

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, May 13, 2005

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

PRESENT:

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

STAFF PRESENT:

JOHN BLAKELEY
TERESA BROOKS
CHRISTOPHER BYRNES
DEBRA CARR, ESQ., Associate Deputy Staff Director
IVY DAVIS, Chief, Regional Programs Coordination Unit
BARBARA DELAVIEZ

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STAFF PRESENT (Continued):

TERRI DICKERSON, Assistant Staff Director

PAMELA A DUNSTON, Chief, Administrative Services and
Clearinghouse Division

BARBARA FONTANA

LATRICE FOSHEE

LIA GARVIN, Intern

DORELLE GRAY

ALFREDA GREENE

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

SETH JAFFE

ELLEN LIU, Intern

SOCK-FOON MACDOUGALL

TINALOUISE MARTIN, Director for Management, Office of
Management

EMMA MONROIG, Solicitor/Parliamentarian

ANNA MARIA ORTIZ

JENNY PARK

VANESSA WILLIAMSON

AUDREY WRIGHT

TIFFANY WRIGHT

MIREILLE ZIESENISS

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COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS

LISA NEUDER

KIMBERLY SCHULD

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

2 (9:38 a.m.)

3 **I. Approval of Agenda**

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

6 The first item on the agenda is the
7 approval of the agenda. May I have a motion to
8 approve the agenda?

9 VICE CHAIRMAN THERNSTROM: So moved.

10 CHAIRMAN REYNOLDS: Second?

11 COMMISSIONER YAKI: Second.

12 CHAIRMAN REYNOLDS: Okay. All in favor
13 indicate by saying aye.

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Okay. Any in
16 opposition?

17 (No response.)

18 CHAIRMAN REYNOLDS: Okay. The motion
19 passes.

20 **II. Approval of Minutes of April, 8, 2005 Meeting**

21 The second item is the approval of the
22 minutes of the April 8th meeting. May I have a
23 motion?

24 COMMISSIONER BRACERAS: So moved.

25 CHAIRMAN REYNOLDS: May I have a second?

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1 COMMISSIONER TAYLOR: Second.

2 CHAIRMAN REYNOLDS: Any changes,
3 discussions?

4 COMMISSIONER BRACERAS: Yes, small change
5 actually. It lists me as present, but actually I came
6 in by telephone, and in the past that had been
7 indicated if somebody was not physically present but
8 was participating electronically that was mentioned.
9 So I just thought to be clear that should be changed.

10 CHAIRMAN REYNOLDS: Okay. Do we have any
11 objections to that change?

12 (No response.)

13 CHAIRMAN REYNOLDS: Okay. Very good.

14 COMMISSIONER YAKI: Next time we'll just
15 get a little cardboard cutout and put it.

16 (Laughter.)

17 CHAIRMAN REYNOLDS: Go for it.

18 VICE CHAIRMAN THERNSTROM: Jennifer, you
19 were so present we couldn't tell the difference.

20 CHAIRMAN REYNOLDS: Okay. Let's see. We
21 need to vote on the motion as amended. All in favor?

22 (Chorus of ayes.)

23 CHAIRMAN REYNOLDS: Any in opposition?

24 (No response.)

25 CHAIRMAN REYNOLDS: The motion passes.

7
III. Announcements

1
2 Next up are the announcements. The first
3 thing I'd like to do is to point out that Commissioner
4 Yaki has been reappointed to a six-year term ending
5 May 3rd, 2001. This has been included in the
6 Congressional Record.

7 Commissioner Yaki, I'm glad to see that
8 you're still with us.

9 COMMISSIONER YAKI: Thank you.

10 CHAIRMAN REYNOLDS: Now, if you could help
11 us get Elsie back I'd appreciate it.

12 (Laughter.)

13 CHAIRMAN REYNOLDS: Okay. Also, I am
14 pleased to announce that May is the month in which
15 Mexicans and Americans of Mexican descent celebrate
16 the holiday of Cinco de Mayo, the 5th of May. Cinco
17 de Mayo commemorates a joyful moment in Mexican
18 history, the victory of an outnumbered Mexican militia
19 led by General Zaragoza over the French army at the
20 Battle of Pueblo in 1862.

21 The U.S. Civil Rights Commission
22 encourages all Americans to enjoy these cultural
23 celebrations while also learning about the
24 contributions that more than 25 million men and women
25 of Mexican origin make to American culture every day.

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Also, I would like to announce that May 5th was Holocaust Remembrance Day, a day of commemoration for Jews who perished and those who showed resistance and heroism during the Holocaust. As many of you are aware, the Holocaust is the term used to refer to the period from 1933 to 1945 before and during World War II where Adolph Hitler and Nazis systematically persecuted and murdered nearly six million Jews. More than one third of world Jewry, as well as another five million non-Jews throughout Europe, were killed during this time period. So as we take these few minutes to say these insignificant words of remembrance, it is more important to leave here today with a renewed sense of vigilance and responsibility in order that we can some day say with the pride that only comes with accomplishment, "Never again."

Commission staff is serving on the steering committee of the U.S. Interagency Committee on the Holocaust. In addition, the Commission was a sponsor of the 12th Annual Interagency Holocaust Program.

On May 11th, 2005, over 20 federal agencies sponsored the event marking the remembrance of the Holocaust, which highlighted the attempted

1 genocide in Rwanda in 1994. The event features
2 survivors of both the Holocaust and Rwanda.

3 I am pleased to announce that May 8th
4 through the 15th is Jewish Heritage Week. During
5 Jewish Heritage Week, we celebrate and honor Jewish
6 Americans with their contributions to this country and
7 for their helping to shape our national character.
8 Jewish Americans' commitment to excellence has
9 enriched our nation and enhanced American culture.

10 As we celebrate Jewish Heritage Week, the
11 U.S. Commission on Civil Rights encourages all
12 Americans to celebrate the contributions of Jewish
13 Americans to the United States with appropriate
14 programs and activities.

15 Okay. A man who has shaped my view of the
16 world died recently. I would like to pay tribute to
17 Harold Wright Cruse, a prominent voice in black social
18 and political thought, perhaps best known for his 1967
19 book *The Crisis of the Negro Intellectual*. He died
20 May 25th in Ann Arbor, Michigan at the age of 89.

21 Mr. Cruse was born in Petersburg,
22 Virginia, where he grew up in New York. While he was
23 determined at an early age to be a writer, he also
24 became interested in the arts owing to an aunt who
25 took him to black vaudeville shows on the weekend.

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1 He joined the Army during World War II and
2 served in Italy, North Africa, Northern Ireland and
3 Scotland.

4 After the war, he attended the George
5 Washington Carver School in Harlem and was exposed to
6 civil rights leaders W.E.B. Dubois during a lecture.

7 Mr. Cruse briefly attended City College in
8 New York. He also wrote for newspapers, magazines,
9 and taught black history at the Black Arts Repertory
10 Theater in Harlem. In 1967 at the time of race riots
11 and integration fears, Mr. Cruse wrote Crisis, an
12 Indispensable History and Urgent Critique of the Black
13 Left from the Harlem Renaissance through the Black Art
14 Movement.

15 From Harlem cultural institutions to
16 broader issues, such as mass media, communism,
17 black-Jewish relationships, and the revolutionary use
18 of force, Cruse searched out an authentic black
19 culture based on political self-consciousness and
20 economic independence. At the time the New York Times
21 Review predicted that the book will infuriate almost
22 everyone, and it did.

23 In 1968, Mr. Cruse became a professor at
24 the University of Michigan and taught African American
25 studies. He played a major role in starting the

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1 University Center for Afro-American and African
2 studies.

3 I am saddened by Mr. Cruse's death and
4 convey deepest sympathy to his family and friends. I
5 ask the Commission to join with me in paying tribute
6 to Harold Wright Cruse, an important voice in American
7 political and social thought.

8 Do we have any other announcements? Yes,
9 Commissioner Yaki.

10 COMMISSIONER YAKI: Yes, thank you very
11 much, Mr. Chair, and thank you for the honor
12 of announcing that May 2005 is Asian Pacific American
13 Heritage month. Americans have celebrated Asians and
14 Pacific Islanders in the U.S. during the month of May
15 since 1978.

16 The month of May actually was chosen to
17 commemorate the immigration of the first Japanese to
18 the United States on May 7th, 1943, and to mark the
19 anniversary of the completion of the transcontinental
20 railroad on May 10th, 1869, in which Asian Americans
21 participated in making that connection.

22 Asian Pacific Islanders in America had
23 profoundly influenced many aspects of American
24 culture, including scientific progress, architectural
25 achievement, music and art, contributing to their

1 significant overall contribution to the United States.

2 I would add at this time there are 13 and
3 a half million Asian Americans in the United States.
4 Of those who are foreign born, 52 percent are now U.S.
5 citizens, which contrasts with 38 percent of average
6 for foreign born in the United States today, and in
7 particular, as a lawyer, it was a Chinese American who
8 was the first case under the equal protection clause
9 of the 14th Amendment, called Yuquo v. Hopkins, in my
10 home town, San Francisco, where there were
11 supervisors, which I also sat on many, many, many eons
12 ago, who decided that everyone could have a laundry
13 except the Chinese, and they said, "Well, I don't
14 think that's right." They brought a case and they
15 actually won.

16 That was the first interpretation of the
17 equal protection clause.

18 Another San Franciscan, a Chinese American
19 named Wong Kim Ark (phonetic), established the
20 principle that those who are born in the United States
21 are citizens of the United States. He was born in the
22 U.S. He went back to China for a visit, and when he
23 tried to return, the United States at that time had
24 the anti-Chinese immigration acts on the books.

25 He said, "I was born here. I'm a

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1 citizen."

2 They said, "No, you're Chinese. You're
3 not."

4 He took it to the United States Supreme
5 Court, and he won. So as we celebrate Asian Pacific
6 American Heritage Month, the United States Commission
7 on Civil Rights encourage all Americans to celebrate
8 the extraordinary contributions and the
9 accomplishments of Asian Pacific Americans with
10 community festivals, education activities, and
11 meetings such as this,

12 COMMISSIONER YAKI: Mr. Chairman, I don't
13 know when is appropriate, but I had earlier E-mailed
14 everyone on the Commission about the incident in
15 Nevada and did not know when would be an appropriate
16 time to bring that up. Should it be later in the
17 agenda?

18 CHAIRMAN REYNOLDS: Let's do it now.

19 COMMISSIONER YAKI: Okay. So on the heels
20 of the fact that this is Asian Pacific American
21 Heritage month, there was an incident in Nevada that
22 brings up why our civil rights laws are so important
23 and also why this Commission is so important.
24 Japanese American educator in southern Nevada is
25 having an elementary school named after him this week.

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1 Last week a white supremacist group called
 2 the National Alliance began distributing flyers in his
 3 neighborhood decrying the values of diversity and
 4 other things which in polite company we choose not to
 5 repeat.

6 The National Alliance has a chapter in Las
 7 Vegas of all places, and there were also some
 8 coincidental, we hope, leavings of dead animals on the
 9 doorstep of said former principal and others in the
 10 community of Asian American descent.

11 The Nevada State Advisory Committee has
 12 called for a Department of Justice investigation, and
 13 I would move to suspend the rules and allow a motion
 14 to ask the staff director to write a letter to the
 15 Department of Justice asking them to investigate the
 16 incident as well on behalf of the United States
 17 Commission on Civil Rights.

18 CHAIRMAN REYNOLDS: Do we have a second?

19 COMMISSIONER TAYLOR: Second.

20 CHAIRMAN REYNOLDS: Okay. A vote. All in
 21 favor.

22 (Chorus of ayes.)

23 CHAIRMAN REYNOLDS: Any in opposition?

24 (No response.)

25 CHAIRMAN REYNOLDS: The motion passes.

1 VICE CHAIRMAN THERNSTROM: I actually
2 wanted to ask Commissioner Yaki a question.

3 Do we know that the Justice Department has
4 made no move?

5 COMMISSIONER YAKI: At this time there
6 hasn't been anything one way or another. I just
7 checked this morning. Obviously local police are
8 concerned about it, but this may be -- since this is a
9 national group, I think there's some concern about the
10 fact that it actually formed a formal chapter in
11 Nevada and what activities it may be doing.

12 I wouldn't be surprised if they were
13 already on a watch list of some sort or another, but
14 I'd like to see at least our expression of support for
15 any such investigation be conveyed.

16 CHAIRMAN REYNOLDS: Okay. Do we have any
17 other announcements?

18 COMMISSIONER TAYLOR: Mr. Chairman.

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER TAYLOR: I wanted to make a
21 motion that's for the National Guard and Reserve.

22 CHAIRMAN REYNOLDS: Well, before we do
23 that, let me finish up with the announcements.

24 COMMISSIONER TAYLOR: Announcements?
25 Okay.

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CHAIRMAN REYNOLDS: Okay. I have some announcements related to personnel moves. I am going to announce that Deborah Reid has left the Office of General Counsel. Deborah Reid was an attorney advisor in the Office of the General Counsel, and she left the Commission earlier this week after ten years of excellent and dedicated service.

Deborah has accepted a position as staff attorney at the National Health Law Program where she will focus on legal analysis of health care issues. On behalf of the Commission, I wish her the best of luck in her new endeavors and thank her for her work at the Commission.

Also, I'd like to announce that John Wynn, a second year law student at George Washington University Law School, has begun a summer internship with the Office of General Counsel. Is Mr. Wynn present?

Okay. Well, take a bow. Welcome aboard.

COMMISSIONER YAKI: Who's the guy in the suit in the back?

(Laughter.)

CHAIRMAN REYNOLDS: Well, I'm sure that he'll be in his jeans tomorrow.

But in any event, his internship at the

1 Commission is being funded by the Patton Boggs Public
 2 Policy Scholarship. Prior to interning at the
 3 Commission, John worked as a research assistant at the
 4 George Washington Law and Public Justice Advocacy
 5 Clinic, as well as completing internships at the Fair
 6 Housing Alliance in Washington, D.C., and the New
 7 Orleans Fair Housing Action Center.

8 And finally, I would like to take this
 9 opportunity to thank Lia Garvin, an intern in the
 10 Eastern Regional Office on behalf of the Commission
 11 for her work over the summer. Ms. Garvin is a native
 12 of San Francisco, California, and she is a third year
 13 sociology student at UCLA.

14 Lia's internship was completed under the
 15 auspices of UCLA's Center for American Politics and
 16 Public Policy.

17 Thank you, Lia. Are you here? Okay.

18 COMMISSIONER YAKI: From San Francisco?

19 MS. GARVIN: Yes.

20 COMMISSIONER YAKI: And you went to UCLA?

21 Oh, dear.

22 (Laughter.)

23 CHAIRMAN REYNOLDS: Commissioner Yaki --

24 COMMISSIONER YAKI: I'm just kidding. My
 25 parents went to UCLA.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki, I'm
2 surprised that you haven't straightened her out and
3 that you haven't had her transferred.

4 (Laughter.)

5 COMMISSIONER YAKI: I can arrange that.

6 CHAIRMAN REYNOLDS: Okay. At this point I
7 don't have any other announcements. Do we have any
8 other announcements?

9 (No response.)

10 CHAIRMAN REYNOLDS: Okay. Commissioner
11 Ashley Taylor, if you don't mind, I'd like to wait
12 until we get to -- well, a little further in the
13 proceedings before we deal with motions. At this
14 point though, I would like to hear from the Staff
15 Director. I'd like to hear the Staff Director's
16 report.

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

18 STAFF DIRECTOR MARCUS: Thank you, Mr.
19 Chairman, Madam Vice Chairman and Commissioners.

20 If it please the Commissioners, I'd like
21 to supplement my written report this month with
22 additional remarks concerning management and
23 operations, and I'd like to begin with a few remarks
24 regarding the Anti-deficiency Act.

25 I have indicated in prior meetings of this

1 Commission that there have been concerns raised
2 regarding whether the Commission has complied with the
3 Anti-deficiency Act during 2004, and prior years there
4 have, in fact, been issues raised regarding 2002,
5 2003, and 2004. Our legal and financial staff have
6 been looking very closely at these issues for some
7 time, and I expect that we will shortly be required to
8 report to the White House, Congress, and others that
9 there was, in fact, a violation of the Anti-deficiency
10 Act during 2004.

11 That was the year in which it appears that
12 approximately \$75,000 in rent was deferred from
13 September 2004 into the 2005 fiscal year. We are
14 developing both a report regarding that deferral and
15 the ramifications of that deferral as well as
16 developing procedures to insure that we will comply
17 with the Anti-deficiency Act in the future.

18 Anti-deficiency Act matters are, of
19 course, an extremely serious legal matter. They
20 relate to the power of Congress over the purse. There
21 are both civil and potentially criminal violations,
22 penalties for violation of the Anti-deficiency Act.
23 So we have been taking this research very seriously
24 regarding 2004. More work will need to be done
25 regarding 2003 or prior issues as well.

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Now, it is in the context of our concern to insure that we live within our means and not violate the Anti-deficiency Act during this fiscal year that we have looked very closely at the projected deficits that we assessed during the last couple of meetings.

As you know, we have discussed in the past projections that if we did not make changes to our financial affairs, we had an anticipated budget deficit of \$265,000. We made a series of interim financial corrections which reduced that figure.

For instance, several of the Commissioners have agreed not to obtain the services of special assistants during this fiscal year. Through measures of this sort, we were able to reduce the projected deficit to \$135,000 during this year.

We also took a number of other steps to try to reduce that number even further. They included, for instance, offering voluntary early retirement, as well as placing a freeze on new-hires and a freeze on spending. Those were very significant cuts.

We also had a discussion last month about more significant reforms that would be necessary in order to live within our budget not only during this

1 fiscal year, but during the next fiscal year when we
2 anticipate that the deficit could expand further.

3 Those measures that were agreed to by the
4 Commissioners included a four-person reduction in
5 force this fiscal year, an additional furlough of any
6 number of days necessary in order to close the gap, as
7 well as the closure of two offices during the next
8 fiscal year, with an estimated date of October 31st.
9 We have identified the two offices for which a closure
10 is recommended as being Denver and Kansas City.

11 I would like to report that since the last
12 meeting there have been a number of changes in our
13 financial condition, which have lessened some of the
14 impacts of the financial concerns that we mentioned.
15 The Chairman has just announced the departure of one
16 of the attorneys in the Office of General Counsel,
17 Deborah Reid.

18 In addition, we have had further
19 attrition. There are three members of the staff who
20 have been separated since the last meeting. That
21 attrition has more than halved the remaining deficit
22 for this fiscal year.

23 In addition, we have had other financial
24 developments which have impacted positively on our
25 financial condition for this fiscal year. For

1 example, as you are aware, there remain two vacancies
2 on the Commission. By virtue of the fact that we have
3 no had expenditures for those two Commissioners as
4 well as the special assistants, we have had further
5 reductions in the projected spending.

6 Moreover, we have taken a number of other
7 measures in order to reduce costs. As you may recall
8 during the last meeting, Commissioners urged that we
9 look at further means of trying to reduce the fiscal
10 consequences of our tight budget. We have done a
11 number of them.

12 In addition to -- well, to begin with,
13 many of us have availed ourselves of an option that
14 management provided last month to take voluntary leave
15 without pay. Several staff members have committed to
16 taking some period of time without pay.

17 We have worked with GSA and agReid to give
18 back a substantial amount of space on the fifth floor
19 and the seventh floor of headquarters. We have also
20 sought a waiver on our obligation to pay rent for
21 headquarters for the month of September of this year,
22 although we have not gotten a response back.

23 In addition, we've received determinations
24 from the Office of General Counsel that we are not
25 obligated to make certain payments out of this fiscal

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1 year's appropriations that we had otherwise
2 anticipated that we would have to pay.

3 Moreover, we have made a large number of
4 cost cutting measures. I would say that these cost
5 cutting measures have been difficult, but they have
6 been really a team effort. Some of them were
7 suggested by the Commissioners. Some were developed
8 by management. Other cost cutting measures were
9 developed and recommended by employees either directly
10 or working through the union. They are starting to
11 work.

12 Between the various measures that I've
13 just discussed and especially attrition since the last
14 meeting, as well as the vacancies on the Commission
15 and the lower use of Commissioner time than expected,
16 we are in a better financial situation this month than
17 it appeared last month.

18 Given the savings from attrition and from
19 the other measures that I have discussed, I am
20 recommending that we hold off for the time being on
21 those financial corrections that would have required
22 immediate actions and specifically, the reduction in
23 force that would otherwise have taken place today.

24 Given the attrition and given the effect
25 of some of the other savings, my recommendation and

1 what I plan to do if it is agreeable with the
2 Commissioners is to hold off until at least the next
3 month's meeting to see whether we continue to enjoy
4 these savings and to at least temporarily withdraw the
5 reprogramming request sent to appropriations that
6 indicated, among other things, the need to do a
7 reduction of four persons during this fiscal year.

8 Some of the measures that I've just
9 described will affect 2006, as well as 2005, and
10 others will not. We will need to assess the extent to
11 which they help us with 2006. The fact is that we
12 still expect that the 2006 fiscal year will have a
13 substantial shortfall notwithstanding the items that I
14 just discussed, but more analysis is going to be
15 required by our financial staff between this meeting
16 and the next.

17 At this point I would say we are still
18 under extremely tight financial circumstances. We
19 still have not only a significant financial challenge
20 for this year, but also an anticipated serious
21 financial challenge for next year. But given the
22 attrition and the other circumstances that I just
23 described, I am hopeful that we can at least hold off
24 on some of the measures that would otherwise have had
25 an immediate serious consequence on at least certain

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1 staff members.

2 CHAIRMAN REYNOLDS: Okay. Just looking at
3 some of the measures that we took that resulted in a
4 savings, it seems to me that most of these are one-
5 time savings, and most of them do not do anything to
6 deal with our structural deficit. Is that a correct
7 assessment?

8 STAFF DIRECTOR MARCUS: It's a correct
9 assessment that it's a mixed bag. Some of these will
10 affect us in future years, and some of them will not.

11 So that, for instance, the give-back of office space
12 should help us with next year, but the voluntary leave
13 without pay will not help us for next year.

14 So some of them will help, but in general
15 they do not as a whole provide the same level of
16 relief for next year --

17 CHAIRMAN REYNOLDS: Isn't the office
18 space, handing over some office space, isn't that the
19 only measure that's going to result in savings for
20 '06?

21 STAFF DIRECTOR MARCUS: That and the
22 attrition.

23 CHAIRMAN REYNOLDS: Well, that wouldn't
24 include the Commissioner vacancies and the fact that
25 Commissioners have not hired -- some Commissioners

1 have not hired special assistants.

2 STAFF DIRECTOR MARCUS: That's correct,
3 and some of the attrition, at least one of the three
4 people was a special assistant to a Commissioner. So
5 if we assume for budgetary purposes that all
6 Commissioners fill their special assistant positions
7 for next year, this will not help the 2006.

8 CHAIRMAN REYNOLDS: Okay. So the bottom
9 line, if I got this right, is that these measures will
10 help us for fiscal year '05, but we're going to be in
11 the same boat that we're -- we're going to be in a
12 similar situation next year.

13 STAFF DIRECTOR MARCUS: I expect that we
14 will still face a shortfall for next year apart from
15 the financial corrections we've discussed. In other
16 words, without those corrections, we will have a
17 shortfall next year.

