 CHAIRMAN REYNOLDS: Okay. The motion  
8 passes.

9 All right. Back to approval of the  
10 agenda as amended. I guess now that it has been  
11 amended I'd need a motion.

12 COMMISSIONER KIRSANOW: So moved.

13 CHAIRMAN REYNOLDS: Okay. A second?

14 COMMISSIONER MEEKS: Second.

15 CHAIRMAN REYNOLDS: All in favor?

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Any in opposition?

18 (No response.)

19 CHAIRMAN REYNOLDS: The motion carries.

20 **II. Approval of Minutes of**

21 **March 18, 2005 Meeting**

22 Okay. The second item is approval of the  
23 minutes of the March 18th meeting. May I have a  
24 motion?

25 COMMISSIONER BRACERAS: So moved.

1 CHAIRMAN REYNOLDS: A second?

2 VICE CHAIRMAN THERNSTROM: Second.

3 CHAIRMAN REYNOLDS: Any changes or  
4 discussion?

5 (No response.)

6 CHAIRMAN REYNOLDS: Okay. All in favor  
7 indicate by saying aye.

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: Any in opposition?

10 (No response.)

11 CHAIRMAN REYNOLDS: Okay. The motion  
12 passes.

13 **III. Announcements**

14 Okay. I would like to make an  
15 announcement.

16 Fred Korematsu passed. I regret to  
17 report that he passed away March 30th at the age of  
18 86. As many of you well know, Fred Korematsu became  
19 a symbol of the civil rights movement for challenging  
20 the World War II internment orders that sent 120  
21 Japanese Americans to government camps.

22 COMMISSIONER YAKI: One hundred and  
23 twenty thousand.

24 CHAIRMAN REYNOLDS: Oh, I'm sorry.  
25 That's right. One hundred and twenty thousand

1 Japanese Americans to American camps.

2 His conviction for opposing the  
3 internment was finally overturned in the U.S.  
4 District Court in 1983. When the internment order  
5 came down in February 1942 after the Japanese bombing  
6 of Pearl Harbor, the U.S. Army issued orders to round  
7 up 120,000 Japanese Americans living on the West  
8 Coast into ten internment camps.

9 Mr. Korematsu did not turn himself in and  
10 was arrested, jailed, and convicted of a felony for  
11 failing to report for evacuation in late 1942. He  
12 appealed his case to the U.S. Supreme Court alleging  
13 the constitutionality of President Roosevelt's  
14 Executive Order 90-66 authorizing -- It couldn't have  
15 been Roosevelt. Any historians here?

16 In any event --

17 VICE CHAIRMAN THERNSTROM: It was  
18 Roosevelt.

19 COMMISSIONER YAKI: Yeah, it was FDR.

20 CHAIRMAN REYNOLDS: Oh, okay, okay.

21 VICE CHAIRMAN THERNSTROM: Yeah.

22 CHAIRMAN REYNOLDS: In any event,  
23 challenging the constitutionality of Roosevelt's  
24 Executive Order 90-66 that authorized the internment.

25 The high Court ruled against him



1 declaring in 1944 that the internment was justified  
 2 by the need to combat sabotage and espionage. I'd  
 3 just like to point out that that war was not -- that  
 4 war was also fought against Italy and Germans, and  
 5 there were German Americans and Italians walking  
 6 around the United States and that order did not apply  
 7 to them.

8 And also I believe that the order did not  
 9 apply to the Japanese living in Hawaii.

10 In any event, Mr. Korematsu's case stood  
 11 for almost 40 years, until the early 1980's when  
 12 Asian American lawyers and civil rights advocates  
 13 unearthed new evidence that undermined the internment  
 14 order. It was on this basis that the Korematsu case  
 15 was reopened in 1983 resulting in the erasure of his  
 16 criminal conviction for defying the internment.

17 In 1988, President Reagan declared the  
 18 internment a grave injustice and signed legislation  
 19 authorizing the reparations of \$20,000 each to  
 20 thousands of surviving internees, including  
 21 Korematsu. In 1999, President Clinton awarded  
 22 Korematsu a Presidential Medal of Freedom, the  
 23 nation's highest civilian honor.

24 Mr. Korematsu remained active in civil  
 25 rights throughout his life, and President Clinton

1 noted the significance of these achievements when he  
2 said, "In the long history of our country's constant  
3 search for justice some names of ordinary citizens  
4 stands for millions of souls, Plessey, Brown, Parks.

5 To that distinguished list we now add the name of  
6 Fred Korematsu."

7 On behalf of the U.S. Commission on Civil  
8 Rights, I wish to acknowledge Mr. Korematsu's long  
9 and distinguished service to his country and, as  
10 well, acknowledge the enormous debt owed to him by  
11 all Americans. His passing is a significant loss for  
12 the United States and the world.

13 COMMISSIONER YAKI: Mr. Chair.

14 CHAIRMAN REYNOLDS: yes.

15 COMMISSIONER YAKI: Could I just add a  
16 few words to that?

17 CHAIRMAN REYNOLDS: Oh, sure.

18 COMMISSIONER YAKI: My father and his  
19 family were interned in camps pursuant to Executive  
20 Order 90-66, and I also knew Fred Korematsu  
21 personally. I worked with him on a number of  
22 occasions.

23 Most recently I saw him at the annual Day  
24 of Remembrance of Events in February, which marks the  
25 anniversary date that the Japanese American community

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1 observed every year for the internment order. And I  
2 was as shocked as anyone that just a few weeks later  
3 he had passed.

4 But I just wanted to say on behalf of the  
5 Japanese American community thank you for your kind  
6 words. I will be attending his service in California  
7 on the 16th, and just want to say that it is one of  
8 the great injustices perpetrated in our  
9 constitutional history, and I think that a sad  
10 reminder of a terrible time in our nation's history

11 What is unfortunate though and still  
12 remains is that while his personal conviction was  
13 overturned, as well as those of four other  
14 plaintiffs, who produced by clear and convincing  
15 evidence that there was no wartime sabotage, there  
16 was no fifth column of enemy aliens in the United  
17 States among the Japanese community, that the  
18 decision in Korematsu v. United States still remains  
19 on the books and still is there, unfortunately, as  
20 precedent for the future, and that, I think, is an  
21 unfortunate legacy that still remains, but can't  
22 detract away from the personal courage and honor that  
23 Fred Korematsu showed throughout his entire life.

24 CHAIRMAN REYNOLDS: Thank you.

25 Yes?

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1 VICE CHAIRMAN THERNSTROM: However,  
2 Michael, we do not agree that it is a disgraced  
3 decision. It goes down in history, along with, you  
4 know, a short list of decisions in which the Supreme  
5 Court reacted appallingly.

6 COMMISSIONER YAKI: I think that, without  
7 a doubt, when you put up there with Dred Scott,  
8 Plessey and Korematsu the only unfortunate thing is  
9 that the other two decisions were overturned either  
10 by an act of amending the Constitution or an act of  
11 the Supreme Court. The last one has yet to be.

12 VICE CHAIRMAN THERNSTROM: Well, and  
13 arguably, Plessey has yet to be, I mean, in very  
14 narrow legal terms, but we won't go further into that  
15 now. But in legal terms, Plessey hasn't been  
16 overturned either, of course. Brown v. Board didn't  
17 overturn Plessey, but anyway --

18 COMMISSIONER YAKI: I think it did.

19 VICE CHAIRMAN THERNSTROM: Well, the  
20 point is well taken.

21 CHAIRMAN REYNOLDS: Okay. We have --  
22 would you hold a moment?

23 (Pause in proceedings.)

24 CHAIRMAN REYNOLDS: Okay. Well, during  
25 our last meeting we discussed the need to take

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1 corrective actions in order to avoid exceeding our  
2 budget authority for fiscal year 2005.

3 The Staff Director and a number of  
4 Commissioners have spent a lot of hours trying to  
5 come up with a battle plan that is going improve the  
6 fiscal health of the institution.

7 We have a battle plan. The battle plan is  
8 unfortunately going to be painful, but we don't have  
9 any choice in the matter. I think that this is going  
10 to be the first step that we take along the road of  
11 recovery.

12 At this point I will ask the Staff  
13 Director to provide his report.

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

15 STAFF DIRECTOR MARCUS: Thank you, Mr.  
16 Chairman.

17 Mr. Chairman, Madame Vice Chairman,  
18 Commissioners, if it please the Commissioners, I  
19 would like to supplement my written report for this  
20 month with additional remarks concerning the  
21 financial condition of the agency. It may be that  
22 there are other issues that the Commissioners would  
23 also like to discuss, but the fact is that over the  
24 last few weeks since our last meeting, we have been  
25 focused intensely on addressing the immediate

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1 financial concerns that I described in the last  
2 meeting.

3 As you know, those current concerns are  
4 intense, and they are immediate, and that is why the  
5 solutions will necessarily be painful ones.

6 During the Commission's February 18, 2005  
7 meeting, I indicated that this would be a  
8 particularly austere year financially, and I added to  
9 that in testimony on March 17, 2005, before the U.S.  
10 House Judiciary Committee, Subcommittee on the  
11 Constitution, indicating that as of my arrival the  
12 spending plans and assumptions of the Commission  
13 place the agency on course to overspend its  
14 appropriations by a considerable sum and that we are  
15 now working on cost cutting measures to close this  
16 gap and provide a sufficient cushion against  
17 unexpected costs.

18 I indicated further during the March 18  
19 meeting that we had yet to determine the precise  
20 parameters of the shortfall, but that based on  
21 present spending patterns and assumptions, we had a  
22 range of figures that could be as low as \$45,000 or  
23 as high as over \$200,000.

24 And subsequently I have indicated that as  
25 our Office of Management refined those figures, that

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1 we had no room for optimism, and that, in fact, the  
2 shortfall based on current spending patterns and  
3 assumptions as of March was well over \$200,000, and  
4 in fact, in the range of 260 or \$265,000 if  
5 corrective measures were not taken as of March.

6 Now, we've also indicated some interim  
7 corrective measures that are bringing those numbers  
8 down, but we'll need to discuss today additional  
9 measures to make sure that we are serving at least  
10 five goals.

11 First, we need to fully close the  
12 shortfall that we have projected to have in fiscal  
13 2005.

14 Second, to do so in a way that  
15 anticipates and closes the shortfall that we would  
16 otherwise have in fiscal year 2006.

17 Third, that enables us to do at least  
18 those sorts of reforms that the Commission has  
19 discussed to date for fiscal year 2005 and 2006.

20 Fourth, and not in any particular order,  
21 fourth, we need to make sure that we are doing each  
22 of these things in a way that protects and advances  
23 the ability of the Commission to achieve its mission.

24 And, fifth, and all throughout as we look  
25 at any options to do so in a manner that as best as

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1 possible preserved the well-being of the dedicated  
2 employees of this agency.

3 Those are very important goals. They're  
4 very difficult goals, and we attempt to reach those  
5 goals in the context of the Anti-deficiency Act,  
6 which has very strict penalties for agencies and  
7 leadership of agencies which overspend their  
8 appropriations or otherwise act in a manner which  
9 fails to comply with the appropriations laws.

10 So these are very serious, very serious  
11 matters, indeed. We know that as recently as 2004 an  
12 arm of the U.S. Department of Treasury cut off its  
13 dealings with the U.S. Commission on Civil Rights,  
14 and a significant part of their reason for  
15 terminating the relationship was a concern that the  
16 Commission in 2003 and 2004 was not sufficiently  
17 seriously dealing with the provisions of the Anti-  
18 deficiency Act in a conversation with senior staff of  
19 that agency.

20 Earlier this week, they indicated to me  
21 that their biggest concern was an attitude of denial  
22 towards the shortfalls that we've had in prior years.  
23 It is my commitment to insure that we are focused  
24 with seriousness on complying with our requirements  
25 under the various appropriations laws, including the

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1 Anti-Deficiency Act.

2 We have looked at a number of short-term  
3 measures that can provide very quick reductions in  
4 spending. Some of these are items that I generated  
5 together with senior staff.

