

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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**Unedited**

FRIDAY  
NOVEMBER 17, 2006

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WASHINGTON, D.C.

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The commission convened at 9:00 a.m. in room 550 of 624 9<sup>th</sup> St NW, Gerald Reynolds, Chairman, presiding.

Present:

- GERALD A. REYNOLDS, Chairman
- JENNIFER C. BRACERAS, Member
- PETER N. KIRSANOW, Member
- ARLAN D. MELENDEZ (via telephone), Member
- ASHLEY L. TAYLOR, JR., Member
- MICHAEL YAKI, Member

Staff Present:

- KENNETH MARCUS, Staff Director
- EMMA MONROIG, Solicitor
- DAVID BLACKWOOD, General Counsel

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

(9:20 a.m.)

CHAIRMAN REYNOLDS: -Okay. I apologize for the late start. Is Commissioner Melendez on the line? Is anyone on the line?

COMMISSIONER MELENDEZ: Yes, I'm here.

CHAIRMAN REYNOLDS: Very good. Okay. This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights at 624 9<sup>th</sup> Street, N.W., Room 540, Washington, D.C. All the commissioners are present, except for the Vice Chair, Commissioner Melendez is participating by telephone. We were previously scheduled to conduct a briefing today on Voting Rights in the Territories. Unfortunately, due to scheduling conflicts, we have had a low rate of acceptance from potential speakers. We will try again to conduct this briefing next year; however, today we will conduct only our regular monthly meeting. First item on the agenda is the approval of the agenda. Once we have a motion to approve the agenda, I suggest that we amend the agenda just to rearrange the order.

#### I. APPROVAL OF AGENDA

In any event, may I have a motion to approve the agenda?

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1 COMMISSIONER BRACERAS: So moved.

2 CHAIRMAN REYNOLDS: Is there a second?

3 COMMISSIONER TAYLOR: Second.

4 CHAIRMAN REYNOLDS: Okay. I move to  
5 change the order of the items to be considered so that  
6 the Staff Director's Report will be the last item on  
7 the agenda. Is there a second?

8 COMMISSIONER TAYLOR: Second.

9 CHAIRMAN REYNOLDS: Discussion? All in  
10 favor?

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: Any in opposition?

13 Okay. The motion passes unanimously.

14 The second item is the Approval of the  
15 Minutes of the October 13<sup>th</sup>, 2006 meeting.

16 **II. APPROVAL OF MINUTES OF OCTOBER 13 MEETING**

17 CHAIRMAN REYNOLDS: May I have a motion?

18 COMMISSIONER TAYLOR: So moved.

19 CHAIRMAN REYNOLDS: Is there a second?

20 COMMISSIONER YAKI: Second.

21 CHAIRMAN REYNOLDS: Discussion? All in  
22 favor?

23 (Chorus of ayes.)

24 CHAIRMAN REYNOLDS: Any in opposition?

25 Any abstentions? The motion passes unanimously.

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1 Next up, we have the Announcements for the  
2 month of November.

3 **III. ANNOUNCEMENTS**

4 CHAIRMAN REYNOLDS: November is National  
5 American Indian and Alaska Native Heritage Month.  
6 This month is dedicated to recognizing the inter-  
7 tribal cultures, events, lifestyles, designs, and  
8 achievements of American Indians and Alaska Natives.  
9 The U.S. Commission on Civil Rights has marked this  
10 observation since 1976, and on behalf of the  
11 Commission, I urge all Americans to celebrate National  
12 American Indian and Alaska Native Heritage Month by  
13 participating in appropriate programs and activities.

14 Also, November marks the 22<sup>nd</sup> anniversary  
15 of Fred Korematsu and Min Yasui, and Gordon Hirabashi,  
16 their petition to overturn their World War II  
17 convictions for violating curfew and the evacuation  
18 orders directed at Americans of Japanese descent. It  
19 is also the --

20 COMMISSIONER YAKI: The coram novis cases.

21 CHAIRMAN REYNOLDS: I'm sorry?

22 COMMISSIONER YAKI: They were called the  
23 coram novis cases.

24 CHAIRMAN REYNOLDS: I guess we could have  
25 a briefing on that alone, and have you as one of the

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1 panelists. It is also the 16<sup>th</sup> anniversary of the  
2 signing by then President George H.W. Bush of a law  
3 requiring the payment of \$20,000 to each surviving  
4 Japanese American internee.

5 And, finally, November 29<sup>th</sup> marks the 30<sup>th</sup>  
6 anniversary of the Individuals with Disabilities and  
7 Education Act. IDEA mandates the provision to allow  
8 students with disabilities to obtain a free  
9 appropriately structured public education. This  
10 anniversary reminds us of the importance of working  
11 together to ensure that all children are provided with  
12 educational opportunities that will enable them to  
13 reach their full potential.

14 Next up, we have the Briefing Report on  
15 the Benefits of Diversity in Elementary and Secondary  
16 Education.

#### 17 IV. PROGRAM PLANNING

18 CHAIRMAN REYNOLDS: On July 28<sup>th</sup>, 2006,  
19 the Commission conducted a briefing on the impact of  
20 racial and ethnic diversity in elementary and  
21 secondary schools. The Commission directed staff to  
22 prepare a briefing report after the briefing. The  
23 Office of the Staff Director distributed the first  
24 draft of this briefing report to the Commissioners on  
25 September 29<sup>th</sup>, 2006, at which time we were asked for

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1 our input with the hopes that OSD would incorporate  
2 those comments and redistribute a proposed final draft  
3 in time for a vote at the October 13<sup>th</sup> meeting.

4 Based on the request of some  
5 commissioners, additional time was needed.  
6 Consequently, at the October 13<sup>th</sup> meeting,  
7 Commissioners agreed to have OSD distribute another  
8 draft on October 20<sup>th</sup>; whereas, Commissioners'  
9 comments were due to OSD on November 2<sup>nd</sup>. The Staff  
10 Director's Office then turned around a proposed final  
11 draft briefing report incorporating those comments on  
12 November 9<sup>th</sup> for a vote at this business meeting.

13 It's now been three and a half months  
14 since the briefing, and a month and a half since the  
15 Commissioners were first provided with a draft of this  
16 report. May I have a motion to approve the briefing  
17 report sent to the Commissioners on November 9<sup>th</sup>,  
18 2006?

19 COMMISSIONER BRACERAS: So moved.

20 CHAIRMAN REYNOLDS: A second?

21 COMMISSIONER TAYLOR: Second.

22 CHAIRMAN REYNOLDS: Discussion? Oh, yes.  
23 Why am I not surprised? Commissioner Yaki.

24 COMMISSIONER YAKI: No, you should not be  
25 surprised. Are the staff who wrote this report

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1 present?

2 CHAIRMAN REYNOLDS: Unfortunately, one of  
3 the individuals who put in a lot of time called in  
4 sick this morning.

5 COMMISSIONER YAKI: Well, that's  
6 unfortunate, because I would like to ask questions  
7 about --

8 COMMISSIONER BRACERAS: Who is that, by  
9 the way?

10 CHAIRMAN REYNOLDS: Chris Byrnes.

11 COMMISSIONER YAKI: Some of the statements  
12 in here, I'd like to know the source of many of the  
13 changes that were made, and I would especially like to  
14 know his familiarity with the rather voluminous  
15 bibliography that was attached, because I believe that  
16 there are statements made about certain of the studies  
17 that do not comport with what their conclusions were,  
18 other ones are all lumped together, and I'm not too  
19 sure whether they should be lumped together in terms  
20 of citations. And, again, I have no idea where some  
21 of the changes came, especially in the findings which  
22 are radically restructured in a way that would enable  
23 me to get some idea about who participated, and why  
24 certain changes were made.

25 In the absence of that, I cannot -- in the

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1 absence of the author being here, I really believe I  
2 cannot, in good conscience, vote on this in any way,  
3 shape, or form, given the fact that this is our first  
4 opportunity publicly to discuss this document, and to  
5 ask questions that go toward the heart of the  
6 justification for many of the findings, and to ask  
7 whether or not aspects of the bibliography were,  
8 indeed, read cobbled together, or just relied upon  
9 from other citations in other works; which, for me,  
10 goes to the whole issue of why I have objections to  
11 the very nature of doing findings and recommendations  
12 in briefing reports.

13 I recall when I first came here a year  
14 ago, we had many discussions about the fact that we  
15 wish to do items that had a much more raw nature about  
16 the data and the research, that we would put it out  
17 there. I remember the quote, "Put it out there on the  
18 website and let people draw their own conclusions, or  
19 use it as they would in proceedings before the  
20 legislature, in Social Science, what have you." We  
21 have diverged radically from those original  
22 declarations, in that the briefings which I always  
23 thought would be a good way to get issues out on the  
24 table, to hear divergent points of view, to hear  
25 discussion and dissension on topics, and let the

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1 public, let the policy makers, let the researchers use  
2 that material, much as you would a hearing report in  
3 the House of Representatives or the Senate, where  
4 conclusions are not drawn, but the raw material is out  
5 there for people to access and use. And when I looked  
6 at - I don't want to jump too far ahead of myself -  
7 when I looked at Commissioner Braceras' attempts to  
8 put some structure to briefing reports, which I  
9 greatly admire and commend her for doing that, it  
10 still seems to me that it's like our dear late friend,  
11 Ann Richards, used to say - you can put lipstick on a  
12 sow and call it Susie, but it's still a pig.

13 This is an issue where the idea that we  
14 can somehow from three hours of testimony, go to a  
15 body of literature afterwards and create findings and  
16 recommendations, I think is inconsistent with this.  
17 It's a drain on staff resources. I would love to know  
18 how much of our staff time is spent combing through  
19 the one, two, three, four - seventy-odd, hundred-odd  
20 citations in the bibliography, given that we already  
21 are screaming about lack of staff resources for our  
22 national reports, as it is. As you know, two meetings  
23 ago we cut back on our national report, because we  
24 don't have the kind of resources with which to do  
25 that.

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1           So in the absence of Chris being here, I  
2 understand he's a hardworking guy, respect him  
3 greatly. I would have appreciated him being here to  
4 answer these questions, which I believe go toward the  
5 credibility and the changes in the report over time,  
6 and in the absence of that, I can't vote on it.

7           CHAIRMAN REYNOLDS: Okay. Commissioner  
8 Braceras.

9           COMMISSIONER BRACERAS: This isn't  
10 specifically about this report, but I just wanted to  
11 raise, at this time, the issue of reforming the  
12 process going forward. And just to note for the  
13 record that as Commissioner Yaki said, I did submit to  
14 all of you for discussion purposes, a draft of  
15 proposed rules for briefing reports that I hope will  
16 eliminate many of the concerns that Commissioner Yaki  
17 has, and I share many of those concerns. And so,  
18 while I realize that we cannot grind our work to a  
19 halt while commissioners deliberate on new rules, and  
20 come up with a new plan for briefing reports, I would  
21 like just to be very clear that this will be the last  
22 briefing report that I will vote for until we  
23 implement, not necessarily my rules, but a system that  
24 hopefully we can get buy-in on from the Democratic  
25 members of the Commission, as well. Because I think

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1 that's really important to our credibility going  
2 forward, and I think that it's important to have  
3 integrity in the process, and have all of the  
4 commissioners feel comfortable with that process,  
5 whatever it may turn out to be. So I hope that you'll  
6 all carefully look at the draft I put together, and we  
7 can maybe conference about it; and, ideally, bring it  
8 up for debate and vote at the next meeting.

9 So with that in mind, I'm going to vote  
10 for this report because a large amount of work went  
11 into it, and I think it's a good report, but it will  
12 be the last report I will support until we have some  
13 better procedural rules in place.

14 CHAIRMAN REYNOLDS: Okay. I'd like to --

15 COMMISSIONER MELENDEZ: This is  
16 Commissioner Melendez here.

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER MELENDEZ: Yes. Can you hear  
19 me?

20 CHAIRMAN REYNOLDS: Yes.

21 COMMISSIONER MELENDEZ: I just wanted to  
22 say, I did submit some comments on this report. And  
23 I appreciate Jennifer's working on this issue, because  
24 it's really overdue and needed. But, again, what I  
25 said in my comments was that I believe that we go

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1 beyond the testimony, similar to the Native Hawaiians,  
2 where we interjected most of our own opinion about  
3 staff, and I think we kind of see that here in this  
4 report. So just based on the fact that we don't want  
5 to seem biased to either of the presenters at that  
6 time, I would hope that we could send in a report to  
7 Congress that was basically without findings, similar  
8 to what we did before. And, hopefully, they can make  
9 up their own minds as to that testimony of all of the  
10 presenters, so that's kind of my position until we can  
11 actually get a better process in place, so I would  
12 concur with Mr. Yaki that the findings are what I'm  
13 having trouble with. We don't have the expertise as  
14 far as Social Science review in our office, I don't  
15 believe, or it hasn't been done, except for Chris  
16 Byrnes maybe reviewing this. And I think we go beyond  
17 what the people actually testified to, so that's my  
18 opinion, and hopefully -- I would vote not to include  
19 the findings, so thank you.

20 CHAIRMAN REYNOLDS: Okay. Well, I'd like  
21 to say that -- well, first of all, I'd like to commend  
22 the staff. I think that this report is quite good.  
23 I think that the staff put in a lot of time, and they  
24 came up with a -- the product is good, in my humble  
25 opinion. I find it interesting that we are spending

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1 this much time talking about our procedures.

2 So far, no one has identified any fatal  
3 flaws with the document.

4 COMMISSIONER BRACERAS: No, I --

5 CHAIRMAN REYNOLDS: Well, let me finish.  
6 We're talking procedural issues, tactical issues. If  
7 we can point to something in the document that is  
8 fatally flawed, then I think that we should address  
9 it. Hold on, folks, let me finish. I'll get to  
10 everyone.

11 COMMISSIONER YAKI: Don't raise a question  
12 that you know I'm going to have an answer to.

13 CHAIRMAN REYNOLDS: Oh, well, no. I don't  
14 mind. I want to have this discussion. The notion  
15 that we issue briefing reports without any findings,  
16 I don't think that's the way we should go. This is  
17 the U.S. Commission on Civil Rights, and it would be  
18 a deviation from the role that we have historically  
19 played. We are not neutral observers. Sometimes  
20 things are right, sometimes things are wrong. This  
21 agency, this commission has always had a particular  
22 point of view. If you will, it's been biased against  
23 say the South's attempt to deny the vote to blacks.  
24 It's not unusual for the commission to take a  
25 leadership role when it comes to civil rights issues.

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1 That's why we're here. This is not a think-tank. Our  
2 job is not to just deliver facts to decision makers.  
3 Our job is to influence decision makers, in my view.

4 This particular document, I think that the  
5 findings reflect what was said. I think that the main  
6 thrust of the document is that when we look at the  
7 literature out there, at best, the benefits are modest  
8 in reading. In math, I think that there is a  
9 consensus that there is no benefits that have been  
10 quantified, so that was the main thrust of the  
11 findings. I think those findings are supported by the  
12 testimony.

13 This is not an instance where a particular  
14 panelist was singled out. I think that the findings  
15 are a -- this is the consensus of all the individuals  
16 that participated in the briefing. Modest findings  
17 for reading, no benefits in math, and some screwy  
18 findings with respect - one study showed that  
19 segregation, in some instances, helped Hispanics, so  
20 the data is all over the place. That's what I took  
21 away from the hearing.

22 Commissioner Braceras.

23 COMMISSIONER BRACERAS: I agree with you  
24 on the merits, that I think that that's what the  
25 evidence demonstrates. However, I have to

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1 respectfully disagree with your comment that we're  
2 spending too much time discussing process. I think  
3 process is extremely --

4 CHAIRMAN REYNOLDS: Oh, no, no. I don't  
5 think I said that. I said I find it interesting that  
6 we're focusing on process --

7 COMMISSIONER BRACERAS: But I think  
8 process is critical, because --

9 CHAIRMAN REYNOLDS: Well, let me rephrase  
10 my statement then. I am not -- I think it's a good  
11 idea that we're going to have some clear guidelines  
12 with respect to our briefing reports, but looking at  
13 the merits, looking at this particular document, I  
14 don't see --

15 COMMISSIONER BRACERAS: Under a revised  
16 process, it may very well be that we'd come out with  
17 the exact same -- well, I think we would come out with  
18 the exact same findings and recommendations. However,  
19 I think what would be different about it is that the  
20 findings would be findings that -- rather than staff  
21 findings, I think they'd be commissioner findings.  
22 And I think there would be a chance to explore each of  
23 the findings at a commissioner level, instead of just  
24 voting for the report in and all or nothing format.  
25 And this -- it's the same objection I had under the

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1 old regime with Mary Frances Berry, where at that  
2 time, when we were in the minority, we were presented  
3 with reports that had conclusions and recommendations  
4 with which not everyone agreed, and we were asked to  
5 vote up or down on the entire thing, even though there  
6 may be some very good, interesting material in the  
7 report. We, as minority commissioners at the time,  
8 didn't necessarily agree with all the findings and  
9 conclusions. And what we wanted from Mary Frances  
10 Berry, and what we never received, was an opportunity  
11 to deliberate over each of the findings, and have an  
12 opportunity to vote on them individually.

13 Now under that regime, we still would have  
14 lost those votes. And under this administration, the  
15 Democratic commissioners may still lose particular  
16 votes on particular findings, but I think that if they  
17 had an opportunity to discuss the findings one by one,  
18 and to dissent from each particular finding so that  
19 would give the process greater integrity. That's all.  
20 I'm not saying that the findings would be different,  
21 or that the report is in any way academically flawed,  
22 But I do think the process is extremely important.

23 Anyway, putting that aside, I'd just  
24 simply like to ask Commissioners Melendez and Yaki if  
25 there's any compromise possible on this document that

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1 would satisfy them, and enable them to vote for it?  
2 Is there anything, short of tanking the whole thing,  
3 that you would remove from the report? I mean, is  
4 there some way we can come up --

5 CHAIRMAN REYNOLDS: Or object to?

6 COMMISSIONER BRACERAS: Are there sections  
7 of the report that could be removed, and would then  
8 satisfy your concerns?

9 CHAIRMAN REYNOLDS: Well, point of  
10 clarification. With respect to -- well, I would -- am  
11 I correct that with our national reports, our  
12 statutory report, for example, we have the flexibility  
13 to support particular findings, but not others. Is  
14 that already in place?

15 COMMISSIONER BRACERAS: Yes. Right. So  
16 when the working group on the reform came up with its  
17 original rules, they were focused on national reports  
18 because we hadn't, as a commission, yet moved to this  
19 model. But then when we moved to this model, we found  
20 ourselves in the position of having to vote on  
21 findings and recommendations that hadn't been vetted  
22 in the same way by the commissioners themselves. And  
23 it's not that I think that the commission should not  
24 be in the business of making findings and  
25 recommendations. I think it's fine for us to make

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1 findings and recommendations, but I think that as with  
2 other study groups, and even governmental commissions,  
3 I think that each finding needs to be considered  
4 separately, and there needs to be an opportunity to  
5 explain the positions of the majority and minority on  
6 each finding.

7 I think, for example, to the report on  
8 Title 9 that was done by you guys at the Department of  
9 Education. Right? That was under your leadership.  
10 Where the findings were stated, and then underneath it  
11 would say something like dissenting commissioners were  
12 concerned that blah, blah, blah, blah, so their  
13 concern about each finding was listed. There weren't  
14 voluminous dissenting statements, but it was broken  
15 down in what seemed to be a more procedurally  
16 democratic way. That might be a model that we would  
17 look to, and that's something that we need to discuss  
18 as commissioners, whether that's a model we want to  
19 adopt.