18 CHAIRMAN REYNOLDS: You've had
19 conversations with the Bureau of Public Debt. Could
20 you let us know, give us a sense of how much it's
21 going to cost? What are the estimates for using its
22 services?

23 STAFF DIRECTOR MARCUS: I'd be happy to,
24 Mr. Chairman.

25 The Bureau of Public Debt, as the

1 Commissioners may inquire, is the agency within the
 2 Department of Treasury which provided full accounting
 3 services to the Commission for a period of time up
 4 until early 2004. They terminated their relationship
 5 with the Commission, among other reasons because they
 6 were concerned that the Commission did not have in
 7 place adequate internal financial controls, and that
 8 it was not taking sufficiently seriously the
 9 Anti-deficiency Act requirements.

10 We have had various conversations with the
 11 Bureau of the Public Debt over the last several weeks
 12 to try to find out from them the nature of their
 13 concerns, what we would have to do in order to allay
 14 their concerns, what we would have to do in order to
 15 make sure that we have the sorts of controls that they
 16 are concerned about, and what we would have to do in
 17 order to be the sort of agency that they would be
 18 willing to do business with.

19 They have discussed with us their
 20 concerns, and I think that they are consistent with
 21 the requirement of the sorts of reforms that we have
 22 been talking about as a group, and consistent with the
 23 sorts of reforms that we are looking at in terms of
 24 GAO implementation and changing and strengthening our
 25 financial and operational controls.

1 In addition, they provided us with a
2 proposal for what would be required financially in
3 order for them to provide us with additional services
4 next year. They indicated to us that in order to
5 provide us with full budget and financial services,
6 they would require that we also purchase from them
7 travel and procurement related services. They have
8 expressed over a period of years a concern that our
9 procurement and travel related services are
10 inadequate, and that it might in a sense taint the
11 financial records that they deal with unless we can
12 correct the procurement and travel related problems.

13 So they have indicated to us that they
14 will provide us with accounting and financial services
15 only if we accept as a package a full range of
16 services, including the procurement, the travel, the
17 budget, the finance, and additional monies to
18 transition from our current service provider to them.

19 They have indicated that for fiscal 2006
20 their assessment of what our needs are in light of
21 what they view as the problems that we have as an
22 agency and the challenges we have and the difficulty
23 that it would take in order to transfer from our
24 current accounting services to their services. They
25 have asked for \$860,000 for next year.

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CHAIRMAN REYNOLDS: Does that include transition costs?

STAFF DIRECTOR MARCUS: That includes transition costs, but it does not include the cost of filling the budget and finance chief position that they are concerned about as well.

Now, in future years, of course, we would not have to pay the transition costs. So they have estimated as \$700,000 as the annual cost that they would charge us to receive those services.

I have assigned staff responsibility for speaking with other agencies to try to determine what other services could be available from alternative institutions, given that this amount of money is such a large percentage of our budget, but this is an indication of at least one agency's assessment of the extent of the challenge that we would face in turning around our budget and financial situation.

CHAIRMAN REYNOLDS: So in '06 what we're looking at is the structural deficit. We're looking at the transition cost associated with using -- assuming we went with the Bureau of Public Debt, we're looking at their transition cost and their annual fees.

And in addition to that, we would have to

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1 -- and they're requiring this -- we would have to hire
2 an experienced budget person.

3 STAFF DIRECTOR MARCUS: Yes, they have
4 insisted as a condition that we have an experienced,
5 competent and responsive budget person in the budget
6 and finance office to act as a liaison and to handle
7 the internal work.

8 CHAIRMAN REYNOLDS: At this point do you
9 have an idea whether, at least as compared to what
10 other federal agencies would charge, are these figures
11 high, low or average?

12 STAFF DIRECTOR MARCUS: I hope to have an
13 assessment during next month's meeting of that. I
14 suspect that these figures may incorporate the Bureau
15 of Public Debt's assessment as to the peculiar
16 circumstances and difficulties that we are in as an
17 agency.

18 CHAIRMAN REYNOLDS: Yes?

19 VICE CHAIRMAN THERNSTROM: I just had a
20 question about the -- you're talking about ten percent
21 of our budget and 900,000 the first year, which
22 includes transitional costs. You're talking about
23 700,000 in subsequent years, but the 900,000 does not
24 include hiring an experienced budget person. The
25 salary for such a person would be on top of the

1 700,000; is that correct?

2 So the 700,000 is an under estimate in
3 subsequent years; is that correct?

4 STAFF DIRECTOR MARCUS: That's correct,
5 Vice Chairman Thernstrom, and let me be clear that I
6 am conveying the information they provided as opposed
7 to making any sort of recommendation.

8 VICE CHAIRMAN THERNSTROM: Right. Well,
9 but there will be that additional salary.

10 STAFF DIRECTOR MARCUS: Yes.

11 VICE CHAIRMAN THERNSTROM: And presumably
12 -- I'm a little confused about the office space
13 question as well. If you fill some of the positions
14 that you now believe must be filled, including a
15 position for somebody overseeing the budget, will we
16 still be okay in cutting back on the office space that
17 we currently hold?

18 STAFF DIRECTOR MARCUS: Yes, I believe we
19 will be okay. Now, the one caveat I should mention
20 deals with special assistants, which is that we are
21 assuming for budget purposes that the Commissioners
22 will each have a special assistant in the future.
23 Historically, offices have not been provided to
24 special assistants in Washington headquarters, except
25 to the extent that they happen to be empty and

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1 available.

2 This has worked out in the sense that only
3 some assistants have wanted space here and others not,
4 but aside from the question of special assistant
5 office space, we will have adequate space here in
6 headquarters next year even with the --

7 VICE CHAIRMAN THERNSTROM: So that is
8 definitely a continuing saving.

9 STAFF DIRECTOR MARCUS: Yes. That is a
10 continuing savings that I expect to be approximately
11 \$100,000 during fiscal 2006.

12 VICE CHAIRMAN THERNSTROM: And the travel
13 and procurement concerns of the Bureau of Public Debt
14 are specifically what?

15 STAFF DIRECTOR MARCUS: Our concerns
16 generally are that we have not had adequate safeguards
17 to insure the integrity of our systems for determining
18 appropriate expenditures on travel and other
19 procurement matters. They are concerned about the
20 specific matters that are related in the GAO reports,
21 but they are also more generally concerned based on
22 their experience with us as an agency, that
23 historically we have not had adequate protections.

24 VICE CHAIRMAN THERNSTROM: And when you
25 look at the budget, when you look towards the future

1 and thinking about the budget, we are obviously not
 2 traveling now. That is a break with the historic
 3 pattern, that in the years that I've been part of the
 4 Commission, there was a certain amount of travel on
 5 the part of the Commission as a whole to hold hearings
 6 elsewhere and so forth.

7 Are you assuming that given our financial
 8 situation, given the flat budget that we're still
 9 dealing with, that we would continue to be unable to
 10 hold hearings outside of Washington, and so that would
 11 be a continuing source of savings?

12 STAFF DIRECTOR MARCUS: What I would
 13 anticipate, assuming we receive an appropriations that
 14 is comparable to the President's budget and comparable
 15 to this year's appropriation, is that we keep travel
 16 expenses very low next year as they have been this
 17 year. That's right.

18 CHAIRMAN REYNOLDS: Ken, assuming that the
 19 estimate provided by the Office of Public Debt is
 20 reasonable, once we look at what other agencies would
 21 offer, are we in a position to pay that amount with
 22 our current budget?

23 STAFF DIRECTOR MARCUS: Well, let me say
 24 first that we are not in a position yet to assess the
 25 reasonableness or competitiveness of their proposal.

1 We simply don't know.

2 What I would say is that our current
3 budget does not provide that amount of money for those
4 services. So it is not yet clear how we would be able
5 to increase the amount we're paying on those services
6 by that amount.

7 CHAIRMAN REYNOLDS: Well, because of our
8 flat budget and increasing salaries. We start out --
9 well, every year we're in the hole. If the costs were
10 reduced to \$500,000 or \$300,000, we still wouldn't be
11 able to afford it unless we took other measures. We'd
12 have to free up some funds that are currently being
13 used for other things at the Commission; is that
14 right?

15 STAFF DIRECTOR MARCUS: If the amount were
16 approximately \$300,000, I believe we would be able to
17 afford it if we assume that we take all of the
18 financial corrections that were approved during the
19 last month's meeting.

20 CHAIRMAN REYNOLDS: If we don't make those
21 corrections?

22 STAFF DIRECTOR MARCUS: Let me say that we
23 need to do more analysis over the next month based on
24 the new information about attrition and other cost
25 savings, but I don't see how that would work if we

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1 don't make financial corrections. We still are
2 looking at a projected deficit for 2006.

3 CHAIRMAN REYNOLDS: And it's not limited
4 to 2006. If we keep a flat budget, it is every year.

5 STAFF DIRECTOR MARCUS: That's right.

6 CHAIRMAN REYNOLDS: Okay.

7 STAFF DIRECTOR MARCUS: The deficit would
8 expand every year in which our appropriations are kept
9 flat and our costs continue to rise.

10 VICE CHAIRMAN THERNSTROM: And my
11 understanding from pervious conversations with you is
12 that there is no way we are going to get a proper
13 financial audit for \$300,000 of this agency. That is
14 really -- we're really talking about more money than
15 that if we do the kind of proper job that seems to be
16 essential; is that correct?

17 There's no way of bumping that figure down
18 that low.

19 STAFF DIRECTOR MARCUS: I don't know how
20 far we will be able to limit the fee, and again, this
21 is for financial and accounting services as opposed to
22 audit, but --

23 VICE CHAIRMAN THERNSTROM: Right, okay.
24 I'm sorry.

25 STAFF DIRECTOR MARCUS: But I do

1 anticipate that it will be a substantial cost for
2 future years.

3 CHAIRMAN REYNOLDS: Any other questions,
4 comments? Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: We've already
6 addressed this, but have you factored in -- to what
7 extent has the current attrition that we experienced
8 in the last month exceeded that which was originally
9 anticipated when we were discussing potential RIFs?

10 STAFF DIRECTOR MARCUS: For budget
11 purposes we have to assume that everyone on the
12 payroll stays on the payroll. Over the last many
13 months we had lower attrition than we historically
14 had, and we were not able to assume that that would
15 change. So for our budget projections we were
16 expecting that there would not be attrition. The fact
17 that there has been is why our projected deficit has
18 been cut in half and then reduced further by the other
19 measures that I discussed.

20 COMMISSIONER KIRSANOW: The fee related to
21 the Bureau of Public Debt, presumably many of the
22 services they would be providing would supplant
23 services already being conducted in house, or am I
24 mistaken about that?

25 STAFF DIRECTOR MARCUS: If we went with

1 the Bureau of Public Debt proposal, they would replace
2 our current outside accounting service provider, and
3 they would also supplant some work that is currently
4 being done in house as well.

5 COMMISSIONER KIRSANOW: And probably I
6 know you indicated you needed to assess these things
7 a little bit more, but do you have any kind of a
8 handle on to what extent that fee or what portion of
9 that fee exceeds what our current baseline is for
10 performing the same services?

11 STAFF DIRECTOR MARCUS: If your question
12 is related to out-of-pocket costs as opposed to salary
13 and benefit of internal personnel, it's easily
14 \$500,000 more than current expenditures.

15 COMMISSIONER KIRSANOW: Okay.

16 CHAIRMAN REYNOLDS: Any other questions,
17 comments? Mr. Yaki.

18 COMMISSIONER YAKI: Yes. I want to thank
19 the Staff Director for alerting us to this information
20 at the earliest opportunity. I know that the -- I
21 keep on forgetting not to do that on the microphone --
22 I remember that at the last meeting none of us thought
23 it was a very sanguine thing that we did in having to
24 approve the RIFs and the '06 corrections, and I know
25 that we took that knowing full well, you know, what

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1 the consequences would be and how we will be devoting
2 some amount of time to figuring out how to insure --
3 not really figuring out. I think that we know that we
4 can and will continue on the Commission. It would
5 just be done a little differently, a little tighter.

6 But then, again, the Commission apparently
7 has been doing that for the last ten or 15 years with
8 the budget that has been given. Each year just gets a
9 little worse and a little more painful, but it's a
10 reality that I know that we have to face.

11 I also know that it's not something that
12 can be corrected overnight. I think anyone who
13 expects that we can turn it around today, wave a magic
14 wand and say here's the help we're going to do doesn't
15 understand the depth to which the finances were in a
16 mess, I guess would be the best way to say it, over a
17 period of years.

18 And so I am wondering at some point if
19 there should be a subcommittee of the Commissioners to
20 just sort of focus on some of this, and the reason I
21 say that is not because I don't think the Staff
22 Director is doing a great job. Far from it, but I
23 think that in doing that, we can not occupy so much of
24 our Commission time actually talking about the fiscal
25 issues and spend a little more time working on those

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1 issues that I know all of us do care and were
2 appointed to this Commission about.

3 And it might be somebody that we might
4 want to consider. I would certainly volunteer to do
5 it, and I certain will continue to state that as long
6 as we have these current budget problems, I will go
7 without an assistant. That's just my own person point
8 of view because I want to make sure that there is
9 money for the staffing at the level where it is really
10 needed, and that is at OCRE and OGC and at the
11 regions, to insure that the mission goes on.

12 But I guess I wanted to say I wanted to
13 commend the Staff Director for taking the step today
14 at least of saying, well, we have some better news.
15 It's not perfect news, but at least we should take a
16 look and see what its ramifications are so that we do
17 not act precipitously in terms of issuing the RIFs and
18 to say that certainly on my part I would be willing to
19 help out as much as I can in that effort and in that
20 analysis as we go forward because, again, maybe the
21 more we can do some of this off line and then bring
22 the other Commissioners up to speed, the more that our
23 public time here can be spent debating the weighty and
24 meaty issues that all of us care and love and, indeed,
25 why we are here today.

1 CHAIRMAN REYNOLDS: Yes, Commissioner
2 Braceras.

3 COMMISSIONER BRACERAS: I have two
4 questions. The first one has to do with the money
5 that you said Counsel's office determined could not be
6 paid from the current appropriations.

7 STAFF DIRECTOR MARCUS: Yes.

8 COMMISSIONER BRACERAS: The debts that
9 were -- that were owed but cannot be paid?

10 STAFF DIRECTOR MARCUS: Yes.

11 COMMISSIONER BRACERAS: Out of these
12 appropriations. So I'm confused as to how those are
13 being dealt with. If they can't be paid out of the
14 current appropriations, are they -- will they ever be
15 paid or are they effectively waived?

16 STAFF DIRECTOR MARCUS: Commissioner, I
17 will try to answer that question to the best of our
18 present knowledge and information and with the caveat
19 that there is legal analysis that is ongoing.

20 Our understanding is that for -- let me
21 start with the \$75,000 for 2004.

22 COMMISSIONER BRACERAS: Okay.

23 COMMISSIONER YAKI: Point of order, Mr.
24 Chair.

25 CHAIRMAN REYNOLDS: Yes.

1 COMMISSIONER YAKI: To the extent that any
2 discussion legally might jeopardize our legal position
3 with regard to any of these matters, I would just ask
4 for caution.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER YAKI: Just in case.

7 CHAIRMAN REYNOLDS: If you feel, if anyone
8 feels that we are wading into dangerous territory,
9 please raise a hand.

10 VICE CHAIRMAN THERNSTROM: You already
11 feel --

12 COMMISSIONER YAKI: All of a sudden it
13 just occurred to me that when it comes to an existing
14 legal obligation if we were disclosing perhaps -- if
15 (a) there's ongoing analysis and (b) that's going to
16 come to a legal conclusion that we will be asserting
17 for any legal obligation that currently exists, I
18 would just caution that then any statements we start
19 making become part of that record.

20 I mean, am I -- I'm looking at some of the
21 other lawyers on this --

22 (Laughter.)

23 CHAIRMAN REYNOLDS: I agree that we should
24 be sensitive to these matters, but at the end of the
25 day if we have a strong legal position that the law

1 prevents us from paying the debt, then that's just the
2 fact.

3 COMMISSIONER YAKI: I'm just from a
4 litigious California.

5 VICE CHAIRMAN THERNSTROM: There's nothing
6 but lawyers --

7 STAFF DIRECTOR MARCUS: Let me venture a
8 few general comments.

9 COMMISSIONER BRACERAS: Okay.

10 STAFF DIRECTOR MARCUS: And perhaps our
11 solicitor will indicate if there's any concern for
12 further discussion in general session.

13 First, it's a general proposition that's
14 been indicated to me that obligations must be paid for
15 out of the account for the fiscal year in which they
16 arise and not out of a subsequent fiscal year, except
17 under some exceptions that don't seem to apply.

18 COMMISSIONER BRACERAS: Okay.

19 STAFF DIRECTOR MARCUS: So the first step
20 has to be to extinguish the debt or liability out of
21 the remaining funds for that fiscal year.

22 Now, for fiscal 2004, we are still on the
23 financial side determining the exact amount that is
24 remaining within that account, and that is a more
25 complicated analysis than you might think in part

1 because there are some obligations that have not yet
2 been expended, and there is question as to whether
3 they will lapse or not.

4 For instance, there are some travel
5 related obligations which may be lapsing. So the
6 exact amount of money left in the '04 account is
7 something that is susceptible to further research.

8 Whatever the exact number is going to be
9 though, it is going to be less than \$75,000.

10 COMMISSIONER BRACERAS: All right.

11 STAFF DIRECTOR MARCUS: Because any
12 interpretation of what could lapse or not would leave
13 us with significantly less. So the next question is
14 to the extent that there is a shortfall, what is done
15 with that, and for that there are a variety of legal
16 questions to be looked at regarding the possibility of
17 using unexpended remaining funds from other prior
18 fiscal years within the past five years or issues of
19 potential supplemental appropriation requests.

20 Those are two possible avenues to look at:
21 supplemental appropriations or use of other prior
22 years' funds.

23 CHAIRMAN REYNOLDS: Could you unpack that?

24 It was my belief that any funds not used in a year
25 would go back to Treasury, and that that money is gone

1 forever. Apparently my belief is mistaken.

2 STAFF DIRECTOR MARCUS: I can take a step
3 at that now and then we can address in the future
4 further issues, but I can say it is my general
5 understanding that five years' accounts remain open
6 within the Department of Treasury. That money can be
7 used for only limited purposes, and so one of the
8 questions we have is the extent to which the
9 unexpended money from the last five years can be used.

10 But, for instance, in the 2004 account,
11 it's still open. We can't use it for 2005
12 obligations, of course, but we can use it to satisfy
13 2004 obligations.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER BRACERAS: Okay.

16 CHAIRMAN REYNOLDS: Any other questions?
17 Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Virtually this is
19 something that Commissioner Yaki had raised, and that
20 is the potential for having a subcommittee to address
21 financial matters, financial and related matters, so
22 that we're not taking up as much Commission meeting
23 time with these matters, and I think that's a very
24 good proposal.

25 We're now in the fifth meeting of the

1 year, and we have, I think, consumed every single
 2 meeting principally with financial and oversight
 3 matters, all of which I think were extraordinarily
 4 important, and I don't think we could have obviated
 5 it.

6 But the Commission was authorized for a
 7 particular reason, and it's not to continue to talk
 8 about our financial problems.

9 Now, consistent with, I think, the
 10 obligation that we have to maintain transparency,
 11 which transparency I don't think was lacking in the
 12 past, I think it nonetheless makes good sense to have
 13 a subcommittee that would address these things,
 14 consistent with the Sunshine Act, and then report back
 15 similar to what the Working Group on Reform is doing,
 16 and you know, so that the public is aware of what's
 17 going on financially, but I think it's imperative that
 18 we now begin utilizing Commission related time for
 19 addressing our charter obligations.

20 And I don't know if this requires a motion
 21 at this particular time, if we even know what the
 22 parameters of that subcommittee would be, and maybe
 23 that is something we should do off line and then maybe
 24 have a subsequent vote, but I think Commissioner Yaki
 25 makes a very good point.

1 Second is a question. I think initially
 2 when you made your report, Mr. Staff Director, you had
 3 indicated that the savings that we are enjoying as a
 4 result of the RIF and some of these other one-time
 5 savings -- I'm sorry -- the attrition and some of the
 6 other one-time savings might be such that we should
 7 reconsider a RIF or postpone a RIF until such time as
 8 we have a handle on what the savings are.

9 Now, my own believe, and I hear what the
 10 Chairman is saying, is that the structure deficit is
 11 such that we're going to still have to take fairly
 12 substantial actions to close the gap. But I think
 13 that a RIF really -- we start cutting into muscle and
 14 bone.

15 So it would be my -- I don't know if it
 16 would be appropriate at this time to make a motion to
 17 postpone doing the RIF until we have a report back
 18 from the Staff Director in the next meeting as to what
 19 the projected savings would be and whether or not a
 20 RIF or to what extent a RIF may be necessary.

21 CHAIRMAN REYNOLDS: Well, I think that we
 22 should vote on that issue, but before I'm fully
 23 responding, I would like to go back to Commissioner
 24 Yaki's point.

25 I think that he is right. I think that we

1 have spent a lot of time dealing with financial and
2 managerial issues. But I think that we have to.

3 The way I look at our situation I think
4 that the Commission is basically fighting for its
5 life. This cannot go on. I think that the
6 uncertainties surrounding the Commission, it's a huge
7 distraction to the Commissioners and the employees. I
8 think that we are going to over time lose good
9 employees who are tired of working under these
10 conditions.

11 I think that we need to spend as much time
12 as necessary to fix these problems so that we can
13 truly focus on our mission, and that's not to say that
14 I don't think that Commissioner Yaki's suggestion is a
15 bad one, but I just want to emphasize the importance
16 of fixing these problems. The structural deficit will
17 result in these conversations every year, and our
18 attention should be focused on doing what we can to
19 convince folk that we're serious about reform and that
20 we are good stewards, and at that point we will be in
21 a position to ask for a budget that is tied to the
22 yearly increases in our expenses.

23 COMMISSIONER KIRSANOW: Mr. Chairman, I
24 couldn't concur more with you, and as you know, I
25 think over the last several months I've been one of

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1 the more vocal persons, Commissioners, along the lines
2 of what you are just suggesting. I do think, however,
3 that the subcommittee can address things over and
4 above what we're doing right here, not that it would
5 supplant what we're doing here, but it would actually
6 be in addition to.

7 And my hope would also be that it would
8 allow us to spend some Commission time on what we're
9 here for. I still think we're going to be discussing
10 financial issues, but similar to what the process is
11 with the working group on reform from whom we'll be
12 hearing shortly, they're going to be doing a lot of --
13 this subcommittee I would suspect would be doing a lot
14 of heavy lifting, getting into nuts and bolts, numbers
15 and so forth, and much of this would be done outside
16 of the Commission meeting, but then a presentation
17 could be done at a Commission meeting, and we would
18 discuss it.

19 And I would suspect here we are. We've
20 spent an hour discussing financial related matter. We
21 may still consume another hour of financial related
22 matters even with the subcommittee in existence.

23 So I'm not saying that we should sweep
24 that off the table at Commission meetings. I think we
25 could do a better job if we have someone concentrating

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1 full force on us and assisting the Staff Director with
2 making some of these judgments.