6 In addition, the entire staff of this  
7 agency has been very helpful in developing ideas for  
8 how we might reduce cost expenditures. Some of them  
9 were provided directly to management, some through  
10 union officials who have been helpful in facilitating  
11 the transmission of ideas.

12 Of those ideas, some of them we've looked  
13 at. Some of them we will continue to look at, but  
14 there are certainly a number of ways that we will  
15 continue to focus on for how we can reduce costs.  
16 Some of them I'll mention right now.

17 First, we have placed a freeze on new  
18 hires in this agency. I'm very much aware that some  
19 of the Commissioners of this agency have made the  
20 sacrifice of doing without full-time special  
21 assistants, which Commissioners have all  
22 traditionally had.

23 The decision to go without special  
24 assistants for the rest of the fiscal year for those  
25 Commissioners who have not brought them on brings

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1 down the shortfall tremendously from \$265,000, and  
2 has helped cut the figure down into the ballpark of  
3 \$135,000 for this year.

4 In addition, we have made serious cuts in  
5 spending, including ceasing to use temporary staff at  
6 this agency, curtailing travel and other  
7 discretionary expenditures, making every cut that we  
8 can in discretionary expenditures as severely as we  
9 can.

10 And, third, we have sought authorization  
11 from the Office of Personnel Management to offer  
12 voluntary early retirement to employees within  
13 certain offices within the agency.

14 Now, given the restrictions in the rules  
15 regarding voluntary early retirement, that will, at  
16 most, affect a small number of employees at the  
17 agency, but given the numbers of the agency as a  
18 whole. Certainly any savings could make a difference  
19 in terms of the sort of pain that could be  
20 experienced by other employees of the agency.

21 As the Commissioners are aware, the bulk  
22 of the budget for this agency falls within the  
23 categories of salary, benefit and rent. The  
24 expenditures for all other categories are so small  
25 that there is really very little room to materially

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1 affect the status of the agency without touching one  
2 or more of those three areas.

3 Now, that is not to say that we will  
4 continue aggressively to seek ways of cutting  
5 expenditures in other categories, but the fact is  
6 that a shortfall of this fiscal year of 265,000 or  
7 even \$135,000 cannot be met without looking to one of  
8 those three categories.

9 Moreover, we know that we have had for  
10 many years a flat line budget of approximately \$9  
11 million. We also know that we have seen federal  
12 salaries increase by approximately three or four  
13 percent or so per year, including the locality pay  
14 adjustments for the areas where the bulk of our  
15 employees reside.

16 In addition, we know that benefits have  
17 continued to rise each year. Assuming that the  
18 federal wages continue to increase in the range of  
19 three to four percent and that the benefits increase,  
20 we would be looking without serious corrections to a  
21 deficit for fiscal year 2006 which not only equaled  
22 the shortfall of 135 or \$265,000, depending on the  
23 use of special assistants, but which increased by an  
24 amount beyond that, which could be 180 or 200 or 220  
25 or \$250,000, depending on the extent of any increase

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1 in federal wages and the extent of any increases in  
2 health and other benefits.

3 So what we are looking at is not only a  
4 significant shortfall for this year, but a projected  
5 shortfall for next year which is substantially  
6 greater.

7 The three main categories of long-term  
8 corrections that could address some or all of those  
9 challenges would have to include a furlough, a  
10 reduction in force, a closure of offices and  
11 associated RIFs. Those are the three categories of  
12 changes that would have the greatest material effect  
13 on our ability to close that gap.

14 We do not look lightly at any one of  
15 those prospects. We are committed to the mission of  
16 the agency. We are committed to the welfare of the  
17 employees of the agency, and we know that any one of  
18 those changes would have a very serious effect on the  
19 lives of all of the people who are dedicated to this  
20 organization and will create very significant  
21 challenges as we attempt to achieve our mission in  
22 future years. At the same time we're obligated by  
23 law to live within our means.

24 The prospect of a furlough would have an  
25 ability during this fiscal year to close the gap, but

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1 it has certain disadvantages. First, it would have  
2 an adverse financial impact on every single employee  
3 of this agency. The only kind of furlough that I  
4 have considered or that I would consider appropriate  
5 would be a furlough on every single employee,  
6 including management and including the Staff  
7 Director.

8 At this point in the year, are furloughs  
9 sufficient to close the gap for fiscal year 2005? It  
10 appears based on Office of Management calculations to  
11 be necessarily at least seven days in duration. A  
12 furlough of less than that period of time would not  
13 meet that gap.

14 Moreover, even a furlough of seven or  
15 eight days during this fiscal year would have no  
16 impact on the much greater shortfall that we are  
17 anticipating for next year. If the shortfall were  
18 increased by another \$200,000, we would be looking at  
19 approximately another ten days of furlough next year,  
20 which is to say at least 17 or 18 days furlough next  
21 year if we continue to go that route, which is to say  
22 close to a month's time.

23 Moreover, since even that would not  
24 affect in any way the shortfall anticipated for  
25 further years if straight fall, if flat line budgets

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1 increased, this would put us in a position where we  
2 are simply expanding every year in fairly dramatic  
3 terms the amount of time that people are out of work,  
4 and that is certainly not sustaining over time. It  
5 would within a very short order reach the point at  
6 which the furlough actually would constitute a  
7 reduction in force since 30 days or more is  
8 considered a reduction in force.

9 Moreover, it would not really enable us  
10 to effect savings of any sort or to reform or correct  
11 any of the problems within the agency. It would  
12 simply be a matter of delaying resolution of our  
13 problems if it were done to the exclusion of any  
14 other sort of remedy.

15 We have also looked at the question of  
16 closure of offices, and again, as with any of the  
17 other options, even considering this is something  
18 that has been very painful to us because we know that  
19 every office within this agency has historically and  
20 currently provided great contributions.

21 The regional offices, for instance, do  
22 the important work of servicing our state advisory  
23 committees in providing the regional and state  
24 reports that they have done over the years.

25 Moreover, the employees of our regional

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1 office are as important to us as the employees here  
2 at headquarters.

3 Closure of regional offices can enable  
4 the agency to appreciate substantial savings over a  
5 period of time. However, we have reached the point  
6 in this fiscal year, given the notice requirements  
7 involved, given the requirements of the GSA and other  
8 entities of the federal government, that there are  
9 very few offices that could be closed with net gains  
10 for this year.

11 There may be one or two offices whose  
12 closure would enable us to appreciate any savings  
13 this fiscal year. Any of the other offices would be  
14 closed at a net cost to us through this fiscal year.

15 On the other hand, closures taking place  
16 early in a subsequent fiscal year would enable us to  
17 appreciate a more substantial savings so that any  
18 plan involving a closure of regional offices would  
19 enable us to deal with long term structural deficit  
20 problems, including fiscal year 2006 fiscal problems,  
21 but would not be sufficient to enable us to correct  
22 the problems with respect to this fiscal year.

23 Finally, there is a question of a  
24 reduction in force. A reduction in force that would  
25 not involve office closure could address the

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1 shortfall that we have within the agency. Now, this  
2 is an extremely painful and difficult issue to  
3 consider and to discuss because it has arguably the  
4 most severe impact on those employees who are  
5 affected.

6 At this point in the fiscal year, a  
7 reduction in force of two or three or four or five  
8 individuals taken alone would not be sufficient to  
9 close the shortfall. According to Office of  
10 Management Calculations, it would likely require, if  
11 a reduction in force were the sole means of  
12 addressing the shortfall, it would likely require as  
13 many as 11 employees to be separated from the agency  
14 if that were the sole means of addressing the  
15 shortfall or a reduction in force of approximately  
16 nine employees if combined with a short furlough of  
17 one or two days.

18 Those are the basic alternatives. Beyond  
19 that, of course, there are various sorts of  
20 combinations of those three approaches that we have  
21 looked at.

22 None of the combinations of those three  
23 elements is an attractive one. All of them involve a  
24 great deal of pain for the agency. As we have looked  
25 at various permutations though, there is one

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1 permutation that appears to achieve the sorts of  
2 goals that we described and to do so in a way that  
3 balances the desire to protect as many employees as  
4 we can while still achieving the savings that we need  
5 in order to live within our means.

6 And that proposal would entail closing  
7 two offices early in the next fiscal year, presumably  
8 during the first fiscal quarter of fiscal year 2006,  
9 and affecting both a reduction in force of four  
10 employees during this fiscal year and a furlough of  
11 such time as is required to fill the remaining  
12 shortfall during this fiscal year, and that period of  
13 time will need to be calculated by the Office of  
14 Management, but we expect it to be shorter than ten  
15 days and perhaps as short as approximately four to  
16 five days.

17 That combination of measures would be an  
18 extremely painful one. There are other alternatives  
19 that would give us a much greater ability to effect  
20 reforms and otherwise to advance strategic  
21 initiatives in future years, but which would come at  
22 a cost of separating a greater number of employees  
23 than under this proposal.

24 There are other proposals that would  
25 involve fewer cuts, but which would not enable us to

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1 deal in a serious, long-term manner with the problems  
2 that we face.

3 This is a combination that appears to be  
4 among all of the difficult, painful alternatives, one  
5 that can meet the objectives that I've articulated.

6 CHAIRMAN REYNOLDS: Okay. So that we can  
7 get the discussion started, I would like to move that  
8 we have a four-person RIF, also an office closure,  
9 well, actually two office closures that would take  
10 place during the first quarter of fiscal '06, and a  
11 furlough. We would furlough -- we would choose a  
12 number of days sufficient to insure that we did not  
13 exceed our budget authority.

14 May I have a second?

15 VICE CHAIRMAN THERNSTROM: Second.

16 CHAIRMAN REYNOLDS: Discussion? Yes.

17 COMMISSIONER KIRSANOW: Ken, you  
18 mentioned a seven day furlough. That's seven working  
19 days? I know you said a possibility. You weren't  
20 sure of how many days it would be, but you said seven  
21 days, and I'm wondering is that calendar days or  
22 working days. Obviously a seven working day would  
23 affect a cost savings.

24 STAFF DIRECTOR MARCUS: I'm sorry. Under  
25 the proposal that I characterized, it would be

1 approximately five, for five working days.

2 COMMISSIONER KIRSANOW: Could that be  
3 offset by any leaves of absence that may be taken  
4 during the course of the year?

5 STAFF DIRECTOR MARCUS: Yes. Thank you,  
6 Commissioner Kirsanow.

7 We have looked at ways of offsetting both  
8 the reduction in force and the furlough, and here is  
9 what I am planning to do with respect to potential  
10 offsets. We are still aggressively looking for any  
11 way of cutting costs that could reduce those numbers  
12 if done quickly enough, and there are possibilities  
13 that we would be able to effect some savings that  
14 would enable us to reduce the numbers both with  
15 respect to the furlough and with respect to the  
16 reduction in force.

17 You've asked about the furlough. What we  
18 are looking into is the prospect of permitting  
19 employees to take additional leave without pay for  
20 periods beyond the furlough, if there are some who  
21 are able to, and there are certainly employees who  
22 have approached me and who have said that if it could  
23 help their fellow employees, they would potentially  
24 take a longer leave without pay.

25 To the extent that the sum of the savings

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1 leaves without pay are sufficient to reduce the  
2 furlough, we will do that. However, we will need  
3 working with the Office of Management to provide very  
4 specifically the circumstances and conditions under  
5 which that leave without pay would have to take place  
6 including the period of time within which we would  
7 have to receive notification of that intent.

8 So if the leave without pay is taken  
9 within the parameters of the conditions that I will  
10 work out with the Office of Management and for which  
11 I hope union representatives may have input, there is  
12 a possibility of ameliorating the furlough.

13 Similarly, to the extent that we are  
14 permitted by the Office of Personnel Management to  
15 offer voluntary early retirement and to the extent  
16 that there are employees who are provided that option  
17 and who accept under the terms that we will need to  
18 promulgate, we would look into reducing the number of  
19 persons subject to a reduction in force.

20 Since the number of persons who would  
21 appear to be subject to a reduction in force is as  
22 small as four, it's a large number in some respects,  
23 but since the number is four, it is possible that  
24 that could be substantially affected by voluntary  
25 early retirements.

