

## U.S. COMMISSION ON CIVIL RIGHTS

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## COMMISSION MEETING

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FRIDAY, FEBRUARY 8, 2008

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The meeting convened in Room 540 at 624  
Ninth Street, N.W., Washington, D.C. at 9:00 a.m.,  
Gerald A. Reynolds, Chairman, presiding.

## PRESENT:

GERALD A. REYNOLDS, Chairman  
ABIGAIL THERNSTROM, Vice Chairman  
TODD GAZIANO, Commissioner  
GAIL L. HERIOT, Commissioner  
PETER N. KIRSANOW, Commissioner  
ARLEN D. MELENDEZ, Commissioner  
ASHLEY L. TAYLOR, JR., Commissioner  
MICHAEL YAKI, Commissioner

DR. ROBERT LERNER, Delegated the Authority  
of the Staff Director, OSD

## STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC  
TERESA BROOKS  
MARGARET BUTLER, EEO Director  
CHRISTOPHER BYRNES, Chief, Regional Programs  
Coordination Unit  
DEBRA CARR, Esq., Associate Deputy Staff Director, OSD  
DEMITRIA DEAS  
PAMELA A. DUNSTON, Chief, ASCD  
LATRICE FOSHEE  
MAJA JWEIED  
MONICA KIBLER  
SOCK-FOON MACDOUGALL, Acting Chief, PAU  
TINALOUISE MARTIN, Director of Management  
EMMA MONROIG, Solicitor  
LENORE OSTROWSKY  
EILEEN RUDERT  
KARA SILVERSTEIN, Attorney Advisor, OSD  
KIMBERLY TOLHURST

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VANESSA WILLIAMSON  
AUDREY WRIGHT  
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON  
RICHARD SCHMELCHEL  
KIMBERLY SCHULD

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1 B-U-S-I-N-E-S-S M-E-E-T-I-N-G

2 9:00 a.m.

3 CHAIRMAN REYNOLDS: On the record. Okay.  
4 Good morning. This is Chairman Reynolds. The meeting  
5 will come to order.

6 This is a meeting of U.S. Commission on  
7 Civil Rights starting at 9:00 a.m. on February 8,  
8 2008. The meeting is held at 624 9<sup>th</sup> Street, N.W.,  
9 Room 540, Washington, D.C.

10 It gives me great pleasure to announce  
11 that on February 6, 2008 pursuant to Section II of the  
12 Civil Rights Commission's Amendments Act of 1994 and  
13 upon the recommendation of the Minority Leader and the  
14 Speaker Pro Tem of House of Representatives, appointed  
15 Todd Gaziano of Falls Church, Virginia as a member of  
16 the Commission. Commissioner Gaziano is currently the  
17 Director of The Center for Legal and Judicial Studies  
18 of The Heritage Foundation. So let's all give him a  
19 round of applause. Welcome aboard.

20 (Applause.)

21 COMMISSIONER GAZIANO: Thank you very  
22 much.

23 CHAIRMAN REYNOLDS: Would you care to take  
24 a few moments just to make some remarks about your  
25 background and what you've done?

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1 COMMISSIONER GAZIANO: If it's all right,  
2 I'll defer that for another time.

3 CHAIRMAN REYNOLDS: That's fine. I like  
4 that. Time management.

5 **I. APPROVAL OF AGENDA**

6 CHAIRMAN REYNOLDS: Okay. Let's see. All  
7 the Commissioners are present and we will now continue  
8 with the first item on the agenda. The first item on  
9 the agenda is the approval of the agenda.

10 I move that we approve the agenda. Is  
11 there a second?

12 VICE CHAIR THERNSTROM: Second.

13 CHAIRMAN REYNOLDS: Discussion?

14 COMMISSIONER YAKI: Two questions. One,  
15 may we ask the new commissioner for the pronunciation  
16 of his name so none of us butcher it for the rest of  
17 the meeting?