3 That's my only point.

4 CHAIRMAN REYNOLDS: Vice Chair.

5 VICE CHAIRMAN THERNSTROM: That's not a --
6 do you want? Go ahead. Go ahead.

7 COMMISSIONER BRACERAS: I'll go after you.
8 Go ahead.

9 VICE CHAIRMAN THERNSTROM: Well, I was
10 just going to say that I also like Commissioner Yaki's
11 suggestion very much, and I would hope in fact, it
12 would reduce the time that the entire Commission
13 spends on these matters, and as Commissioner Yaki has
14 said, he hopes, I hope it would free up some time to
15 discuss the real business of this Commission, which is
16 the substantive business, the projects that we are
17 working on and so forth.

18 Just a quick question for the Staff
19 Director. Deborah Reid has left OGC. Is that a
20 position that we can afford to keep empty?

21 CHAIRMAN REYNOLDS: We are struggling to
22 do more with less. We are at a situation where
23 currently our legal staff is fully occupied handling
24 legal analysis and is barely able to cover the legal
25 issues at a time when they are not doing any work on

1 reports.

2 During future fiscal years, I expect that
3 they will return to doing projects as well. My hope
4 is that as we get past this fiscal crisis and the
5 unusual amount of legal analysis required to deal with
6 situations like the Anti-deficiency Act, there will be
7 less in the way of a demand for legal analysis, and
8 that we will return to a situation more like prior
9 years where less legal analysis was required.

10 What I would say is it will be a struggle
11 to maintain legal quality while still doing even as
12 much as one report a year with the current staffing.
13 But the Legal Office is working extremely hard under
14 the circumstances to get as much done as possible.

15 VICE CHAIRMAN THERNSTROM: Well, you know,
16 as we think about financially restructuring this
17 agency, I think we have to keep very much in mind that
18 the OGC is, indeed, supposed to be working on
19 substantive reports, and that this agency is not
20 fulfilling its mission if the OGC spends, continues to
21 spend all of its time on these financial matters.

22 And the cost of getting the work done that
23 is the rationale for the agency has to be factored in.

24 STAFF DIRECTOR MARCUS: I would agree that
25 the Office of General Counsel is substantially under

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1 staffed right now.

2 CHAIRMAN REYNOLDS: Commissioner Braceras.

3 COMMISSIONER BRACERAS: Well, I don't even
4 know if this is appropriate, but is that a way that a
5 working group or subcommittee could be of assistance
6 in terms of answering some of those legal questions,
7 particularly if some of the members of the
8 subcommittee are attorneys?

9 CHAIRMAN REYNOLDS: Well, I've been
10 wearing numerous hats since I started. I've been a
11 financial planner --

12 (Laughter.)

13 CHAIRMAN REYNOLDS: -- providing legal
14 analysis and --

15 COMMISSIONER YAKI: Selling insurance on
16 the side.

17 (Laughter.)

18 CHAIRMAN REYNOLDS: -- and I encourage all
19 of the other Commissioners to lend a hand. I know we
20 all have different areas of expertise.

21 Commissioner Yaki.

22 COMMISSIONER YAKI: Yes. I just wanted to
23 echo what Commissioner Kirsanow said and you said. I
24 don't see this as necessarily limiting the amount of
25 time we might spend debating the subject when it comes

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1 up in public, but I'm thinking that what the
 2 subcommittee can do is accelerate the time frame so
 3 that we're not still doing this in month eight, but
 4 that we can get it done in month six or month seven or
 5 month five as we're going down the track, and at month
 6 five it may be a two-hour thing, but it may be on
 7 everything that we want to try and get done rather
 8 than the fact that the Staff Director has to work on
 9 this, bring it up, and then all of us sort of hammer
 10 him with questions that he has to go back and then
 11 we're waiting another month to come back.

12 That's all I'm trying to do is think of a
 13 way to help compress the time so that when we do have
 14 the presentation, it's fuller. It's more robust. The
 15 debate and the discussion -- well, there's not much
 16 debate -- there's discussion about what it is that we
 17 can and we cannot do, and then take the actions, move
 18 on, clear the decks, and get to the fun stuff.

19 COMMISSIONER BRACERAS: So do you want to
 20 move to establish that?

21 VICE CHAIRMAN THERNSTROM: Yeah, do we
 22 want a motion on this?

23 COMMISSIONER YAKI: Now?

24 COMMISSIONER KIRSANOW: Yes.

25 (Laughter.)

1 COMMISSIONER BRACERAS: Yeah, let's do it.

2 COMMISSIONER YAKI: I should always
3 remember to shut my mouth while I'm ahead. No, I
4 think that I would move that the Chair appoint a
5 working group on fiscal -- what should we call it?
6 Fiscal reform, financial reform?

7 COMMISSIONER KIRSANOW: Fiscal and
8 administrative --

9 COMMISSIONER YAKI: Annuity planning? No.

10 COMMISSIONER KIRSANOW: Something along
11 the -- the core of this has to do with fiscal,
12 financial difficulties that we're currently facing and
13 to what extent we can address those things off line
14 and then report back.

15 COMMISSIONER YAKI: How about the working
16 committee on the budget?

17 COMMISSIONER KIRSANOW: That's good
18 enough. That's broad enough that we can fold in a
19 number of things into it and then throw out any things
20 that we don't want to work on.

21 CHAIRMAN REYNOLDS: Okay. Well, before we
22 get a second and start voting, I just want to say up
23 front that since it was phrased in a way that the
24 Chairman would appoint people, I hope you have some
25 time because it's your idea.

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: So, Commissioner Yaki,
3 I would like to be on that subcommittee.

4 VICE CHAIRMAN THERNSTROM: I do not want
5 to be on it. I can't even manage my own budget.

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
7 and Jennifer, do you have an interest?

8 COMMISSIONER BRACERAS: Sure.

9 CHAIRMAN REYNOLDS: Okay. That's one,
10 two, three, four. So --

11 COMMISSIONER BRACERAS: So I'm sorry.
12 That was what? There were three or four?

13 CHAIRMAN REYNOLDS: Four is the maximum.
14 Am I right? Including me.

15 So that would be the line-up. So we have
16 a motion. Do we have a second?

17 VICE CHAIRMAN THERNSTROM: I second it.

18 CHAIRMAN REYNOLDS: Okay. All in favor?

19 (Chorus of ayes.)

20 CHAIRMAN REYNOLDS: All in opposition?

21 (No response.)

22 CHAIRMAN REYNOLDS: The motion passes.

23 Okay. At this point I guess we need a
24 little good news. Commissioner Taylor, do you have
25 any?

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(Laughter.)

V. Motion Recognizing National Guard and Reserve

COMMISSIONER TAYLOR: I do. I want to make a motion for the National Guard and Reserve. I wanted to move that the Commission recognize the National Guard and Reserve as essential to the strength of our nation and the well-being of our communities.

In light of the highest American tradition, the patriotic men and women of the Guard and Reserve serve voluntarily in an honorable and vital profession. They train to respond to their community and their country in time of need. They deserve the support of every segment of our society.

If these volunteer forces are to continue to serve our nation, increased public understanding is required of the essential role of the Guard and Reserve in preserving our national security. Their members must have the cooperation of all American employers and encouraging employee participation in the Guard and Reserve.

Therefore, I move that the Commission join other employers by signing a statement of support for the Guard and Reserve, pledging that:

One, employment will not be denied because

1 of service in the Guard or Reserve;

2 Two, the employee job and career
3 opportunities will not be limited or reduced because
4 of service in the Guard or Reserve;

5 Three, employees will be granted leaves of
6 absence for military service in the Guard or Reserve
7 consistent with existing laws without sacrifice of
8 vacation; and

9 Four, this agreement and its resultant
10 policies will be made known throughout the Commission.

11 I thank the Chair for the honor of making
12 this motion, in part, because it serves to honor my
13 father's 35 years in the Air Force and 25 years in the
14 D.C. Air National Guard, and while he had no
15 difficulty since his full-time job was as a technician
16 in the Air Force with respect to his leave issue,
17 various colleagues that he worked with did have this
18 issue when he served with the National Guard.

19 And he often reminded me of the difficult
20 situation folks would find themselves in having to go
21 to their current employer and say that "I'm going to
22 be out of pocket unexpectedly for two weeks," and the
23 strain and difficulty that could place on a family.

24 So thank you, again, for the honor.

25 CHAIRMAN REYNOLDS: Okay. Is there a

1 second?

2 COMMISSIONERS: Second.

3 COMMISSIONER KIRSANOW: Second. I would
4 also like to just note that obviously there's federal
5 legislation that protects members of the Guard and
6 Reserve when they're on service and protects their
7 positions with respect to employment in terms of
8 seniority escalators and so on and so forth.

9 However, what I find is that despite the
10 fact that there is sufficient legislative protection
11 there for members of the Guard and Reserve, probably
12 out of sheer ignorance many employers are not even
13 aware of the requirements of protecting those
14 positions for individuals that go into the Guard and
15 Reserve while they're in service and maintaining their
16 seniority benefits.

17 I think it was just in the last week there
18 was a judgment of I believe it was \$875,000 against
19 one firm that had failed to comply with the federal
20 legislation protecting the positions of individuals
21 that serve in the Guard and Reserves.

22 So the penalties are not light, but again,
23 out of, I think, lack of information, out of
24 ignorance, this happens quite often. And I know in my
25 practice on a fairly regular basis, especially in

1 times such as now with a number of call-ups in the
2 Iraq war, we get a lot of inquiries about this, and a
3 number of employers are not familiar with what their
4 obligations are in that regard.

5 So I would second that.

6 CHAIRMAN REYNOLDS: Okay. All in favor?

7 (Chorus of ayes.)

8 CHAIRMAN REYNOLDS: Any in opposition?

9 (No response.)

10 CHAIRMAN REYNOLDS: The motion passes.

11 **VI. Update on Working Group on Reform**

12 Okay. Next up, at the Commission meeting
13 of January 7th of '05, a Working Group on Reform was
14 appointed to make specific --

15 COMMISSIONER KIRSANOW: Mr. Chairman.

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER KIRSANOW: I may be out of
18 order here, but my recollection is that in the Staff
19 Director's report there was some reference made to the
20 RIF.

21 CHAIRMAN REYNOLDS: Oh, that's right,
22 that's right, that's right.

23 **VII. Motion to Postpone Consideration of RIFs**

24 VICE CHAIRMAN THERNSTROM: We need a
25 motion on that.

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1 COMMISSIONER KIRSANOW: I think I've
2 already moved to postpone that until the next meeting,
3 consideration to the next meeting.

4 VICE CHAIRMAN THERNSTROM: Right, and I
5 second that.

6 CHAIRMAN REYNOLDS: All in favor?

7 (Chorus of ayes.)

8 CHAIRMAN REYNOLDS: Any in opposition?

9 COMMISSIONER TAYLOR: Just a question or
10 clarification. In our last meeting did we actually
11 approve the RIFs in terms of actually executing the
12 RIFs or simply delegate authority? So with every
13 change in our fiscal condition we're going to come
14 back every month and have to make this decision? That
15 is, if there's an improvement in our condition, next
16 month we have to come back and do the same thing
17 again?

18 VICE CHAIRMAN THERNSTROM: Yeah, I thought
19 we were doing this very fast. I thought, "Wait a
20 minute. Next month are we going to have to, you
21 know?"

22 COMMISSIONER TAYLOR: That's what we are
23 if we are. I just want to make sure I understand
24 where we are.

25 CHAIRMAN REYNOLDS: I think that it's

1 prudent at this point to postpone taking any actions
2 and to spend the next month just gathering data.

3 VICE CHAIRMAN THERNSTROM: But why did we
4 pick a one month?

5 COMMISSIONER BRACERAS: Could I speak to
6 that?

7 VICE CHAIRMAN THERNSTROM: Why couldn't we
8 simply have had a motion saying postponing any action
9 rather than put some kind of --

10 COMMISSIONER BRACERAS: May I speak to
11 that?

12 CHAIRMAN REYNOLDS: Yes.

13 COMMISSIONER BRACERAS: My impression was
14 -- and correct me if I'm wrong -- that the Staff
15 Director already had the authority to make those
16 decisions, but he came to us last month to get our
17 seal of approval on the plan that he recommended, and
18 we did approve that plan.

19 My inclination at this point would be
20 simply to delegate it back to him with the assumption
21 that he will keep us informed.

22 CHAIRMAN REYNOLDS: Well, I think that
23 this is -- I mean, there are a whole lot of issues
24 wrapped up into this problem. We have to make sure
25 that we, as good stewards, help the Staff Director

1 make these difficult decisions since they will
2 possibly involve the livelihoods of our employees.

3 In addition to that, there are larger,
4 broader issues involved, specifically the structural
5 deficit, and our need to free up some money in order
6 to implement some reform measures.

7 So I think that we all as Commissioners
8 need to be involved in the decision making process.

9 COMMISSIONER BRACERAS: Right, but my
10 sense was that in some respects that's what the
11 subcommittee will do, is sort of act as a
12 clearinghouse for the Commissioners on those issues so
13 that when we come to the meetings we can just vote and
14 move on without having quite so many questions because
15 the Commissioners involved in the subcommittee can be
16 available to the Commissioners who are not to answer
17 questions. Because we will then have the information
18 because we will have worked with the Staff Director in
19 doing that.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER BRACERAS: So if we just
22 delegate it back to that process, I think what we're
23 going to do today is not to go forward with the RIFs
24 right now, and to delegate back to the Staff Director
25 the decision making it to work with the subcommittee

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1 to make those decisions going forward, and we will
2 come back to the Commission, the full Commission, and
3 everybody will be informed, but --

4 CHAIRMAN REYNOLDS: And vote on it.

5 COMMISSIONER BRACERAS: Yes, but there
6 will be less need for discussion at that point. Is
7 that how you envision it?

8 CHAIRMAN REYNOLDS: Okay. Any other
9 comments, questions, concerns? Vice Chair Thernstrom?

10 VICE CHAIRMAN THERNSTROM: It seems to me,
11 Commissioner Braceras, that what you just said
12 suggests that perhaps the language of postponement for
13 one month is a little --

14 COMMISSIONER BRACERAS: Imprecise.

15 VICE CHAIRMAN THERNSTROM: Well, imprecise
16 and incorrect, not quite what we wanted, what we
17 should be doing here. What we really want is for the
18 Staff Director and the working group on the budget to
19 get back to us at whatever point it is appropriate to
20 do so.

21 COMMISSIONER BRACERAS: As soon as is
22 practical.

23 VICE CHAIRMAN THERNSTROM: Yeah. So I'm a
24 little unhappy with the wording of the motion that
25 somehow went by us at 1,000 miles an hour.

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1 COMMISSIONER TAYLOR: Well, why don't we
 2 amend that motion to state something to the effect
 3 that the RIF will be held in abeyance until such time
 4 as the working group on the budget in conjunction with
 5 the Staff Director recommend that some action be taken
 6 with respect to that RIF.

7 VICE CHAIRMAN THERNSTROM: That further
 8 discussion by the whole Commission is warranted.

9 COMMISSIONER TAYLOR: Yes, that would be
 10 find.

11 VICE CHAIRMAN THERNSTROM: I'd like to
 12 second that amendment.

13 CHAIRMAN REYNOLDS: Okay. Let's vote.
 14 All in favor?

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: Any in opposition?

17 (No response.)

18 CHAIRMAN REYNOLDS: The motion carries.

19 Yes, Commissioner Braceras, let's hear
 20 about all this great work that --

21 COMMISSIONER BRACERAS: Oh, no, before
 22 that, there was a small procedural motion. I wanted
 23 to move that the letter signed by all Commissioners to
 24 the officials at the Smithsonian Institution urging
 25 them to place the National Museum for African American

1 History and Culture at a prominent site on the Mall in
2 Washington, D.C. be posted on the Commission Website
3 at the earliest possible time.

4 CHAIRMAN REYNOLDS: Is there a second?

5 VICE CHAIRMAN THERNSTROM: Second.

6 CHAIRMAN REYNOLDS: Any discussion?

7 (No response.)

8 CHAIRMAN REYNOLDS: Very good. All in
9 favor.

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Any in opposition?

12 (No response.)

13 CHAIRMAN REYNOLDS: The motion carries.

14 **VIII. Working Group on Reform**

15 At this point Commissioner Braceras will
16 update us on the work of the Working Group on Reform.

17 All righty.

18 COMMISSIONER BRACERAS: Do you want me
19 just to move the rules and then open it for discussion
20 at that point?

21 CHAIRMAN REYNOLDS: Yes.

22 COMMISSIONER BRACERAS: Okay. So I have
23 two motions. It's broken down into two separate
24 sections.

25 I will first move that the 13 proposed

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1 rules submitted by the Working Group on Reform, which
2 address external and internal communications, be
3 adopted as one package.

4 CHAIRMAN REYNOLDS: Is there a second?

5 COMMISSIONER YAKI: Second.

6 CHAIRMAN REYNOLDS: Discussion.

7 COMMISSIONER BRACERAS: Okay. So these 13
8 rules that we came up with here basically seek to
9 address internal and external communications. The
10 second set of rules which I'll move separately involve
11 the project planning process.

12 .. Basically what these 13 rules do is they
13 seek to strike a balance between Commissioners micro
14 managing the staff and increased transparency and
15 access to the staff and input into projects.

16 And it also seeks to clarify the rules
17 about formal statements of the Commission, be it press
18 releases or letters to public officials, and seeks to
19 basically have a process for putting those into the
20 public domain where we can all have input into those
21 documents before they go out.

22 So unless there are questions about
23 specific rules, you know, and I'm happy to answer any
24 questions that people might have, the only thing I'd
25 want to add is just to thank the people who worked on

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1 this, the members of the working group and the Staff
2 Director and the members of the staff, Seth Jaffe,
3 Deborah Vagins and Mireille -- I'm not going to be
4 able to pronounce your last name -- Zieseniss, is that
5 right?

6 And TinaLouis Martin, all of whom worked
7 on this project. So that's it unless there are
8 questions on the 13 rules.

9 CHAIRMAN REYNOLDS: Okay. I have, I
10 guess, some slight concerns about two rules, Rules 7
11 and 8.

12 COMMISSIONER BRACERAS: Okay.

13 CHAIRMAN REYNOLDS: I guess my concern is,
14 well, this Commission has had in the past and still
15 has some strong willed Commissioners, and looking at
16 proposed Rule 8, I can see a situation obviously not
17 involving any of the present Commissioners --

18 (Laughter.)

19 CHAIRMAN REYNOLDS: -- but --

20 COMMISSIONER BRACERAS: Of course not.

21 CHAIRMAN REYNOLDS: -- a Commissioner
22 suggesting in strong language to a staffer that a
23 report be written in a particular way. And while it
24 may be couched as a suggestion, coming from a
25 Commissioner that has a lot of weight, and I just want

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1 to put that on the table as a concern.

2 COMMISSIONER BRACERAS: Well, let me try
3 to address that.

4 What we specifically did in proposed Rule
5 No. 7 is open the door for Commissioners to contact
6 the Staff Director, the General Counsel or the
7 Director of OCRE to ask questions so that individual
8 staff members wouldn't feel harassed or feel overly
9 burdened by Commissioner requests.

10 And we left it to the senior staff,
11 basically, to filter our requests and to determine in
12 their judgment whether or not it's appropriate for
13 individual staff to then have a conversation with a
14 Commissioner. So we were hoping that that kind of
15 struck that balance there.

16 And then proposed Rule No. 8 really talks
17 about the flow of communication in the other
18 direction, and it simply states that -- it simply
19 lifts the ban on a member of the staff picking up the
20 phone and calling a Commissioner if they have a
21 question.

22 If the staff is working on a report on
23 education and they want to ask Commissioner Thernstrom
24 a question about her book or her research in this
25 area, they should feel free and, indeed, are

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1 encouraged to do that.

2 You know, likewise if they're doing
3 something on employment law or labor law, they should
4 feel free to pick up the phone and consult, you know,
5 with Commissioner Kirsanow or the other attorneys on
6 the Commission. They don't have to do that, but
7 they're welcome to.

8 And I wanted to, you know, encourage them
9 to tap into the collective wisdom of the Commission,
10 but the members of the staff are by no means forced to
11 do that.

12 CHAIRMAN REYNOLDS: I think it's a good
13 idea. I'm just thinking about a worst case scenario.

14 You have an obstreperous employee who does not like
15 his boss' approach with respect to a particular issue,
16 and now that obstreperous employee has a means of
17 circumventing the boss basically and calling a
18 Commissioner and trying to enlist a Commissioner's
19 support.

20 And, again, it is a worst case scenario,
21 and I think that it's unlikely, but because of some
22 current issues that I'm dealing with in my day job,
23 the issue stuck.

24 In any event, any other? Yes,
25 Commissioner Yaki.

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COMMISSIONER YAKI: I'm just wondering on proposed Rule 7 perhaps we should add a statement that addresses your concern as I'm thinking about this, something along the lines of notwithstanding no Commissioner nor their staff may in any way interfere with an ongoing project.

I don't know if that would --

CHAIRMAN REYNOLDS: If I were the strong willed Commissioner who wanted it my way, I'm just making suggestions. That's all.

COMMISSIONER YAKI: Okay.

COMMISSIONER BRACERAS: Well, look. I think the bottom line is, and this comes up with respect to project planning, too, is that the staff works very hard on these reports, and it's a shame when they bring the reports to us and they get voted down.

So it is in the interest of the staff to take into consideration suggestions that may increase the likelihood of passage of the report. If it's just one Commissioner that has their own agenda and it's not the agenda of the rest of the Commission, that report is not going to get passed if it includes that one person's agenda.

But if the suggestion is a reasonable one

1 that reflects the agenda of the Commission as a whole,
2 it would make sense for the staff to adopt it.

3 So I think that there's a natural
4 mechanism for kind of sorting out what suggestions
5 should be adopted and what shouldn't.

6 I mean, before we basically had a Chinese
7 wall between the Commissioners and the staff which
8 made no sense in terms of we had no information on not
9 only the status of projects, but the content of
10 projects, and then by the time projects were completed
11 and presented to us, we had too many questions or
12 problems with them to be able to support them as a
13 whole.

14 So if we increase the communication along
15 the way, there's a better chance of reports -- I think
16 the reports will be a higher quality, and I think
17 there's more of a chance that you will have unanimous
18 support for projects if we all feel invested in them.

19 And I try to tackle that in other ways in
20 the second set of motions, but basically, you know, we
21 just want to be able to have access to information,
22 and we don't want the staff to feel in any way
23 intimidated from approaching us and asking us for our
24 input if they feel it would be helpful.

25 If they don't feel it would be helpful,

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1 that's fine, too.

2 CHAIRMAN REYNOLDS: Well, I think that my
3 concerns are, well, this Commission is structured in a
4 way where personalities really matter, and I think
5 that the current group works well together, and my
6 concern, I don't think that we're going to have any
7 problems with this set of Commissioners. I was just
8 thinking down the road.

9 And quite frankly, if there is a problem I
10 think that we could deal with it. So, again, I
11 started off by describing my concern as, well, slight.
12 Commissioner or Vice Chair.

13 VICE CHAIRMAN THERNSTROM: Well, I
14 understood your concern, but obviously as part of the
15 working group, I was coming from exactly the same
16 place that Commissioner Braceras was and coming from
17 considerable previous experience in feeling very
18 frustrated with the wall between the staff and the
19 Commissioners.

