

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

+ + + + +

FRIDAY

NOVEMBER 7, 2008

+ + + + +

WASHINGTON, D.C.

+ + + + +

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

PRESENT:

GERALD A. REYNOLDS, CHAIRMAN
ABIGAIL THERNSTROM, VICE CHAIRMAN
TODD F. GAZIANO, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER (via telephone)
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
TERESA BROOKS
MARGARET BUTLER
CHRISTOPHER BYRNES, Chief, Regional Programs
Coordination Unit
IVY DAVIS, Director, Eastern Regional Office
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
ALFREDA GREENE
MAHA JWEIED
ROBERT LERNER, Assistant Staff Director for OCRE

STAFF PRESENT (CONTINUED):

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SOCK-FOON MacDOUGALL, Acting Chief, Public Affairs
Unit

TINALOUISE MARTIN, Director, Office of Management

LENORE OSTROWSKY

KIMBERLY TOLHURST

VANESSA WILLIAMSON

AUDREY WRIGHT

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY

DOMINIQUE LUDVIGSON

KIMBERLY SCHULD

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P R O C E E D I N G S

9:34 A.M.

CHAIRMAN REYNOLDS: I want to get started.

Okay, here we go. The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights, starting a little after 9:30 a.m. on November 7, 2008. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C. Commissioner Kirsanow will be participating by phone. Commissioner Yaki, I believe is in route. The other Commissioners are present.

Pete, please confirm that you're on the line.

COMMISSIONER KIRSANOW: Present.

CHAIRMAN REYNOLDS: Very good.

CHAIRMAN REYNOLDS: Okay, the first item on the agenda is the approval of the agenda.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: Is there a motion to approve the agenda?

COMMISSIONER TAYLOR: So moved.

CHAIRMAN REYNOLDS: Second, please?

COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: If we just say no, can we all just go home?

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: That's an interesting
3 question.

4 Discussion? Ashley, I thought you had an
5 item that you wanted to --

6 COMMISSIONER TAYLOR: That was with
7 respect to the minutes.

8 CHAIRMAN REYNOLDS: Oh, okay. That's
9 right, the minutes.

10 Okay, well, I would like to postpone
11 discussion of the policy for Commissioner rebuttals to
12 concurring and dissenting statements.

13 I thought I was going to have to send
14 somebody out to look for you.

15 Please let the record reflect that
16 Commissioner Yaki is with us. Since he is here,
17 rather than delve into the usual Commission business,
18 instead I would like to talk about the fact that we
19 had an election. Regardless of where you are
20 politically, I think that we can all recognize and
21 appreciate the historical and cultural significance of
22 the election.

23 In 1965, when we were enacting the Voting
24 Rights Act, we were in the process of dismantling a
25 racial cast system. Forty-three years later, we find

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1 ourselves, Americans have elected a black man as its
2 President. This is huge.

3 Now that's a historical piece, where we've
4 been, where we've come, where we are. But there's
5 also a cultural piece, one that just amazes me. When
6 I turn on the television and I see these black
7 families crying and talking about how they're telling
8 their children that they can do anything they want to
9 do and what amazes me is that all these centuries
10 black families have believed that there were limits on
11 what they can do. And for most of the century, it was
12 an accurate statement. But after the '60s, after the
13 '70s, and the '80s, there were new opportunities that
14 made themselves available because of the civil rights
15 revolution, yet this doubt, this collective doubt that
16 existed with black communities was still there and
17 became in my view a self-fulfilling prophecy.

18 If you don't believe that you can win the
19 fight, then you probably are right. And so the
20 cultural significance of this race, one of the
21 important issues is for the first time this collective
22 doubt, blacks are questioning this collective doubt
23 themselves. They're challenging this notion that
24 there are limits on what they can do and that is a sea
25 change, a welcome sea change.

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1 So in any event those are my few words on
2 the matter. I open up the floor for anyone else who
3 would like to make a comment.

4 Commissioner Yaki, I was waiting for you.
5 I suspect that you have a thing or two to say.

6 COMMISSIONER YAKI: Thank you very much,
7 Chairman Reynolds, and as I share many of your same
8 sentiments. It seems amazing that 50 years ago when
9 this Commission was formed, it was formed simply to
10 provide the enactment of basic rights afforded
11 African-Americans in this country that had been
12 promised following Reconstruction, but never realized.

13 It's even more amazing that two
14 generations after the assassination of Dr. Martin
15 Luther King, that we have come to a place where we
16 have elected a man, an African-American, who did so by
17 winning the majority of the popular vote of this
18 country in record turnout. And it's a testament, I
19 believe, to the work done by those who preceded us on
20 this Commission, by millions of Americans who marched
21 in the streets, who sat down at lunch counters, and
22 who road buses, and it's a testament to the faith of
23 the American people today that a man whose name is
24 Barack Obama could be the person that they checked in
25 the ballot box on Tuesday, November 4th.

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1 I think it's amazing. I think it's
2 wonderful. But I would say this and that is it is an
3 important milestone and achievement that cannot and
4 will not be diminished by time. It signifies many
5 things great and wonderful about these United States
6 and the promise of the more perfect union sought by
7 our founders over 200 years ago. But I still believe
8 that we still continue to search for that more perfect
9 Union and to that end our Commission still serves a
10 purpose in fulfilling that. But as that perhaps the
11 only somber note that I would say I just -- someone
12 who lived overseas so much of my life, who understood
13 what that glorious shining city on the hill called
14 America meant to so much of the world, for me it was
15 personally gratifying to see the reaction from
16 millions upon millions of people overseas with the
17 hope and the knowledge that the America that they care
18 about that was an example to them and inspiration to
19 their people is back and for all those millions of
20 Americans here who believe in hope, believe in change,
21 that we are indeed on the road.

22 And I do want to say this as a personal
23 note to my fellow Commissioners. As you know, I
24 worked very hard in my spare time on behalf of
25 President-elect Obama and I did so with the full

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1 feeling that what he stood for was not about left or
2 right. It was not about liberal, conservative. It
3 was about working together, collectively, finding
4 common ground and moving forward. And that is
5 certainly the spirit in which I intend to continue
6 working with Members of the Commission. So thank you
7 very much.

8 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

9 VICE CHAIR THERNSTROM: Well, I said some
10 of this -- I'll second obviously what I heard from the
11 Chairman and Commissioner Yaki. And I had some of
12 this in a little very short piece in the National View
13 on line yesterday, but this is a thrilling election no
14 matter what color you are. Barack Obama got a higher
15 white vote than any presidential elected President
16 since LBJ in 1964. He did better among every racial
17 and ethnic group since that year. Well, since the
18 last election. I can't tell you -- obviously my
19 politics in many ways differ from his, but I can't
20 tell you the degree to which I also celebrate this
21 election. And I hope that one of the messages that
22 will be taken from it is will be to aspiring black
23 politicians in the future, wade into multi-racial and
24 majority white constituencies and run as you can win
25 because there has been too much reluctance on the part

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1 of potential black elected officials to think we can't
2 win, except in safe black districts. It is not true
3 at the highest level of our government.

4 It has been shown that American politics
5 is now politically integrated and it can be true at
6 every level of American government. And so it's
7 again, it was a very thrilling day. As many
8 differences as I will have with the policy of
9 President Obama.

10 CHAIRMAN REYNOLDS: Commissioner Gaziano?

11 COMMISSIONER GAZIANO: I'm glad to
12 associate myself with all the previous remarks with a
13 few minor exceptions, but I don't need to point those
14 out.

15 Particularly the point that you, Mr.
16 Chairman, made about how wonderful this is that it may
17 overcome the doubt industry that surrounds certain
18 minority groups that they can't achieve in America.
19 And my own sort of personal family story which I hope
20 to write down some time, I've always been a firm
21 believer that despite the latent racism that still
22 exists, America has always been a land that you can
23 overcome that, but certainly since the landmark
24 legislation that you noted.

25 And when Barack Obama was nominated, I

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1 couldn't understand the stories that said that his
2 race would be a significant impediment to him and I
3 always suspected that the opposite was true. And I
4 can't wait for the statistics that help establish
5 that. There are silly stories throughout this
6 campaign and there will continue to be silly stories
7 that certain racists out there did not vote for him,
8 Barack Obama, our President-elect, because he was
9 black, but surely there are also some equally silly
10 stories that any person who supported McCain must have
11 done so because they are racist. And there's an
12 example of that kind of silly story in today's
13 Washington Post, an assumption that they quote and
14 prominently do.

15 So to the extent that this is a wonderful
16 teaching moment, we need to try to draw all the
17 lessons and we can perhaps in our collective and
18 individual capacities try to augment the wonderful
19 message that this teaches. And it goes both ways,
20 that there was also a sharp etiological divide and
21 that support for one or the other candidates was or
22 was not based on racism, but the much more important
23 lesson is the one that the three Commissioners before
24 me identified to the extent that it helps break the
25 grip of doubt. This is a wonderful and marvelous

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1 educational lesson.

2 CHAIRMAN REYNOLDS: Commissioner Heriot?

3 COMMISSIONER HERIOT: As long as we're
4 piling on, I have something to say too. Another
5 reason to celebrate this election that has nothing to
6 do with race, in the last couple of presidential
7 elections, there's been a trend that I find at least a
8 little bit troubling. John McCain is a very fine man.
9 He is also the son and grandson of an Admiral.
10 President Bush is a very fine man. But he's also the
11 son of a former President. Senator Gore, very fine
12 man, son of a Senator. And John Kerry, the husband of
13 a very, very, very wealthy woman. President-Elect
14 Obama doesn't have a background like that, quite apart
15 from race. And I find that a reason to celebrate in
16 itself.

17 CHAIRMAN REYNOLDS: Commissioner Melendez?

18 COMMISSIONER MELENDEZ: Yes, I'll just
19 make a short comment. I think Michael's, and everyone
20 here has said quite a bit. I think it is -- I was
21 very surprised, as a Native American, and I think we
22 can identify really with many of the discrimination
23 and all those different things that have happened in
24 this country. And the only thing I can say is --
25 Senator McCain has done a lot for Native Americans in

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1 Arizona, within that sphere, and being a Vietnam
2 Veteran also, I can identify with his contributions to
3 this country also. But I think this election was
4 bigger than that. I think when you talk about Native
5 Americans also with tears in their eyes, there was
6 something there that was larger than the politics of
7 conservative or liberal and I think that's what we're
8 celebrating today is an historical event and the
9 challenges that we have today is to bring this country
10 forward in unity and to work together. And that's the
11 message President-Elect Obama has brought to America
12 is that we have tremendous challenges and we're going
13 to have to really work together to try to overcome all
14 the things that we face in this coming year and into
15 the future. So I just wanted to say that and come --
16 I'm real proud of this country on what has happened.

17 CHAIRMAN REYNOLDS: Commissioner Taylor,
18 anything from you?

19 COMMISSIONER TAYLOR: I'm not going to go
20 on too long. I hope that all of the political
21 instructional guides now are being pulled out and the
22 chapters related to the quote Bradley effect are being
23 ripped out and thrown away forever because clearly,
24 there was no Bradley effect. Indeed, it may have been
25 quite the opposite.

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1 I think that in my view, the election may
2 have the most profound effect on the modeling of the
3 African-American family in the African-American
4 community. I anticipate that that will have the most
5 lasting impact on my community and I hope that is what
6 happens. So I was given a piece of paper yesterday by
7 someone who was not really politically active and it
8 had a picture not just of President-Elect Obama, but
9 his entire family around the Presidential Seal with a
10 picture of the White House. And the symbolism of an
11 African-American family, an intact family, is very
12 strong and I am thrilled that that is going to be the
13 picture that is going to be the model in our community
14 for the next four years. I just think that's going to
15 have a profound impact.

16 VICE CHAIR THERNSTROM: Can I say just one
17 more thing?

18 CHAIRMAN REYNOLDS: Yes.

19 VICE CHAIR THERNSTROM: I just want to
20 give you, because I had a thought yesterday myself on
21 the question of the Bradley effect and something that
22 Commissioner Gaziano referred to. Just two percent of
23 Americans told pollsters that race was the single most
24 important factor in casting their ballots and was in
25 that group Barack Obama garnered 58 percent of the

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1 votes, so exactly as you said, quite the opposite from
2 the Bradley effect.

