

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, JANUARY 15, 2010

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

PRESENT:

GERALD A. REYNOLDS, Chairman

ABIGAIL THERNSTROM, Vice Chairman

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

ARLAN D. MELENDEZ, Commissioner

ASHLEY L. TAYLOR, JR., Commissioner

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

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STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC

MARGARET BUTLER

CHRISTOPHER BYRNES, Director, RPCU

DEMITRIA DEAS

PAMELA A. DUNSTON, Chief, ASCD

HANNA GUYER, Intern

MAHA JWEIED

ROBERT LERNER, Asst. Staff Director for OCRE

LENORE OSTROWSKY

TINALOUISE MARTIN, Director, OM (via telephone)

EMMA MONROIG, Solicitor and Parliamentarian

LENORE OBSTROWSKY

JOHN RATCLIFFE, Chief, Budget and Finance

KIMBERLY TOLHURST

AUDREY WRIGHT

MICHELLE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SCHMAUCH

KIMBERLY SCHULD

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P R O C E E D I N G S

(9:36 a.m.)

CHAIRMAN REYNOLDS: Okay. Good morning. This is Chairman Gerald Reynolds. This meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights. It is 9:36 a.m., Eastern Standard Time, on January 15th, 2010. All Commissioners are present at 624 Ninth Street, N.W., Room 540, Washington, D.C., where the meeting is being held, except for Commissioner Kirsanow, who is participating by phone.

I'd like to start off by noting that we're celebrating the birthday of Dr. Martin Luther King, Jr. Because of his inspiring leadership, our nation has made extraordinary progress in eradicating discrimination and promoting equal opportunity for all people. Dr. King voiced a hope that his four children would one day live in a nation where they would be judged not by the color of their skin, but by the content of their character.

As we pause to honor Dr. King's inspiring leadership, let us rededicate ourselves to standing together against discrimination and ensuring that his dream is fully realized.

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1 COMMISSIONER TAYLOR: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 COMMISSIONER GAZIANO: Second.

4 VICE CHAIR THERNSTROM: No, it's been
5 seconded.

6 COMMISSIONER TAYLOR: Oh, sorry. All
7 right.

8 COMMISSIONER HERIOT: Ashley, did you want
9 to add your --

10 COMMISSIONER TAYLOR: I don't think I need
11 to add it, do I?

12 COMMISSIONER HERIOT: I don't know.

13 CHAIRMAN REYNOLDS: Actually --

14 COMMISSIONER HERIOT: Does it come under
15 something that's here?

16 MR. DANNENFELSER: You just substitute at
17 that time. Are you talking about MEPA?

18 CHAIRMAN REYNOLDS: No.

19 COMMISSIONER TAYLOR: No, I want to make
20 sure how we get out the health care disparities
21 report.

22 MR. DANNENFELSER: Oh, okay.

23 COMMISSIONER TAYLOR: But I don't think
24 that I --

25 CHAIRMAN REYNOLDS: Well, actually --

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1 COMMISSIONER TAYLOR: Just make sure it
2 gets through the pipeline.

3 COMMISSIONER GAZIANO: You can do it under
4 Staff Director's report if you want, but if you want
5 to do it anywhere prior to that, then we would need
6 to.

7 CHAIRMAN REYNOLDS: We'll handle it under
8 the Staff Director's report.

9 COMMISSIONER TAYLOR: That's fine, yeah.

10 CHAIRMAN REYNOLDS: Okay. That being the
11 case, all those in favor of the agenda, please say
12 aye.

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Objections?

15 (No response.)

16 CHAIRMAN REYNOLDS: Abstentions?

17 (No response.)

18 CHAIRMAN REYNOLDS: The motion passes.

19 Next up, I move that the Commission
20 approve for publication Part A of the report of the
21 impact on illegal immigration on the wages and
22 employment opportunities of black workers.

23 **II. PROGRAM PLANNING**

24 **A. APPROVAL OF BRIEFING REPORT RE. IMPACT**

25 **OF ILLEGAL IMMIGRATION**

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1 CHAIRMAN REYNOLDS: Part A, as distributed
2 to Commissioners on January 8th, 2010, was produced by
3 staff and reflects Commissioners' and panelists' input
4 on the briefing the Commission held on the same topic
5 on April 4th, 2008.