20 Is there some small change that you would
21 like to see in the wording of this that would address
22 your concerns?

23 CHAIRMAN REYNOLDS: No, I am comfortable.
24 I just wanted to put my concern on the table. I can
25 live with this language. If any Commissioner were to

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1 abuse their rights under this rule, we can address it
2 at the time. I'm not suggesting that we change the
3 language.

4 VICE CHAIRMAN THERNSTROM: I mean, there
5 is a check here of sorts in that the relevant senior
6 staff has some power here to protect staff members
7 under his or her jurisdiction from, as it were,
8 harassment by a single Commissioner.

9 COMMISSIONER BRACERAS: Maybe we want to
10 add that check to proposed Rule No. 8. In other
11 words, we have the senior staff acting as a filter
12 from communications to Commissioners to staff. Maybe
13 we want them to act as a filter in the other direction
14 as well, that if the staff wants to contact a
15 Commissioner about something they would first go
16 through -- yeah, but it says in consultation with. It
17 doesn't say --

18 VICE CHAIRMAN THERNSTROM: Well, I think -
19 -

20 COMMISSIONER BRACERAS: I mean, if you
21 think that's not strong enough.

22 VICE CHAIRMAN THERNSTROM: I think
23 "consultation" is appropriate.

24 CHAIRMAN REYNOLDS: With eight I am
25 presuming that the chain of command remains intact,

1 that the staff role will talk to his or her boss, make
2 sure everything is okay.

3 COMMISSIONER BRACERAS: And would say no
4 if you wanted to make it more specific to reflect the
5 language in number seven.

6 VICE CHAIRMAN THERNSTROM: I think eight
7 is fine. There isn't the same danger with eight.

8 COMMISSIONER BRACERAS: Right. I Agree.

9 CHAIRMAN REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: Yeah, thank you very
11 much, Mr. Chair. It's interesting when I was reading
12 these rules for the first time the other day and
13 thinking how when I was on the Board of supervisors I
14 just called anyone at all times, and it was alarming
15 to me to know that there had been a barrier between
16 staff and Commissioners.

17 COMMISSIONER BRACERAS: You don't know the
18 Stalinist regime under which we toiled.

19 COMMISSIONER YAKI: I understand.

20 CHAIRMAN REYNOLDS: Be nice. Be nice.

21 COMMISSIONER YAKI: But I would simply say
22 that I would hope that in this sort of -- in sort of
23 the free flow of information going back and forth,
24 that it be free and flowing in every direction so that
25 if we want -- so staff do not feel that they have to

1 hide the ball on anything from anyone about who spoke
 2 to them about this or that or anything like that;
 3 that, you know, if Commissioner Thernstrom wants to
 4 know, "Did you get that crazy idea from Yaki?" you
 5 know, she can go, "Yeah, yeah. I got this crazy idea
 6 from Yaki," and stuff like that. I just wanted to be
 7 clean open.

8 COMMISSIONER BRACERAS: Free and open, all
 9 for it.

10 VICE CHAIRMAN THERNSTROM: I mean you
 11 could have an additional sentence in eight making
 12 clear that staff is also free to go to the Staff
 13 Director and indicate a sense of being under pressure,
 14 under undue pressure from a particular Commissioner if
 15 you wanted, if you want to make this super protective.

16 CHAIRMAN REYNOLDS: How about this?
 17 Unless there is other discussion, unless there are
 18 other comments, I'm comfortable voting on it as it's
 19 written. I think that the discussion, the comments
 20 made suggest that everyone is aware and sensitive to
 21 the potential problem and that we will act on -- we
 22 will respond forcefully if there is any undue pressure
 23 applied to the staff.

24 So with that understanding I'm comfortable
 25 voting on these matters as written, but we haven't

1 gone through everything yet, and we have 13 items.
2 Comments on any other item?

3 VICE CHAIRMAN THERNSTROM: I have one
4 comment. On proposed Rule 11, "The Office of Staff
5 director shall maintain a binder of the minutes from
6 all Commission meetings." I would like that binder to
7 contain minutes from previous -- I would like a binder
8 for every calendar year so that it's not starting
9 today, but retroactive. I do not believe that exists.

10 CHAIRMAN REYNOLDS: Is that possible? Do
11 we have -- I assume that we've -- okay.

12 VICE CHAIRMAN THERNSTROM: I'm sorry. I
13 didn't hear you.

14 MS. MONROIG: The library has the minutes
15 of the meeting.

16 The library has a copy of the meetings
17 from back from --

18 VICE CHAIRMAN THERNSTROM: Are they in
19 binders?

20 MS. MONROIG: Yes.

21 VICE CHAIRMAN THERNSTROM: So that you can
22 just flip through it and --

23 MS. MONROIG: Yes.

24 VICE CHAIRMAN THERNSTROM: Okay. So that
25 we are proposing something already in place?

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1 MS. MONROIG: I don't know.

2 CHAIRMAN REYNOLDS: Well, we're
3 establishing a formal policy. We do it apparently.

4 COMMISSIONER BRACERAS: The library has
5 done it as a matter of practice, but some of these
6 things were formalizing things that were done before
7 or that this current Staff Director has already begun
8 to do.

9 VICE CHAIRMAN THERNSTROM: But I just --

10 COMMISSIONER BRACERAS: For example,
11 number 13, the Staff Director has already begun to do
12 that at the suggestion of the working group, but we're
13 formalizing it for the sake of the historical record.

14 VICE CHAIRMAN THERNSTROM: Right. I did
15 not realize that was true of 11, and I wanted to make
16 sure that, indeed, minutes of previous meetings were
17 as accessible as they turn out to be.

18 COMMISSIONER BRACERAS: I mean, part of
19 the history of this, of the genesis of this has to do
20 with the fact that under the previous regime the Chair
21 would always say, "Well, we've always done X, Y, and
22 Z," without necessarily being able to point to the
23 rule.

24 So here are the rules just so we're all on
25 the same page and in the interest of clarity, and

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1 other of these rules or events, you know, are new and
2 are meant to protect the rights of the political
3 minority on the Commission which I think we all agree
4 is very important.

5 COMMISSIONER YAKI: Yep.

6 COMMISSIONER BRACERAS: So those are the
7 thoughts behind this.

8 VICE CHAIRMAN THERNSTROM: All except to
9 Michael Yaki at least it's important.

10 COMMISSIONER BRACERAS: So should I move
11 the question?

12 VICE CHAIRMAN THERNSTROM: Yes.

13 COMMISSIONER YAKI: Second.

14 CHAIRMAN REYNOLDS: Okay. All in favor?

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: Any in opposition?

17 (No response.)

18 CHAIRMAN REYNOLDS: The motion passes.

19 COMMISSIONER YAKI: Mr. Chairman.

20 CHAIRMAN REYNOLDS: Yes, Commissioner
21 Yaki.

22 COMMISSIONER YAKI: I was only appointed
23 for one meeting, but I just wanted to commend
24 Commissioner Braceras for her hard work on creating
25 these rules and for all the other members of the

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1 working group.

2 COMMISSIONER BRACERAS: Thank you.

3 VICE CHAIRMAN THERNSTROM: And the work is
4 finished.

5 COMMISSIONER BRACERAS: Nope.

6 VICE CHAIRMAN THERNSTROM: Oh.

7 COMMISSIONER BRACERAS: We have the second

8 --

9 CHAIRMAN REYNOLDS: Motion number two.

10 VICE CHAIRMAN THERNSTROM: The work of the
11 working group is finished.

12 COMMISSIONER BRACERAS: Yes. Okay. So
13 I'd like to now move that the proposed rules submitted
14 by the Working Group on Reform that addressed project
15 planning and execution be adopted as one package.

16 COMMISSIONER YAKI: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 COMMISSIONER BRACERAS: Okay. So this
19 section of the document that was distributed is
20 basically an outline or a template, if you will, for
21 how we think the staff should manage projects going
22 forward, and the goal here was basically, again, to
23 strike a balance between having Commissioner input, on
24 the one hand, and not micro managing on the other.

25 So the idea is to have certain specific

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1 points in time where for every project the Commission
2 will have input, and we basically broke it down to
3 four discrete stages of input. Well, actually, I
4 guess five, the first being when the Commission votes
5 to authorize a project, which we've always had input
6 at that stage, but then in the past that's basically
7 where our inputs stopped until the point in time where
8 the staff brought the report to us for a vote.

9 Now we've added these additional points of
10 input, the first one being we call it "Stage 1,
11 Background and Planning," and that's after the staff
12 has conducted the initial research and literature view
13 and they've done a more detailed outline of where they
14 think they're going with the project and they come
15 back to us at that point for further authorization.

16 And then the second point, the second new
17 point of input would be -- and conceivably these could
18 be done at the same time. The staff could come to a
19 Commission meeting with both their detailed outline
20 and their Stage 2 discovery plan. It doesn't have to
21 be spread out by months, but the point is that we will
22 authorize in two stages, one, the detailed outline and
23 scope and direction of the project and, two, the
24 discovery plan.

25 And it's that point where we as a

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1 Commission would like to see basically a detailed plan
 2 in the same sense that a lawyer would put forward a
 3 discovery of plans to the court, and so the staff will
 4 tell us what depositions they plan to take, what
 5 interrogatories they plan to issue, subpoenas,
 6 document requests, and other forms of discovery that
 7 they think are necessary to researching and collecting
 8 all of the data they need to collect for the project.

9 And so the Commission will authorize the
 10 discovery plan at that point, maybe making amendments
 11 or changes to the plan, but then authorizing them to
 12 go forward and conduct that discovery.

13 Stage three would be a draft report which
 14 would be presented to the Commission. Commissioners
 15 would have four weeks to comment on the draft report
 16 and make suggestions both in terms of format or style,
 17 as well as content that may have been missed or that
 18 should be deleted.

19 And then stage four would be the final
 20 report that we would vote to approve or reject.

21 And then just to be clear, I've added a
 22 section saying that basically nothing in this rule is
 23 intended to require us to adopt reports in total. If
 24 there's a portion of a report that has a majority of
 25 support from the Commission but the rest of the report

1 view is that that's fine. I mean, the way the courts
2 work is the dissenter writes as much as they feel they
3 need to write to explain why they don't agree.

4 I know this harkens back to the Florida
5 report, but the fact of the matter is if a dissenter
6 wants to take the time to go out and gather competing
7 sets of data or, you know, undergo a complete
8 competing analysis. I think more information for the
9 public is better, and the public can decide, can weigh
10 them, and it is what it is. It's a dissent. If it
11 only speaks for one or two people, it says that quite
12 clearly on it.

13 And I think more information is better,
14 and it should be left to the dissenter to decide how
15 much effort and time and energy they want to put into
16 that.

17 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

18 VICE CHAIRMAN THERNSTROM: Mr. Chairman,
19 as Commissioner Braceras indicated, this did come up
20 with respect to the very long dissent that I wrote in
21 conjunction with the Florida report, a dissent that
22 was not published as such, as a dissent in its final
23 form, never saw the light of day, and at the time, the
24 Vice Chair Cruz Reynoso said this is not a dissent.
25 Dissents are two or three pages. You have done

1 fails to achieve that support, we can adopt a portion
2 of the report.

3 So it doesn't have to be an all or nothing
4 end game, which was part of the problem, I think,
5 before. So we can divide it as we see fit and make
6 those decisions specific to the report in question. I
7 think that will vary from report to report, how we
8 want to handle that.

9 And of course, dissents will be published
10 with the report, and I think it should be really left
11 up to the dissenting Commissioner whether -- or
12 Commissioners -- whether they want to write one
13 dissent for attachment at the end or whether they want
14 to integrate their points of dissension with the
15 report after specific recommendations or findings. If
16 they just wanted dissent from them within the text of
17 the report, that's fine, too, and I think that's
18 something that should be left to the dissenters to
19 work out with the Staff Director.

20 CHAIRMAN REYNOLDS: Commissioner Braceras,
21 the statement of dissent, now I can see someone
22 submitting basically a competing report. We have our
23 100 page report, and there is a dissent that has as
24 much paper or is larger --

25 COMMISSIONER BRACERAS: My own personal

1 separate work, separate data collection. This is
2 completely inappropriate. The Commission has never
3 accepted, you know, this kind of substantial work
4 before and published it as a dissent, and the proposal
5 to squash it on those grounds was defeated.

6 It was suppressed on other grounds
7 completely, but nobody on the Commission was willing
8 to go along with the notion that dissents were simply,
9 you know, a few pages saying, "I disagree."

10 COMMISSIONER BRACERAS: Right, and
11 frankly, I also anticipate that dissents won't need to
12 be as long because we are changing the whole process,
13 which will allow for input along the way, and I think
14 that as the Commission feels more invested in the work
15 product that's coming out of the Commission, there may
16 not be the need for that type of dissent.

17 But I welcome hardy dissents, and I think
18 the public benefits from hardy dissents. We're
19 supposed to be a clearinghouse for information, and I
20 think it will make our reports stronger.

21 VICE CHAIRMAN THERNSTROM: A clearinghouse
22 of information and a forum for competing ideas, and I
23 think to the extent to which we lay out the landscape
24 of differing opinions, different ways of looking at
25 data, and so forth. Again, the public benefits.

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1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER BRACERAS: I don't know if
3 there are any other questions about the project
4 planning process. There's also a section here that
5 deals with project resource management, which were
6 some of the issues that Commissioner Redenbaugh had
7 been concerned with, and a section that basically
8 defines for the record the differences between
9 hearings, briefings and speakers. It indicates
10 basically that all three of those events need
11 Commission approval.

12 So that's really it. The only thing is if
13 I can make two small amendments to my own document
14 here, I believe there's a typo on page 6, which is
15 Subsection D(a). I'm not sure because this is from
16 the statute, but where it says "Attendance of
17 Witnesses or the Production of Written or Other
18 Matters," I wasn't sure whether that was supposed to
19 be written materials. But anyway, that is something
20 that can be checked --

21 VICE CHAIRMAN THERNSTROM: Where is this?

22 COMMISSIONER BRACERAS: -- because that's
23 the statutory language. Page 6.

24 COMMISSIONER YAKI: 702.1(e), third
25 sentence.

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1 VICE CHAIRMAN THERNSTROM: Fine.

2 COMMISSIONER BRACERAS: But anyway, we
3 should just make sure that it reflects the exact
4 statutory language. That's all I wanted --

5 VICE CHAIRMAN THERNSTROM: It's got to be
6 materials. It doesn't make sense otherwise.

7 COMMISSIONER BRACERAS: Right. That's
8 what I thought but I'm not sure because who knows how
9 these things get drafted.

10 Okay, and then the other small amendment I
11 wanted to make is on page 4. I don't think I was
12 quite clear under III(B)(1), Project Implementation,
13 Stage I, I had clearly indicated what type of outline
14 the staff should present to us but I don't think I was
15 clear that the Commission needed to approve it at that
16 point.

17 So I just wanted to add a sentence there
18 that says, "The Commission will consider the outline
19 and may, at its discretion, vote to alter or amend the
20 scope and focus of the project." So I just want to be
21 clear there that that is a point at which the
22 Commission either signs off or makes changes and then
23 signs off.

24 CHAIRMAN REYNOLDS: Okay. At this point
25 are we -- additional comments? Commissioner Yaki?

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1 COMMISSIONER YAKI: Yes, just one, I
 2 think, discrepancy in -- on page 4 under III(B)(3),
 3 the draft is supposed to be held in strictest of
 4 confidence but I think if we make an editorial
 5 suggestion at the Commission, it becomes public. So I
 6 would -- I wonder if we should just strike the word
 7 Commission meeting? Do you see what I mean?

8 COMMISSIONER BRACERAS: Yes, I do see what
 9 you mean. I wonder what --

10 COMMISSIONER YAKI: Just say make
 11 editorial suggestions before final draft is prepared.
 12 Just strike the -- either in writing or at a
 13 Commission meeting because --

14 COMMISSIONER BRACERAS: Yes. Okay.
 15 Right.

16 CHAIRMAN REYNOLDS: Okay. At this point,
 17 are we ready to -- no, we're not.

18 COMMISSIONER KIRSANOW: Just a couple
 19 questions. The draft report when it is submitted for
 20 editorial board review, what is that? I mean before -
 21 -

22 COMMISSIONER BRACERAS: Well, they usually
 23 go through their own editing process where they check
 24 -- they go through the legal sufficiency and they send
 25 it out to the different agencies. And that's --

1 COMMISSIONER KIRSANOW: Okay. It means it
2 goes to the Washington Post.

3 (Laughter.)

4 COMMISSIONER BRACERAS: Right.

5 VICE CHAIRMAN THERNSTROM: See if it
6 conforms to their style.

7 COMMISSIONER BRACERAS: Basically it is
8 before they finalize it.

9 COMMISSIONER KIRSANOW: I'm just curious
10 as to who they is.

11 COMMISSIONER BRACERAS: The staff.

12 COMMISSIONER KIRSANOW: And who will be
13 part of the editing process?

14 COMMISSIONER BRACERAS: I'd say maybe the
15 staff wants to speak to that. I don't know who
16 specifically has responsibility for --

17 COMMISSIONER KIRSANOW: The word Board,
18 that's --

19 COMMISSIONER BRACERAS: Editing the draft
20 or conducting the legal sufficiency review. I mean,
21 yes --

22 VICE CHAIRMAN THERNSTROM: The word Board
23 perhaps should be struck there.

24 COMMISSIONER BRACERAS: Right.

25 VICE CHAIRMAN THERNSTROM: Commissioner

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1 Yaki is right.

2 STAFF DIRECTOR MARCUS: Mr. Chairman, if I
3 may, for all reports that are issued by the
4 Commission, historically before they have gone to the
5 Commissioners, they have gone through a couple of
6 processes and one is formation of a Board of staff
7 members appointed by the Staff Director with the
8 Division Heads, either OCRE or OGC to do a editorial
9 review as well as the legal analysis.

10 COMMISSIONER BRACERAS: It is basically,
11 as I understand it, so that the people who did not
12 work on the report have a chance to eyeball it and
13 edit it.

14 COMMISSIONER KIRSANOW: All right. I
15 just wanted to know who it was. And I want to make
16 sure --

17 COMMISSIONER BRACERAS: Because they're
18 not as invested in it as the people who wrote it.

19 COMMISSIONER KIRSANOW: -- you know, if --
20 when other organizations, economic institutions, for
21 example, if there is a paper that is going to be
22 issued or a report that is going to be issued, there
23 is peer review, for example, and there are systems in
24 place to make sure that there is economic integrity to
25 whatever the final draft is. And so I trust the Staff

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1 Director to appoint the appropriate people to make
2 sure that happens.

3 COMMISSIONER BRACERAS: Right. And we're
4 now part of that process as well.

5 STAFF DIRECTOR MARCUS: If I may say, the
6 editorial board review is really more editorial as
7 opposed to the --

8 COMMISSIONER BRACERAS: Substance.

9 STAFF DIRECTOR MARCUS: -- sort of
10 substance. Historically this agency has not
11 participated in the form of academic peer review
12 that's described.

13 COMMISSIONER KIRSANOW: The other thing is
14 I'm presuming that the discovery plan, the discovery
15 process, whether it be interrogatories, everything
16 else, also includes briefings and hearings, correct?

17 COMMISSIONER BRACERAS: Well, I don't
18 think -- hearing --

19 COMMISSIONER KIRSANOW: Well, briefings
20 possibly?

21 COMMISSIONER BRACERAS: Well, let me just
22 describe it as I understand it. That hearings are
23 conducted in conjunction with a project concept that
24 has been approved and voted on. And there will be
25 some sort of document that comes out of it. So to

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1 answer your question, yes.

2 COMMISSIONER KIRSANOW: Okay.

3 COMMISSIONER BRACERAS: The discovery plan
4 will include -- and maybe we should state that
5 specifically -- we can just add it here. It says the
6 discovery plan will describe with as much detail as
7 practicable the subpoenas, interrogatories, document
8 requests, and plans for hearings. I don't know if we
9 can stick it in there. I sort of assumed that fell
10 into other forms of discovery because when we bring
11 people here to testify, that's a form of discovery.

12 COMMISSIONER KIRSANOW: Okay. I just
13 wanted to be clear on that.

14 COMMISSIONER BRACERAS: I mean if you want
15 to add this precise language, that's fine.

16 COMMISSIONER KIRSANOW: Oh, I'm
17 comfortable with that. I just wanted clarity on that.

18 COMMISSIONER BRACERAS: Right. And in the
19 back --

20 COMMISSIONER KIRSANOW: One other thing --

21 COMMISSIONER BRACERAS: -- the statutory
22 part in the back, if you look under Section D, it's
23 already incorporated into the statutory language --
24 no, not the statutory language, the regulatory
25 language, excuse me, that describes hearings.

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COMMISSIONER KIRSANOW: Yes.

COMMISSIONER BRACERAS: Must be approved by a majority of the Commission. And then we basically added the same authorization requirements for briefings and public speakers.

COMMISSIONER KIRSANOW: Okay.

COMMISSIONER BRACERAS: So in other words, if the Staff Director decides, you know, it would be a great idea to do a briefing on college antisemitism, in the past we would just show up and the speakers would be here and they'd brief us. And we had no input into the topic or even knew what the topic was until we walked into the room.

So now under these rules, the Commission must approve the topics. Well, first of all, they must approve the concept in general and decide whether or not to have a briefing. And then approve the topic for the briefing and give some input into the list of invitees. And that has to be at least one month prior --

COMMISSIONER KIRSANOW: Okay.

COMMISSIONER BRACERAS: -- to the briefing. So --

COMMISSIONER KIRSANOW: You think we want to change that to 60 days instead of one month? I'm

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1 aware of the whole 60 day --

2 COMMISSIONER BRACERAS: Yes.

3 COMMISSIONER KIRSANOW: -- deal.

4 COMMISSIONER BRACERAS: I mean the only
5 reason I said one month is so we can do it at one
6 meeting and have the briefing at the next meeting if
7 need be.

8 COMMISSIONER KIRSANOW: No big deal.

9 COMMISSIONER BRACERAS: But, you know, I'm
10 not wedded to any particular time frame.

11 COMMISSIONER KIRSANOW: Okay. I don't
12 know if it is doable in 60 days. I don't know if we
13 can -- if we're able to do that. No, the language is
14 fine as far as I'm concerned.

15 One other question which is with the Stage
16 4 final report. The staff is going to incorporate
17 comments from the Commissioners in the final draft.
18 I'm wondering if it makes sense to have a final draft
19 that has -- might be similar to what you get in a
20 court opinion where you have findings of fact or
21 findings and then recommendations -- or maybe not a
22 court opinion, where the recommendations would be the
23 opinion portion of it.

24 And whether -- I'm not sure that
25 recommendations are something that is necessarily

1 appropriate for staff to come up with. Maybe that's
2 something for the Commissioners.

3 COMMISSIONER BRACERAS: I think they have
4 -- in the past, reports have included both findings
5 and recommendations.

6 COMMISSIONER KIRSANOW: Does it make sense
7 to kind of separate the two though so that
8 Commissioners are focused on recommendations? It is
9 the prerogative or responsibility of Commissioners to
10 do the recommendation portion since that is policy?

11 CHAIRMAN REYNOLDS: I would think that --
12 yes, gathering the data -- if we're -- well, you know,
13 we have some good people here. And so gathering
14 accurate data, that's -- I would hope that we're not
15 going to have too many debates over what the facts
16 are. But what those facts mean or should mean, that
17 falls within the Commissioners province. That's
18 policy.