3 Look, as a number of people have said,
4 America -- President-Elect Obama is to be celebrated.
5 America is to be celebrated. We have really turned a
6 corner here. It's wonderful.

7 CHAIRMAN REYNOLDS: Okay, Commissioner
8 Kirsanow, would you like to make a comment?

9 COMMISSIONER KIRSANOW: You know, I don't
10 have much to say beyond what's been already said.
11 It's been very eloquent. I would reemphasize what's
12 been said that this is a reflection of what this
13 country is and has become. It has always been the
14 greatest country in the history of the world. We have
15 confirmed that again. It continues to perfect itself.

16 It can never be perfect, but there's no country in
17 the world or the history of the world that could have
18 done what we did just a few days ago. This is a
19 tremendous testament to the power of what we put
20 before us. It gave rise to a treasure of blood or
21 sweat to get to this point. Barack Obama stands on
22 the shoulders of a lot of people, a lot of giants.
23 And what I am going to talk about, talking about hope
24 and change, is that this is at least a moderate step
25 for African-Americans and Italian-Americans, et cetera

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1 generally -- I=d like to get rid of that hyphen. If
2 we can do that and we have justified all the work that
3 has been done in Department of Justice, U.S. Civil
4 Rights Commission, and all the other agencies that
5 we've spent billions of dollars on to make sure that
6 we=ve got a level playing field.

7 Having said that, I don=t suffer
8 illusions. I am concerned about that 52% figure that
9 was cited by Vice Chair Thernstrom, but, so what, the
10 Civil Rights Commission still has a lot of work to do.

11 The EEOC still has a lot of work to do. There are
12 small pockets of racism in this country. Thankfully
13 very, very small, but nonetheless regardless of how
14 small it's still pernicious. We have things to do in
15 order to make sure that it goes away, but I think it
16 was Commissioner Taylor who indicated, maybe a salient
17 feature of this, the most salutary feature of this is
18 if this is a model for the black family which right
19 now, the failure of the black family, the fact that 70
20 percent of black youth live in a single-parent
21 household is much more toxic and corrupting of black
22 possibilities for improvement than blatant racism.
23 And I think that that is one of the great
24 accomplishments of the election of President-Elect
25 Obama.

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1 CHAIRMAN REYNOLDS: Okay, all right.
2 Well, thank you, everyone for your comments. Looking
3 at the agenda we were discussing the agenda and I
4 would like to move to table the discussion of this
5 policy for rebuttals to concurring and dissenting
6 statements on National Office Reports.

7 Is there a second?

8 COMMISSIONER GAZIANO: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 All in favor say aye.

11 (Chorus of ayes.)

12 Any dissents, any concurrences? The
13 motion passes unanimously.

14 Okay, next up, the minutes.

15 **II. APPROVAL OF MINUTES**

16 CHAIRMAN REYNOLDS: I move that we approve
17 the minutes of the meeting held on October 17, 2008.

18 Is there a second?

19 VICE CHAIR THERNSTROM: Second.

20 CHAIRMAN REYNOLDS: Discussion?

21 COMMISSIONER TAYLOR: Yes, I'd like to the
22 minutes to be amended to reflect the fact that I
23 joined in person at 9:40. I think I missed the
24 gaveling in of the Commission at 9:35. I think I
25 arrived at 9:40. And there are two instances in which

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1 the minutes indicate that I'm on the phone when I was
2 present. So I'd like the minutes to amended to
3 reflect that fact.

4 VICE CHAIR THERNSTROM: Nobody noticed
5 you.

6 CHAIRMAN REYNOLDS: Were you here?

7 COMMISSIONER TAYLOR: I have a very light
8 footprint.

9 (Laughter.)

10 I'm trying to change that.

11 VICE CHAIR THERNSTROM: We're looking
12 forward to it, Ashley.

13 CHAIRMAN REYNOLDS: Okay, any other
14 changes that need to be discussed?

15 Okay, so --

16 COMMISSIONER MELENDEZ: Just one. My name
17 is spelled wrong.

18 (Laughter.)

19 CHAIRMAN REYNOLDS: That's important.

20 COMMISSIONER MELENDEZ: That's important.

21 COMMISSIONER GAZIANO: I'd like an
22 investigation to find out who is responsible for that.

23 (Laughter.)

24 CHAIRMAN REYNOLDS: Okay, with those two
25 amendments --

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1 COMMISSIONER YAKI: I better check my
2 name.

3 CHAIRMAN REYNOLDS: We need to correct the
4 spelling of Commissioner Melendez' name and reflect
5 the fact that Commissioner Taylor participated in the
6 meeting in person.

7 So with those changes, all in favor,
8 please say aye.

9 (Chorus of ayes.)

10 Any dissents? Any abstentions? The
11 motion passes unanimously.

12 Okay, announcements.

13 **III. ANNOUNCEMENTS**

14 CHAIRMAN REYNOLDS: November is National
15 American Indian and Alaska Native Heritage Month.
16 This month is dedicated to recognizing the inter-
17 tribal cultures, events, lifestyles, designs, and
18 achievements of American Indians and Alaska Natives.
19 The U.S. Commission on Civil Rights has marked this
20 observation since 1976, and on behalf of the
21 Commission, I urge all Americans to celebrate National
22 American Indian and Alaska Native Heritage Month by
23 participating in appropriate programs and activities.

24 Also, November marks the 24th anniversary
25 of Fred Korematsu and Min Yasui --

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1 COMMISSIONER YAKI: Yasui.

2 CHAIRMAN REYNOLDS: Yasui, and Korematsu,
3 and Gordon Hirabashi --

4 COMMISSIONER YAKI: Hirabashi. I'm not
5 reading what you have to say about this --

6 CHAIRMAN REYNOLDS: In any event --

7 COMMISSIONER YAKI: Kansas City was
8 mispronounced.

9 CHAIRMAN REYNOLDS: Kansas City? Kansas
10 City -- we need to adjourn this meeting here so we can
11 have a conversation.

12 (Laughter.)

13 In any event --

14 VICE CHAIR THERNSTROM: He doesn't know
15 his geography.

16 CHAIRMAN REYNOLDS: I will not sit here
17 and take these insults.

18 COMMISSIONER YAKI: I will simply specific
19 and rather regionally to be the Reynolds effect.

20 (Laughter.)

21 CHAIRMAN REYNOLDS: That would be more
22 accurate. In any event, this is the 24th anniversary
23 of the petition that overturned their World War II
24 convictions for violating curfew and the evacuation
25 orders directed at Americans of Japanese descent.

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1 And finally, on November 29, 1975,
2 President Ford signed into law the Education for All
3 Handicapped Children Act, later renamed the
4 Individuals with Disabilities in Education Act. IDEA
5 guarantees that students with disabilities are
6 provided a free appropriately structured public
7 education. This anniversary reminds us of the
8 importance of working together to ensure that all
9 children are provided with educational opportunities
10 that will enable them to reach their full potential.

11 Next up, Mr. Staff Director.

12 COMMISSIONER YAKI: Mr. Chairman?

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER YAKI: I just wanted to note
15 that the coram nobis petition of Mssrs. Korematsu,
16 Hirabashi, and Yasui, while vacating their criminal
17 convictions did not have any effect upon the Supreme
18 Court opinion, Korematsu v. United States. It still
19 stands there as, to me, an ugly testament to a
20 standard that was cited by some brief -- I don't know
21 if they were friends of the Court or whoever, but it
22 was cited as a precedent in the moving paper, in the
23 briefing papers regarding the incarceration of
24 individuals at Guantanamo Bay. So to the extent that
25 decision still stains the history of the United States

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1 Supreme Court, the coram nobis decisions vindicated
2 the individual convictions and rights of those three
3 brave individuals, but Korematsu as a decision,
4 unfortunately, still stands.

5 CHAIRMAN REYNOLDS: I concur. It is a
6 stain and I suspect that my take on that case probably
7 differs from yours, but for me it's just an example of
8 the invidious nature of using racial classifications.

9 The use of racial classifications, there is a reason
10 of why there is a presumption that they're
11 unconstitutional and yes, it may be clear to all of us
12 in that particular case that it was wrong, looking at
13 the facts, but we use racial classifications in other
14 circumstances and during these discussions we have
15 disagreements, but in any event, I agree that decision
16 was a stain.

17 COMMISSIONER YAKI: As a son of a father
18 who lived in one of those internment camps, it has a
19 special impact upon me.

20 VICE CHAIR THERNSTROM: I have a question,
21 actually, Commissioner Yaki. It is true, however,
22 isn't it, that the Supreme Court has never cited
23 Korematsu as precedent in one of its subsequent
24 decisions, is that correct? I ask that not knowing
25 the answer. But I thought it was.

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1 COMMISSIONER YAKI: I believe in terms of
2 the opinion of the Court that is correct. I'll have
3 to check to see whether any of the concurring or
4 dissents had -- but I do know that some of the
5 briefing papers filed with regard to Guantanamo Bay.
6 It did cite Korematsu as a reason for allowing certain
7 actions to occur mainly on the wartime exigency --

8 VICE CHAIR THERNSTROM: Wartime powers,
9 yes. Well, appalls me also for the record.

10 CHAIRMAN REYNOLDS: Mr. Staff Director.

11 **IV. STAFF DIRECTOR'S REPORT**

12 MR. DANNENFELSER: Thank you, Mr.
13 Chairman. The Office of General Counsel has begun
14 conducting telephone interviews for their spring 2009
15 legal interns and OGC also continue to assist in final
16 preparation of the FY2008 statutory report, along with
17 OCRE and Office of the Staff Director. And also,
18 OCRE, OGC, and the Office of the Staff Director have
19 began the planning process for the FY2009 statutory
20 report.

21 Preparations are also underway regarding
22 the December briefing on English in the workplace.

23 OGC received an Equal Employment
24 Opportunity claim filed by a former Commission
25 employee and staff made an appearance on behalf of the

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1 Commission and began to research laws associated with
2 the former employee's claims.

3 The Office of Civil Rights Evaluation
4 during this period of September 29th through October
5 17th, received 122 written complaints, one
6 congressional complaint, zero walk-in complaints, 24
7 email complaints, 3 facsimile complaints, 102
8 telephone complaints of which 45 were repeat calls.
9 In total, staff received in the process 252 complaints
10 during this reporting period.

11 Within the Office of Management, staff
12 completed revisions to the Draft Agency and IT COOP,
13 Continuity of Operations Plan.

14 In the area of IT services, Nortec started
15 their extended desktop support contract on October 1,
16 2008 and a junior engineer will be on site every
17 Tuesday and Friday morning to provide assistance to
18 staff here.

19 Staff completed part one of the Exchange
20 2007 server update and they also worked on a server
21 problems with Microsoft. Management staff also
22 completed and submitted the FY 2009 FISMA report to
23 OMB by the October 1, 2008 deadline and attended all
24 relevant FISMA training sessions.

25 Section 508 training has been rescheduled

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1 until November 14, 2008.

2 The Library staff received 96 telephone
3 inquiries. They completed 48 simple reference
4 requests of the Form 16 research projects of various
5 sizes. An additional 30 research requests are
6 completed utilizing automated research services.

7 We received 150 pre-written requests and
8 30 emails requests for publications during this
9 period; 254 publications were mailed; and 35 different
10 publications were requested.

11 There were no congressional requests
12 received for publications during this reporting
13 period. "Getting Off the Stand for Enforcement of
14 Civil Rights", "Compilation of Civil Rights Laws", and
15 the "Catalog of Publications" continue to be our most
16 requested publications during this reporting period.

17 Currently we have 50 requests for
18 publications in the process.

19 The auditors have completed their field
20 work and the Agency is expecting a draft audit by
21 November 12, 2008. The Budget and Finance Division
22 has dissemination office budgets for FY 2009, taking
23 into account the FY 08 budget level that will be
24 operating under during the continuing resolution.

25 And the Human Resources Division, all of

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1 their reports that were due to the Office of Personnel
2 Management were submitted in a timely manner.

3 And the State Advisory Committees are
4 continuing to hold meetings on a variety of topics,
5 many of which were detailed in the Staff Director's
6 Report that was sent to Commissioners on October 30th.