1                   COMMISSIONER KIRSNOW: And what would be  
 2 the time frame by which you could determine whether  
 3 or not you could simply do this either completely or  
 4 in the main by voluntary early retirement as opposed  
 5 by RIF?

6                   Presumably you have a time frame in which  
 7 you have to engage the RIF and complete it for a  
 8 notice standpoint. If early voluntary retirement was  
 9 being offered, what is the time frame for that so  
 10 that you could then make plans to either implement a  
 11 RIF or not implement a RIF?

12                   STAFF DIRECTOR MARCUS: Commissioner  
 13 Kirsanow, we would need to know that information very  
 14 soon because the plan works the way it does with the  
 15 smallest number of RIFs and the shortest furlough  
 16 days only if we get notices out very quickly to the  
 17 employees who are subject to these matters.

18                   If we are to notify people in the very  
 19 early part of May, we would need to know at some  
 20 point in late April of the decision that employees  
 21 make with respect to voluntary early retirement.

22                   Now, I will need to work with the Office  
 23 of Management and perhaps speak with union  
 24 representatives in terms of setting an exact date,  
 25 but I believe that it would need to be in late April

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1 and in the ballpark of the third week of April.

2 COMMISSIONER KIRSANOW: And without  
3 getting into too much detail, I know you've addressed  
4 this to some extent insofar as the bulk of any  
5 savings would be achieved through salary and benefit  
6 cuts or rent. You indicated that you're trying to  
7 put freezes or reduce the amount of discretionary  
8 travel.

9 Does anybody have a ballpark figure for  
10 how much Commissioner travel on an annualized basis  
11 would be?

12 STAFF DIRECTOR MARCUS: I don't have that  
13 on the top of my head. We could try and see if staff  
14 can look that up perhaps during a break.

15 COMMISSIONER KIRSANOW: It would probably  
16 be marginal, but I think it might be helpful to see  
17 where we can achieve cost savings to minimize any  
18 pain that may be spread throughout staff, and also  
19 making sure we can discharge our mission.

20 I think there's a balancing act. I think  
21 from time to time staff -- I mean Commissioners do  
22 need to meet face to face, but to the extent we might  
23 be able to affect or have meetings by teleconference,  
24 if, in fact, that does give any kind of substantial  
25 cost savings, that's something we might want to

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1 consider.

2 VICE CHAIRMAN THERNSTROM: On that last  
3 point, is there not a statutory obligation that we  
4 actually meet once a month?

5 STAFF DIRECTOR MARCUS: I don't believe  
6 that there is a requirement that there be a face-to-  
7 face meeting once a month, and I'm confirmed in that  
8 by legal counsel.

9 COMMISSIONER BRACERAS: Excuse me. This  
10 is Jennifer.

11 Even if we were required to meet face to  
12 face once a month, that doesn't mean we all have to  
13 be there face to face. I mean, I'm not there now,  
14 and again, I don't know how much this would save, but  
15 perhaps there could be for the next couple of months  
16 a rotating system of people who don't come and come  
17 in by phone, and if that would save us, you know,  
18 some pains for some of the staff at least in terms  
19 of, you know, furlough days, I'd be willing to do  
20 that.

21 CHAIRMAN REYNOLDS: I think that these  
22 are all things that should be considered, but I think  
23 that it's important to note that what we're wrestling  
24 with is a structural deficit.

25 COMMISSIONER BRACERAS: Yes.

1 CHAIRMAN REYNOLDS: And these types of  
2 recommendations will affect our ability to discharge  
3 our obligations to fulfill our mission. So at the  
4 end of the day I think, yes, we should consider them,  
5 but these are stop-gap measures.

6 COMMISSIONER BRACERAS: Right. I mean,  
7 obviously we need the longer term solutions, but in  
8 terms of, you know, furloughs for this year, if I can  
9 help the staff in any way --

10 CHAIRMAN REYNOLDS: Sure.

11 COMMISSIONER BRACERAS: -- you know, I'm  
12 willing to make that sacrifice because, you know, I  
13 can participate from here. So it's just something to  
14 think about or at least to consider how much it would  
15 save us. Maybe it's so negligible that it wouldn't  
16 make a difference. I don't know.

17 VICE CHAIRMAN THERNSTROM: Look. I feel  
18 very strongly also about protecting the staff to the  
19 degree to which we can. At the same time, this  
20 agency has to function, and I'm not sure that -- I  
21 suspect that fiddling around with some kind of  
22 teleconferencing meeting or rotating participation in  
23 person at these meetings -- we're really into serious  
24 compromises at this point in terms of the functioning  
25 of the agency.

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1 Jennifer, I'm sure you would be the first  
2 person to say it is not the same to come in by phone  
3 as it is to meet, and I am concerned. Obviously I'm  
4 concerned about the staff, but I am also concerned  
5 about crippling the agency.

6 CHAIRMAN REYNOLDS: Commissioner  
7 Kirsanow.

8 COMMISSIONER KIRSANOW: I just use their  
9 competing considerations. I just want to make sure  
10 that we do everything we can pursuant to, I think,  
11 what Commissioner Yaki had indicated last month, and  
12 that is that we take whatever cuts that seem to be  
13 necessary only after we have exhausted all other  
14 alternatives.

15 And I am persuaded by what Jennifer had  
16 to say in terms of it's not going to affect the  
17 structural deficit. We know that, and we're probably  
18 talking about pennies, but pennies mean a lot to the  
19 staff in terms of making rent and everything else.

20 A furlough is a big hit, and if we can  
21 reduce the number of furlough days, if it's possible,  
22 I don't know if it is, but I think it is something  
23 that is worth examining.

24 And I'm also interested and I'm just not  
25 familiar with what the agency does, whether or not

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1 there are any -- in the private sector whenever we  
 2 implement RIFs, we have out-placement programs.  
 3 We've got things that are done for staff who are  
 4 affected, if any are going to be affected by a RIF,  
 5 to ease the transition, possibly help them find other  
 6 opportunities.

7 Is there anything like that that we have  
 8 examined or can we examine something like that?

9 STAFF DIRECTOR MARCUS: Our Office of  
 10 Management is looking into what we can do within the  
 11 parameters of our budget and ability on that.

12 COMMISSIONER KIRSANOW: Does OPM have any  
 13 kind of role in that?

14 STAFF DIRECTOR MARCUS: We have been  
 15 regularly in touch with OPM about what we're planning  
 16 to do and the resources that they can make available.

17 I am not aware of any resources that they have yet  
 18 provided regarding out-placement specifically, but  
 19 we'll certainly see if they can provide any help in  
 20 that regard.

21 CHAIRMAN REYNOLDS: Commissioner Yaki.

22 COMMISSIONER YAKI: Yes. Thank you very  
 23 much, Mr. Chair and Mr. Staff Director.

24 As you know, I've had some difficulty  
 25 with this arrangement, and I just think that there

1 are some questions that I think we will need to put  
2 out there so that the staff knows why it is we're  
3 taking the action that we're doing.

4 My understanding is that although a  
5 furlough could close the gap for this year, and let  
6 me just say that in terms of, you know, sacrifice or  
7 whatever you want to call it, I have chosen, I have  
8 deliberately chosen, as has the Chairman, not to hire  
9 a special assistant for this year, and I have  
10 indicated that if it is needed I will do so for the  
11 following year as well.

12 That, of course, means that this pile in  
13 front of me will get ever messier every month, but I  
14 think we can live with that.

15 But so although a furlough for this year  
16 could close the gap in and of itself, that would not  
17 achieve the savings for next year, correct?

18 STAFF DIRECTOR MARCUS: That's correct,  
19 Commissioner Yaki. It would not reduce the gap for  
20 next year or provide any additional savings.

21 COMMISSIONER YAKI: Now the next question  
22 I have is in the scenario that you described, which  
23 is the four-person RIF this year plus the two office  
24 closure next year, what is the anticipated savings  
25 estimated for fiscal year '06?

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1                   STAFF DIRECTOR MARCUS: That's a good  
 2 question, Commissioner Yaki, and I appreciate the  
 3 word "anticipated" because it's difficult to predict  
 4 exactly for a number of reasons, including the fact  
 5 that once one does a reduction in force, it tends to  
 6 take on, as some people have said, a life of its own,  
 7 which is to say it is not always possible to  
 8 determine exactly in advance the individuals who will  
 9 necessarily be subject to it and the amount of  
 10 savings to the institution for future years will, of  
 11 course, depend on which individuals unfortunately  
 12 have to be subject to --

13                   COMMISSIONER YAKI: Sure, but you must  
 14 have a ballpark.

15                   STAFF DIRECTOR MARCUS: We do. The  
 16 ballpark figure that we have for the total savings in  
 17 fiscal year 2006 from both the four person reduction  
 18 in force plus, the office closure involving two  
 19 offices and associated employees and expenses next  
 20 year would be between seven and \$800,000, roughly in  
 21 the middle sevens, and of course, that would be  
 22 required both to close the shortfall for that year  
 23 and to provide some additional cushion.

24                   COMMISSIONER YAKI: Then that's the next  
 25 question I want to ask. What is the delta between

1 the anticipated shortfall and the savings that you  
2 would achieve, in other words, the cushion that you  
3 talk about for next year?

4 STAFF DIRECTOR MARCUS: Well, as I tried  
5 to indicate, Commissioner Yaki, the shortfall for  
6 this year is approximately 135 or \$265,000, the  
7 difference between those figures being largely the  
8 freeze on hires, including Commissioner assistants.

9 Based on either figure, the 265 or the  
10 135, depending on whether assistants are hired next  
11 year, would increase by an amount of that could be as  
12 low as \$180,000, but could be \$250,000. It will be  
13 somewhere in that vicinity.

14 COMMISSIONER KIRSANOW: So we're talking  
15 about a cushion that could be anywhere between 500 or  
16 \$250,000, depending on how it breaks on the high end  
17 or low end. Is that --

18 STAFF DIRECTOR MARCUS: That's about  
19 right. I would think 500,000 would require a lot of  
20 things breaking in the favor of the Commission, but  
21 that's an approximate range.

22 COMMISSIONER YAKI: And I assume that in  
23 our budget submission for next year, we would be  
24 anticipating what we would hopefully be spending that  
25 money on. So what is it that we would be using the

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1 cushion for if we could and why?

2 STAFF DIRECTOR MARCUS: Well, let me tell  
3 you, Commissioner Yaki, some of the things that we  
4 need, and it's a question of what we will be able to  
5 afford, based in part on whether the savings are at  
6 the low end or at the high end. We need stronger  
7 accounting services than what we have now. That is a  
8 big one, and that includes in-house staff and  
9 potentially additional expenditures to outside staff  
10 to insure that we are able to get a clean audit.

11 We have not been able to get a clean  
12 audit in the past. I think it's extremely unlikely  
13 that we would get a clean audit for 2003 or 2004  
14 based on the accounting services we have right now.  
15 I think it's extremely unlikely that we could get a  
16 clean audit for this fiscal year. I think it's  
17 already too late in the year for that to happen.

18 I think we need to focus on getting the  
19 accounting services required for a clean audit for  
20 2006.

21 In addition, to general accounting  
22 services, we will need to get a full-scope audit.  
23 That is something that is required by law and that we  
24 have not had yet.

25 In addition, we may need other services

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1 provided by an Inspector General's audit team. Those  
2 are among the highest on our list.

3 We also have certain critical vacancies,  
4 not all of which could be filled. We may be able to  
5 fill some or none of them depending on how the  
6 figures break. Certainly filling the General Counsel  
7 position would be high on the list. We also have  
8 vacancies for the head of Congressional Affairs,  
9 Public Affairs, and Deputy Staff Director.

10 We certainly wouldn't be able to fill all  
11 of those positions. I'm not sure if we would be able  
12 to fill any of those positions, but they certainly  
13 are on the list of things that we might do depending  
14 on what money we have.

15 So I would say the highest on the list  
16 would be accounting and related services, both  
17 internal and external.

18 COMMISSIONER YAKI: So that would be a  
19 combination of in-house hire and external contracting  
20 for the services that are currently provided by this  
21 other company that we have right now?