20 CHAIRMAN REYNOLDS: Well, I think we  
21 should redouble our efforts to get the procedures in  
22 place, and with any luck, vote on it at our next  
23 meeting.

24 COMMISSIONER BRACERAS: Well, that's what  
25 I'm trying to do, but in the meantime, I would like to

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1 hear from Commissioners Yaki and Melendez as to  
2 whether there are specific paragraphs or things that  
3 if removed they could support the report, or would you  
4 vote against it anyway?

5 COMMISSIONER MELENDEZ: Well, I think --  
6 this is Commissioner Melendez. Again, I have problem  
7 with a lot of the findings and a lasso citation to  
8 some of the Social Science portions of this. And  
9 really what that would require would be to delay this  
10 until another meeting, and go back over it, and  
11 basically see if it's acceptable to delete certain  
12 things, even more so; otherwise, I'd have to still  
13 vote against the way it is now.

14 COMMISSIONER BRACERAS: Let me just put it  
15 to you this way. If there were no findings and  
16 recommendations in this report, would you vote for it?

17 COMMISSIONER MELENDEZ: If there were no  
18 findings, yes.

19 COMMISSIONER BRACERAS: Yes. Commissioner  
20 Yaki?

21 COMMISSIONER YAKI: Well, let me just talk  
22 just a little bit about procedure. I am somewhat  
23 disturbed. And, again, this has nothing to do with  
24 the qualifications of Mr. Byrnes, who I think does a  
25 fine job, but this was, in many ways, an exercise in

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1 understanding the Social Science research of this. It  
2 is my understanding that we have Social Science people  
3 in OCRE, and my first question is, did they review the  
4 bibliography and literature to determine whether or  
5 not some of the conclusions made about the literature,  
6 or characterization of the literature were accurate or  
7 not?

8 STAFF DIRECTOR MARCUS: In making the  
9 assignments, I think that we had the luxury of having  
10 on staff someone who is particularly expert in  
11 educational civil rights policy, and who had an  
12 unusual amount of expertise dealing with policies  
13 regarding diversity in education, and that's Mr.  
14 Byrnes. You may be aware that he joined us from the  
15 Office for Civil Rights at the Department of  
16 Education, where a large percentage of his work dealt  
17 with looking at issues of diversity in education. So  
18 he is, I think, a person who has an unusually strong  
19 background in the subject.

20 He was joined in this work for parts of it  
21 by an analyst that we had on detail from HUD. We did  
22 not have anyone --

23 COMMISSIONER YAKI: Is she an analyst or  
24 an attorney?

25 STAFF DIRECTOR MARCUS: Pardon?

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1                   COMMISSIONER YAKI: Was she an analyst or  
2 an attorney from HUD?

3                   STAFF DIRECTOR MARCUS: She was not an  
4 attorney. I don't recall her exact personnel  
5 designation, but she was some form of analyst.

6                   COMMISSIONER YAKI: And what kind of  
7 training did she have?

8                   STAFF DIRECTOR MARCUS: Her background is  
9 in the Office of Fair Housing and Equal Opportunity  
10 dealing with fair housing issues at HUD. We did not  
11 have precisely the sort of exercise that you  
12 described, but we did have a review of at least some  
13 of the findings by OCRE, just where it appeared that  
14 some technical guidance would be necessary. It's a  
15 kind of a reality check.

16                   COMMISSIONER YAKI: But the basic answer  
17 is no.

18                   STAFF DIRECTOR MARCUS: I don't think  
19 that's the basic answer. The basic answer is what I  
20 just gave.

21                   COMMISSIONER YAKI: No, I think the basic  
22 answer is that OCRE's Social Scientist did not play a  
23 significant role in reviewing whether or not the  
24 characterizations of the Social Science research and  
25 the bibliography, as characterized in the findings,

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1 were accurate or not.

2 STAFF DIRECTOR MARCUS: They played only  
3 a supporting role in the findings. That's right.

4 COMMISSIONER YAKI: Thank you. The reason  
5 I'm bringing that up is that, like I said, I have  
6 great fondness and appreciation for the comments of  
7 Commissioner Braceras, and if you were to ask me, I  
8 would say that, to me, the significant flaw, fatal  
9 flaw of this document is in tone, and in  
10 characterization. When you start with Finding One,  
11 first sentence, "There's little academic consensus",  
12 that sentence in -- that phrase, in and of itself, I  
13 believe, is misleading. You had in the testimony from  
14 Professor Kurlaender and Attorney Coleman that they  
15 believed there was broad consensus on the idea that  
16 there were educational benefits.

17 Now part of this definitional issue that  
18 we have, as the Chair said, the Chair keeps on talking  
19 about math, but the educational benefit, the  
20 educational experience in the American primary school  
21 system, and its impact on secondary and post-secondary  
22 goes far beyond simply whether or not it's a math  
23 score, or the English score.

24 I like, for example, the points brought up  
25 about should there be differential research on

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1 economics, and some of the other areas? I think those  
2 are good questions to pose. I think those are the  
3 kinds of things that briefing reports should look at  
4 to say, everyone seems to be focusing on these two  
5 factors, but there are other differentials that we  
6 should look at to see what kind of impact there is on  
7 that. I like that.

8 What I don't like, though, is the idea  
9 that you say there's little academic consensus, where  
10 there is clearly two people saying there is, two  
11 people there are not --

12 COMMISSIONER BRACERAS: Why don't we just  
13 say the evidence is mixed?

14 COMMISSIONER YAKI: The evidence is -- I  
15 would say we would simply characterize the panel as  
16 they said it, which is that two of them believe there  
17 was broad academic consensus, and cite who it was they  
18 believe constitutes that broad consensus, and the two  
19 said there wasn't, cite the one or two studies, which  
20 I know that they were doing, to say that there wasn't.  
21 That, to me, is how these findings should be done.  
22 So, number one, as it starts off, is just completely  
23 off the chart.

24 I could go --

25 CHAIRMAN REYNOLDS: Well, before you go on

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1 --

2 COMMISSIONER YAKI: Well, you asked me for  
3 my response.

4 CHAIRMAN REYNOLDS: Oh, no./ Oh, no, no,  
5 no. And I want you to continue, but before you do,  
6 since my memory isn't what it should be, I would like  
7 to respond to the first bullet point. I mean, we have  
8 to sit in judgment of the evidence that's put before  
9 us, and to judge the credibility of the panelists, and  
10 the evidence. And we, at times, will come to  
11 different conclusions, and I think that that's all  
12 right. But in terms of the academic piece of this, I  
13 don't think - at least I don't recall any panelist  
14 stating that there were significant academic benefits  
15 to diversity.

16 Now to put it in context, I mean, the  
17 issue before the court - okay --

18 COMMISSIONER YAKI: Did you say academic?  
19 What did you -- rephrase that.

20 CHAIRMAN REYNOLDS: Academic benefits? I  
21 said that, no, I don't recall any of the panelists  
22 stating that there was significant academic  
23 educational benefits to diverse settings in schools.  
24 Now the background, though, is a court case. The  
25 court is going to need a compelling state interest.

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1           Now if we're saying that on the one hand  
2 we have to meet the strict scrutiny standard, and on  
3 the other, at best, what we have in one subject area  
4 is modest educational improvement, and even that is  
5 mixed. The high-performing black students, they seem  
6 to benefit; whereas, the low-performing black students  
7 do not. That's what the court is going to look at,  
8 and so when I discuss this issue --

9           COMMISSIONER YAKI: Is that a mixed  
10 result, or is that a differential result? In other  
11 words, you have a clear measure of higher performance  
12 in one category, and not in another. Now is that  
13 mixed, or is that a differential?

14           CHAIRMAN REYNOLDS: In that particular  
15 case, it's mixed. Overall, I believe all of the  
16 Social Scientists on the panel said that with respect  
17 to math, nothing; with respect to reading, it's  
18 modest. I believe the best we can do is two points.

19           COMMISSIONER BRACERAS: I mean, just with  
20 respect to this first sentence, the word "consensus"  
21 means agreement. The fact that we're even having this  
22 discussion proves the validity of the sentence, that  
23 there is little academic agreement. I mean, if some  
24 people think that are benefits to racial and ethnic  
25 diversity, and some people think that there are not

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1 benefits, then there's no consensus.

2 COMMISSIONER YAKI: Well, I would disagree  
3 with that, Commissioner Braceras, because if you and  
4 I were to say based on, let's say Panelist A and  
5 Panelist B. Panelist A said there was consensus,  
6 Panelist B said there's no consensus, and you --

7 COMMISSIONER BRACERAS: And if they don't  
8 agree, there's no consensus.

9 COMMISSIONER YAKI: Well, that may be,  
10 except that Panelist B is talking about two reports,  
11 and Panelist A is talking about 125. I mean, to me,  
12 that is part of the methodological and open  
13 scholarship --

14 COMMISSIONER BRACERAS: But that's still  
15 not a consensus. It could be 99 to 1, and that's not  
16 a consensus, that's a majority viewpoint.

17 COMMISSIONER YAKI: Well, in that case --

18 COMMISSIONER BRACERAS: You wouldn't call  
19 it a consensus.

20 COMMISSIONER YAKI: In that case, then we  
21 should rephrase it to -- instead of using the weak  
22 phrase, "There's little academic consensus", we could,  
23 instead, say that the majority of academic reports  
24 support blankity-blank, versus us taking it back --

25 COMMISSIONER BRACERAS: Or we could just

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1 say the evidence is mixed.

2 COMMISSIONER YAKI: -- and saying mixed.

3 COMMISSIONER BRACERAS: The evidence is  
4 mixed.

5 COMMISSIONER YAKI: But see, that's what  
6 I don't believe that the evidence is as mixed as you  
7 say it is. When I look at the bibliographies, and I  
8 see who it is that's saying no, and who it is that's  
9 saying yes, it's one thing to say there's 25 reports  
10 here, and 25 reports here. There's nothing to say  
11 there's 25 different reports by different authors in  
12 different studies over here, versus 25 of the same  
13 people jinning up the same thing over and over again.

14 CHAIRMAN REYNOLDS: Are you backing out  
15 the flawed studies? I mean, the two panelists who  
16 were most expert in this area both agreed, there was  
17 consensus, that most of the studies had fatal  
18 methodological flaws. There are not many studies out  
19 there, there are not many sound studies out there on  
20 this particular issue, so when you talk about 25  
21 studies here, are you including the flawed ones?

22 COMMISSIONER YAKI: No, I'm talking about  
23 the fact that when I received one of the big globs of  
24 backup material that we got from -- very late in the  
25 game that would support the -- that would go toward

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1 supporting the findings in this document, and then I  
2 started looking at it more closely, it looked to me  
3 like complete rehashes by the same people over and  
4 over again, versus a much more distinct, varied, and  
5 broad-based set of studies on the other side. And  
6 that, to me, is --

7 COMMISSIONER BRACERAS: Yes, but can I  
8 just say one thing? I'm genuinely trying to sort of  
9 strike out a compromise, and if that means going over  
10 these findings one by one, and rewording them in a way  
11 that you think has a more neutral tone, then I'm  
12 willing to do that. But it seems from Commissioner  
13 Yaki's most recent statement that that may not solve  
14 the problem, because it seems like what you're really  
15 concerned about is not necessarily whether the  
16 language of these findings is neutral, but rather, the  
17 underlying studies. I mean, it seems, in other words,  
18 that you're not willing to acknowledge, for example,  
19 that the evidence is mixed. You don't like a certain  
20 set of studies, so you don't want to acknowledge them  
21 at all.

22 COMMISSIONER YAKI: No, I would say -- I  
23 would characterize it -- let me just put it to you  
24 another way. I am not a Social Scientist, I'm a  
25 lawyer, I'm a politician. I acknowledge that, that's

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1 who I am. We have staff here who are Social  
2 Scientists, who can look at the data, arrange it in  
3 such a way and say these studies tend to favor these,  
4 these are the kinds of things these studies looked at.  
5 There really was very little variation in what these  
6 studies were saying over and over again, versus the  
7 kinds of data that these people were going. I would  
8 say in that case, there seems to be a greater range of  
9 research supporting this on this side, a narrower  
10 range of research on the other side, and just leave it  
11 at that. I wouldn't say it's mixed. If you want to  
12 say it's mixed at that point, yes, but as long as you  
13 accurately characterize what it is within Column A or  
14 Column B. And, quite frankly, I don't think that I am  
15 functionally confident to do that in the document as  
16 it's here right now.

17 Part of the reason why I wanted Chris here  
18 was to sort of ask some of the questions about where  
19 some of these things came from, to help me understand  
20 better what he relied on, and what he didn't rely  
21 upon. But if you want to go one thing, which I think  
22 is completely off the chart, is Recommendation 17,  
23 which just pops out of nowhere from anything that I  
24 can think of.

25 CHAIRMAN REYNOLDS: Which page is that on?

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1                   COMMISSIONER YAKI: 20. And just to  
2 finish, because I think that this is -- I just have  
3 one final statement to make.

4                   COMMISSIONER BRACERAS: Yes, I see.

5                   COMMISSIONER YAKI: And that is, I just  
6 find -- the difficulty I have with briefing reports,  
7 and I was a big fan of the briefing report. It was a  
8 means of dealing with issues with a lack of resources.  
9 We do findings and recommendations on the national  
10 report. We do findings and recommendations on the big  
11 hearings that we do. Briefings in the original  
12 context, and I was a big supporter, was to get issues  
13 on the table, hear about them, get it out so that we  
14 could react quickly to what was going on. I  
15 understand what the Chairman says about having a point  
16 of view. Of course, we have a point of view, and the  
17 commission is charged with having a point of view.  
18 But to take a three-hour hearing with limited  
19 panelists on short timetables with limited staff, and  
20 then task that staff with going through 85, 90  
21 different studies, and not even ask our OCRE folks,  
22 who have Social Science degrees and are called Social  
23 Scientists, to take a look at it, as well, and provide  
24 feedback back, I think is a methodological and  
25 fundamental flaw, weakness of the entire document. I

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1 cannot support this document. I'm not going to --

2 COMMISSIONER BRACERAS: In any form.

3 COMMISSIONER YAKI: I'm not going to sit  
4 here and try to improve it any way, other than to say  
5 I think that for the benefit of the credibility of  
6 those of you who are going to be voting on it, Number  
7 17 just really sticks out there as -- well, let me  
8 just throw --

9 COMMISSIONER BRACERAS: I agree with you.

10 COMMISSIONER YAKI: -- a bias out there  
11 real far.

12 COMMISSIONER BRACERAS: I agree with you,  
13 I think it should be removed.

14 COMMISSIONER YAKI: So, in other words, I  
15 don't want to take up more of the commission's time.

16 CHAIRMAN REYNOLDS: No, I understand that.

17 COMMISSIONER YAKI: I think there is a  
18 fundamental methodological and analytical weakness of  
19 this document. I think that the findings  
20 mischaracterize and do not do justice to the kinds of  
21 opinions and studies that are out there. If we're  
22 going to do this kind of work, it should be done in a  
23 much deeper, broader, and more coherent point of view  
24 that uses our Social Scientists at OCRE, and I cannot  
25 support this report.

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1                   COMMISSIONER BRACERAS: But the whole  
2 point of the testimony, as I understand it, was that  
3 these people were brought in, these experts we brought  
4 in were Social Scientists who said that the Social  
5 Science data out there is both unreliable, and a mixed  
6 result, so how would we expect our staff of Social  
7 Scientists, who, while they might well-trained, are  
8 not the experts that we brought in before us, to make  
9 sense of data that even they are saying they cannot  
10 make sense of?

11                   COMMISSIONER YAKI: Well, just in  
12 response, Mr. Chair, and thank you for indulging this  
13 colloquy. In that case, we shouldn't have a report  
14 chock-full of references to studies that were not  
15 discussed in full by any of the panelists, because --

16                   CHAIRMAN REYNOLDS: Well, then we can't  
17 have any briefing reports -- I mean, the standard that  
18 you just set forth --

19                   COMMISSIONER YAKI: The standard I set  
20 forth is more like what I'm used to, which is a  
21 hearing report, which is people come, they give  
22 testimony, they have other stuff that's in there.

23                   CHAIRMAN REYNOLDS: You want to dissect  
24 the report and any statement in there has to be traced  
25 back to not only a particular document, but we have to

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1 explore the whole body of literature to see where that  
2 particular statement, how it sits --

3 COMMISSIONER BRACERAS: No, the opposite.

4 COMMISSIONER YAKI: No, no, no. If we --

5 COMMISSIONER BRACERAS: I think he's  
6 saying the opposite.

7 COMMISSIONER YAKI: If we are using  
8 statements that were not spoken of on the record, if  
9 we are using source data that was only alluded to by  
10 panelists - and if you look at the findings, they're  
11 like multiple, multiple, multiple, multiple citations  
12 for this and that; although, of course, there's no  
13 citation for the widely cited 1984 review of research  
14 in the second sentence.

15 CHAIRMAN REYNOLDS: The Cook Report?

16 COMMISSIONER YAKI: Well, we're not citing  
17 it. Anyway, the --

18 CHAIRMAN REYNOLDS: Okay.

19 COMMISSIONER BRACERAS: I --

20 COMMISSIONER YAKI: I mean --

21 CHAIRMAN REYNOLDS: You know, just -- I  
22 find this beneficial because it's causing me to think  
23 about the role of the findings and who owns the  
24 findings. Is it the panelists who come before us? Is  
25 our job merely to regurgitate what they have said, and

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1 if they haven't said it, offer no opinion on a  
2 particular topic. I have a different point of view.

3 I think that the commissioners are here to  
4 exercise their judgment, to gather information, to  
5 cogitate, to think about it, to draw their own  
6 conclusions.

7 COMMISSIONER BRACERAS: But Commissioner  
8 Yaki is right that there was, at some point in time,  
9 conceptually, at least, a difference between hearings  
10 and briefings, and hearing reports and briefing  
11 reports, and the whole notion was that hearings, we  
12 would hear from all of the witnesses, and there would  
13 be probably more than one panel of witnesses, but then  
14 our own staff would get involved in doing their own  
15 research, be it legal analysis, or Social Science  
16 research. Whereas, a briefing was meant to be just  
17 that, bringing together people of different  
18 perspectives to give us their views, and for us to  
19 synthesize those views for the public, but not  
20 necessarily go back and do our own exhaustive  
21 research.

22 CHAIRMAN REYNOLDS: Changed.

23 COMMISSIONER BRACERAS: Huh?

24 CHAIRMAN REYNOLDS: That changed.

25 COMMISSIONER BRACERAS: Well, I don't know

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1 if I agree with that part, but the point is that there  
2 were supposed to be two different vehicles for us to  
3 be relevant in the civil rights debates that are  
4 happening, and the line between hearings and briefings  
5 seems to have become blurred. And I think that's  
6 where a lot of the objections we're hearing from  
7 Commissioners Melendez and Yaki are resonating with  
8 me, because it is procedurally confusing.

9 CHAIRMAN REYNOLDS: Well, I agree that we  
10 need to get our arms around the procedural issues, and  
11 I think that the document that you put together is a  
12 good starting point. And I don't see any reason why -  
13 - well, we have some holidays coming up, but I'm  
14 hopeful that we will be able to have a serious  
15 discussion, and hopefully vote on these new procedures  
16 at the next meeting. So I don't think there's any  
17 push-back in terms of the need to formalize our rules  
18 in terms of briefings.