7 That's my report, Mr. Chairman.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano?

9 COMMISSIONER GAZIANO: Yes, one question
10 struck me when I was going over this report and it
11 relates to the number of written requests and email
12 requests for publications to be mailed out. In your
13 summary, you just mentioned that there were no
14 requests from Congress, but I would assume that in
15 these days many more people are downloading
16 Commission's materials. And so I have a few questions
17 with regard to that. The first is, how far back are
18 our reports available in PDF or other form for
19 downloading? Do you know how far back or if they've
20 all been put online?

21 MR. DANNENFELSER: I'd have to check on
22 that. I believe they go back at least two years, but
23 it's probably longer than that in terms of things that
24 are archived and available through the archives.

25 COMMISSIONER GAZIANO: I don't know if

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1 other Commissioners are as interested, but I'd be
2 interested in maybe if it's appropriate for a report
3 on that and we might discuss whether to put some
4 others -- it struck me, particularly the other job I
5 have which is a think tank that we measure the number
6 downloads we have of our documents. It seems very
7 important to us and many other organizations to know
8 in this day and age how many we mail out is no longer
9 a very important measure of whether our documents are
10 being read. I would expect that congressional
11 staffers whose boss tell them they want something
12 immediately are not necessarily going to write that it
13 be sent in the mail.

14 And so the next question, does the
15 Commission -- may have some issues as far as tracking
16 that, but my next question would be is how can we
17 track so that we know the relevance of at least to
18 others of some of our work? I don't know whether it's
19 to turn on the toggle switch that's already on our
20 email, some people don't want to give their cookies
21 away. I don't know what that means, but I know it's
22 something.

23 (Laughter.)

24 But most people don't --

25 COMMISSIONER YAKI: Are we dealing in

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1 euphemisms here?

2 (Laughter.)

3 Is there something here that the Civil
4 Rights Commission must deal with now?

5 COMMISSIONER GAZIANO: I understand
6 there's something, there's a secondary or primary --

7 COMMISSIONER YAKI: All right --

8 COMMISSIONER GAZIANO: Okay, but the
9 reports, for example, that we've gotten at my think
10 tank are quite valuable to us. They contract on a
11 day-by-day basis. You can chart the downloads, but
12 you can also say what sectors. You could say that
13 certain of them are from the Executive Branch by the
14 gov or which are from Capitol Hill. By the way, we
15 may want -- if we're going to do that, I think it's
16 very valuable to me. We may want to ensure anonymity,
17 individual anonymity, individual anonymity, but it
18 still might be helpful to know how many are from
19 mail.house.gov or how many are from -- but we might
20 decide not to do that, but at least I do want to know
21 how we can measure that in the future, at least the
22 number of unique visitors to our website. It doesn't
23 necessarily need to be a monthly edition, but maybe it
24 should be.

25 There's all sorts of unique visitors and

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1 how long they stay on your site, and how many page
2 visits and there's a wealth of information that I
3 think might be more relevant today than the number of
4 reports that we've mailed out.

5 CHAIRMAN REYNOLDS: Vice Chair Gaziano,
6 you're not suggesting that perhaps the rumor of the
7 Heritage Foundation running a beta test of some
8 Homeland Security software isn't actually being --

9 COMMISSIONER GAZIANO: No, we just hope
10 that liberals are downloading our papers and we want
11 anyone on the Transition Team for the Obama
12 Administration to download all of our wisdom.

13 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

14 VICE CHAIR THERNSTROM: I like,
15 Commissioner Gaziano's suggestion very, very much and
16 his concern about the accessibility of the voluminous
17 records of this Commission over the years. But I am
18 not so concerned about how many downloads there are or
19 to put it another way, I don't want us to lose site of
20 the importance of some of our reports over the years
21 going all the way back to the beginning of the
22 Commission, the importance of these reports and the
23 materials generated to academics, to historians, to
24 political scientists. They may not come in droves,
25 but the person who wants to see one of the original

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1 reports, proceeding, for instance, the passage of the
2 Voting Rights Act, that information is invaluable even
3 if it's one person, two people, three people, and so
4 you know --

5 COMMISSIONER GAZIANO: Absolutely, there's
6 no way am I suggesting that -- but for example, the
7 number of edu -- it's just information.

8 CHAIRMAN REYNOLDS: There's no
9 disagreement between the two of you.

10 VICE CHAIR THERNSTROM: No, I just want
11 everything possible.

12 COMMISSIONER YAKI: But we haven't
13 discussed whether they want cookies or not?

14 VICE CHAIR THERNSTROM: I don't eat
15 cookies.

16 CHAIRMAN REYNOLDS: They both make very
17 good points. If we are to -- if we want to quantify
18 our relevance, Todd's point is extremely important.
19 He is right. The mailouts don't necessarily reflect
20 the amount of information, the amount of requests that
21 we respond to.

22 COMMISSIONER TAYLOR: Mr. Chair?

23 CHAIRMAN REYNOLDS: Yes.

24 COMMISSIONER TAYLOR: If I may, I'd like
25 to get some information --

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1 MS. SCHULD: I thought that getting our
2 old reports available in digital form was part of our
3 agreement with the Thurgood Marshall Law Library. So
4 maybe that is the avenue. Maybe that's our conduit.
5 And so as part of your looking to how we track and if
6 we track and how many reports, I think that might be
7 built into that agreement.

8 CHAIRMAN REYNOLDS: Okay, so for the next
9 business meeting, please include in your report an
10 update on this issue.

11 MR. DANNENFELSER: Will do. Thank you.

12 CHAIRMAN REYNOLDS: Any other questions?

13 Okay, next up. I move to approve the
14 project outline and discovery plan for FY 2009
15 statutory report on the possible effect of relaxed
16 lending standards for minorities on the mortgage
17 crisis prepared by staff and distributed to
18 Commissioners on October 30, 2008.

19 **V. PROGRAM PLANNING**

20 **1. PROJECT OUTLINE AND DISCOVERY PLAN FOR FY 2009**

21 **STATUTORY REPORT**

22 CHAIRMAN REYNOLDS: Is there a second?

23 VICE CHAIR THERNSTROM: Second.

24 CHAIRMAN REYNOLDS: Discussion?

25 CHAIRMAN REYNOLDS: Okay, I have some

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1 discussion. Maybe you can recognize somebody else
2 first.

3 First of all, I don't really like this
4 title here of this report. We've got a conclusion
5 written into the title, as it were.

6 And there's no reason even for a reference
7 to minorities. It can simply read -- I'm sorry, I had
8 made a note myself of this and I've lost my own note,
9 but here we go. I've got it.

10 I don't know why it doesn't read simply
11 "relaxed lending standards and the mortgage crisis."
12 So we leave out the question of whether it has an
13 effect. We leave out the question of specifically on
14 minorities.

15 CHAIRMAN REYNOLDS: What's our hook then,
16 looking at our statutory jurisdiction, jurisdictional
17 requirement?

18 VICE CHAIR THERNSTROM: Commissioner Yaki
19 is very eager to come in on this and I will let him.
20 I have more to say about this.

21 COMMISSIONER YAKI: I was looking at the
22 title as well and I was not exactly enthralled or
23 overwhelmed. I was wondering if something much
24 simpler that fits into our statutory mandate which
25 would simply be an examination of civil rights issues

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1 with regard to the mortgage crisis or something like
2 that?

3 VICE CHAIR THERNSTROM: That would be fine
4 with me, too. But I don't like the existing -- that
5 would be fine with me.

6 CHAIRMAN REYNOLDS: That's fine with me.
7 Other comments? Are there any violent objections to
8 the proposed amendment? Nonviolent objections?

9 COMMISSIONER GAZIANO: What was it again,
10 examination --

11 CHAIRMAN REYNOLDS: Commissioner Yaki.

12 COMMISSIONER YAKI: Examination of civil
13 -- I'm sorry?

14 CHAIRMAN REYNOLDS: No, please repeat the
15 title that you offered.

16 COMMISSIONER YAKI: Since I just sort of
17 made it up, examination of civil rights --

18 CHAIRMAN REYNOLDS: You made it up on the
19 fly?

20 COMMISSIONER YAKI: Yes.

21 (Laughter.)

22 An examination of civil rights issues with
23 regard to the mortgage crisis.

24 VICE CHAIR THERNSTROM: Or civil rights
25 implications.

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1 COMMISSIONER YAKI: Civil rights
2 implications with regard to the mortgage crisis.

3 VICE CHAIR THERNSTROM: Yes.

4 COMMISSIONER YAKI: Examination of civil
5 rights implications on the mortgage crisis.

6 VICE CHAIR THERNSTROM: Okay, then I have
7 a comment.

8 COMMISSIONER GAZIANO: I like your
9 original better, Commissioner Yaki. Implications
10 suggest that what are the implications on minority of
11 the crisis. I think civil rights issues relate to
12 both causes and effects. So I would prefer the
13 former.

14 COMMISSIONER YAKI: Let me try this again.
15 An examination of civil rights issues -- is anyone
16 writing this down?

17 An examination of civil rights issues --

18 VICE CHAIR THERNSTROM: With respect to --

19 COMMISSIONER YAKI: With respect to the
20 mortgage crisis.

21 VICE CHAIR THERNSTROM: Yes, that fine.
22 Does that work for you, Commissioner Gaziano?

23 COMMISSIONER GAZIANO: I'm not --

24 CHAIRMAN REYNOLDS: Okay, next, any other
25 comments?

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1 VICE CHAIR THERNSTROM: Yes, I have a
2 comment.

3 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

4 VICE CHAIR THERNSTROM: Okay, I don't know
5 whether this is an appropriate comment now or you want
6 it delayed, but I want to talk about the time table
7 for the 2009 statutory report.

8 I'm really troubled by the deadlines for
9 the very ambitious deadlines that have been proposed
10 for this report. I think they're completely
11 unrealistic. I mean I --

12 CHAIRMAN REYNOLDS: Walk us through the
13 dates.

14 VICE CHAIR THERNSTROM: Okay, so we have a
15 proposed time table here that interrogatories will be
16 issued to various agencies and entities on December 1
17 and we will receive responses by January 5, 2009.

18 First, December is a major holiday month,
19 obviously, as well as use-it-or-lose-it leave month
20 for federal employees. Almost no one in the Federal
21 Government will be working more than 10 days during
22 this interval, except for perhaps our new President's
23 Transition Team.

24 Second, in case anybody has missed it, we
25 have a new Administration moving into town. That will

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1 further delay any responses to our interrogatories.
2 On the assumption that indeed, we will get responses
3 which I hope so and I'd like to make a motion that
4 this path not be held accountable for failure of
5 federal agencies to respond to our interrogatories by
6 January 5.

7 CHAIRMAN REYNOLDS: Don't you -- wouldn't
8 you rather propose that we revise the dates?

9 VICE CHAIR THERNSTROM: No, because I
10 think we're going to have -- I'd be happy to revise
11 the date, but I think we really are going to have to
12 go with the flow here a bit and I don't want the staff
13 held accountable for the failure of federal agencies
14 to respond to the interrogatories and date that we set
15 and I don't want their performances being affected.

16 COMMISSIONER GAZIANO: Will the Vice Chair
17 yield for a question?

18 VICE CHAIR THERNSTROM: Yes.

19 COMMISSIONER GAZIANO: Just the way I read
20 this, it's January 5th is the date when our staff is
21 directed just to follow up with the agencies. It
22 doesn't -- I don't read the kind of consequences into
23 it or the requirement that agencies -- but in my
24 former civil litigation experience and those -- the
25 current civil litigators in the room can comment. If

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1 you don't, at least, give some 30-day deadline and
2 then try to follow up, then the time always expand.

3 CHAIRMAN REYNOLDS: Well, what about this?

4 I don't think that there's a disagreement -- everyone
5 agrees that staff should not be held accountable for
6 agencies' failure to respond. Staff's obligation is
7 to get the interrogatories out in a timely fashion.
8 Once that's done --

9 COMMISSIONER HERIOT: And to follow up.

10 CHAIRMAN REYNOLDS: Yes, we would expect
11 appropriate follow up, but if for whatever reason the
12 response doesn't -- we don't receive it in a timely
13 fashion, I don't think -- no one would consider --

14 COMMISSIONER HERIOT: There's nothing in
15 this document that says they must be held accountable
16 for failure of the government to respond.

17 CHAIRMAN REYNOLDS: Mr. Staff director?

18 MR. DANNENFELSER: Also, that date,
19 there's bracketed right next to that date is the
20 comment that deadline be met is dependent on agencies'
21 response time, so that is factored in that the
22 agencies may not respond in the optimum timely
23 fashion.