22 STAFF DIRECTOR MARCUS: That's right.

23 COMMISSIONER YAKI: And have we estimated  
24 the delta between what the contract is for the  
25 current accounting company and another one as well,

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1 what that would be?

2 STAFF DIRECTOR MARCUS: We have requested  
3 cost information from the Treasury Department's  
4 Bureau of the Public Debt, and we have asked them  
5 questions about what we would have to do in order to  
6 become the sort of agency that they would be willing  
7 to have contractual relationships with again.

8 What they have told us is that they  
9 believe we need additional procurement services that  
10 we're not receiving in order to insure that we are  
11 not violating procurement laws and regulations, as  
12 well as additional budget services to rectify what  
13 they consider problems in that area.

14 We have not yet gotten those cost  
15 estimates. It was Mr. Harbison's recollection that  
16 in the past when they have indicated the services  
17 that they believed that we required, but do not have,  
18 that the figure was over \$100,000, but we don't yet  
19 have that figure.

20 COMMISSIONER YAKI: That wouldn't be new  
21 100,000 because that would be just the difference  
22 between what we're paying the current company and  
23 what BPD would be asked. So you've got a full 100  
24 there.

25 STAFF DIRECTOR MARCUS: It would be -- it

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1 would be --

2 COMMISSIONER YAKI: Well, I mean in terms  
3 of the agency overall budget it wouldn't be an  
4 additional 100,000 spent because we're already  
5 spending some amount on accounting services already.

6 It would just be that difference over and above that  
7 would be the net requirement for our budget for next  
8 year.

9 STAFF DIRECTOR MARCUS: It was his  
10 understanding that it would be an additional  
11 \$100,000.

12 COMMISSIONER YAKI: Over and above what  
13 we're currently paying.

14 STAFF DIRECTOR MARCUS: That's right.  
15 That's right.

16 Now, I should say again that we have  
17 requested cost estimates and not yet received them.

18 COMMISSIONER YAKI: And how much would it  
19 cost for in-house budget personnel that you're  
20 indicating? What kind of positions are we talking  
21 about?

22 STAFF DIRECTOR MARCUS: A senior budget  
23 official with sufficient level of expertise to serve  
24 as a chief budget officer at a GS-15 level who could  
25 assist both with basic budget matters and also to

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1 turn around the strategic planning process at this  
 2 agency, which has been so severely criticized would  
 3 probably cost in the ballpark of \$150,000, more or  
 4 less, depending on the step at which the person comes  
 5 in, including salary and benefits.

6 The highest, I believe, salary could be  
 7 about \$135,000, but depending on seniority, it could  
 8 be a bit lower than that, with the benefits being  
 9 approximately a quarter of whatever the salary is.

10 COMMISSIONER YAKI: Okay. It's just  
 11 important, I think, to get this information out there  
 12 because, as you know, I've been troubled by the drive  
 13 to create I wouldn't call it a surplus, but the  
 14 cushion, as you call it, for each year. I understand  
 15 that it is your feeling and the Chair's feeling that  
 16 we need to demonstrate these kinds of reforms to  
 17 Congress in order to put ourselves on a better  
 18 footing with them, and I certainly appreciate that.

19 You know, as we go forward, I just want  
 20 you to know, and I don't think it's any secret, that  
 21 I'm hoping that at some point we can make the case  
 22 that for this agency to function we need more money  
 23 to work.

24 I know that's your feeling, Mr. Chair,  
 25 and the feeling of every single person here not

1 because -- simply to keep up for the lack of  
2 purchasing power or personnel that we've lost over  
3 the past ten and 15 years.

4 I appreciate the fact that we have to  
5 engage in actions this year to close the deficit. I  
6 understand and appreciate the fact that we have to do  
7 so next year. I wish we didn't have to do it in a  
8 way or in a manner that was based on a timetable that  
9 seems almost forced upon us by others, but that being  
10 the case, as you know, I've been working very closely  
11 with you and the Chair on how to make this work and  
12 how to preserve our core mission at headquarters as  
13 much as possible, and in the end, I will support  
14 this, but I just think we need to be able to say why  
15 it is we're doing, what it is we're doing, and,  
16 again, for my part if it were not for, as you have  
17 said to me repeatedly, the need to demonstrate  
18 reform, I would have another alternative in mind.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER KIRSANOW: Mr. chairman.

21 CHAIRMAN REYNOLDS: Actually I'm going to  
22 exercise the Chair's prerogative.

23 COMMISSIONER KIRSANOW: Okay.

24 CHAIRMAN REYNOLDS: The problems that we  
25 are wrestling with now are problems that have been

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1 festering for a number of years, and, Commissioner  
2 Yaki, I share your concerns, but I think that at this  
3 point we are going to have to -- we don't have any --  
4 there are no good decisions. All of the options that  
5 we have, all of the viable options that we have are  
6 bad, and it's just a matter of picking the best of  
7 the bad choices.

8 I think that it's important to our staff  
9 that we make the hard decision now and create that  
10 cushion so that we don't have to go through this  
11 process again in '06. I think it's important that  
12 '06 staff and the Commissioners and the special  
13 assistants have some space so that we can get our  
14 arms around the problems that we have, come up with a  
15 battle plan without having to worry about RIFs,  
16 layoffs, furloughs, office closures.

17 So while the options that we have will  
18 adversely affect the lives of some of our employees,  
19 I think over the long term, we have to make this  
20 decision. This decision will put us on the road to  
21 restoring the fiscal health of the agency, and at the  
22 end of the day we can't fulfill our mission if the  
23 back office issues, like budget matters and  
24 operational matters aren't dealt with.

25 Commissioner Kirsanow.

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COMMISSIONER KIRSANOW: Yes, Mr. Chair.

Thanks very much.

I concur in large part with comments made by Commissioner Yaki. I think it's extremely important to have a great deal of transparency when it comes to making decisions such as this. For the time that I've been on the Commission we have been kicking the can down the road, so to speak, and not been making hard choices, and I think that has gotten us to the point where we now have to do this, which is an extremely unpleasant task.

Possibly we could have avoided this at some point. I'm not sure if we could have, but if things had been done earlier, maybe we would not be in this particular spot.

The one thing that I am a little concerned with, Commissioner Yaki is troubled by the cushion. I'm troubled by the cushion from a different perspective, and it seems to be consumed almost completely by our need, in fact, our mandate to implement structural reforms that haven't been implemented over the course of a number of years.

That leaves us with virtually no additional revenues, no additional money for discharging our statutory mission, and at least

1 that's my perspective, but I'm wondering if you might  
2 be able to give us an explanation of what you  
3 perceive to be our ability to do what we're here to  
4 do, that is, produce reports, look at the issues  
5 pertaining to civil rights throughout the country.

6 In 2006, for example, if much of the  
7 cushion is consumed by audits and all of the other  
8 things that have been deferred for years and years  
9 and years, will we have the ability, for example, to  
10 conduct hearings, fly people in if necessary? Will  
11 we be able to discharge our mission?

12 STAFF DIRECTOR MARCUS: Yes,  
13 Commissioner, the work of the Commission will  
14 continue despite the cutbacks. Just as we have less  
15 resources than last year and last year than the year  
16 before, we will have less resources next year than a  
17 year ago.

18 However, we will still be able to hold  
19 hearings and briefings even under the tighter  
20 circumstances. We will need to be a little bit  
21 tighter in terms of expenses in '06 than we have been  
22 in prior years.

23 Even this year we have fewer in the way  
24 of analysts and related staff to do reports than  
25 we've had in the recent past, and certainly

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1 significantly fewer than in the distant past, and  
2 we'll have somewhat fewer again next year.

3           Whether this reduces -- I think it will  
4 reduce the number of reports that we do, but we will  
5 still be doing reports. We will still be doing  
6 analyses. We will still be holding hearings and  
7 briefings if that is the Commissioners' intent, and I  
8 expect it will be.

9           CHAIRMAN REYNOLDS: Vice Chair, Vice  
10 Chair Thernstrom.

11           VICE CHAIRMAN THERNSTROM: I just have  
12 with respect to what Commissioner Yaki said just one  
13 question for him.

14           I very much appreciate what you said.  
15 I'm in agreement with it, but there was one point you  
16 made that I think could be easily misunderstood. You  
17 said you understood the necessity of impressing  
18 Congress with the seriousness of our dedication here  
19 to reform. You would agree, I hope, that we're not  
20 simply here talking about a public relations problem  
21 as it were, but we are talking about restoring the  
22 fiscal health of the agency, which is not -- I mean,  
23 the question of impressing Congress is, you know,  
24 simply one aspect of that larger picture, in that  
25 it's important to communicate the seriousness of our

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1 commitment to restoring the fiscal health, but you  
2 seem to imply that this was driven solely by the need  
3 to impress Congress.

4 And I'm sure that was a misunderstanding,  
5 but --

6 COMMISSIONER YAKI: May I respond?

7 VICE CHAIRMAN THERNSTROM: Yes.

8 COMMISSIONER YAKI: No, that wasn't a  
9 misunderstanding at all. Since I have been appointed  
10 to the Commission and been in meeting after meeting,  
11 it has been stated over and over that we are taking  
12 these particular reforms in response to Congress.

13 And to me the point is that if I had my  
14 druthers, which I will not and which is why I'm  
15 supporting this, I think, kinder, gentler version of  
16 what had originally been talked about, is because  
17 that I'm not going to win the argument of perception,  
18 which is that I believe that we have taken serious  
19 steps toward reform.

20 Our internal agency instructions have  
21 been amended to the nth degree by the Staff Director  
22 and by the other members of the Commission before I  
23 came on. I'm being very meticulous in all of my  
24 record keeping to meet all of GAO's requirements so  
25 that I don't charge anything that I shouldn't.

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1 I have foregone a special assistant, as  
2 has the Chair, because I take my contribution to this  
3 very seriously, but I do not believe and continue to  
4 not believe that we need to go as far as we need to  
5 at this time and at this moment to maintain our  
6 fiscal health. I think that natural attrition will  
7 come in. I think the voluntary buyouts are part of  
8 it.

9 On the other hand, I recognize the  
10 handwriting on the wall, and when so many people have  
11 said to me over and over again, you know, we're being  
12 watched, we need to take serious action and we have  
13 to show that we're committed to all of these things,  
14 which I really think we are. That's why I agree to  
15 go along with this proposal, because, to put it  
16 bluntly, I just want to make it less worse than it  
17 is.

18 And no one likes what we're doing. I  
19 know that the Chair, I know that the Staff Director  
20 nor you, Vice Chair nor any of the other  
21 Commissioners who are here want to do what it is that  
22 we're doing. I certainly don't, and I don't because  
23 I don't believe that the timing is such that we  
24 actually need to do everything all at once.

25 And I think that we have the ability, and

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1 I think we have the means and bipartisan basis to go  
2 forward to policy makers and say, "We have gotten  
3 your message."

4 We certainly did that at the hearing last  
5 month. This is what we are doing. This is what  
6 we're going to continue to do. I would rather have  
7 seen a three-four year plan rather than an overnight  
8 plan that forces us to engage in essentially, you  
9 know, a five to ten percent cut of our staff in the  
10 next year and a half.

11 But I don't have the majority on this  
12 Commission, and in wanting to work constructively  
13 with a majority in this Commission, I'm willing to  
14 say that I do not separate myself out and just be a  
15 naysayer and say no. I understand that's where they  
16 want to go. That's the perception. Whatever I can  
17 do to make it less worse, so to speak, I will, and  
18 that's why I support what the Staff Director and the  
19 Chair put forward.

20 But make no mistake. I do not have any  
21 misunderstanding in all my conversations over the  
22 past two months about why we are being driven down  
23 this road at this time.

24 CHAIRMAN REYNOLDS: well, I'd like to  
25 respond.

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1 Commissioner Yaki, the two of us, we've  
2 had conversations about these ugly choices, and I  
3 just want to be clear that I share many of the  
4 concerns that members of Congress have expressed  
5 about this agency. The decisions that we're making  
6 today I don't believe are driven solely by Congress.