19 COMMISSIONER BRACERAS: No, no. I  
20 understand that. I mean, with respect to this report,  
21 I think it would be a useful exercise; and, frankly,  
22 I think it's something we should do all the time, to  
23 go over -- to take each finding and recommendation and  
24 discuss them. And I know we're not going to get  
25 agreement from Commissioners Melendez and Yaki on a

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1 majority of them, but if there are some that are  
2 particularly either inaccurate or biased, then I would  
3 like to strike them for the integrity of the report.

4 CHAIRMAN REYNOLDS: There's nothing to  
5 stop us from discussing any aspect of this briefing  
6 report, whether it's the findings, or --

7 COMMISSIONER BRACERAS: All right. So  
8 let's do that right now.

9 CHAIRMAN REYNOLDS: Okay. Thank you for  
10 your patience, Commissioner Kirsanow.

11 COMMISSIONER KIRSANOW: Just a couple of  
12 quick statements on the record. I concur with  
13 Commissioner Braceras, and I'm also sensitive to the  
14 procedure questions that have been raised by  
15 Commissioner Yaki. Just a couple of observations with  
16 respect to some specific aspects of it.

17 With respect to the point of the Social  
18 Scientists and who's considering the data, analyzing  
19 the data, it's my understanding from what the Staff  
20 Director said, that perhaps the person most suitable  
21 on staff to do that was, in fact, Chris Byrnes. Maybe  
22 it would have been helpful to run it by Social  
23 Scientists, also, but my understanding was that in the  
24 allocation of resources, Chris Byrnes was probably the  
25 individual who could do it the most efficiently, and

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1 with the greatest amount of background.

2 Second, I would prefer a process similar  
3 to what was described by Commissioner Braceras, and  
4 that is that the statutory reports, of course, would  
5 have much more guts to them, been vetted a number of  
6 times, and could yield findings and recommendations;  
7 whereas, briefing reports, as Commissioner Yaki  
8 indicated, would probably consist of the facts  
9 gathered, maybe with some summarization or synthesis  
10 of those facts gathered, and put it out into the  
11 public domain.

12 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
13 let me ask you; would the commission be within its  
14 authority, would it be proper if there were some civil  
15 rights event for us to issue a statement condemning --

16 COMMISSIONER KIRSANOW: No, I agree with  
17 you on that. I think we don't sit simply as kind of  
18 solons that kind of throw things up and let them fall  
19 where they may. I think we do come to conclusions,  
20 and we have -- that's part of our charter. But my  
21 point goes to process, and I think having reviewed  
22 Commissioner Braceras' emails that she had sent  
23 around, I think that we're going to be going a long  
24 way toward establishing a process that I think  
25 everybody can sign on to.

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1           A couple of other quick observations, and  
2 these are just very minor. With respect to findings  
3 and Recommendation 1, maybe I would have phrased it a  
4 little bit differently, but that was probably, in my  
5 estimation, the most accurate finding. I recall that  
6 we spent a good portion of time cross examining, for  
7 no other better term, the witnesses as to specific  
8 aspects of the purported educational benefits yielded  
9 by diversity. Not only did we go through the Grutter  
10 standards of whether or not it promoted cross-cultural  
11 understanding, eliminated stereotypes, prepared  
12 students for a global marketplace, those that were  
13 cited by Grutter, but we went through specific  
14 academic disciplines to determine whether or not the  
15 extant data yielded any benefits. We asked them,  
16 given that they are the experts in the area, please  
17 cite for us the data that supports, or literature that  
18 supports a finding of benefit, if there is any.

19           I recall specifically what those findings  
20 were, and we can go through the transcript. There was  
21 a marginal increase in spelling scores, there was a  
22 disputed report with respect to an improvement in  
23 geography, there was a disputed report as to  
24 improvements in attendance and tardiness, or overall  
25 discipline, virtually every - and this includes

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1 Kurlaender, Coleman, Thernstrom, and Armor. Armor  
2 was, perhaps, the most knowledgeable. If there was a  
3 consensus, the consensus was there was hardly anything  
4 out there to support benefits. - Later, we received  
5 literature from, I believe it was Professor  
6 Kurlaender, which I went through in great detail,  
7 which purported to be literature in support of  
8 possible benefits in K-12, solely by virtue of  
9 diversity. That literature was, at best, at very,  
10 very best, yielding the most liberal interpretation  
11 mixed, and more likely than not saying nothing, simply  
12 coming up with conclusions that well, diversity is  
13 intuitively considered a good thing, but can't point  
14 to any particular standards whereby there have been  
15 objective measurements that show that there are either  
16 hard facts supporting improvements in academic scores,  
17 or the Grutter standards, the kind of soft standards  
18 of - and I don't even know how you measure these -  
19 promoting cross-cultural understanding were improved,  
20 so with respect to number 1.

21 Now going to another one, Commissioner  
22 Yaki's point with respect to 17, I agree with that  
23 entirely. If it were up to me, I would vote to excise  
24 that. And the reason I would is, I think we can come  
25 to conclusions like that. I think we have the

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1 authority to do it. I think it's wise to avoid doing  
2 that, because I think it tends -- I think we go beyond  
3 merely standing in judgment, to the point where we go  
4 make another leap beyond judgment, and even maybe  
5 beyond advocacy, to coming to conclusions. It's a  
6 very conclusory statement, but more important is, it  
7 is consistent with what - and maybe Jennifer Braceras  
8 and I, the old timers here - had been faced with  
9 during the previous regime, these kind of conclusions.

10 COMMISSIONER BRACERAS: Battered  
11 Commissioners' Syndrome.

12 COMMISSIONER KIRSANOW: Right.

13 COMMISSIONER BRACERAS: I can't help it. :

14 COMMISSIONER KIRSANOW: I think we have to  
15 eliminate that one, even if we could somehow argue  
16 that the data there supports it, I don't know that it  
17 does, I think that's really a matter of opinion.

18 CHAIRMAN REYNOLDS: Okay. Now on 17 --  
19 actually, I like 17, but I have no objections to --

20 COMMISSIONER KIRSANOW: Can I just say, I  
21 agree with 17, but for the purpose of this commission  
22 and its integrity, the fact of the matter is, I think  
23 it is wise for us to avoid certain types of  
24 statements, even if we could make reasonable arguments  
25 in support thereof.

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1           CHAIRMAN REYNOLDS: Isn't there a moral,  
2 an ethical cost associated with distributing benefits,  
3 at least here in America --

4           CHAIRMAN REYNOLDS: I agree.'

5           COMMISSIONER KIRSANOW: -- benefits and  
6 burdens on the base of risk. Isn't there an ethical  
7 and a moral --

8           COMMISSIONER BRACERAS: We can have that  
9 discussion, but I think -- let's just not -- I mean,  
10 it seems like the majority of the commissioners don't  
11 want number 17 in there. It's not that I disagree  
12 with you on the merits.

13          CHAIRMAN REYNOLDS: Well, no, I think --

14          COMMISSIONER BRACERAS: Let's just get rid  
15 of it and move on.

16          CHAIRMAN REYNOLDS: Well, I think that  
17 we're in agreement that 17 goes, but I think it's --

18          COMMISSIONER BRACERAS: You want to have  
19 the philosophical discussion, and we could do that at  
20 lunch.

21          CHAIRMAN REYNOLDS: Well, no. I think  
22 that it's an important issue.

23          COMMISSIONER BRACERAS: Well, there are  
24 lots of important issues, but we have an agenda, so if  
25 the majority of the commissioners don't support number

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1 17, let's strike it and discuss the philosophy later.

2 CHAIRMAN REYNOLDS: Well, there's the  
3 discussion piece of the meeting here. This is the  
4 first time since we started the discussion of this  
5 briefing where we wanted to cut off discussion.

6 COMMISSIONER BRACERAS: No, I'm not saying  
7 that. I'm just saying that the moral and  
8 philosophical question is one that could be debated  
9 from here to eternity, and we --

10 CHAIRMAN REYNOLDS: No, I disagree. I  
11 think that the issue is settled in America, at least,  
12 amongst most Americans, that it is, at a minimum,  
13 unethical.

14 COMMISSIONER KIRSANOW: I would say this.

15 COMMISSIONER BRACERAS: Let's just deal  
16 with the report.

17 COMMISSIONER KIRSANOW: My recollection is  
18 that Item 17 actually encapsulates something that  
19 Professor Thernstrom said in his testimony.

20 CHAIRMAN REYNOLDS: Yes.

21 COMMISSIONER KIRSANOW: I don't know that  
22 -- I would prefer not to have it in there, but I think  
23 that it is, at least, supportable on the basis of  
24 something that someone had made a statement, somebody  
25 made a conclusion that an expert had come to based on

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1 a considered analysis and a longstanding, I mean, 30  
2 years analysis of the purported benefits of diversity,  
3 and also assigning students or others on the basis of  
4 race.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER BRACERAS: That's fine, but -

7 -

8 CHAIRMAN REYNOLDS: So I would like to -  
9 somebody tell me the procedure - move to amend the  
10 document so that this particular finding is deleted.

11 COMMISSIONER KIRSANOW: May I make a  
12 recommendation?

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER KIRSANOW: I agree with  
15 Commissioner Braceras. I don't think Commissioner  
16 Yaki - he's already indicated he's not going to sign  
17 onto the document, but for - I think there is an  
18 institutional imperative for us to go through each one  
19 of those and say yea or nay.

20 COMMISSIONER BRACERAS: Yes, I do. And I  
21 think we should do that every time.

22 COMMISSIONER TAYLOR: And I would -- let  
23 me add to that, because I think it will improve our  
24 work product. Despite the fact that Commissioner Yaki  
25 and Melendez may not be inclined to support the

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1 document, I think it's helpful for purposes of  
2 improving the document to hear their criticism on each  
3 particular point, because I think it will help us in  
4 terms of our deliberative process. And we may want to  
5 tweak some language in response to the criticism, so  
6 I just encourage those two to participate.

7 CHAIRMAN REYNOLDS: And Commissioner  
8 Yaki's strong arguments from time to time persuade me  
9 that I am wrong.

10 COMMISSIONER YAKI: They should.

11 COMMISSIONER BRACERAS: So I think we  
12 should go over it, and then vote on the revised thing  
13 at the end.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER BRACERAS: So number one, can  
16 I make a proposal?

17 CHAIRMAN REYNOLDS: Sure.

18 COMMISSIONER BRACERAS: I would propose  
19 that we delete the first sentence, and instead say,  
20 "The academic literature on the effect of racial and  
21 ethnic diversity in elementary and secondary education  
22 is mixed." Leave the rest of it as it is.

23 CHAIRMAN REYNOLDS: Well, I think it would  
24 be more accurate to say that there is very little  
25 academic literature to support the notion that

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1 diversity improves academic performance. When  
2 Commissioner Kirsanow went down the line, it was a  
3 long laundry list of subjects, and the response for  
4 most of them, the overwhelming majority was no, there  
5 is no evidence to support it. So to say that the  
6 evidence is mixed, I think is not --

7 COMMISSIONER BRACERAS: Well, there are  
8 studies. It's just that we believe, and the panelists  
9 believe that many of them are flawed. There are  
10 studies.

11 COMMISSIONER TAYLOR: Mr. Chairman, I just  
12 have a question. Are you distinguishing in your own  
13 mind between academic evidence and educational  
14 benefits?

15 CHAIRMAN REYNOLDS: I'm thinking test  
16 scores improved, academics.

17 COMMISSIONER TAYLOR: That's what I'm --  
18 so are you using the two terms interchangeably?

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER TAYLOR: My sense was that  
21 the -- the way I heard the evidence come out, there  
22 seemed to be more evidence on the soft side, which I  
23 put in the category of educational benefits, which I  
24 have a difficult time getting my arms around, versus  
25 the harder academic aspects, the test scores, things -

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1 - I mean, just those tangible things. And I didn't  
2 know if you were using the two interchangeably.

3 CHAIRMAN REYNOLDS: Well, when I say  
4 academic or educational, I'm referring, basically, to  
5 subject matters like spelling, Social Studies, math.

6 COMMISSIONER TAYLOR: Things you can test,  
7 versus cultural efficiency.

8 CHAIRMAN REYNOLDS: Yes.

9 COMMISSIONER BRACERAS: So how --

10 COMMISSIONER KIRSANOW: As we all know, as  
11 I think everybody here is a lawyer, there's a  
12 difference between evidence and opinion. And the  
13 evidence that was adduced during the hearing didn't  
14 even yield any standards with respect to the soft  
15 characteristics. They were simply conclusory  
16 statements made, and then when you go through the  
17 empirical - if you go through the literature, there's  
18 nothing there. In fact, if I have any flaw with  
19 number one, I wouldn't even say there was a consensus  
20 - there's little academic consensus on whether it  
21 results in significant education benefits. There's  
22 almost a consensus that it doesn't.

23 CHAIRMAN REYNOLDS: Yes.

24 COMMISSIONER BRACERAS: So you don't want  
25 to use the word "mixed". You want something stronger.

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1                   CHAIRMAN REYNOLDS: I think that --  
2                   actually, when I look at this, I think that this was  
3                   -- well, this could have been even harder. I think  
4                   that there is very little evidence to support the  
5                   notion that diversity raises test scores. And if we  
6                   take a step back and just look at where is all this  
7                   achievement taking place, when we look at school  
8                   districts -- well, you pick the city where they have  
9                   mixed classes, so you have the academic literature,  
10                  you have the NAEP data, whatever benefits that are  
11                  being generated by diverse classrooms, those benefits  
12                  are modest.

13                 COMMISSIONER BRACERAS: Okay. So what's :  
14                 your proposed edit?

15                 CHAIRMAN REYNOLDS: Okay.

16                 COMMISSIONER BRACERAS: Come up with  
17                 something concrete.

18                 CHAIRMAN REYNOLDS: There is little  
19                 evidence to support that racial and ethnic diversity  
20                 results in improved academic performance.

21                 COMMISSIONER BRACERAS: There is little -  
22                 say it again - little academic --

23                 CHAIRMAN REYNOLDS: There's little  
24                 evidence.

25                 COMMISSIONER BRACERAS: There's little

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1 evidence.

2 CHAIRMAN REYNOLDS: That racial and ethnic  
3 diversity results in improved academic performance.  
4 Yes, increased reading level by two to six weeks, I  
5 mean --

6 COMMISSIONER BRACERAS: All right. Let's  
7 just --

8 CHAIRMAN REYNOLDS: Okay. All right. I'm  
9 trying.

10 COMMISSIONER BRACERAS: So there is little  
11 evidence that racial and ethnic diversity in  
12 elementary and secondary schools --

13 CHAIRMAN REYNOLDS: Results in improved --

14  
15 COMMISSIONER BRACERAS: -- results in  
16 improved academic performance.

17 CHAIRMAN REYNOLDS: Right.

18 COMMISSIONER TAYLOR: I would strike the  
19 word "any", and keep the word "significant", so that  
20 it reads results in significant --

21 CHAIRMAN REYNOLDS: Yes, that's better.  
22 That's more accurate.

23 COMMISSIONER BRACERAS: Okay. There is  
24 little evidence that racial and ethnic diversity in  
25 elementary and secondary schools results --

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1 COMMISSIONER TAYLOR: In significant  
2 academic.

3 COMMISSIONER BRACERAS: -- in significant  
4 academic performance.

5 COMMISSIONER TAYLOR: Right.

6 COMMISSIONER BRACERAS: Wait, significant  
7 --

8 CHAIRMAN REYNOLDS: Improvements in  
9 academic performance.

10 COMMISSIONER BRACERAS: Significant  
11 improvements in academic performance. Does everybody  
12 agree with that?

13 COMMISSIONER KIRSANOW: Yes.

14 COMMISSIONER BRACERAS: Or is there  
15 majority support for that sentence? There is little  
16 evidence that racial and ethnic diversity in  
17 elementary and secondary schools results in  
18 significant improvement in academic performance.  
19 That's the new first sentence of number 1.

20 CHAIRMAN REYNOLDS: Does that get your  
21 support?

22 COMMISSIONER YAKI: No.

23 CHAIRMAN REYNOLDS: Commissioner Melendez.

24 COMMISSIONER MELENDEZ: No, it seems  
25 pretty much the same as what we had before.

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1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER BRACERAS: All right. Number  
3 2, does anybody have any concerns, or proposed  
4 language changes?

5 COMMISSIONER KIRSANOW: I don't.

6 COMMISSIONER BRACERAS: I have none.

7 CHAIRMAN REYNOLDS: Let's go to number 3.

8 COMMISSIONER BRACERAS: I have no comments  
9 on number 3.

10 CHAIRMAN REYNOLDS: Neither do I.

11 COMMISSIONER KIRSANOW: Neither do I. But  
12 I just want to interject, so far in the first three in  
13 going through this, I just want to relay to Chris  
14 Byrnes that I think he has digested accurately and  
15 truthfully what was represented at the hearing.

16 COMMISSIONER YAKI: I disagree.

17 COMMISSIONER BRACERAS: One small point on  
18 3.

19 CHAIRMAN REYNOLDS: Steven?

20 COMMISSIONER BRACERAS: Yes. That's  
21 supposed to be Thernstrom. Right? Not Steven.

22 CHAIRMAN REYNOLDS: He was probably  
23 calling him up at the time.

24 COMMISSIONER BRACERAS: Oh, okay. I  
25 didn't know who he was referring to.

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1 CHAIRMAN REYNOLDS: I was going to make  
2 the same comment.

3 COMMISSIONER BRACERAS: So maybe a last  
4 name should -- a first or last name should be --

5 CHAIRMAN REYNOLDS: I assume this is a  
6 last name.

7 STAFF DIRECTOR MARCUS: I believe it's  
8 reference to Professor Walter G. Stephan.

9 COMMISSIONER BRACERAS: Can we say Walter  
10 G. Stephan?

11 CHAIRMAN REYNOLDS: Or Professor Stephan.

12 COMMISSIONER BRACERAS: It's just a little  
13 confusing, since the panelist was Steven Thernstrom,  
14 Steven spelled that way. I don't know. Maybe it's  
15 not a big deal.

16 COMMISSIONER KIRSANOW: I agree with  
17 Commissioner Braceras because in findings and  
18 recommendations, there's no previous reference to  
19 Professor Stephan, so it would be confusing as to --

20 COMMISSIONER BRACERAS: I know. I know  
21 that's the way Social Scientists do it, though.

22 STAFF DIRECTOR MARCUS: We tried to follow  
23 the usual form, and in future findings we also refer  
24 to a number of Social Scientists by last name.

25 COMMISSIONER BRACERAS: Yes.

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1 COMMISSIONER KIRSANOW: Let's remain  
2 uniform, at least.

3 COMMISSIONER BRACERAS: Let's just keep it  
4 as it is.

5 CHAIRMAN REYNOLDS: Okay. Number 4.

6 COMMISSIONER YAKI: Wait. I just want to  
7 make an objection on number three.

8 COMMISSIONER BRACERAS: Yes.

9 COMMISSIONER YAKI: And cite studies by  
10 Braddock, Crane, McPartland, Dawkins, Eric Fulcher,  
11 Hallanan, Hawley, Schofield, Ward, Slavin,  
12 Sandleitner, Woods, and Amy Wells as being to the  
13 contrary.

14 COMMISSIONER BRACERAS: So --

15 COMMISSIONER KIRSANOW: Contrary to what?

16 COMMISSIONER YAKI: The idea that their --

17

18 COMMISSIONER BRACERAS: It says mixed  
19 results.

20 COMMISSIONER YAKI: Right.

21 COMMISSIONER BRACERAS: So those studies -  
22 - how do those studies --

23 COMMISSIONER YAKI: I don't think they're  
24 mixed. I don't think that what we heard had anything  
25 to do with being mixed. I thought that what I heard

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1 from Thernstrom and Armor was much more on the  
2 academic achievement side, and much less contradiction  
3 of Professor Kurlaender's points of view. And I think  
4 that the bibliographies that are out there tend to  
5 support that, so I object. But, whatever. Let's keep  
6 it going.