24 VICE CHAIR THERNSTROM: I'm just sort of
25 concerned that the staff be protected here and also

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1 I'd like to hear from the staff of the restructuring
2 of the time line, that is we elicited, since I think
3 --

4 CHAIRMAN REYNOLDS: I'm not sure that
5 pushing the dates out after giving it some thought is
6 the way to go. I would much rather struggle with
7 trying to get agencies to hand over the data as
8 opposed to pushing the date back and then trying to
9 get them to hand over the data. But your larger
10 point, I think there's -- everybody agrees with you
11 that staff can't be held accountable for an agency's
12 failure to respond timely.

13 Do you have any other concerns?

14 VICE CHAIR THERNSTROM: No, and timely,
15 timely means in time for them really to work with the
16 data in a proper way. I mean you know, I think that
17 some very close communication with the staff is going
18 to be required so that there isn't a blame game at the
19 end of the day.

20 MR. DANNENFELSER: I think the General
21 Counsel would like to make a comment, Mr. Chairman.

22 CHAIRMAN REYNOLDS: Mr. Blackwood?

23 MR. BLACKWOOD: With regard to these time
24 lines, we've had problems with the time lines since I
25 arrived here. The 2007 report, we knew from the very

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1 beginning the time line was set against us and we
2 weren't going to be able to comply with it.

3 Last year we tried to adjust to that and
4 again it was unrealistic. This year, this reflects
5 some of the changes that were adopted through the Lean
6 Six Sigma process.

7 Part of the problems, I can tell you this
8 year, already are beginning because we're behind.
9 This is really, this is not a one-year process, it's
10 about an 18-month process. Part of the problem was
11 selecting the topic, honing the topic, etcetera.

12 The way this time line was derived was by
13 backing out. We know we have our end deadline, now
14 let's work backwards.

15 I can tell you now we're not going to hit
16 all the deadlines. Right now, this is about as tight
17 as we can get it. We think we can hit it if we work
18 extremely hard. We do get the responses.

19 I don't think we're going to get responses
20 within 30 days. Now we understand that, but we don't
21 have discretion to prepare any time line to
22 arbitrarily put down what we think is going to happen.

23 I'm glad that you pointed out it's probably going to
24 be more than 30 days.

25 I am somewhat hopeful that in this

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1 particular topic, the publicly available information
2 out there will speed this up.

3 VICE CHAIR THERNSTROM: HMDA.

4 MR. BLACKWOOD: Exactly, the HMDA data,
5 Fed studies, HUD studies. To a large extent I think
6 the basic data we need is out there. We just need to
7 get it.

8 Some of it is not publicly available, but
9 we know they've done it, these analyses. The biggest
10 issue this year, I think, is going to be putting them
11 together and analyzing them.

12 But working back from our statutory
13 deadline with the assumption that we will hit
14 everything, this is a realistic thing, as realistic as
15 we can get.

16 What I propose this year to do and would
17 be glad to do is to tell at every business meeting
18 where we are.

19 VICE CHAIR THERNSTROM: Thank you. That
20 would be great.

21 MR. BLACKWOOD: Well, on behalf of staff,
22 I would say we like that. We would prefer that to let
23 you all know where we stand. If someone is having
24 trouble getting -- number one, if we find that a
25 certain avenue of research simply doesn't -- is not

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1 panning out or doesn't exist, we would like to tell
2 you that up front. So if there's a feeling among the
3 Commissioners we need to readjust the topic, you all
4 will know that and know that sooner rather than later.

5 CHAIRMAN REYNOLDS: Well, Mr. Blackwood,
6 thanks for volunteering to give us a monthly update.
7 I think that's a very good idea. That way we won't
8 have surprises. That way we would know -- if we can --
9 - in some cases we can help, but the bottom line is it
10 is better for us to find out that we're having
11 difficulties as the difficulties arise as opposed to
12 getting to the end of the process and finding out it's
13 not going to be ready for X number of weeks or months.

14 VICE CHAIR THERNSTROM: And I would
15 assume, Mr. Blackwood, that as part of that report,
16 the question is not only how quickly the responses to
17 interrogatories come in, but also whether the staff
18 doing the basic research and writing can meet the
19 deadlines that we have laid out and so that's part of
20 what we need to hear, what the difficulties are.

21 MR. BLACKWOOD: I will tell you, the
22 biggest change with the Lean Six Sigma processing and
23 what frankly after working the 2007 report, that was
24 very much pushed was that our first draft law is going
25 to be in the nature of an annotated outline. Instead

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1 of wasting time trying to draft something which is not
2 ready to be drafted, here's an outline, this is what
3 we're showing. It's the opportunity for the
4 Commission to correct where we're going. If you don't
5 like where the report is going, that very first step
6 is to give us the guidance that we need, not at the
7 end, but at the beginning of the process, after we've
8 begun to get the data together.

9 VICE CHAIR THERNSTROM: And that will go
10 to all Commissioners.

11 MR. BLACKWOOD: Correct.

12 CHAIRMAN REYNOLDS: Okay, Commissioners
13 Gaziano and then Yaki.

14 COMMISSIONER GAZIANO: I just want to talk
15 about this, the substance of this. I think it's too
16 ambitious and in light of what --

17 VICE CHAIR THERNSTROM: The substance of
18 the report?

19 COMMISSIONER GAZIANO: Yes. It's -- and
20 there's some of it that I think is less important than
21 others. And in meeting the deadlines, by the way, I
22 think it's -- providing that Commission staff has time
23 to do a great job, it's probably more important to
24 keep the initial request deadlines short and that you
25 all bug the agencies as much as possible as early as

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1 possible to make sure they've received and they're
2 working on the request.

3 But now to the substance of my concerns, I
4 might not have been clear in the last meeting and I
5 should have followed up with perhaps the Staff
6 Director and the General Counsel in clarifying some of
7 my views, but one of the things I suggested would make
8 me feel a lot more comfortable, at the last meeting,
9 was to know specifically which databases existed. And
10 that's reflected in the minutes of the last meeting.
11 And what that might show and maybe what I wasn't clear
12 about is a clearer statement of the research
13 hypotheses, because there may be more than one, and
14 how those data bases would be tested. And a specific
15 concern I have is there's nothing in the current
16 report that specifically identifies, it's rather
17 general, rather vague, that says there is this
18 database that the Fed maintains. There is something
19 in the concept paper to that effect and here's the
20 test that our social scientists can run on it. Here's
21 the hypothesis. There is this other database that's
22 maintained by FDIC.

23 Regarding my -- in a minute, I think that
24 there are several -- if we're already a little bit
25 behind, there are several aspects of this that might

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1 not be necessary or probably aren't necessary, two are
2 more narrow and focused examination.

3 For example, in Sections 2 and 3, there's
4 a lot of overviews of the history and other issues
5 relating to fair housing discrimination. In 3, 3C for
6 example, I don't know what an overview of social
7 science studies on mortgage discrimination entails. I
8 don't know whether there are a thousand social science
9 studies on mortgage discrimination in the last 40
10 years. I don't know whether this is time bound or not.

11 But collecting the hundreds or thousands might take a
12 staffer a significant amount of time. I don't know
13 what overview means either, but I'm not sure it's
14 necessary if we have a more focused examination.

15 We already have overviews of the history
16 of fair housing. We already have an overview of
17 mortgage lending statistics and changes in lending
18 statistics. I'm not sure that all of them are
19 necessary, but what is suggested here is a meta
20 analysis of hundreds or thousands of social science
21 studies, that would take, I imagine, any outstanding
22 social scientists months to do and I'm not sure that
23 it's necessary.

24 What I would like going forward --

25 CHAIRMAN REYNOLDS: Before you go on, Dr.

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1 Lerner, would you shed some light on this section
2 here, overview of social science studies of mortgage
3 discrimination?

4 DR. LERNER: Sure.

5 COMMISSIONER GAZIANO: While he's coming
6 up, let me -- what do we have as a comparative
7 advantage to contribute in this debate? There are
8 dozens and dozens of outstanding scholars already in
9 this field. What we, it seems to me, have a
10 comparative advantage is is we can get data from
11 federal agencies.

12 VICE CHAIR THERNSTROM: But we do need
13 context.

14 COMMISSIONER GAZIANO: Some context,
15 surely. But I would rather --

16 CHAIRMAN REYNOLDS: Let's listen to Dr.
17 Lerner.

18 COMMISSIONER GAZIANO: Maybe I picked the
19 wrong point. It seems like there's about -- if we
20 pick one or two things that we can do really well that
21 we -- if you let me return to that other point.

22 DR. LERNER: Okay, let me respond to the
23 Chairman's request. As far as data sources are
24 concerned, I can also talk about the number of studies
25 I've actually done, so looking at that already. Let's

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1 start with data sources first. Some of the data that
2 we would use to sketch the background is publicly
3 available, meaning we can get it almost immediately.
4 We might have to pay a tiny fee for it, it's available
5 to the general public or it's available to scholars,
6 the HMDA data which is the Home Mortgage Disclosure
7 Act data which is a piece of legislation that provides
8 for a great deal of housing and above all mortgage
9 discrimination kinds of information. That's probably
10 available to be used in hearings. It's been available
11 since 1990 and we can actually probably put together a
12 pretty nice package on that. That shouldn't be hard.

13 There's, of course, census data on
14 housing, too, that's publicly available. Again, it's
15 a matter of downloading it and doing statistical
16 analysis.

17 COMMISSIONER GAZIANO: Do you have a
18 concern of putting that in the paper? Why was that
19 not in the paper? This database we're going to -- is
20 available. It would tell us this?

21 DR. LERNER: I thought we actually did,
22 but the idea of doing this was to make this very
23 general and it was -- more of it was in the concept
24 paper, more of it were earlier drafts of this thing.
25 They were excluded for reasons of economy and space.

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1 Yes, I could -- I'd be glad to do that.

2 CHAIRMAN REYNOLDS: I get the impression
3 that most of the information that we need we can get
4 and we can get the information, start reviewing it,
5 start analyzing it while other folks in your shot and
6 David's shop are bird-dogging the outstanding requests
7 that are pending at agencies. So we won't be in a
8 position where we're sitting just waiting for data to
9 come in. We have a sufficient amount of data, so we
10 can start work.

11 DR. LERNER: Correct. If I can add one
12 more point to that. One study that Commissioner
13 Gaziano was referring to which was the study the Fed
14 did on the validity of credit score as a means of
15 assessing credit worthiness of individuals, that's a
16 study that was done in 2003 as a response by the FTC
17 and the Fed in response to a request for Congress to
18 evaluate credit scoring. And it's the most
19 comprehensive data that I've been able to find on the
20 subject. It combines in one data set not only credit
21 scores, but also the demographic information of
22 individuals.

23 I have to add that the credit scores used
24 by mortgage companies and by the credit scoring
25 agencies by law are not allowed to collect race data,

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1 so those -- when you see what is it, TransUnion and
2 Equifax and all those, the data that they have, they
3 have individual data, by the way, they don't release
4 any of that data to anybody by name. There's all
5 kinds of privacy protections. None of that data is
6 related to race. That's, in fact, against the law to
7 do so. So when the Fed did their study, they got data
8 from the Social Security Administration. They got
9 data from these credit agencies, they constructed
10 their own version of the credit scores and that's what
11 they used to do their analysis. And that's the one
12 piece of data in the interrogatories that I'd like to
13 request because that's the one thing that's probably
14 not available to the public and it's one of the things
15 that we would, as a watchdog gate so you have access
16 to that nobody else would.

17 CHAIRMAN REYNOLDS: Your competitive
18 advantage.

19 DR. LERNER: Yes, that's what I'm getting
20 to, that's right. This is the one thing, we would
21 probably have access to either they would allow us to
22 have a public version of the data set before perhaps
23 they would be willing to do that, statistical runs for
24 us, using the data in which means the data would stay
25 in their shop. They wouldn't see it, but we would ask

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1 them to do certain kinds of statistical work and they
2 would send us the output and from the output we could
3 write what we needed to write. So I believe either
4 way it would work. We're going to try for the first
5 as part of the interrogatories.

6 This is a uniquely valuable piece of data.

7 I never heard of this thing before we started working
8 on this study. And because it raises the question of
9 how are you going to measure the credit worthiness of
10 people in an objective way?