7 Is it a factor, and an important factor? Yes.

8 But we can't get a clean audit in our  
9 present state. We don't have an accounting system in  
10 place. This agency has neglected over the years, and  
11 that's why we've reached this point.

12 And I believe that strong measures are  
13 needed now, not down the road, and these measures are  
14 needed in order to enable us to function.

15 And after saying that though I appreciate  
16 the fact that while we disagree on some issues, I  
17 appreciate the manner in which we have disagreed and  
18 the manner in which we have worked to reach  
19 compromise.

20 VICE CHAIRMAN THERNSTROM: Staff  
21 Director, I wonder if you have anything to add to  
22 that.

23 STAFF DIRECTOR MARCUS: The measures  
24 which we are taking are necessary to deal with the  
25 problems that we have. If they also serve to send a

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1 signal of our seriousness either to Congress or to  
2 anyone else, that may be helpful, but we would need  
3 to take measures of this sort regardless.

4 The fact that we are on target to  
5 overspend our budget unless various corrections are  
6 taken, that's a fact. Now, there are many ways of  
7 dealing with it, some of which demonstrate a  
8 seriousness of reaching long-term solutions and some  
9 of them are not, but we need to do what we need to do  
10 because it's legally required and because it's the  
11 right thing to do regardless of whether it also  
12 pleases any of our stakeholders.

13 CHAIRMAN REYNOLDS: Commissioner Yaki.

14 COMMISSIONER YAKI: Thank you, Mr. Chair.

15 Just by way of clarification, has the  
16 number that we've put forth for next year -- does  
17 that include the fact that I probably will not hire a  
18 staff assistant or not?

19 STAFF DIRECTOR MARCUS: I've tried to  
20 give both sets of figures, Commissioner Yaki, some on  
21 the assumption that the Commissioners hire special  
22 assistants and some on the assumptions that they do  
23 not, and that's part of why there's a range.

24 All of them, all of the figures that I've  
25 given you, however, are predicated on the assumption

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1 that as the Staff Director I do not hire any of the  
2 four Schedule C special assistants that I'm  
3 authorized to hire because I think it's important to  
4 demonstrate that resolve.

5 CHAIRMAN REYNOLDS: Commissioner  
6 Thernstrom?

7 VICE CHAIRMAN THERNSTROM: Can I just say  
8 something on the special assistant question? I have  
9 repeatedly expressed my willingness to, as it were,  
10 being so lucky as to have a special assistant,  
11 repeatedly expressed my willingness to share my  
12 special assistant so that other Commissioners have  
13 some help as well.

14 You know, I think we're all here ready to  
15 pitch in in any way that we can. Again, going back  
16 to our concern for the staff and our concern for the  
17 impact on the regional offices and so forth of the  
18 measures that are on the table here.

19 CHAIRMAN REYNOLDS: Commissioner  
20 Kirsanow?

21 COMMISSIONER KIRSANOW: I just want to  
22 emphasize I think with both what Staff Director and  
23 yourself said, that we came to this pass not in a  
24 vacuum. Even in the few meetings we've had so far  
25 this year, we were told astonishing things, things

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1 that we were not told for at least my tenure on the  
2 Commission, and we discovered were pretty  
3 significant, pretty serious.

4 We were told we didn't even have a  
5 general ledger. That in and of itself should send  
6 sirens wailing throughout the Capitol.

7 We did not implement GAO reforms. When  
8 you read GAO reports, they try to say things in a  
9 kind of sterile manner, but anyone who has read any  
10 kind of accounting reports or assessments of an  
11 agency or a firm would look at it and say this place  
12 is completely out of control and is spiraling into a  
13 ditch quickly.

14 We have not implemented or did not  
15 implement prior to Staff Director coming on board OPM  
16 recommendations. We did not have an audit for 12  
17 years. Every time I would pick up the paper to read  
18 about the agency, it would have something to do with  
19 how it is completely out of control.

20 So we did not come to this pass without  
21 any history, and we did not get here -- the measures  
22 that are being taken are not being done in a vacuum.

23 I think everybody here would prefer not to have done  
24 this, but I think had we had the kind of information  
25 that the Staff Director provided to us over the last

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1 three months, had we taken a hard look and a sober,  
2 responsible look at this agency in the past, we may  
3 not have had to take these kinds of Draconian  
4 actions.

5 I still think we have a structural  
6 deficit with which we would have to deal, but it's  
7 conceivable we could have implemented controls and  
8 reforms that would have cushioned the blow a little  
9 bit more.

10 So are we trying to impress people? I  
11 agree with the Staff Director. Whether it impresses  
12 anybody or not, and I frankly doubt that it will  
13 because I don't think anybody is paying a whole lot  
14 of attention to what we're doing, these are reforms  
15 that need to be taken, and my only concern is are we  
16 going far enough.

17 What I don't want to do is have to  
18 revisit the issue two years down the road, a year  
19 down the road. I'm persuaded by what the Staff  
20 Director has to say that we're taking cuts  
21 significant enough or sufficient enough to avoid that  
22 eventuality.

23 CHAIRMAN REYNOLDS: Any other comments,  
24 questions?

25 COMMISSIONER KIRSANOW: I'd move the

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1 question.

2 CHAIRMAN REYNOLDS: Okay. Second?

3 VICE CHAIRMAN THERNSTROM: Second.

4 CHAIRMAN REYNOLDS: Okay. Let's vote.

5 All in favor say aye.

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: All in opposition?

8 (No response.)

9 CHAIRMAN REYNOLDS: The motion passes.

10 Okay. At this point let's take a ten-  
11 minute break -- I'm sorry?

12 COMMISSIONER MEEKS: Could I? Before we  
13 leave the Staff Director's report, because I assume  
14 that's what we're doing now.

15 CHAIRMAN REYNOLDS: Yes.

16 COMMISSIONER MEEKS: I just wanted to ask  
17 one question which is completely off the subject of  
18 the budget, but can you tell me what the status of  
19 the request that the Indian Affairs Committee put  
20 forth to the Commission to testify regarding the  
21 Indian health care report, the Broken Promises  
22 Report?

23 CHAIRMAN REYNOLDS: Okay. That  
24 invitation was sent to me. I declined for various  
25 reasons. So that's --

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COMMISSIONER MEEKS: Well, and the reason I ask is because then they have gotten hold of me because they were disappointed, and I am disappointed to say the least, because, I mean, they felt like it was protocol asking you, but in fact, I mean, they would have been happy with -- I mean, they actually did want me to testify, and if that wasn't possible, then anyone from the Commission, Debra Carr's office or someone to go testify and report concerning what the contents of that report was.

So, you know, I really am very disappointed that this Commission would turn down the Indian Affairs Committee, to appear before them.

CHAIRMAN REYNOLDS: Well, It was a -- Jennifer, were you about to jump in?

COMMISSIONER BRACERAS: Oh, I'm just confused, but, Elsie, did you say they asked you?

COMMISSIONER MEEKS: Well, according to them, protocol they felt required them to ask the Chair, to extend the invitation to the Chair, but you know, assuming he could not do it, that it then would be passed to someone else.

CHAIRMAN REYNOLDS: Okay. The issues, well, some of the complexities of this issue at least for me, I wasn't here when that report was issued,

1 and that report, I believe, was approved by four  
2 Commissioners and there was four abstentions.  
3 There's a lot in that document that I agree with and  
4 support, but there are other issues that I have  
5 serious concerns about, but that's me.

6 And I felt that it was not -- I don't  
7 think it would be appropriate for me to be unable to  
8 give my full support to a Commission document, and so  
9 those are some of the reasons why I --

10 COMMISSIONER MEEKS: Fine. The report  
11 was approved though.

12 CHAIRMAN REYNOLDS: That's correct.

13 COMMISSIONER MEEKS: And so the fact that  
14 the Indian Affairs Committee wanted someone to come  
15 talk to them about that report, you could disagree  
16 with part of it if you wished, but you know, I just  
17 am -- I think that the Indian Affairs Committee, for  
18 one thing, deserves more respect than that.

19 I also think that this was a very  
20 important report, and things haven't gotten better in  
21 Indian Country since that report, but it's a very,  
22 very important report.

23 CHAIRMAN REYNOLDS: Well, the conditions  
24 in Indian Country are issues that I hope one day we  
25 would be able to -- well, I want to spend some time

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1 looking at some of the issues in Indian Country, but  
2 getting back to the current issue, now, are you  
3 suggesting that, okay, fine, I may be uncomfortable  
4 but you, on the other hand, would be willing?

5 COMMISSIONER MEEKS: I would certainly  
6 be. I mean, in the past, I know that Terri  
7 Dickerson, if it was her report, went and, you know,  
8 testified. This came out of OGC. So, you know,  
9 someone from there. I mean, depending on budget, it  
10 would mean an extra trip out here for me so --

11 CHAIRMAN REYNOLDS: Okay. How about  
12 this? Let's --

13 COMMISSIONER MEEKS: -- I would be glad  
14 to do it.

15 CHAIRMAN REYNOLDS: Let's talk about our  
16 options. We still have some time.

17 COMMISSIONER MEEKS: It's next week.

18 VICE CHAIRMAN THERNSTROM: Is it? I was  
19 about to say isn't it next week.

20 COMMISSIONER MEEKS: Yes. But I would  
21 very much like someone to go.

22 COMMISSIONER BRACERAS: Well, excuse me.  
23 This is Jennifer.

24 I mean, why don't you do it? You seem to  
25 be the most knowledgeable about the report and the

1 most passionate about the report, and it seems that  
2 you would be the best person to do it.

3 COMMISSIONER MEEKS: I'm happy to do it.

4 VICE CHAIRMAN THERNSTROM: Commissioner  
5 Meeks would obviously be the best person to do it.  
6 As we're talking about saving pennies here, the only  
7 question is whether we should send somebody from the  
8 staff instead, and why don't we leave this for  
9 Commissioner Meeks and the Chair to settle?

10 COMMISSIONER BRACERAS: Right, okay.

11 COMMISSIONER MEEKS: I'm fine with that.

12 CHAIRMAN REYNOLDS: Okay. Let's take a  
13 ten-minute break.

14 (Whereupon, the foregoing matter went off  
15 the record at 10:47 a.m. and went back on  
16 the record at 11:15 a.m.) .

17 **V. Management and Operations**

18 CHAIRMAN REYNOLDS: Okay. We're going to  
19 start.

20 Next on the agenda is Management and  
21 Operations, and I believe Commissioner Kirsanow has  
22 several motions.

23 COMMISSIONER KIRSANOW: Thank you, Mr.  
24 Chair.

25 Last month we discussed several different

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1 motions and that we would revisit them at this  
2 particular meeting. Since that time we have had GAO  
3 come out with their report. One of the motions, you  
4 may recall, was a motion to adopt GAO and OPM  
5 recommendations within an expedited nine-month time  
6 frame.

7 And to ward that end, I move that the  
8 Commission adopt the policy recommendations of the  
9 GAO reports of 2005, 2004, 2003, and 1995, and also  
10 the OPM report of 1997, and that the Staff Director  
11 implement those recommendations within a nine-month  
12 time frame consistent, however, with any strictures  
13 or confines imposed by the Anti-deficiency Act, of  
14 course.

15 VICE CHAIRMAN THERNSTROM: I'm sorry. I  
16 don't seem to have a copy of these motions.

17 Oh, okay.

18 COMMISSIONER BRACERAS: Can somebody  
19 recap the minutes? I don't know if that makes a  
20 difference one way or the other.

21 CHAIRMAN REYNOLDS: I'm sorry. Jennifer,  
22 please repeat what you just said.

23 COMMISSIONER BRACERAS: Our discussion of  
24 this the last time was not recapped in the minutes  
25 for some reason I don't believe.

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1 CHAIRMAN REYNOLDS: Okay. I haven't  
2 reviewed the minutes.

