

## U.S. COMMISSION ON CIVIL RIGHTS

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## MEETING

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Friday, March 10, 2006

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C., at 9:30 a.m., Abigail Thernstrom, Vice Chairman, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chairman  
 JENNIFER C. BRACERAS, Commissioner  
 (via telephone)  
 PETER N. KIRSANOW, Commissioner  
 ARLAN D. MELENDEZ, Commissioner  
 (via telephone)  
 ASHLEY L. TAYLOR, JR., Commissioner  
 MICHAEL YAKI, Commissioner  
 KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

JOHN BLAKELEY  
 RACHELLE BRACEY  
 CHRISTOPHER BYRNES  
 DEBRA CARR, Associate Deputy Staff Director  
 PAMELA DUNSTON, Chief, Administrative Services  
 and Clearing House Division  
 BARBARA FONTANA  
 LATRICE FOSHEE  
 PATRICIA JACKSON, Chief, Budget and Finance  
 Division  
 SETH JAFFE  
 SOCK-FOON MACDOUGALL  
 TINALOUISE MARTIN, Director of Management  
 EMMA MONROIG, Solicitor/Parliamentarian  
 EILEEN RUDERT

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STAFF PRESENT: (cont'd)

ANGELA ST. HILAIRE  
AUDREY WRIGHT  
MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS  
LISA NEUDER  
KIMBERLY SCHULD (via telephone)

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

(9:41 a.m.)

VICE CHAIRMAN THERNSTROM: All right.

This meeting will come to order. This is a meeting with -- let me see -- four Commissioners present, two participating by phone, Commissioners Braceras and Melendez.

COMMISSIONER YAKI: And one in a pear tree.

VICE CHAIRMAN THERNSTROM: Pardon me?

COMMISSIONER YAKI: And one in a pear tree.

VICE CHAIRMAN THERNSTROM: And one in a pear tree, right.

(Laughter.)

I'm afraid you've just referred to -- I hope you have not just referred to the chair --

COMMISSIONER YAKI: No.

VICE CHAIRMAN THERNSTROM: -- who cannot be here.

COMMISSIONER YAKI: No, not at all.

### **I. Approval of Agenda**

VICE CHAIRMAN THERNSTROM: The first item on the agenda is the approval of the agenda. Before we vote to approve the agenda, could I have a motion

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1 to amend the agenda so as to add an item labeled  
2 "Special Assistant for Commissioner Melendez"?

3 COMMISSIONER YAKI: So moved.

4 COMMISSIONER KIRSANOW: Second.

5 COMMISSIONER BRACERAS: Can I make another  
6 motion to amend?

7 VICE CHAIRMAN THERNSTROM: Yes. But can  
8 we vote on this one first?

9 COMMISSIONER BRACERAS: All right.

10 VICE CHAIRMAN THERNSTROM: All in favor --  
11 any discussion?

12 (No response.)

13 All in favor?

14 (Chorus of ayes.)

15 It has passed unanimously.

16 Commissioner Braceras, you want another  
17 amendment to the agenda?

18 COMMISSIONER BRACERAS: Well, yes. If  
19 it's possible, I'd like to throw out moving up  
20 Items VI and VII, Program Planning and Strategic  
21 Planning, before Items IV and V, Staff Director's  
22 Report and Management and Operations. I just want to  
23 make sure I can still be on the phone, because I have  
24 to be off at 11:00 for a meeting out of town.

25 VICE CHAIRMAN THERNSTROM: I'm happy to

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1 move that. Do I have a second on that?

2 COMMISSIONER YAKI: Second.

3 VICE CHAIRMAN THERNSTROM: And any  
4 discussion?

5 (No response.)

6 All in favor?

7 (Chorus of ayes.)

8 Okay. So that's approved. So the order  
9 of the agenda is changed, though, Commissioner  
10 Braceras, I would say that I think you are needed at  
11 this meeting for all items.

12 COMMISSIONER BRACERAS: I'm sorry. But  
13 the reason I couldn't be there personally is I have a  
14 conflict at 11:30, so --

15 VICE CHAIRMAN THERNSTROM: Right. Okay.  
16 And we apologize for starting late.

17 **II. Approval of Minutes of February 17,**  
18 **2006 Meeting**

19 VICE CHAIRMAN THERNSTROM: Second item for  
20 approval is minutes of February 17th. Can I get a  
21 motion to approve those minutes?

22 COMMISSIONER KIRSANOW: So moved.

23 VICE CHAIRMAN THERNSTROM: Seconded?  
24 Somebody second it, please.

25 COMMISSIONER BRACERAS: Second.

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1 VICE CHAIRMAN THERNSTROM: Any discussion?

2 (No response.)

3 All in favor say aye.

4 (Chorus of ayes.)

5 Anybody opposed?

6 (No response.)

7 The motion is approved unanimously.

8 **III. Announcements**

9 VICE CHAIRMAN THERNSTROM: One  
10 announcement only. I'm pleased to announce that March  
11 2006 is Women's History Month. It's a month in which  
12 we celebrate the achievements of American women,  
13 recognizing their contributions and accomplishments, a  
14 recognition in part of how far we have come, even in  
15 my lifetime.

16 Staff Director, you have a report?

17 STAFF DIRECTOR MARCUS: I do, but I  
18 believe the agenda was moved, so that I would speak  
19 later.

20 VICE CHAIRMAN THERNSTROM: Oh, that is  
21 correct. Okay.

22 COMMISSIONER BRACERAS: I think we're  
23 ready for Program Planning.

24 VICE CHAIRMAN THERNSTROM: Right. So we  
25 are going, what, immediately to Item VI. We do not

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1 even go through the motion to -- for a Special  
2 Assistant for Commissioner Melendez? Okay.

3 COMMISSIONER YAKI: Where did we put it on  
4 the agenda when we amended it?

5 COMMISSIONER BRACERAS: I think it's all  
6 in Management and Operations.

7 STAFF DIRECTOR MARCUS: Usually that's  
8 where we would put it.

9 VICE CHAIRMAN THERNSTROM: I am lost.

10 COMMISSIONER YAKI: I see it. That's  
11 where it says on the motion. Okay.

12 VICE CHAIRMAN THERNSTROM: I'm sorry. Is  
13 it page 8? So, Jennifer, you want to start with the  
14 question of the Voting Rights Act statutory report?

15 COMMISSIONER BRACERAS: I want to do all  
16 of the substantive stuff first.

## 17 VI. Program Planning

### 18 Voting Rights Act Statutory Report

19 VICE CHAIRMAN THERNSTROM: Fine. Okay.  
20 So item number 1 is the Voting Rights Act statutory  
21 report, a motion to approve the FY06 statutory  
22 enforcement report on the reauthorization of the  
23 temporary provisions of the Voting Rights Act.

24 Can I have a motion to approve that  
25 report, together with concurring or dissenting

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1 Commissioners' statements received within two weeks of  
2 the agency's statutory enforcement -- two weeks of the  
3 report? The report was distributed to Commissioners  
4 earlier this week. Commissioner Yaki?

5 First of all, do I have a second on that?

6 And then, let's go to discussion.

7 COMMISSIONER YAKI: Yes, I was going to  
8 amend the motion.

9 VICE CHAIRMAN THERNSTROM: Okay.

10 COMMISSIONER YAKI: I was going to amend  
11 the motion that we defer -- we approve -- we defer  
12 this item to April -- to the April meeting. I have  
13 been reading the various drafts as they come forward.

14 I did not receive the final draft until -- what day  
15 is today, Friday? Thursday, because it was sent while  
16 I was in transit to Washington.

17 In it -- in the e-mail that -- well,  
18 strike that. It was -- we were informed that changes  
19 pertaining to certain reports and comments had been  
20 made since the last draft. It is very difficult for  
21 me, given the short time period, to be able to fully  
22 debate and discuss a report.

23 And as I requested in an e-mail to my  
24 fellow Commissioners, especially for those  
25 Commissioners who do not have an assistant, having a

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1 redline available to distinguish between the last  
2 prior draft and the final draft, so that we could more  
3 easily understand the changes that were made from one  
4 draft to the other would be extremely helpful. And I  
5 would say that some point we should discuss whether  
6 that should be a permanent policy on statutory  
7 reports.

8 But for my -- for my sake right now, I am  
9 not prepared to vote on the report, and I would  
10 request that a redline be made available to  
11 Commissioners subsequent to this meeting, so that  
12 before the April meeting we will have ample time to  
13 have examined the changes in order for a full and  
14 robust discussion to occur.

15 VICE CHAIRMAN THERNSTROM: Do you have --  
16 Staff Director, do you have any problems with this?

17 STAFF DIRECTOR MARCUS: Well, there isn't  
18 currently a redline version, so I suppose we would  
19 have to check to see whether it's possible  
20 retroactively to do one. So maybe that's sort of a  
21 caveat.

22 VICE CHAIRMAN THERNSTROM: I mean, is it  
23 possible, Commissioner Yaki, to simply take the  
24 existing draft -- I'm not -- this is not on the  
25 question of whether we have a vote today, but simply

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1 procedurally for you -- take the existing draft, read  
2 the document as is, and comment on it?

3 COMMISSIONER YAKI: I think that is  
4 possible. I don't think that, given the time period  
5 that, one, I can comment on it now --

6 VICE CHAIRMAN THERNSTROM: Right.

7 COMMISSIONER YAKI: -- and, two, much less  
8 have the ability within two weeks to formulate any  
9 additional statements.

10 VICE CHAIRMAN THERNSTROM: I was  
11 separating that from the question of the timetable.

12 COMMISSIONER YAKI: Sure. I understand  
13 that. In other words, if -- if -- I mean, it strikes  
14 me -- and maybe this is just because I live in a world  
15 of word processing. It just strikes me as odd that we  
16 wouldn't be able to have a redline. But if we can't,  
17 then that even more goes to the need for further time  
18 for me to review this, because I do want to have a  
19 careful comparison between the penultimate draft and  
20 this draft.

21 VICE CHAIRMAN THERNSTROM: Well, I am very  
22 sympathetic to the notion of giving Commissioners time  
23 to properly review the draft. Is there any down side  
24 to delaying this a month?

25 STAFF DIRECTOR MARCUS: I'm not surprised

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1 to hear the motion, because, as Commissioner Yaki  
2 points out, there was very little time for  
3 Commissioner review. And I also do have to say,  
4 Commissioner Yaki, that there are a very large number  
5 of changes. It's not minor, so I can particularly  
6 understand your comment.

7 Is there a down side? Well, it is true  
8 that Congress is moving quickly, or seems to be moving  
9 quickly, on reauthorization. And any time we push  
10 back the date there is a possibility that our report  
11 will be less useful to Congress in its  
12 reauthorization.

13 It is also true that we specifically  
14 streamline the project somewhat in order to get the  
15 thing done to make it more likely that will be  
16 relevant. There is a possibility that a month's delay  
17 would mean the difference between some member of  
18 Congress having the ability to use this document for  
19 their deliberations or not.

20 But I certainly haven't heard anything to  
21 say for certain that that month would be dispositive,  
22 so it may well be that a month from now it will be as  
23 relevant as it is today.

24 VICE CHAIRMAN THERNSTROM: I mean, the  
25 Senate has yet to hold hearings on the

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1 reauthorization.

2 STAFF DIRECTOR MARCUS: That's true. We  
3 don't know for sure, but I suspect it will be as  
4 relevant a month from now as it is today.

5 VICE CHAIRMAN THERNSTROM: I think,  
6 Commissioner Yaki, that you should propose an  
7 alternative -- make an alternative motion here.

8 COMMISSIONER YAKI: I did.

9 VICE CHAIRMAN THERNSTROM: Well, do it  
10 formally.

11 COMMISSIONER YAKI: Oh. I would move that  
12 this item be deferred to the April agenda for  
13 consideration and approval.

14 COMMISSIONER KIRSANOW: Second.

15 COMMISSIONER BRACERAS: Second.

16 COMMISSIONER YAKI: And that, if possible,  
17 if a redline draft could -- is possible and practical  
18 -- I want to add that word, too -- that it be made  
19 available. If not, that's okay, as long as -- but I'd  
20 like to know that in fairly short order, so I'm not  
21 waiting for something that might not occur.

22 STAFF DIRECTOR MARCUS: We should be able  
23 to figure out fairly soon --

24 COMMISSIONER YAKI: Okay.

25 STAFF DIRECTOR MARCUS: -- whether it's

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1 feasible.

2 COMMISSIONER YAKI: Great.

3 VICE CHAIRMAN THERNSTROM: Do I have a  
4 second on that motion.

5 COMMISSIONER BRACERAS: I did second it.

6 VICE CHAIRMAN THERNSTROM: Oh, you did  
7 second it, yes. Any further discussion?

8 COMMISSIONER KIRSANOW: Yes. I would just  
9 like to note that I think it might be useful in the  
10 future, on a go forward basis, to have redline copies  
11 whenever we have changes to any kind of draft reports.  
12 It just makes it a lot easier for us. We're not  
13 going back and forth.

14 And I think it would probably expedite  
15 discussion and probably yield greater consensus more  
16 quickly, because there is always a concern on the part  
17 of any Commissioner that they're missing something.  
18 And I think it causes them to reserve judgment on  
19 something when they don't necessarily have to do so.

20 VICE CHAIRMAN THERNSTROM: Now, I wonder  
21 if there might be an additional part to this motion.  
22 That is, that concurring and dissenting statements  
23 come in by the next meeting. Would that help in any  
24 way?

25 STAFF DIRECTOR MARCUS: It would help. I

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1 have to say the reason that in the last couple of  
2 meetings we've provided for the additional two weeks  
3 is -- is on the possibility that the findings and  
4 recommendations will change, that it might be that a  
5 concurring or dissenting Commissioner will need to  
6 know what they're concurring or dissenting to. So  
7 that's why we've given additional time before that.

8 COMMISSIONER YAKI: That's fine. That  
9 would be fine, if you just wanted to make it all due  
10 the same day.

11 VICE CHAIRMAN THERNSTROM: Oh. Let us  
12 make it -- let us add that to your motion, that  
13 concurring or dissenting statements are also due by  
14 the next Commission meeting, so that we can really  
15 wrap this up at that time.