18 COMMISSIONER GAZIANO: That I would be  
19 glad to do. Gaziano.

20 COMMISSIONER YAKI: Gaziano. Secondly,  
21 under the Management and Operations, I believe that  
22 what we discussed was to deal only with moving forward  
23 with the recommendations from Booz Allen Hamilton as  
24 it pertained to the SAC because the changes in the  
25 reports would have required, will require, changes in

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1 the AI and I believe most of them are debates centered  
2 on SAC implementation if not report implementation.

3 CHAIRMAN REYNOLDS: I'm having a little  
4 difficulty. Does that relate to the issue that's on  
5 the table now?

6 COMMISSIONER YAKI: Yes, it says that we  
7 are accepting this recommendation to begin the user  
8 process suggested by DAH which also includes, which  
9 included, the entire thing.

10 CHAIRMAN REYNOLDS: Okay.

11 VICE CHAIR THERNSTROM: I don't know  
12 anything about any of these documents. What are you  
13 looking at?

14 COMMISSIONER YAKI: I'm looking at the  
15 minutes.

16 VICE CHAIR THERNSTROM: We're doing the  
17 agenda now.

18 COMMISSIONER YAKI: Oh, you're doing the  
19 agenda. Okay. I thought we already approved the  
20 agenda.

21 COMMISSIONER HERIOT: And I don't have a  
22 copy of either.

23 VICE CHAIR THERNSTROM: Me either. We're  
24 a little handicapped here.

25 COMMISSIONER YAKI: We can accommodate

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1 that. I apologize. I thought we had zoomed through  
2 the agenda and we were onto the minutes.

3 CHAIRMAN REYNOLDS: Okay. So we had a  
4 second.

5 VICE CHAIR THERNSTROM: Second.

6 COMMISSIONER MELENDEZ: I had a question.

7 CHAIRMAN REYNOLDS: Yes.

8 COMMISSIONER MELENDEZ: I had sent, I  
9 believe, an email asking the Commissioners about the  
10 importance of our budget and my understanding in the  
11 email I sent was that 2009 budget was actually due at,  
12 I believe --

13 CHAIRMAN REYNOLDS: Yes, in December.

14 COMMISSIONER MELENDEZ: And I didn't  
15 receive an answer. I think it's an important issue as  
16 far as where we stand on the budget based on the  
17 amount of money we had, the \$8.8 million, of the post  
18 \$11.7 that we originally thought we were going to get.

19 So that means that we have to make some adjustments  
20 with our budget.

21 There was also a question of whether or  
22 not we would have to cut back some of the briefings  
23 that we were going to hold this year and I'm not sure  
24 where we stand on that and I think it's a topic for  
25 discussion because we need to determine (Inaudible)

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1 we'll be coming to. So we really held one today. So  
2 that means that based on the Staff Director's  
3 suggestion the last time, if you were suggesting we  
4 were only going to hold three, that means there's only  
5 two more and the question would be which two are  
6 there.

7 So, I mean, there are some important  
8 issues we have to at some point address in either a  
9 business meeting or after this agenda in this meeting  
10 to get some clarification.

11 CHAIRMAN REYNOLDS: You're right. We must  
12 deal with these issues and they will be dealt with  
13 next month at the next business meeting.

14 COMMISSIONER MELENDEZ: Okay. Just one  
15 question. What about the importance of the budget  
16 that's already due by, I believe, by this past week?

17 CHAIRMAN REYNOLDS: We did not meet that  
18 deadline. We are in a transition period and, in  
19 addition to that, we need to have conversations  
20 amongst ourselves. The staff is working on a revision  
21 to our budget to take into account the cut that we  
22 received.

23 Okay.

24 COMMISSIONER MELENDEZ: One more thing.  
25 We had also had an email on the fiscal briefing

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1 complaint and there was supposed to be some looking  
2 into that issue and then getting back to us. We  
3 haven't heard anything on that also.

4 CHAIRMAN REYNOLDS: Well, I'm expecting a  
5 motion to amend the agenda to discuss that either from  
6 you or Commissioner Yaki.