3 COMMISSIONER BRACERAS: It's -- I don't  
4 know.

5 COMMISSIONER KIRSANOW: Jennifer, it's  
6 not in the minutes per se.

7 CHAIRMAN REYNOLDS: It's here.

8 COMMISSIONER KIRSANOW: Well, I see it  
9 here. It is in the minutes under Management and  
10 Operations.

11 COMMISSIONER BRACERAS: Oh, okay. I'm  
12 sorry. My mistake then. I was looking in another  
13 section.

14 CHAIRMAN REYNOLDS: Okay. Is there a  
15 second?

16 VICE CHAIRMAN THERNSTROM: Yeah, I second  
17 it.

18 CHAIRMAN REYNOLDS: Okay. Discussion.  
19 Commissioner Yaki.

20 COMMISSIONER YAKI: Yeah, I would just  
21 like to add a friendly amendment, hopefully a  
22 friendly amendment to say that after the nine month  
23 thing, to the extent they are non-repetitive and to  
24 the extent funds are available because I would not  
25 want us to -- I understand what you meant by the

1 Anti-deficiency Act, but there are also other -- even  
2 within their priorities regarding which of these  
3 things we're going to do, there are money costs  
4 associated with each.

5 CHAIRMAN REYNOLDS: Commissioner  
6 Kirsanow, do you accept that as a friendly amendment?

7 COMMISSIONER KIRSANOW: Yeah, I have no  
8 objection to it.

9 And I'd also want to just state for the  
10 record that I would like these implemented as quickly  
11 as possible, but I told the Staff Director off line  
12 that I wasn't going to hang him if he didn't have  
13 them within nine months. We understand he's laboring  
14 under a lot of pressures right now.

15 CHAIRMAN REYNOLDS: Any other discussion?  
16 Any other comments? Okay.

17 COMMISSIONER BRACERAS: Well, I'm sorry.  
18 I'd just like to hear from the Staff Director  
19 whether there are any in particular of these  
20 recommendations that are problematic either from a  
21 financial point of view or a management point of  
22 view. Does he have any concerns about seeing all of  
23 these take place?

24 STAFF DIRECTOR MARCUS: Commissioner  
25 Braceras, I do not have any concerns about any single

1 recommendation from either of those two perspectives  
2 under the motion as amended. There are some  
3 recommendations that may require expenditures,  
4 including, for instance, some that may require either  
5 additional training or that may require purchase of  
6 software. We will need to assess the cost in order  
7 to comply with the motion, but it seems to me that I  
8 would not recommend accepting any single one of the  
9 recommendations. I think it is appropriate to move  
10 forward on all of them.

11 COMMISSIONER BRACERAS: Okay. I just  
12 wanted to make sure that you were supportive of this  
13 before I signed on, but if you're supportive of it,  
14 then since you're the one who has to implement them  
15 all, I'm on board.

16 STAFF DIRECTOR MARCUS: Thank you,  
17 Commissioner, and, yes, I do wholeheartedly support  
18 this.

19 CHAIRMAN REYNOLDS: Okay. Time to vote.  
20 All in favor?

21 (Chorus of ayes.)

22 CHAIRMAN REYNOLDS: Any objections?

23 (No response.)

24 CHAIRMAN REYNOLDS: The motion passes.

25 COMMISSIONER KIRSANOW: Mr. Chair, I've

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1 got another motion. This is fairly simple. I move  
2 the Commission authorize the Staff Director to post  
3 documents on the Commission Web site, specifically  
4 the congressional testimony of Commissioners Yaki and  
5 Redenbaugh, and also the correspondence sent to  
6 Congress by Commissioners Braceras and Vice Chair  
7 Thernstrom.

8 CHAIRMAN REYNOLDS: Would that include  
9 the testimony of Staff Director?

10 COMMISSIONER KIRSANOW: I'm sorry. Yes,  
11 also the Staff Director. That's correct.

12 CHAIRMAN REYNOLDS: A second?

13 VICE CHAIRMAN THERNSTROM: And I'll  
14 second it.

15 CHAIRMAN REYNOLDS: Discussion?

16 (No response.)

17 CHAIRMAN REYNOLDS: Okay. All in favor?

18 (Chorus of ayes.)

19 CHAIRMAN REYNOLDS: Any objections?

20 (No response.)

21 CHAIRMAN REYNOLDS: The motion passes.

22 COMMISSIONER KIRSANOW: I have one last  
23 motion for right now, and last meeting we had a  
24 discussion with respect to conducting a full scope  
25 audit of the Commission. As a preliminary matter we

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1 had determined it was necessary to engage in an  
2 examination of what the costs would be, what the  
3 scope would be, and chronologically when we should  
4 fit this in, given that we have GAO and some other  
5 things going on. We were possibly talking about a  
6 restructuring of the Commission in terms of a RIF.

7           During that period of time, there has  
8 been an examination as to what the costs would be and  
9 whether or not, in fact, we could even conduct an  
10 audit, and as a result of that particular  
11 examination, it was determined that the Commission is  
12 not in auditable shape; in other words, that  
13 reputable auditing firms, major auditing firms would  
14 not even take on the Commission because of the fact  
15 that we don't have the appropriate financial  
16 controls, and they couldn't conduct an audit that  
17 they can put their name to.

18           They indicated that before that would  
19 happen, certain necessary controls would have to be  
20 put into place, and before that happened an  
21 assessment would need to be done as to the nature of  
22 the controls and what else needed to be done so that  
23 we would be audit ready.

24           So toward that end, I would simply move  
25 that the Staff Director take all necessary steps to

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1 make the Commission audit ready as soon as  
2 practicable.

3 I know that's a very large or expansive  
4 motion. It's not specific, but I would leave it to  
5 the discretion of the Staff Director to employ  
6 whatever means are necessary, whether it be engaging  
7 a contractor to conduct that assessment. However, if  
8 we could do it inside, in house, if that can be  
9 accomplished, that's fine also.

10 CHAIRMAN REYNOLDS: Is there a second?

11 VICE CHAIRMAN THERNSTROM: I second it.

12 I would like to hear from -- you were  
13 about to say, "Any discussion?" -- I would like to  
14 hear from the Staff Director any thoughts.

15 STAFF DIRECTOR MARCUS: Well, I think  
16 that Commissioner Kirsanow raised some very good  
17 points. It is distressing to hear that several of  
18 the major accounting firms that were contacted have  
19 indicated that they suspect that we are not auditable  
20 at this point or that they could not conduct the  
21 audit. I think it will be very difficult at this  
22 point to be able to entice a large major accounting  
23 firm to do such an audit, and questions about whether  
24 we could get a mid-size firm.

25 So I think that it is appropriate to do

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1 preparatory work to get to the point where we can be  
2 auditable.

3 CHAIRMAN REYNOLDS: Staff Director, do we  
4 have a sense of how far away we are from being  
5 auditable? Have we established the scope of our  
6 problem yet?

7 STAFF DIRECTOR MARCUS: We have gotten  
8 preliminary information, as I believe Commissioner  
9 Kirsanow indicated.

10 COMMISSIONER KIRSANOW: I can speak to  
11 that. The Staff Director and I had a brief  
12 discussion about this.

13 It may take about four weeks for someone  
14 to do whatever assessment is necessary to make  
15 recommendations as to what controls are put into  
16 place.

17 So it's conceivable that after today's  
18 meeting that if we worked diligently, then maybe by  
19 the June meeting we'd be in a position where we would  
20 know what controls need to be put into place and  
21 possibly even put those controls into place, and then  
22 thereafter we could perhaps commission an audit.

23 Obviously we're going to have to take a  
24 look at the costs, but the preliminary step before we  
25 do all of this, and we must have an audit, is to

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1 conduct this assessment.

2 CHAIRMAN REYNOLDS: Are you suggesting  
3 that we can't audit prior years? I mean once we put  
4 the controls in place, our ability to conduct an  
5 audit, that would be prospective.

6 COMMISSIONER KIRSANOW: Right.

7 CHAIRMAN REYNOLDS: What about the prior  
8 years?

9 COMMISSIONER KIRSANOW: My understanding  
10 is it's unlikely we could do that effectively. Now,  
11 I think what you're referring to would have to be  
12 done in a forensic way. They'd have to reconstruct a  
13 whole lot.

14 CHAIRMAN REYNOLDS: And have we had any  
15 discussions about a forensic audit so that we will --

16 COMMISSIONER YAKI: Sounds like "CSI."

17 CHAIRMAN REYNOLDS: Have we had those  
18 types of discussions?

19 COMMISSIONER KIRSANOW: No, not  
20 specifically with respect to forensics. My  
21 understanding is though, I mean, I've done this  
22 before, not personally, but I've been involved  
23 situations where that has happened. A forensic is  
24 obviously a little bit more time consuming and a lot  
25 more expensive.

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1 CHAIRMAN REYNOLDS: All right. Are we  
2 ready to vote? Okay. All in favor say aye.

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: All in opposition?

5 (No response.)

6 CHAIRMAN REYNOLDS: The motion passes.

7 Okay. Pete, Commissioner Kirsanow, you  
8 have another motion.

9 COMMISSIONER KIRSANOW: Okay. This is a  
10 motion to amend the scope of the approved project on  
11 federal procurement following the Supreme Court's  
12 decision in Adarand v. Pena, and this is the motion:

13 I move that OCRE reshape the scope of the  
14 Adarand enforcement study to include information on  
15 federal agencies' use of race-neutral contracting  
16 vehicles, in addition to elements of the original  
17 project proposal. The resulting study will, one,  
18 report the amount of federal procurement funds going  
19 to small, disadvantaged, and HUBZone businesses; two,  
20 analyze continuing barriers facing socially and  
21 economically disadvantaged firms; and, three, examine  
22 the role of federal agencies, including SBA in  
23 implementing procurement programs for these firms  
24 following the Supreme Court decision that government  
25 procurement activity involving racial classification

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1 be subject to strict scrutiny.

2 Specifically, OCRE --

3 COMMISSIONER BRACERAS: I'm sorry. This  
4 is Jennifer. I can't hear people well because I'm  
5 picking up interference from somebody else's  
6 microphone.

7 COMMISSIONER KIRSANOW: Okay. Let me go  
8 back to --

9 CHAIRMAN REYNOLDS: Do we have copies of  
10 this?

11 COMMISSIONER BRACERAS: I think I have a  
12 copy here, but --

13 COMMISSIONER KIRSANOW: Okay.

14 COMMISSIONER BRACERAS: -- I just wanted  
15 to let you know that I'm picking up murmurings from  
16 other people.

17 COMMISSIONER KIRSANOW: I believe the  
18 Chair was murmuring.

19 COMMISSIONER BRACERAS: Jerry, stop  
20 murmuring.

21 (Laughter.)

22 COMMISSIONER KIRSANOW: Hold on, Pete.

23 A copy of the motion was circulated  
24 electronically, Commissioner Yaki. Unfortunately we  
25 just brought down a single copy.

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1 Well, no, hold on. The cavalry has  
2 arrived.

3 COMMISSIONER YAKI: You always have  
4 copies. Audrey is the -- thank you.

5 COMMISSIONER KIRSANOW: I left off where  
6 I indicated, made reference to the Supreme Court's  
7 decision regarding racial classification subject to  
8 strict scrutiny. Specifically, OCRE will research if  
9 and how federal contract or federal agencies changed  
10 procurement practices to fulfill the compelling  
11 interest and narrow tailoring components of the  
12 Adarand v. Pena decision.

13 VICE CHAIRMAN THERNSTROM: Excuse me.  
14 Commissioner Braceras, have you now got the entire  
15 motion or do you need Commissioner Kirsanow to read  
16 it?

17 COMMISSIONER BRACERAS: Oh, no, I have  
18 it. I just wanted to make you aware that I was  
19 having trouble hearing.

20 VICE CHAIRMAN THERNSTROM: Oh, okay.

21 COMMISSIONER BRACERAS: Because of the  
22 microphone issue.

23 VICE CHAIRMAN THERNSTROM: Okay.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER KIRSANOW: That's the



1 motion.

2 CHAIRMAN REYNOLDS: Is there a second?

3 COMMISSIONER TAYLOR: Second.

4 CHAIRMAN REYNOLDS: Discussion.

5 Commissioner Yaki.

6 COMMISSIONER YAKI: I want to thank the  
7 Chair and the other Commissioners in pulling this  
8 together. I just need time to read it in view of  
9 what I had done before. Can I ask a question of  
10 staff on this one?