11 One of the problems with mortgage lending
12 over the many, many years, is of course, well, a lot
13 of problems, but one of them is -- it's based on some
14 fairly loose and casual assumptions. I think that's
15 one of the reasons, for example, the practice of
16 redlining which was not that uncommon not that long
17 ago. Persistent redlining in the collective sense is
18 simply not writing mortgages for particular areas or
19 particular neighborhoods. The process itself began in
20 the 1930s, ironically, with the Federal Government,
21 actually doing that, but presumably, informally, and
22 by law elsewhere such a thing occurred, but the name
23 actually comes from the Federal Housing Authority.
24 It's kind of an irony about this particular ideal of
25 measure. But so there was legislation to prevent

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1 that. The Equal Credit Opportunity Act and the Fair
2 Housing Act, as well as the Community Reinvestment Act
3 are all designed to deal with that.

4 COMMISSIONER GAZIANO: Let me go back to
5 my --

6 VICE CHAIR THERNSTROM: Wait a minute,
7 there was a question you posed he hasn't yet gotten
8 to.

9 COMMISSIONER GAZIANO: I was making a
10 statement, please let me just go back --

11 CHAIRMAN REYNOLDS: Hold on folks. The
12 question that was on the table you wanted a
13 description of what was entailed with this overview of
14 social science studies of mortgage --

15 COMMISSIONER GAZIANO: I haven't heard
16 that yet, but no -- I haven't heard that yet, but what
17 I wanted to say is one of the problems with this
18 smorgasbord description we have that existed in the
19 last year's statutory report is it creates
20 expectations among different Commissioners. We had
21 comments of Commissioners in the Religious Liberty in
22 Prisons that the concept paper promised we were going
23 to examine the faith-based this and it wasn't done and
24 that was just a crying shame or a sin or a violation
25 of our rules. If we're really going to do a focused

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1 study, then that's what we need to vote on. If we're
2 going to imply that we're going to do ten things,
3 we're either setting ourselves up for failure when we
4 later limit it or we --

5 CHAIRMAN REYNOLDS: Well, Todd, how about
6 this -- the understanding is is that this is a
7 framework that will be refined and developed as the
8 data comes in. We can't say -- we can't discuss what
9 the amount of precision that you're talking about
10 until we have data. We don't know what we'll be able
11 to get.

12 COMMISSIONER GAZIANO: This plan covers a
13 lot more than data. Let me get back to that, but
14 because Dr. Lerner spoke about the data set, that's
15 not identified in what we're voting on, but I also
16 don't -- I think we should vote on what the research
17 hypotheses that are going to be tested on, so that
18 will be a follow-up question I'd have to Dr. Lerner
19 that I think should be presented to us. How is that
20 data set going to be tested and in what ways will it
21 satisfy Commissioner Yaki that we're asking
22 alternative questions? Because the same data set
23 might answer more than one hypotheses, so I think that
24 that's the kind of thing that the Commissioners should
25 be concentrating on so that we know whether someone

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1 else's plan for the data is one that we think is
2 compelling.

3 CHAIRMAN REYNOLDS: Commissioner Heriot?

4 COMMISSIONER HERIOT: I just want to point
5 out that what I see coming from both these documents
6 here for the upcoming report is another train wreck.
7 And I'm very, very pessimistic at this point. This is
8 not specific enough. This is another grand
9 authorization just to sort of go out there and find
10 something and with the religious liberties statutory
11 report what we got I think was extremely disappointing
12 and I predict we're going to get something very
13 similar this time unless we get more specificity.

14 I think we need a much more -- a much
15 tighter control over the report as it unfolds over the
16 next year. And I can't vote for this at this point.
17 I need more specificity.

18 VICE CHAIR THERNSTROM: Can I hear from
19 Dr. Lerner the rest of what he was going to say and
20 perhaps a response to Commissioner Heriot as well.

21 CHAIRMAN REYNOLDS: Well, actually,
22 Commissioner Yaki was next in the queue. No? Okay.

23 VICE CHAIR THERNSTROM: I just want to
24 hear -- we interrupted him --

25 DR. LERNER: Well, one question I'm not

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1 sure I remember exactly the question --

2 VICE CHAIR THERNSTROM: The question was
3 kind of the framework, one of the questions that
4 Commissioner Gaziano raised was whether there was a
5 manageable literature on the history of this topic on
6 the previous scholarship on the top, but whether it
7 was possible to do a kind of useful summary for us.
8 And now there's the additional question of whether
9 we're headed into a train wreck all together because
10 we're setting ourselves up for something that's not
11 management. The person I trust in responding to this
12 is -- you're it. You and the General Counsel, Mr.
13 Blackwood are mostly responsible and I'd like to hear
14 from the two of you.

15 MR. BLACKWOOD: Well, if I could --

16 DR. LERNER: Go ahead, David, and then
17 I'll --

18 MR. BLACKWOOD: If I could first -- if we
19 already had the data sets identified, we'd list them.
20 Part of the reason this is a more general document,
21 so you understand is we don't know the exact data
22 sets. I mean Bob mentioned one study. There are a
23 variety of studies. There are stacks of studies. If
24 I could identify specifically right now what those
25 were, we could do that. That's why I propose to, in

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1 essence, report periodically to let you know what
2 we're finding.

3 Part of the problem with the religious
4 report issue last year was there was an assumption
5 that there was a data set of information out there
6 with the Bureau of Prisons that didn't exist. Now
7 maybe at some point we should have come back and said
8 we need to revisit this whole topic or the data set.
9 But at this stage of the game, given what the time
10 we've had, we cannot and did not want to create the
11 parameters of the data set because we don't know what
12 they are yet.

13 COMMISSIONER GAZIANO: What's the research
14 hypothesis then that we're going to be searching for
15 data sets? I don't see any statement of the research
16 hypothesis that you're going to use to test.

17 MR. BLACKWOOD: There is no single
18 hypothesis.

19 DR. LERNER: The format of these proposals
20 and these documents don't, in fact, we follow -- I
21 follow them in writing this not the project, not the
22 procedure I would use if I were writing my own book,
23 but the documents that the Commission had previously
24 used, the concept paper, the discovered plan of the
25 statutory report outline or the chapter outline. And

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1 in those, they have a general problem that they're
2 looking at. They don't necessarily have specific
3 hypotheses to test. That's the way those documents
4 have read. That's the way they're read in the 2007
5 report. That's the way they read for the 2008 report
6 and I believe, David, you can correct me and I'm
7 wrong.

8 MR. BLACKWOOD: I wasn't clear enough last
9 meeting and so I take my share of blame for not being
10 clear, but I'll state it again, that's what I wanted
11 you all to help us to develop so that we could vote on
12 it. I think that work needs to be done first.

13 CHAIRMAN REYNOLDS: Well, Todd, you're
14 bringing up a different issue here.

15 COMMISSIONER GAZIANO: The problems we had
16 last time were caused because the direction to staff
17 was too general and it created expectations --

18 CHAIRMAN REYNOLDS: Todd, you are asking
19 us to adopt a methodology that we've never used before
20 and it's not clear to me that it would be appropriate.

21 This is not hard core social science that we're doing
22 here. We have social scientists that we use to help
23 us inform our views on public policies as they relate
24 to civil rights, but we are not a pure research shop
25 here. And if we were, then they wouldn't -- the

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1 Commission wouldn't be Commissioners.

2 COMMISSIONER GAZIANO: We can always
3 refine the research hypothesis, but it seems most
4 appropriate to me that the Commissioners approve the
5 general one or two or three research hypotheses and
6 then based on the recommendations, the social
7 scientists' views, I also -- let me go back to one of
8 my other questions again. We set ourselves when the
9 concept -- or not the concept paper and the discovery
10 plan said we were going to do 20 things in this
11 religious liberty paper. Now we have Commissioners
12 and their concurrences and dissents decrying the staff
13 that we didn't to subpart B(2)(4). And we've got a
14 lot of these in the current plan.

15 Let me just -- the reason you came up --
16 how many social science studies on mortgage
17 discrimination are there?

18 DR. LERNER: Well, there are not --

19 COMMISSIONER GAZIANO: What do you think?

20 DR. LERNER: Well, there are not
21 thousands. There are many. They're many a dozen.

22 COMMISSIONER GAZIANO: Goes does that
23 apply in the last 10 years?

24 DR. LERNER: Yes, although ones of
25 sufficient quality that are notoriety that are worth

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1 looking at in my --

2 COMMISSIONER GAZIANO: That's a lot of
3 caveats. I would have probably preferred that those
4 caveats be put in there, but to what effect? What
5 would we review the social science literature?

6 If it's related to the question we're
7 looking at, that's important. If it's unrelated to
8 the question that we're examining, I'm not sure why
9 that's necessary.

10 CHAIRMAN REYNOLDS: We can't get
11 there until we review the literature. Is that right?

12 COMMISSIONER GAZIANO: We should have a
13 focus first. Then we should decide what literature is
14 relevant to it.

15 VICE CHAIR THERNSTROM: I'm not sure that
16 that's correct. Dr. Lerner?

17 DR. LERNER: We do have a kind of a focus
18 on the literature. We're looking at all fair housing
19 issues.

20 We're not looking at all equal credit
21 issues. We're focusing on one particular issue which
22 is mortgage discrimination, or mortgage lending
23 discrimination depending on how you want to phrase it.

24 And there are a number of very important
25 studies that have been done, one of those studies that

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1 was cited in one of the earlier documents. I believe
2 it was in the concept paper, that was in the American
3 lead article, the American Economic Review in 1996,
4 that was a study out of a Boston Fed that purported to
5 study this kind of discrimination. And that's
6 probably the leading publication and that was the real
7 initiation of this entire -- it's called the
8 literature on the subject.

9 Of course, that also provoked also
10 controversy and so on and so forth because in fact, it
11 reached for so many controversial conclusions and it's
12 methodology was challenged. Nonetheless, that's
13 really the founding study of all this. What may have
14 happened 50 years ago is essentially irrelevant
15 because of social science methodology and theories
16 have improved so much that it's basically history.

17 I guess in the pejorative sense. There aren't that
18 many studies of mortgage credit discrimination of
19 which I am aware.

20 I don't have a list. I haven't done a
21 full inventory at this point. There are not thousands
22 and not hundreds. Fifty, I think, is a generous
23 numerous. My guess is that the answer is more like 20
24 or even less. So to get back to your other comment --

25 COMMISSIONER GAZIANO: That's very

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1 helpful, by the way. That's not the kind of
2 specificity in the --

3 DR. LERNER: Right, but I wasn't asked to
4 provide that, so I didn't. I'm sorry, Commissioner
5 Gaziano, I respond as people see fit, but also we have
6 that kind of specificity was not -- let me, in defense
7 of my colleagues, that was not built into the previous
8 concept paper discovery plan, statutory report --

9 COMMISSIONER GAZIANO: Several of us asked
10 for it this time.

11 DR. LERNER: Okay, well, then in that case
12 then we have to take that -- if that's going to be the
13 way B we can see if that has to be taken as direction
14 or not. The Commissioners have to decide that. We
15 can't decide that.

16 COMMISSIONER GAZIANO: Mr. Staff Director,
17 can you comment?

18 MR. DANNENFELSER: Well, I would just
19 direct Commissioners to the second paragraph in the
20 discovery plan and I think that that is pretty
21 succinct description of where we want to go and what
22 you might turn that first sentence into a hypothesis.

23 The Commission said why 2009 statutory
24 enforcement would address the role of relaxed lending
25 standings for minorities under current mortgage

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1 crisis. I turn that sentence into a question and look
2 at it in the same way and then it goes from there to
3 the Reinvestment Act and so on, but it's more related
4 to mortgage lending. All studies related to mortgage
5 lending, so there is a focus there.

6 There are many other areas of housing
7 discrimination --

8 DR. LERNER: All this broadens this,
9 rather than narrows it. This project will examine the
10 enforcement of the Community Reinvestment Act. That's
11 huge. And what aspect of it, I don't know, as well as
12 efforts to enforce federal statutes against
13 discrimination in mortgage lending and credit as
14 exemplified by the relevant provisions of the Fair
15 Housing Act and Equal Credit Opportunity Act. That's
16 huge. That's anything.