16 COMMISSIONER YAKI: I guess the question  
17 is: are you going to concur or dissent? It's a  
18 prejudgment, but oh well.

19 VICE CHAIRMAN THERNSTROM: Excuse me?

20 COMMISSIONER YAKI: Well, in other words,  
21 you would have to prejudge what your vote would be on  
22 that day.

23 VICE CHAIRMAN THERNSTROM: You would have  
24 to do that. Look, we can --

25 COMMISSIONER BRACERAS: No. You could

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1 submit a statement of your personal views, and then  
2 decide what to label it after the vote.

3 (Laughter.)

4 COMMISSIONER YAKI: Two stamps.

5 (Laughter.)

6 VICE CHAIRMAN THERNSTROM: All right.

7 COMMISSIONER YAKI: That's fine. Not a  
8 problem.

9 VICE CHAIRMAN THERNSTROM: Let's take a  
10 vote on this. All in favor?

11 (Chorus of ayes.)

12 All opposed?

13 (No response.)

14 This has passed unanimously. We will look  
15 forward to a final vote on this statutory report next  
16 month.

17 **Anti-Semitism Findings and Recommendations**

18 VICE CHAIRMAN THERNSTROM: Okay. We go  
19 straight to Anti-Semitism Findings and  
20 Recommendations.

21 You all have a motion in front of you.  
22 This obviously has -- matter has been pending since  
23 the November briefing. We have postponed it now, I  
24 believe, three times. And it is time, in my view  
25 today, to move on this.

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1                   Now, Staff Director, do you want to say  
2 something on -- where are we on this? We've got now  
3 amendments to --

4                   COMMISSIONER BRACERAS: Yes. This is  
5 Commissioner Braceras. I just want to make sure that  
6 everybody has the same version in front of them,  
7 because there was an original version, and then there  
8 was a redline version, and there had been some  
9 discussion at the last meeting by the Vice Chair that  
10 she wanted to go back to the original version.

11                   And I tend to agree with going back to the  
12 original version and just tweaking it ever so  
13 slightly, in the hopes of satisfying everybody, and  
14 sent that to Kat earlier this morning. So I don't  
15 know if people have that in front of them or are able  
16 to look at it.

17                   STAFF DIRECTOR MARCUS: The people who are  
18 in the room should have it in front of them.

19                   COMMISSIONER YAKI: Is this the --

20                   STAFF DIRECTOR MARCUS: Yes.

21                   COMMISSIONER YAKI: -- one that was handed  
22 out, not the one in the packet?

23                   STAFF DIRECTOR MARCUS: Well, let me just  
24 try to summarize the different versions. There was --  
25 the briefing took place in November. During the

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1 December meeting, an initial set of findings and  
2 recommendations were distributed.

3           Approximately in February, a revised set  
4 of findings and recommendations were distributed,  
5 together with a redline version showing the difference  
6 between the new ones and the initial ones. That same  
7 set was redistributed again in advance of this  
8 meeting, and then this morning Commissioner Braceras  
9 provided this alternative version, which was just  
10 circulated a few minutes ago.

11           COMMISSIONER BRACERAS: So basically, just  
12 to summarize, the "Braceras version" is the same as  
13 the original version, except that it makes a small,  
14 almost grammatical stylistic change to finding number  
15 three, and it deletes some language from finding  
16 number four, which I know the chair wanted deleted.  
17 And then, it adds recommendation number six. So there  
18 are three changes to the original document.

19           I don't think the one -- the edit to  
20 finding number three is particularly controversial.  
21 The edit to finding number four basically just deletes  
22 reference to the OCR in order to avoid basically  
23 having to interpret their policy for them. To the  
24 extent that there's any ambiguity on their policy, my  
25 solution is simply not to reference it, and to move

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1 forward with our own interpretation of the statute.

2 And then, the final thing, which is  
3 recommendation number six, is the recommendation that  
4 Congress act to clarify what we believe is already the  
5 state of the law.

6 And if I may just add, I think the only  
7 person who may not have a copy of this before them  
8 would be Commissioner Melendez. And I don't know if  
9 anybody can go and quickly e-mail this version to him,  
10 but I believe everybody else should have it.

11 VICE CHAIRMAN THERNSTROM: If people want  
12 to take a minute to look at it, my -- I would like a  
13 motion to approve the original -- the original  
14 findings and recommendations with the amendments that  
15 Commissioner Braceras has proposed here that you have  
16 before you. But if people need a minute to look at  
17 them --

18 COMMISSIONER KIRSANOW: Madam Chair?

19 VICE CHAIRMAN THERNSTROM: Yes.

20 COMMISSIONER KIRSANOW: I would propose a  
21 motion that we continue this until April. Having  
22 spoken to --

23 COMMISSIONER BRACERAS: I'm sorry. Can  
24 you speak up? I can't hear you.

25 COMMISSIONER KIRSANOW: Yes. I would

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1 propose a motion to continue this until April. Having  
2 spoken to the Chairman, who is not able to be here  
3 today -- he had a death in the family -- he expressed  
4 his desire to be involved in any discussion related to  
5 the campus anti-Semitism matter. And since he will  
6 not be available today, he asked that this be  
7 postponed until the next meeting.

8 VICE CHAIRMAN THERNSTROM: Well, but,  
9 Commissioner Kirsanow, his concern is with OCR policy  
10 and our response to it. We are -- it seems to me that  
11 Commissioner Bracer's solution is simply to eliminate  
12 that argument. And, frankly, we have now postponed --  
13 we did this on an expedited basis to get it to the  
14 December meeting. There have been three postponements  
15 here.

16 I do think it is extremely important that  
17 the Commission -- I know there's a lot of interest on  
18 the Hill in this. Extremely important -- it's  
19 extremely important that the Commission come out with  
20 really what is -- shouldn't be a controversial  
21 statement at all, particularly as we are simply -- we  
22 are not engaging the question of OCR's policy here,  
23 which is -- was the concern of the chair.

24 COMMISSIONER KIRSANOW: I understand that,  
25 but he simply wanted to be involved in the discussion.

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1 I would note that if the Hill is interested in this --  
2 I don't know if there was any pending votes related to  
3 this, and I don't see any down side to waiting as an  
4 accommodation at the explicit request of the chair to  
5 hold this over until April.

6 VICE CHAIRMAN THERNSTROM: I am opposed to  
7 postponing this a fourth time.

8 COMMISSIONER MELENDEZ: This is  
9 Commissioner Melendez. I haven't received Ms.  
10 Braceras' changes. Any time you make changes close to  
11 the last minute when we're voting, I think we need to  
12 see those. So I would also support --

13 COMMISSIONER BRACERAS: It's a very simple  
14 change. If somebody could e-mail it to Commissioner  
15 Melendez now, it is redlined. It's flagged, so you  
16 can look at it very easily. It has the --

17 STAFF DIRECTOR MARCUS: Excuse me.  
18 Commissioner Melendez, a copy was just faxed to you,  
19 if you're near a fax machine.

20 COMMISSIONER BRACERAS: The original  
21 document has been in our possession for, as the Vice  
22 Chair noted, several months. And my edits to the  
23 original document are actually quite minor, so I  
24 believe that it's easy to eyeball it and consider it  
25 quickly, you know, assuming that the original

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1 document, which we've all had since December, has been  
2 digested thoroughly by all of us by now.

3 COMMISSIONER MELENDEZ: Okay. My concern  
4 -- Commissioner Melendez again. As I stated before, I  
5 think that the Commission needs to come to consensus  
6 as to when we all agree, and I don't think that's  
7 totally there today, especially with the chair having  
8 an issue with this. And I think we have to have the  
9 proper respect that we should all be in consensus  
10 before we even vote on this.

11 COMMISSIONER BRACERAS: Well, consensus is  
12 not something that has been -- you know, there has  
13 been a long history of dissent on this Commission. We  
14 don't all have to sign on to a particular policy. Let  
15 me go to Commissioner Yaki, who is waving his hand  
16 frantically.

17 COMMISSIONER YAKI: Thank you very much,  
18 Madam Chair. I would just like to know whether or not  
19 the chair -- the chair, in absentia -- and please  
20 communicate my personal sorrow for his loss -- if he  
21 has seen the changes proposed by Commissioner  
22 Braceras, number one.

23 But, number two, even if -- even if he has  
24 not -- has or has not, if he has expressed a desire to  
25 participate in the discussion given his former

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1 position at the agency -- I mean, I have no problems  
2 with what Commissioner Braceras has done, and I thank  
3 her for her hard work on this in attempting to meet  
4 this deadline.

5 Obviously, none of us can predict when  
6 events like what has happened to the chair will occur.  
7 And if he has expressed a desire -- a personal wish to  
8 be involved in this debate, I am inclined to give him  
9 that courtesy.

10 COMMISSIONER BRACERAS: This is Braceras.  
11 May I be heard?

12 VICE CHAIRMAN THERNSTROM: Yes, of course.

13 COMMISSIONER BRACERAS: What I would  
14 propose, if it's workable, then, is rather than wait a  
15 full month until the April meeting, would it be  
16 possible to get a copy of this to Gerry, and to vote  
17 on this by poll vote sometime in the next 10 to 14  
18 days? Because as the Vice Chair has noted, this has  
19 been hanging around a long time.

20 I would very much like for these findings  
21 and recommendations to be useful to Congress if, in  
22 fact, we do approve them. And I think the sooner we  
23 get them out the better. So I'm all for giving the  
24 chair an opportunity to look at the latest draft and  
25 have his vote heard. But if we could do it by poll

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1 vote and not wait until April, I'm hoping that that  
2 would satisfy the concerns of everybody.

3 COMMISSIONER YAKI: Point of information.  
4 A poll vote does not allowed for debate and  
5 discussion. It's simply yes or no on the motion, is  
6 that correct?

7 STAFF DIRECTOR MARCUS: That's right,  
8 Commissioner. Let me distinguish between a telephonic  
9 meeting and a poll vote. A poll vote does not allow  
10 for a deliberation, and can be held only if the  
11 Commissioners -- if no Commissioner objects, whereas a  
12 telephonic call could be -- can include deliberations.

13 COMMISSIONER YAKI: I would -- I think  
14 that what I heard from Commissioner Kirsanow, and  
15 perhaps he can restate, is that the chair wanted to  
16 engage in discussion about it, and a poll vote would  
17 not allow that.

18 I understand you very much -- I sympathize  
19 very much, Commissioner Braceras and Vice Chair  
20 Thernstrom, with your desire to get this out the door.  
21 But I just think that -- that as a courtesy to the  
22 chair and to his former office, I would either have a  
23 telephonic meeting in the interim or postpone it to  
24 the next meeting.

25 COMMISSIONER BRACERAS: Well, I would be

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1 very much in favor, then, of a telephonic meeting  
2 sometime within the next 14 days to discuss solely  
3 this issue.

4 COMMISSIONER TAYLOR: Can I make a  
5 suggestion? Since we don't know what the chair's  
6 position will be relative to these new changes, can we  
7 leave it open, such that we can either be contacted  
8 for the poll vote or a telephonic meeting, if a  
9 meeting is necessary? There's no need to have a  
10 meeting if Gerry reviews this and decides this  
11 satisfies his concerns, and we can do it by way of a  
12 poll vote.

13 COMMISSIONER KIRSANOW: Yes. I think  
14 Commissioner Yaki and Commissioner Taylor both make  
15 good points. I will communicate with the Chairman and  
16 ask him if it's feasible to simply do it by poll vote.  
17 And if that's the case, then I can relate that as soon  
18 as possible at the beginning of next week to the Staff  
19 Director, and then we can make the appropriate  
20 arrangements for either a poll vote or a telephonic  
21 conference if that's what the Commission decides.

22 COMMISSIONER MELENDEZ: This is  
23 Commissioner Melendez. I'm out of the country until  
24 the 23rd of March. I think it's a Thursday, the 23rd,  
25 I come back to the United States. So I might have a

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1 problem getting --

2 COMMISSIONER BRACERAS: When do you leave?

3 COMMISSIONER MELENDEZ: I leave, actually,  
4 Sunday to Los Angeles. I'm going to Rome, so I'll be  
5 there a couple of weeks.

6 VICE CHAIRMAN THERNSTROM: Well, is it  
7 possible to -- for us to have some indication from you  
8 before you leave?

9 COMMISSIONER MELENDEZ: I think I actually  
10 have Virginia Davis over at NC, National Congress. I  
11 could talk to her about this. And when I look at this  
12 thoroughly, I can -- you can contact her, and she  
13 could give you my position, if that's possible.

14 COMMISSIONER BRACERAS: I don't know if,  
15 procedurally, you can vote that way. Certainly, if we  
16 did it by poll vote, you can fax in your vote at any  
17 time.

18 COMMISSIONER KIRSANOW: I would just note  
19 that the 23rd is less than two weeks from now. I  
20 think we could probably wait until Commissioner  
21 Melendez returns back from Rome.

22 COMMISSIONER MELENDEZ: I'll be back on  
23 that Friday, the 24th. I'll be in the office on the  
24 24th.

25 COMMISSIONER BRACERAS: Okay. So why

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1 don't we -- let me put this in a motion. I move that  
2 the findings and recommendations on anti-semitism are  
3 -- strike that. I move that the Commission conduct a  
4 vote on the findings and recommendations related to  
5 anti-semitism, either by poll vote or by telephonic  
6 meeting, sometime before April 1, 2006.

7 COMMISSIONER KIRSANOW: Second.

8 VICE CHAIRMAN THERNSTROM: Any further  
9 discussion on this?

10 (No response.)

11 COMMISSIONER BRACERAS: We're ready to  
12 vote I guess.

13 VICE CHAIRMAN THERNSTROM: Okay. Let's  
14 take a vote. All in favor?

15 (Chorus of ayes.)

16 Anybody opposed?

17 (No response.)

18 All right. So we can move on.

19 And, again, I should note that I think  
20 that the chair's concerns have been met by the  
21 suggestions of Commissioner Braceras here by the  
22 amendments to both the recommendations and findings.  
23 I hope that that is correct.