7 COMMISSIONER MELENDEZ: Okay.

8 VICE CHAIR THERNSTROM: Can I just ask  
9 something on the question of briefings for a minute?  
10 We did have a briefing of the schedule in April. I  
11 hope that that topic will be up for discussion next  
12 month as well.

13 CHAIRMAN REYNOLDS: Sure. Okay, folks.

14 VICE CHAIR THERNSTROM: And that's going  
15 fast.

16 CHAIRMAN REYNOLDS: Folks, we need to try  
17 to focus on the agenda. We have a lot to cover today.

18 So we have a motion to amend the agenda  
19 and I presume that the items that you would like to  
20 add are the letter that received on the personnel  
21 issues as well as transition issues.

22 COMMISSIONER YAKI: Yes.

23 CHAIRMAN REYNOLDS: I second it.  
24 Discussion?

25 (No verbal response.)

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1 CHAIRMAN REYNOLDS: All in favor please  
2 say aye.

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: Any abstentions?

5 (No verbal response.)

6 CHAIRMAN REYNOLDS: Any in opposition?

7 (No verbal response.)

8 CHAIRMAN REYNOLDS: The motion carries  
9 unanimately.

10 **II. APPROVAL OF MINUTES OF JANUARY 11 MEETING**

11 Okay. Now, Commissioner Yaki, we're about  
12 to discuss the minutes. The second item is the  
13 approval of the minutes of January 11, 2008. I move  
14 that we approve the minutes. Is there a second?

15 COMMISSIONER TAYLOR: Second.

16 CHAIRMAN REYNOLDS: Discussion?  
17 Commissioner Yaki.

18 COMMISSIONER YAKI: Yes, as I said before  
19 in the previous agenda item, I believe that the  
20 recommendation that we voted on pertained only to the  
21 SACs and not to the reports by the Commission, the  
22 recommendations regarding reports made by Booz Allen  
23 Hamilton. I'd like the minutes to reflect that.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER HERIOT: I don't quite

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1 understand.

2 CHAIRMAN REYNOLDS: I'm not following.

3 COMMISSIONER YAKI: Booz Allen Hamilton  
4 had a multi-tiered packet. The one packet had to deal  
5 with State Advisory Committee special process. The  
6 other part of the packet had to do with the national  
7 report and reporting process. In the reporting  
8 process, they truncated and made some changes to that  
9 process that it would require an adjustment of our AI  
10 for compliance.

11 And most of our discussion though did not  
12 center on that part at all. It centered on the debate  
13 over whether or not we should be moving forward with  
14 the recommendations on the streamline SACs selection  
15 process which I objected to and which passed by a four  
16 to three margin. We kept on talking about we'll do  
17 that and we'll incorporate it and we'll see how it  
18 works and we were all clearly talking about the SACs,  
19 the SAC recommendations in the transcript.

20 So I would like the minutes to reflect  
21 that and not to reflect a general implementation of  
22 the entire thing. Simply because as a matter of  
23 administration law, we can't do the second part until  
24 we change our AIs.

25 CHAIRMAN REYNOLDS: Okay. Commissioner

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1 Yaki, you have me at a disadvantage. I'm not -- I  
2 guess I will have to review the materials. Would you  
3 be amenable to tabling the vote on the January 11<sup>th</sup>  
4 minutes?

5 COMMISSIONER YAKI: Sure. Absolutely.

6 CHAIRMAN REYNOLDS: Okay. All in favor of  
7 --

8 COMMISSIONER MELENDEZ: I make a motion to  
9 table.

10 CHAIRMAN REYNOLDS: Okay. I second. Any  
11 discussion?

12 COMMISSIONER HERIOT: We're tabling simply  
13 the request that the minutes be changed.

14 CHAIRMAN REYNOLDS: We're tabling the vote  
15 on approving the minutes for the January 11<sup>th</sup> meeting.

16 COMMISSIONER HERIOT: Okay.

17 VICE CHAIR THERNSTROM: That's it.

18 CHAIRMAN REYNOLDS: We're just punting  
19 until we had a chance to take a look at it. Okay.  
20 All in favor please say aye.