17 It will also seek to examine the role of
18 the credit scores in mortgage lending decisions --
19 something a little more focused on that would have
20 been helpful. This seems -- the rest of this as --
21 this seems to almost broaden that first sentence
22 rather than limit it.

23 DR. LERNER: Mr. Chairman, may I respond?

24 CHAIRMAN REYNOLDS: Yes.

25 DR. LERNER: Commissioner Gaziano, I

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1 think in fact the focus is fairly narrow. Please
2 allow me to differ from your opinion.

3 On the Community Reinvestment Act, it's a
4 very specific piece of legislation that was adopted in
5 1977 to deal with the problem of redlining as the
6 Congress sought at that time.

7 It's gone through a number of changes in
8 its enforcement regime, as it were and we would be
9 focusing on one primary part of it which is mortgage
10 lending or mortgage credit discrimination. The
11 Community Reinvestment Act covers lending of all sorts
12 and we're not going to look at those other sorts.

13 Similarly, while the Fair Housing Act and
14 Equal Opportunity Act are very broad acts, we have no
15 intentions of looking at all of those. The
16 Commission, by the way, in the past, has done so,
17 especially with the Fair Housing Act. As far as I'm
18 aware, they've never studied the Equal Credit
19 Opportunity Act.

20 We're only looking at mortgage credit
21 discrimination. That's the focus. That's a statutory
22 focus because the federal agencies that are relevant
23 which is high Justice and the five financial
24 regulatory agencies all have jurisdiction over it.
25 That's part of this as an enforcement report. And

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1 that's part of what we were proposing, if I may be so
2 bold to study, how are they enforcing it. How are
3 they seeing these laws.

4 Now, I'm sorry, Mr. Chairman --

5 CHAIRMAN REYNOLDS: Commissioner Yaki?

6 COMMISSIONER YAKI: Yes, just on this one
7 note, just for the record, I know that Treasury just
8 released a whole list of state banks that they just
9 did the SRA analysis for and that data just became
10 available.

11 Number two, I think in terms of publicly
12 available documents, etcetera, there have been I think
13 one, if not two, congressional hearings on this issue.

14 That the one thing that did disturb me about the
15 statement of scope is that banks subject to the CRA
16 were by and large not the culprits involved in the --
17 in this. And I'm just wondering are we chasing the
18 wrong -- chasing the wrong dragon here in terms of
19 where the real impact to Latin and African-American
20 home owners in the subprime market which is what I'm
21 really more concerned about, occurred. Because that
22 occurred in institutions that are not subject to CRA.

23 CHAIRMAN REYNOLDS: Dr. Lerner?

24 DR. LERNER: I think that's true at one
25 level. But the argument that I would make and this is

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1 Commissioner Gaziano wanted a hypothesis. I would
2 argue that the selection of relaxed lending standards
3 was initiated by the CRA, not so much in this original
4 incarnation in 1977, but in fact, in the amendments
5 that occurred in the late 1980s, I don't remember the
6 name, I don't have the exact legislative, piece of
7 legislation that changed it and the regulations
8 adopted ultimately by the Clinton Administration in
9 1995 which imposed a three-fold test on institutions
10 that had to comply with the community reinvestment
11 act. And if -- if we could just focus on that without
12 considering the mortgage crisis itself because that
13 would by itself a worthy thing to study.

14 However, the other thing that happened in
15 the Federal Government at that time was the 1992 Act
16 that empower HUD to regulate Fannie Mae and Freddie
17 Mac.

18 And to impose upon them fair low and
19 middle-income housing goals that had to be met in
20 order for them to satisfy their regulators at that
21 time at HUD. The regulatory agency recently has been
22 moved to the FHA, FHFA, which is the Federal Housing
23 Finance Agency. But nonetheless, what oversight there
24 was was done at HUD under FHEO which as I understand
25 it, I mean talking formally to some people over there,

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1 in fact, we had a pretty stringent requirement about
2 Freddie and Fannie's buying up of mortgages that were
3 issued in response to community reinvestment actions.

4 Not it's that larger action that I would
5 hypothesize, again, you want to hypothesis about -- to
6 hypothesize I can't say I can prove it certainly, that
7 in fact helped trigger, not alone, but the mortgage
8 crisis. I would never -- would never make the claim
9 that this Community Reinvestment Act itself did that.

10 It doesn't have the scope to do that.

11 CHAIRMAN REYNOLDS: There's some possible
12 interplay, as I read the literature.

13 DR. LERNER: Yes, there's the interplay
14 between that, between Freddie and Fannie, they play
15 very important roles. And by the way, because there
16 are -- first of all, the regulation of Freddie and
17 Fannie is a Federal Government responsibility, first
18 in HUD and now in the Federal Housing Finance Agency.

19 That's something we can directly look at in a way
20 that other academics and nobody else can because we
21 have access to that.

22 Freddie and Fannie themselves are very, as
23 government-sponsored agencies are very strange animals
24 and again, I would guess other people could study
25 those, but we can, if this point is adopted would sent

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1 them interrogatories to find out well exactly what did
2 you do because I have got all kinds of newspaper
3 clippings about Freddie and Fannie, especially Fannie,
4 where then President Franklin Raines was boasting
5 about how many trillions of dollars they made
6 available in low-income mortgages. I can send people
7 the clippings from the New York Times and elsewhere.
8 So if those boasts are, in fact, true they played
9 quite a substantial role in the financial fluctuations
10 that we've seen now.

11 So I guess that's my answer to you. My
12 implicit hypothesis is yes, there was a snowballing
13 effect and that contributed to the mortgage crisis.
14 That's the explicit hypothesis. It may be false. Not
15 everybody -- I started to read the literature on the
16 more think tank activist literature on both sides of
17 the issue and it's clear that not everybody would
18 agree with that and that's why it's a hypothesis to be
19 tested rather than a conclusion to be assumed. I
20 think that's, to me, the guiding framework. And if it
21 turns that it's not so, we are required anyway to
22 evaluate the performance of a federal agency in
23 dealing with discrimination legislation and equal
24 credit opportunity and fair housing. Every Community
25 Reinvestment Act are all legitimate subjects and

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1 important subjects the Commission is studying as part
2 of their enforcement, its enforcement
3 responsibilities, in my opinion at least.

4 COMMISSIONER GAZIANO: Mr. Chairman, let
5 me make two possible minor amendments that may go far
6 to make me a little more comfortable with where we
7 are, given the right direction.

8 First, on page three of the -- what do we
9 call the document that's memorandum for --

10 MR. DANNENFELSER: Project outline.

11 COMMISSIONER GAZIANO: Project outline.
12 On the top of page three, specifically the report may
13 include the following items subject to further
14 Commission direction, so that we're not implying it
15 will include all these things. I think this is all
16 too much. I don't want to slow the project down, but
17 I think there are several items. Another example, by
18 the way broadly describe the history and interplay of
19 laws and policies designed to eliminate
20 discrimination. If we decide we're really focusing on
21 some small -- I don't know that we need to broadly
22 describe the history and interplay of all the laws and
23 policies designed to eliminate discrimination.

24 MR. DANNENFELSER: Do you want to say
25 succinctly or --

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1 VICE CHAIR THERNSTROM: That can be three
2 sentences you realize.

3 COMMISSIONER GAZIANO: I don't know how
4 you broadly -- but in any event, can we modify the
5 report may include some of the following subject to --

6 CHAIRMAN REYNOLDS: Any objections?

7 VICE CHAIR THERNSTROM: Wait a minute,
8 what does it say now instead of may?

9 COMMISSIONER TAYLOR: It says will
10 address.

11 COMMISSIONER GAZIANO: So that we don't
12 have any expectations created that it's going to
13 contain --

14 VICE CHAIR THERNSTROM: May address --

15 COMMISSIONER GAZIANO: May address some of
16 the following, okay?

17 CHAIRMAN REYNOLDS: And you had a second
18 one?

19 MR. DANNENFELSER: Well, the broadly --

20 COMMISSIONER GAZIANO: No, that was just
21 an example. That's just an example of what I -- that
22 -- I don't know how to put this, that this is -- the
23 description is amended to the extent that our
24 discussion today has focused the specified -- what it
25 is that the Commission staff is going to try to

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1 develop and bring to us for further refinement.

2 CHAIRMAN REYNOLDS: So, Todd, this
3 document is a document that is subject to revision.
4 We'll have monthly updates from the General Counsel
5 and as information comes in and as we refine our
6 ideas, this document will reflect where the Commission
7 is.

8 COMMISSIONER GAZIANO: And I suppose it's
9 understood if we vote on it today that it is already
10 limited by the discussion we've had, now that --

11 VICE CHAIR THERNSTROM: It's only limited
12 in the sense that we are getting these reports. We are
13 open to revising this and I would like reports from
14 both the General Counsel and Dr. Lerner because they
15 have two different roles in this project and I found
16 the information from both of them immensely useful
17 this morning.

18 COMMISSIONER GAZIANO: I think I got some
19 of the answers that i was looking for today and I
20 think that does -- if it amends this, if it's
21 understood to amend this, maybe I can vote for it. If
22 it's just an explanation of what they meant, but that
23 they can go completely some other direction as they
24 see fit, then I might not feel comfortable.

25 CHAIRMAN REYNOLDS: Here's my

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1 understanding and I don't know if it's shared by the
2 folks around the table, but it's my understanding that
3 this is a framework document subject to revision by
4 the Commissioners. We will have monthly updates on
5 where we are and we will have multiple opportunities
6 to change this document. That's my understanding.

7 VICE CHAIR THERNSTROM: It's mine, too.

8 CHAIRMAN REYNOLDS: Commissioner Heriot
9 was up next.

10 COMMISSIONER HERIOT: A couple of things I
11 wanted to say. First of all, if we're going to have
12 monthly updates, they have to be real updates. That
13 is, they have to actually convey information and not
14 just broad generalities. For example, I had expected
15 to see the interrogatories that we were going to be
16 asking other government agencies in this document and
17 it wasn't here and I was disappointed. I can't do
18 anything with broad generalities. There were a lot of
19 things in the religious liberties report that had we
20 see a long time earlier we might have been able to do
21 something about. But we were not able to do anything
22 about it until the very end to the point where the
23 report has some very serious flaws in it and had we
24 known what was going on earlier, we might have been
25 able to help.

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1 So I would expect to see not another
2 flimsy document with a couple of things about how
3 golly, we're going to study something to do with
4 housing, but I want to see the actual interrogatories.

5 I want to know why we're asking things in particular.

6 I want to what questions we're looking at and I
7 really am very dissatisfied so far. I feel that the
8 religious liberties report was a disaster and I don't
9 want to see another disaster.

10 MR. BLACKWOOD: If that is accepted, the
11 time line has to be totally changed, because what we
12 have found is this kind of review of interrogatories
13 or anything else needs -- doesn't happen
14 instantaneously, so time would have to built in.

15 DR. LERNER: Mr. Chairman, I'd like to
16 just address Commissioner Heriot's point. I do, in
17 fact, have such a list, but it's -- I haven't shared
18 it yet with anybody. But I have a list of the
19 relevant legislation, the relevant data. It's not in
20 any of these documents. The relevant agencies to whom
21 interrogatories would have to be sent. The Staff
22 Director hasn't seen it yet, so I'm kind of reluctant
23 to share it, but I'll do whatever the Commissioners
24 want. We are developing that specificity. As far as
25 the interrogatories themselves, that I don't have yet,

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1 but I have a pretty good idea of what we're going to
2 be asking for, based on that document which is based
3 on these three documents.

4 I would agree completely, specificity is
5 critical and we're not going to -- otherwise, we're
6 going to get lost in the swamps of all the material
7 that's available on this subject. We're not looking
8 at housing discrimination, only mortgage credit
9 discrimination. My staff has reminded me, make sure
10 you tell them that. I said okay, I've told them that.

11 Because they too are very, very concerned about
12 specificity and I agree with that. But yes, I'm
13 fairly close to that. I have a document. As I said,
14 the Staff Director hasn't seen it yet, so I'm
15 reluctant to say any more about it.

16 CHAIRMAN REYNOLDS: Okay, the General
17 Counsel brings up a good point.

18 Commissioner Heriot, give us a description
19 of the type of involvement you have in mind because it
20 equals time.

21 COMMISSIONER HERIOT: Like, for example,
22 all I can do is refer back to the religious liberty
23 report because I don't have enough to go on here to
24 say now I can't -- I can't tell from this because it's
25 a report on credit discrimination. That, to me, is

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1 not a narrow topic at all. That is a huge topic.