24 We move on.

25 **Minorities in State Foster Care and Adoption**

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1                   VICE CHAIRMAN THERNSTROM: All right. We  
2 are at Minorities in State Foster Care and Adoption.  
3 On May 17, 2005, the Commission approved a national  
4 project on minority children in state foster care and  
5 adoption, later converted to a briefing currently  
6 scheduled for February '07. Approved project was  
7 based on a concept paper whose scope only extended to  
8 minorities in state foster care.

9                   During discussion of the project at the  
10 May '05 meeting, the scope of the project was extended  
11 to cover minority children in state adoption.  
12 However, the extension of the scope was not clarified  
13 at that meeting. I had requested a clarification of  
14 the scope at the meeting held last month on  
15 February 20th, and there is a motion here to clarify  
16 the scope of the briefing.

17                   And somebody could read it, or I could  
18 read it, but you should have it in front of you. Does  
19 somebody want to read this motion?

20                   (No response.)

21                   Has everybody got the language in front of  
22 them?

23                   COMMISSIONER KIRSANOW: I don't believe I  
24 do.

25                   VICE CHAIRMAN THERNSTROM: It should be

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1 right in your briefing book, right after the material  
2 on anti-semitism.

3 COMMISSIONER KIRSANOW: I've got it.

4 VICE CHAIRMAN THERNSTROM: Okay. Does  
5 somebody want to make a motion and read the motion  
6 into the record?

7 COMMISSIONER YAKI: Can we waive reading?

8 VICE CHAIRMAN THERNSTROM: Can we waive  
9 reading it? Well, we can --

10 COMMISSIONER BRACERAS: It would be  
11 helpful for me if you read it.

12 VICE CHAIRMAN THERNSTROM: Okay. Somebody  
13 read the motion.

14 COMMISSIONER BRACERAS: I've looked it  
15 over, but if I could hear it --

16 VICE CHAIRMAN THERNSTROM: Ashley, do I  
17 hear a volunteer?

18 COMMISSIONER YAKI: Yes, he was clearing  
19 his throat.

20 (Laughter.)

21 It's not American Idol.

22 (Laughter.)

23 COMMISSIONER TAYLOR: All right. I move  
24 that the expanded scope of the briefing on minority  
25 children in state foster care and adoption be

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1 clarified to reflect the following. The Commission  
2 will examine the efforts of the Department of Health  
3 and Human Services in enforcing the Multi-Ethnic  
4 Placement Act with respect to foster care and  
5 placement agencies.

6 As originally enacted in 1994, the Multi-  
7 Ethnic Placement Act provided that the placement of  
8 children in foster or adoptive homes could not be  
9 denied or delayed solely because of the race, color,  
10 or national origin of the child, or of the prospective  
11 foster or adoptive parents.

12 However, the Act expressly permitted  
13 consideration of the racial, ethnic, or cultural  
14 background of the child, and the capacity of the  
15 prospective parents to meet the child's needs in these  
16 areas when making placement decisions, if such a  
17 consideration was one of a number of factors used to  
18 determine the best interest of a child.

19 Furthermore, it required states to  
20 undertake efforts to recruit foster and adoptive  
21 families that reflect the racial and ethnic diversity  
22 of children in need of care. The Act was amended in  
23 1995 to clarify the race -- in 1996 to clarify that  
24 race, color, or national origin may be considered only  
25 in rare circumstances when making placement decisions.

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1 As amended, the Act states that placement cannot be  
2 denied or delayed because of race, color, or national  
3 origin.

4 Furthermore, the amendment removed  
5 language that allowed routine consideration of these  
6 factors in assessing both the best interest of the  
7 child and the capacity of prospective foster or  
8 adoptive parents to meet the needs of a child.

9 An agency making a placement decision that  
10 uses race, color, or national origin would need to  
11 prove to the courts that the decision was justified by  
12 a compelling government interest, and necessary to the  
13 accomplishment of a legitimate stated purpose -- in  
14 this case, the best interest of a child.

15 Thus, under the law, the "best interest of  
16 a child" is defined on a narrow, case-specific basis,  
17 whereas child welfare agencies have historically  
18 assumed that same race placements are in the best  
19 interest of all children.

20 VICE CHAIRMAN THERNSTROM: So this is a  
21 motion to clarify the scope of the briefing, so that  
22 it reflects the language that Commissioner Taylor just  
23 read. Do I have a second on that motion?

24 COMMISSIONER BRACERAS: Second.

25 VICE CHAIRMAN THERNSTROM: Any discussion

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1 on this?

2 (No response.)

3 Hearing none, all in favor?

4 (Chorus of ayes.)

5 Opposed?

6 COMMISSIONER MELENDEZ: Abstention, one.

7 VICE CHAIRMAN THERNSTROM: Okay. Let the  
8 record reflect one abstention. Otherwise, I lost  
9 count here, we've got five in favor.

10 **Annual Program Planning**

11 VICE CHAIRMAN THERNSTROM: Okay. Annual  
12 Program Planning. Here we've got a motion for  
13 briefing on the American Bar Association Standards of  
14 Diversity in Law Schools. The concept paper for the  
15 briefing on the American Bar Association on the ABA  
16 Standards on Diversity in Law Schools was included in  
17 the packet of FY07 and FY08 potential projects.

18 We have included today a motion to conduct  
19 this briefing in June of '06 -- that is, this coming  
20 June -- because the ABA is set to vote on these  
21 proposed standards in its meeting in August. I have  
22 written -- I personally have written a letter to Sally  
23 Stroop, Assistant Secretary for Post-Secondary  
24 Education, expressing my view on the new ABA standards  
25 on diversity.

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1           And I'd like a motion to conduct a  
2 briefing on the ABA's new standards in this coming --  
3 on this coming -- in the meeting of this coming June.  
4 So I need a motion to have a briefing on the ABA  
5 standards.

6           We are already at that June meeting going  
7 to hear from Professor Richard Sander on racial  
8 preferences in law schools. And we will have,  
9 obviously, somebody who is a critic of Sander's work.  
10 This would mean a second briefing on that same day,  
11 but it's obviously on a related topic. And I would  
12 think we would have simply two speakers at each  
13 briefing.

14           COMMISSIONER KIRSANOW: Madam Chairman?

15           VICE CHAIRMAN THERNSTROM: Yes.

16           COMMISSIONER KIRSANOW: It seems to me  
17 that -- could they be -- they are so similar that it  
18 would just be one briefing.

19           VICE CHAIRMAN THERNSTROM: Well --

20           COMMISSIONER KIRSANOW: That you would  
21 have, you know, Professor Sander and whoever the  
22 critic is --

23           VICE CHAIRMAN THERNSTROM: Well, that is a  
24 possibility, of course, that we also ask Professor  
25 Sander to not only talk about his work but talk about

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1 the ABA standards.

2 COMMISSIONER KIRSANOW: Right. And  
3 whatever impact that might have on his work.

4 COMMISSIONER TAYLOR: I would concur in  
5 that. My sense would be that we would have a more  
6 robust discussion if we had all four speakers there at  
7 the panel at the same time, and hopefully engaging in  
8 significant exchanges, so hat --

9 VICE CHAIRMAN THERNSTROM: I would think  
10 we would want four speakers, however, then, whereas  
11 before we had set the Sander up -- briefing up, we had  
12 not thought of four speakers. But --

13 COMMISSIONER BRACERAS: I'm sorry. Do we  
14 know who is responding to Sander? Did I miss that?

15 VICE CHAIRMAN THERNSTROM: No, I don't  
16 think we do yet. Do we?

17 STAFF DIRECTOR MARCUS: No. We did have a  
18 few names that were circulated as potential speakers,  
19 but we don't yet have a single one that has been  
20 selected.

21 COMMISSIONER BRACERAS: Well, for what  
22 it's worth, I like the idea of having four on one  
23 panel.

24 VICE CHAIRMAN THERNSTROM: Yes, it makes  
25 sense to me also. I've been -- that's been in the

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1 back of my mind as well. So it seems to me the motion  
2 should read that we modify the briefing that is  
3 already scheduled to include a discussion of the ABA  
4 diversity standards, and that we have four panelists,  
5 all of whom address both questions or are prepared or  
6 what -- well, if somebody chooses not to address all  
7 four questions, that, of course, is their prerogative.  
8 But in any case, one briefing, four panelists. Can I  
9 have a second on that?

10 COMMISSIONER TAYLOR: Second.

11 VICE CHAIRMAN THERNSTROM: Any further  
12 discussion on this?

13 (No response.)

14 Let's have a vote. All in favor?

15 (Chorus of ayes.)

16 Anybody opposed?

17 COMMISSIONER YAKI: No. I oppose.

18 VICE CHAIRMAN THERNSTROM: You oppose.

19 COMMISSIONER YAKI: I oppose.

20 VICE CHAIRMAN THERNSTROM: Okay. But you  
21 didn't want to discuss it? Fine. Out of the blue he

22 --

23 COMMISSIONER YAKI: I move not to discuss  
24 this.

25 PARTICIPANT: Second.

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1 (Laughter.)

2 COMMISSIONER MELENDEZ: Abstention.

3 VICE CHAIRMAN THERNSTROM: Any  
4 abstentions?

5 COMMISSIONER MELENDEZ: One abstention  
6 here.

7 VICE CHAIRMAN THERNSTROM: Okay. We've  
8 got one opposed -- one opposed, one Commissioner  
9 abstaining, Commissioner Melendez abstaining,  
10 Commissioner Yaki opposing, and we have four  
11 Commissioners in favor.

12 Okay. Motion for briefing or hearing on  
13 elementary and secondary school desegregation. I am  
14 -- I move to have the staff conduct a briefing or  
15 hearing on the elementary and secondary school  
16 desegregation -- on elementary and secondary school  
17 desegregation in connection with our FY2007 statutory  
18 report on October 13, 2006.

19 The briefing or hearing will be based on  
20 the concept paper distributed to Commissioners on  
21 Friday, March 3, 2006. Do I have a second on that?

22 COMMISSIONER YAKI: Second. But I can't  
23 discuss it.

24 (Laughter.)

25 VICE CHAIRMAN THERNSTROM: Is there any

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1 discussion?

2 (No response.)

3 All in favor?

4 (Chorus of ayes.)

5 All opposed?

6 (No response.)

7 It passes unanimously.

8 Friday, March 3rd, Office of the Staff  
9 Director recommended a process to facilitate  
10 discussion and approval of Commission projects for  
11 fiscal years 2007 and 2008. This procedure asked  
12 Commissioners to rank potential projects in order to  
13 streamline the process of developing a slate of  
14 potential candidates -- "slate."

15 Commissioners were asked to send the  
16 Office of the Staff Director a list containing up to  
17 five of his or her top preferences and potential  
18 fiscal year 2008 statutory reports, and up to five of  
19 his or her top preferences and potential briefings for  
20 '07 and '08, ranking them in order of preference, with  
21 one being the highest, two the second highest, and so  
22 forth.

23 By close of business on Wednesday,  
24 March 8th, the Office of the Staff Director of the OSD  
25 staff would then assign points to each proposal

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1 selected by each Commissioner, weighing them according  
2 to how high each Commissioner would place the item on  
3 his or her list -- five points for a number one  
4 choice, four points for a number two choice, and so  
5 forth.

6 So, in a subsequent e-mail, Commissioners  
7 who ranked reports separately for '07 and '08 were  
8 asked to advise OSD if they would like Commissioners  
9 to consider the '07 picks for '08, and indicate how  
10 highly you would rank them relative to your other '08  
11 selections. Otherwise, they would be disregarded when  
12 the Office of the Staff Director tabulated the  
13 rankings for '08.

14 As for briefings, this subsequent e-mail  
15 asked Commissioners to rank their top five briefings  
16 from among our recommendations or your own ideas, and  
17 to refrain from dividing their choices between '07 and  
18 '08. If Commissioners selected more than five  
19 briefings, OSD assigned a half point for each -- for  
20 every briefing ranked below five.

21 To the extent that Commissioners are more  
22 enthusiastic about certain projects than others, we  
23 can discuss the scheduled briefings for FY07. It is  
24 my hope that Commissioners will come up with a list of  
25 at least eight potential briefings for '08, at least

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1 three potential briefings for '07. Currently, we have  
2 five briefings scheduled for '07 through February.

3 Finally, the subsequent e-mail reminded  
4 Commissioners that briefings they would like to  
5 address in '06 would require a separate motion, and  
6 would also require bumping a project that was  
7 previously approved and scheduled.

8 There have been new tabulations,  
9 evidently, which -- have these been passed around?  
10 Does everybody have them?

11 COMMISSIONER YAKI: New tabulations?

12 VICE CHAIRMAN THERNSTROM: New  
13 tabulations. It has been a very mathematically  
14 complicated process. Some ballot boxes have been  
15 destroyed.

16 Does everybody have -- how have people  
17 received these new tabulations?

18 STAFF DIRECTOR MARCUS: This is an e-mail  
19 dated Thursday, March 9, at 4:05 p.m.

20 VICE CHAIRMAN THERNSTROM: Does everybody  
21 have this? Commissioner Melendez, do you have this?

22 COMMISSIONER MELENDEZ: I've got March 9,  
23 1:05 p.m. Is there another one?

24 COMMISSIONER YAKI: That's --

25 COMMISSIONER MELENDEZ: That's the same

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1 one?

2 COMMISSIONER YAKI: That's Pacific  
3 Standard Time.

4 COMMISSIONER MELENDEZ: Okay.

5 VICE CHAIRMAN THERNSTROM: It takes  
6 somebody in California to figure that out.

7 (Laughter.)

8 Okay. So we've got the final results. I  
9 don't think I have to read this entire list. Can  
10 people stare at it and --

11 COMMISSIONER YAKI: Question. Point of  
12 information. Given that this -- these are fairly  
13 important decisions in terms of the planning of the  
14 Commission, I would feel much more comfortable if the  
15 chair were present for this -- for these rankings. I  
16 think not having him present -- because, as it was,  
17 these rankings were not meant to be binding, but were  
18 to provide the basis for discussion.

19 And I remember that last time when we did  
20 this we actually had a very full, informed discussion  
21 that resulted in a lot of consensus being arrived at,  
22 including moving things around from one column --  
23 Column A to Column B. And I just think that it's  
24 important enough that the chair of this Commission  
25 should be involved in that discussion.

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1                   So I would -- I would ask that we -- we  
2 postpone this to the April meeting to allow the chair  
3 the opportunity to participate.