7 COMMISSIONER BRACERAS: What if we deleted  
8 the second paragraph of number 3, instead of bringing  
9 in the examples, just sort of plucking out the studies  
10 that we want to highlight, and just leave the first  
11 paragraph as it is, which just says there are varied  
12 results, and mixed results.

13 CHAIRMAN REYNOLDS: Would you support that  
14 finding?

15 COMMISSIONER BRACERAS: And not pluck out  
16 the examples that we like.

17 COMMISSIONER YAKI: And, by the way, the  
18 things I'm looking at, which come from the David Armor  
19 bibliography, were all post 1978.

20 COMMISSIONER TAYLOR: I think if you took  
21 out the second paragraph it would be --

22 COMMISSIONER BRACERAS: All right. I move  
23 that we strike the second paragraph in number 3.

24 COMMISSIONER TAYLOR: Second.

25 COMMISSIONER MELENDEZ: This is

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1 Commissioner Melendez. Hello?

2 CHAIRMAN REYNOLDS: Yes.

3 COMMISSIONER MELENDEZ: I have in my  
4 recommendation that I sent in, that was it possible to  
5 consolidate finding 3-5. We got 20, I was wondering  
6 is there any consolidate any of these?

7 CHAIRMAN REYNOLDS: Would you support the  
8 document with that change?

9 COMMISSIONER MELENDEZ: Well, that's just  
10 one component. I don't know if this is -- I'm trying  
11 to take my comments line by line right now.

12 CHAIRMAN REYNOLDS: Well, I guess I'm  
13 trying to see -- I mean, we're changing the document  
14 and we're trying to accommodate some of the concerns  
15 of Commissioners Melendez and Yaki, and I'm just  
16 trying to see if that's going to be enough to get  
17 support. And if not, then --

18 COMMISSIONER YAKI: Well, I think you can  
19 pretty much count on the fact I'm not going to support  
20 this document. The fact you're going through this  
21 exercise is, I think, nice.

22 COMMISSIONER BRACERAS: I think we still  
23 need to do it.

24 COMMISSIONER YAKI: You're working on your  
25 own dime now, Mr. Chairman.

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1 COMMISSIONER BRACERAS: It needs to be  
2 done. I just --

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER BRACERAS: We could not have  
5 a regime where we have to vote up and down --

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER BRACERAS: -- on serious  
8 findings and recommendations without going through  
9 them as a commission.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER BRACERAS: Otherwise, we're  
12 just a rubber stamp for the staff.

13 CHAIRMAN REYNOLDS: I mean, there's no  
14 disagreement. We are already doing what you have  
15 suggested.

16 COMMISSIONER BRACERAS: All right. So  
17 we're striking the second paragraph of number 3.

18 CHAIRMAN REYNOLDS: Okay. That's fine.

19 COMMISSIONER BRACERAS: I want to kind of  
20 piggyback on what Commissioner Melendez just said  
21 about some of the subsequent findings, seeming a  
22 little drawn out, and maybe recommending a  
23 consolidation.

24 CHAIRMAN REYNOLDS: So we strike the  
25 second paragraph of 3.

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1                   COMMISSIONER BRACERAS: Well, I mean, it  
2 seems that 4, 5, and 6 are not really findings, but  
3 just summaries. They're summaries of studies, they're  
4 not findings.

5                   CHAIRMAN REYNOLDS: I think a piece of 4  
6 is a finding, and the discussion about the  
7 mythological weaknesses.

8                   COMMISSIONER BRACERAS: Yes, that is a  
9 finding. No, 4 is a finding, but 5 and 6 are not  
10 findings, they're summaries of research.

11                  CHAIRMAN REYNOLDS: This is probably  
12 something more appropriate in the body of the  
13 document.

14                  COMMISSIONER YAKI: 5 and 6 is really what  
15 I wanted to talk to Chris about.

16                  COMMISSIONER BRACERAS: I would strike 5  
17 and 6, to be honest with you.

18                  COMMISSIONER TAYLOR: Is the first  
19 sentence in 5, is that accurate, or is that  
20 misleading?

21                  CHAIRMAN REYNOLDS: Why would you suspect  
22 that that's --

23                  COMMISSIONER TAYLOR: Well, if we're  
24 striking it, to me, the first sentence seems to be an  
25 important finding.

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1                   COMMISSIONER BRACERAS:   Some ongoing  
2 research, including several longitudinal studies --

3                   COMMISSIONER TAYLOR:  Yes, those are -- if  
4 we think that is where the research is really going,  
5 I think that's an important point.  I don't need the  
6 examples afterward.

7                   COMMISSIONER BRACERAS:  Right.  I mean,  
8 the examples are something that should be either in a  
9 footnote, or --

10                  COMMISSIONER TAYLOR:  Yes, they should be  
11 in a footnote.

12                  COMMISSIONER BRACERAS:  They're not  
13 findings.

14                  CHAIRMAN REYNOLDS:  Okay.  So what I am  
15 hearing is keep the first sentence of finding 5, and  
16 either delete or drop the remaining information in a  
17 footnote.

18                  COMMISSIONER KIRSANOW:  Drop it in a  
19 footnote.  I think the information is useful, and then  
20 anyone who is interested in the finding can refer to  
21 the footnote, and then go to the original source  
22 material.

23                  COMMISSIONER BRACERAS:  So 5 and 6 would  
24 go into a footnote?

25                  COMMISSIONER KIRSANOW:  I think that's

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1 right. Keep the first sentence of 5, and the balance  
2 of 5, and all of 6 would be a footnote, probably to  
3 the finding, although, I prefer it to be in the text  
4 somewhere, the appropriate place in the text.

5 COMMISSIONER BRACERAS: Well, there is no  
6 appropriate -- see, here's the other thing, there is  
7 no appropriate place because there's no commission  
8 opinion, as it were. Right? There's a summary of  
9 what the panelists said and what the discussion was  
10 like, and then there's the panelists' papers, but  
11 there's no place in these documents, other than the  
12 findings and recommendations, where we offer our own  
13 views.

14 COMMISSIONER KIRSANOW: Then let's put it  
15 in a footnote.

16 COMMISSIONER BRACERAS: So I think it  
17 should in a footnote, but I also think the first  
18 sentence needs to be tweaked a little bit. "Raise  
19 questions about" is a little vague. I would just say  
20 "some ongoing research, including blah, blah, blah,  
21 suggests that - whatever it suggests. And then  
22 there's a footnote. Right?"

23 COMMISSIONER YAKI: I would just like to  
24 point out from a scholarship point of view that  
25 neither of these papers has actually been published

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1 yet under the first two by Fulker, and Ladd, and  
2 Cooley, at least according to the bibliography, one  
3 was a paper presented at a research conference, the  
4 other one is an unpublished manuscript, so we do not  
5 know whether or not, what kind of peer review its gone  
6 through before it has entered the academic mainstream.  
7 I just thought I'd point that out.

8 COMMISSIONER BRACERAS: I would be fine  
9 striking it all together, to be honest with you.

10 CHAIRMAN REYNOLDS: I'm comfortable.

11 COMMISSIONER TAYLOR: I have no strong  
12 feelings about it. It's more of a question than  
13 anything else.

14 COMMISSIONER BRACERAS: I mean, it's  
15 interesting, but it's not critical to the rest of --

16 CHAIRMAN REYNOLDS: Let's drop it.

17 COMMISSIONER BRACERAS: Okay. Strike 5  
18 and 6.

19 CHAIRMAN REYNOLDS: So we're at 7.

20 COMMISSIONER YAKI: I'm sorry. How did we  
21 handle 4?

22 COMMISSIONER BRACERAS: We're leaving it,  
23 as is:

24 COMMISSIONER TAYLOR: Okay. Let's go to  
25 number 7.

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1 CHAIRMAN REYNOLDS: 6 you mean, 7.

2 COMMISSIONER BRACERAS: 5 and 6 have been  
3 stricken, struck, eliminated.

4 CHAIRMAN REYNOLDS: Struck..'

5 CHAIRMAN REYNOLDS: 7 makes a different  
6 point. The piece that discusses controlling for socio  
7 economic status.

8 COMMISSIONER BRACERAS: I think it's fine.

9 CHAIRMAN REYNOLDS: 8. I like 8.

10 COMMISSIONER KIRSANOW: That's consistent  
11 with the questions that we posed to them.

12 COMMISSIONER BRACERAS: I'm interested in  
13 the relationship that racial and ethnic diversity has  
14 on people's performance in shop class.

15 COMMISSIONER KIRSANOW: Penmanship. Mine  
16 was penmanship. I acknowledge that these questions,  
17 that they are kind of silly, but I thought, you know,  
18 no more silly than trying to come up with measurable  
19 differences in performance between students who are in  
20 a diverse setting, and those who are not, with respect  
21 to whether or not it promotes cross-cultural  
22 understanding, or there is an improvement in the --

23 COMMISSIONER BRACERAS: Yes, yes.

24 COMMISSIONER KIRSANOW: -- global  
25 marketplace. How do you measure those things?

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1                   COMMISSIONER BRACERAS: Do people still  
2 take home ec?

3                   COMMISSIONER KIRSANOW: Yes, they do.  
4 What I did is, when I posed those questions, I went  
5 through the --

6                   COMMISSIONER YAKI: That's one of his  
7 teaching assignments. Right?

8                   COMMISSIONER KIRSANOW: I went through  
9 report cards that you might find through K-12, and I  
10 just --

11                   COMMISSIONER BRACERAS: Oh, okay.

12                   COMMISSIONER KIRSANOW: -- pulled out  
13 every single one and said give it to me.

14                   COMMISSIONER BRACERAS: All right. Well,  
15 I think 8 is fine.

16                   CHAIRMAN REYNOLDS: 9.

17                   COMMISSIONER KIRSANOW: That's consistent  
18 with what Professor Armor said.

19                   COMMISSIONER YAKI: That's not consistent  
20 with some of the other studies, but that's okay. I'm  
21 not voting for it, anyway.

22                   COMMISSIONER BRACERAS: Is -- can we just  
23 say on number 9 - I think this might change the tone  
24 of it a little bit - there is some evidence  
25 indicating that students in racially diverse

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1 elementary and secondary schools were somewhat more  
2 likely to engage in spirited classroom discussion than  
3 their racially isolated peers.

4 CHAIRMAN REYNOLDS: I'm comfortable with  
5 that, but, I mean, the horse trader in me, I don't  
6 feel comfortable handing over compromises --

7 COMMISSIONER TAYLOR: To quid no pro.

8 CHAIRMAN REYNOLDS: Right.

9 (Laughter.)

10 COMMISSIONER BRACERAS: It's not a  
11 compromise to try to get the result.

12 CHAIRMAN REYNOLDS: I feel like I'm  
13 negotiating against myself.

14 COMMISSIONER BRACERAS: No. It's not  
15 negotiating against yourself. We're not changing the  
16 language to buy their votes. I mean, if they want to  
17 vote for it, that's great. And if they don't feel  
18 they can vote for it, that's their prerogative. I  
19 want to change it to make it a better document, and to  
20 make it as neutral and fair, as possible. And some of  
21 the points that they raise I think are valid, and we  
22 should incorporate them, not because we're trying to  
23 get their votes, but because they're good comments.

24 COMMISSIONER KIRSANOW: Commissioner  
25 Braceras' comment, the impact of it actually dilutes

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1 whether or not spirited classroom discussions are  
2 supportable, findings are supportable. She said  
3 "somewhat more likely".

4 COMMISSIONER BRACERAS: Well, because it  
5 says they found only a small difference.

6 COMMISSIONER KIRSANOW: Yes, there was a  
7 very small difference. When you take a look at what  
8 Professor Armor said, and there was really no  
9 contradiction -- I'm sorry, not Professor Armor.

10 COMMISSIONER YAKI: I'm sorry, that's not  
11 true.

12 COMMISSIONER KIRSANOW: It is true.

13 COMMISSIONER YAKI: It is not true.

14 COMMISSIONER KIRSANOW: It is true.

15 COMMISSIONER YAKI: We can pull the  
16 transcript.

17 COMMISSIONER KIRSANOW: Well, then let's  
18 pull it.

19 COMMISSIONER YAKI: Since we've obviously  
20 gone beyond the transcript in all these things, let's  
21 get Chris out here, pull out the Amy Wells report that  
22 went after the long-term impacts of classroom  
23 interaction. Let's pull it out.

24 COMMISSIONER KIRSANOW: My recollection is  
25 that in response, Professor - I think it's Professor

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1 Armor referred to the flawed nature of that study, and  
2 there were at least two other studies --

3 COMMISSIONER YAKI: Well, we're taking his  
4 word that it was flawed, and she says his stuff is  
5 flawed back. And we can sit here and argue all day  
6 about it.

7 COMMISSIONER KIRSANOW: And what we're  
8 saying is there's research to support, despite the  
9 fact that he says they're flawed, we're actually going  
10 with --

11 COMMISSIONER BRACERAS: There's some  
12 evidence indicated.

13 COMMISSIONER KIRSANOW: If we're simply  
14 relying on Professor Armor, we wouldn't even say  
15 there's any evidence.

16 COMMISSIONER BRACERAS: Right.

17 COMMISSIONER YAKI: Well, if we were  
18 relying on Professor Armor, we'd be in a much  
19 different country than we are right now.

20 COMMISSIONER KIRSANOW: Professor Armor  
21 says that he disputes that.

22 (Simultaneous speech.)

23 COMMISSIONER YAKI: Well, that's the  
24 question that I asked him during the thing, and I  
25 stand by that.

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1                   COMMISSIONER BRACERAS: I think all the  
2 evidence we heard during our briefing on historically  
3 black colleges and universities - now, granted it's  
4 higher ed and not primary and secondary ed, but,  
5 basically, came to the opposite conclusion; that  
6 students that attend historically black colleges and  
7 universities, which are majority black, tend to be  
8 more confident, and more engaged in spirited classroom  
9 discussion, so I think evidence is all over the place  
10 of it. I don't know which way that cuts --

11                   COMMISSIONER KIRSANOW: I believe that --

12                   COMMISSIONER BRACERAS: -- but I think we  
13 should say that there is some evidence that comes to  
14 this other conclusion. That's fine.

15                   COMMISSIONER KIRSANOW: I think this is an  
16 accurate summary --

17                   CHAIRMAN REYNOLDS: Before we go on, we  
18 have an issue. Ken.

19                   STAFF DIRECTOR MARCUS: I'm just going to  
20 remind commissioners that under our Defame and Degrade  
21 Rules, any individual who might be defamed or degraded  
22 by remarks here will have a right to respond, and the  
23 transcript we'll review for purposes of compliance  
24 after the meeting.

25                   COMMISSIONER BRACERAS: Fine. Okay. So

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1 number 9, here's my suggestion.

2 CHAIRMAN REYNOLDS: I thought it was a  
3 good shot.

4 COMMISSIONER BRACERAS: There is some  
5 evidence indicating that students in racially diverse  
6 elementary and secondary schools --

7 COMMISSIONER KIRSANOW: Were somewhat more  
8 likely.

9 COMMISSIONER BRACERAS: -- were somewhat  
10 more likely to engage in spirited classroom  
11 discussions than their racially isolated peers.

12 CHAIRMAN REYNOLDS: That's good.

13 COMMISSIONER BRACERAS: Okay. Number 10.  
14 I'm okay with number 10.

15 CHAIRMAN REYNOLDS: Okay. Number 11.

16 COMMISSIONER KIRSANOW: I'm still reading.  
17 Please bear with me. I don't read as quickly as some  
18 of you. I'm fine with it. Number 11.

19 COMMISSIONER BRACERAS: I don't  
20 understand.

21 COMMISSIONER KIRSANOW: This seems  
22 redundant here.

23 COMMISSIONER BRACERAS: Yes.

24 COMMISSIONER KIRSANOW: I don't know that  
25 we need 11, since we've made the point pretty much in

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1 10.

2 CHAIRMAN REYNOLDS: Let's strike it.

3 COMMISSIONER BRACERAS: Strike 11. You  
4 know, I think that similar to number 5, I think that  
5 some of the citations to these other studies that  
6 weren't in the transcript should just go into a  
7 footnote. I mean, I know we ended up striking five  
8 all together, but in this case, I would stop after the  
9 word "definitive", period, footnote. And then the  
10 whole "For example" part, I would put in a footnote.  
11 And then I would come back to the text with, "It is  
12 difficult".

13 COMMISSIONER KIRSANOW: I'm okay with  
14 that.

15 CHAIRMAN REYNOLDS: Yes.

16 COMMISSIONER BRACERAS: But take out --  
17 well, I'd put the whole thing in a footnote. I'd  
18 stop at "definitive", and put everything else in a  
19 footnote.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER YAKI: By the way, Mr. Staff  
22 Director, given the characterization of Ms.  
23 Kurlaender's testimony in the beginning of the  
24 document, I suggest that if you're going to do a  
25 defame and degrade process, you should send that to

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1 her, because when I last communicated with her, she  
2 thought that was an overly narrow characterization of  
3 her testimony, and she didn't have a chance to correct  
4 it.

5 STAFF DIRECTOR MARCUS: I would be pleased  
6 to submit the entire matter for a defame and degrade  
7 review.

8 COMMISSIONER YAKI: Fine.

9 COMMISSIONER BRACERAS: Okay. Number 13.

10 COMMISSIONER KIRSANOW: I'm just a little  
11 puzzled as to why we are making reference to early  
12 studies. What do we yield from that? What gain do we  
13 get from that? I mean, I think there's good academic  
14 reason for that, but I'm not sure that needs to be a  
15 finding of our's.

16 COMMISSIONER BRACERAS: I would strike  
17 number 13 for that reason.

18 CHAIRMAN REYNOLDS: Okay. Let's strike  
19 it.

20 COMMISSIONER KIRSANOW: And let me just  
21 say that I would not be opposed to putting this into  
22 a footnote or somewhere. I mean, I think it's useful  
23 information, but I don't know why it would be a  
24 finding.

25 COMMISSIONER BRACERAS: Let's just strike

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1 it for now, because -- well, let's just strike it,  
2 because then we're going to vote, and we can't ask  
3 for, at this point, the staff to go back and reword,  
4 so I think it's either in or out.

5 CHAIRMAN REYNOLDS: Any strong feelings on  
6 that matter, on whether it goes into the footnote or  
7 not?

8 COMMISSIONER KIRSANOW: I don't have a  
9 strong feeling.

10 CHAIRMAN REYNOLDS: Okay. Let's strike  
11 it.

12 COMMISSIONER BRACERAS: So in number 14,  
13 I haven't read it carefully just now, but I would  
14 delete the word "more", because it makes sense if  
15 we're taking out 13, and start with "recent".

16 COMMISSIONER KIRSANOW: Right. Exactly.

17 COMMISSIONER MELENDEZ: I had a question.  
18 Commissioner Melendez. I had suggested that merging  
19 it into finding two and my comments, if that's  
20 possible.

21 COMMISSIONER KIRSANOW: Merging 14 into 2?

22 COMMISSIONER MELENDEZ: Yes, is that  
23 possible? We've got too many findings, in my opinion.

24 COMMISSIONER BRACERAS: No, I think it's  
25 different, because one has to do with academic --

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1 well, number 2 has to do with academic achievement,  
2 and number 14 has to do with cross-racial friendships.