6 Part A of the report contains a briefing
7 overview and summary of the issue and why the
8 Commission chose to conduct this briefing. A summary
9 of the proceedings consisted of synopses of the
10 panelists, oral statements during the briefing, and a
11 synopsis of the question and answer questions, and
12 copies of the panelists' written statements.

13 Under this motion, if a majority of the
14 Commission votes to adopt Part A of the briefing
15 report, the Commission will then open discussion on
16 Part B. If Part A fails to obtain a majority of
17 votes, discussion of Part B becomes moot.

18 This bifurcated vote is taken pursuant to
19 the policy adopted by Commissioners on April 13th,
20 2007.

21 Is there a second?

22 VICE CHAIR THERNSTROM: Second.

23 CHAIRMAN REYNOLDS: Discussion?

24 Commissioner Yaki.

25 COMMISSIONER YAKI: Yes. Thank you very

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1 much, Mr. Chair.

2 I am going to vote no on this for a very
3 simple reason. This was a report, a briefing that in
4 large part reflects some measure of discomfort and
5 distrust what the Commission's motives were in holding
6 this hearing, and as a consequence, many of the
7 organizations and groups that would be likely or would
8 have been likely people to have participated in the
9 briefing, namely, national groups associated with
10 Latino and Hispanic causes, refused to testify.

11 You will recall that prior to this
12 briefing, we were having difficulties, as evidenced by
13 reports from the Staff Director, in getting such
14 organizations and individuals representing such
15 organizations to participate. I think that their
16 absence in this report casts a large shadow on its
17 ability to have any usefulness beyond, well, having
18 usefulness at all, and I just wanted to say that is
19 why I will be voting against this report.

20 CHAIRMAN REYNOLDS: Okay. Commissioner
21 Yaki, in Part A itself, do you have an opinion that
22 you would like to share in terms of the quality of
23 Part A?

24 I understand where you're coming from with
25 respect to folks not participating, but just looking

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1 at the document on its merits?

2 COMMISSIONER YAKI: But, Mr. Chair, thank
3 you very much for asking that question.

4 The point is that Part A is the sum and
5 substance of a briefing which in my mind was by its
6 very nature of omission incomplete and, therefore, not
7 a valid predicate for any Part B consideration.

8 CHAIRMAN REYNOLDS: Comments? Pete?

9 COMMISSIONER KIRSANOW: I had a difficult
10 time hearing Commissioner Yaki.

11 CHAIRMAN REYNOLDS: Well, do you have any
12 questions or comments regarding Part A?

13 COMMISSIONER KIRSANOW: Not currently.

14 CHAIRMAN REYNOLDS: Okay. Vice Chair
15 Thernstrom?

16 VICE CHAIR THERNSTROM: No. I mean, I
17 think that that's a very serious point that's been
18 made. In truth, in preparing for this meeting, I went
19 through the findings and recommendations, and I didn't
20 go back to the entire report. So I feel unable to
21 judge.

22 I mean, I had read through it a long time
23 ago, but --

24 CHAIRMAN REYNOLDS: Okay. Commissioner
25 Gaziano.

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1 COMMISSIONER GAZIANO: (No audible
2 response.)

3 CHAIRMAN REYNOLDS: All right. All in
4 favor please say aye.

5 (Chorus of ayes.)

6 COMMISSIONER GAZIANO: Abstain.

7 VICE CHAIR THERNSTROM: I'm going to
8 abstain, too.

9 CHAIRMAN REYNOLDS: Okay. Hold on.

10 COMMISSIONER GAZIANO: Unless it'll --
11 I'll vote if it affects the outcome.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER MELENDEZ: I'm abstaining
14 also.

15 CHAIRMAN REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: No.

17 CHAIRMAN REYNOLDS: Commissioner Taylor?

18 COMMISSIONER TAYLOR: Aye.

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

20 COMMISSIONER KIRSANOW: Aye.

21 CHAIRMAN REYNOLDS: I vote in favor of it
22 also. Okay.

23 COMMISSIONER HERIOT: Did you get me?

24 CHAIRMAN REYNOLDS: No, I didn't.

25 COMMISSIONER HERIOT: I'm an aye.

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1 CHAIRMAN REYNOLDS: Okay. All right. The
2 motion passes.