11 CHAIRMAN REYNOLDS: Sure.

12 COMMISSIONER TAYLOR: Ms. Dickerson.

13 STAFF DIRECTOR MARCUS: I would add that  
14 Ms. Dickerson is prepared to give a few words on this  
15 that would also require some transparencies if you  
16 would like and some discussion.

17 CHAIRMAN REYNOLDS: Do you have a mic?  
18 Yes. Okay, great.

19 COMMISSIONER YAKI: I'm trying to get the  
20 original wording. Ms. Dickerson, can you sort of  
21 tell me what you now understand the scope of the  
22 presently moved but not yet approved project to be?

23 MS. DICKERSON: Would it be okay to  
24 explain that with some of the presentation?

25 COMMISSIONER YAKI: Yes..

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1 MS. DICKERSON: Because it might be  
2 helpful to look along with me at a few things.

3 COMMISSIONER YAKI: Sure.

4 MS. DICKERSON: This is Teresa Brooks.  
5 She's the secretary in OCRE, and she's going to help  
6 out a little bit.

7 I understand we don't have a PowerPoint  
8 projector anymore.

9 VICE CHAIRMAN THERNSTROM: Wait a minute.

10 COMMISSIONER YAKI: That was on eBay last  
11 week, wasn't it?

12 CHAIRMAN REYNOLDS: Well, in order to  
13 avoid violating the Anti-deficiency Act, we had to  
14 auction off a few things.

15 (Laughter.)

16 MS. DICKERSON: This is just in response  
17 to some of the questions that came up at the last  
18 meeting, and I just thought I would do a quick  
19 comparison of the original scope compared to the race  
20 neutral one.

21 So the first transparency has the program  
22 ceiling start. It does point out that one effect of  
23 the change in scope is that whereas the original  
24 scope was going to focus on procurement trends and  
25 procurement itself and how Adarand changed

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1 procurement strategies, the new focus, which is on  
2 the right side, would be race neutral strategies to  
3 achieve contracting goals.

4 Okay. This isn't working.

5 VICE CHAIRMAN THERNSTROM: I'm sorry,  
6 Terri. Can I ask you a question?

7 MS. DICKERSON: It doesn't matter how  
8 close you sit to that one. It's not going to work.  
9 This one does.

10 VICE CHAIRMAN THERNSTROM: Terri, could I  
11 ask a question here?

12 MS. DICKERSON: Yes.

13 VICE CHAIRMAN THERNSTROM: Now, those are  
14 two separate questions. One is not really a  
15 substitute for the other. They are both legitimate  
16 questions. The reason you came down on the side of  
17 one being a substitute for the other is what?

18 MS. DICKERSON: Well, maybe I can fast  
19 forward to sort of the time line of what's happened  
20 with staff.

21 If you could just fast forward to number  
22 28, and I'll go over.

23 Some of the significant dates with  
24 respect to what has occurred with the statutory  
25 report. December 1st was when staff submitted draft

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1 interrogatories, but that was to the former Staff  
2 Director, and those were presented for the former  
3 Staff Director's and Chair's signature and approval.

4 And so I assume those were undergoing an  
5 approval process, and then there was a change in the  
6 Staff Director's office.

7 So by December 17th, the staff had  
8 revised -- I believe STAFF DIRECTOR MARCUS may have  
9 been named around the 8th, and I don't know. I mean,  
10 it was just my recollection. I think maybe he was in  
11 the building by the 13th.

12 STAFF DIRECTOR MARCUS: I came in around  
13 December 16th or 17th.

14 MS. DICKERSON: Sixteenth or 17th. Okay.

15 So the day after the new Staff Director was here,  
16 along with a mountain of other things he was dealing  
17 with, we presented the new. That's going to be where  
18 we end up.

19 We presented the new and revised  
20 interrogatories with just the signature block  
21 changed. That was December 17th.

22 On January 10th, the Staff Director had  
23 reviewed those, you know, just like we were waiting  
24 for the former Staff Director to review and comment,  
25 and he asked us to expand on some of the questions,

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1 which we did.

2 And then by the 13th of January, he gave  
3 us a little bit more guidance on some of being more  
4 specific and less vague on some of the race neutral  
5 questions.

6 Meanwhile the staff was still working on  
7 the project, and they submitted to me a draft report  
8 according to the plan that the Commission had  
9 approved last year. So the original draft came to me  
10 at that time. It was kind of sketchy and lacked some  
11 detail, but it was our first draft.

12 By the 26th, I met with the Staff  
13 Director and he gave me kind of his last changes on  
14 the interrogatories, and we revised that, and by then  
15 the concept paper, it was really a shift because  
16 there was a lot more focus on whereas the race  
17 neutral component had been a part of the original  
18 concept, we were elaborating on it so much that the  
19 concept paper necessarily, you know, became  
20 different as well.

21 So by February 1st, we had revised the  
22 interrogatories, and we submitted those for signature  
23 and approval. By the 8th we had received changes  
24 from the front office, and we sent those  
25 interrogatories to agencies.

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1           The deadline to the agencies was February  
2 28th. Most of the agencies requested extensions, and  
3 some just stated that they disliked the February 28th  
4 deadline because they were only getting it on the  
5 8th, but we only received requests for extensions  
6 from some of them.

7           By February 8th, we had received no  
8 replies to our interrogatories -- on February 28th,  
9 which was the deadline.

10           Between March 3rd and March 21st, we had  
11 received all of the interrogatories by March 21st,  
12 but we had only gotten five by March 11th.

13           By the 31st, we, the staff, submitted to  
14 me the new report draft because that had to start  
15 coming to me, and now today is April 8th. We're  
16 hoping to get some guidance on which of these  
17 directions we're supposed to go. By the 11th, the  
18 draft report is due to the Staff Director.

19           And then the last date I have posted  
20 here, May 24th through June 8th is legal sufficiency  
21 review. The 24th through June 8th is also the  
22 editorial review. According to the schedule or, you  
23 know, what we could see as a doable revised schedule,  
24 by June 16th we would give it to the Staff Director  
25 in the hope that that would be the version that would

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1 go to the Commissioners, and their review would be  
2 simultaneous with affected agencies, which would be  
3 June 16th through 29th, and I assume looking to a  
4 discussion in July, at the July meeting.

5 Those are a review of some of the things  
6 that occurred. Maybe it would be helpful then to go  
7 back to two to talk.

8 VICE CHAIRMAN THERNSTROM: Yeah, let's do  
9 that.

10 MS. DICKERSON: Okay. Oh, back to one,  
11 yeah. That's right.

12 VICE CHAIRMAN THERNSTROM: That one.

13 MS. DICKERSON: Yeah. So because of the  
14 more specificity that we were getting from the front  
15 office, the focus of the project really did change  
16 from how Adarand changed procurement strategies to  
17 how agencies are really implementing race neutral  
18 strategies to achieve contracting goals.

19 In the original version we were going to  
20 look at minority and women owned businesses, and in  
21 the revised version we're only looking at minority  
22 owned businesses. This is partly because -- well,  
23 I'll get to that in the next slide.

24 And then in the original we were going to  
25 look at procurement trends, 1994 to 2004. That was

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1 really because we were looking at right after  
2 Adarand, but then in the revision we were only  
3 looking at what agencies had been able to implement.

4 So we were looking at programs that they had  
5 started, 2000 to 2004.

6 The HUBZone project or program that Mr.  
7 Kirsanow referred to didn't even start I don't think  
8 until about 2000. So agencies had to have time to  
9 get those programs in place that were going to  
10 comport with Adarand, and so we changed the date of  
11 what we were looking at from 1994 to beginning with  
12 2000.

13 I want to amplify the second bullet. Can  
14 you put the next slide up?

15 I want to amplify the second bullet is  
16 reasons we're not studying the women owned -- it's  
17 number three -- reasons that we're not looking at the  
18 women owned businesses along with minority owned  
19 firms.

20 Number one, because different legal  
21 standards apply to women owned procurement. Women  
22 owned firms are subject to intermediate and not  
23 strict scrutiny, and agencies sometimes nonetheless  
24 apply policies to both, but the legal basis for doing  
25 so is very different.

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1           So I think we probably would have,  
2           irrespective of which direction we had gone, we would  
3           have had to come to that conclusion anyway, that it's  
4           almost a separate study to look at women owned firms.

5           There's a different program infrastructure. There  
6           are, you know, sometimes women owned procurement  
7           offices that are separate from the minority offices  
8           within agencies. There are, as I said, different  
9           statutory mandates, and the character of women owned  
10          businesses is different.

11          So that component wouldn't be addressed  
12          at this point.

13          And another aspect of the changed  
14          emphasis is that we would not be relating procurement  
15          trends to Adarand. That is foremost, I guess because  
16          we didn't ask for data exactly post Adarand. As I  
17          said, we made the data request from 2000 to 2004, and  
18          not 1994 or pre-Adarand through 2000 because the  
19          whole nature of the project changed. We really  
20          weren't looking at procurement post Adarand.

21          But within that there were also so many  
22          other legislative and regulatory changes, changes to  
23          federal acquisition streamlining, changes to small  
24          business programs and policy. Those probably could  
25          not be isolated anyway and analyzed separately from

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1 the effects of the Adarand decision.

2 I guess I'm kind of getting into some of  
3 our findings, preliminary findings, with you at this  
4 point. So it's advantageous that I'm able to present  
5 this to you, but this is another component of the  
6 original concept that we would not be able to  
7 deliver, but I don't think we would have been able to  
8 get to this anyway even if we had ten years' worth of  
9 data. We would have been able to look at trends a  
10 little bit more from 1994 to 2004, but I don't think  
11 we would have been able to isolate the effects of  
12 Adarand from all of the other legislative and  
13 regulatory changes that have occurred in that ten-  
14 year period.

15 CHAIRMAN REYNOLDS: Okay. Ms. Dickerson,  
16 before you go on, going back to Vice Chair  
17 Thernstrom's point, the shift from looking at  
18 procurement to race neutral policies, do we have  
19 sufficient information to do both, sufficient  
20 information and time?

21 MS. DICKERSON: Oh, to do both? Yes, we  
22 can do some aspects of the original and as well as  
23 the race neutral piece.

24 CHAIRMAN REYNOLDS: And still meet the  
25 deadlines that were in that earlier --

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1 MS. DICKERSON: Yes, provided we get that  
2 specific direction from you today.

3 VICE CHAIRMAN THERNSTROM: You know, I  
4 understand your point here, looking at trend lines  
5 from '94 to '04 you can't separate out the effects of  
6 Adarand from other legislative and regulatory  
7 changes, but nevertheless the trend lines in  
8 themselves are interesting to me.

9 You know, I think if it's possible for  
10 you to provide information on them worth looking at.

11 MS. DICKERSON: It's not on the slide,  
12 but I do have kind of an idea of an outline that the  
13 staff has generated in this whole discussion of  
14 what's possible to cover at this point, which I would  
15 like to -- there would be six chapters, and I'm only  
16 -- would only indicate broadly what they would cover  
17 just to give an indication of what would be covered  
18 and what wouldn't.

19 Chapter 1 would certainly just be the  
20 introduction, scope, methodology, et cetera, overview  
21 of the Adarand case, narrow tailoring what it means,  
22 strict scrutiny, all of that, the DOJ guidance, just  
23 sort of like to lay the landscape for what  
24 procurement is all about and has been in the last ten  
25 years.

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1 Chapter 2 is based on data that we  
2 received from agencies, and as well as literature  
3 review. We would present data on federal  
4 contracting, data on minority owned businesses,  
5 federal contract growth, barriers to contract  
6 opportunities, et cetera. We would really deal with  
7 procurement and looking at the seven agencies that  
8 we're now looking at.

9 Maybe you can just post the seven  
10 agencies, Teresa so that everybody has an idea of  
11 which ones we're looking at now. Do you have that?  
12 Number five, yes. Thank you.