3 COMMISSIONER KIRSANOW: Yes, there are two  
4 different components. One is the hard component, the  
5 other one is the soft component.

6 COMMISSIONER BRACERAS: But I would -- in  
7 addition to striking the word "more" at the beginning,  
8 after the sentence that ends "racially isolated  
9 schools.", I would take that data, 2005 study, and put  
10 it in a footnote at the bottom.

11 CHAIRMAN REYNOLDS: Any objections?  
12 Anything else for 14? Okay, 15.

13 COMMISSIONER BRACERAS: 14, I would take --  
14 - I'm sorry, 15.

15 CHAIRMAN REYNOLDS: 15.

16 COMMISSIONER BRACERAS: I would start with  
17 "A study by Crane and Mihard", and then down to the  
18 bottom and put that in a footnote.

19 COMMISSIONER KIRSANOW: You know, I  
20 wouldn't, Jennifer, and I'll tell you why.

21 COMMISSIONER BRACERAS: You wouldn't?  
22 Okay.

23 COMMISSIONER KIRSANOW: Yes. Because the  
24 first sentence deals with military academies, the  
25 second one has to do with occupational aspirations.

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1 It's a different subject. I was initially inclined to  
2 do that, but I think it should remain as-is: We're  
3 talking about two different concepts.

4 COMMISSIONER BRACERAS: Wait a minute.  
5 Where is it military academies?

6 COMMISSIONER KIRSANOW: The first one says  
7 that racial composition has no effect on whether or  
8 not someone is more likely to attend military  
9 academies, or become officers. 15, right there, for  
10 example.

11 COMMISSIONER BRACERAS: Yes.

12 COMMISSIONER KIRSANOW: Okay. And then it  
13 goes to occupational aspirations, in general.

14 COMMISSIONER BRACERAS: Yes, gotcha. All  
15 right. Keep it, keep 15 as-is.

16 COMMISSIONER TAYLOR: I don't --  
17 persuasive, it says a little persuasive evidence?

18 COMMISSIONER BRACERAS: Yes. Delete  
19 persuasive.

20 COMMISSIONER TAYLOR: Yes.

21 CHAIRMAN REYNOLDS: That's a good point.  
22 Anything else on 15?

23 COMMISSIONER BRACERAS: Wait a minute.  
24 Hold on a second.

25 COMMISSIONER KIRSANOW: Number 16, I would

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1 delete. I agree with the statement. In fact, this is  
2 a statement that I think I made, but I don't think  
3 it's a finding.

4 COMMISSIONER BRACERAS: I agree.

5 COMMISSIONER KIRSANOW: This goes to the  
6 whole rationale by O'Connor under Sweezy v. New  
7 Hampshire, the Frankfurter rationale related to the  
8 benefits or the deference accorded to institutions of  
9 higher education, so let's delete that.

10 CHAIRMAN REYNOLDS: I don't agree, but  
11 I'll go along. I think that that's inordinate.

12 COMMISSIONER KIRSANOW: I think that this  
13 makes it a tighter document. I think it has -- I  
14 thought the document originally had good integrity in  
15 terms of reflecting what was adduced at the hearing,  
16 and I think this is a very useful exercise. However  
17 we adopt or don't adopt changes to the procedure for  
18 briefings, and I think Commissioner Braceras' work on  
19 this is going to be very helpful, I think that this  
20 improves this particular document. And I hope we can  
21 do something - if we ever have findings and  
22 recommendations for briefings, and I have issues with  
23 respect to whether or not we should do that - but if  
24 we do that, and for statutory reports, I think this  
25 kind of exercise, first of all, is useful in terms of

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1 sheer transparency, the procedural aspect of this.

2 Second, I think it vets the document one  
3 last time. Third, I think it reflects more accurately  
4 the consensus of the commission, and so that we can  
5 support this document more readily in a public domain.  
6 If we're ever asked in hearings, or by the press, or  
7 anyone else, I think that we have a more effective  
8 means by which we can respond, because this is -- I  
9 think this does reflect the consensus of the  
10 commission. And, going to what Commissioner Braceras  
11 had indicated before, the Battered Commissioner  
12 Syndrome, is the antithesis of what had occurred  
13 before. I asked the question, are we potted plants?  
14 Because something would be presented to us, and the  
15 commission - by the way, let me just say, the staff  
16 had always done fine work, and it was within the  
17 parameters of what their charge was, but we would be  
18 presented with it, and we said we either sign off on  
19 it, or don't sign off on it.

20 COMMISSIONER BRACERAS: That is the first  
21 time we've done this, and I think it was extremely  
22 helpful. So, anyway, I guess I'd move that we approve  
23 the document, as edited by the commission.

24 COMMISSIONER KIRSANOW: I second.

25 CHAIRMAN REYNOLDS: Okay. Discussion?

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1 Commissioner Yaki.

2 COMMISSIONER YAKI: I just wanted to thank  
3 the rest of the commission for going through this  
4 process. I think that for this document, it was a  
5 good exercise. I still believe that for future  
6 briefings, we need to look at a different process all  
7 together.

8 CHAIRMAN REYNOLDS: I think that there is  
9 --

10 COMMISSIONER YAKI: And I am not a member  
11 of -- I do not have Battered Commissioner Syndrome,  
12 but I'm wondering if I stay here too long, if I'll get  
13 Stockholm Syndrome.

14 (Laughter.)

15 COMMISSIONER BRACERAS: You might.

16 CHAIRMAN REYNOLDS: Okay. All in favor?

17 (Chorus of ayes.)

18 CHAIRMAN REYNOLDS: All the folks who  
19 object?

20 (Vote taken.)

21 CHAIRMAN REYNOLDS: Okay. Let the record  
22 reflect that Commissioners Yaki and Melendez voted  
23 against the amended motion, and the remaining  
24 commissioners voted in favor, the motion passes.

25 **V. MANAGEMENT AND OPERATIONS**

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1                   Okay. Next up, last month all of the  
2 members of the commission signed letters urging the  
3 Attorney General to investigate very disturbing  
4 allegations of Anti-Hispanic Voter Discrimination in  
5 Orange County, California. I am pleased that the  
6 commissioners were unanimous in calling upon the  
7 Attorney General in this matter. This unanimity is  
8 reflective, I believe, of the level of cooperation  
9 that we should strive for. I thank Commissioner  
10 Michael Yaki for bringing this matter to the attention  
11 of the commission, and I thank all of the  
12 commissioners for accepting Commissioner Yaki's  
13 recommendation to send the letters.

14                   These letters, I think, should be  
15 accessible to the public. May I have a motion for  
16 posting to the website the letters from Commissioners  
17 Braceras, Taylor, Yaki, Karsanow, and Reynolds, the  
18 letter that was sent to Attorney General Gonzalez on  
19 October 18<sup>th</sup> regarding an Anti-Hispanic Voter  
20 Harassment Letter, and the letter that was sent by  
21 Vice Chair Abigail Thernstrom and Commissioner  
22 Melendez to Attorney Gonzalez dated October 19<sup>th</sup>  
23 regarding the same topic.

24                   COMMISSIONER KIRSANOW: Second.

25                   CHAIRMAN REYNOLDS: Discussion? All in

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1 favor?

2 (Chorus of ayes.)

3 CHAIRMAN REYNOLDS: Any objections,  
4 abstentions? The motion carries unanimously.

5 Okay. Now it's time to set a schedule for  
6 the meetings during the 2007 calendar year. May I  
7 have a motion to approve the proposed 2007 business  
8 meeting and briefing calendar that was distributed to  
9 the commissioners via email and hard copy sent on  
10 November 9<sup>th</sup>, 2006? May I have a motion?

11 COMMISSIONER YAKI: So move.

12 CHAIRMAN REYNOLDS: Second?

13 COMMISSIONER KIRSANOW: Second.

14 CHAIRMAN REYNOLDS: Okay. Commissioner  
15 Braceras.

16 COMMISSIONER BRACERAS: Yes, I'd like to  
17 discuss. A couple of things; first, I think as our  
18 previous discussion indicates, we need more time in  
19 the calendar for business meetings, and for thoughtful  
20 consideration of our reports, so I would like to  
21 propose -- I mean, the way it's set up right now is we  
22 have four briefings scheduled back-to-back, and then  
23 everything right now is open, but I assume that the  
24 theory was that we would plug briefings into this  
25 other slots. I think it's very difficult to have a

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1 productive business meeting and a briefing on the same  
2 day. I know the commissioners that come from farther  
3 away have to get home, the commissioners who have  
4 children need to get home at the end of the day, and  
5 it's just hard to go late in the day on Friday, for a  
6 variety of reasons. So what I would like to propose  
7 is that we do fewer briefings, and perhaps get on an  
8 every other month rotation, where we'd do six  
9 briefings, and every other month have simply a  
10 business meeting where we can really hash out the  
11 reports, because I think while we put out fewer  
12 reports and fewer briefings, they would be of a higher  
13 quality, and we wouldn't rush through our agenda.

14 CHAIRMAN REYNOLDS: I like the idea, but I  
15 would ask that, would anyone object to tabling this  
16 issue so that we can think about it some more? I like  
17 the idea of reducing the number of briefings for the  
18 very reasons you've just articulated.

19 COMMISSIONER BRACERAS: Well, I think the  
20 staff needs to know what they're going to be preparing  
21 for for January, February, and March, so I think -- I  
22 mean, my proposal would be to have a briefing in  
23 January, to not have a briefing in February, and then  
24 we could go from there. And I think -- I'd like to  
25 sort of discuss the order of the briefings, too. But

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1 if you want to just first vote on the calendar and the  
2 dates, we could do that, and then --

3 CHAIRMAN REYNOLDS: Well, how about this;  
4 how about we keep the briefing schedule for January,  
5 and table everything else until we give this some more  
6 thought in terms of restructuring our approach, and  
7 also the order of the briefings.

8 COMMISSIONER BRACERAS: I guess I'm not  
9 sure why it's not something we can just discuss right  
10 now. It doesn't seem that complicated. If there are  
11 concerns, let's discuss them. I mean, it's simply a  
12 question of whether the quantity of work product is  
13 more important than breathing room, because I, myself,  
14 feel that I need breathing room, and I think some  
15 other commissioners do, as well.

16 CHAIRMAN REYNOLDS: Okay. So basically,  
17 we would move everything -- well, we would space -- we  
18 would add a business meeting between each briefing.

19 COMMISSIONER BRACERAS: Yes.

20 CHAIRMAN REYNOLDS: Starting after  
21 January.

22 COMMISSIONER BRACERAS: Yes. Hopefully,  
23 that would avoid a situation where we have to  
24 continuously table our votes on reports because people  
25 feel that they haven't had the time to discuss or

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1 consider it, because we've been discussing and  
2 considering them at the meeting, so it might end up  
3 helping us to produce our reports more quickly in the  
4 end.

5 CHAIRMAN REYNOLDS: Commissioner Yaki.

6 COMMISSIONER YAKI: Well, I understand the  
7 sentiment, but I object.

8 COMMISSIONER BRACERAS: Okay.

9 COMMISSIONER YAKI: Two reasons; one, I  
10 like the briefings, I think that they provide  
11 intellectual and civic discussion of important issues,  
12 number one. Number two, a lot of this could be solved  
13 if we didn't have this insanely cumbersome mini-  
14 national report process for briefing reports, where  
15 that has a habit of consuming staff time while they're  
16 busy also trying to prepare for briefings in the  
17 future. And, number three, I have my own parochial  
18 objection, because so far, those items which I had  
19 proposed keep on getting bumped further and further  
20 back, and an alternate schedule will put anything that  
21 I had an interest in probably into 2008, and I'm just  
22 --

23 COMMISSIONER BRACERAS: Which are your  
24 priorities on the list?

25 COMMISSIONER YAKI: None of the ones right

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1 there.

2 COMMISSIONER BRACERAS: But tell me which  
3 ones on the broader list are your priorities?

4 COMMISSIONER YAKI: Well, let's see, the  
5 Patriot Act is now back to 2008, but the Domestic  
6 wiretapping issue is something that I'm very  
7 interested in, and it got a high number of votes, and  
8 it could be -- it's last on that list, hopefully not  
9 in terms of priority, but it always appears there  
10 last, and I'm just worried that's going to get kicked  
11 off yet again.

12 COMMISSIONER BRACERAS: Well, I mean, that  
13 is very understandable, and I, personally, am more  
14 than happy to see some of your priorities --

15 CHAIRMAN REYNOLDS: Moved up.

16 COMMISSIONER BRACERAS: -- moved up to  
17 early this year, early 2007.

18 CHAIRMAN REYNOLDS: Folks, let's take a  
19 10-minute break.

20 COMMISSIONER BRACERAS: Why now, we're in  
21 mid-conversation?

22 CHAIRMAN REYNOLDS: Because I have to --

23 (Laughter.)

24 CHAIRMAN REYNOLDS: I would rather not  
25 respond.

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1                   COMMISSIONER YAKI: All right. All you  
2 have to do is hand the gavel over, walk out the door.  
3 No one is going --

4                   COMMISSIONER BRACERAS: Yes, hand the  
5 gavel over.

6                   (Whereupon, the proceedings went off the  
7 record at 10:55:59 a.m., and went back on the record  
8 at 11:06:47 a.m.)

9                   CHAIRMAN REYNOLDS: Everyone is here.  
10 Let's go back on the record.

11                   COMMISSIONER BRACERAS: I wanted to, if  
12 it's okay, just discuss strictly the dates in the  
13 calendar, first, before we discuss anything else, if  
14 that's okay. And I raise the point that I know right  
15 now that Friday, June 8<sup>th</sup>, doesn't work for me. I do  
16 appreciate the September meeting not conflicting with  
17 the first day of school this year, that's very  
18 helpful, but December 14<sup>th</sup>, I'd like to point out is,  
19 I believe, several days after Commissioner Kirsanow's  
20 term and my term expire. Maybe you care about that,  
21 maybe you don't, but if you wanted us to participate  
22 in the December meeting --

23                   CHAIRMAN REYNOLDS: When does it expire,  
24 when does your --

25                   COMMISSIONER KIRSANOW: I think both of

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1 our's is the same date, December 9<sup>th</sup>.

2 COMMISSIONER BRACERAS: December 7<sup>th</sup>, or  
3 the 9<sup>th</sup>.

4 COMMISSIONER KIRSANOW: The 7<sup>th</sup>.

5 COMMISSIONER BRACERAS: 6<sup>th</sup>.

6 CHAIRMAN REYNOLDS: Okay. Let's --

7 COMMISSIONER BRACERAS: Yaki can't get  
8 them down fast enough.

9 (Laughter.)

10 CHAIRMAN REYNOLDS: Okay. Does anyone --  
11 let's see, let me get out my gizmo. Okay. Let's  
12 start with June. Well, the 7<sup>th</sup>, you said that that  
13 may possibly work, the 7<sup>th</sup>.

14 COMMISSIONER BRACERAS: I don't know how  
15 Thursdays work for other people. I could do a  
16 different week, or I could do --

17 CHAIRMAN REYNOLDS: How does the 7<sup>th</sup>, June  
18 7<sup>th</sup> work for everyone?

19 COMMISSIONER KIRSANOW: It's fine with me.

20 COMMISSIONER YAKI: For the west coasters,  
21 that kind of bites.

22 COMMISSIONER BRACERAS: Thursday bites?

23 COMMISSIONER YAKI: Yes.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER MELENDEZ: This is

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1 Commissioner Melendez. Thursdays would be hard for  
2 me, but Friday would work.

3 COMMISSIONER YAKI: How about the 15<sup>th</sup>?

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER BRACERAS: Well, what about  
6 earlier, what's the Friday before?

7 CHAIRMAN REYNOLDS: The first. Are kids  
8 out of school on the 15<sup>th</sup>?

9 COMMISSIONER BRACERAS: No, we go almost  
10 until July in New England.

11 COMMISSIONER YAKI: What has happened to  
12 education since we went to school?

13 COMMISSIONER BRACERAS: Really.

14 CHAIRMAN REYNOLDS: Okay. The first and  
15 the 15<sup>th</sup> - the first works for me, and so does the  
16 15<sup>th</sup>.

17 COMMISSIONER BRACERAS: I mean, it is  
18 true, depending on snow days, that could potentially  
19 be the last day of school, but we tend to go much  
20 later. So the first would be preferable, just from my  
21 --

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER YAKI: They tack on school  
24 days for snow days now?

25 COMMISSIONER BRACERAS: Yes.

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1                   COMMISSIONER YAKI:  Outrageous.  I think  
2 we ought to have a hearing on that.

3                                   (Laughter.)

4                   COMMISSIONER BRACERAS:  I know, their  
5 civil rights are being violated.

6                   COMMISSIONER YAKI:  Absolutely.

7                   CHAIRMAN REYNOLDS:  Okay.  So unless I  
8 hear an objection, I'll put it down for June 1<sup>st</sup>.

9                   COMMISSIONER BRACERAS:  Thank you.

10                  CHAIRMAN REYNOLDS:  Commissioner Melendez,  
11 is that okay with you?

12                  COMMISSIONER MELENDEZ:  That's fine.  I  
13 had another question about next month's meeting, was  
14 that a Thursday instead of a Friday?

15                  CHAIRMAN REYNOLDS:  It's a Friday.

16                  COMMISSIONER BRACERAS:  No, it's a  
17 Thursday, because Friday is the --

18                  CHAIRMAN REYNOLDS:  Oh, next month.

19                  COMMISSIONER BRACERAS:  Friday, that  
20 Friday in December is the first day of Chanukah.

21                  COMMISSIONER YAKI:  Also, one of the worst  
22 travel days of the year.

23                  COMMISSIONER MELENDEZ:  We can't move it  
24 a week earlier?

25                  CHAIRMAN REYNOLDS:  Okay.  Let's take a

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1 look.

2 COMMISSIONER YAKI: It's too late, isn't  
3 it? We have to give 30 days notice or something like  
4 that.

5 STAFF DIRECTOR MARCUS: I'm not aware of  
6 a legal requirement.

7 PARTICIPANT: No, we don't need a 30-day  
8 notice for agendas or attending a meeting.

9 STAFF DIRECTOR MARCUS: No, it makes it a  
10 little bit more difficult in terms of notice to the  
11 panelists for the briefing, but I'm not aware of any  
12 legal requirement.

13 COMMISSIONER BRACERAS: What is our  
14 December briefing?

15 STAFF DIRECTOR MARCUS: Elementary and  
16 secondary desegregation.

17 CHAIRMAN REYNOLDS: Haven't we already  
18 sent out the -- have we received the responses?

19 STAFF DIRECTOR MARCUS: We've not yet.

20 CHAIRMAN REYNOLDS: Okay. If that's the  
21 case, then, we wouldn't be asking the panelists to  
22 change their schedule. December.

23 COMMISSIONER YAKI: Don't change - if you  
24 change the 14<sup>th</sup>, I'm toast.

25 COMMISSIONER BRACERAS: So--

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1 CHAIRMAN REYNOLDS: It's a Thursday.