3 Next up is Part B.

4 COMMISSIONER YAKI: What's the vote,
5 please?

6 CHAIRMAN REYNOLDS: The vote, there are
7 three abstentions, four in favor of the motion and one
8 vote against it.

9 COMMISSIONER YAKI: Thank you.

10 CHAIRMAN REYNOLDS: Okay. Part B.
11 Commissioner Kirsanow, I believe you --

12 COMMISSIONER KIRSANOW: Yes, Mr. Chairman.
13 I'd like to move to postpone consideration of Part B
14 for a later meeting. I've got a possibly amended
15 findings and recommendations that I'll circulate to
16 all Commissioners for consideration if we do postpone
17 it and would like the Commissioners to have sufficient
18 time to consider the amended findings and
19 recommendations before we vote.

20 CHAIRMAN REYNOLDS: Is there a second?

21 COMMISSIONER YAKI: Second.

22 CHAIRMAN REYNOLDS: Further discussion?

23 COMMISSIONER HERIOT: Do you need to move
24 to not do something or is it just we don't do it?

25 VICE CHAIR THERNSTROM: Well, I think that

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1 we need a motion.

2 COMMISSIONER HERIOT: Motions have to move
3 things. They don't have to not move things.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER HERIOT: You have a motion to
6 adopt these things, not a motion not to adopt them.

7 CHAIRMAN REYNOLDS: Okay. We can do this
8 one of two ways. We can vote or we can see if we have
9 a consensus --

10 COMMISSIONER HERIOT: No, you call for a
11 motion, and if the motion isn't made and not seconded,
12 then you go on.

13 CHAIRMAN REYNOLDS: I believe Pete made
14 the motion.

15 COMMISSIONER HERIOT: No, he didn't make a
16 motion. He said he wanted us to not do it. So that's
17 not a motion. Does anybody want to move to adopt?

18 COMMISSIONER YAKI: Point of order.
19 Unless we understand under the rules that motions on
20 an agenda have the ability to carry over if not
21 adopted, then I'd say we actually have a much more
22 explicit motion because under a lot of different rules
23 of order, if an item is on the agenda and if not moved
24 and not adopted, it deemed not adopted.

25 CHAIRMAN REYNOLDS: Okay. I am going to

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1 interpret what Mr. --

2 COMMISSIONER HERIOT: It's not on the
3 agenda.

4 CHAIRMAN REYNOLDS: -- what Commissioner
5 Kirsanow said or meant, and I believe that he either
6 said or meant to make a motion, and I believe that
7 motion was seconded.

8 COMMISSIONER YAKI: Yes.

9 CHAIRMAN REYNOLDS: So we will vote and
10 move on. All in favor of supporting the motion, real
11 or perceived, --

12 (Laughter.)

13 CHAIRMAN REYNOLDS: -- made by
14 Commissioner Kirsanow please say aye.

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: Any objections?

17 COMMISSIONER YAKI: I sent an imaginary
18 vote. Does that count?

19 CHAIRMAN REYNOLDS: Yes, Michael.

20 Any objections?

21 (No response.)

22 CHAIRMAN REYNOLDS: Any abstentions?

23 (No response.)

24 CHAIRMAN REYNOLDS: Okay. The motion
25 passes unanimously.

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1 Next up, covert wiretapping.

2 **II(B). APPROVAL OF BRIEFING REPORT ON**

3 **COVERT WIRETAPPING**

4 CHAIRMAN REYNOLDS: At the December 4th,
5 2009 meeting, Commissioner Yaki moved that
6 consideration of a briefing report on covert
7 wiretapping be postponed until our next in-person
8 business meeting in Washington, D.C. A draft of the
9 covert wiretapping report was recirculated to all
10 Commissioners with your meeting materials on January
11 8th, 2010.

12 I'd like to move that the Commission
13 approve Part B of the report.

14 COMMISSIONER HERIOT: What are we talking
15 about here?

16 COMMISSIONER GAZIANO: You talking about
17 Part A, right?

18 CHAIRMAN REYNOLDS: Yes.

19 COMMISSIONER GAZIANO: Okay. Not Part A.
20 Not Part B is what you said, but fine.

21 CHAIRMAN REYNOLDS: Okay. Part A contains
22 a briefing, overview and summary of the issue, why the
23 Commission chose to conduct this briefing, any
24 description of subsequent events, a summary of
25 proceedings consisting of synopses of panelists' oral

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1 statements during the briefing, and a synopsis of the
2 question and answer sessions, and copies of panelists'
3 written statements.