19 VICE CHAIRMAN THERNSTROM: Mr. Chair, it
20 isn't quite that simple. The underlying questions,
21 the drive, the gathering of data are Commission
22 business. That is there isn't a bright and clear line
23 between gathering facts and how you frame the issue
24 which spills over into larger policy questions so
25 that, you know, different scholars ask different

1 questions about the same topic and gather data
2 differently that is Commission business.

3 COMMISSIONER BRACERAS: I agree and I
4 think that we sort of discussed this in the working
5 group and decided that it would be better just to
6 handle it on an ad hoc basis because there may be
7 times when, as the Chair said, the facts are not in
8 dispute but only the recommendations are. And there
9 may be other times, as the Vice Chair pointed out,
10 where the facts themselves are controversial as they
11 are presented.

12 So that's why I want to make clear that
13 when a report is presented to the Commission, there
14 does not have to be an up or down vote on the report
15 as a whole. We can discuss sections of it. We can
16 discuss particular findings of facts that we have
17 objections to. And remove them, amend them, whatever,
18 if a majority deems fit.

19 And same thing with the recommendations.
20 And to the extent that the staff can, you know, break
21 things down in terms of their format so that we can
22 discuss things in that way, that would be helpful.
23 But I think we should let them kind of figure out how
24 to do that and work through it on a case-by-case
25 basis.

1 VICE CHAIRMAN THERNSTROM: And where there
 2 are instances in which the staff is gathering
 3 particular facts and we think that the questions being
 4 asked are either -- might be framed in a different way
 5 or are insufficient in their breadth, do not take into
 6 account other questions that can be raised with
 7 respect to particular phenomenon, then, you know,
 8 Commissioners have to have input into that.

9 COMMISSIONER BRACERAS: And hopefully that
 10 will be sorted out in Stages 1 and 2. At the time the
 11 staff comes forward with an outline, which discusses
 12 the methodology and frames the questions, that would
 13 be the point in time --

14 VICE CHAIRMAN THERNSTROM: Right.

15 COMMISSIONER BRACERAS: -- to suggest
 16 other questions or other sources of data. And also
 17 with the discovery process, that would be a time for
 18 Commissioners to suggest different witnesses,
 19 different questions to be asked in interrogatories, a
 20 different makeup of speakers at a hearing.

21 VICE CHAIRMAN THERNSTROM: Right.

22 COMMISSIONER BRACERAS: So those would be
 23 the points in time, the discreet points in time at
 24 which we'd have the opportunity to do that instead of
 25 all along the process picking up the phone and

1 harassing them -- what about this idea, what about
2 this idea?

3 We'd have these two discreet time periods
4 where we could do just what you suggest. And do it as
5 a group. And do it openly.

6 VICE CHAIRMAN THERNSTROM: I have a
7 question of the Staff Director. To the best of your
8 knowledge, is there any aspect of what we're proposing
9 here that the staff feels will create substantial
10 problems in terms of their ability to work on these
11 projects? And if so, you know, it would be nice to
12 know about them up front.

13 STAFF DIRECTOR MARCUS: I think that the
14 senior staff generally believes that this is a
15 workable framework. I have heard concerns expressed
16 about whether some aspects of this could have
17 ramifications for timing, especially for the statutory
18 report. They are concerned about whether we still
19 will be able to meet our deadlines given this timing.

20 COMMISSIONER BRACERAS: You mean for this
21 year? Or going forward?

22 STAFF DIRECTOR MARCUS: In general.

23 COMMISSIONER BRACERAS: In general.

24 STAFF DIRECTOR MARCUS: In general. And
25 whether having such a highly structured approach could

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1 COMMISSIONER BRACERAS: So why don't we
2 just make a -- under Project Implementation, which is
3 B, add a number five. And --

4 VICE CHAIRMAN THERNSTROM: Saying that the
5 timing of each stage is flexible and the
6 implementation of any stage can take place with a
7 conference call and a notational vote.

8 COMMISSIONER BRACERAS: The timing of each
9 of the above-referenced stages is flexible and may be
10 conducted by a notational vote.

11 VICE CHAIRMAN THERNSTROM: And the
12 implementation of any stage may be conducted.

13 COMMISSIONER BRACERAS: So have it the
14 timing and implementation of each of the
15 above-referenced --

16 VICE CHAIRMAN THERNSTROM: The timing is
17 flexible. The implementation can take place through a
18 process of --

19 COMMISSIONER BRACERAS: But not without a
20 vote.

21 VICE CHAIRMAN THERNSTROM: No. Through a
22 process of conference call and a notational vote.
23 Sorry. I mean I don't want the staff waiting around
24 for us --

25 COMMISSIONER BRACERAS: Yes.

1 be workable. That's a concern that I've heard.

2 But I've not heard any, you know, senior
3 staff indication that it is impossible. It's simply a
4 question sort of going forward about whether we can be
5 flexible about it and revisit it in the event that it
6 causes problems for meeting our statutory timeliness
7 requirement.

8 COMMISSIONER BRACERAS: Well, I guess
9 maybe one thing we could do is, you know, we don't
10 necessarily have to wait until the next Commission
11 meeting. If the staff is ready and wants to get
12 going, we could convene by teleconference and, of
13 course, complying with the Sunshine Act in whatever
14 way we need to, noticing it in the Federal Register
15 and et cetera, et cetera.

16 But if the staff gets to a point where
17 they want approval of a discovery plan and they don't
18 want to wait three weeks until the next Commission
19 meeting, then by all means, a teleconference should be
20 convened. And I don't know, maybe we want to add that
21 formally to the document.

22 CHAIRMAN REYNOLDS: I think that that's a
23 good idea to the extent that we need flexibility. It
24 should be clear that these rules permit a notational
25 vote via teleconference.

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1 VICE CHAIRMAN THERNSTROM: --

2 unnecessarily.

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER BRACERAS: So --

5 CHAIRMAN REYNOLDS: Is everyone
6 comfortable with the amendment?

7 COMMISSIONER BRACERAS: Great. Thank you
8 for raising that. Is there anything else? Ken? That
9 would cause concern?

10 STAFF DIRECTOR MARCUS: The other concern
11 was whether this staging will necessarily make sense
12 for all kinds of projects. And whether there might be
13 some projects that are more streamlined or minor
14 projects that either don't have discovery or
15 substantial discovery where we might want to have a
16 more streamlined process. That's something that --

17 COMMISSIONER BRACERAS: I guess to --

18 STAFF DIRECTOR MARCUS: -- was mentioned.

19 COMMISSIONER BRACERAS: -- that I would
20 say if that type of project comes about, then come to
21 us and ask for a waiver of this process and where it
22 makes sense, we'll do that.

23 And I guess the only thing is that in
24 Stage -- on page 4, Stage 1, we need to delete the
25 language at a regular monthly meeting. So it will now

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1 say the staff will conduct background research and a
2 literature review of the topics. Staff shall then
3 present to the Commission a detailed outline of the
4 project.

5 CHAIRMAN REYNOLDS: Thoughts, additional
6 thoughts, comments?

7 (No response.)

8 CHAIRMAN REYNOLDS: Okay. At this point,
9 as amended, do we -- will all in favor for this motion
10 as amended say aye?

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: Any in opposition?

13 (No response.)

14 CHAIRMAN REYNOLDS: The motion passes.

15 **IX. Program Planning**

16 Okay. At this point, we're up to Program
17 Planning. And -- okay, all right, on that note, will
18 the Staff Director please walk us through Project
19 Planning and Execution?

20 STAFF DIRECTOR MARCUS: Certainly. This
21 is the time during the year -- we're actually a few
22 months delayed for the time for setting an agenda for
23 fiscal year 2007.

24 In addition, there has been a discussion
25 among Commissioners about the appropriateness at this

1 time with the new composition of the Commission of re-
2 looking at fiscal year 2006 and 2005.

3 Although 2007 seems like a long way off,
4 we are, in fact, past the time at which a budget call
5 is usually made in connection with projects for 2007.

6 So it is important that we get an agreement on
7 projects for 2007 in order to be able to get a budget
8 proposed to the Commissioners by the July meeting in
9 order to get things to OMB by September as is
10 required.

11 We have circulated to Commissioners the
12 previously proposed projects as well as a series of
13 new concepts of potential projects and suggested that
14 preferences be indicated as to which projects we
15 should do for 2005, 2006, and 2007.

16 Based on that discussion, we have a
17 proposed slate of projects which is as follows:

18 For the Office for Civil Rights
19 Evaluation, the reauthorization of the Voting Rights
20 Act, minority employment, and the wealth gap,
21 effectiveness of Historically Black Colleges and
22 Universities, disparity studies as evidence of
23 discrimination in federal contracting, and voter fraud
24 in Washington State gubernatorial election.

25 For the Office for General Counsel, the

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1 proposals would be elementary and secondary school
2 desegregation and either role of race in magnet school
3 admissions or minority representation in the census.

4 In terms of scheduling order, the proposal
5 is that the Voting Rights Act be 2006, minority
6 employment, 2005, Historically Black Colleges and
7 Universities, '07, disparity studies, '07, voter fraud
8 in Washington State gubernatorial election, '06.

9 We have indicated a proposal under which
10 elementary and secondary school desegregation be '06
11 and that either magnet school admissions or minority
12 representation in the census be '07.

13 However, staff have recently indicated
14 that based on the Census Bureau's schedule for
15 preparing for the next census, if we do handle the
16 census matter, it is probably something that we should
17 do sooner rather than later in order to be able to
18 effect that in that if we handle the -- if we take on
19 the census, it should probably be '06 and
20 desegregation '07.

21 So if that were to vote, it would be the
22 recommendation that those two be flipped in order.

23 CHAIRMAN REYNOLDS: Okay. All right. At
24 this point, discussion? We have the slate of items.
25 Commissioner Braceras?

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COMMISSIONER BRACERAS: Yes. In thinking about the OGC projects and whether to choose -- I guess we're choosing between the Role of Race in Magnet School Admissions and Minority Representation in the Census? I just -- I have a few thoughts that I'd like to get people's feedback on.

The first is that it seems to me that rather than do two education-related topics, it might be better to diversity our portfolio. And if we're doing desegregation, then to add the census one as a nice complement instead of doing two things that dealt with education.

But my second thought is that if we do do that, I personally would like to see the census topic altered or expanded or tweaked, if you will, to include a discussion of the efficacy of the categories used on the census. And there is a debate -- there is an ongoing debate about whether there should be a multiracial category or whether people should just be able to self report in a more open-ended question.

And I believe that the way the project was originally phrased was that it was going to look at minority under-representation in the census. There's probably also over-representation for a variety of reasons including both ignorance and confusion.

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1 I mean there's no doubt in my mind that at
2 some point, people look at these categories and put
3 themselves into categories that they don't actually
4 belong in. Not because that's how they actually
5 identify themselves but because they don't understand
6 the phraseology.

7 So I'd rather open it up and yes,
8 definitely look at under-representation but also look
9 at over-representation. And look at, you know, from
10 a theoretical perspective, why certain races and
11 categories are on there and others aren't. And why we
12 call them what we call them.

13 CHAIRMAN REYNOLDS: Okay. I would like to
14 hear from Vice Chair Thernstrom.

15 COMMISSIONER BRACERAS: Oh, definitely.

16 CHAIRMAN REYNOLDS: I know that she has
17 some view on this topic. But during the meantime, any
18 other comments on that particular one or --

19 COMMISSIONER TAYLOR: Yes. I just want to
20 grow with the first thought that I think we should, at
21 least as best we can, try to have a diverse portfolio
22 of issues. And to the extent we can collapse some of
23 these, I think we should do so.

24 CHAIRMAN REYNOLDS: Okay. Commissioner
25 Yaki?

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COMMISSIONER YAKI: Yes, I would second Commissioner Bracer's motion -- not that motion but suggestion that we diversify our portfolio. I think the census is one of the most important acts that the United States government does. And I think that our input on that would be important.

I'm not sure if I would at this point -- I guess because -- to try and fine tune what exactly this says, I think that actually the process that we just adopted allows us to do that kind of fine tuning.

But I understand what it is you are saying.

I don't know if I would say over representation. I think that that has loaded terms to it. I would rather talk about -- more about just the categorization of racial and ethnic categorizations and then just sort of leave it at that --

COMMISSIONER BRACERAS: Yes.

COMMISSIONER YAKI: -- in terms of how the analysis goes forward at least for the purposes of today. And then, of course, through the project planning process that we adopted, we can do the fine tuning --

COMMISSIONER BRACERAS: Yes.

COMMISSIONER YAKI: -- on the methodology as we go forward. But I would say that yes, we need a

1 diverse portfolio.

2 COMMISSIONER BRACERAS: Yes, maybe even
3 some sort of title or concept that would basically
4 encompass the notion that we want to look at the
5 accuracy of this. And it can be inaccurate both in
6 the sense that it's not recording all of the people
7 that should be recorded. And in the sense that maybe
8 the categories are too blunt or in some cases, you
9 know, too sharp.

10 COMMISSIONER YAKI: Right. I just know
11 that from the Asian American point of view, that our
12 community fought a long time to try and get it broken
13 down so we just weren't Asian American --

14 COMMISSIONER BRACERAS: Right.

15 COMMISSIONER YAKI: -- because when you
16 disaggregate the data, you find that for the Southeast
17 Asian population, poverty rates are much different
18 than those for the Japanese-Americans, than for the
19 Filipino-American, et cetera, et cetera.

20 And that has an impact on how Title VI
21 applies and what kind of access to programs --

22 COMMISSIONER BRACERAS: Right.

23 COMMISSIONER YAKI: -- we provide. So I
24 think that -- though I agree with what you're saying,
25 I think that -- but I agree with your broader

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1 (Laughter.)

2 VICE CHAIRMAN THERNSTROM: I just ordered
3 coffee. And Ashley has just ordered a Coke. And if
4 you want coffee, I'll just go down and get one for
5 you.

6 COMMISSIONER YAKI: That's fine. I'm just
7 teasing you.

8 VICE CHAIRMAN THERNSTROM: Jennifer, you
9 were saying you want to expand it. I have got some
10 problems with the census question.

11 COMMISSIONER BRACERAS: Well, I have some
12 problems with the census question that way it is
13 currently framed. But --

14 VICE CHAIRMAN THERNSTROM: Where are we?

15 CHAIRMAN REYNOLDS: You're book is
16 different from mine.

17 VICE CHAIRMAN THERNSTROM: Let me get the
18 relevant page here. Go on. Okay.

19 COMMISSIONER BRACERAS: Well, I have
20 problems with the way it is currently phrased and the
21 way it is currently outlined. But if we expanded the
22 topics to look, like I said, not just at
23 representation -- under representation but at the
24 categories themselves and whether -- how accurate they
25 are and the efficacy of using those particular

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1 categories, that, I think, might make an interesting
2 project.

3 CHAIRMAN REYNOLDS: Vice CHAIRMAN
4 Thernstrom?

5 VICE CHAIRMAN THERNSTROM: Okay. I am
6 extremely interested in the topic that you just
7 suggested, the irrationality of the categories and the
8 history. I mean it is an insane history of how the
9 categories have evolved.

10 The question of under representation,
11 there is this enormous literature on it. The Census
12 Bureau -- I mean a lot of scholars have put out
13 reports. I just don't see how we're going to add
14 anything to the existing very thorough discussion of
15 that matter.

16 COMMISSIONER BRACERAS: I mean one
17 possibility in terms of narrowing the scope might be
18 to take one particularly community, you know for
19 example the Hispanic community and look at -- do sort
20 of a short literature view on under-representation
21 issues in that community. And then talk about how
22 that community is described on the census, what boxes
23 people are allowed to check, whether that makes sense,
24 the whole use of the term --

25 VICE CHAIRMAN THERNSTROM: Our use of the

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1 term racial and ethnic -- racial groups, ethnic
2 groups.

3 COMMISSIONER BRACERAS: Right. And the
4 whole racial categories -- categorization of the
5 Hispanic community.

6 I mean that wouldn't give us as broad a
7 perspective in terms of necessarily influencing the
8 way things are done in the future. But it would be a
9 discreet topic that if we just took one ethnic group
10 and looked at both sides of that coin, that way I
11 think it would be doable.

12 VICE CHAIRMAN THERNSTROM: Well, I think
13 it might, in fact, have an impact on how things are
14 done in the future since, as I say, the other question
15 is, you know, has been mined and mined and mined, I
16 mean it has been discussed ad nauseam.

17 So I mean we know what the debates are.
18 We know what the problems are. It's a complicated
19 issue, the whole counting, the estimations are
20 complicated. The Census Bureau --

21 COMMISSIONER BRACERAS: But if there is a
22 lot of stuff out there --

23 VICE CHAIRMAN THERNSTROM: -- tries to do
24 a very careful job on this but I like the questions
25 you asked.

1 COMMISSIONER BRACERAS: I mean maybe we
2 could be useful if there is a lot of stuff out there
3 in doing a thorough literature review and summarizing
4 the data and the arguments on both sides of that.

5 CHAIRMAN REYNOLDS: I believe that there
6 is also value in not just -- well, yes, there is a
7 mountain of data out there.

8 VICE CHAIRMAN THERNSTROM: It's not only
9 data but discussion of how that data is gathered, how
10 it is analyzed, what the assumptions made.

11 CHAIRMAN REYNOLDS: Would putting it in a
12 package that could be disseminated for the public --

13 VICE CHAIRMAN THERNSTROM: Well, it's
14 already in packages to disseminate.

15 CHAIRMAN REYNOLDS: So it's broken down
16 for guys like me?

17 VICE CHAIRMAN THERNSTROM: Oh, absolutely.

18 COMMISSIONER BRACERAS: But in an unbiased
19 way that includes the analyses by left-wing groups as
20 well as conservative groups as well as, you know,
21 moderate groups --

22 VICE CHAIRMAN THERNSTROM: Yes, I can
23 double check --

24 COMMISSIONER BRACERAS: -- sort of lays it
25 all out there.

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VICE CHAIRMAN THERNSTROM: -- on this.

But I believe we would be replicating work already done.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I think

Commissioner Thernstrom makes a good point in terms of there being a lot of data. I would say, though, that that data is such that very often when the Commission says something -- or any governmental agency makes a determination or says something about a particular matter, it has some currency to it that private groups or private studies may not have.

And with respect to this particular issue, there is kind of toxic proliferation of rumor, innuendo, urban legends related to the failure to count individuals from certain ethnic groups.

And although there may be a lot of data suggesting that the census is relatively accurate and there may not be the kind of under representation that's alleged by many, this myth continues to persist. And it's being used for political imperatives also that are not very helpful.

So it may be helpful for the Commission to go through a literature review and make a pronouncement of some sort on this also because I will

1 tell you that in my community, I mean in almost every
2 other community, if you go to Cleveland and you are in
3 urban Cleveland, my neighborhood is 99.99 percent
4 black, every election cycle, you're going to have
5 politicians talking about the fact that, you know, we
6 need to have a certain group in there to make sure
7 that you are counted because you're not going to be
8 counted. And because you're not counted, we're not
9 getting money. And all this other stuff.

10 And it's out there. And I tell you it is
11 very powerful. No one here has looked at what you're
12 talking about. I think -- I don't know if that can be
13 --

14 VICE CHAIRMAN THERNSTROM: And the whole
15 process of statistical adjustment that the census
16 makes and what assumptions go into that process of
17 adjustment and so forth -- okay, I mean I'm not
18 opposed.

19 I am personally, because of the volume of
20 literature on that question, personally more
21 interested in what -- in the question Jennifer raises
22 which is absolutely fundamental of the categorization
23 on the census which, of course, have changed over
24 time.

25 COMMISSIONER BRACERAS: I don't know if we

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1 need a motion to amend the projects before we vote on
2 whether to do it or not. But --

3 VICE CHAIRMAN THERNSTROM: Do we need a
4 motion? I'm sorry. I am not sick. This is a
5 leftover cough from being sick.

6 COMMISSIONER KIRSANOW: I don't know what
7 -- I think Commissioner Yaki made a good point --

8 VICE CHAIRMAN THERNSTROM: I'm not
9 infecting the entire room. I'm just hacking away
10 here.

11 COMMISSIONER KIRSANOW: -- I don't know
12 that the title necessarily needs to be amended at this
13 particular point because thanks to the great work of
14 the working group on reform, we've got a number of
15 opportunities to tweak things as we go forward.

16 VICE CHAIRMAN THERNSTROM: Right. So this
17 constitutes a message to the staff --

18 COMMISSIONER KIRSANOW: Yes.

19 VICE CHAIRMAN THERNSTROM: -- as to how we
20 envision that project.

21 COMMISSIONER BRACERAS: Right. And they
22 could come forward with, you know, I don't know if it
23 is manageable. But if it is manageable, then they can
24 lay out for us what a subset of data that they could
25 handle might look like.

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1 VICE CHAIRMAN THERNSTROM: I suspect there
2 is a good Congressional Research Service report on
3 statistical adjustments and so forth.

4 COMMISSIONER YAKI: And I think there is a
5 GAO report on it as well.

6 VICE CHAIRMAN THERNSTROM: And a GAO
7 report on it as well, right.

8 COMMISSIONER TAYLOR: The one thing I
9 would say is that what I hope we -- I think we can all
10 remember is that we are supposed to have a distinct
11 voice in the chorus. So that even if this issue or
12 any issue may have been addressed by a variety of
13 folks, Congress and otherwise, that we are supposed to
14 be independent.

15 And if we think it is an issue that is
16 important in terms of driving the public debate or I
17 know what you mean. In Richmond, the Richmond Free
18 Press is the urban free paper. And I see it all the
19 time. Your vote is not being counted. They're
20 ignoring you message.

21 And in my mind, at least, the United
22 States Commission on Civil Rights has a distinct
23 voice. And if it is important, we need to go on
24 record despite what anybody else may say.

25 That's my general thought about any topic

1 by the way.

2 VICE CHAIRMAN THERNSTROM: No, I
3 understand that. I just -- the under-representation
4 question is a very complicated statistical issue. But
5 I'm fine with just leaving it as is. And with the
6 assumption that this discussion constitutes a message
7 to the staff that the topic has been expanded to
8 include the -- I think I'll keep this. I like it.
9 The discussion has been expanded to include the
10 concerns about the categories and the structure of the
11 census questions that Commissioner Bracer raised.

12 COMMISSIONER TAYLOR: May I add one point?

13 VICE CHAIRMAN THERNSTROM: Yes.

14 COMMISSIONER TAYLOR: One additional
15 point. I think this also may be a good opportunity
16 for us to discuss the role of government, the point of
17 the census, self-identification versus identification
18 by the public. I understand that the census is used
19 to dole out certain government benefits, identify
20 groups or individuals that may need access to X, Y,
21 and Z.

22 But then as an individual is filling out
23 the form, I'd like a discussion as to, you know, what
24 we're asking people, those categories that
25 Commissioner Yaki described, why they're important.

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1 And there is a -- I say this because my
2 kid is a multiracial. So it's -- and we have this
3 debate in our home all the time. You know, what's
4 important? Self identification? Public
5 identification? In terms in government benefits
6 particularly, what's important?