2 COMMISSIONER BRACERAS: It's currently  
3 scheduled for Thursday.

4 CHAIRMAN REYNOLDS: That's the only  
5 Thursday that actually works for me. The only  
6 Thursday, what about a Friday? Say the --

7 COMMISSIONER YAKI: The 8<sup>th</sup> does not work.

8 CHAIRMAN REYNOLDS: Oh, not for me.

9 COMMISSIONER BRACERAS: Any later in the  
10 month is probably untenable --

11 CHAIRMAN REYNOLDS: Right.

12 COMMISSIONER BRACERAS: But that's okay,  
13 I can participate by phone.

14 COMMISSIONER YAKI: You're going to get  
15 snowed in at the airport, anyway, or the train  
16 station.

17 CHAIRMAN REYNOLDS: Okay. Here are the  
18 ugly options, the 29<sup>th</sup>, the 1<sup>st</sup>.

19 COMMISSIONER YAKI: Of what?

20 CHAIRMAN REYNOLDS: December.

21 COMMISSIONER BRACERAS: The 29<sup>th</sup>?

22 COMMISSIONER YAKI: Mr. Chairman --

23 CHAIRMAN REYNOLDS: I said --

24 COMMISSIONER YAKI: -- is your middle name  
25 Grinch?

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1 CHAIRMAN REYNOLDS: I prefaced my  
2 statements by saying that these are the ugly options.  
3 You're not available on any Thursday, except the 14<sup>th</sup>.

4 COMMISSIONER BRACERAS: I actually could  
5 do the 29<sup>th</sup>, now that I think about it.

6 COMMISSIONER YAKI: I'm in Hawaii.

7 CHAIRMAN REYNOLDS: Good man.

8 (Off the record comments.)

9 CHAIRMAN REYNOLDS: Okay, folks. Where  
10 are we on December? Jennifer is fine with the 29<sup>th</sup>.

11 COMMISSIONER MELENDEZ: I'm fine with  
12 that, too.

13 (Laughter.)

14 COMMISSIONER YAKI: What was that laugh?  
15 What the hell laugh was that? If you want to fly on  
16 the weekend before New Year's, that is just --

17 CHAIRMAN REYNOLDS: Folks, the 29<sup>th</sup>, I  
18 mean, Jennifer, Arlan, I just think that the 29<sup>th</sup> is  
19 just bad.

20 COMMISSIONER BRACERAS: Okay.

21 CHAIRMAN REYNOLDS: Staff is going to want  
22 to prepare for the New Year's, and all that good  
23 stuff, and people will take time, at least I hope.

24 COMMISSIONER BRACERAS: Yes. No, that's  
25 fine.

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1 COMMISSIONER YAKI: Scrooge.

2 COMMISSIONER BRACERAS: Let me just throw  
3 something else out there. Do we need a December  
4 meeting? We had an August meeting.

5 COMMISSIONER KIRSANOW: We have a briefing  
6 scheduled.

7 STAFF DIRECTOR MARCUS: We could postpone  
8 the briefing to January.

9 COMMISSIONER BRACERAS: We can't make it  
10 earlier in December? And what's the problem with the  
11 date we have on the calendar?

12 CHAIRMAN REYNOLDS: Who is the trouble  
13 maker?

14 COMMISSIONER YAKI: I thought it was you.

15 COMMISSIONER BRACERAS: No, I'm fine with  
16 it. I think Commissioner Melendez raised it.

17 COMMISSIONER MELENDEZ: I have a meeting  
18 on Wednesday night. I will pull a red-eye, like  
19 Michael Yaki did the last time.

20 CHAIRMAN REYNOLDS: Well, would you be  
21 willing to participate by phone?

22 COMMISSIONER MELENDEZ: Yes, I guess I  
23 could do that, if I have to.

24 CHAIRMAN REYNOLDS: Yes. Okay.

25 COMMISSIONER BRACERAS: Keep it where it

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1 is then.

2 CHAIRMAN REYNOLDS: .Okay.

3 COMMISSIONER BRACERAS: No?

4 COMMISSIONER YAKI: Yes, it's good. I  
5 like it. It's the only Thursday that works for me.

6 CHAIRMAN REYNOLDS: Any other dates that  
7 are problematic?

8 COMMISSIONER BRACERAS: Well, the only  
9 other one I raised was the December 14<sup>th</sup>.

10 COMMISSIONER KIRSANOW: Of next year.

11 COMMISSIONER BRACERAS: Of next year.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER BRACERAS: Of 2007.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER YAKI: Actually, I have a  
16 problem with that date, too.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER MELENDEZ: Can we do it the  
19 week before?

20 COMMISSIONER TAYLOR: We need to move it  
21 up another week.

22 CHAIRMAN REYNOLDS: Right. So like the  
23 first.

24 COMMISSIONER MELENDEZ: I'd be in the same  
25 situation, a Wednesday meeting.

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1 CHAIRMAN REYNOLDS: No, the 7<sup>th</sup>.

2 COMMISSIONER BRACERAS: It needs to be the  
3 week before that if Commissioner Kirsanow and I are  
4 going to participate. And we'll be expecting a big  
5 farewell party with beverages and pastries.

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN REYNOLDS: No, they said their  
8 terms expire the 6<sup>th</sup>, so we have to do it before the  
9 6<sup>th</sup>.

10 COMMISSIONER YAKI: Oh, the 6<sup>th</sup>.

11 CHAIRMAN REYNOLDS: Okay.

12 COMMISSIONER YAKI: So Wednesday, the 5<sup>th</sup>?  
13 Or Monday?

14 CHAIRMAN REYNOLDS: The 3<sup>rd</sup> works for me.

15 COMMISSIONER YAKI: I can actually do it  
16 Monday.

17 COMMISSIONER BRACERAS: Is that the 3<sup>rd</sup>?

18 COMMISSIONER YAKI: Yes.

19 COMMISSIONER KIRSANOW: It doesn't matter  
20 to me.

21 CHAIRMAN REYNOLDS: Commissioner Melendez.

22 COMMISSIONER MELENDEZ: What date?

23 CHAIRMAN REYNOLDS: The 3<sup>rd</sup>, which is a  
24 Monday. How much pain does that inflict on you?

25 COMMISSIONER MELENDEZ: That's fine.

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1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER YAKI: If you guys get  
3 reappointed before then, I want to move --

4 (Laughter.)

5 CHAIRMAN REYNOLDS: Okay. Are we done  
6 with the -- we are done with the dates. Okay.  
7 Briefings. I suggest that we take two items that are  
8 not currently slotted. One would be, assuming that  
9 Commissioner Yaki approves, is to put the domestic  
10 wiretapping briefing on the calendar, and also --

11 COMMISSIONER BRACERAS: Excuse me. I'm  
12 sorry. Can we deal with the structural question first?

13 COMMISSIONER KIRSANOW: Yes. I think so,  
14 as to whether or not we're going to have on-day/off-  
15 day, or on-briefing --

16 COMMISSIONER MELENDEZ: Can I ask a  
17 question? This is Commissioner Melendez. As far as  
18 alternating may not be feasible, but I think maybe one  
19 time we should have just strictly not a briefing  
20 meeting, similar to today's meeting.

21 COMMISSIONER BRACERAS: Even if it's just  
22 once a quarter.

23 COMMISSIONER YAKI: Like two on, one off,  
24 two on, one off.

25 COMMISSIONER BRACERAS: Yes.

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1                   COMMISSIONER YAKI:    Like the Senate  
2 schedule, two weeks in, one week off.

3                   CHAIRMAN REYNOLDS:   Okay.  Is everyone  
4 comfortable with that approach?

5                   COMMISSIONER BRACERAS:  I'm comfortable  
6 with that, as long as we have some that are designated  
7 for purely business agendas.

8                   COMMISSIONER YAKI:    That's fine.

9                   CHAIRMAN REYNOLDS:   Okay.  If that is the  
10 case, then the question of when this starts.

11                   COMMISSIONER BRACERAS:  So, if we have a  
12 briefing in December, then maybe we want to have a  
13 business meeting in January, and a briefing in  
14 February, and in March, and a business meeting in  
15 April.  What does the Staff Director think of that?

16                   CHAIRMAN REYNOLDS:   He thinks it's crazy.

17                   STAFF DIRECTOR MARCUS:  I think that  
18 there's no problem with that.  I think we're  
19 indifferent as to where the breaks are.

20                   COMMISSIONER BRACERAS:  Okay.

21                   STAFF DIRECTOR MARCUS:  I mean, the breaks  
22 have some operational ramifications that I think  
23 balance out.  One is that we might have had difficulty  
24 doing all of these briefings in light of the expected  
25 appropriations, anyhow, so this is --

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1 CHAIRMAN REYNOLDS: So there will be  
2 several briefings for next year. --

3 STAFF DIRECTOR MARCUS: On the other hand,  
4 we've announced publicly and to Congress the briefings  
5 we're going to have, so we'll have to revise that, and  
6 let them know we're going to do less than we initially  
7 committed to, that may be a wash.

8 COMMISSIONER BRACERAS: Well, I think  
9 that's okay.

10 CHAIRMAN REYNOLDS: Okay. So if I  
11 understand this right, we will have a briefing in  
12 December, a business meeting in January, then a  
13 briefing in February.

14 COMMISSIONER KIRSANOW: I think I  
15 preferred having a briefing in January, given the fact  
16 that we've had a briefing today. Let's do December,  
17 January, then take --

18 COMMISSIONER BRACERAS: Break in February.

19 CHAIRMAN REYNOLDS: Business meeting in  
20 December.

21 COMMISSIONER KIRSANOW: No.

22 COMMISSIONER BRACERAS: No, no.

23 COMMISSIONER KIRSANOW: Briefing in  
24 December, briefing in January, then we'll take --

25 COMMISSIONER BRACERAS: And a business

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1 meeting in February.

2 COMMISSIONER KIRSANOW: -- February for a  
3 business meeting. So it'll go March, April, business  
4 meeting in May.

5 COMMISSIONER YAKI: So that means the last  
6 meeting can be done strictly to extolling your  
7 virtues, and --

8 COMMISSIONER BRACERAS: Exactly.

9 (Off the record comments.)

10 COMMISSIONER YAKI: So it would be seven  
11 briefings, four meetings.

12 COMMISSIONER BRACERAS: Right. And then  
13 as Kim points out, the end of the fiscal year in  
14 September, that would be a strictly business meeting,  
15 which might be good. So briefing January, business  
16 February, briefings for March and April, business May,  
17 briefings June and July, business September, briefings  
18 October and November.

19 CHAIRMAN REYNOLDS: Is anybody writing  
20 this down?

21 COMMISSIONER YAKI: And party in December.

22 COMMISSIONER BRACERAS: And party for Pete  
23 and me in December.

24 (Laughter.)

25 CHAIRMAN REYNOLDS: Okay. So we are done,

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1 I believe, with that.

2 COMMISSIONER MELENDEZ: Can I ask a  
3 question?

4 CHAIRMAN REYNOLDS: Okay. Yes.

5 COMMISSIONER MELENDEZ: Are we set for  
6 four briefings next year already all the way up to  
7 April?

8 CHAIRMAN REYNOLDS: We are about to tackle  
9 that issue, as soon as we're done with the briefing  
10 versus business meeting.

11 COMMISSIONER BRACERAS: Right. So we've  
12 got the calendar now. Now we're going to plug in the  
13 topics.

14 COMMISSIONER MELENDEZ: Okay, go ahead.

15 CHAIRMAN REYNOLDS: Okay. I would like to  
16 move two issues that are not currently calendared, and  
17 they are the No Child Left Behind briefing, and the  
18 Domestic Wiretapping Briefing.

19 COMMISSIONER YAKI: I'd like to add,  
20 Commissioner Melendez' important one was the  
21 discrimination against the American Border towns.

22 COMMISSIONER MELENDEZ: Yes. I've been  
23 waiting a long time for that one, also.

24 (Off the record comments.)

25 COMMISSIONER BRACERAS: I mean, why don't

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1 we let the Dems pick the March briefing. You work  
2 that out amongst yourselves.

3 COMMISSIONER YAKI: No, we're both going  
4 to get one. What are you talking about?

5 COMMISSIONER BRACERAS: Well, which do you  
6 want in March? You can't have two in March.

7 COMMISSIONER YAKI: Oh, in March.

8 CHAIRMAN REYNOLDS: Well, you don't have  
9 to decide now. You can consult with Commissioner  
10 Melendez, and just let the Staff Director know.

11 COMMISSIONER YAKI: Okay.

12 CHAIRMAN REYNOLDS: Okay. I propose that  
13 the one on No Child Left Behind, NCLB, that that go  
14 forward in January.

15 COMMISSIONER TAYLOR: As a briefing.

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER YAKI: That's fine.

18 COMMISSIONER BRACERAS: And March will be  
19 the topic of the Democratically appointed  
20 Commissioners' choice. The Democrats choice.

21 COMMISSIONER YAKI: Arlan, do you mind if  
22 I put mine there?

23 COMMISSIONER MELENDEZ: Go ahead, that's  
24 fine.

25 COMMISSIONER YAKI: Okay.

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1 COMMISSIONER MELENDEZ: Domestic  
2 wiretapping?

3 COMMISSIONER YAKI: Yes.

4 COMMISSIONER MELENDEZ: For March.

5 CHAIRMAN REYNOLDS: So you pulled rank on  
6 him.

7 (Laughter.)

8 COMMISSIONER YAKI: I asked did he mind.

9 CHAIRMAN REYNOLDS: Yes, that's right.

10 COMMISSIONER MELENDEZ: No, that's fine.

11 CHAIRMAN REYNOLDS: Sort of like when my  
12 boss asks me if I want to do something. Okay. So we  
13 have December covered, January covered, March covered.  
14 When is the next briefing?

15 COMMISSIONER BRACERAS: April.

16 CHAIRMAN REYNOLDS: April. Thoughts?

17 COMMISSIONER BRACERAS: Well, one thought  
18 I have is that we haven't done anything on gender, and  
19 so that might be an appropriate slot for the Title 9  
20 topic.

21 CHAIRMAN REYNOLDS: I'm still recovering  
22 from my involvement with Title 9 when I was at the  
23 Department of Education, but that's fine.

24 COMMISSIONER YAKI: So you have Battered  
25 Title 9 Syndrome. Is that --

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1 CHAIRMAN REYNOLDS: Yes, indeed. Yes,  
2 indeed, angry women, angry girls.

3 COMMISSIONER BRACERAS: Okay, go ahead.

4 CHAIRMAN REYNOLDS: That's fine with me.  
5 Is there -- does anyone else have concerns? Okay.

6 COMMISSIONER YAKI: How would you like to  
7 reserve either October or November for Arlan's  
8 briefing?

9 CHAIRMAN REYNOLDS: I'm sorry.. What are  
10 the months?

11 COMMISSIONER YAKI: Either October or  
12 November for Arlan's briefing.

13 CHAIRMAN REYNOLDS: Sure. Okay. How  
14 about we put it down for October?

15 COMMISSIONER YAKI: Is that good?

16 COMMISSIONER MELENDEZ: Thank you.

17 COMMISSIONER YAKI: And you guys can work  
18 out the rest offline.

19 CHAIRMAN REYNOLDS: Okay. I think that's  
20 a good suggestion.

21 COMMISSIONER YAKI: Okay.

22 CHAIRMAN REYNOLDS: Okay. Is everyone in  
23 agreement that we would work out the rest of the slots  
24 offline?

25 COMMISSIONER BRACERAS: All right. So

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1 it's NCLB in January, domestic wiretapping in March,  
2 Title 9 in April, and the rest is to be determined?

3 CHAIRMAN REYNOLDS: No. And the border  
4 towns.

5 COMMISSIONER BRACERAS: I'm sorry, where  
6 is that?

7 COMMISSIONER YAKI: October.

8 CHAIRMAN REYNOLDS: October.

9 COMMISSIONER BRACERAS: And why October,  
10 as opposed to --

11 COMMISSIONER YAKI: I just chose October.  
12 And then you can --

13 CHAIRMAN REYNOLDS: I defer to the  
14 Democrats.

15 COMMISSIONER YAKI: That'll give you a  
16 nice stream of uninterrupted Republican briefings, so  
17 --

18 COMMISSIONER BRACERAS: You didn't want  
19 the summer, you'll be vacationing?

20 (Laughter.)

21 COMMISSIONER BRACERAS: Okay. October is  
22 border town.

23 COMMISSIONER YAKI: I have good attendance  
24 here.

25 COMMISSIONER BRACERAS: And the rest is to

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1 be determined from this list. Sounds good.

2 CHAIRMAN REYNOLDS: Okay. Where am I?

3 **VI. STATE ADVISORY COMMITTEE ISSUES**

4 CHAIRMAN REYNOLDS: Okay. The staff has  
5 done an exemplary job of preparing the recharter  
6 packages for the commission's consideration for the  
7 State of California. In this instance, the recharter  
8 package was initially presented to the commission for  
9 a vote in July of 2006. At the request of a  
10 commissioner, the vote was delayed until today's  
11 meeting. At this point, I would like to discuss the  
12 folks who are being voted on. Well, skip that piece.

13 Okay. I'm going to move that the  
14 following individuals be appointed to the California  
15 SAC; Gail Heriot, Luis Alejo, James Bolton, Sharon  
16 Browne, Jack Citrin, John Dodd, Marc Dollinger, Percy  
17 Duran, Thomas Gray, Lance Izumi, Manual Klausner,  
18 Sanford Lakoff, Al Latham, Leonard Mitchell, Velma  
19 Montoya, and Matthew Rosenthal. And I also move that  
20 the commission appoint Gail Heriot as Chair of the  
21 newly rechartered California State Advisory Committee.  
22 These members will serve as uncompensated government  
23 employees. Under the motion, the commission  
24 authorizes the Staff Director to execute the  
25 appropriate paperwork for the appointment of these

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1 individuals. Is there a second?

2 COMMISSIONER KIRSANOW: Second.

3 CHAIRMAN REYNOLDS: Discussion?

4 COMMISSIONER MELENDEZ: Yes. This is  
5 Commissioner Melendez. Again, I have a real concern  
6 in the makeup of some of our advisory committee  
7 members. One of my concerns, as I mentioned, and even  
8 the Connecticut, and some of these other State  
9 Advisory Committees, was that I think there's a lack  
10 of women. As you know, there was only 19 percent in  
11 this of California SAC nominees, 13 percent in  
12 Connecticut, and only 27 percent in Georgia, as far as  
13 number of women that are being appointed to the SAC.  
14 And the other thing was that there's four returning  
15 members to this California SAC, and I was wondering  
16 why one of those returning members wasn't the Chair,  
17 would be nominated then for the Chair.

18 CHAIRMAN REYNOLDS: I probably nominated  
19 Gail. I know her personally. She's scary smart. She  
20 knows a lot of the issues that come before the  
21 commission, and I just thought that she'd do a fine  
22 job. So that's the rationale.

23 COMMISSIONER MELENDEZ: And then the other  
24 thing I had was, there is -- the other question was  
25 how qualified are our commissioners with respect to

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1 civil rights work, and I think there was one question  
2 as far as this John L. Dodd, who didn't really appear  
3 to me that he has a lot of experience in civil rights  
4 issues. That was my other concern.

5 CHAIRMAN REYNOLDS: Okay. I went through  
6 the rechartering packages last night, and I looked at  
7 each individual in terms of their interest in civil  
8 rights, and no one jumped out at me as not having an  
9 interest, but give me a moment while I find his paper.

10 COMMISSIONER YAKI: Can I ask a question  
11 of the solicitor?

12 CHAIRMAN REYNOLDS: Sure. Yes.

13 COMMISSIONER YAKI: What are the conflict  
14 of interest rules regarding, can a SAC committee  
15 member participate on an item in which he or she is  
16 involved in litigation on the subject? In other  
17 words, if the SAC were to consider desegregation, and  
18 one of the attorneys is involved in a desegregation  
19 case. I know that we have some conflicts in our  
20 ability to deal with items for which we are receiving  
21 remuneration or compensation for specific items,  
22 specific topics. I just want to know whether or not  
23 that applies to SAC members, as well.