4                   COMMISSIONER KIRSANOW:     I would second  
5 that.

6                   COMMISSIONER BRACERAS:    That's fine.    But  
7 could we have a few minutes of discussion just to get  
8 a sense of the people who are here?   No binding votes,  
9 but just a brief --

10                  VICE CHAIRMAN THERNSTROM:   Yes, I think  
11 that would be helpful, a preliminary discussion here.

12                  COMMISSIONER BRACERAS:    And I guess I have  
13 two questions.    And the first is:    are there any  
14 proposals that any of you have that aren't on this  
15 list?   And, two, it's more of a procedural question --  
16 the No Child Left Behind Act project I believe was  
17 proposed as a briefing, and not as a statutory report,  
18 although I voted for it as a statutory report, because  
19 I think it could be most effective that way.

20                  But I'm not sure if there is a procedural  
21 reason why it cannot be or should not be a statutory  
22 report.   So I just wanted to ask Staff Director about  
23 that, because I just took the liberty of voting for it  
24 in Column A when it was proposed in Column B.   But I  
25 wanted to find out what the procedural situation is on

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1 that.

2 COMMISSIONER YAKI: Point of information.

3 Didn't we also get distributed today two more -- one  
4 briefing proposal and one statutory report proposal --  
5 that incorporates part of the No Child Left Behind Act  
6 as well?

7 COMMISSIONER BRACERAS: I don't believe I  
8 received any --

9 COMMISSIONER YAKI: That's why I'm saying  
10 that it might be better to have the discussion later,  
11 because these just were distributed today.

12 COMMISSIONER BRACERAS: Well, that's fine.  
13 So could somebody briefly just tell me what they are?

14 COMMISSIONER YAKI: One is a statutory  
15 report proposed on topic. I can't read this without  
16 laughing, so I -- let's have someone else read it.

17 VICE CHAIRMAN THERNSTROM: One is -- it's  
18 called Six Civil Rights Initiatives of the George W.  
19 Bush Administration. I suppose that Commissioner Yaki  
20 is laughing because he doesn't think that anything  
21 qualifies as a civil rights initiative by the Bush  
22 administration. Am I correct?

23 COMMISSIONER YAKI: I would not argue with  
24 that description.

25 VICE CHAIRMAN THERNSTROM: Okay.

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1 COMMISSIONER BRACERAS: So that again.

2 VICE CHAIRMAN THERNSTROM: Commissioner  
3 Yaki said this had given him the chuckles, and I  
4 simply said I assume it has given him the chuckles  
5 because he does not believe the Bush administration  
6 has any civil rights initiatives that -- or any  
7 initiatives that can legitimately be called civil  
8 rights. I'm obviously in disagreement with that, but  
9 that's fine.

10 So that's one statutory report proposal.  
11 And what is the other one?

12 COMMISSIONER YAKI: The educational  
13 achievement gap briefing proposal.

14 COMMISSIONER BRACERAS: I'm sorry. These  
15 were circulated by whom?

16 COMMISSIONER YAKI: I have no idea.

17 STAFF DIRECTOR MARCUS: Okay. I guess --  
18 let me try to answer a couple of questions. First,  
19 Commissioner Braceras, there is no procedural reason  
20 why we can't look at No Child Left Behind as either a  
21 statutory report or a briefing.

22 Second, the documents that were just  
23 circulated were circulated by staff based on requests  
24 for comments from Commissioners. For instance, the  
25 one on civil rights initiatives of the Bush

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1 administration was based on some comments received  
2 from Commissioner Kirsanow through his special  
3 assistant, although I don't know whether Commissioner  
4 Kirsanow considers the concept paper to be a fair  
5 reflection of his comments, but that's what the intent  
6 was.

7 And the other one I believe --

8 VICE CHAIRMAN THERNSTROM: The causes of  
9 the educational achievement gap -- I believe that was  
10 submitted by the chair.

11 STAFF DIRECTOR MARCUS: Yes. The one on  
12 the causes of the educational achievement gap was also  
13 a staff effort to reflect comments received from  
14 Chairman Reynolds.

15 COMMISSIONER BRACERAS: To go to the point  
16 of procedure, given these new proposals, are we going  
17 to be asked to rerank our preferences?

18 VICE CHAIRMAN THERNSTROM: I think we need  
19 to. I also added by the way -- and I don't believe  
20 that anybody had a chance to rank it -- I added  
21 religious discrimination in K through 12 schools. And  
22 the reason it is only five points is because those are  
23 my points.

24 COMMISSIONER YAKI: I never saw that.

25 VICE CHAIRMAN THERNSTROM: Yes. Nobody

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1 else ever saw that.

2 COMMISSIONER BRACERAS: Pay back.

3 VICE CHAIRMAN THERNSTROM: Pardon me? It  
4 was thrown in there by me.

5 COMMISSIONER BRACERAS: Yes. In the same  
6 way that --

7 VICE CHAIRMAN THERNSTROM: Yes. So I do  
8 think that there has to be now a new process of  
9 ranking. But I wonder if, once again, as Jennifer  
10 suggested, we couldn't have a preliminary discussion,  
11 so that we got this list down a little bit.

12 COMMISSIONER BRACERAS: Well, I don't  
13 think we have to trim it. I just -- I'm just  
14 interested in people's views, and maybe it will form  
15 my thinking. If we're asked to rerank or vote again,  
16 you know, maybe I hadn't thought through some of these  
17 ideas with clarity. And maybe if one Commissioner or  
18 another feels strongly about a proposal that would  
19 help me -- help me make my tabulation.

20 COMMISSIONER TAYLOR: Yes. May I? Along  
21 those lines, I did not vote for racial profiling the  
22 United States Department of Justice remedies, only  
23 because I didn't have a sense of where it was going.  
24 Could someone who is supportive of that idea provide  
25 me with a sense of that, particularly as it relates to

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1 limiting it to DOJ remedies? I just don't --

2 COMMISSIONER KIRSANOW: I don't know what  
3 it means. I didn't propose it.

4 COMMISSIONER TAYLOR: Okay.

5 COMMISSIONER KIRSANOW: But it seems to me  
6 that it probably is something that relates to an  
7 assessment of to what extent DOJ and other affected  
8 agencies or responsible agencies have tracked and  
9 possibly taken action to prohibit racial profiling,  
10 consistent with the directive received from the  
11 administration I think it was two years ago. Is that  
12 when the anti-profiling statement came out? I don't  
13 know. I suspect that's what this would be.

14 COMMISSIONER TAYLOR: Okay.

15 VICE CHAIRMAN THERNSTROM: My suggestion  
16 about pruning the list a little bit was simply based  
17 on the fact that there are a number of potential  
18 briefing proposals here that got almost no support --  
19 1.5 points, 1.1 point, .5, 0.5 points. And it seems  
20 to me unless you have a sense that they didn't vote  
21 for it because they didn't understand the proposal  
22 that we could do a little bit of pruning here and get  
23 a little more consensus as a consequence.

24 COMMISSIONER BRACERAS: That sounds fine  
25 with me. We're talking about there's virtually no

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1 support. I don't --

2 VICE CHAIRMAN THERNSTROM: I was proposing  
3 perhaps we should just eliminate the ones at the very  
4 bottom.

5 COMMISSIONER YAKI: There's a couple  
6 questions I have about that. One, one of the things  
7 that struck me is that there were two separate but  
8 also overlapping Title IX topics in this, number one.

9 Number two, I think that some people -- it looks like  
10 some people voted for some stuff under reports versus  
11 briefings.

12 For example, if you look at the statutory  
13 reports, the FEMA thing has four. Even though it only  
14 has one under briefings -- that's what I'm saying,  
15 that there's a lot of -- I would rather have a fuller  
16 discussion with the chair present, because his  
17 leadership was very -- was very useful last time as we  
18 started playing with the fact that some votes were  
19 here, some votes were in that column, Column A,  
20 Column B, we have a couple more things.

21 While we're doing this, there is one more  
22 item that I was thinking -- that I've been thinking  
23 about at great length regarding the role of federal  
24 agencies, not just regarding to people with  
25 disabilities but also in particular looking at --

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1 looking at the federal response of Katrina and civil  
2 rights issues that have been implicated there as well.

3 So I -- what I would suggest is that this  
4 is a good way for people to start and sort of see  
5 where interest lies or may not lie, and then items  
6 that they -- that they do like or don't like, or more  
7 appropriately do like but may want to try and  
8 strengthen a little bit, that within a week -- a  
9 deadline of a week any further ideas be brought  
10 forward and submitted to the Staff Director and to  
11 staff, so that they can be developed and circulated  
12 prior to the next meeting for another round of beauty  
13 contests, and then we can have a nice, robust  
14 discussion in the April meeting.

15 COMMISSIONER MELENDEZ: This is Chairman  
16 -- this is Commissioner Melendez. This is my first  
17 time through this process, and I totally didn't  
18 understand it. The question I had was, you know, if I  
19 came up with something -- a topic that maybe nobody  
20 really knew about, and it wasn't on this list, I asked  
21 myself, well, what are the chances of that getting on  
22 this list? And if it wasn't going to be -- have much  
23 chance of even getting on the list because I might not  
24 be the only one voting for it, I kind of tied it to  
25 something that already had been done.

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1           For example, I looked at the border town  
2 issues with Native Americans. That was an issue in  
3 the -- I think it was the Rocky Mountain region where  
4 their whole state was working on that issue. Then, we  
5 had the New Mexico report. You know, so I thought,  
6 well, in certain regions of the United States as far  
7 as Native Americans we're dealing with that issue.  
8 And it was on this list, so I -- I kind of voted for  
9 that.

10           But then, when you said that you had come  
11 up with a new initiative, I was thinking, well, what  
12 chance would that actually have? So I wasn't really  
13 sure exactly how to rank these, you know, on the  
14 racial profiling. And I had listed that, too, but I  
15 wasn't sure if I knew it affected minorities, so I  
16 naturally put it up there, because, you know, a lot of  
17 minorities are stopped by police and those type  
18 things.

19           So I was still trying to learn the  
20 process, and we hastily kind of put this together in a  
21 week. But I'm still not real comfortable with the  
22 chances of some of these issues. So I just wanted to  
23 just state that.

24           VICE CHAIRMAN THERNSTROM:           Well,  
25 Commissioner Melendez, I hope that if you have

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1 additional topics that you would -- you would send  
2 them in as well, so that they could be part of the  
3 list upon which we vote.

4 COMMISSIONER YAKI: Well, I already have a  
5 motion to push this to April. I would amend that  
6 motion to say that any other -- any other proposals by  
7 Commissioners be forwarded to the Staff Director no  
8 later than one week from -- close of business one week  
9 from today, and that the Staff Director then prepare  
10 another round of beauty contest votes to occur prior  
11 to the April meeting for consideration.

12 COMMISSIONER BRACERAS: Okay. Can I call  
13 the question?

14 VICE CHAIRMAN THERNSTROM: Yes. Let's  
15 take a vote. All in favor?

16 (Chorus of ayes.)

17 All opposed?

18 (No response.)

19 It passes unanimously.

## 20 VII. Strategic Planning

### 21 Working Group on Strategic Planning

22 VICE CHAIRMAN THERNSTROM: Okay. Where  
23 are we? We are at -- okay. We are now at Strategic  
24 Planning, but I think we need to go back to your -- to  
25 the beginning. Is that correct?

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1 COMMISSIONER BRACERAS: No. Strategic  
2 planning comes next, and then we go back to the Staff  
3 Director's Report.

4 VICE CHAIRMAN THERNSTROM: Okay. All  
5 right. Strategic planning. Well, wait. But, first,  
6 a motion on postponing the briefing on historically  
7 black colleges and universities, and instead holding a  
8 briefing on strategic planning. That is the motion.  
9 I don't know whose proposal that is.

10 COMMISSIONER KIRSANOW: I'm not sure. I  
11 see that it's listed under mine. I'll make the  
12 motion, and then we can have some discussion related  
13 to it, so I can tell you where we stand with respect  
14 to strategic planning.

15 I move that the Commission postpone until  
16 April 2007 the briefing previously approved for May 5,  
17 2006, addressing the effectiveness of historically  
18 black colleges and universities, and hold instead a  
19 briefing on strategic planning on May 5, 2006.

20 VICE CHAIRMAN THERNSTROM: Could you say  
21 something more about what you have in mind in terms of  
22 the strategic --

23 COMMISSIONER BRACERAS: I will second  
24 that, and then open it up for --

25 COMMISSIONER KIRSANOW: Yes. The

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1 second --

2 VICE CHAIRMAN THERNSTROM: Well, no, I'd  
3 like to hear a little bit more about what he has in  
4 mind in terms of a briefing on strategic planning.

5 COMMISSIONER KIRSANOW: The strategic  
6 planning group has met by teleconference twice. On  
7 that call were Commissioners Braceras, Melendez,  
8 Chairman Reynolds, and Staff Director, along with  
9 certain members of staff.

10 We had discussed in general terms various  
11 aspects of strategic planning, and staff had prepared  
12 for us materials for our review, specifically  
13 templates that we might follow from other similarly-  
14 situated agencies such as the EEOC, so that we could  
15 -- we wouldn't be operating in the dark and we'd have  
16 a sense for the direction in which we should go.

17 They also prepared for us the letters that  
18 we had received from at least two affected agencies  
19 who reviewed the preliminary strategic plan prepared  
20 by staff, as well as letters from oversight commenting  
21 upon the drafts of the strategic plan.

22 We reviewed the comments of oversight with  
23 an eye toward what is it that is necessary to revise  
24 the current draft, so that it would at least meet, in  
25 some respects, the approval of oversight, but at the

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1 same time give us an overarching strategic plan,  
2 number one, that has goals and missions of the  
3 Commission, but also would have sort of the nuts and  
4 bolts under those goals and missions.

5 In other words, how do we achieve them?  
6 What are some of the benchmarks and measures  
7 necessary, so that we know, in fact, whether or not  
8 we're making progress toward the five-year strategic  
9 plan?