2 And with the religious liberties, if I had
3 what the structure of the research that was being done
4 on our -- out of the LEXIS database, had I learned
5 about that a year earlier, things would have been
6 really very different, because I think that part of
7 our research got us very little useful information.

8 CHAIRMAN REYNOLDS: I'm trying to get a
9 sense of whether the approach that you have in mind
10 fits comfortably within the timeline that we've set
11 out.

12 COMMISSIONER HERIOT: That's what I've
13 been saying about go narrow, look for some tiny little
14 issue within this, something that we actually can
15 handle within a year.

16 VICE CHAIR THERNSTROM: It's premature to
17 do that. It really is. Let us let this process go
18 forward --

19 COMMISSIONER HERIOT: It will be a train
20 wreck.

21 VICE CHAIR THERNSTROM: And we can --

22 COMMISSIONER HERIOT: It will be an
23 absolute train wreck.

24 COMMISSIONER GAZIANO: One example that
25 Gail mentioned is whether Commissioners should review

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1 interrogatories who want to review interrogatories.
2 And it may or may not affect the timeline in a
3 significant way. I certainly concede General
4 Counsel's point of the time line, but I think whether
5 we need to take a formal vote on it or not, some of us
6 may see some problems or offer some advice on the
7 interrogatories.

8 COMMISSIONER YAKI: Well, if I might.

9 CHAIRMAN REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: Just --

11 CHAIRMAN REYNOLDS: I'm looking for
12 wisdom.

13 (Laughter.)

14 COMMISSIONER YAKI: Wisdom, I don't know -
15 - three and a half hours of sleep for six months,
16 probably not there right now.

17 CHAIRMAN REYNOLDS: All right, give it
18 your best shot.

19 COMMISSIONER YAKI: I would say this. I
20 think the concern I have overall about the report is
21 about the time lines because certainly I would suspect
22 that some of the interrogatories are going to some
23 agencies whose priority right now is not answering our
24 questions, but figuring out how to bail out the
25 economy, whether it's FDIC, whether it's Treasury,

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1 whether it's -- we're talking about people for whom
2 their major task is to figure out what to do with the
3 \$700 billion, how to get it out into the marketplace.

4 I mean there are certainly agencies that have some
5 responsibility and oversight over what happened that
6 we need to ask questions to and they're the ones right
7 now trying to bail the country out of the financial
8 mess that we're in right now.

9 That is my major concern. So when you add
10 on to that the timelines of reviewing the
11 interrogatories, etcetera, I mean there may be some
12 merit to that and I also understand what it means in
13 terms of the timeline. These would have to be
14 something that would have to be done rather quickly
15 and I think nonbinding. I think that we could offer
16 comments, but ultimately in the discretion of either
17 the Chair, in consultation with the Staff Director, or
18 whoever, what suggestions be offered may or may not be
19 incorporated in order to meet the deadline. I would
20 hate to see that slow it down, because otherwise you
21 get into back and forth, back and forth and back and
22 forth.

23 CHAIRMAN REYNOLDS: That was the wisdom I
24 was looking for. Thank you very much.

25 VICE CHAIR THERNSTROM: Mr. Chairman?

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1 CHAIRMAN REYNOLDS: Staff Director, then
2 Vice Chair --

3 MR. DANNENFELSER: I would tend to agree
4 with Commissioner Yaki's point there. I think that we
5 can, as we develop these interrogatories, we can send
6 out the drafts to the Commissioners and then invite
7 feedback. Right now, we are looking at a December 1
8 timeframe to try to get those interrogatories out and
9 as General Counsel noted earlier, we are already
10 several months behind where we ideally would be in
11 terms of starting this process. So there is concern
12 about that and people have noted also you're up
13 against the holidays in December and the New Year and
14 the transition and all kinds of things, not to mention
15 the points that Commissioner Yaki made about getting
16 the money out the door and so on. So we have lots of
17 hurdles that we'll have to deal with, but I think if
18 we do it in the framework that you just described,
19 that we -- as they come available, that we send them
20 out to the Commissioners and then invite feedback and
21 then I would -- the idea of consulting with the
22 Chairman and going forward from there, I think that
23 would be a good way to try to resolve these competing
24 concerns.

25 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

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1 VICE CHAIR THERNSTROM: Kim Schuld has
2 just informed me, I didn't know that, that in our AIs,
3 that our AI specify Commissioners have a chance to
4 look at the interrogatories before they go out. Is
5 that your understanding too, Mr. Staff Director?

6 MR. DANNENFELSER: I'm not aware of the
7 particulars on that point. Maybe the General Counsel
8 --

9 CHAIRMAN REYNOLDS: We'll pass the hot
10 potato to the General Counsel.

11 (Laughter.)

12 MR. BLACKWOOD: Last year, I don't know
13 whether the interrogatories went out to the
14 Commissioners or not.

15 COMMISSIONER HERIOT: I never saw them.

16 DR. LERNER: They did not as far as I'm
17 aware. Excuse me, I'm sorry.

18 CHAIRMAN REYNOLDS: Okay, folks, we have a
19 set of AIs that govern how we do business and when we
20 proceed and whatever activities someone should have
21 the responsibility for looking at the AIs and
22 confirming that we are acting in accordance with the
23 AIs.

24 VICE CHAIR THERNSTROM: And we will do so.

25 CHAIRMAN REYNOLDS: Yes, but it's just

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1 somewhat of a concern that someone doesn't know the
2 answer.

3 COMMISSIONER GAZIANO: And that we didn't
4 do so last year.

5 CHAIRMAN REYNOLDS: Right, so bottom line
6 is if the AIs require us to distribute the
7 interrogatories before they go out, then that is what
8 we shall do, unless we change the AI.

9 COMMISSIONER GAZIANO: I would hope we
10 would do it whether the AIs are clear on that or not,
11 but I don't mind Commissioner Yaki's suggestion that
12 the time table be honored in this regard, that they be
13 advisory. I delegate my share of authority to the
14 chair to work with the Staff Director and General
15 Counsel on that. I don't know that we need to take a
16 vote on every -- that might have been ideal, so we'll
17 think about that for next year.

18 CHAIRMAN REYNOLDS: Okay, folks, where are
19 we?

20 VICE CHAIR THERNSTROM: We need to take a
21 vote on this.

22 COMMISSIONER GAZIANO: Okay. Before I
23 vote, I want to know the content of -- I would like
24 this document refined and revised by the next meeting
25 to take some of these -- to reflect some of the

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1 discussion we've had from General Counsel and Dr.
2 Lerner and to hopefully pair down some of the overly
3 broad and what I see as unreasonable --

4 CHAIRMAN REYNOLDS: Okay, how about this?
5 Dr. Lerner, Mr. Blackwood, Mr. Staff Director, please
6 work on this document so that it reflects these --
7 your next --

8 MR. BLACKWOOD: The problem with these
9 conversations is I haven't heard from six of the
10 Commissioners about whether this should be broadened
11 or this should be narrowed.

12 CHAIRMAN REYNOLDS: No, no, no, where
13 you've heard consensus, that is where the changes
14 should occur. For example, Todd's recommendation that
15 that phrase will address be softened so that it's may
16 address. Language in there, making it clear that this
17 document shall be revised by the Commission.

18 COMMISSIONER GAZIANO: I'd like to hear
19 from the other Commissioners too, actually, whether
20 they --

21 CHAIRMAN REYNOLDS: Hold on, Commissioner
22 Heriot's up next.

23 COMMISSIONER HERIOT: It just -- I can
24 understand the notion of gosh, we're not really sure
25 what the report is going to look like in the end, but

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1 my guess is -- not guess, I'm pretty sure that if we
2 do something as broad as what this suggests at this
3 point we are going to produce a document that I won't
4 vote for. That it will have flaws in it that will not
5 allow me to vote for it and I will be much tougher
6 next year than I was this past year. I figured in the
7 end we had to get something out, but I'm not going to
8 vote for another report that's even remotely like
9 that.

10 So what I would suggest is that we have a
11 number of hypotheses as Todd has called them, things
12 that we might task, things that may pan out to be --
13 any one of them may turn to be the whole report, but
14 we are going to look at the following questions. I
15 want them narrow enough to where I think we actually
16 have a prayer at turning out a report based on those
17 hypotheses and it may be that some of them won't pan
18 out and we'll just throw those out, but if we have
19 five or six of them, some narrow pursuit in this area,
20 we can report back on.

21 CHAIRMAN REYNOLDS: Okay, a few comments.
22 Any Commissioner, if they want to vote against the
23 report, that's their prerogative. You can vote for
24 it. You can vote against it.

25 COMMISSIONER HERIOT: I know. That's what

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1 I said.

2 CHAIRMAN REYNOLDS: Well, we all know it,
3 and you've said it several times during this meeting.
4 We're trying to work through this and this is
5 difficult because we have different approaches,
6 different methodologies and different expectations
7 taking a hard line this early in the process, I don't
8 think is helpful. So that's one comment.

9 COMMISSIONER HERIOT: It's better than
10 having to vote against it at the end and not having
11 told people.

12 VICE CHAIR THERNSTROM: We're not going to
13 be in the same boat we were last time. We are going
14 to have these reports regularly.

15 CHAIRMAN REYNOLDS: You'll have regular
16 updates. We understand that this is subject to
17 change. We now -- now we are sure now that the
18 interrogatories will not go out until the
19 Commissioners review them. This is not last year.
20 This is -- I understand the feelings surrounding the
21 process that we used. We didn't do a good job, but to
22 assume that this is going to land in the same place as
23 the others despite the fact that we are making changes
24 to the process.

25 COMMISSIONER HERIOT: Well, I think we're

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1 making those changes precisely because we're raising a
2 fuss today.

3 VICE CHAIR THERNSTROM: Okay, but we are
4 making changes. Is it possible to have a vote?

5 COMMISSIONER GAZIANO: I'd like to ask
6 Commissioner Yaki a question first. On page two of
7 the whatever we call it, the memorandum, the last
8 phrase of the last sentence of that page says "and
9 will examine any evidence" -- well, actually second to
10 last sentence, "and will examine any evidence that
11 minority homeowners in particular have been unfairly
12 targeted by any lender or lending policy."

13 I think that was added at your request, if
14 I remember from the last meeting. Do you still care
15 about that issue?

16 CHAIRMAN REYNOLDS: I can answer that.

17 Yes.

18 (Laughter.)

19 COMMISSIONER GAZIANO: Is that accurate?

20 COMMISSIONER YAKI: I defer to the wisdom
21 of the chair.

22 CHAIRMAN REYNOLDS: Yes.

23 COMMISSIONER GAZIANO: So what I would
24 like and then as an example of what Commissioner
25 Heriot was talking about, the hypothesis is how are we

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1 going to test that? What evidence are we going to try
2 to obtain to test that particular question which is
3 different from some of the others, all worthy, but if
4 we're committing today that we're -- that's one of the
5 issues we're going to test, I'd like to know how,
6 whether -- and whether we're serious about that. I
7 hope we are.

8 CHAIRMAN REYNOLDS: A legitimate question
9 posed by Commissioner Gaziano. I'm sure you have an
10 answer.

11 COMMISSIONER GAZIANO: No, he -- I'm
12 asking whether he still cares. I'd like the hear from
13 the staff how they are going to test that. And if
14 not, that's going to be difficult and we ought to
15 debate that at the next meeting.

16 CHAIRMAN REYNOLDS: Well, how about this,
17 there's some issues that don't lend themselves to
18 being tested, but that doesn't mean that these issues
19 aren't worthy of discussion.

20 COMMISSIONER GAZIANO: And I want to know
21 how we will examine any evidence. That implies we're
22 going to try to collect the evidence.

23 CHAIRMAN REYNOLDS: It's implied it's
24 collected evidence. There are several reports we
25 already have.

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1 COMMISSIONER GAZIANO: I'd just like that
2 specificity to know -- I hope we do take that question
3 as seriously as we're taking the other potential
4 questions. Some of them may or may not pan out within
5 our expertise and I hope we as Commissioners are
6 willing to help focus the statutory report as we go
7 forward and say yes, we'd like more energy put in
8 these two hypotheticals or hypotheses because they
9 seem to be panning out. What more can we do on this
10 one? We can abandon the other one. So that as we're
11 going forward, we're trying to say what we're really
12 interested in. So the final report is something that
13 we're all really proud of.