24 MS. MONROIG: Well, the regional directors  
25 have -- and in some cases, civil rights analysts have

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1       been appointed Deputy Ethics Officers.       The  
2       appropriate thing is for members of SACs that might  
3       have a conflict to disclose all the circumstances, and  
4       for them, in the first instance, to analyze it to see  
5       if there's a conflict, and maybe consult on the  
6       matter.

7                   COMMISSIONER YAKI: I would like to know  
8       from the Staff Director whether or not the California  
9       SAC is one of the SACs that would be dealing with the  
10      desegregation issue.

11                   STAFF DIRECTOR MARCUS: I think that the  
12      SAC would have to convene together, and talk about  
13      what they want to deal with. At this point, I would  
14      say that the --

15                   COMMISSIONER YAKI: But I --

16                   COMMISSIONER BRACERAS: You mean for our  
17      national report.

18                   COMMISSIONER YAKI: Yes. I had understood  
19      that some of the SACs were being tasked with dealing  
20      with some of the issues related to the national  
21      report.

22                   CHAIRMAN REYNOLDS: But don't they have to  
23      decide to --

24                   STAFF DIRECTOR MARCUS: Let me just answer  
25      these. That is, part of it is if they get to decide.

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1 California is not one of the states that we are  
2 relying on in the sense that we feel it is important  
3 to our national report to get something from them. I  
4 don't recall off-hand whether it was one of the ones  
5 that we designated with a request, that designation  
6 was based on whether they had certain filings there,  
7 but it's not one of the ones that we feel that we  
8 need.

9 COMMISSIONER YAKI: Okay. Well, my  
10 response to that is I find that very odd, given that  
11 it's one of the --

12 STAFF DIRECTOR MARCUS: Oh, I'm sorry.  
13 Commissioner Yaki, and I can say further that it is  
14 not one of the ones that we even made a request of.

15 COMMISSIONER YAKI: Okay. I was just  
16 going to say that's odd, given that it's one of the  
17 most diverse states in the country with some of the  
18 biggest issues involving deseg, but hey, whatever.

19 STAFF DIRECTOR MARCUS: The requests were  
20 not based on subjective evaluations, but based on the  
21 Department of Justice docket.

22 CHAIRMAN REYNOLDS: Okay. Getting back to  
23 Commissioner Melendez' issue. I have before me the  
24 rechartering package, and, quite frankly, I am  
25 comfortable with is background. Apparently, he has

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1 done work in the area of Criminal Justice,  
2 representing the indigent, and I think that that is --  
3 well, I'm satisfied. Other questions?

4 COMMISSIONER YAKI: I'm sorry, the  
5 indigent?

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER YAKI: Are they within our  
8 charter?

9 CHAIRMAN REYNOLDS: Under certain  
10 circumstances, yes. To the extent that these issues  
11 relate to race, ethnicity.

12 COMMISSIONER YAKI: Okay. Well, may I  
13 speak on this subject?

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER YAKI: I have, as someone who  
16 has been an elected official in the great State of  
17 California, who has campaigned up and down the state,  
18 been involved in campaigns there, and electoral and  
19 public policy issues for 20 years of my life, I have  
20 to say that I am absolutely 100 percent - and you may  
21 send this out for defame or degrade, whatever way you  
22 want - I'm completely appalled by the nominees to the  
23 California State Advisory Committee. There is a  
24 difference between having diversity of viewpoint on a  
25 committee, and creating uniformity of viewpoint in

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1 that diversity.

2 You have amongst these individuals  
3 overlapping -- let me put it another way. Three to  
4 four members of the appointees were all part of the  
5 Prop. 209 campaign, which has done horrific things to  
6 affirmative action issues in the University of  
7 California system. You have people who have been  
8 involved, who are currently involved working together  
9 on the Seattle and Louisville cases. They are, by  
10 most parts, all lawyers or professors, hardly a cross-  
11 section of the type - even if we cut out the issues of  
12 ethnicity, hardly a cross-section, a representation of  
13 the people of California.

14 I think that this is an elite group of  
15 individuals, who share a distinct point of view. I do  
16 not believe there is diversity. I look at the fact  
17 that 75 percent of the new nominees are white, and  
18 male. I look at the fact that 63 percent of the  
19 committee is going to be white in a state that is  
20 majority minority, and even if you say well, we have  
21 no quotas, the mere fact you would ignore the fact  
22 that in a state where ethnicity and race plays such a  
23 major role in how things work, by having the committee  
24 of this makeup, I think is a slap in the face to  
25 Californians. It's a slap in the face to the

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1 communities of color in California, and I cannot  
2 support this in any way, shape, or form. And, to me,  
3 the idea that Gail Heriot would be named Chair, when  
4 I found her to be wholly unconvincing and evasive  
5 during her testimony on the Native Hawaiian Act, send  
6 that to her, let her respond, is a double insult to  
7 the people of color in California. And that is my  
8 statement, and I don't even want to participate in  
9 this vote.

10 CHAIRMAN REYNOLDS: Okay. We will treat  
11 Commissioner Yaki's actions as an abstention.

12 COMMISSIONER YAKI: I won't even be here.

13 CHAIRMAN REYNOLDS: Okay.

14 COMMISSIONER YAKI: Not voting at all. I  
15 refuse to have my name appear in any way, shape, or  
16 form with any vote on the composition of this  
17 committee. This committee is anathema to everything  
18 that people of color, that women, and minorities in  
19 California have worked for, for years. And this is --  
20 I mean, as I've said before, there is diversity, and  
21 there is uniformity.

22 CHAIRMAN REYNOLDS: Is this because those  
23 three individuals --

24 COMMISSIONER YAKI: It's more than the  
25 three. I could have gone into much more detail about

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1 all the different back -- about all the similarity of  
2 backgrounds, about all the organizations that they all  
3 cross-belong to.

4 CHAIRMAN REYNOLDS: Commissioner Yaki --

5 COMMISSIONER YAKI: The fact that they  
6 belong to the same network of people, and it just does  
7 not say to me that this commission is seriously  
8 interested, as I said it was, in promoting balance and  
9 diversity of viewpoint.

10 CHAIRMAN REYNOLDS: Commissioner Yaki --

11 COMMISSIONER YAKI: And the State Advisory  
12 Committees, especially in a state as big, and as  
13 important, as California. Because of that, I cannot  
14 participate in this farce of a proceeding on the  
15 California State Advisory Committee.

16 CHAIRMAN REYNOLDS: Is the driver that the  
17 individuals that you mentioned were in the forefront  
18 of Prop. 209, a proposition that was supported by a  
19 majority of the folks living in California?

20 COMMISSIONER YAKI: The driver is that the  
21 overall composition of this committee, the selection  
22 process that was used, the criteria that evidently was  
23 pulled together, creates homogeneity of viewpoint and  
24 background that is completely contrary --

25 COMMISSIONER BRACERAS: Am I mistaken --

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1 COMMISSIONER YAKI: There's more than  
2 three people.

3 CHAIRMAN REYNOLDS: Okay. You --

4 COMMISSIONER BRACERAS: Am I mistaken, I  
5 thought this was a pretty evenly balanced panel in  
6 terms of 50 percent sort of liberals, and 50 percent  
7 conservatives?

8 COMMISSIONER YAKI: No, because if you  
9 look at some of the resumes for the independents and  
10 the Ds, they're not.

11 COMMISSIONER BRACERAS: They're not what?

12 COMMISSIONER YAKI: They're not liberals.

13 COMMISSIONER BRACERAS: So would you like  
14 to remove some of the independents and Ds, and come up  
15 with your own suggestion?

16 COMMISSIONER YAKI: I've already spoken  
17 with the Chair. There is no desire to remove any of  
18 the people involved, and --

19 COMMISSIONER BRACERAS: So you just want  
20 more Ds.

21 COMMISSIONER YAKI: No, I just think that  
22 --

23 COMMISSIONER BRACERAS: Not different Ds.

24 COMMISSIONER YAKI: I just think that the  
25 idea that if the commission were willing to think

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1 about looking at these names differently, adding a  
2 different kind of viewpoint and ethnic balance to the  
3 committee - for the life of me, I don't understand --

4 COMMISSIONER BRACERAS: Why don't you sit  
5 down and we'll discuss it.

6 COMMISSIONER YAKI: -- how the commission  
7 could believe that it could, with a straight face,  
8 nominate a SAC that is completely out of whack with  
9 the State of California.

10 CHAIRMAN REYNOLDS: How so?

11 COMMISSIONER YAKI: The idea that the  
12 State Advisory Committee would be 64 percent Caucasian  
13 in a state that is majority minority is, in and of  
14 itself, indicative of a lack of understanding. If you  
15 cannot find conservatives, people of color to  
16 articulate a viewpoint and put it out there, I have  
17 little trouble with that. Let that debate go on.  
18 That's number one.

19 Number two, is the fact that when you look  
20 at from where the recruitment began, there is such  
21 similarity and cross-overlap of bodies of work, of  
22 organizations that they belong to, that it just does  
23 not seem to me -- it would be one thing to say I'm  
24 going to get someone from this community who is  
25 conservative and believes in dahdala dahdala da, but

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1 doesn't necessarily belong to the same three groups as  
2 three other people do.

3 CHAIRMAN REYNOLDS: I'm not sure that  
4 belonging to an organization, that that's a proxy for  
5 each issue. For example, the Federalist Society,  
6 there are libertarians.

7 COMMISSIONER YAKI: I have heard --

8 CHAIRMAN REYNOLDS: Conservatives --

9 COMMISSIONER YAKI: Mr. Chairman, with all  
10 due respect, I have heard your argument on that time  
11 and time again. The fact of the matter is, is that  
12 the fact that we cannot, especially in a state as big  
13 and as diverse, and as populous as California, with as  
14 many different interests, and people involved, that  
15 you cannot go outside the box of certain  
16 organizations, and instead, rely on the fact that  
17 well, maybe they're not all the same. Well, Democrats  
18 aren't all the same, Republicans aren't all the same.  
19 I understand that.

20 CHAIRMAN REYNOLDS: I agree.

21 COMMISSIONER KIRSANOW: We have in various  
22 SACs, I would wager that a number of SACs, if not  
23 most, have more than one, two, three individuals who  
24 belong to the same organization, such as the NAACP.  
25 I don't know that belonging to the same organization

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1 is necessarily a disqualifying factor. I understand  
2 your concerns. I also don't think that, and I would  
3 be personally opposed to some type of proportional  
4 ethnic representation. If the chips fall where they  
5 may and that happens, fine. But I think one of the  
6 things we wanted to avoid was ethnicity as a proxy for  
7 viewpoint. So, because you're from California, and  
8 you've got a particular knowledge of that, I mean, I'm  
9 sensitive to your view, but I'm not necessarily  
10 persuaded by it.

11 COMMISSIONER YAKI: Well, I would say that  
12 you can look at certain areas, certain regions,  
13 certain states, and make differential conclusions  
14 about where interests lie, what groups should be  
15 involved. But I'm just saying this as a practical  
16 fact, it is California, it is the largest state in the  
17 Union, it is the most diverse state in the Union, it  
18 is the seventh largest economy in the entire world, it  
19 is a place where people of all colors, all creeds, all  
20 political persuasions get together and have a friendly  
21 hash fight, and no so friendly hash fight every two,  
22 four, or six years, depending on what election is  
23 going on.

24 It just strikes me as bizarre, and  
25 certainly indicative of either lack of effort,

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1 imagination, or creativity to find a little bit more  
2 diversity. Just look at it from one point of view.  
3 Why is the vast majority of the new appointees all  
4 lawyers? Why is the vast majority or professors?  
5 That's it, that's the group. Certainly, there are  
6 other types of individuals involved in the civil  
7 rights perspective from both left and right, who don't  
8 necessarily belong in the lawyer drafting camp, and  
9 the professor camp.

10 COMMISSIONER BRACERAS: I have a question  
11 for you. May I ask a question of Commissioner Yaki?

12 CHAIRMAN REYNOLDS: Yes.

13 COMMISSIONER BRACERAS: If this group were  
14 to contain more community activists, more people of  
15 color, as you suggest, but it still contained the  
16 names of the three individuals with whom I understand  
17 you have strong objection, would you vote for the  
18 panel?

19 COMMISSIONER YAKI: Let me just say this;  
20 I named three individuals as being sort of from the  
21 same cut of cloth. If you really want my --

22 COMMISSIONER BRACERAS: If Gail Heriot  
23 were still named as Chairman, and the other two  
24 individuals - I forget who they are, even, that you  
25 object to - are still on the panel, is it Manny

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1 Klausner, is that one of them?

2 COMMISSIONER YAKI: I'm not going to get  
3 into names.

4 COMMISSIONER BRACERAS: Okay. Well, if  
5 Gail were still named as Chair, and the other two  
6 individuals to whom you object are still on the panel,  
7 but there was reshuffling of other individuals to  
8 include more community activists, and other types of  
9 criteria that you desire, would you vote for the  
10 panel?

11 COMMISSIONER YAKI: I might.

12 COMMISSIONER BRACERAS: Because I don't  
13 believe that you would vote for a panel with Gail  
14 Heriot on it, no matter what it looked like. And so  
15 that's why --

16 COMMISSIONER YAKI: Well, Gail I have  
17 trouble with. I think overall in terms of what -- I  
18 mean, I've been a politician most of my life.

19 COMMISSIONER BRACERAS: Right. So what  
20 I'm saying is I think you're bluffing a little bit,  
21 because I think you would reject any panel that  
22 included Professor Heriot.

23 COMMISSIONER YAKI: No. I can tell you  
24 right now, I would not reject any panel that included  
25 Professor Heriot.

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1 COMMISSIONER BRACERAS: As Chair?

2 COMMISSIONER YAKI: It would depend on who  
3 the Vice Chair was, and would depend on the  
4 composition of the rest of the committee. Never say  
5 no, never say never.

6 COMMISSIONER BRACERAS: But you're not  
7 saying yes.

8 CHAIRMAN REYNOLDS: I suggest that we vote  
9 on the --

10 COMMISSIONER YAKI: I'm not saying yes,  
11 because I've been informed that that's not going to  
12 happen. And that's not going to happen, I can't vote  
13 for it. I'm not going to vote on speculation that  
14 maybe --

15 COMMISSIONER BRACERAS: I'm not asking you  
16 to vote. I'm just asking your intention.

17 CHAIRMAN REYNOLDS: I suggest that we vote  
18 on this slate, and this is 16 individuals. I believe  
19 California has what, 18 slots? Is that correct?

20 STAFF DIRECTOR MARCUS: Our standard is to  
21 go up to 19, no more than 19.

22 CHAIRMAN REYNOLDS: Okay. We could  
23 continue these conversations with respect to the  
24 remaining slots, and see if through discussions we can  
25 come up with some candidates that have the support of

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1 Commissioner Yaki. But in the meantime, I suggest  
2 that we vote. All in favor?

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: All in opposition?

5 COMMISSIONER MELENDEZ: Aye.

6 COMMISSIONER BRACERAS: That would be a  
7 nay.

8 COMMISSIONER MELENDEZ: No. I vote no.

9 CHAIRMAN REYNOLDS: Please let the record  
10 reflect that Commissioners Braceras, Kirsanow, Taylor  
11 and Reynolds voted in favor of the California SAC  
12 members proposed, and that Commissioner Yaki did not  
13 vote, and that Commissioner Melendez voted against the  
14 motion. The motion passes.

15 COMMISSIONER YAKI: For the record,  
16 Commissioner Yaki left the room so he did not vote.

17 CHAIRMAN REYNOLDS: Let the record reflect  
18 that Commissioner Yaki left the room so he did not  
19 vote.

20 COMMISSIONER YAKI: Would not vote.

21 CHAIRMAN REYNOLDS: Would not vote,  
22 refused to vote. Next up, Future Agenda Items.

23 **VII. FUTURE AGENDA ITEMS**

24 CHAIRMAN REYNOLDS: Do any of the  
25 commissioners have any items that they'd like to

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1 discuss?

2 COMMISSIONER MELENDEZ: Yes. This is  
3 Commissioner Melendez. Are we going to have an update  
4 on the audit?

5 CHAIRMAN REYNOLDS: Yes, but -- one, two.  
6 Okay. We have to wait until Commissioner Braceras  
7 returns so that we will have a quorum. Okay. We're  
8 going to start the discussion of the Staff Director's  
9 Report.

10 **VIII. STAFF DIRECTOR'S REPORT**

11 CHAIRMAN REYNOLDS: Staff Director Marcus.

12 STAFF DIRECTOR MARCUS: Thank you, Mr.  
13 Chairman. First, I just wanted to make a brief  
14 announcement about the Utah State Advisory Committee,  
15 which is one of our most newly rechartered committees.  
16 On December 13, the Utah Advisory Committee will  
17 conduct a briefing in Salt Lake City, Utah regarding  
18 discrimination against Native Americans in border  
19 communities. Our Denver office is working hard to put  
20 on what I think will be a very fine panel on that  
21 topic. The governor of Utah is now scheduled to  
22 participate, as is the mayor of Salt Lake County,  
23 Utah.

24 The meeting is very shortly before our  
25 commission meeting, which, unfortunately, was an

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1 unavoidable conflict. Nevertheless, if there are any  
2 commissioners who are interested in attending that  
3 meeting, please let me know, and I'm sure that they  
4 will be welcome.

5 I'd like to say a few words about the  
6 commission's financial reporting and finances. On  
7 Thursday night, Wednesday night, early Thursday  
8 morning, we completed and issued our Annual  
9 Performance and Accountability Report, including our  
10 Audited Financial Statement.

11 As you know, these reports were seldom  
12 prepared and delivered to OMB on time in the past, and  
13 getting our paperwork together for the deadline was,  
14 I think, nothing short of a heroic effort. I  
15 particularly would commend Tina Martin and Debra Carr.  
16 Staff worked here until 2:30 in the morning to get the  
17 work done, and I think that their ability to compile  
18 this accountability report really was an indication of  
19 extraordinary dedication by commission staff.

20 The report, together with the audited  
21 financial statement, paints a picture that I think has  
22 two main features. One of them is that it shows that  
23 we still have some weaknesses that are significant,  
24 and that will require concerted effort in order to fix  
25 them and turn them around. We still have a great deal

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1 of work to do on our finances, and I think we have a  
2 great deal of aggressive work still to do.

3 On the other hand, they do show rather  
4 dramatic improvement from two years ago; and rather  
5 dramatic improvement even from last year. As the  
6 commissioners will recall, we have never before been  
7 able to get even a qualified opinion on more than one  
8 of our financial statements. In 2004, when we  
9 arrived, the Parker firm was in the middle of an audit  
10 that took two years to complete, and when they  
11 completed it, they only looked at the balance  
12 statement, and were unable to provide even a qualified  
13 opinion. Instead, they provided a disclaimer;  
14 together with a discussion of weaknesses on that one  
15 statement.

16 Last year, we made substantial progress,  
17 even though we still had the same accounting firm that  
18 had been contracted by the prior administration, we  
19 actually were able to get a full-scope audit, which is  
20 to say an audit of all five financial statements, and  
21 we were able to get not a disclaimer, but a qualified  
22 opinion on our balance sheet, as well as disclaimers  
23 on the other four statements.

24 This year, for the first time, we have  
25 opinions on all five financial statements. Becoming

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1       auditable, and being able to get qualified opinions on  
2       all five statements I think is an extraordinary amount  
3       of progress. But what's more is that we didn't get  
4       qualified opinion on all five of our statements, we  
5       actually got unqualified opinions on every single one  
6       of them for the first time, so this is a dramatic  
7       improvement.