4 Is there a second?

5 COMMISSIONER YAKI: Second.

6 CHAIRMAN REYNOLDS: Discussion?

7 (No response.)

8 CHAIRMAN REYNOLDS: Okay. All in favor
9 please say aye.

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Objection?

12 COMMISSIONER GAZIANO: Could I have a roll
13 call, please?

14 CHAIRMAN REYNOLDS: Okay. Commissioner
15 Heriot, how do you vote?

16 COMMISSIONER GAZIANO: To adopt Part A.

17 CHAIRMAN REYNOLDS: I'm sorry. Let's go
18 around. Commissioner Yaki.

19 COMMISSIONER YAKI: Aye.

20 CHAIRMAN REYNOLDS: Commissioner Melendez.

21 COMMISSIONER MELENDEZ: Yes.

22 CHAIRMAN REYNOLDS: Commissioner Taylor?

23 COMMISSIONER TAYLOR: Abstain for now.

24 CHAIRMAN REYNOLDS: You're confusing me.

25 Vice Chair Thernstrom.

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1 VICE CHAIR THERNSTROM: Aye.

2 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

3 COMMISSIONER KIRSANOW: Abstain.

4 CHAIRMAN REYNOLDS: I'm sorry?

5 COMMISSIONER KIRSANOW: Abstain.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano.

7 COMMISSIONER GAZIANO: No, for the reasons
8 that Dean Eastman said in his testimony, that that
9 report was beyond our jurisdiction.

10 CHAIRMAN REYNOLDS: Commissioner Heriot?

11 COMMISSIONER HERIOT: I guess no.

12 CHAIRMAN REYNOLDS: Okay, and I vote no
13 also.

14 It's a tie. So the motion --

15 COMMISSIONER HERIOT: Fails.

16 CHAIRMAN REYNOLDS: -- fails.

17 Next up, Multi-Ethnic Placement Act
18 briefing report.

19 COMMISSIONER YAKI: Excuse me. May I --
20 may I ask for the summary of the roll call vote?

21 VICE CHAIR THERNSTROM: I'm sorry. I
22 couldn't hear that.

23 COMMISSIONER YAKI: I asked for the
24 summary of the roll call vote.

25 CHAIRMAN REYNOLDS: Okay. It was three in

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1 favor of the motion, three against and two
2 abstentions.

3 COMMISSIONER YAKI: Who were the
4 abstentions?

5 CHAIRMAN REYNOLDS: Taylor and Kirsanow.

6 COMMISSIONER YAKI: I would like to just
7 state for the record I find this laughable that a
8 report that is a briefing on a subject that has
9 immense consequences to communities in this country
10 who have been subject to intense surveillance and,
11 indeed, acts of bias and hate crimes, as a result of
12 this should see none of what they have done in coming
13 here and appealing to us for support and information
14 about this should be denied.

15 Publication of even that part of the
16 report, I find it chilling. I find it extremely
17 disturbing, and the mere fact that one person believes
18 that we had no jurisdiction over this I think is (a)
19 completely wrong. (b) If that is the case, then the
20 reach of this Commission to protect the civil rights
21 of protected citizens, discrete communities by
22 religion or by ethnicity is basically one that a
23 majority of this Commission has decided is not worthy,
24 and that is, indeed, a sad statement of the state of
25 the United States Commission on Civil Rights.

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1 COMMISSIONER GAZIANO: Mr. Chair, can I
2 just explain? Certainly there was a potential
3 question that is well within our jurisdiction, and
4 that is whether there was profiling of an ethnic or
5 racial nature. The hearing itself, although attempted
6 to get at that, produced no evidence one way or the
7 other on that issue, and the remainder of the
8 examination of the national security questions that
9 the report did produce, I submit, is not within our
10 jurisdiction, but I also just as this point want to
11 ask the Staff Director.

12 It is the case that the transcript is
13 either on our Website or can be placed on our Website.

14 I have no objection to the actual views, the actual
15 testimony that was produced being available, and let
16 citizens judge for themselves whether there's really
17 something for the Commission to comment on. I believe
18 certainly there's nothing for Commissioner statements
19 within our jurisdiction that was produced at this
20 hearing, but certainly it would be fine for me and
21 good if the statements were available on the Website.