10 The bulk of the discussion surrounded how  
11 it is that we arrive at a strategic plan, and a  
12 proposal was made -- I think by myself that was --  
13 kind of piggybacked off of something that Commissioner  
14 Yaki had said right at the outset of his appointment  
15 to the Commission in terms of having a briefing from  
16 affected parties or stakeholders that would inform the  
17 Commission as to what it is that they perceive the  
18 role of the Commission is in 2006 as opposed to when  
19 it was originally established in 1957.

20 And there was some discussion back and  
21 forth first about --

22 VICE CHAIRMAN THERNSTROM: All right.  
23 Let's not get into discussion at this moment. All I  
24 wanted -- I was hoping for two sentences, the last two  
25 that you just gave, that -- so that I understood

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1 exactly what this briefing was.

2 Commissioner Braceras, you want to second  
3 it and have a discussion?

4 COMMISSIONER BRACERAS: I just want to  
5 second it for purposes of moving on to the discussion,  
6 yes.

7 VICE CHAIRMAN THERNSTROM: Okay. It has  
8 been seconded. I'm sorry, Commissioner Kirsanow. My  
9 request was misunderstood here. Let's pick up this.

10 COMMISSIONER KIRSANOW: Okay.

11 VICE CHAIRMAN THERNSTROM: You are now  
12 into the discussion business.

13 COMMISSIONER KIRSANOW: The question is:  
14 in such a briefing, what is the scope of the briefing?  
15 There are certain GPRA guidelines, for example, or  
16 requirements that require that in preparing a  
17 strategic plan the affected agencies seek input from  
18 stakeholders. The GPRA statute provides that the  
19 affected agency, meaning ourselves, would determine  
20 who our stakeholders are. So that's one -- we have to  
21 determine who it is -- from whom we receive input in  
22 preparing the strategic plan.

23 More important I think is the discussion  
24 surrounding when that input should be received. Some  
25 were of -- or at least I was of the opinion that we

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1 should receive that input before we prepare our  
2 strategic plan, as GPRA contemplates. There are  
3 logistical problems, possible logistical problems  
4 inherent in that, and there are certain substantive  
5 problems that were raised by I think Commissioner  
6 Braceras related to that, and she can speak for  
7 herself on that.

8 And then, there were other alternatives  
9 such as, do we do this on an ongoing basis? Do we  
10 have briefings at the same time that we prepare our  
11 strategic plan? Or do we have briefings after we  
12 prepare our strategic plan? Or do we have briefings  
13 at all? And then --

14 COMMISSIONER BRACERAS: Can I quickly be  
15 heard? Because I do have to go soon.

16 COMMISSIONER KIRSANOW: Sure.

17 VICE CHAIRMAN THERNSTROM: Sure.

18 COMMISSIONER BRACERAS: And I want to  
19 speak specifically to the motion. Number one, I'm not  
20 in favor of it for several reasons. First of all, I  
21 was very much looking forward to hearing a briefing on  
22 historically black colleges and universities. I think  
23 that's an important topic. I think it's a topic that  
24 the public would benefit from our putting on a  
25 briefing on.

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1           But that logistical point aside, I am very  
2 much opposed to the idea of having the briefing  
3 proposed by Commissioner Kirsanow at this point in  
4 time. And the reason is: the mandate of the  
5 strategic planning group was for us to develop a  
6 strategic plan for the Commission. I think that we,  
7 as Commissioners, need to exercise leadership and come  
8 to the determination ourselves as to who our  
9 stakeholders are, and what it is we want to achieve.

10           I don't think inviting every Tom, Dick,  
11 and Harry in to opine on the state of the Commission  
12 and the role of the Commission for the future is going  
13 to inform any of us in a useful and streamlined  
14 manner.

15           And so I actually think there are two  
16 different questions being asked here. I mean, one is:  
17 what is your strategic plan -- excuse me. One  
18 question is: what is your strategic plan, given the  
19 current statutory mandate that we have? And that is  
20 something that I think we're perfectly equipped to do  
21 without outside testimony.

22           Another question is: what role, if any,  
23 should the Commission play in the future going  
24 forward? And that seems to me to be a separate  
25 question which we might want to invite people to do --

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1 give us their advice on, or to -- you know, just might  
2 want to hear from outside sources on that.

3 That does not answer the immediate  
4 question, which is: what is your current strategic  
5 plan for this year? And I think, you know, Congress  
6 has been waiting for the document, and we need to --  
7 we need to close the deal, put something together. So  
8 I'm not in favor of any type of briefing like this  
9 this spring.

10 COMMISSIONER KIRSANOW: In response to  
11 Commissioner Braceras, I don't know that there's a  
12 dichotomy between whether or not we put together a  
13 strategic plan -- first of all, the strategic plan is  
14 not for this year. It's for a five-year go-forward  
15 period. Second --

16 COMMISSIONER BRACERAS: But they want it  
17 this year.

18 COMMISSIONER KIRSANOW: Well, and I think  
19 that's perfectly doable, although I will admit there's  
20 a logistical problem if we have a briefing in May.  
21 Just putting together the briefing itself causes  
22 problems.

23 But I will say two things. One is,  
24 putting together a strategic plan for a current  
25 mission is something that oversight and, in fact, some

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1 of the commenting agencies had kind of rebuked us on,  
2 saying that, well, wait a minute, you're not looking  
3 at something a little bit more overarching.

4 There have been -- they have contemplated  
5 that there have been changes to the nature of civil  
6 rights, and yet the Commission has not incorporated  
7 those changes or the structural shifts in the civil  
8 rights paradigm if you will into a strategic plan.

9 COMMISSIONER BRACERAS: Yes. But so why  
10 is the goal of the briefing to throw open the doors  
11 to, you know, every special interest group and every  
12 member of the public and say, "What is your vision of  
13 civil rights?"

14 COMMISSIONER KIRSANOW: No, absolutely  
15 not.

16 COMMISSIONER BRACERAS: They are not --

17 COMMISSIONER KIRSANOW: GPRA, for example,  
18 says that this is something we're supposed to do --  
19 seek input from our stakeholders --

20 COMMISSIONER BRACERAS: That's right. But  
21 bear in mind --

22 COMMISSIONER KIRSANOW: -- and we can  
23 determine who --

24 COMMISSIONER BRACERAS: -- the problem,  
25 Pete, because we, as a Commission, have to define our

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1 own stakeholders.

2 COMMISSIONER KIRSANOW: And that's  
3 precisely what GPRA says, and we can do that.

4 COMMISSIONER BRACERAS: No. No, we can't  
5 hold a briefing to figure out who our stakeholders --

6 COMMISSIONER KIRSANOW: No, you're getting  
7 it backwards, with all due respect. GPRA says we  
8 define who our stakeholders are, so we can do that  
9 amongst ourselves, make a determination, and then  
10 those stakeholders are the individuals that we invite  
11 to a briefing, not every Tom, Dick, and Harry. I  
12 don't think that there should be some kind of free-  
13 flowing debate that's out of control. We do want to  
14 have something defined --

15 COMMISSIONER BRACERAS: But here is the  
16 problem.

17 COMMISSIONER KIRSANOW: -- and I think  
18 we've got control over it.

19 COMMISSIONER BRACERAS: Once you define  
20 the stakeholders, if you select any special interest  
21 group as a stakeholder, the question becomes: why  
22 weren't other groups included? So, for example, if  
23 the NAACP is defined as a stakeholder, the next  
24 question is: why wasn't the National Organization for  
25 Women included? Why wasn't this Native American group

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1 included?

2 COMMISSIONER KIRSANOW: And the answer to  
3 that is that GPRA gives us the ability to define who  
4 it is we want as stakeholders. And, second --

5 COMMISSIONER BRACERAS: I understand that,  
6 but --

7 COMMISSIONER KIRSANOW: -- that's a  
8 question that's inherent in virtually every briefing.

9 There are a number of people who are interested in  
10 almost every subject matter that we have before the  
11 Commission, and we make a determination as to who is  
12 invited. There are a number of experts on any given  
13 topic.

14 COMMISSIONER BRACERAS: If I have to chop  
15 strategically selected stakeholders in the first draft  
16 of a strategic plan that did not include special  
17 interest groups at all -- in other words, you did not  
18 include any special interest groups, you defined our  
19 stakeholders more along the lines of other  
20 governmental enforcement agencies, because once you  
21 define even a single interest group as a stakeholder  
22 that is a Pandora's Box, because you are going to  
23 inevitably be excluding some minority groups from the  
24 stakeholding process.

25 And once someone is defined as a

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1 stakeholder, we have a legal obligation to include  
2 them in our strategic planning process. And I just  
3 want to go down that road.

4 COMMISSIONER KIRSANOW: Commissioner  
5 Braceras, I don't think we have an argument here. I  
6 think we here will define, preliminary to any kind of  
7 a briefing, who it is that we consider to be our  
8 stakeholders. They may not include special interest  
9 groups if that is what the body here decides. I  
10 happen to think that -- and I wouldn't define them as  
11 special interest groups.

12 I happen to think it's healthy, and I also  
13 think it's contemplated within the confines of even  
14 our current statutory mission, that we've got  
15 stakeholders that go beyond agency heads, Congress,  
16 the President, to include those who are affected by  
17 our fact-finding mission.

18 COMMISSIONER BRACERAS: The public -- the  
19 public at large is affected, but you can't say, you  
20 know, African-Americans are affected and Asian-  
21 Americans aren't. I mean, you're going to have to  
22 include everybody.

23 COMMISSIONER KIRSANOW: Well, that's very  
24 easily done. The Leadership Conference on Civil  
25 Rights, for example, purports to represent a number of

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1 -- is the umbrella agency for a number of groups.

2 COMMISSIONER BRACERAS: Oh, come on. So  
3 you're going to say the Leadership Conference on Civil  
4 Rights is one of our stakeholders, but the Center for  
5 Equal Opportunity isn't?

6 COMMISSIONER KIRSANOW: We can invite both  
7 of them. I think we have to have a balanced debate.

8 COMMISSIONER BRACERAS: I don't think  
9 either of those groups covers the range of minority  
10 groups out there and political perspectives out there.

11 COMMISSIONER KIRSANOW: I don't think it  
12 is conceivable that any briefing on any subject will  
13 include every single person who is interested in that  
14 subject or might even conceivably be defined as a  
15 stakeholder. I don't think that it is possible to  
16 get, for example, you know, the -- I don't know,  
17 someone from some outlying area that may be an  
18 extraordinarily discrete minority group and invite  
19 them in.

20 COMMISSIONER BRACERAS: Right.

21 COMMISSIONER KIRSANOW: What I'm saying  
22 is --

23 COMMISSIONER BRACERAS: That's exactly my  
24 point. If this isn't a briefing of stakeholders, then  
25 what is the point of doing it before we develop our

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1 strategic plan?

2 COMMISSIONER KIRSANOW: The point is that  
3 we comply with the express mandate of GPRA and also  
4 with what oversight --

5 COMMISSIONER BRACERAS: Well, that's not  
6 complying with GPRA. I mean, because you just said  
7 they're not necessarily going to be all our  
8 stakeholders or that they would necessarily even be  
9 stakeholders.

10 COMMISSIONER KIRSANOW: I think we're  
11 really not arguing on this point. I think the charge  
12 of the Commission, pursuant to GPRA and oversight, is  
13 to, one, define who our stakeholders are. GPRA gives  
14 that -- us that authority. And if --

15 COMMISSIONER BRACERAS: You don't need a  
16 briefing to do that.

17 COMMISSIONER KIRSANOW: -- and if we  
18 exclude somebody, then we're going to be criticized,  
19 and the Commission is used to criticism.

20 COMMISSIONER BRACERAS: Right. We don't  
21 need a briefing to define our stakeholders. That's my  
22 bottom line.

23 COMMISSIONER KIRSANOW: Well, I've never  
24 suggested that, and I think maybe that's the point of  
25 the disagreement here, or the confusion. I've never

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1 suggested a briefing to --

2 COMMISSIONER BRACERAS: Well, I think we  
3 need to have our strategic plan in place. We need to  
4 identify our stakeholders, and we need to meet with  
5 the stakeholders and develop our strategic plan before  
6 we have a briefing.

7 COMMISSIONER KIRSANOW: Commissioner  
8 Braceras, let me give you my -- my sense of the  
9 chronology that I think is consistent with GPRA. That  
10 is, the Commission determines who it is who the  
11 stakeholders are. That is done before a briefing.

12 We invite -- and if we choose to hold a  
13 briefing, then we invite those stakeholders to the  
14 briefing in advance of the preparation of a strategic  
15 plan -- again, as set forth by GPRA and by what  
16 oversight has suggested to us, but mainly by GPRA.  
17 And that's how all of the other agencies do it, by the  
18 way. They don't necessarily have a briefing, but they  
19 invite their stakeholders to --

20 COMMISSIONER BRACERAS: I've never heard  
21 of one of them having a briefing.

22 COMMISSIONER KIRSANOW: Well, they invite  
23 -- I'm suggesting that we do so -- you know, think  
24 outside the box. And then, we bring them in here,  
25 conduct a briefing, and that informs at least part of

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1 our strategic plan. We can accept recommendations,  
2 reject recommendations, but I think it would be a  
3 healthy briefing to have for a couple of reasons.  
4 One, again, it's consistent with GPRA. Two -- or not  
5 inconsistent with GPRA.

6 And two is that we have radically changed  
7 the landscape of civil rights, so that putting  
8 together a strategic plan based on our model of 1957  
9 is not only something that oversight has told us we  
10 need to revisit, but it's something that is, you know,  
11 I think inherently the wrong way of going about it. I  
12 think we do have to look forward to what civil rights  
13 is going to be five years from now, because we have a  
14 five-year strategic plan.

15 Also, keep in mind that every year we are  
16 charged with doing updates for our strategic plan.

17 COMMISSIONER BRACERAS: Right. That's why  
18 we need to get this one done.

19 COMMISSIONER KIRSANOW: And we can do so  
20 in a timely fashion. I think we'd better do it the  
21 right way as opposed to doing it fast. Oversight --

22 COMMISSIONER BRACERAS: But the bottom  
23 line is I think that we, as individuals and as a  
24 Commission, need to exercise some leadership here.  
25 And all of us are presumably knowledgeable in the

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1 field of civil rights, or at least some aspect of the  
2 field of civil rights. And I think we can bring our  
3 own knowledge to bear on this question.