14 CHAIRMAN REYNOLDS: Mr. Staff Director,
15 then we vote.

16 MR. DANNENFELSER: One of the things we're
17 planning in the context here is to have a briefing
18 that would help inform the statutory report hopefully
19 in February and one of the things we could do was
20 regarding predatory lending, for instance, as we can
21 look for panelists who have done research in that area
22 to come to us and present their findings --

23 COMMISSIONER TAYLOR: Or competing
24 panelists --

25 MR. DANNENFELSER: Or competing panelists

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1 on the issue of predatory lending and certainly on the
2 whole question of minority lending that that was
3 delineated here in the discovery plan.

4 And we would welcome recommendations from
5 the Commissioners as to who some of those panelists
6 might be. Ashley has one.

7 COMMISSIONER TAYLOR: Is this our only
8 briefing in the first quarter or the second quarter,
9 rather? It is.

10 We haven't voted on it yet. That's part
11 of our recommended plan.

12 CHAIRMAN REYNOLDS: That's fine.

13 COMMISSIONER TAYLOR: We don't have one
14 for the second quarter at this point.

15 CHAIRMAN REYNOLDS: Okay.

16 COMMISSIONER TAYLOR: That will be it.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER TAYLOR: And I guess as a
19 general comment, I agree with all of the comments made
20 today and --

21 CHAIRMAN REYNOLDS: How could you?

22 COMMISSIONER TAYLOR: Well, because what

23 --

24 CHAIRMAN REYNOLDS: He wasn't listening.

25 (Laughter.)

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1 COMMISSIONER TAYLOR: What I thought I
2 heard was that we need to further refine what we have
3 before us and so what I would say is that the mistake
4 I think we made in the past as a body is that we did
5 not actively manage that process of refining the
6 statutory report.

7 CHAIRMAN REYNOLDS: It was saying praise
8 the Lord --

9 COMMISSIONER TAYLOR: We put it on auto
10 pilot. And what we're saying this time is that we're
11 not going to put it on auto pilot.

12 CHAIRMAN REYNOLDS: More involvement --

13 COMMISSIONER TAYLOR: Every month we come
14 back and we burn away what appears to be illusory or
15 something we can't get our arms around. And so the
16 reports we receive from the staff next month will help
17 us decide what we need to jettison, what we need to
18 focus on, what we can't do and so this gives us a
19 starting point, but the burden is on us at our
20 meetings, I think, to set aside an hour, hour and a
21 half, if necessary, to further refine so that nearer
22 the process we have something we can all be proud of.

23 So by that I agree with everyone.

24 CHAIRMAN REYNOLDS: Okay. All right, all
25 in favor, please say aye.

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1 (Ayes.)

2 Dissents? Abstentions?

3 COMMISSIONER YAKI: I abstain.

4 COMMISSIONER HERIOT: I abstain.

5 CHAIRMAN REYNOLDS: Okay, let the record
6 reflect that Commissioners Yaki and Heriot abstained.

7 Pete?

8 COMMISSIONER KIRSANOW: I said aye.

9 CHAIRMAN REYNOLDS: Okay, very good.
10 Commissioners Yaki and Heriot abstain. The motion
11 passes.

12 Next up, okay, I move to recharter the
13 Illinois State Advisory Committee.

14 **VI. STATE ADVISORY COMMITTEE ISSUES**

15 **1. Recharter of the Illinois State**

16 **Advisory Committee**

17 CHAIRMAN REYNOLDS: Under this motion, the
18 Commission appoints the following individuals to that
19 Committee based on the recommendations of the Staff
20 Director: Barbara Abrajano, Nancy Andrade, David
21 Baker, Martin Castro, Sunny Chico, Yvonne Coleman,
22 Louis Goldstein, Sandra Jackson, Reverend Kantzavelos,
23 Herbert Martin, John Mauck, Kamran Memon, Gordon
24 Quinn, Cynthia Shawamreh, Betsy Shuman-Moore, Anthony
25 Sisneros, Lee Walker and Farhan Younus.

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1 I also move that the Commission appoint
2 Martin Castro as Chair of the rechartered Illinois
3 State Advisory Committee. These members will serve as
4 uncompensated government employees, and the Commission
5 appreciates the hard work they will no doubt
6 contribute to this State Advisory Committee. Under
7 this motion, the Commission authorizes the Staff
8 Director to execute the appropriate paperwork --
9 fellow, gals, whisper quietly -- the Commission
10 authorizes the Staff Director --

11 VICE CHAIR THERNSTROM: I don't being mind
12 called a fellow.

13 CHAIRMAN REYNOLDS: There was a gal in
14 there too -- authorizes the Staff Director to execute
15 the appropriate paperwork for the appointment.

16 Is there a second?

17 VICE CHAIR THERNSTROM: Second.

18 CHAIRMAN REYNOLDS: Discussion? All in
19 favor, please say aye.

20 (Chorus of ayes.)

21 CHAIRMAN REYNOLDS: Any objections? Any
22 abstentions?

23 I also move that the Commission recharter
24 the Minnesota State Advisory Committee. Under this
25 motion, the Commission appoints the following

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1 individuals to that Committee based on the
2 recommendation of the Staff Director: Robert Battle,
3 Lester Collins, Kenneth Doyle, JoAnn Enos, John
4 Gilbertson, Kirk Kolbo, Velma Korbek, Teresa Nelson,
5 Shamus O'Meara, Jeremiah Reedy, Craig Taylor, Neva
6 Walker, Lawrence Wohl, Michael Yang.

7 I also move that the Commission appoint
8 Mr. O'Meara as chair of the newly rechartered
9 Minnesota State Advisory Committee. These members
10 will also serve as uncompensated government employees.

11 Under this motion, the Commission authorizes the
12 Staff Director to execute the appropriate paperwork
13 for the appointment.

14 Is there a second?

15 COMMISSIONER TAYLOR: Second.

16 CHAIRMAN REYNOLDS: Discussion.

17 COMMISSIONER MELENDEZ: Hang on a second.

18 My understanding, there were six returning people
19 from the last that were up for reappointment, but we
20 only recommended four. My question was about the two
21 that wanted to be reappointed, but for some reason we
22 said that we don't need them any more. I'm not sure -
23 - I read that six wanted to come back, but only four
24 were actually reappointed or recommended for
25 reappointment.

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1 CHAIRMAN REYNOLDS: Mr. Staff Director?

2 MR. DANNENFELSER: In general, when we
3 looked at some members that we had, we felt that we
4 were a little bit light on members with academic
5 expertise and social science research, statistical
6 analysis, and technical writing skills, so the
7 Commission staff undertook additional recruitment for
8 these qualities and just felt that by reaching out and
9 bringing in some of these new members we would broaden
10 the scope of the Commission in keeping with the AI and
11 the Lean Six Sigma process. So it was not a negative
12 about those two individuals, but we just felt that
13 there were some other areas of expertise that we
14 needed to bring to bear that were not there or with
15 those particular members, as far as -- so we didn't
16 reach out to further approval of those two.

17 CHAIRMAN REYNOLDS: Question?

18 COMMISSIONER MELENDEZ: Could you comment
19 on the chair, who that was and something about his
20 civil rights background?

21 CHAIRMAN REYNOLDS: That would be --

22 MR. DANNENFELSER: Shamus O'Meara. He's
23 the chair of the Minnesota Governor's Council on
24 Developmental Disabilities. He's also an education
25 lawyer with Johnson & Condon and a board member of the

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1 Minnesota Disability Justice Foundation. This is an
2 area that we've been asked to take a stronger role in
3 the area of disabilities and it was felt that to have
4 someone with this kind of background would be a good
5 thing to have as chair at one of our Advisory
6 Committees.

7 CHAIRMAN REYNOLDS: Commissioner Yaki?

8 COMMISSIONER MELENDEZ: Just a question.

9 CHAIRMAN REYNOLDS: Sure.

10 COMMISSIONER MELENDEZ: I looked at
11 returning people -- John Gilbertson, he was basically
12 along the same lines of disability experience, similar
13 to the chair? Is that right?

14 MR. DANNENFELSER: I believe there's some
15 overlap there. I don't believe it's quite as
16 specialized as Mr. O'Meara is in the area of
17 disabilities, but that was an area that he had a
18 broader reach in terms of the Affirmative Action
19 Committee --

20 CHAIRMAN REYNOLDS: This is Gilbertson?

21 MR. DANNENFELSER: Gilbertson, yes, so he
22 did have some that overlapped into this area, but I
23 believe that Mr. O'Meara had more specialized
24 background in that area.

25 COMMISSIONER MELENDEZ: The other

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1 question, as far as I know, some of the applicants
2 didn't really check the box on political affiliations.

3 Is that okay to do or are we trying to balance this
4 out? Two of them, Velma Korbel didn't check party
5 affiliation and Craig Taylor didn't either. I was
6 just wondering is that something we really don't care
7 about or --

8 CHAIRMAN REYNOLDS: Well, I would be
9 loathe to have that as a requirement. If someone
10 feels that they don't want to reveal their party
11 affiliation, although I do understand the concern that
12 this information is needed in order to ensure that
13 there is a fair amount of diversity in terms of
14 political affiliation.

15 COMMISSIONER YAKI: Sure, but we can do
16 that checking ourselves, can't we? It's very simple
17 to get -- it's a public record under the Voter
18 Registration Act to determine whether or not someone
19 has registered as a Democrat, Independent, or
20 Republican.

21 COMMISSIONER GAZIANO: For states that
22 require such disclosure, some states don't.

23 CHAIRMAN REYNOLDS: Well, I would suggest
24 that we -- unless this is a trend, and I don't believe
25 it is, if this is a one-off issue, I say that we just

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1 continue with our current approach, but if this
2 becomes a trend, we'll revisit the issue.

3 COMMISSIONER YAKI: I actually have a
4 statement to make on that which is it seems that some
5 of the recommendations of certain individuals were the
6 ones who deliberately did not check their
7 affiliations, so I would --

8 CHAIRMAN REYNOLDS: A conspiracy?

9 COMMISSIONER YAKI: I'm just making a
10 point. So like I'm going to vote no on this, so let's
11 just get the vote over with.

12 CHAIRMAN REYNOLDS: Okay, let's give him
13 40 seconds or so.

14 MR. DANNENFELSER: Mr. Chairman, on that
15 point, there are four Republicans, four Democrats,
16 four Independents, in terms of the political
17 affiliation of people on the Committee, stated
18 political affiliations. We did go back to these two
19 individuals and requested -- you might note too that
20 Velma Korbelt declined to identify her religion, which
21 is also at times a sensitive personal subject of
22 people. So I would associate myself with the comment
23 the Chairman made that if this was a trend, it
24 certainly would not be something that we would want to
25 do because it is important in terms of the political

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1 balance of the Committee. It is something we strive
2 to do is have political balance.

3 CHAIRMAN REYNOLDS: Not balance.

4 MR. DANNENFELSER: Political diversity,
5 right, but we did feel that these people -- Velma
6 Korbelt is Commissioner of Minnesota Department of
7 Human Rights, YWCA, Minneapolis, and so she's had a
8 lot of different involvements in the area of human
9 rights, so we did make the judgment that she was
10 someone who would add value to the Committee. But as
11 a matter of general practice, it is important for us
12 to get that kind of political affiliation.

13 CHAIRMAN REYNOLDS: Okay, folks, let's
14 vote.

15 All in favor, please say aye.

16 (Ayes.)

17 COMMISSIONER YAKI: No.

18 CHAIRMAN REYNOLDS: Abstentions?

19 VICE CHAIR THERNSTROM: I'm changing mine
20 to an abstention since I paid no attention to that.

21 CHAIRMAN REYNOLDS: Okay, the ayes have
22 it. Okay, future agenda items.

23 **VII. FUTURE AGENDA ITEMS**

24 CHAIRMAN REYNOLDS: Okay, I move that we
25 adjourn.

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VIII. ADJOURN

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CHAIRMAN REYNOLDS: Second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Are you going to
object?

COMMISSIONER YAKI: Absolutely not.

CHAIRMAN REYNOLDS: All in favor, please
say aye.

Okay, folks. See you next trip.

(Whereupon, the above-entitled matter was
concluded at 11:31 a.m.)

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