22 Is that the case?

23 MR. DANNENFELSER: Well, the transcripts
24 are available on the Website at the moment.

25 COMMISSIONER GAZIANO: That's fine.

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1 MR. DANNENFELSER: The prepared statements
2 are not on the Website.

3 COMMISSIONER GAZIANO: Okay. Thank you.

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

5 VICE CHAIR THERNSTROM: Well, I mean, it
6 seems to me that if somebody is going up on the
7 Website, the prepared statements need to be there as
8 well, but on the point about beyond the jurisdiction,
9 look. This is a question we decided as a Commission
10 when we held the briefing, and the time, I mean, you
11 know, I lose votes all the time when I'm in the
12 minority in this Commission. That's all right. The
13 majority has decided and we go forward, and I need to
14 honor the use of the majority.

15 In this case, this was decided as within
16 the jurisdiction of the Commission, and I think at
17 this point to be holding up a report because of an
18 ongoing quarrel with the very nature of this report is
19 not right, in my view.

20 COMMISSIONER GAZIANO: The majority
21 prevailed as to having the hearing. I just submit
22 there's nothing for us to have findings and
23 conclusions on. There's nothing that we can draw
24 findings and conclusions on as much as we may want to
25 have done so. There is no record of issues within our

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1 jurisdiction.

2 VICE CHAIR THERNSTROM: But that does not
3 pertain to Part A.

4 COMMISSIONER GAZIANO: Yes. If we approve
5 Part A, we've got to go to Part B and Commissioner's
6 statements.

7 CHAIRMAN REYNOLDS: Commissioner Yaki.

8 COMMISSIONER YAKI: I would like to point
9 out a couple of things. One, and this is probably
10 showing my age, this briefing --

11 VICE CHAIR THERNSTROM: You mean how young
12 you are.

13 COMMISSIONER YAKI: -- this briefing was
14 done March 9th, 2007. That is well nigh over 30
15 months ago. The information in this report, Congress
16 has since then had several debates on the issue of the
17 nature of these and other statutes related to
18 profiling and targeting of individuals in various
19 affected communities.

20 We, by not having this available, have
21 missed some of those very important debates. No
22 doubt, in the wake of more recent events, those
23 debates have and will still continue. To claim that
24 it is beyond our jurisdiction now and essentially akin
25 to burying our head in the sand on issues that are of

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1 immense importance to the civil rights of certain
2 religious and ethnic communities in this country, I
3 would stipulate that Mr. Eastman did challenge whether
4 we even had the authority to do it. But I would argue
5 that part of what our mission has been since the
6 inception of the Commission, indeed, the very nature
7 of why this Commission was created, was to challenge
8 preconceived notions of what was allowable
9 jurisdiction and what was allowable for this
10 Commission to go into.

11 This Commission went into the issue of
12 gender and equality prior to the time that Congress
13 amended the statute to include women as part of the
14 charter of this Commission. This is something that is
15 part of who we are as a body and why our importance is
16 one that should still be relevant today, which you
17 know, by actions like these, tend to undermine what
18 our role really is.

19 I am disappointed that the Commission
20 would not even -- we have done, as far as I can
21 tell -- we usually do reports that have findings and
22 recommendations. This report has none. It is simply
23 only A.

24 Quite frankly, I did not expect there
25 would be findings and recommendations in this report,

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1 given the composition of this Commission. So why we
2 will not simply publish A and leave it at that because
3 I don't think we're going to get anything better than
4 that is beyond me.

5 CHAIRMAN REYNOLDS: Okay. Unless someone
6 from the side that victorious in the vote decides to
7 move to reopen this issue, we have taken a vote on
8 this.

9 VICE CHAIR THERNSTROM: Well, I just have
10 a clarification here. I don't understand Commissioner
11 Gaziano's point. I mean, we're only going to vote on
12 Part A. We already have decided not to vote on Part
13 B. What is the logic that we can't vote on Part A?

14 You said the logic was that we then had to
15 vote on --

16 COMMISSIONER GAZIANO: We hadn't
17 decided -- the reason we -- we haven't decided not to
18 vote on Part A. This is how we decide not to vote on
19 Part A.

20 CHAIRMAN REYNOLDS: Well, we voted on Part
21 A.

22 COMMISSIONER HERIOT: We voted. It's not
23 future tense. It's past tense. We voted.

24 COMMISSIONER GAZIANO: If we were to
25 approve Part A --

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1 VICE CHAIR THERNSTROM: Yeah.