4 I don't think we need to hear from outside  
5 experts to inform us as to what -- what the meaning of  
6 civil rights should be five years from now. I think  
7 our strategic plan -- our statutory obligation is to  
8 develop a strategic plan that helps us perform our  
9 mandate under the current statute.

10 And I think the fundamental question that  
11 you would be asking these people to come in and opine  
12 on, which is, what is the new paradigm of civil  
13 rights, is inherently broad. And you'll inevitably be  
14 having panelists come in and speak to their own pet  
15 issues, and it would not end up informing anything.

16 And I guess I would finish by saying that  
17 if we really care so much what the so-called  
18 stakeholders think who have yet to be defined, can't  
19 we just ask them either to submit a written statement  
20 for the consideration of the subcommittee that would  
21 inform our deliberations? Why do we need to have a  
22 briefing?

23 COMMISSIONER KIRSANOW: Well, we have --  
24 we have already done that, and we've gotten two  
25 responses back. And there's nothing that precludes us

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1 from doing so, and I don't think that these are  
2 mutually exclusive methods of seeking input from  
3 stakeholders. We can do --

4 COMMISSIONER BRACERAS: I think it's a  
5 waste of time and money.

6 COMMISSIONER KIRSANOW: We can do that,  
7 and I -- actually, I think we -- it doesn't cost a  
8 whole lot. But I see Commissioner Yaki would like to  
9 weigh in.

10 VICE CHAIRMAN THERNSTROM: Michael, one  
11 second, just let me make one remark here. I mean, we  
12 know what the vision of the Leadership Conference on  
13 Civil Rights is. You only have to get on the website  
14 and look at their leadership. I mean, what news are  
15 they going to bring to us?

16 COMMISSIONER KIRSANOW: I'm not going to  
17 presume that what is on their website is something  
18 that they would repeat here. And, second, I think the  
19 purpose of a briefing is not that they simply wrote or  
20 just repeat what they have said on their website, but  
21 it's to engage in a bit of interaction, so we can ask  
22 them questions. If we think that some of the things  
23 they say on their website are silly, we can gauge them  
24 on that. I think it's healthy and --

25 VICE CHAIRMAN THERNSTROM: Well, we'll

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1 enlist the --

2 COMMISSIONER KIRSANOW: -- and I think we  
3 are not the gods of civil rights, with all due  
4 respect.

5 VICE CHAIRMAN THERNSTROM: Oh, we're not  
6 the gods of civil rights. We certainly are not.

7 COMMISSIONER KIRSANOW: I also think  
8 leadership is not --

9 VICE CHAIRMAN THERNSTROM: We have access  
10 to --

11 COMMISSIONER KIRSANOW: -- consistent with  
12 getting input, balanced input, and I would like  
13 Commissioner Yaki to speak.

14 VICE CHAIRMAN THERNSTROM: All right.  
15 But, you know, I have access to plenty of information  
16 in terms of what the interest groups believe. I mean,  
17 there's not going to be any news brought here. You  
18 can write the literature of, you know, interest groups  
19 on the right and interest groups on the left in your  
20 sleep. You know the arguments. I don't see that we  
21 need to have a -- what will amount to a circus here.

22 Anyway, Commissioner Yaki.

23 COMMISSIONER YAKI: Well, as someone who  
24 once served on a legislative body that was called a  
25 circus many times, I have my own views on this. I

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1 think that a couple of things that informed my  
2 thoughts listening to the spirited discussion between  
3 Commissioner Kirsanow and Commissioner Braceras.

4 One is that we are approaching the 50th  
5 year of our -- of the creation of this Commission.  
6 And as much as one might try and characterize  
7 Commissioner Kirsanow's proposal as -- well, or try to  
8 characterize it in any way possible, I would say that  
9 certainly it's a step I think in the direction of  
10 saying, you know, who are we now 50 years later? And  
11 where are we going?

12 Secondly, when you think about  
13 reauthorization of the statute, why wouldn't we take  
14 the leadership in hearing from individuals or  
15 organizations who we believe would be useful in sort  
16 of defining the next stage of the Civil Rights  
17 Commission, as distinct from what their individual  
18 organizations believe they are set up for?

19 We are different -- we are different than  
20 the Leadership Conference. We are different than the  
21 Committee for Racial Equality -- Equal Opportunity.  
22 We are distinctly different. We are mandated by  
23 government, by the Congress, created by appointments  
24 from the President and from the -- and from the  
25 legislative branch.

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1 I think that if you were -- if you were  
2 designing a hearing for the reauthorization of this  
3 Commission, they would be going through very much the  
4 same kind of process that Commissioner Kirsanow is  
5 talking about. And I don't see why we wouldn't take  
6 the leadership and grab the reigns ourselves in terms  
7 of starting to define, you know, who and what we are  
8 and should be, and listening to our stakeholders who  
9 are out there whose views would be solicited by the  
10 committees anyway in a forum that we would -- we would  
11 be passive in rather than controlling ourselves.

12 And I think that in terms of controlling  
13 our destiny towards reauthorization in terms of  
14 fulfilling the mandate -- mandates of GPRA, as  
15 Commissioner Kirsanow has suggested, I am in favor of  
16 at least attempting. We may end up with --

17 COMMISSIONER BRACERAS: But attempting to  
18 design a debate about reauthorization is a separate  
19 discussion from the one about, what should our  
20 strategic plan be that we need to submit now?

21 COMMISSIONER YAKI: If you -- I would not  
22 go so far as to make that distinction, given the kinds  
23 of rumblings all of us have heard from the committee  
24 of jurisdiction, and what we have gone through in the  
25 past year. I think that, you know, you can risk a

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1 circus, but, you know, I think -- I think that we're  
2 better than that and can -- and better stage managers  
3 than that from all of our different walks of life.

4 And I think that to me it's -- it's very  
5 worthwhile in terms of not sort of presuming, with all  
6 due respect, to say that we all have our collective  
7 knowledge of civil rights, and collectively we can  
8 decide together what our collective strategic plan of  
9 the future is going to be when we have reauthorization  
10 around the corner.

11 And I really do believe that they're  
12 connected, and I think that taking leadership on this  
13 issue in the way that Commissioner Kirsanow is  
14 suggesting is something that I find refreshing and  
15 worthy of support.

16 COMMISSIONER BRACERAS: Well, this is the  
17 final few things I'm going to say about this. Number  
18 one, I'm against it, and I'm going to vote against it.

19 Number two, should it pass, I want to be perfectly  
20 clear that I don't think there's a single special  
21 interest group out there, on either the right or the  
22 left, that is a stakeholder of ours.

23 Our stakeholders are the public and other  
24 government agencies, and I'm not interested in  
25 bringing any interest group in here to tell the United

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1 States Commission on Civil Rights what its platform or  
2 agenda should be for the next five to ten years. Not  
3 interested in hearing it.

4 VICE CHAIRMAN THERNSTROM: What is the  
5 objection, Commissioner Yaki, to simply soliciting  
6 written views from any organization that would like to  
7 provide input into the long-run vision of the  
8 Commission on civil rights questions?

9 COMMISSIONER YAKI: I don't have any  
10 objection to that. On the other hand, you know, I am  
11 deferring to Commissioner Kirsanow on this one.

12 COMMISSIONER KIRSANOW: Well, I would say  
13 that there are significant logistical hurdles to  
14 having people come in here for a briefing by May. And  
15 in our teleconference the Staff Director outlined  
16 those. I think it can be done, but I also don't want  
17 to do this simply for the purpose of doing it, going  
18 through the exercise. I think if we're going to do  
19 it, we should attempt to do it in the most competent  
20 way possible.

21 So when I propose this, I'm not saying  
22 this without any reservations. I do have  
23 reservations, but they're logistical reservations. I  
24 think this is necessary in terms of what's been  
25 directed to us by GPRA and by oversight.

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1           By the same token, I think that it's  
2 perfectly plausible to do this by seeking or  
3 soliciting written input. We did so -- only received  
4 two brief letters from stakeholders that I would  
5 simply characterize as not necessarily particularly  
6 helpful, and I don't think we'll get any more than  
7 that. I think it's more likely that people would  
8 appear for a live hearing.

9           Second, I think going to what Commissioner  
10 Yaki was talking about, we are at the 50th anniversary  
11 of the creation of the Civil Rights Commission. And  
12 something that we may want to keep in mind is  
13 something that is related to but maybe somewhat  
14 distinct from this is having a briefing related to the  
15 next half-century of the Civil Rights Commission, if  
16 we last anywhere near that long.

17           But I think having a briefing along these  
18 lines -- and I disagree with Commissioner Braceras  
19 with all due respect. I do think that our  
20 stakeholders go beyond simply Congress and the  
21 executive branch.

22           COMMISSIONER BRACERAS: And the public --

23           COMMISSIONER KIRSANOW: Well, I think --

24           COMMISSIONER BRACERAS: But the public  
25 isn't represented by an interest group. We all know

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1 that.

2 COMMISSIONER KIRSANOW: Well, you know, I  
3 -- "interest group" is -- can be a loaded term. There  
4 are interest groups, and there are groups -- I don't  
5 necessarily think that -- I don't necessarily think  
6 that the NAACP, for example --

7 COMMISSIONER BRACERAS: I can't -- I don't  
8 know if you're referring to the left or if you're  
9 referring to all of those yahoos on the right. I  
10 mean, these groups claim to have constituencies.  
11 They're not membership organizations. They don't have  
12 constituencies.

13 COMMISSIONER KIRSANOW: But, Commissioner  
14 Braceras, we invite individuals here who are members  
15 or executive directors of interest groups all the  
16 time. Roger Craig is here all the time.

17 COMMISSIONER BRACERAS: Right, because we  
18 are interested in their academic --

19 COMMISSIONER KIRSANOW: And he doesn't  
20 represent anybody but CEO.

21 COMMISSIONER BRACERAS: Excuse me. We are  
22 interested in their view on a particular issue, a  
23 substantive issue. We're not asking them for their  
24 view on us.

25 VICE CHAIRMAN THERNSTROM: And defining

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1 people as stakeholders has larger repercussions.

2 COMMISSIONER BRACERAS: My problem is not  
3 in hearing from somebody from the Leadership  
4 Conference on Civil Rights. I very much would like to  
5 hear from them on certain topics on which they have  
6 expertise. I do not want to hear from them on what  
7 the mission of the U.S. Civil Rights Commission should  
8 be going forward. They certainly don't ask us what  
9 their mission should be going forward.

10 COMMISSIONER KIRSANOW: Let me just say  
11 this, and I'll -- I don't want to prolong this too  
12 much longer here. But when I talk about stakeholders  
13 in my own view, that it goes beyond simply Congress  
14 and executive branch, I threw out the Leadership  
15 Conference on Civil Rights as an example, and it's not  
16 necessarily definitive. Others may have other ideas  
17 as to whether or not they should be invited.

18 But I think that there are stakeholders  
19 who are members of the public who we can invite. Some  
20 of them I had mentioned on our conference call -- and  
21 I know there was objection to this -- maybe former  
22 Commissioners. I think there are people out there who  
23 can inform this debate credibly. I think it would be  
24 a useful exercise. I think, in fact, it is intrinsic  
25 to our mission to hear from these people, and I for

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1 one don't see as big a down side as Commissioner  
2 Braceras aside from the logistical aspect of this.

3 COMMISSIONER BRACERAS: It's not that I  
4 don't want to do a briefing like this sometime in the  
5 future. I just want to focus and streamline the work  
6 of the working group, and I don't -- I think it's a  
7 big sideshow, and I'd like to call the question.

8 VICE CHAIRMAN THERNSTROM: All right.

9 COMMISSIONER MELENDEZ: This is  
10 Commissioner Melendez. I just wanted to comment,  
11 since everybody is.

12 (Laughter.)

13 I just wanted to say, you know, I don't  
14 have a problem with some of the group on strategic  
15 planning -- listening to people, because ultimately,  
16 you know, we can take their comments or leave them,  
17 you know, because we're still basically the  
18 Commission.

19 And, you know, the question I had was:  
20 does this help us in our strategic planning? If it  
21 does, you know, I think it's a good idea to hear what  
22 the general public has to say. And, you know, it's --  
23 and I don't want to take an attitude against special  
24 interest groups, because there are a lot of them out  
25 there. You know, it's like if I took an attitude

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1 against the Republican party. You know, I can't --

2 COMMISSIONER BRACERAS: I'm not taking an  
3 attitude against them. They do very good work. I  
4 just don't think that their views on what the U.S.  
5 Commission on Civil Rights should do are relevant.  
6 Their views on substantive civil rights topics are  
7 very relevant.

8 I just want to be clear -- I'm not  
9 attacking them for what they do. I just don't think  
10 that their views are relevant in this case.

11 COMMISSIONER MELENDEZ: Right. And the  
12 issue I think is, you know, even though they may have  
13 their opinions as to civil rights in general, I'm not  
14 -- I'm kind of differentiating it between them telling  
15 me what to do as a Commissioner. I don't look at it  
16 like that.

17 I just look at it as, you know, they're  
18 giving me input as to maybe it's the shift of how  
19 civil rights were in 1964 as opposed to as I -- we all  
20 think there's kind of like a shift -- at least I do  
21 when I came on the Commission. It just seems like  
22 things are not the same as they were back in 1964.

23 COMMISSIONER BRACERAS: Well, that's a  
24 briefing that will take about two months to conduct. I  
25 mean, come on. If you want people to come in and talk

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1 about how things have changed since 1964 --

2 COMMISSIONER MELENDEZ: Well, I'm not  
3 saying that. I'm just saying --

4 COMMISSIONER BRACERAS: Volumes have been  
5 written on that.

6 COMMISSIONER MELENDEZ: I'm just saying  
7 that, you know, I don't have a problem listening to  
8 people. I'm not a closed-minded person that is  
9 totally in control of --

10 COMMISSIONER BRACERAS: Are you suggesting  
11 I am?

12 COMMISSIONER MELENDEZ: No. I'm just  
13 saying I'm not, you know, that I have a --

14 VICE CHAIRMAN THERNSTROM: Well, none of  
15 us are, Commissioner Melendez.

16 COMMISSIONER MELENDEZ: You know, so I --

17 COMMISSIONER BRACERAS: Well, the question  
18 has been called.

19 VICE CHAIRMAN THERNSTROM: No, wait a  
20 minute. Commissioner Ashley has had his hand up.  
21 Commissioner Ashley? Taylor.