8               As I say, there are still material  
9       weaknesses and reportable conditions. They deal with  
10      the travel and approval process, they deal with human  
11      capital needs, travel expenses, supporting  
12      documentation, file maintenance, and travel and  
13      approval processing. These are all things that we are  
14      in the process of developing a corrective action plan  
15      to deal with. Nevertheless, the work to ensure that  
16      our financial reporting is sound, I think was a big  
17      step forward. So it is mixed news, still very  
18      significant issues, very significant issues, but  
19      dramatic improvements.

20              COMMISSIONER MELENDEZ: Could I ask a  
21      question? This is Commissioner Melendez. Here's  
22      where we really need what the findings was, maybe the  
23      other stuff, but we need the findings, here's where  
24      it's really needed. What were the actual findings as  
25      far as issues relating to the budget, and spending,

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1 those type things?

2 STAFF DIRECTOR MARCUS: If you're  
3 referring to the findings of our auditors, Walker and  
4 Company, they were distributed to commissioners  
5 yesterday. As I say, there were two material  
6 weaknesses, and three reportable conditions, which is  
7 an improvement from the prior year. Is it two and  
8 three or two and two? I'm sorry, it's two and two.  
9 Two material weaknesses, two reportable conditions,  
10 which is an improvement from the prior year, but that  
11 everything else is unqualified.

12 COMMISSIONER MELENDEZ: Okay. My question  
13 as to have we spent our money appropriately so that we  
14 don't really lose funding that reflects on the  
15 commission? Because, as you know, we were unable to  
16 hire special assistants for a number of months, and  
17 I'd hate to see us all of a sudden find out that we  
18 did not spend appropriately the money that we have.  
19 Could you answer that question?

20 CHAIRMAN REYNOLDS: Commissioner Melendez,  
21 we intend to go into closed session, and that issue  
22 will be discussed at that time. But we do have an  
23 answer for you.

24 COMMISSIONER MELENDEZ: Okay.

25 CHAIRMAN REYNOLDS: Any other questions?

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1 Okay. The Staff Director has requested that the next  
2 portion of the meeting be closed pursuant to the  
3 commission's regulations implementing the Sunshine  
4 Act. Will the General Counsel and Solicitor please  
5 certify that the meeting can be closed pursuant to the  
6 commission's regulations?

7 MR. BLACKWOOD: Based on our knowledge of  
8 why the Staff Director is requesting the closed  
9 portion of the meeting, we certify in writing and have  
10 submitted in writing, that this meeting can be closed,  
11 and the information pertaining to same can be  
12 withheld. Pursuant to the following exemptions  
13 provided for in the commission regulations, see 45 CFR  
14 Section 702.54. Exemption Two, when a meeting relates  
15 to the internal personnel rules and practices of the  
16 commission. Exemption Five, when a meeting might  
17 involve censoring a person. And Exemption Six, when  
18 a meeting might involve disclosing information of a  
19 personal nature, where disclosure might constitute a  
20 clearly unwarranted invasion of personal privacy. And  
21 Exemption Ten, when the meeting might involve the  
22 commission's participation in a civil action or  
23 proceeding.

24 CHAIRMAN REYNOLDS: Okay. May I have a  
25 motion to close this meeting pursuant to Exemptions

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1 Two, Five, Six, and Ten of the Closed Meetings  
2 Procedures for the commission meetings; furthermore,  
3 this motion would authorize the Staff Director to  
4 place in a location accessible to the public within  
5 one working day, business day, the public vote to  
6 close the meeting, reflecting an explanation of the  
7 decision to close the meeting, and a list of all  
8 persons attending the meeting.

9 COMMISSIONER KIRSANOW: So moved.

10 CHAIRMAN REYNOLDS: Is there a second?

11 COMMISSIONER BRACERAS: Second.

12 CHAIRMAN REYNOLDS: Okay. I will call out  
13 the name of each commissioner. The commissioner  
14 should then answer yes, no, or abstain. After the  
15 voting is concluded, I will read out how each one of  
16 you voted in order to ensure that the tally is  
17 correct. Please vote when I call your name.  
18 Commissioner Braceras.

19 COMMISSIONER BRACERAS: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

21 COMMISSIONER KIRSANOW: Yes.

22 CHAIRMAN REYNOLDS: Commissioner Melendez.

23 COMMISSIONER MELENDEZ: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Taylor.

25 COMMISSIONER TAYLOR: Yes.

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1           CHAIRMAN REYNOLDS: And I vote yes, also.  
2 The tally is as follows, Commissioners Braceras,  
3 Kirsanow, Melendez, Taylor, and Reynolds voted in the  
4 affirmative. Commissioners Thernstrom and Yaki did  
5 not participate in the vote. The motion passes.

6           At this point, I guess we need to clear  
7 the room pursuant to the affirmative vote. The  
8 individuals who will participate in the closed session  
9 are Commissioners Braceras, Kirsanow, Taylor,  
10 Melendez, and Reynolds. Also present will be Staff  
11 Director Marcus, the General Counsel, David Blackwood,  
12 the Assistant Deputy Staff Director, Debra Carr, the  
13 Director of Administration, Tina Louise Martin, the  
14 Director of Human Resources, Tyro Beatty, Derek Horne,  
15 who is the Attorney Advisor to the Staff Director, and  
16 the Solicitor, Emma Monroig.

17           STAFF DIRECTOR MARCUS: I would add that  
18 if Commissioner Melendez would want Mr. Schmechel to  
19 remain, that there is no problem with his remaining.  
20 I don't know whether Ms. Schuld is here, but if  
21 Commissioner Braceras --

22           COMMISSIONER BRACERAS: She is no longer  
23 here. She needed to catch a flight.

24           COMMISSIONER MELENDEZ: Yes, Richard can  
25 remain.

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1 CHAIRMAN REYNOLDS: Okay. Let the record  
2 reflect that Richard Schmechel will also be in  
3 attendance. Okay. So everyone is out, doors closed.

4 (CLOSED SESSION.)

5 CHAIRMAN REYNOLDS: Okay. Let's go back  
6 on the record.

7 COMMISSIONER BRACERAS: These are just  
8 minor questions that I have.

9 COMMISSIONER TAYLOR: Are we required to  
10 certify on the back-end?

11 CHAIRMAN REYNOLDS: I'm sorry?

12 COMMISSIONER TAYLOR: Are we required to  
13 certify on the back-end of a closed session?

14 CHAIRMAN REYNOLDS: I'm sorry. Yes.

15 (Off the record comments.)

16 STAFF DIRECTOR MARCUS: Ms. Monroig, why  
17 don't you answer the question.

18 MS. MONROIG: The requirement, according  
19 to the regs, is that you read the transcript of the  
20 closed session afterwards to determine if there is any  
21 items there that are disclosable to the public or not.

22 COMMISSIONER TAYLOR: Okay.

23 CHAIRMAN REYNOLDS: Okay. Commissioner  
24 Braceras.

25 COMMISSIONER BRACERAS: Oh, I just had a

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1 question about transcripts, and where we stand in  
2 receiving them, and getting them up on the web for  
3 previous briefings and meetings?

4 STAFF DIRECTOR MARCUS: Yes, Commissioner  
5 Braceras. We are now several months behind in making  
6 the transcripts available in final form. The process  
7 that we go through is a time-consuming one. Usually,  
8 it is the Secretary to the Staff Director who does  
9 this work, which involves not just reading the  
10 transcript, but listening to the tapes carefully,  
11 finding any errors, with due respect to court  
12 reporters, which we do find.

13 COMMISSIONER BRACERAS: With respect to  
14 the briefing, or also the meeting portion?

15 STAFF DIRECTOR MARCUS: Both of them, we  
16 find errors in both. Based on various efforts using  
17 current staff, I've determined that we simply are not  
18 able currently to make our way through the backlog  
19 with the currently available people, particularly  
20 given that the Secretary to the Staff Director remains  
21 on long-term medical leave.

22 We are bringing on a temporary person for  
23 the sole purpose of wading through these transcripts  
24 to try and come up to speed. And my expectation is  
25 that our temporary employee who is working on that

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1 matter, I hope, will be on board on Monday. And the  
2 Director of Management is nodding her head yes, we do  
3 expect her to be on board, so she can start.

4 COMMISSIONER BRACERAS: Okay. I raise it,  
5 simply because I've been asked by members of the  
6 public who are interested in some of the briefings we  
7 did, and I guess, wanted to do research based on them,  
8 whether the transcripts were publicly available.

9 STAFF DIRECTOR MARCUS: Yes. And that's  
10 why we're spending the money to bring a temporary  
11 person on board, is because we really need to get  
12 those --

13 COMMISSIONER BRACERAS: My other question  
14 is, is it our intention, with respect to all of the  
15 briefings we've done, to try to issue briefing  
16 reports, or are some of them just simply verbal  
17 briefings? Specifically, I was wondering whether  
18 we're putting together a report on the ABA Rules, and  
19 on the Omaha briefing that we had.

20 STAFF DIRECTOR MARCUS: Yes. We are  
21 working on reports on all of the briefings that we've  
22 held so far.

23 COMMISSIONER KIRSANOW: When do you think  
24 the ABA Rules one might come out?

25 STAFF DIRECTOR MARCUS: Fairly confident

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1 by the January meeting, and there's a chance that it  
2 would be in the December meeting.

3 COMMISSIONER KIRSANOW: The reason I ask -  
4 - I'm sorry. Go ahead.

5 COMMISSIONER BRACERAS: Yes, the reason I  
6 asked, which may be the same reason that Commissioner  
7 Kirsanow was concerned, is that my understanding is  
8 that negotiations between the ABA and the Department  
9 of Education are moving along at a speedy clip, and I  
10 understand from folks at the Department of Education  
11 that it would be useful for them to have us weigh-in  
12 on the issue, or at least make the transcripts  
13 available as soon as possible.

14 COMMISSIONER KIRSANOW: That is my  
15 concern. My understanding is that the first week of  
16 December, the Department of Education is going to have  
17 its accreditation hearings. I know I'm going to be  
18 testifying at them, and then they're going to be  
19 making a determination shortly thereafter, so anything  
20 that we can do to weigh-in, I think might be helpful.

21 CHAIRMAN REYNOLDS: Well, I would suggest  
22 that we make that particular transcript a priority.  
23 Is there any chance -- well, what's your estimate in  
24 terms of completing the briefing report for that  
25 topic?

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1                   COMMISSIONER BRACERAS: I think he just  
2 said that --

3                   STAFF DIRECTOR MARCUS: Well, again, I'm  
4 pretty confident for January, for December - and the  
5 December, I believe, is after the hearing. I think we  
6 have a pretty good chance, I don't know if it's 50/50  
7 or not, but we can certainly try to focus on that  
8 above all the others. I have to say, and I may need  
9 to focus on it a little bit more, or maybe your input  
10 would be useful - one of the difficult questions for  
11 that briefing and the other briefings that are well  
12 advanced in process, is to what extent we need to redo  
13 them based on the new draft briefing procedures that  
14 I think are still in process.

15                   COMMISSIONER BRACERAS: Well, let me just  
16 ask a few questions. What are, other than Omaha and  
17 ABA, the briefings that are out there that we're  
18 trying to reduce to writing?

19                   STAFF DIRECTOR MARCUS: Voting Fraud and  
20 Intimidation, Misidentification or Misrepresentation  
21 of Minorities in the Census.

22                   COMMISSIONER BRACERAS: That's right.  
23 Okay, so ABA, voting, census, and Omaha.

24                   STAFF DIRECTOR MARCUS: Those are the ones  
25 I can think of off-hand.

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1 COMMISSIONER BRACERAS: And which is -- I  
2 mean --

3 STAFF DIRECTOR MARCUS: I have to say that  
4 the -- some of the staff have been sent out and  
5 haven't come back, so I can't guarantee for sure I  
6 haven't forgotten something.

7 COMMISSIONER BRACERAS: Okay. No, no,  
8 that's fine, but of these, am I correct - I mean, this  
9 is just based on my shaky memory - but am I correct  
10 that the oldest, the one that's been out there the  
11 longest is ABA, or is it census?

12 STAFF DIRECTOR MARCUS: I think it's  
13 census. I did forget one. The one that I forgot is  
14 the Effectiveness of Historically Black Colleges.

15 COMMISSIONER BRACERAS: That's right. Age  
16 perceives, okay. Right. And, hence, I think this  
17 sort of reiterates our need for separate business  
18 meetings, because this is a lot to talk about if we're  
19 going to be putting these out. So is the priority to  
20 do them in chronological order in terms of getting out  
21 the briefing reports, or what is the priority?

22 CHAIRMAN REYNOLDS: I suggest that, to the  
23 extent an issue - a particular topic that's been  
24 covered is being covered by a federal agency - for  
25 example, the ABA briefing report, I would suggest that

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1 we take that one out of order.

2 STAFF DIRECTOR MARCUS: The ABA report  
3 happens to be one of the ones in the most advanced  
4 stage.

5 COMMISSIONER BRACERAS: Right. I mean, I  
6 think it should be, precisely for the reason that the  
7 Chair just stated. I mean, other than that, I think  
8 we should try to proceed chronologically, but when  
9 something is more timely or current, I think we need  
10 to move it to the head of the line.

11 STAFF DIRECTOR MARCUS: There are, of  
12 course, other considerations. For instance, there's  
13 at least one that was - the timing of which is  
14 affected by a change in personnel.

15 COMMISSIONER BRACERAS: Right.

16 STAFF DIRECTOR MARCUS: Being done by  
17 attorneys in OGC who are no longer employed here, so  
18 it got delayed by that reason.

19 COMMISSIONER BRACERAS: Right.

20 STAFF DIRECTOR MARCUS: There are others  
21 that are a little faster based on difference in  
22 resources between OGC, versus OCRE, versus OSD.

23 COMMISSIONER BRACERAS: Okay. I guess my  
24 concern is that before we allocate staff time and  
25 resources to planning further briefings, I think it's

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1 important to try to kind of clear the docket, or make  
2 headway on the docket before we move on to the next  
3 thing. But my particular concern was with the ABA,  
4 and I'd like to see that moved forward as quickly -- I  
5 mean, if we could have with the ABA - if we could get  
6 the transcript available ASAP so that it can be useful  
7 to the Department as they move into their hearings,  
8 that would be great. And then the report will just  
9 come when it comes.

10 CHAIRMAN REYNOLDS: With any luck, by  
11 December. If not December, January.

12 COMMISSIONER BRACERAS: Right.

13 STAFF DIRECTOR MARCUS: We'll move it to  
14 the top of the list.

15 COMMISSIONER BRACERAS: Right. I mean,  
16 and why don't we, for purposes of procedure, you know,  
17 our procedures are in flux, but why don't we try to --  
18 well, why don't we schedule -- I think that there  
19 needs to be some sort of conference call where a  
20 member of the minority commissioners - the  
21 commissioners in the political minority can kind of go  
22 through it with some of the members in the majority,  
23 and hash it out line-by-line. I don't know that we  
24 need to call it a working group, per se, but I think  
25 Commissioner Yaki and myself, and whoever else may be

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1 interested with the Staff Director's cooperation, we  
2 should all talk soon about this. I don't know if you  
3 want to -- if we can ask the Staff Director's shop to  
4 coordinate that conference.

5 CHAIRMAN REYNOLDS: I think it's a good  
6 suggestion. I think the other commissioners, the ones  
7 who are not going to participate in this  
8 teleconference, should also read the document that you  
9 prepared, and to provide you with their input. But I  
10 think that the Staff Director should work with the  
11 participants to select a date that this conversation  
12 can take place.

13 COMMISSIONER BRACERAS: Can we try to do  
14 that in the next couple of weeks?

15 STAFF DIRECTOR MARCUS: I would certainly  
16 be happy to. Commissioner Melendez is on the line,  
17 still?

18 COMMISSIONER MELENDEZ: Yes.

19 STAFF DIRECTOR MARCUS: Did you want to  
20 participate on that?

21 COMMISSIONER MELENDEZ: If I'm available,  
22 yes.

23 CHAIRMAN REYNOLDS: Okay. Then we should  
24 assume that -- well, I'm going to assume that  
25 Commissioner Yaki, he has a keen interest in these

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1 procedural issues.

2 COMMISSIONER BRACERAS: How many can we  
3 have without violating the Sunshine Act?

4 CHAIRMAN REYNOLDS: It is four?

5 COMMISSIONER KIRSANOW: Four.

6 CHAIRMAN REYNOLDS: So --

7 COMMISSIONER TAYLOR: I would be --

8 COMMISSIONER BRACERAS: So that would be  
9 Yaki, Melendez, Taylor, Braceras.

10 CHAIRMAN REYNOLDS: Right.

11 COMMISSIONER BRACERAS: And the Staff  
12 Director.

13 CHAIRMAN REYNOLDS: That's right.

14 COMMISSIONER BRACERAS: And I think if we  
15 can all set aside a chunk of time, an hour or so, or  
16 more to hash through it on the phone, we can probably  
17 take care of it in one phone call. But if everybody  
18 else could get their written comments to me, and to  
19 the Staff Director ahead of time, that would be great.

20 I mean, with respect to how to proceed on  
21 the reports you're going to be putting together, I  
22 guess I would -- I don't know. Do you have any  
23 thoughts?

24 COMMISSIONER KIRSANOW: No.

25 CHAIRMAN REYNOLDS: This is -- the markers

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1 laid down. Well, assuming that we get the new  
2 procedures in place quickly, then I don't think that  
3 we're going to need -- that we're going to lose too  
4 much ground, but there is the potential that we will  
5 have to go back and redo some things.

6 COMMISSIONER BRACERAS: Well, I think the  
7 only risk is that if a report is coming up for the  
8 December meeting for a vote, I think if we could  
9 separate it physically into two parts, the summary of  
10 the proceedings, and the finding and recommendations,  
11 then, at the very least, I think we can vote on sort  
12 of the clearinghouse version, and approve that without  
13 -- hopefully, we could also approve findings and  
14 recommendations, but that could be a separate  
15 discussion.

16 CHAIRMAN REYNOLDS: Yes, I would be  
17 interested to hear from Commissioner Yaki. I have no  
18 idea whether that would be an acceptable approach for  
19 Commissioner Yaki, but it's a reasonable one.

20 COMMISSIONER BRACERAS: And my guess is  
21 that it would be, but I don't want to speak for him.

22 CHAIRMAN REYNOLDS: It's a reasonable  
23 approach.

24 COMMISSIONER BRACERAS: Like I said before,  
25 I am uncomfortable voting to approve any further

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1 reports, unless it is either just a clearinghouse  
2 report, or unless the process has been put in place  
3 beforehand. So if we're not voting on just a  
4 clearinghouse report, I would abstain from that vote.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER BRACERAS: Until we have a  
7 process.

8 CHAIRMAN REYNOLDS: I understand. Any  
9 other questions or comments? Commissioner Melendez,  
10 questions, comments?

11 COMMISSIONER MELENDEZ: No.

12 COMMISSIONER BRACERAS: Oh, I do have one  
13 other question. Where do we stand with the strategic  
14 plan right now?

15 CHAIRMAN REYNOLDS: Ken.

16 STAFF DIRECTOR MARCUS: We're very close  
17 to having another draft. I think that we should have  
18 one early next week before Tuesday.

19 CHAIRMAN REYNOLDS: Thanksgiving reading.

20 COMMISSIONER BRACERAS: Okay.

21 **IX. ADJOURN**

22 CHAIRMAN REYNOLDS: Okay, on that note,  
23 let's adjourn until next month. Thanks, folks.

24 (Whereupon, the proceedings went off the  
25 record at 12:30 p.m.)

**NEAL R. GROSS**

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