2 COMMISSIONER GAZIANO: -- then it would be
3 incumbent upon us to come up with some findings and
4 conclusions and Commissioner statements. And we
5 should not waste taxpayer money or our own resources
6 going through --

7 CHAIRMAN REYNOLDS: We've had discussion
8 on several occasions on this particular topic. We
9 finally had a vote. For various reasons this
10 particular motion did not garner a majority of votes.
11 Unless folks who voted in the majority on this
12 particular issue decide to revisit the issue, it's
13 done.

14 COMMISSIONER TAYLOR: The vote is still
15 open, correct?

16 COMMISSIONER YAKI: Point of order. Point
17 of order. What is the majority? Is someone who
18 abstains someone who can move for reconsideration or
19 is it only those who voted against can move for
20 reconsideration.

21 CHAIRMAN REYNOLDS: Well, you raise an
22 interesting issue, an interesting point since it was
23 three in favor, three against, and two abstentions.
24 The way I am looking at -- well, my interpretation,
25 I'm looking at the folks who voted against it, but I'm

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1 not sure that in this particular instance that that's
2 the right way to look at it since there really was no
3 majority.

4 The bottom line is we have vote.

5 COMMISSIONER TAYLOR: Can we get a ruling
6 from the parliamentarian on that question.

7 COMMISSIONER YAKI: Actually, I would also
8 like to add a second question to the parliamentarian,
9 which is that can we -- if the answer is someone in
10 the abstention category cannot move for
11 reconsideration, can we not move for suspension of the
12 rules with regard to this particular vote for the
13 purpose of reopening it for reconsideration.

14 CHAIRMAN REYNOLDS: If there's a vote to
15 suspend one of our rules, I think that we can do it.
16 We can change our rules.

17 COMMISSIONER YAKI: Well, first, on the
18 first question of whether an abstention person can
19 move for reconsideration.

20 MS. MONROIG: I think that people who
21 voted for it, Commissioners who voted for it that
22 would reopen it.

23 CHAIRMAN REYNOLDS: But in this particular
24 case we have three Commissioners who voted for it,
25 three Commissioners who voted against it, and then two

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1 abstentions.

2 COMMISSIONER GAZIANO: The against it
3 prevailed because it needs a majority. So people who
4 prevailed, which are the people who voted against
5 it --

6 COMMISSIONER HERIOT: It's the three-three
7 aspect of it that raises the question of whether an
8 abstention can move to reopen a question.

9 CHAIRMAN REYNOLDS: That's a different
10 question.

11 COMMISSIONER HERIOT: Yeah, it's a
12 different point. The three-three thing, you know,
13 there's nothing special about that. The motion lost,
14 but can someone who abstained be a moving party to
15 change? I don't know the answer to that, and that is,
16 I think the question that Emma just answered for us.

17 CHAIRMAN REYNOLDS: What was the answer?

18 MS. MONROIG: I think the answer is that
19 those that voted for the prevailing point of view.

20 VICE CHAIR THERNSTROM: An abstention
21 can't -- somebody who abstained can't reopen the
22 question?

23 MS. MONROIG: I would think that an
24 abstention would be even less than someone who voted
25 against it, someone who chose not to participate at

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1 all.

2 COMMISSIONER YAKI: Well, I move to
3 suspend the rule with regard to the requirement for
4 someone on the prevailing side of the vote to be able
5 to move for reconsideration.

6 CHAIRMAN REYNOLDS: And just to clarify --

7 COMMISSIONER YAKI: With regard to this
8 particular vote.

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER TAYLOR: Second.

11 CHAIRMAN REYNOLDS: Discussion.

12 (No response.)

13 CHAIRMAN REYNOLDS: All right. All in
14 favor.

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: Okay. Vice Chair
17 Thernstrom?

18 VICE CHAIR THERNSTROM: Aye.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano.

20 COMMISSIONER GAZIANO: I'll pass.

21 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: Same.

23 CHAIRMAN REYNOLDS: You're up.

24 COMMISSIONER HERIOT: Okay.

25 COMMISSIONER GAZIANO: What about Gail?

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1 Did Gail vote?

2 COMMISSIONER HERIOT: No. I was against
3 that motion.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER HERIOT: Nothing personal
6 actually.