22 (Laughter.)

23 COMMISSIONER YAKI: Point of order.  
24 Calling for a question prior to two-thirds vote of  
25 those -- of those present. So, you know --

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1 VICE CHAIRMAN THERNSTROM: Well, we have  
2 not finished this.

3 COMMISSIONER BRACERAS: Well, I have to  
4 leave in about four minutes, so --

5 COMMISSIONER TAYLOR: I will make my  
6 comments very brief. My sense is that the time we  
7 have for briefings is very precious. My sense is that  
8 I don't think inviting these groups for the purposes  
9 of informing the strategic planning group is the best  
10 use of our time relative to the briefing.

11 I think we should do it by way of written  
12 submissions. I think there will be a time for us to  
13 invite a lot of folks in. But relative to our  
14 briefing time, I don't think this is a good use of it.

15 COMMISSIONER KIRSANOW: Well, if I could  
16 ask Commissioner Ashley --

17 (Laughter.)

18 VICE CHAIRMAN THERNSTROM: I apologize. I  
19 meant to say Ashley, and I threw in a Commissioner  
20 before it.

21 COMMISSIONER KIRSANOW: I don't want to be  
22 sloppy with our scope or our terms here. As I laid  
23 out, the way GPRA contemplates this is I think we're  
24 kind of presuming that a briefing would necessarily  
25 include "special interests." I think as a preliminary

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1 step we have to determine who it is we're inviting,  
2 and those may only include, for example, if we invited  
3 folks from Congress or their designated  
4 representatives, or somebody from the executive  
5 branch.

6 And let me just say that if the Commission  
7 decides that the best use of time, to which I'm very  
8 sensitive, is by written submission I'm completely  
9 comfortable with that. I don't have a problem with  
10 that. I simply would say that I think it is very  
11 useful to have a live debate on matters that will  
12 inform our strategic plan. And I don't think it would  
13 take that long.

14 I don't think it would be a sideshow.  
15 But, you know, I -- I am simply interested in using  
16 the best possible procedure, informing the  
17 establishment of our strategic plan, consistent with  
18 GPRA goals, consistent with Oversight. And, remember  
19 now, Oversight has kicked this thing back to us  
20 already. They've said, you know, "Your first stab at  
21 this didn't work." So I'm more concerned about  
22 getting it right than getting it fast, but I'd like to  
23 do both if we can.

24 VICE CHAIRMAN THERNSTROM: Well, if --  
25 look, the motion is altered. If we can come to some

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1 consensus that we can solicit views in the form of  
2 written statements, we do not, then, have to postpone  
3 the briefing on historically black colleges and  
4 universities, a briefing that I also am extremely  
5 interested in. And if we --

6 COMMISSIONER BRACERAS: I'd like to vote  
7 on the motion as written. And if somebody has a  
8 substantive motion to do something different, request  
9 written testimony or what have you, then let them make  
10 that motion. But I'd like to vote on the motion as  
11 written.

12 COMMISSIONER KIRSANOW: Well, first of  
13 all, I didn't propose -- I didn't write that motion.  
14 I was simply repeating it -- something that was  
15 written, but --

16 VICE CHAIRMAN THERNSTROM: Well, Jennifer,  
17 what is the down side to altering -- amending the  
18 motion, so that we go ahead with the briefing on  
19 historically black colleges and universities, and, in  
20 the meantime, we solicit written --

21 COMMISSIONER BRACERAS: From whom?

22 VICE CHAIRMAN THERNSTROM: Pardon me?

23 COMMISSIONER BRACERAS: Solicit written  
24 testimony from whom?

25 VICE CHAIRMAN THERNSTROM: Well --

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1                   COMMISSIONER BRACERAS: We need to decide  
2 that.

3                   COMMISSIONER KIRSANOW: Can I propose  
4 this? I would make a motion, first, that we determine  
5 whether or not we have a briefing versus seeking any  
6 other kind of input. Second is the timing of such  
7 briefing. Is it something that occurs in May, if, in  
8 fact, we agree on a briefing? Or is it something that  
9 occurs at some other time, and maybe morphs into  
10 something bigger or different as a result of it not  
11 being truly informative of the strategic plan?

12                  COMMISSIONER BRACERAS: No, I don't want  
13 to do that, because if I have to vote on whether or  
14 not to have a briefing at all, first and foremost,  
15 then I'm going to have to vote no. I'd rather just  
16 vote on whether or not to do it this spring, and we  
17 can revisit the topic later. And you may convince me  
18 that it's worth doing later on, but I do not think  
19 it's worth doing now. And if I have to vote on the  
20 whole thing, I'm going to vote no.

21                  VICE CHAIRMAN THERNSTROM: All right. I'm  
22 calling the question on the motion as it exists, which  
23 is to postpone the briefing on historically black  
24 colleges and universities, and, instead, hold a  
25 briefing on strategic planning. And that is in May.

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1 That would be in May. To continue to -- to stick with  
2 our current plans of holding the briefing on the  
3 HBUCs.

4 COMMISSIONER BRACERAS: So read the  
5 motion, because it --

6 VICE CHAIRMAN THERNSTROM: The motion is:  
7 I move the Commission postpone until April '07 the  
8 briefing prepared -- previously approved for May 5,  
9 2006, addressing the effectiveness of historically  
10 black colleges and universities and hold, instead, a  
11 briefing on strategic planning on May 5, 2006.

12 So this is simply a question of whether we  
13 postpone and substitute. Postpone the briefing on  
14 historically black colleges and universities and  
15 substitute a briefing on strategic planning. We can  
16 take up later the question of whether we have a  
17 briefing on strategic planning and what that briefing  
18 looks like.

19 COMMISSIONER BRACERAS: I need to vote.  
20 I've got to go. I'm sorry. I've got to be out of  
21 town in 15 minutes.

22 VICE CHAIRMAN THERNSTROM: All right.  
23 Let's have a vote on it. Can we call the question?  
24 All in favor?

25 (Chorus of ayes.)

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1 Roll call?

2 COMMISSIONER KIRSANOW: Kirsanow, aye.

3 VICE CHAIRMAN THERNSTROM: Nay.

4 COMMISSIONER YAKI: Yaki, aye.

5 COMMISSIONER MELENDEZ: Melendez, aye.

6 COMMISSIONER TAYLOR: Nay.

7 VICE CHAIRMAN THERNSTROM: What do we have  
8 there? Three and three. The motion fails. the  
9 motion fails.

10 COMMISSIONER BRACERAS: Did Commissioner  
11 Melendez just get off the call?

12 COMMISSIONER MELENDEZ: No, I'm still on.

13 COMMISSIONER BRACERAS: Oh, okay. I  
14 thought I heard you say good-bye.

15 COMMISSIONER MELENDEZ: No, no. I said  
16 aye.

17 VICE CHAIRMAN THERNSTROM: All right. The  
18 motion fails. So we are not postponing the briefing  
19 on the historically black universities and colleges.  
20 That will take place, as previously approved, in May.

21 Commissioner Braceras, have you got  
22 something -- anything more you want to say?

23 COMMISSIONER BRACERAS: I have nothing to  
24 say. I think that the strategic planning working  
25 group should continue to revise the document, and if

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1 somebody wants to propose having a briefing on this  
2 topic in the fall, then a contact paper should be  
3 drawn up, and it should be a narrowly-tailored  
4 document, so we're all very clear on the focus of such  
5 a briefing, and we can have a discussion about that  
6 instead of a vague, nebulous idea.

7 COMMISSIONER TAYLOR: Is it the view of  
8 the strategic planning working group that we are  
9 obligated as a matter of statutory obligation, that  
10 is, to have a briefing?

11 COMMISSIONER KIRSANOW: No.

12 COMMISSIONER TAYLOR: Okay.

13 COMMISSIONER KIRSANOW: In fact, GPRA  
14 doesn't say we have to have a briefing.

15 COMMISSIONER TAYLOR: Just input.

16 COMMISSIONER KIRSANOW: It says we have to  
17 have input.

18 COMMISSIONER TAYLOR: Right. Okay.

19 COMMISSIONER KIRSANOW: It leaves it to us  
20 to --

21 COMMISSIONER BRACERAS: Right. But first  
22 we need to figure out who we think our stakeholders  
23 are. We need to define them, and then we need to ask  
24 for input.

25 COMMISSIONER TAYLOR: And then, we need to

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1 decide whether or not the input takes the form of a  
2 briefing or written testimony.

3 COMMISSIONER BRACERAS: I'm willing to  
4 consider the idea of a briefing once we, as a  
5 Commission, define our stakeholders privately.

6 VICE CHAIRMAN THERNSTROM: Okay. We're --  
7 this issue has been resolved, and, Commissioner  
8 Braceras, you can hang up.

9 COMMISSIONER BRACERAS: Sorry.

10 VICE CHAIRMAN THERNSTROM: That's okay.

11 COMMISSIONER BRACERAS: I'm now 20 late  
12 for my meeting. Okay. Bye.

13 VICE CHAIRMAN THERNSTROM: Thank you very  
14 much for staying.

15 COMMISSIONER BRACERAS: Yes, bye.

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

17 VICE CHAIRMAN THERNSTROM: Okay. I  
18 believe that we are back now to the Staff Director's  
19 report.

20 STAFF DIRECTOR MARCUS: Thank you, Madam  
21 Vice Chair. Just a few points.

22 First, Commissioners may recall that for  
23 next month the briefing topic is the census, and  
24 specifically the minorities in the census. I'm happy  
25 to say that Census Bureau Director Charles Kincannon

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1 has agreed to address the Commission during the  
2 briefing, as have Professor Kenneth Pruitt of Columbia  
3 University, and Professor Sharon Lee of Cortland State  
4 University.

5           Invitations remain outstanding to Mr.  
6 Peter Scarey of The Brookings Institution, Mr. Ward  
7 Connerly of the American Civil Rights Institute, and  
8 Ms. Katherine Wallman, Chief Statistician at OMB's  
9 Statistical and Science Policy Branch.

10           I also wanted to bring to the attention of  
11 the Commission that we have begun conversations with  
12 the Government Printing Office and the University of  
13 Maryland's Thurgood Marshall Law Library about the  
14 possibility that the University of Maryland's Thurgood  
15 Marshall Law Library would serve as an alternative  
16 official repository for electronic official U.S.  
17 Commission on Civil Rights documents.

18           This would take place as a part of an  
19 existing GPO program. They have been in conversations  
20 with the University of Maryland about doing this.  
21 Under the proposed notion, if we were to do this, no  
22 money would change hands. Thurgood Marshall Law  
23 Library already maintains a collection of the official  
24 work of the U.S. Commission on Civil Rights. So it  
25 would not be a significant change in that respect, but

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1 they would receive official recognition from the  
2 Government Printing Office.

3 In the event that we were to enter into a  
4 memorandum of understanding with the Government  
5 Printing Office and the University of Maryland on this  
6 topic, it occurs to me that we would likely need to  
7 ensure that the holdings of the University of Maryland  
8 would comport with approved U.S. Commission on Civil  
9 Rights policies.

10 For instance, the Commission has, within  
11 the last -- a little over a year approved a policy  
12 regarding the way in which we oppose materials that  
13 were not approved by a majority of the Commission.  
14 And that is an issue which we knew would have to be  
15 worked out, and we would need to make sure that  
16 documents are kept in an official manner without  
17 extraneous or misleading markings, and that they are  
18 kept in an appropriate manner.

19 We're still in an early phase of the  
20 discussion, but I thought I should bring it to the  
21 attention of the Commission, in case there are members  
22 of the Commission who have either concerns or ideas  
23 about this.

24 Preliminarily, it appears to be a way of  
25 ensuring that, since the University of Maryland is

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1 keeping these documents anyhow, that they do it in a  
2 way which is neutral and objective and consistent with  
3 Commission policy, and without any expense to the  
4 Commission or to the GPO.

5 I don't know if there are any questions on  
6 that before I move on, or any input that people have.

7 (No response.)

8 So I will continue to keep Commissioners  
9 posted as we go forward in discussions with GPO and  
10 the University of Maryland on that topic.

11 Finally, I regret to inform the Commission  
12 that three very dedicated, very highly valued members  
13 of our staff have indicated an intent to resign and to  
14 take other positions elsewhere. Terri Dickerson, the  
15 Director of the Office of Civil Rights Evaluation,  
16 will be leaving the Commission to accept a position at  
17 the United States Coast Guard. She is leaving the  
18 Commission after almost six years of service. We  
19 expect that her last day in the office will be Friday,  
20 March 31st.

21 Seth Jaffe, an Attorney Advisor in the  
22 Office of the Staff Director, will be leaving the  
23 Commission to accept a position in the United States  
24 Office of Government Ethics. And Mireille Zieseniss,  
25 a Civil Rights Analyst in the Office of Civil Rights

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1 Evaluation, will be leaving the Commission after seven  
2 years of service to accept a position in the  
3 Department of Housing and Urban Development.  
4 Mireille's last day in the office will be Friday,  
5 March 17th.

6 All three of these individuals have  
7 provided excellent service. We have been privileged  
8 to have them among us, and are proud to have had them  
9 within the agency. I don't mean to lump them all  
10 together, except in the sense that they will all be  
11 leaving within approximately the same time, but we  
12 thank them for their service and will be sorry to  
13 leave them -- to see them go. But we do wish them  
14 well in their new employment.

15 VICE CHAIRMAN THERNSTROM: And I would  
16 certainly like to second that, that I'm very sorry to  
17 see all three of them go, and it has been a privilege  
18 and pleasure to have them here.

19 COMMISSIONER KIRSANOW: Madam Chair, a  
20 couple -- first, I would concur with that. They have  
21 all done very good work. And I've had the longest  
22 experience obviously with Ms. Dickerson, who has  
23 always been extraordinarily professional and has done  
24 a very, very good job for the Commission. That's not  
25 to diminish anybody else, but she has been I think

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1 around a little bit longer, or at least I've had more  
2 interaction with her.