7 CHAIRMAN REYNOLDS: Well, I find it --

8 COMMISSIONER TAYLOR: So that's a
9 discussion I think we should put on the table at some
10 point.

11 VICE CHAIRMAN THERNSTROM: Well, that's
12 right. And that, it seems to me, is part Commissioner
13 Braceras' concern. And, by the way, the counting, of
14 course, is important after every census. Well, of
15 course after ever census. It is important for
16 redistricting --

17 COMMISSIONER TAYLOR: That's right.

18 CHAIRMAN REYNOLDS: -- purposes as well
19 not only for benefits.

20 CHAIRMAN REYNOLDS: Well, I find -- well,
21 as amended, I think that it is a wonderful project.
22 And it's not just race and ethnicity as least as
23 established by the Brazilian culture, at least in some
24 points of the world also goes into the mix when it
25 comes to, you know, which box you check.

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1 We've taken a different approach here in
2 the United States but I think that looking at how
3 other societies look at race would be informative.

4 Okay. Have we settled on anything? I
5 stepped out of the room. Have we worked out the
6 issues?

7 COMMISSIONER YAKI: You are now Vice
8 Chair.

9 (Laughter.)

10 CHAIRMAN REYNOLDS: Here you go, Abi.
11 I've been demoted so -- you know I stepped out of the
12 room so I just wanted to get up to speed on the
13 progress we made with respect to --

14 VICE CHAIRMAN THERNSTROM: Well, we talked
15 about you when you were out of the room.

16 CHAIRMAN REYNOLDS: Well, it's all true.
17 It's all true. I did it and I'm responsible.

18 COMMISSIONER KIRSANOW: It appears to be
19 the consensus is on the OGC projects to do elementary
20 and secondary school desegregation and minority
21 representation in the census as amended, altered,
22 expanded.

23 CHAIRMAN REYNOLDS: And the first item,
24 elementary and secondary school desegregation, that
25 would be in '07?

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1 COMMISSIONER KIRSANOW: Right.

2 COMMISSIONER BRACERAS: Correct.

3 CHAIRMAN REYNOLDS: We'll flip it?

4 COMMISSIONER KIRSANOW: Yes, right.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER KIRSANOW: Because it appears
7 that we need to get something done with respect to the
8 census now to have any kind of effect on the upcoming
9 census.

10 CHAIRMAN REYNOLDS: Okay.

11 STAFF DIRECTOR MARCUS: It might be useful
12 for clarity to have motions on what is being approved
13 and clarity that, I believe, the Commissioners are
14 dispensing with the previously-approved projects to
15 the extent that they're not discussed today.

16 COMMISSIONER KIRSANOW: I think that makes
17 good sense.

18 COMMISSIONER BRACERAS: Okay. So I move
19 that OGC will take on minority representation in the
20 census for an '06 project.

21 COMMISSIONER KIRSANOW: Second.

22 CHAIRMAN REYNOLDS: Okay. We've had the
23 discussion. Unless there are some additional
24 comments, all in favor?

25 (Chorus of ayes.)

1 CHAIRMAN REYNOLDS: All in opposition?

2 (No response.)

3 CHAIRMAN REYNOLDS: The motion passes.

4 COMMISSIONER BRACERAS: And I move that
5 OGC take on elementary and secondary school
6 desegregation as a 2007 project.

7 COMMISSIONER KIRSANOW: Second.

8 CHAIRMAN REYNOLDS: All in favor?

9 (Chorus of ayes.)

10 CHAIRMAN REYNOLDS: All in opposition?

11 (No response.)

12 CHAIRMAN REYNOLDS: The motion passes.

13 But for clarity, for clarity I just want
14 to make sure that -- well, I just want it to be on the
15 record that the other projects that were on the OGC
16 list, we are not going to move forward with these
17 projects. We're just going to do the two projects
18 that were just voted upon.

19 STAFF DIRECTOR MARCUS: I would recommend
20 a motion on that just so that the staff will know that
21 they are no longer required to do for '06 -- or '05
22 any other projects that had been previously agreed to
23 by the Commission.

24 VICE CHAIRMAN THERNSTROM: I so move.

25 COMMISSIONER KIRSANOW: I second.

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1 CHAIRMAN REYNOLDS: Discussion?

2 (No response.)

3 CHAIRMAN REYNOLDS: All in favor?

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: All in opposition?

6 (No response.)

7 CHAIRMAN REYNOLDS: The motion passes --

8 well, is there a question about what we're voting on?

9 VICE CHAIRMAN THERNSTROM: No.

10 CHAIRMAN REYNOLDS: Okay. So the motion

11 passes.

12 VICE CHAIRMAN THERNSTROM: Yes. But I do

13 have a question. This does not -- I'm sorry,

14 Jennifer, go ahead.

15 COMMISSIONER BRACERAS: Oh, I just wanted

16 to make sure because Ken had mentioned in his memo

17 that some of these could nevertheless be done as

18 briefings.

19 VICE CHAIRMAN THERNSTROM: I was going to

20 make the same point.

21 COMMISSIONER BRACERAS: And we have, I

22 guess, four topics on our agenda to discuss as future

23 briefings. But some of the ones that are not on the

24 agenda that are listed here might make very

25 interesting briefings.

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VICE CHAIRMAN THERNSTROM: Right.

COMMISSIONER BRACERAS: I don't know how you want to take that up.

VICE CHAIRMAN THERNSTROM: Yes, no that was exactly the point I was about to make. That I think we should keep them in mind as topics for briefings.

CHAIRMAN REYNOLDS: I don't think there is anything -- we haven't done anything today that would prevent us from picking one of these topics.

COMMISSIONER BRACERAS: Okay. So when we get to the second on the agenda where we discuss briefings, then we can feel free to resurrect some of these topics.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: Okay.

VICE CHAIRMAN THERNSTROM: But in addition, as we go along and really turn this Commission from its preoccupation with budgetary issues to a preoccupations with the substantive issues, we can add briefings that come off this list because every single one of these topics is interesting. And I don't think all the briefings have to be decided today.

CHAIRMAN REYNOLDS: Okay. At that point,

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1 OCRE projects. Ken, you want to walk us through?

2 STAFF DIRECTOR MARCUS: Yes. I believe
3 that it is the consensus of the Commission that we
4 should continue on the work on Adarand as re-approved
5 last month. And, in addition, for 2005 to do the
6 project on minority employment and the wealth gap.
7 But to dispense with any other projects previously
8 approved for 2005. That might be an appropriate
9 motion as well for now.

10 COMMISSIONER YAKI: So moved.

11 COMMISSIONER BRACERAS: Second.

12 CHAIRMAN REYNOLDS: I'm sorry. I was --

13 VICE CHAIRMAN THERNSTROM: I am sorry.

14 Two people here were not listening.

15 COMMISSIONER YAKI: This struggle for
16 power is unbecoming.

17 (Laughter.)

18 STAFF DIRECTOR MARCUS: There has been a
19 motion and a second to continue 2005 OCRE work on
20 Adarand and on minority employment and the wealth gap.

21 But otherwise to discontinue work on any other 2005
22 OCRE projects for 2005.

23 CHAIRMAN REYNOLDS: Okay.

24 VICE CHAIRMAN THERNSTROM: Okay.

25 CHAIRMAN REYNOLDS: Let me get this

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1 straight. Okay. While we were chatting over here,
2 did we have discussions?

3 COMMISSIONER BRACERAS: No.

4 CHAIRMAN REYNOLDS: Are we ready to vote?

5 COMMISSIONER BRACERAS: We did not have
6 discussion.

7 CHAIRMAN REYNOLDS: Okay.

8 COMMISSIONER BRACERAS: You were about to

9 --

10 STAFF DIRECTOR MARCUS: Oh, the Director
11 of OCRE has pointed out that one of the
12 previously-approved projects for OCRE for 2005 is
13 federal funding for federal civil rights enforcement
14 which was ranked No. 7 of the projects.

15 VICE CHAIRMAN THERNSTROM: Well, I mean we
16 have got three topics at the very top here of the list
17 that are -- the support for which was dramatically
18 different than that for any of the other topics. And
19 I think that there is really a clear -- as a
20 consequence, a clear and bright line here.

21 COMMISSIONER KIRSANOW: With respect to
22 the ongoing work, how much ongoing work has there
23 been?

24 STAFF DIRECTOR MARCUS: There has been a
25 substantial amount of ongoing work on minority

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1 employment and the wealth gap as well as on the
2 funding report and Adarand. They are very --

3 VICE CHAIRMAN THERNSTROM: Well, but
4 Adarand we're continuing with.

5 STAFF DIRECTOR MARCUS: That's right. The
6 others are very far advanced in terms of the research,
7 analysis, and even the rough drafting.

8 COMMISSIONER BRACERAS: I'm sorry. Which
9 ones? Adarand?

10 STAFF DIRECTOR MARCUS: Adarand, funding
11 federal civil rights enforcement for 2006, and
12 minority employment and the wealth gap.

13 VICE CHAIRMAN THERNSTROM: Well, but the
14 minority employment and the wealth gap is not at issue
15 in that it's the second on the list. What is at issue
16 is the --

17 COMMISSIONER BRACERAS: Funding.

18 VICE CHAIRMAN THERNSTROM: -- funding of
19 federal civil rights enforcement.

20 STAFF DIRECTOR MARCUS: That's right.
21 Funding federal civil rights enforcement was
22 relatively low on the list of priorities. It is
23 something that is fairly advanced in terms of work
24 that was done.

25 COMMISSIONER KIRSANOW: I guess obviously

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1 I would prefer the reauthorization of the Voting
2 Rights Act, something I'm very interested in. But I'm
3 also very concerned that we spend or have spent time,
4 effort, resources, on something that I guess we are
5 going to be abandoning it wholesale?

6 STAFF DIRECTOR MARCUS: If that is the
7 vote, then we would be abandoning it. Now if the
8 Commissioners want to continue on it, I believe that
9 it could be completed probably consistent with being
10 able to complete the other projects that we have
11 discussed today. However, it would take some time
12 away from -- I suppose it might mean that the start of
13 one of the projects is delayed a little bit. Most of
14 the staff-level work on funding has been done.

15 COMMISSIONER BRACERAS: I guess with
16 respect to the merits of the funding topic, first of
17 all I'm not sure that the Commission's value added is
18 that great on this topic. In other words, I'm not
19 sure that -- it seems to me that there are other
20 organizations out there that collect this information.
21 Maybe I'm wrong. But that it is available to the
22 public in other ways.

23 And secondly, I would say that the premise
24 of the topic is one with which I have had some
25 trouble. And that is that there's always going to be

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1 a sense that there is not enough money and that civil
2 rights enforcement is underfunded. And so I'm not
3 sure on a yearly basis what we're contributing to the
4 discussion on civil rights.

5 I think some of these other topics we can
6 contribute more in terms of the debate on civil rights
7 instead of just beating the same drum that there is
8 not enough money, there needs to be more money.

9 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

10 VICE CHAIRMAN THERNSTROM: There is
11 another point here. We don't actually know how long
12 it would take to finish this project because it has
13 not gone through the stages that we have outlined for
14 future projects. So there hasn't been the kind of
15 input at each stage in drafting this report.

16 And, indeed, it may turn out that a
17 certain number of Commissioners, perhaps the majority
18 of Commissioners, have problems with the report such
19 that you really are talking about a great deal more
20 work and a great deal of time that will eat into the
21 projects that have gotten 18 points, 17 points, 17
22 points, when we're talking here about a project that
23 got only five points.

24 COMMISSIONER BRACERAS: Right. And part
25 of my problem in the past with these funding reports

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1 has been that they look pretty much at one criteria,
2 which is money, without looking at the effectiveness
3 of civil rights enforcement programs. And so the
4 conclusions they draw are not necessarily complete or
5 accurate.

6 And, therefore, on the merits, at least as
7 currently conceptualized and using the template that
8 has been used in the past, I would be against going
9 forward with the funding project.

10 CHAIRMAN REYNOLDS: Is there any support
11 for the funding project? Mr. Yaki?

12 COMMISSIONER YAKI: Yes. How were the
13 points? I'm trying to remember how the points were
14 scored. It's five for our first choice and what --
15 four --

16 STAFF DIRECTOR MARCUS: Four for a second,
17 three for our third, two for the fourth --

18 COMMISSIONER YAKI: Okay.

19 STAFF DIRECTOR MARCUS: -- and one for our
20 fifth.

21 COMMISSIONER YAKI: I was just trying to
22 remember if all the five points were from me or not.

23 (Laughter.)

24 COMMISSIONER YAKI: And it's not actually
25 a stupid question because the question is whether it

1 was present on enough people's list at a one- or a
 2 two- point level that maybe the total number wasn't
 3 but the over -- you know there is an overweight on
 4 some of how the scoring goes. If three people did the
 5 Voting Rights Act, that would come out at 15. If two
 6 people didn't, and list something -- you see what I'm
 7 saying here?

8 VICE CHAIRMAN THERNSTROM: Yes.

9 COMMISSIONER BRACERAS: I think all of us
 10 had voting rights at some level.

11 COMMISSIONER YAKI: I think I have an
 12 issue that actually is different from -- I mean there
 13 are two issues. One, I think that there is a role for
 14 us to - - part of our mission historically has been to
 15 be the watchdog on federal government's efforts to
 16 deal with federal funding enforcement.

17 And to the extent that we sing the same
 18 tune each year that there isn't enough funding for
 19 civil rights enforcement, I don't see why necessarily
 20 that is a bad thing. I mean we sing the same tune
 21 every year ourselves that we don't have enough money
 22 to do the job that we would really like to do.

23 So hopefully, sooner or later, you know,
 24 someone listens to that song and puts it on their iPod
 25 or something like that, Number One.

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Number Two, and more importantly, is that to the extent that there is a substantial amount of time and effort that has been expended to this already, just from the tenure of some of the questions that I received in follow up from the subcommittee, I am loathe to sort of toss it to the side given their concern about how we allocate and spend our resources.

That's just my own point of view. I've been having difficulty answering some of these questions without going haywire as you can probably imagine. But I don't necessarily want to be in the position of saying that the Commission abandoned a substantial amount of time, effort, and person power into doing something at this point in time.

And I would say that in terms of what I do not like on the OCRE schedule, I think that quite frankly the - - I don't know if it is a lesson but the experience that this Commission went through on Florida may make us be a little more cautious in wading into the gubernatorial election, especially two years out, on Washington.

And I would, if it can be done, like to see the federal funding for some substitute of that one at least. And maybe, you know, maybe it is done in a way that's not perspective. Maybe it's

1 retrospective.

2 This report, maybe it comes out in '06
3 rather than '05. So maybe it's a -- it may be a day
4 late and a dollar short but it's still a good
5 historical and analytical document about what funding
6 has been for federal civil rights enforcement in this
7 country.

8 And, again, to reiterate, maybe it is a
9 song that has been played before but it's a song, I
10 think, that needs to continue to be played.

11 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: Yes. The reason I
13 raised the issue with respect to the funding of
14 federal civil rights enforcement is similar to what
15 Commissioner Yaki just mentioned and that is I can
16 just see a year from now or two years from now or
17 whenever Congress or GAO saying the Commission had
18 done the work on a particular project, expended
19 resources, time, and energy on it. And then just
20 threw it under the bus.

21 Now that doesn't mean that, you know, we
22 necessarily blindly go forth on every single project.

23 We can revisit certain things. But I think there is
24 a certain utility to utilizing whatever data we have
25 collected if we can.

1 And I'm wondering -- and I raise that
2 because I'm wondering if maybe Terri Dickerson can
3 tell us if there is any utility -- if there is
4 anything that can be given to the Commission? It
5 doesn't have to be a report.

6 But if there has been data collected to
7 this point, or if there have been certain conclusions
8 reached -- I'm not sure where it is, is there
9 something useful that can be provided to the
10 Commission at this point so it's not as if we've just
11 gone down this path and then abandoned it.

12 CHAIRMAN REYNOLDS: Well, at this point,
13 Ms. Dickerson, would you please grab a microphone?

14 MS. DICKERSON: Thank you. We issued
15 interrogatories on this project in October. And
16 someone has worked to not only collect the data but to
17 make the changes that I believe former Commissioner
18 Redenbaugh asked us to make last year which was to
19 address output and outcome measures as a function of -
20 - to talk about the budget in the context of what the
21 GPRA measures were and how the agencies were measuring
22 their effectiveness and efficiency given the budget
23 that they were supplied by Congress.

24 So in addition to the President's request,
25 it also looks at what Congress appropriated all in the

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1 context of what the agency's strategic plan is.

2 CHAIRMAN REYNOLDS: Ms. Dickerson, could
3 you give us a sense of how much time has been spent on
4 this?

5 MS. DICKERSON: This report was to come to
6 you, I believe, at this meeting. We are -- just
7 because of a couple of interrogatories that came in
8 late, we were running a little bit late. But I'm
9 believing this report -- I've already seen two drafts
10 of it. And I'm believing this report would be
11 forwarded to the Staff Director next week.

12 COMMISSIONER KIRSANOW: Okay. At this
13 point, I think we should -- we need to go forward on
14 this.

15 COMMISSIONER BRACERAS: Can I make a --

16 CHAIRMAN REYNOLDS: Well, I guess my two
17 cents is that whenever there is a changing of the
18 guard, there's the possibility and probability that
19 there will be a different focus. And so agendas being
20 changed, projects being modified, and dropped, that is
21 -- that can't be avoided in my view.

22 As drafted, I have some concerns about the
23 value. I mean it rests upon a presumption that
24 increased expenditures equals improved enforcement
25 activities. And I don't think that that link has been

1 demonstrated. .

2 COMMISSIONER KIRSANOW: Mr. Chairman, I'm
3 not sure that that's -- we had this issue in the past
4 where Commissioner Redenbaugh addressed, you know, the
5 whole issue of inputs versus outputs. And I think his
6 recommendations will be very salutary in this report.

7 I haven't seen the report. I don't know what it is
8 going to say. But I think -- I know that OCRE worked
9 with Commissioner Redenbaugh on this type of issue
10 before with good result.

11 And second is we're very close -- and,
12 again, I probably would not have voted for this
13 particular project if we had come to this point a year
14 ago. But since we are at this point now, I'm not sure
15 it is a good use of Commission resources to abandon it
16 when we're so close to the finish line.

17 And number three is I agree with you
18 entirely that very often there is a change in focus
19 whenever there is a changing of the guard. And we
20 shouldn't have these kinds of considerations
21 necessarily.

22 But in know that in a couple of other
23 issues in this last year when the Commission decided
24 to go in a different direction, there were howls and
25 screams that, you know, the Commission was being

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1 hijacked. And I think if we abandon a project when we
2 are, you know, at the three yard line, people will
3 suggest that we are trying to, you know, kind of shove
4 things under the rug so they don't see the light of
5 day.

6 CHAIRMAN REYNOLDS: Well, if there is
7 sufficient support for the project in its current
8 form, then by all means, we vote on it. But at this
9 point, I don't --

10 COMMISSIONER BRACERAS: Can I make a
11 suggestion?

12 CHAIRMAN REYNOLDS: Yes, Commissioner
13 Braceras?

14 COMMISSIONER BRACERAS: First of all, I
15 hadn't realized that Russell's suggestions -- I knew
16 they had been incorporated earlier. I didn't know
17 that you were going to continue to use his model.

18 I guess part of my problem is I haven't
19 seen the report or a template for it. And don't know
20 exactly what questions have been asked. But given
21 that the work is virtually complete and given that you
22 say you look at the question of outputs as well as
23 inputs, I guess I would reverse course on what I said
24 before and be willing to support the project if we can
25 take a look at what you have prepared.

1 It's too late to go through the whole
2 process that we just adopted. But if we could take it
3 as a draft instead of a final draft and have an
4 opportunity to make suggestions or changes --

5 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

6 COMMISSIONER BRACERAS: -- and at least
7 have some input into the conclusions, then I might be
8 willing to go forward with this project. I think if
9 it comes to us and we have to vote on it in an up or
10 down fashion, I'm not sure I'm going to be able to
11 support it. But --

12 CHAIRMAN REYNOLDS: So, would this come in
13 as a Stage 3 draft report?

14 VICE CHAIRMAN THERNSTROM: Well, let me
15 speak to that a second.

16 COMMISSIONER BRACERAS: Yes.

17 VICE CHAIRMAN THERNSTROM: I don't think
18 that it can come in quite as a Stage 3 draft report.
19 That is -- I'm also very sympathetic to what
20 Commissioner Yaki has said. Well, what both
21 Commissions Kirsanow and Braceras has said.

22 I don't think it can quite come in as a
23 Stage 3 draft report given the fact that we have had -
24 - we have not had any look at it before. If it comes
25 in as a draft -- and I think it should come in as a

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1 draft given how much work they have done -- there
2 should be an understanding that we can raise even at
3 this point the questions that in the future we will be
4 raising at Stages 1 and 2.

5 That is we can look at the draft and raise
6 some fundamental issues about the questions that have
7 been asked, the way the issue has been framed, and so
8 forth. In the future, by Stage 3, we will have been
9 asked all of those inquiries.

10 So I would support, given how much work
11 you've done on it, I would support your bringing it to
12 us as a draft with the understanding that we are not
13 really at Stage 3 as it is contemplated for the
14 future.

15 COMMISSIONER KIRSANOW: My presumption is
16 this is not detracting from being able to perform any
17 work on reauthorization of Voting Rights Act or
18 anything else that we may approve here.

19 VICE CHAIRMAN THERNSTROM: Well, it may.
20 It depends.

21 CHAIRMAN REYNOLDS: Well -- right, right.

22 VICE CHAIRMAN THERNSTROM: It may.

23 CHAIRMAN REYNOLDS: But we don't know at
24 this point.

25 COMMISSIONER KIRSANOW: Well, yes. Maybe

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1 it is a question we can pose to Ms. Dickerson.

2 VICE CHAIRMAN THERNSTROM: Well, she can't
3 answer it without us having looked at this to say what
4 our problems are.

5 CHAIRMAN REYNOLDS: Well, how about this?
6 Why don't we, once the draft is completed, just
7 distribute the draft and get it on the agenda so we
8 can see how much work will be involved in -- pardon me
9 -- we need to see how much work would be involved and
10 what shape it is in, whether it reflects a document
11 that this Commission wants to move forward with.

12 So I don't know if we need --

13 VICE CHAIRMAN THERNSTROM: And what the
14 competing considerations are in terms of other
15 projects --

16 CHAIRMAN REYNOLDS: Time and resources,
17 yes.

18 VICE CHAIRMAN THERNSTROM: -- and so
19 forth. But I think given how much work we've done
20 now, we cannot turn our back on your staff and simply
21 drop it.

22 CHAIRMAN REYNOLDS: Commissioner Taylor?

23 COMMISSIONER TAYLOR: Any expectation as
24 to when you will be able to circulate a draft?

25 MS. DICKERSON: My plan is to give the

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1 draft -- but it would be the first draft -- to the
2 Staff Director next week. And, of course, there may
3 be things that he wants us to do with that draft.

4 COMMISSIONER TAYLOR: May I?

5 MS. DICKERSON: Sure.

6 COMMISSIONER TAYLOR: Under our recently
7 adopted Stage 3, just so I understand the process
8 because we're trying to plug it in here at Stage 3,
9 what would normally happen? I know we would have four
10 weeks to review it once we've been provided a draft
11 copy. But would it normally go from you to the Staff
12 Director? It is the normal vetting process?