13 In the original, we were only looking at  
14 DOD, DOT, SBA, and GSA. And in the revised we've  
15 dropped GSA because we were really looking at the GSA  
16 schedule, and effect of the GSA schedule on minority  
17 and women owned businesses and not implementation.

18 So we kind of dropped them, but we added  
19 agencies that do a fair amount of federal  
20 procurement. We added energy, housing, and urban  
21 development, Department of State, and the Department  
22 of Education. So now we're looking at seven  
23 agencies, and so Chapter 3 would be looking at, you  
24 know, their level of procurement with minority and  
25 women owned businesses.

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1           The third chapter we would -- would be  
2 where we would discuss race conscious aspects of  
3 federal procurement. I guess the small disadvantaged  
4 business programs, the 8(a) program, et cetera, and  
5 that was in the original proposal.

6           We also would talk about other federal  
7 programs like mentor protege program, which may or  
8 may not be race specific depending on the agency and  
9 also the HUBZone program, which is a non-race --  
10 well, it does have race conscious aspects, but it was  
11 something that was implemented after Adarand.

12           Chapter 4 would focus specifically on  
13 race neutral alternatives in federal contracting.  
14 Some of the ones that have been identified so far in  
15 the research are, for example, financial assistance,  
16 relaxed bonding requirements, unbundling of  
17 contracts, outreach and technical assistance, those  
18 things that do not have race conscious aspects.

19           How agencies define race neutrality and  
20 narrow tailoring, and this we would get from the  
21 interrogatories that we've sent. The programs and  
22 strategies that benefit all small businesses  
23 irrespective of gender or race.

24           And then Chapter 5 would be any other  
25 elements of narrow tailoring. For example,

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1 enforcement, and again, I'm kind of getting into  
2 findings, but one of our chief findings is that there  
3 really isn't an enforcement mechanism within all of  
4 this. I mean, all of these agencies have Title VI  
5 responsibilities, but there's not really an agency or  
6 an entity that is functioning making sure that these  
7 programs do not have discrimination. So there's not  
8 an enforcement aspect to it.

9           Also, how do agencies measure the  
10 effectiveness of their race conscious or race neutral  
11 programs? What are they doing to determine whether  
12 they should expand these, the extent to which they  
13 should be offering them?

14           We want to make some recommendations with  
15 respect to that, how they should periodically  
16 evaluate programs, whether they're race neutral or  
17 race conscious, and the periodic evaluation and  
18 review, which don't seem to be built in very much to  
19 any of these programs.

20           And then Chapter 6, we would offer  
21 findings and recommendations.

22           VICE CHAIRMAN THERNSTROM: And as you  
23 outlined those chapters, you feel able to do the work  
24 you just depicted?

25           MS. DICKERSON: Yes.

1 VICE CHAIRMAN THERNSTROM: I mean, well,  
2 the word "capable" may have some unfortunate  
3 connotations.

4 MS. DICKERSON: Yes.

5 VICE CHAIRMAN THERNSTROM: I just meant  
6 given the time, given the staff, given, you know,  
7 whatever.

8 MS. DICKERSON: I was taking it that way.

9 VICE CHAIRMAN THERNSTROM: Yes.

10 MS. DICKERSON: But, you know, the time  
11 had definitely been compressed, and it has been a  
12 little bit of a moving target, but, yes, we do feel  
13 that we can do this.

14 There's been one person on the team from  
15 the beginning of the fiscal year. Someone joined the  
16 team around November. Dr. Rudert has been on from  
17 the beginning, and Mireille Zieseniss since about  
18 November. Ana Maria Ortiz joined that team in  
19 January, and then on a part-time basis Latrice Foshee  
20 in addition to her compliance analysis duties is also  
21 a part of that time.

22 So if we can keep that team together and  
23 moving toward those states, we ought to be able to  
24 deliver what I just said.

25 VICE CHAIRMAN THERNSTROM: Okay.

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1 CHAIRMAN REYNOLDS: Commissioner Meeks.

2 COMMISSIONER MEEKS: And so to be clear,  
3 this motion will not change the scope as Terri has  
4 outlined.

5 CHAIRMAN REYNOLDS: Geez, I don't believe  
6 so, but let me take a quick look here.

7 VICE CHAIRMAN THERNSTROM: Well, let's  
8 ask Commissioner Kirsanow. Do you envision that this  
9 motion would have an impact on the --

10 COMMISSIONER KIRSANOW: I am not the  
11 proponent of the motion.

12 VICE CHAIRMAN THERNSTROM: I thought you  
13 were. I'm sorry.

14 COMMISSIONER KIRSANOW: I'm simply the  
15 mouthpiece.

16 CHAIRMAN REYNOLDS: I believe that the  
17 motion as drafted is broad enough so that it would  
18 encompass the approach that's just been discussed.

19 COMMISSIONER MEEKS: Well, I mean, I can  
20 support this motion as long as the contents that  
21 Terri has outlined is included in the report.

22 VICE CHAIRMAN THERNSTROM: And I would  
23 second that.

24 COMMISSIONER TAYLOR: Can we ask Terri  
25 what her view of it is?

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1 CHAIRMAN REYNOLDS: Oh, sure, sure.

2 MS. DICKERSON: Yes. I believe if I  
3 heard the motion correctly that we are --

4 VICE CHAIRMAN THERNSTROM: Terri, let's  
5 have you look at the exact wording.

6 MS. DICKERSON: Okay. Thank you.

7 Yes, it is true. The only thing that it  
8 doesn't have, which isn't addressed in the motion or  
9 what I just said is, you know, we would like to skip  
10 the women owned business piece.

11 VICE CHAIRMAN THERNSTROM: Right.

12 MS. DICKERSON: Okay. So, yes, I think  
13 this comports with our new outline.

14 CHAIRMAN REYNOLDS: Commissioner Yaki.

15 COMMISSIONER YAKI: Seeing as this is a  
16 motion that was the progeny of a discussion that  
17 Commissioner Braceras and I had at the last meeting  
18 and given that Terri has committed her team to get  
19 this done, I'm satisfied and will support the motion  
20 and move it.

21 CHAIRMAN REYNOLDS: Any other questions  
22 or comments?

23 VICE CHAIRMAN THERNSTROM: But I second  
24 moving it.

25 CHAIRMAN REYNOLDS: Okay. We've had the

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1 discussion. Unless there are additional questions or  
2 comments, Jennifer, anything from you?

3 COMMISSIONER BRACERAS: No. I obviously  
4 couldn't see the visuals, but everything that Terri  
5 spoke about seemed on track with what I had hoped to  
6 have the Commission produce. So that sounds great.

7 CHAIRMAN REYNOLDS: Okay. All in favor  
8 say aye.

9 (Chorus of ayes.)

10 CHAIRMAN REYNOLDS: All in opposition say  
11 nay.

12 (No response.)

13 CHAIRMAN REYNOLDS: Okay. The motion  
14 carriers.

15 **VI.Future Agenda Items**

16 Okay. Now, future agenda items. Are  
17 there any times that the Commissioners definitely  
18 want to discuss at our next meeting?

19 VICE CHAIRMAN THERNSTROM: Don't you have  
20 one that you wanted to discuss?

21 PARTICIPANT: I thought we were short on  
22 one motion.

23 CHAIRMAN REYNOLDS: Actually that motion  
24 wasn't circulated.

25 COMMISSIONER BRACERAS: I thought there

1 was another motion.

2 CHAIRMAN REYNOLDS: Yes, there was a  
3 another motion, but after discussion, it was not  
4 clear that this motion was circulated, and I believe  
5 that our Commission rules require that motions be in  
6 writing and be circulated so that Commissioners would  
7 have an opportunity to review them before the  
8 meeting.

9 VICE CHAIRMAN THERNSTROM: That is  
10 correct.

11 COMMISSIONER YAKI: Which motion are we  
12 talking about?

13 VICE CHAIRMAN THERNSTROM: Special ed.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER YAKI: I haven't seen that.

16 VICE CHAIRMAN THERNSTROM: Yeah. No, we  
17 have to have prior notification.

18 CHAIRMAN REYNOLDS: Okay. May I have a  
19 motion to adjourn?

20 VICE CHAIRMAN THERNSTROM: So moved.

21 CHAIRMAN REYNOLDS: Second?

22 COMMISSIONER MEEKS: Second.

23 COMMISSIONER KIRSANOW: Before doing so,  
24 I just wanted to make note, and I should have done it  
25 earlier during the announcements portion, of the

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1 passing of John Paul II, who probably is one of the  
2 chief human rights activists in the history of the  
3 last 100 years.

4 Anyone reading Veritatis Splendor, Gospel  
5 of Truth, or any of his other writings see him not  
6 just as a human rights activist but, by extension, a  
7 civil rights activist, and I think his passing is  
8 obviously mourned by millions, if not billions,  
9 throughout the world.

10 COMMISSIONER BRACERAS: Thank you, Pete.  
11 I agree with that statement.

12 CHAIRMAN REYNOLDS: Okay. Well, folks,  
13 until we meet again, this meeting is adjourned.

14 (Whereupon, the foregoing matter went off  
15 the record at 11:54 a.m. and went back on  
16 the record at 11:55 a.m.)

17 CHAIRMAN REYNOLDS: Commissioner Meeks'  
18 appointment is coming to an end. I hope that she is  
19 reappointed. While we have disagreements on the  
20 substantive issues, I believe that her voice adds to  
21 the --

22 COMMISSIONER BRACERAS: Hello?  
23 (Laughter.)

24 CHAIRMAN REYNOLDS: Welcome back,  
25 Jennifer.

1                   COMMISSIONER YAKI: We thought your baby  
2 was teething on the microphone there.

3                   CHAIRMAN REYNOLDS: Jennifer, I was just  
4 commenting, well, just pointing out that Commissioner  
5 Meeks, her term is up, and I was saying that I hope  
6 that you're reappointed.

7                   .                   Again, while we have a different approach  
8 to dealing with these issues, I think that you have  
9 taken principled positions and that the manner in  
10 which you have disagreed has been a model. This is  
11 how this agency should operate, where we have people  
12 who have different views, but who understand the  
13 importance of fighting in a respectful manner.

14                   So I want to thank you for the quality of  
15 conversations that we've had since December, and  
16 again, if it were my decision, you would be  
17 reappointed. So I keep my fingers crossed.

18                   VICE CHAIRMAN THERNSTROM: I would like  
19 to kind of second that. I'd very much like to see  
20 Commissioner Meeks reappointed, and I don't think of  
21 her as somebody I will necessarily disagree with in  
22 the end to all matters at all, and I think this is a  
23 remarkably collegial group as it stands, and she is  
24 part of that collegiality.

25                   And I have a great deal of respect for

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1 her opinions when I agree with them and when I  
2 disagree with them. So I hope that she will be back  
3 sitting in that chair, and I hope that there's some  
4 way of communicating to the minority in Congress our  
5 hopes.

6 COMMISSIONER MEEKS: And if I can just  
7 say I actually am pleasantly surprised to say that I  
8 think we've had some good agreement and that we've  
9 also been able to disagree. I agree with that.

10 This has been a learning experience, and  
11 I've said that I had a lot to learn, and so this has  
12 been quite an education for me these last six years.

13 The one message I did send, you know, to  
14 the powers that be is that whether I get appointed or  
15 not, I really very much have an interest in someone  
16 from Indian Country being appointed because I think  
17 these issues need to continue to be looked at.

18 And so it's with mixed emotions then I  
19 say goodbye or maybe I'll say hello.

20 VICE CHAIRMAN THERNSTROM: Right.

21 CHAIRMAN REYNOLDS: Until we meet again.

22 VICE CHAIRMAN THERNSTROM: Thank you very  
23 much. I'm glad that you remembered that, Jerry.

24 CHAIRMAN REYNOLDS: On, no, actually it  
25 was Commissioner Yaki.

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VICE CHAIRMAN THERNSTROM: Oh. I'm glad  
Commissioner Yaki remembered it.

CHAIRMAN REYNOLDS: Okay. We're now  
adjourned.

(Whereupon, at 11:58 a.m., the Commission  
meeting was concluded.)