3 Second, just a question, actually two  
4 questions. One is, to what extent, if you've done  
5 this or assessed it already, is the budgetary impact  
6 on that attrition? It seems to me we're going to have  
7 to replace all three anyway, or maybe not. And next  
8 is, to what extent have we taken any steps, or where  
9 are we with respect to possibly finding replacements?

10 STAFF DIRECTOR MARCUS: Those are good  
11 questions. We certainly will want and need to replace  
12 Ms. Dickerson, and we will be announcing a senior  
13 executive service position. Since all three of them  
14 have fairly recently given notice, we have not yet  
15 taken official step to announce their positions.

16 Similarly, Mr. Jaffe will need to be  
17 replaced by another attorney advisor in the Office of  
18 the Staff Director.

19 As for the upcoming vacancy in the Office  
20 of Civil Rights Evaluation, it seems to me that we  
21 have two options. We certainly have fewer people in  
22 that office than we need, so it will -- it would  
23 certainly hurt not to replace an outgoing civil rights  
24 analyst.

25 On the other hand, there are also other

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1 vacancies that are very important as well. One of the  
2 alternatives before the Commission is to -- is to hold  
3 off on replacing her and in the meantime using the  
4 funds that are saved to authorize the hiring of  
5 another Commissioner Assistant.

6 I've been asked in prior meetings whether  
7 it would be possible, consistent with our budget, to  
8 hire another Commissioner Assistant for Commissioner  
9 Melendez. One of the options that we now have  
10 available is to permit him to do that immediately on a  
11 permanent basis rather than a detail.

12 As for the question of the budget impact,  
13 I would say that no matter -- I would say that no  
14 matter how quickly we're able to bring people on,  
15 there is going to be a bit of a lag, which means that  
16 there will be some savings of money. On the other  
17 hand, it certainly does mean it will be difficult to  
18 handle our programs in the next few months.

19 It is at least fortunate that our  
20 statutory report is either done or nearly done, and  
21 that's the main work of OCRE. But it's still the case  
22 that we have a large number of briefings coming up for  
23 OCRE, and we're just going to have to work to try and  
24 do more with less.

25 VICE CHAIRMAN THERNSTROM: Does the fact

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1 that Terri Dickerson is leaving and OCRE is really not  
2 properly staffed, should it have an impact on how we  
3 think about our priorities in terms of these briefings  
4 and in terms of the statutory report as well?

5 STAFF DIRECTOR MARCUS: To answer the  
6 question for me, Madam Vice Chair, it seems to me that  
7 we will still be able to do them in the same way or  
8 the same order. If it turns out that workflow just  
9 becomes unmanageable with the fewer people, I can  
10 report back to the Commission as to whether we need to  
11 cut a briefing or two that is scheduled for later in  
12 the year. But for the meantime, I think the best way  
13 is just to try and continue along the path that we're  
14 on.

15 VICE CHAIRMAN THERNSTROM: And can we  
16 contract work out if there is social science  
17 expertise, for instance, needed on a particular topic?

18 STAFF DIRECTOR MARCUS: Well, that's  
19 something we would have to look into. We do have an  
20 ability to contract out for work, but there are some  
21 statutory limitations on our ability to do that. Over  
22 the next several months, the main challenges that we  
23 have in the Office for Civil Rights Evaluation, once  
24 we get through the statutory report, will be to  
25 conduct the briefings.

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1 Now, that work I think is best done --

2 VICE CHAIRMAN THERNSTROM: In-house.

3 STAFF DIRECTOR MARCUS: -- in-house.

4 VICE CHAIRMAN THERNSTROM: Yes.

5 STAFF DIRECTOR MARCUS: To do the public  
6 education campaign on anti-semitism. I suppose we  
7 could look into that question, but I think it could be  
8 done in-house. And I suppose OCRE will need to  
9 provide backup support to OGC's project on elementary  
10 and secondary education, and perhaps to get started  
11 early on the next statutory report.

12 I think that the projects they're working  
13 on probably at this point can best be handled in-  
14 house, and it's just a matter of replacing the  
15 outgoing employees.

16 VICE CHAIRMAN THERNSTROM: Did somebody  
17 have their hand up here?

18 COMMISSIONER YAKI: I did. I just wanted  
19 to say that in my year on the Commission I have  
20 enjoyed working with Terri, Mireille, and with Seth,  
21 and wish them all the very best success in their  
22 future endeavors.

23 VICE CHAIRMAN THERNSTROM: Well, I know  
24 that's a -- it's a rare issue on which there is  
25 consensus on the Commission.

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1                   **V. Management and Operations**

2                   **Special Assistant for Commissioner Melendez**

3                   VICE CHAIRMAN THERNSTROM: And that really  
4 does -- the Staff Directors' report really does bring  
5 us directly into the next item, which is a Special  
6 Assistant for Commissioner Melendez.

7                   This would be a motion in the nature of a  
8 substitute amendment to lift the moratorium on hiring  
9 Commissioners Special Assistants, to permit the hiring  
10 of one for Commissioner Melendez. Can I have a motion  
11 to that effect, that we lift the moratorium on the  
12 hiring of Special Assistants, and for the exclusive  
13 purpose of hiring a Special Assistant for Commissioner  
14 Melendez as soon a possible?

15                  COMMISSIONER YAKI: Second.

16                  VICE CHAIRMAN THERNSTROM: Any discussion?

17                  COMMISSIONER KIRSANOW: Yes. I wonder if  
18 the Staff Director could flesh out a little bit the  
19 impact of whatever budgetary savings we may have as a  
20 result of the attrition that was just discussed on the  
21 possible hire of a Special Assistant for Commissioner  
22 Melendez.

23                  STAFF DIRECTOR MARCUS: Well, I would  
24 envision that the new Special Assistant would replace  
25 the outgoing civil rights analyst, since we are

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1 replacing a civil rights analyst at a GS-13 level, who  
2 as a Commissioner's Assistant, even if the new  
3 Commissioner's Assistant were brought in at a GS-13  
4 level, which is the maximum, it would be  
5 essentially --

6 COMMISSIONER KIRSANOW: A wash?

7 STAFF DIRECTOR MARCUS: -- a wash, yes.  
8 Now, that would -- it would be essentially a wash.

9 VICE CHAIRMAN THERNSTROM: Any further  
10 discussion?

11 (No response.)

12 Let's have a vote. All in favor?

13 (Chorus of ayes.)

14 Opposed?

15 (No response.)

16 The motion passes unanimously.

17 COMMISSIONER MELENDEZ: I want to thank  
18 you very much for that. It will really help me out in  
19 the work I have to do as a Commissioner, so thank you.

20 VICE CHAIRMAN THERNSTROM: Well, it's our  
21 pleasure, and, of course, every Commissioner should  
22 have a Special Assistant.

23 COMMISSIONER MELENDEZ: Okay.

24 VICE CHAIRMAN THERNSTROM: Any time you  
25 can tell members of Congress that, you're welcome to.

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1 It's appreciated.

2 **February 15, 2006 Letter to Senate Subcommittee**  
3 **on the Constitution**

4 VICE CHAIRMAN THERNSTROM: Okay. We need  
5 a motion to post a letter requesting SAC term  
6 extension on the Commission website, a letter  
7 authorizing subcommittees to extend the terms of the  
8 State Advisory Committees in reauthorization  
9 legislation. You should have the motion in front of  
10 you.

11 COMMISSIONER KIRSANOW: Do you need a  
12 second?

13 VICE CHAIRMAN THERNSTROM: Yes. Well, I  
14 need somebody to make a motion, actually.

15 COMMISSIONER KIRSANOW: I move that the  
16 Commission post on its website the order submitted by  
17 the Chairman to our House and Senate authorizing  
18 committees to extend the terms of the State Advisory  
19 Committees in our reauthorization legislation.

20 This letter, submitted on February 15,  
21 2006, recommended that Congress extend the terms of  
22 the SACs and their members to four years when it  
23 considers reauthorization legislation for the  
24 Commission.

25 VICE CHAIRMAN THERNSTROM: All right. Now

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1 I need a second.

2 COMMISSIONER TAYLOR: Second.

3 VICE CHAIRMAN THERNSTROM: Any discussion?

4 (No response.)

5 All in favor?

6 (Chorus of ayes.)

7 Any opposition?

8 (No response.)

9 Passes unanimously.

10 **February 15, 2006 Corrective Action Plan**

11 VICE CHAIRMAN THERNSTROM: Then, there's  
12 the question of the corrective action plan. The  
13 Commission submitted its corrective action plan, as  
14 requested by the Office of Management and Budget, on  
15 November 15, 2005. This plan addresses reportable  
16 conditions noted in the Commission's fiscal year  
17 financial -- '05 financial statement audit.

18 The plan presents audit findings, provides  
19 contexts or backgrounds related to each finding,  
20 summarizes the recommendations made by the independent  
21 auditors, and discusses the corrective actions the  
22 Commission has implemented or is in the process of  
23 implementing. The plan also provides the Commission's  
24 target completion dates for corrective action that are  
25 currently underway and indicated the actual completion

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1 dates for correction action already implemented.

2 And I simply need a motion to post the  
3 corrective action plan on the Commission's website.

4 COMMISSIONER TAYLOR: Madam Vice Chair, I  
5 move that the Commission post on its website the  
6 corrective action plan submitted to the Office of  
7 Management and Budget on February 15, 2006. This plan  
8 addresses --

9 VICE CHAIRMAN THERNSTROM: We don't have  
10 to go through that whole language I just went through.  
11 I know it says it there, but it's just a repeat.

12 COMMISSIONER TAYLOR: Oh, okay.

13 VICE CHAIRMAN THERNSTROM: Precise  
14 language.

15 COMMISSIONER TAYLOR: All right.

16 VICE CHAIRMAN THERNSTROM: Have we got a  
17 second?

18 COMMISSIONER KIRSANOW: Second.

19 VICE CHAIRMAN THERNSTROM: Is there any  
20 discussion on this?

21 (No response.)

22 All right. All in favor, aye?

23 (Chorus of ayes.)

24 Opposed?

25 (No response.)

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1 The motion is approved unanimously.

2 I think we're done. Do we have a motion  
3 to adjourn?

4 COMMISSIONER YAKI: So moved.

5 VICE CHAIRMAN THERNSTROM: And I second  
6 it.

7 COMMISSIONER TAYLOR: Future agenda items?

8 **VIII. Future Agenda Items**

9 VICE CHAIRMAN THERNSTROM: Oh, future  
10 agenda items. I'm sorry. It's because we have  
11 reordered this -- things are out of order. Sorry  
12 about that.

13 Future agenda items. I don't even have  
14 this in front of me. I have no idea.

15 STAFF DIRECTOR MARCUS: We don't have any  
16 future agenda items. Commissioner Yaki requested at  
17 the last meeting that we place on the agenda an item  
18 so that if anyone has future business issues they  
19 could be raised. That's --

20 COMMISSIONER TAYLOR: That makes for a  
21 nice segue into a comment I wanted to make. In my  
22 mind at least, I recognize that we're operating under  
23 significant fiscal constraints. But I really think  
24 it's important that we, to the extent feasible, try to  
25 have a meeting outside of Washington. And Katrina was

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1 the obvious situation for us to have a meeting, and we  
2 -- for a variety of reasons, we didn't.

3 But I just want to go on record as saying  
4 I think we should work as hard as we can to put our  
5 house in order such that we can have that flexibility  
6 in the future. I think we need it. I think it's  
7 something we should do. And I think we will become  
8 conspicuously absent from certain events if we -- if  
9 we continue to hold all of our meetings in Washington.  
10 So --

11 VICE CHAIRMAN THERNSTROM: You know, it  
12 does seem to me that Katrina specifically -- that  
13 unless we have -- are going to hold -- have a  
14 briefing, hold some kind of hearings, do something  
15 Katrina-related, we don't want to go down to New  
16 Orleans.

17 COMMISSIONER TAYLOR: No, I don't  
18 disagree. I just we need that flexibility. We need  
19 to plan such that we have the flexibility to do those  
20 things when circumstances warrant. And right now we  
21 don't, but we need to get in a position where we do,  
22 because I think we're missing.

23 STAFF DIRECTOR MARCUS: If the  
24 Commissioners have a compelling interest in doing that  
25 this year, then we could look into it. We are doing

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1 better this year than planned, because of the extent  
2 of the attrition and because we have -- because of the  
3 time necessary to hire new people. So this year is  
4 actually a better year for thinking about those than  
5 future years. Next year may be harder because it  
6 looks like the budget will be tighter for next year.

7 COMMISSIONER KIRSANOW: I would note that  
8 we have an extraordinarily pressing issue on the  
9 Native Hawaiian matter that we had a briefing on, and  
10 I suggest that we --

11 COMMISSIONER YAKI: A question on -- just  
12 a followup on that. Are we going to -- when will that  
13 report be ready, and when will Commissioner statements  
14 be needed by for the Native Hawaiian briefing?

15 STAFF DIRECTOR MARCUS: We are working to  
16 have it available for a vote at the April meeting.

17 COMMISSIONER YAKI: Okay.

18 STAFF DIRECTOR MARCUS: As for  
19 Commissioner statements, I don't believe we've set a  
20 date. We could either set it for the same -- for the  
21 same date, which is to say the April meeting, or for a  
22 couple weeks after that.

23 COMMISSIONER YAKI: After, because VRA  
24 comments will be the same day as the April meeting.

25 VICE CHAIRMAN THERNSTROM: You're right.

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1 STAFF DIRECTOR MARCUS: That's a good  
2 point.

3 VICE CHAIRMAN THERNSTROM: Yes.

4 COMMISSIONER TAYLOR: By the way, I would  
5 also be in favor of holding a meeting on tribal land.  
6 I don't know if every Commissioner has had the  
7 opportunity to actually step foot on tribal land, but  
8 if you have not I think it is helpful in terms of  
9 forming our discussion of these issues. So --

10 VICE CHAIRMAN THERNSTROM: Well, you know,  
11 I think there's -- well, I am in agreement with that.  
12 It would be nice to get out of Washington. I think as  
13 an agency it lends -- adds to our credibility.

14 Any other business, future business?

15 (No response.)

16 All right. We are adjourned.

17 (Whereupon, at 11:37 a.m., the proceedings in the  
18 foregoing matter were adjourned.)

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