7 COMMISSIONER TAYLOR: No slight taken.

8 COMMISSIONER GAZIANO: Let's see. So
9 we've had four for suspending the rules. Pete has
10 abstained.

11 CHAIRMAN REYNOLDS: In this particular
12 case.

13 COMMISSIONER GAZIANO: Pete has abstained.
14 Okay. I'll -- I'll indulge and vote yes so that I
15 can be in the majority.

16 CHAIRMAN REYNOLDS: Okay. I'm going to
17 vote no.

18 (Laughter.)

19 CHAIRMAN REYNOLDS: I'm going to vote no
20 so I could be in the minority. Okay. The motion
21 passes.

22 COMMISSIONER YAKI: The vote being
23 reopened, I again move for adoption of Part A, only
24 recognizing that we're not going to be doing Part B.

25 COMMISSIONER HERIOT: Or Commissioners'

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1 statements, I think.

2 COMMISSIONER YAKI: That's right.

3 CHAIRMAN REYNOLDS: Let's start with
4 Commissioner Heriot.

5 COMMISSIONER TAYLOR: Can I --

6 COMMISSIONER HERIOT: There's no second
7 yet.

8 COMMISSIONER TAYLOR: No, I won't add
9 this. Go ahead.

10 CHAIRMAN REYNOLDS: Thank you.

11 COMMISSIONER TAYLOR: So Commissioner
12 Heriot's a friendly amendment to the Yaki motion; is
13 that correct?

14 CHAIRMAN REYNOLDS: That's how I'm
15 interpreting it unless --

16 VICE CHAIR THERNSTROM: I'm sorry. I'm
17 lost. What is the friendly amendment?

18 COMMISSIONER HERIOT: That there will be
19 no findings and recommendations or Commissioner
20 statements.

21 CHAIRMAN REYNOLDS: We're voting straight
22 up on Part A.

23 COMMISSIONER TAYLOR: Effectively Part A.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER HERIOT: There hasn't been a

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1 second yet.

2 CHAIRMAN REYNOLDS: I seconded. I

3 seconded.

4 COMMISSIONER YAKI: Ashley seconded.

5 COMMISSIONER HERIOT: No, he hadn't.

6 COMMISSIONER YAKI: Yeah, he did.

7 CHAIRMAN REYNOLDS: Commissioner Yaki.

8 COMMISSIONER YAKI: Aye.

9 COMMISSIONER MELENDEZ: Aye.

10 COMMISSIONER TAYLOR: Aye.

11 VICE CHAIR THERNSTROM: Aye.

12 CHAIRMAN REYNOLDS: Vice Chair.

13 COMMISSIONER GAZIANO: No.

14 COMMISSIONER HERIOT: No.

15 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Abstain.

17 COMMISSIONER YAKI: I can't tell whether
18 he's saying "same" or "abstain."

19 CHAIRMAN REYNOLDS: Abstain.

20 Okay. I'm going to vote with the winners.

21 (Laughter.)

22 COMMISSIONER HERIOT: I thought you liked
23 being in the minority.

24 CHAIRMAN REYNOLDS: Oh, just having a
25 little fun. That's all.

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1 COMMISSIONER YAKI: Even the Mets won a
2 game in '62.

3 CHAIRMAN REYNOLDS: Okay. We're done with
4 this particular point.

5 All right. Next up, Multi-Ethnic
6 Placement Act briefing report.

7 **II(C). MULTI-ETHNIC PLACEMENT ACT**

8 **BRIEFING REPORT**

9 CHAIRMAN REYNOLDS: At the December 4th,
10 2009 -- Commissioner Yaki, you were persuasive.

11 VICE CHAIR THERNSTROM: Why is that so
12 shocking?

13 CHAIRMAN REYNOLDS: Well, I didn't say it
14 was shocking. I just want to comment on the fact that
15 I believe that it was the manner in which he expressed
16 his displeasure and the manner in which he framed the
17 issue and the willing to compromise.

18 COMMISSIONER YAKI: Mr. Chair, I'd like to
19 correct what you just said. One, I was not expressing
20 displeasure. I was expressing some disagreement,
21 which is different. Displeasure connotes emotion. It
22 is no different than the way I display my disagreement
23 with much of what the Commission does.

24 VICE CHAIR THERNSTROM: And let the spirit
25 of compromise be contagious.

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: Okay. It's a new
3 year. You heard the Vice Chair. Show more
4 flexibility, damn it.