21 (Chorus of ayes.)

22 CHAIRMAN REYNOLDS: Any objections?

23 (No verbal response.)

24 CHAIRMAN REYNOLDS: Any abstentions?

25 (No verbal responses.)

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1 CHAIRMAN REYNOLDS: The motion passes  
2 unanimately.

3 III. MANAGEMENT AND OPERATIONS - TRANSITION ISSUES

4 CHAIRMAN REYNOLDS: Okay. Next we'll  
5 discuss several transition issues. At the last  
6 Commission meeting, Commissioner Yaki requested that  
7 the General Counsel provide a report of a letter sent  
8 by Nathan Penley, an attorney representing two former  
9 Commission assistants.

10 In order to discuss the letter, the  
11 following item is a motion to close a portion of the  
12 meeting pursuant to the Commission's regulations  
13 implementing the Sunshine Act. General Counsel and  
14 the Solicitor, please certify that the meeting can be  
15 closed pursuant to Commission regulations.

16 DAVID BLACKWOOD: So certified.

17 CHAIRMAN REYNOLDS: Thank you. General  
18 Counsel and Solicitor, based on our knowledge of why  
19 the agenda requires a closed portion of the meeting --  
20 We certify in writing that this meeting can be closed  
21 and the information pertaining to the same can be  
22 withheld pursuant to the following exemption provided  
23 for in the Commission regulations at 45 CFR Section  
24 702.54: Exemption 2 that it relates to the internal  
25 personnel rules and practices of the Commission;

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1 Exemption 6 that might involve disclosing information  
2 of a personal nature where disclosure might constitute  
3 a clearly unwarranted invasion of personal privacy;  
4 Exemption 10 when the meeting might involve the  
5 Commission's participating in a civil action or  
6 proceeding.

7 I move that we close this meeting pursuant  
8 to Exemptions 2, 6 and 10 of the Closed Meeting  
9 Procedures for the Commission's meetings and  
10 furthermore to authorize Dr. Lerner to place in a  
11 location accessible to the public within one working  
12 day of the public vote to close the meeting an  
13 explanation of the decision to close the meeting and a  
14 list of all persons attending the meeting.

15 Is there a second?

16 VICE CHAIR THERNSTROM: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 COMMISSIONER YAKI: Point of information.

19 When we go to closed session, everything shuts off,  
20 including the tape or the transcript.

21 CHAIRMAN REYNOLDS: I don't believe so.

22 VICE CHAIR THERNSTROM: No.

23 COMMISSIONER YAKI: There's a transcript  
24 of the closed proceeding.

25 VICE CHAIR THERNSTROM: There is a

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1 transcript.

2 COMMISSIONER YAKI: I just wanted to make  
3 sure.

4 VICE CHAIR THERNSTROM: Yes.

5 CHAIRMAN REYNOLDS: Okay. All in favor  
6 please say aye.

7 (Chorus of ayes.)

8 CHAIRMAN REYNOLDS: Any objections?

9 (No verbal response.)

10 CHAIRMAN REYNOLDS: Any abstentions?

11 (No verbal response.)

12 CHAIRMAN REYNOLDS: The motion passes  
13 unanimately.

14 (Whereupon, at 9:13 a.m., the above-  
15 entitled matter recessed for closed session and  
16 reconvened at 9:48 a.m. to open session.)

17 CHAIRMAN REYNOLDS: On the record. Please  
18 tell the folks to come back in.

19 (Off the record comments.)

20 CHAIRMAN REYNOLDS: Okay. We're back in  
21 open session. I'm sorry.

22 VICE CHAIRMAN THERNSTROM: We have some  
23 more people.

24 CHAIRMAN REYNOLDS: All right. Okay.  
25 We're back in open session. At this point, I believe

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1 we have a motion from Commissioner Yaki.