13 COMMISSIONER YAKI: Actually under the new
14 rules, it says the first draft goes to us --

15 COMMISSIONER TAYLOR: See, that's what I
16 thought.

17 COMMISSIONER YAKI: -- pending --

18 COMMISSIONER TAYLOR: That's why I was
19 asking --

20 COMMISSIONER YAKI: -- the editorial --

21 COMMISSIONER TAYLOR: -- the question.
22 That sounded different than the proposed rule or the
23 rule we just adopted.

24 COMMISSIONER YAKI: Right.

25 STAFF DIRECTOR MARCUS: Well, I believe

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1 they all go to the Staff Director.

2 COMMISSIONER BRACERAS: Yes.

3 STAFF DIRECTOR MARCUS: Each draft goes
4 first to the Staff Director and then to the
5 Commissioners --

6 COMMISSIONER BRACERAS: Right.

7 STAFF DIRECTOR MARCUS: -- after Staff
8 Director comments are incorporated.

9 COMMISSIONER TAYLOR: Okay. I'm asking
10 this series of questions because I think it's
11 important that we follow through -- we're too far down
12 this road.

13 COMMISSIONER BRACERAS: Yes.

14 COMMISSIONER TAYLOR: I think it should be
15 incumbent upon us -- we've given ourselves four weeks
16 here in our recently-adopted rule. I think we should
17 put pressure on ourselves to turn this around in two
18 weeks if necessary once it is circulated among the
19 Commissioners so that if at all possible, we can
20 address this issue at the next meeting. I don't think
21 it is something we should put off and rely on our four
22 weeks that we've given ourselves here. So that's my
23 recommendation.

24 COMMISSIONER KIRSANOW: Keep in mind also
25 that this, to my recollection, is the only report that

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1 we voted on eight-zip to approve back last year.

2 VICE CHAIRMAN THERNSTROM: Terri, how long
3 is this report likely to be?

4 MS. DICKERSON: I think it is about 60
5 pages long.

6 VICE CHAIRMAN THERNSTROM: So the two
7 weeks is manageable.

8 COMMISSIONER TAYLOR: Yes.

9 VICE CHAIRMAN THERNSTROM: I think we've
10 got a plan of action here.

11 CHAIRMAN REYNOLDS: Okay. So do we need a
12 motion?

13 VICE CHAIRMAN THERNSTROM: I don't -- do
14 we need a motion? I mean this is a project approved a
15 long time ago. It's now going to go forward --

16 CHAIRMAN REYNOLDS: Okay. So we voted --

17 VICE CHAIRMAN THERNSTROM: -- to the Staff
18 Director.

19 CHAIRMAN REYNOLDS: -- it's been voted on
20 in the past.

21 STAFF DIRECTOR MARCUS: Technically, I
22 believe for '05 for OCRE, the projects we're talking
23 about are Adarand, minority employment, and federal
24 funding for '06. There are no other projects that
25 were previously approved.

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1 And I think that the consensus of the
2 Commissioners is that we go forward on those. So for
3 '05 OCRE, I don't believe that we need a new motion or
4 a new vote at this time.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER BRACERAS: So --

7 STAFF DIRECTOR MARCUS: We do need them
8 for '06 and for '07 for OCRE.

9 CHAIRMAN REYNOLDS: Okay. What's next.

10 STAFF DIRECTOR MARCUS: Staff could
11 certainly use guidance at this point for the projects
12 that the Commissioners would like OCRE to undertake in
13 2006. I believe that the consensus of the
14 Commissioners is that for 2006, OCRE should do
15 projects regarding a reauthorization of the Voting
16 Rights Act and voter fraud in Washington State.

17 COMMISSIONER YAKI: Well, it's not a
18 consensus.

19 VICE CHAIRMAN THERNSTROM: No, wait a
20 minute. Wait a minute. How did we get to there?
21 What happened to --

22 COMMISSIONER BRACERAS: We were talking
23 about -- we're doing it by year.

24 VICE CHAIRMAN THERNSTROM: Oh, we're
25 talking about by year, yes.

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1 COMMISSIONER BRACERAS: I would just jump
2 in and second what Commissioner Yaki said before about
3 the Washington State --

4 VICE CHAIRMAN THERNSTROM: Yes, me, too.

5 COMMISSIONER BRACERAS: -- topic. I don't
6 think it will be timely. And it's too narrow.

7 CHAIRMAN REYNOLDS: Well, I think that
8 recently we've had allegations of fraud. And I think
9 there may be some value in trying to ferret out what
10 that exactly means or should mean, what constitutes
11 intimidation, what constitutes fraud.

12 So I do believe it would have value. And
13 for me what happened in Washington State is not what
14 is key for me. What is important, though, is to try
15 to develop a common understanding in the 21st century
16 of what voter fraud means, what voter intimidation
17 means.

18 COMMISSIONER BRACERAS: Could that be done
19 through a briefing?

20 CHAIRMAN REYNOLDS: Sure, sure.
21 Commissioner Yaki?

22 COMMISSIONER YAKI: I was going to suggest
23 that the difficulty, I think, with a full-blown report
24 one is that it is two years out. Memories start to
25 fade a little bit.

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1 Number two is that I think for it to be as
2 fair as it could be, it would involve the kind of
3 expenditure of resources that we don't have right now,
4 namely going to Washington.

5 CHAIRMAN REYNOLDS: Yes, that's a good
6 point, right.

7 COMMISSIONER YAKI: I think to have it
8 here would subject the Commission to all sorts of
9 scrutiny about who would be able to actually manage to
10 attend. And it is the voters in Washington who are
11 the ones who were effected.

12 But if there was a question of what kinds
13 of voter fraud and intimidation reports have existed
14 in recent elections, including the State of
15 Washington, I think that a briefing here or a hearing
16 here would be sufficient.

17 There are enough scholars out there who
18 have done and written about it that I just don't think
19 as a project report it's a wise use of our resources.

20 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

21 VICE CHAIRMAN THERNSTROM: I'm in complete
22 agreement with what Commissioner Yaki just said. And
23 look, this is an unfolding story. By the time we get
24 to it, the facts may be fairly clear and the effected
25 parties in the State of Washington are certainly

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1 deeply engaged in the issue of what happened in that
2 election.

3 I'm in agreement with having a hearing on
4 it but I'm opposed to a report as well.

5 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: Yes, I think this
7 is an extraordinarily important issue. It is one that
8 has dominated two presidential elections. And has
9 potentially undermined government -- or, I'm sorry,
10 citizens' belief or confidence in the integrity of the
11 electoral system.

12 VICE CHAIRMAN THERNSTROM: The larger --
13 you're talking about the larger issue.

14 COMMISSIONER KIRSANOW: Yes, that being
15 said -- and again I think it is an extraordinarily
16 important issue, I'm not sure that we have the ability
17 to address the issue in a credible fashion that moves
18 the question forward or even answers a couple of
19 questions.

20 Number two is that there is ongoing
21 litigation in Washington and I believe in Milwaukee
22 and in other locales related to this issue where I
23 think the facts will be more definitively adduced. We
24 could probably conduct a briefing -- I think we should
25 conduct a briefing given the extraordinary importance

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1 of the issue here.

2 And I think as Commissioner Yaki and Vice
3 Chair Thernstrom indicated there are people with a lot
4 of resources who can address this before us in a
5 briefing including the Civil Rights Division of the
6 Department of Justice. We could probably get somebody
7 to come here. They've got ongoing investigations on
8 some of these things.

9 I think it deserves an airing but it is an
10 airing that probably, if we're going to do it in a
11 credible fashion, would consume our entire budgetary
12 resources.

13 CHAIRMAN REYNOLDS: Okay. So there seems
14 to be a majority of Commissioners who would either
15 like to have a hearing on the issue or not address the
16 issue at all.

17 CHAIRMAN REYNOLDS: And a hearing does not
18 --

19 COMMISSIONER BRACERAS: Or a briefing.

20 VICE CHAIRMAN THERNSTROM: -- the question
21 of a hearing --

22 COMMISSIONER BRACERAS: A briefing.

23 VICE CHAIRMAN THERNSTROM: -- does not
24 need to be decided now.

25 CHAIRMAN REYNOLDS: Right.

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1 COMMISSIONER BRACERAS: But the
2 distinctions are important.

3 VICE CHAIRMAN THERNSTROM: Briefing. And
4 it doesn't have to be decided now. Let us see how
5 this story unfolds.

6 CHAIRMAN REYNOLDS: Okay. So we have --
7 have we --

8 COMMISSIONER BRACERAS: So we're voting on
9 '06. We have the Voting Rights Act. That's one.

10 COMMISSIONER YAKI: Can we move up the
11 HBCUs to '06? Or is that too much in addition to the
12 Voting Rights Act? Because I know Commissioner
13 Thernstrom was asking about -- wondering if that could
14 be moved up.

15 COMMISSIONER BRACERAS: Yes.

16 VICE CHAIRMAN THERNSTROM: Yes, I would
17 like that moved up to '06.

18 COMMISSIONER KIRSANOW: Just as a point of
19 clarification, I think we had a discussion in a
20 meeting either last month or the month before where we
21 involved OCRE as to what their capabilities were. And
22 I'm not sure that we're, at this point, if we approve
23 another topic, whether they can do that. I'm just
24 asking. I mean --

25 CHAIRMAN REYNOLDS: Well, let's establish

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1 a preference. And then ask --

2 COMMISSIONER KIRSANOW: Okay.

3 CHAIRMAN REYNOLDS: -- staff whether they
4 have the capacity to do it.

5 COMMISSIONER KIRSANOW: Right.

6 VICE CHAIRMAN THERNSTROM: Is it my
7 understanding --

8 STAFF DIRECTOR MARCUS: I mean given
9 projected staffing, it's our understanding that OCRE
10 can do two major projects in 2006.

11 CHAIRMAN REYNOLDS: That is my
12 understanding. But we'll circle around just to
13 confirm.

14 COMMISSIONER BRACERAS: The Staff Director
15 was explaining the feasibility of going forward with
16 the HBC project.

17 STAFF DIRECTOR MARCUS: What I indicated
18 is that given the projected staffing for next year, we
19 anticipate that OCRE should be able to do two major
20 projects during the course of the year.

21 VICE CHAIRMAN THERNSTROM: And the first
22 one will be the re-authorization of the Voting Rights
23 Act.

24 COMMISSIONER BRACERAS: There seems to be
25 a consensus for that.

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1 CHAIRMAN REYNOLDS: Yes, I think so.

2 VICE CHAIRMAN THERNSTROM: Yes. Okay. So
3 we've got another project they can possibly do.

4 COMMISSIONER YAKI: And I would move the
5 effectiveness of the HBCUs second.

6 VICE CHAIRMAN THERNSTROM: And I second
7 that.

8 CHAIRMAN REYNOLDS: Okay. Any comments?
9 Any discussion?

10 STAFF DIRECTOR MARCUS: If I may, I would
11 suggest that either as part of this motion or a
12 subsequent we indicate that staff is not directed to
13 do work on other projects previously approved for
14 2006.

15 COMMISSIONER BRACERAS: So moved.

16 VICE CHAIRMAN THERNSTROM: Second.

17 COMMISSIONER YAKI: I'll take that
18 amendment.

19 CHAIRMAN REYNOLDS: Okay. All in favor?

20 (Chorus of ayes.)

21 CHAIRMAN REYNOLDS: All against?

22 (No response.)

23 CHAIRMAN REYNOLDS: Motion passes.

24 CHAIRMAN REYNOLDS: Okay. Effectiveness
25 of HBCUs.

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1 VICE CHAIRMAN THERNSTROM: That's the
2 second one.

3 CHAIRMAN REYNOLDS: I'm sorry?

4 VICE CHAIRMAN THERNSTROM: That's the
5 second one for '06.

6 CHAIRMAN REYNOLDS: Right. Okay. All
7 right. Moving right along. Okay. So we have '05 and
8 '06 done for OCRE. And '07 we have the Adarand
9 Project.

10 VICE CHAIRMAN THERNSTROM: No.

11 STAFF DIRECTOR MARCUS: I'm sorry, if I
12 may, the other federal contracting project. Not
13 Adarand.

14 VICE CHAIRMAN THERNSTROM: Adarand is '05.

15 STAFF DIRECTOR MARCUS: But the question
16 of disparity studies as evidence of discrimination in
17 federal contracting.

18 CHAIRMAN REYNOLDS: Okay. Okay. Okay.
19 So that's one topic for '07. Any discussion about
20 another project for '07?

21 Vice Chair Thernstrom?

22 VICE CHAIRMAN THERNSTROM: Well, I'm
23 curious how the Patriot Act, which I thought
24 Commissioner Yaki had a great interest in at least,
25 ended up so far to the bottom.

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(Laughter.)

CHAIRMAN REYNOLDS: Well, there are a couple of ways to explain that.

(Laughter.)

COMMISSIONER YAKI: I think there is some voter intimidation going on.

(Laughter.)

CHAIRMAN REYNOLDS: I guess we need to do some work to define our terms.

VICE CHAIRMAN THERNSTROM: On its face --

COMMISSIONER YAKI: Polls closed early? I don't know.

VICE CHAIRMAN THERNSTROM: Wait a minute.

On its face, it is, it seems to me, a more important issue than some of the others that would seem to have priority.

COMMISSIONER YAKI: But, Commissioner Thernstrom, thank you for your kind comments. I think that I can't -- I don't think we can foresee sort of -- this was a much more timely topic than it was a future topic.

VICE CHAIRMAN THERNSTROM: Right, '07.

COMMISSIONER YAKI: So I think in '07, I would --

VICE CHAIRMAN THERNSTROM: Yes, yes.

1 COMMISSIONER YAKI: -- much rather that be
2 a briefing --

3 VICE CHAIRMAN THERNSTROM: Okay. That's
4 fine.

5 COMMISSIONER YAKI: -- in the near future.

6 VICE CHAIRMAN THERNSTROM: Okay.

7 COMMISSIONER YAKI: So I would withdraw
8 that.

9 VICE CHAIRMAN THERNSTROM: That's fine.
10 All right.

11 CHAIRMAN REYNOLDS: Any other
12 recommendations for '07?

13 COMMISSIONER BRACERAS: I just have a
14 question.

15 CHAIRMAN REYNOLDS: Yes?

16 COMMISSIONER BRACERAS: What is it exactly
17 we're trying to achieve with the disparity studies
18 topic? It wasn't one of my top ones and I'm just
19 trying to understand the enthusiasm of others for it.

20 CHAIRMAN REYNOLDS: Well, the ability of
21 the federal government depends on a certain factual
22 predicate. And I guess there are a number of
23 Commissioners that want to ensure that that factual
24 predicate has been satisfied.

25 COMMISSIONER BRACERAS: So what exactly

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1 are we looking at though?

2 CHAIRMAN REYNOLDS: The disparity studies
3 that form the factual basis for the use of racial
4 classifications.

5 COMMISSIONER BRACERAS: Right. And we're
6 looking at whether those are valid?

7 CHAIRMAN REYNOLDS: Whether those studies
8 are solid or just basically junk science.

9 COMMISSIONER KIRSANOW: When you take a
10 look at Adarand, for example --

11 COMMISSIONER BRACERAS: So it's a more
12 statistical - -

13 COMMISSIONER KIRSANOW: -- up and down the
14 appellate chain, there are a number of studies upon
15 which defendants rely to maintain -- well, let me back
16 up, Richmond v. Kerson, the imperative that you always
17 have, these ongoing disparity studies kind of to
18 justify set aside contracts.

19 COMMISSIONER BRACERAS: I guess my
20 question is I'm trying to understand whether this is a
21 more statistical project or a more theoretical project
22 because this question can be looked at either or both
23 ways.

24 COMMISSIONER KIRSANOW: My understanding
25 was it was going to be statistical.

1 CHAIRMAN REYNOLDS: Okay. Well my
2 understanding is that it would be broader. That there
3 would be statistical analyses but also other types of
4 analyses to assess the soundness of these studies.

5 VICE CHAIRMAN THERNSTROM: It is
6 inevitably --

7 COMMISSIONER BRACERAS: Theoretical?

8 VICE CHAIRMAN THERNSTROM: -- yes, it
9 involves, you know, the whole question of how you
10 measure discrimination. I wonder whether this is more
11 appropriate for a briefing.

12 COMMISSIONER BRACERAS: Well, I guess
13 that's why I asked because it seems to me that on
14 those big theoretical questions as to whether or not
15 these types of studies, disparity studies should be
16 used as evidence of discrimination, that's an age-old
17 debate that maybe we'd get consensus in this
18 particular group of Commissioners but I'm not sure
19 we're going to change the debate at large until -- I'm
20 just not sure what we can bring to that.

21 VICE CHAIRMAN THERNSTROM: I agree with
22 this.

23 CHAIRMAN REYNOLDS: Commissioner Yaki?

24 COMMISSIONER YAKI: Mr. Chair, thank you
25 very much. Just a naive question from the newbie.

1 What is the drop dead for actually selecting an '07
 2 project because it sounds to me as if what we have
 3 here is a situation where maybe fertile minds could,
 4 within the next couple months, come up with some
 5 substantive weighty projects that would part of the
 6 OCRE agenda for '07.

7 But if we need to adopt it now, we need to
 8 adopt it now. . But I'm looking down the list and
 9 probably more than one of this is thinking as we're
 10 looking down the list --

11 COMMISSIONER BRACERAS: You're not fired
 12 up.

13 VICE CHAIRMAN THERNSTROM: Not fired up
 14 about '07?

15 CHAIRMAN REYNOLDS: I wonder how that's
 16 going to read on the transcript.

17 (Laughter.)

18 CHAIRMAN REYNOLDS: Well, I believe it's
 19 the budget issue.

20 STAFF DIRECTOR MARCUS: Yes. Under our
 21 rules, the decision should have been made either in
 22 January or February with March essentially having been
 23 the real deadline. We're now a couple months behind
 24 in terms of the budget call, which should have been
 25 based on that.

1 At this point, given that the soonest
2 we'll make the decision is today, that means that we
3 will not be able to have a draft budget available in
4 June, which would be the usual method. And, instead,
5 it will have to be July.

6 I think that if we waited any longer, we
7 would very seriously jeopardize our ability to get the
8 final budget in by September, especially since we
9 don't have a planned meeting in August.

10 CHAIRMAN REYNOLDS: Okay.

11 VICE CHAIRMAN THERNSTROM: On this budget
12 question, I don't really understand why one project
13 results in a budget estimate of X and another project
14 results in a budget estimate of Y. And why we can't
15 view the '07 projects, since they're not going to
16 start tomorrow, why we can't view them as kind of
17 tentative decisions depending on how we see the
18 landscape down the road.

19 COMMISSIONER YAKI: Mr. Chair, as a point
20 of personal privilege here. In true Washington
21 bureaucratic appropriations gaming, we should simply
22 pick two of the largest possible things --

23 (Laughter.)

24 COMMISSIONER BRACERAS: Civil rights.

25 (Laughter.)

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COMMISSIONER YAKI: Well, we have the right, as we have exercised, to timely change and amend what those projects have been.

As long as those programs come with a budget and as long as our substitutes come within those budget numbers, I think that in terms of the Staff Director's ability to make a presentation to OMB et cetera for the preparation of the FY '07 budget, I think that would be sufficient. I don't mean to be quite so cynical but I sort of see it that way.

CHAIRMAN REYNOLDS: Well, no. I mean a little honesty is appreciated so it seems to me that unless a project is going to require a significant amount of outside resources, I mean if we're just looking at internal costs, salaries and -- Commission salaries, then it really doesn't make a difference. And there are no additional expenditures over, you know, wages and benefits.

COMMISSIONER YAKI: And I have another naive question, a point of order, Mr. Chair.

What differentiates one being an OGC versus OCRE? There is some good stuff in OGC we could move over to OCRE. But I don't know why.

CHAIRMAN REYNOLDS: Well, I'm sure there is an internal wrestling match to see who gets the

1 good projects.

2 COMMISSIONER BRACERAS: No but what is the
3 answer to that.

4 (Laughter.)

5 CHAIRMAN REYNOLDS: Mr. Staff Director?

6 STAFF DIRECTOR MARCUS: The criterion
7 include whether -- well first, some of them are
8 derived from either OCRE or OGC. Second, some are
9 anticipated to require a hearing and potentially a
10 request for subpoena power, in which case it would be
11 OGC.

12 COMMISSIONER BRACERAS: Okay.

13 STAFF DIRECTOR MARCUS: And some of them
14 may require more legal analysis or social science
15 analysis. Those are some of the criterion.

16 CHAIRMAN REYNOLDS: In other words, he
17 just picks.

18 COMMISSIONER BRACERAS: I have a question
19 though. So if voting rights is under OCRE, does that
20 mean we cannot have a hearing on the topic?

21 STAFF DIRECTOR MARCUS: Voting rights is a
22 two-part project. It is both an OGC and an OCRE
23 project. The OGC portion was approved at least a
24 couple of years ago. And OGC work was complete I
25 believe earlier in this fiscal year.

1 And I believe that there were hearings --
2 no, there have not been hearing on it. But if the
3 Commission wanted to have hearings, we could use OGC's
4 subpoena power.

5 COMMISSIONER BRACERAS: But just
6 typically, if you approve something as an OCRE
7 project, you're not anticipating having a hearing on
8 it?

9 STAFF DIRECTOR MARCUS: It could be a
10 briefing but it is not anticipated that it would be a
11 hearing.

12 COMMISSIONER BRACERAS: Subpoena power.

13 STAFF DIRECTOR MARCUS: That's right.

14 COMMISSIONER BRACERAS: Okay.

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

16 VICE CHAIRMAN THERNSTROM: Well, two
17 points here. By the way, it should not read the
18 reauthorization of the Voting Rights Act. The Voting
19 Rights Act is not up for reauthorization. The
20 temporary provisions of the Voting Rights Act are up
21 for reauthorization. The core of the Voting Rights
22 Act is permanent.

23 CHAIRMAN REYNOLDS: No, now Commissioner
24 Thernstrom, I think you're intimidating the staff here
25 with your level of expertise.

1 VICE CHAIRMAN THERNSTROM: Well, but no.
2 The wording is important because there is an urban
3 legend out there that the Voting Rights Act is going
4 to expire and there will be -- we're back to wide
5 disenfranchisement when that happens. And it is a
6 pernicious and dangerous rumor.

7 But look -- oh no --

8 (Laughter.)

9 VICE CHAIRMAN THERNSTROM: I apologize to
10 everybody. But in terms of the OGC portion of the
11 project being complete, I do not think that the draft
12 that I have seen constitutes a completion of the OGC
13 portion of this project.

14 STAFF DIRECTOR MARCUS: I perhaps was
15 imprecise in my phrasing. What I probably should have
16 said is that they have completed at a staff level
17 their draft work on the project. And they don't
18 anticipate doing any further work without prior to
19 getting instructions for revisions or rewriting or
20 something of that sort.

21 CHAIRMAN REYNOLDS: So are there plans to
22 distribute that document so that we can take a look at
23 it? I know it doesn't fall within our recently-
24 adopted procedure.

25 STAFF DIRECTOR MARCUS: I would be happy

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1 to identify the document for Commissioners. It was in
2 a prior distribution but it was a few months back.