2 COMMISSIONER YAKI: Yes. Thank you very  
3 much, Mr. Chair. I would like to make a motion that  
4 the Commission vote upon the vote to approve the  
5 delegation of the authority of the staff director to  
6 Robert Lerner given the fact that it is late, getting  
7 later, in the Presidential term. With no assurance  
8 one way or another whether or not there will be  
9 forthcoming a permanent staff director, I believe it  
10 is incumbent upon this Commission to exercise its  
11 responsibility in approving the temporary appointment  
12 of, the temporary delegation of, Dr. Lerner to the  
13 authority of the staff director.

14 CHAIRMAN REYNOLDS: Is there a second?

15 COMMISSIONER MELENDEZ: Second.

16 COMMISSIONER GAZIANO: I move to table the  
17 motion on the ground that it can have no consequential  
18 effect and that such a motion is not in the, such a  
19 vote would just be deleterious.

20 CHAIRMAN REYNOLDS: Second? Is there a  
21 second?

22 COMMISSIONER HERIOT: Second.

23 CHAIRMAN REYNOLDS: Discussion?

24 COMMISSIONER YAKI: Yes. I'm a little --  
25 I would like to know how you would find a vote to be

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1 deleterious. The vote might take --

2 COMMISSIONER HERIOT: Is the motion to  
3 table -- a motion?

4 COMMISSIONER YAKI: I don't think it is.

5 COMMISSIONER HERIOT: Does a motion to  
6 table -- Doesn't that have to be just up or down?

7 COMMISSIONER YAKI: That's fine.

8 COMMISSIONER GAZIANO: I think a motion to  
9 table is non-debatable.

10 CHAIRMAN REYNOLDS: Okay. The motion is  
11 on the table. Additional discussion?

12 COMMISSIONER MELENDEZ: Which motion?

13 COMMISSIONER GAZIANO: Which motion are we  
14 voting on?

15 CHAIRMAN REYNOLDS: Additional discussion  
16 on the motion to table?

17 COMMISSIONER GAZIANO: Point of order. I  
18 don't know that there can be discussion on a motion to  
19 table which is why I made the motion.

20 COMMISSIONER HERIOT: The whole point of a  
21 motion to table is to just do it.

22 COMMISSIONER GAZIANO: That would be a  
23 substitute motion.

24 CHAIRMAN REYNOLDS: So just to stir up a  
25 now vote.

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1 COMMISSIONER GAZIANO: That's right.

2 CHAIRMAN REYNOLDS: Okay. All in favor  
3 please say aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: All in opposition?

6 COMMISSIONER YAKI: No.

7 COMMISSIONER MELENDEZ: Aye.

8 CHAIRMAN REYNOLDS: Did you say aye?

9 COMMISSIONER YAKI: He meant aye to the  
10 opposition.

11 CHAIRMAN REYNOLDS: Okay. Please let the  
12 record reflect --

13 COMMISSIONER YAKI: Which is a no.

14 CHAIRMAN REYNOLDS: Please let the record  
15 reflect that Commissioners Yaki and Melendez voted  
16 against the motion and the motion carries.

17 **IV. ADJOURN MEETING**

18 CHAIRMAN REYNOLDS: So at this point,  
19 we're going to adjourn the business meeting and I  
20 apologize for the delay of the start of the briefing.

21 COMMISSIONER YAKI: Commissioner Reynolds,  
22 I just want to make one brief announcement that I will  
23 be requesting the HR director to process my  
24 application for a special assistant.

25 CHAIRMAN REYNOLDS: Okay. We're going to

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1 have to talk about that, too.

2 COMMISSIONER YAKI: No. You can --

3 VICE CHAIR THERNSTROM: Wait a minute. He  
4 wants to file a form.

5 CHAIRMAN REYNOLDS: He can file it.

6 COMMISSIONER YAKI: I can file it.

7 CHAIRMAN REYNOLDS: Yes. Okay. Run the  
8 paperwork through. Off the record.

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