3 COMMISSIONER BRACERAS: But that -- I'm
4 sorry, is that the document that a consultant
5 prepared?

6 STAFF DIRECTOR MARCUS: Exactly.

7 COMMISSIONER BRACERAS: Okay. That's my
8 confusion.

9 VICE CHAIRMAN THERNSTROM: Yes, it's the
10 document the consultant prepared.

11 COMMISSIONER BRACERAS: It didn't come --

12 STAFF DIRECTOR MARCUS: That's right. It
13 was the Posner Report.

14 COMMISSIONER BRACERAS: Okay. And that
15 document --

16 CHAIRMAN REYNOLDS: Was it distributed
17 already?

18 COMMISSIONER BRACERAS: Yes.

19 STAFF DIRECTOR MARCUS: Yes.

20 CHAIRMAN REYNOLDS: Okay. Well, someone
21 send it to me again. I don't recall seeing it.

22 COMMISSIONER BRACERAS: Okay. I was
23 confused about the purpose of that document. So is
24 that something that we need to approve or adopt or --
25 I thought it was --

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1 STAFF DIRECTOR MARCUS: That was legal
2 work that was commissioned in order to provide OCRE
3 with legal analysis --

4 COMMISSIONER BRACERAS: Okay.

5 STAFF DIRECTOR MARCUS: -- that they may
6 use in the course of preparing a final report.

7 COMMISSIONER BRACERAS: Okay.

8 COMMISSIONER YAKI: But we still need the
9 entire process to go through.

10 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

11 VICE CHAIRMAN THERNSTROM: Yes. But I
12 have a problem with that report and, therefore, I have
13 a problem with OCRE using that as the basic legal
14 analysis with which they are going to work. And I
15 don't know what we do about that.

16 And by the way, just to reiterate what I
17 have said before, I do very strongly urge the
18 Commission to change the title of the project to the
19 Reauthorization of the Temporary Provisions of the
20 Voting Rights Act so that we do not perpetuate --

21 COMMISSIONER YAKI: So moved.

22 CHAIRMAN REYNOLDS: Second.

23 COMMISSIONER BRACERAS: Second.

24 CHAIRMAN REYNOLDS: All in favor?

25 (Chorus of ayes.)

1 CHAIRMAN REYNOLDS: All in opposition?

2 (No response.)

3 CHAIRMAN REYNOLDS: Passes.

4 VICE CHAIRMAN THERNSTROM: Okay. But I
5 don't know what we do about the fact that to use that
6 legal analysis that has been produced by an outside
7 consultant as the basis upon which OCRE goes forward
8 is unsatisfactory to me.

9 CHAIRMAN REYNOLDS: Commissioner Yaki?

10 COMMISSIONER YAKI: Mr. Chair, I think
11 that the concerns expressed by Commissioner Thernstrom
12 are addressed in the first phase of the Braceras
13 Process, as I will now call it --

14 (Laughter.)

15 COMMISSIONER YAKI: -- which includes the
16 methodology and scope. And I think that's where you
17 can raise the questions and make the changes necessary
18 at that time.

19 VICE CHAIRMAN THERNSTROM: That's fine
20 except that it already came to us.

21 COMMISSIONER BRACERAS: But that doesn't
22 mean they have to rely on it for their
23 recommendations.

24 VICE CHAIRMAN THERNSTROM: Okay.

25 COMMISSIONER BRACERAS: I mean they'll

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1 come to us with an outline and a literature review.
2 And at that point, you can raise your objections.

3 VICE CHAIRMAN THERNSTROM: All right.

4 COMMISSIONER BRACERAS: And hopefully by
5 that time, you will have time to, you know, elaborate
6 on your reasons for --

7 VICE CHAIRMAN THERNSTROM: Okay, okay.

8 COMMISSIONER BRACERAS: -- not agreeing
9 with the report --

10 VICE CHAIRMAN THERNSTROM: I was just
11 concerned.

12 COMMISSIONER BRACERAS: -- so that we can
13 all understand where your concerns are.

14 VICE CHAIRMAN THERNSTROM: Okay.

15 COMMISSIONER YAKI: It's in '07 though.

16 CHAIRMAN REYNOLDS: Okay.

17 VICE CHAIRMAN THERNSTROM: Wait, no.
18 Reauthorization of the Voting Rights Act is '06.

19 CHAIRMAN REYNOLDS: Right.

20 COMMISSIONER BRACERAS: I raised that as
21 an example because Commissioner Yaki had raised the
22 question of what is OGC, what is OCRE, and how is that
23 decided.

24 So the only reason that came back up again
25 was I was asking the question of whether or not you

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1 can have a hearing on the topics that are slated to go
2 forward under OCRE. And as I understand the Staff
3 Director's answer to that question, you can have a
4 briefing or -- you just can't necessarily use the
5 subpoena power. Is that right.

6 STAFF DIRECTOR MARCUS: That's right.

7 CHAIRMAN REYNOLDS: Okay. At this point,
8 I just want to bring up a personal matter. I`have to
9 catch a plane. So I am going to have to leave. And
10 so you mentioned that you enjoyed having the gavel in
11 your possession so in any event, I think things are
12 going well.

13 VICE CHAIRMAN THERNSTROM: They'll go even
14 better after you leave.

15 (Laughter.)

16 CHAIRMAN REYNOLDS: There you go. In any
17 event, I bid everyone a fond farewell. And I shall
18 see you next month.

19 VICE CHAIRMAN THERNSTROM: And we lost our
20 whole audience. So how much more business do we have
21 here?

22 COMMISSIONER YAKI: Who moves to the Vice
23 Chair to the Vice Chair? What's the line of
24 succession?

25 (Laughter.)

1 VICE CHAIRMAN THERNSTROM: All right.

2 Good. Where are we?

3 COMMISSIONER YAKI: '07.

4 VICE CHAIRMAN THERNSTROM: '07.

5 COMMISSIONER YAKI: Right.

6 VICE CHAIRMAN THERNSTROM: I very much
7 like Commissioner Yaki's suggestion we pick the most
8 expensive projects and throw them into the budget.

9 COMMISSIONER TAYLOR: Well, the term
10 placeholder comes to mind.

11 COMMISSIONER YAKI: Absolutely.

12 VICE CHAIRMAN THERNSTROM: Yes, they are a
13 placeholder.

14 COMMISSIONER TAYLOR: I don't think it's a
15 -- I think we identify a couple placeholders and move
16 on.

17 VICE CHAIRMAN THERNSTROM: All right.
18 What are our placeholders here? Somebody speak.

19 COMMISSIONER BRACERAS: Well, we can pluck
20 them from OGC if we want to I suppose.

21 COMMISSIONER YAKI: Could we? I like
22 that. I like the state foster care system.

23 COMMISSIONER TAYLOR: I do as well.

24 COMMISSIONER BRACERAS: I do, too.

25 COMMISSIONER TAYLOR: I do as well.

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1 VICE CHAIRMAN THERNSTROM: I do very much.

2 COMMISSIONER TAYLOR: Yes.

3 VICE CHAIRMAN THERNSTROM: Do we want to
4 expand it to adoption?

5 COMMISSIONER TAYLOR: I'd like that even
6 better.

7 COMMISSIONER YAKI: Sure. That's one.

8 VICE CHAIRMAN THERNSTROM: Okay. Do we
9 need a motion to expand it to adoption? Emma, are you
10 trying to get a hold of me? I'm sorry, Emma, what is
11 the definition of an enforcement report?

12 MS. MONROIG: It's enforcement of civil
13 rights.

14 VICE CHAIRMAN THERNSTROM: That's what I
15 assumed. So that the state foster care systems
16 obviously can't qualify.

17 COMMISSIONER BRACERAS: But we've already
18 approved that.

19 VICE CHAIRMAN THERNSTROM: So that the
20 candidates in terms of the enforcement would be --

21 COMMISSIONER BRACERAS: Well, may I ask a
22 question - -

23 VICE CHAIRMAN THERNSTROM: Yes.

24 COMMISSIONER BRACERAS: -- of the
25 solicitor I guess. Does the enforcement report have

1 to come from OCRE?

2 MS. MONROIG: No.

3 COMMISSIONER BRACERAS: So why can't the
4 desegregation one for '07 count as the enforcement
5 report which we've already approved for OGC? Could
6 that --

7 STAFF DIRECTOR MARCUS: Well, I can't
8 think of a reason why it couldn't be the statutory
9 enforcement report.

10 VICE CHAIRMAN THERNSTROM: Yes. Good. So
11 we've got that one already.

12 COMMISSIONER YAKI: Good.

13 VICE CHAIRMAN THERNSTROM: So the second -
14 - and as I understand it --

15 COMMISSIONER YAKI: Yes, the United States
16 Office of Civil Rights and Education Department --

17 STAFF DIRECTOR MARCUS: As well as the
18 U.S. Department of Justice.

19 COMMISSIONER YAKI: -- Justice, right.

20 VICE CHAIRMAN THERNSTROM: Right. Right.

21 So we've got our statutory enforcement project there.

22 And as I understand it, the second one that is being
23 suggested and, I sign on to this, minority children --
24 as I understand it, the second '07 report that is
25 going to function as a placeholder would be minority

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1 children in state foster care and their eligibility
2 for adoption.

3 COMMISSIONER BRACERAS: That's the first -

4 -

5 COMMISSIONER YAKI: That's the first.

6 COMMISSIONER BRACERAS: -- for OGC.

7 VICE CHAIRMAN THERNSTROM: Oh, that's the
8 first for OGC?

9 COMMISSIONER YAKI: No, no, no, no. We
10 switched that to OCRE.

11 COMMISSIONER BRACERAS: I mean for OCRE.
12 Right. So that's the first. We need a second. In
13 other words, we've already taken care of OGC. We
14 voted to do desegregation in '07 and census in '06.
15 Now we're doing OCRE. But we don't need to worry
16 about one of them in '07 is an enforcement project
17 because one of the OGC ones counts as that. So we've
18 got the --

19 VICE CHAIRMAN THERNSTROM: I don't
20 understand why we can't move minority children in
21 state foster care - -

22 COMMISSIONER BRACERAS: We are.

23 VICE CHAIRMAN THERNSTROM: -- and adoption
24 into OCRE.

25 COMMISSIONER BRACERAS: We are. We are.

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1 COMMISSIONER YAKI: We did. We just did.

2 VICE CHAIRMAN THERNSTROM: We did? Oh,
3 okay.

4 COMMISSIONER BRACERAS: But we need a
5 second one.

6 COMMISSIONER TAYLOR: That was the first
7 for '07.

8 VICE CHAIRMAN THERNSTROM: Fine. Somebody
9 speak.

10 COMMISSIONER BRACERAS: Well, I guess --
11 and again these are just placeholders -- but I'd be
12 interested in the Blaine Amendments, anti-Catholicism
13 topic or the voting rights in the U.S. territories.

14 COMMISSIONER KIRSANOW: I prefer the
15 Blaine Amendments myself.

16 COMMISSIONER YAKI: I prefer voting
17 rights. It sounds bigger, more expensive.

18 VICE CHAIRMAN THERNSTROM: No, the Blaine
19 Amendments require looking at every state.

20 COMMISSIONER BRACERAS: Blaine Amendments
21 is massive.

22 VICE CHAIRMAN THERNSTROM: It's massive.
23 It requires looking at every state.

24 COMMISSIONER BRACERAS: State legislation.

25 COMMISSIONER YAKI: No, I understand. But

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1 do you understand how far away some of the territories
2 are?

3 COMMISSIONER KIRSANOW: That's right. It
4 would probably require travel.

5 COMMISSIONER YAKI: Absolutely.

6 (Laughter.)

7 COMMISSIONER BRACERAS: Are we going to
8 Guam?

9 COMMISSIONER BRACERAS: It's six of one,
10 half a dozen of the other to me. They're both very
11 interesting topics. And if they're placeholders, I'm
12 not -- I don't feel strongly. I really -- I very much
13 like them both.

14 VICE CHAIRMAN THERNSTROM: Commissioner
15 Kirsanow, you got any --

16 COMMISSIONER KIRSANOW: My preference
17 would have been the Blaine Amendments also.

18 VICE CHAIRMAN THERNSTROM: It is just a
19 placeholder you understand.

20 COMMISSIONER YAKI: Madame Chair? Madame
21 Chair, my preference for saying voting rights in U.S.
22 territories is not the facetious I gave but rather it,
23 again from a placeholder point of view for the
24 budgetary process, it just -- how should I put it --
25 it sounds more civil rights Commissioney.

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1 COMMISSIONER BRACERAS: Commissioney?

2 (Laughter.)

3 COMMISSIONER BRACERAS: I guess my counter
4 to that would be that that could be, I think, done
5 nicely in a briefing format whereas the Blaine
6 Amendments I think would --

7 COMMISSIONER YAKI: Well, I'm not going to
8 get in the way. Why don't we just -- if that's where
9 the preference is, as a placeholder, I have no stake.
10 So if Commissioner Braceras and Commissioner Kirsanow
11 want to move it, I won't get in the way.

12 COMMISSIONER KIRSANOW: Yes, I would move
13 that we do the Blaine Amendments proposal in 2007.

14 VICE CHAIRMAN THERNSTROM: You got to
15 second it.

16 COMMISSIONER BRACERAS: Second.

17 VICE CHAIRMAN THERNSTROM: All in favor?

18 (Chorus of ayes.)

19 VICE CHAIRMAN THERNSTROM: Okay. So we've
20 got our '07.

21 COMMISSIONER YAKI: Okay. Yeah.

22 VICE CHAIRMAN THERNSTROM: What else do we
23 have here on the agenda? Proposed future briefings.
24 Oh, right. We have not taken a vote on minorities in
25 foster care and the adoption process.

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1 COMMISSIONER KIRSANOW: I would move that
2 for 2007 we also schedule minority children in state
3 foster care systems and the adoption process also.

4 COMMISSIONER YAKI: Second.

5 VICE CHAIRMAN THERNSTROM: And --

6 COMMISSIONER BRACERAS: That's the same
7 thing isn't it?

8 VICE CHAIRMAN THERNSTROM: No. Foster
9 care and adoption? Not the same thing.

10 COMMISSIONER BRACERAS: No, I know they're
11 not the same thing. But the --

12 COMMISSIONER KIRSANOW: It's going to be
13 folded into one project.

14 COMMISSIONER BRACERAS: -- the title you
15 mentioned and the title --

16 COMMISSIONER KIRSANOW: Yes, it's foster
17 care and adoption are going to be addressed.

18 VICE CHAIRMAN THERNSTROM: It's not the
19 same thing as what is down on paper here --

20 COMMISSIONER KIRSANOW: Right.

21 VICE CHAIRMAN THERNSTROM: -- which
22 mentions only foster care.

23 COMMISSIONER BRACERAS: Right. I
24 understand that part. Okay.

25 VICE CHAIRMAN THERNSTROM: Okay. We had a

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1 second on that. .All in favor?

2 (Chorus of ayes.)

3 VICE CHAIRMAN THERNSTROM: That is a
4 unanimous vote.

5 So we move on to proposed future
6 briefings.

7 **X. Future Briefings**

8 COMMISSIONER YAKI: Madame Vice Chair?

9 VICE CHAIRMAN THERNSTROM: Yes.

10 COMMISSIONER YAKI: Two things. One, I
11 have to go catch a plane pretty soon. But two, we've
12 identified a lot of issues here today that could be
13 the stuff of briefings -- of future, near future, or
14 far future. I am just wondering given time,
15 budgetary, and personnel considerations what is our
16 ability to hold briefings? How many? At what time?
17 Et cetera, et cetera. Before we start approving.

18 All of these actually I like. I mean I
19 would -- but I also know there is a bunch that we
20 talked about during the project planning process that
21 we might also want to have. And then prioritizing
22 those for you I think is in some ways for us -- for me
23 at least a question of our resources at this point.

24 VICE CHAIRMAN THERNSTROM: And do we have
25 any briefings scheduled at this point?

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1 STAFF DIRECTOR MARCUS: We have no
2 briefings scheduled at this point. I think it would
3 take about two to -- about 60 to 90 days to get the
4 first one started. And then we might try them for
5 about every couple of months assuming that we're doing
6 briefings that do not require material expenditures --

7 VICE CHAIRMAN THERNSTROM: Right.

8 STAFF DIRECTOR MARCUS: -- which is to say
9 witnesses who are local or who do not need travel
10 expenses.

11 VICE CHAIRMAN THERNSTROM: Right. I mean
12 there are some briefings here that require no expense
13 whatsoever. For instance, Douglas Besharov is will to
14 come with his team on a very good collection of people
15 across the political spectrum to talk about the
16 stagnation of the black middle class. He's been doing
17 some very interesting work. And, again, this would be
18 -- it's not politically driven in any sense.

19 So that seems to be a no-brainer.

20 COMMISSIONER BRACERAS: Can we vote to --
21 I don't know that we need to necessarily approve all
22 the briefings. But can we vote to authorize them to
23 get started on one since it may take two months at
24 least to have it. We could at least -- if we
25 authorize one, they could get started --

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1 VICE CHAIRMAN THERNSTROM: Right.

2 COMMISSIONER BRACERAS: -- in preparing.

3 VICE CHAIRMAN THERNSTROM: And I would
4 like to make a motion to authorize the stagnation of
5 the black middle class. I don't think it is going to
6 take two months. Besharov is ready to go on this.
7 And he has lined up people who would speak on the
8 question.

9 So there is a motion on the table.
10 Somebody second it?

11 COMMISSIONER YAKI: I want to amend it.

12 VICE CHAIRMAN THERNSTROM: Yes.

13 COMMISSIONER YAKI: I would actually like
14 -- not just because I want in here -- I'd like to
15 approve all four as proposed future briefings, number
16 one.

17 Number two, ask that the staff be directed
18 to begin preparations for the stagnation of the black
19 middle class as the first briefing.

20 And then number three, to start
21 identifying of the remainder, what kind of resources
22 would be required, the expectations for local versus
23 out-of-state, that kind of stuff, and the cost
24 identified with those.

25 So at least we can get rolling on doing

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1 the analysis. I think all four of them are very good.
2 I know that Commissioner Redenbaugh was very
3 interested in the campus anti-Semitism one as am I.

4 So that would be my amended motion.

5 VICE CHAIRMAN THERNSTROM: And I accept
6 that amendment.

7 COMMISSIONER TAYLOR: We are going screw
8 up the process here I know. But I would have a
9 concern about that motion in the sense that there is
10 something that I'd like to add.

11 If we're going to begin, I think, to
12 identify the topics for future briefings, I wanted to
13 add religious discrimination to that so if we're going
14 to -- as opposed to just identifying the first one and
15 moving forward, if we're going to create a list, I
16 would like to at least discuss placing religious
17 discrimination on that list.

18 COMMISSIONER BRACERAS: And I'd like to
19 add voting rights in the U.S. territories to the list.

20 COMMISSIONER YAKI: I'll accept those as
21 friendly amendments. Commissioner Kirsanow? Is there
22 one on your list?

23 COMMISSIONER KIRSANOW: We already
24 addressed or raised the issue of voter fraud as a
25 briefing.

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1 COMMISSIONER YAKI: Okay. And voter
2 fraud.

3 STAFF DIRECTOR MARCUS: I guess -- just so
4 that staff can know what we're doing, I guess it would
5 be useful for clarification whether Commissioner
6 Taylor means religious discrimination specifically in
7 the workplace and whether Commissioner Kirsanow is
8 referring to voter fraud specifically in either
9 Washington, Milwaukee, or other locations.

10 COMMISSIONER TAYLOR: Right now it is not
11 in my own mind limited to the workplace. It is also
12 in the area of contracting and other areas so the
13 answer right now is no. But I could be -- quite
14 frankly if I got a briefing on workplace because it
15 was easier, I would probably concede the point. So as
16 of now, no.

17 COMMISSIONER KIRSANOW: Mr. Staff
18 Director, with respect to my point, mine is not
19 specific to Washington State or Milwaukee. It goes to
20 our previous discussion as to what, in fact,
21 constitutes voter fraud and/or disenfranchisement
22 although that sounds much more expansive.

23 There are a lot of allegations out there
24 about what's going on and, you know, IDs and so on and
25 so forth. It's something, I think, geared towards

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1 reducing the incidence -- manifest incidence of voter
2 fraud.

3 STAFF DIRECTOR MARCUS: Thank you.

4 VICE CHAIRMAN THERNSTROM: Let us see if
5 we can get on top of the final shape of this motion.
6 And as I understand the question of briefings, there
7 is nothing written in stone about this list. That is
8 in the future, as events unfold, it is possible to add
9 a topic that seems urgent at the time.

10 Commission Yaki, do you want to rephrase
11 now a complete motion.

12 COMMISSIONER YAKI: Okay.

13 VICE CHAIRMAN THERNSTROM: I'm going to
14 withdraw my motion and let you make a motion.

15 COMMISSIONER YAKI: Okay. I would like to
16 move that we approve all the items on Item 7 of the
17 agenda as well as to add to that item religious
18 discrimination in the workplace that previously is a
19 project under project planning, voting rights in the
20 U.S. territories, which was previously under project
21 planning, a briefing on the issues and nature of
22 allegations regarding voter fraud in recent elections
23 in the United States, and to further direct the staff
24 to prepare, consistent with the Braceras Process,
25 discovery plans and processes for all of the above but

1 to immediately begin preparations for a briefing at
2 the earliest possible date for stagnation of the black
3 middle class.

4 COMMISSIONER KIRSANOW: Second.

5 VICE CHAIRMAN THERNSTROM: Second.

6 COMMISSIONER BRACERAS: Discussion? I
7 don't think the Braceras Plan kicks in with a briefing
8 except to the extent that they would come back to us
9 and we would have input into the list of speakers at
10 the briefing because these aren't going to be --

11 COMMISSIONER YAKI: Okay.

12 COMMISSIONER BRACERAS: -- there aren't
13 going to be interrogatories.

14 COMMISSIONER YAKI: Then let me amend that
15 to say to the Secretary, that's of the Braceras
16 Process, to prepare cost and time estimates for each
17 of the briefings in order that we are able to begin
18 prioritizing the remainder for scheduling at our
19 regular Commission meetings. Is that okay?

20 COMMISSIONER BRACERAS: That's okay.

21 COMMISSIONER KIRSANOW: Certainly.

22 COMMISSIONER YAKI: Okay.

23 VICE CHAIRMAN THERNSTROM: I have a
24 question on this. I'm sorry. And at what point do
25 the Commissioners have an input into who testifies at

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1 these briefings?

2 COMMISSIONER BRACERAS: I think it's --
3 what did we say?

4 COMMISSIONER YAKI: That's the Braceras
5 Process?

6 COMMISSIONER BRACERAS: Yes, it's --

7 VICE CHAIRMAN THERNSTROM: Okay.

8 COMMISSIONER BRACERAS: -- I'm looking it
9 up right now. It's one monthly meeting prior to the
10 meeting at which the briefing will take place.

11 VICE CHAIRMAN THERNSTROM: Fine. Okay.
12 All right. I had forgotten that. All right. We have
13 a motion on the table.

14 COMMISSIONER KIRSANOW: Second.

15 VICE CHAIRMAN THERNSTROM: That motion has
16 been seconded. All in favor?

17 (Chorus of ayes.)

18 VICE CHAIRMAN THERNSTROM: Unanimously
19 passed.

20 I believe that a motion is in order to
21 adjourn this meeting unless anybody has any other
22 business.

23 COMMISSIONER KIRSANOW: So moved.

24 VICE CHAIRMAN THERNSTROM: Seconded?

25 COMMISSIONER BRACERAS: Second.

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(Whereupon, the above-entitled meeting was
concluded at 1:10 p.m.)

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