5 Okay. At the December 4, 2009 meeting,
6 Commissioners approved Part A of the Multi-Ethnic
7 Placement Act briefing report. Commissioners voted
8 individually on each finding and recommendation. At
9 that meeting we agreed to table Finding 9 and
10 Recommendations 3 and 8 until the next Commission
11 meeting.

12 Commissioners asked that staff provide
13 better supporting documentation and cite the
14 appropriate authorities for those three items at the
15 December 16th, 2009 meeting. The motions to approve
16 these items were tabled until this meeting so that
17 Commissioners would have an opportunity to explore
18 whether the statute allows for any consideration of
19 race.

20 I move the Commission approve rewritten
21 Finding No. 9, which reads as follows:

22 "Since enactment of the 1996 amendments to
23 MEPA, the removal of barriers to Inter-Ethnic Adoption
24 Act, HHS has conducted compliance reviews which found
25 that a number of agencies and personnel have

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1 circumvented MEPA's provisions against consideration
2 of race in placements. MEPA makes it clear that the
3 use of race in making placement decisions is subject
4 to strict scrutiny and must represent a compelling
5 interest."

6 Is there a second? Please.

7 COMMISSIONER TAYLOR: Second.

8 CHAIRMAN REYNOLDS: Okay. Someone has
9 some --

10 COMMISSIONER TAYLOR: I'll make the motion
11 to amend that finding.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER TAYLOR: In a manner that is
14 consistent with what has been, I think, handed out to
15 everyone. Need I read it into the record or --

16 CHAIRMAN REYNOLDS: Yes, indeed.

17 COMMISSIONER TAYLOR: It would be amended
18 to read as follows: "Since enactment of the 1996
19 amendments to MEPA, the removal of barriers to Inter-
20 Ethnic Adoption Act, HHS has conducted compliance
21 reviews which found that a number of agencies and
22 personnel have circumvented MEPA's provisions,
23 prohibiting consideration of race in placements,"
24 period.

25 CHAIRMAN REYNOLDS: I will treat that as a

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1 friendly amendment.

2 COMMISSIONER YAKI: An amendment to the
3 amendment?

4 CHAIRMAN REYNOLDS: Let's hear it.

5 COMMISSIONER YAKI: No, that was an
6 amendment to the amendment, what he just read.

7 CHAIRMAN REYNOLDS: Yes.

8 COMMISSIONER YAKI: okay.

9 CHAIRMAN REYNOLDS: Discussion?

10 (No response.)

11 CHAIRMAN REYNOLDS: All in favor, please
12 say aye.

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Objections?

15 COMMISSIONER YAKI: Point of order.

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER YAKI: I heard beeps in and
18 out. Is Commissioner Kirsanow with us?

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

20 COMMISSIONER KIRSANOW: I'm here.

21 CHAIRMAN REYNOLDS: How do you vote?

22 COMMISSIONER KIRSANOW: Aye.

23 CHAIRMAN REYNOLDS: Okay. Commissioner
24 Yaki, how do you vote?

25 COMMISSIONER YAKI: Abstain.

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1 CHAIRMAN REYNOLDS: Commissioner Melendez?

2 COMMISSIONER MELENDEZ: No.

3 COMMISSIONER TAYLOR: Aye.

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

5 VICE CHAIR THERNSTROM: Aye.

6 CHAIRMAN REYNOLDS: I'm sorry, Pete. I'll
7 have to ask you again. How do you vote?

8 COMMISSIONER KIRSANOW: Aye.

9 CHAIRMAN REYNOLDS: Commissioner Gaziano?

10 COMMISSIONER GAZIANO: Aye.

11 CHAIRMAN REYNOLDS: Commissioner Heriot.

12 COMMISSIONER HERIOT: I abstained from the
13 earlier round. I think I'm going to abstain here.

14 CHAIRMAN REYNOLDS: Okay, and I vote in
15 favor of it. The motion passes.

16 Commissioner Kirsanow is struggling to
17 hear the conversation. So I would ask everyone to
18 raise their voices.

19 COMMISSIONER YAKI: In song?

20 CHAIRMAN REYNOLDS: If it's related to
21 Commission business, that would be fine.

22 Okay. I move that the Commission approve
23 rewritten Recommendation No. 3, which reads as
24 follows: "HHS should continue to conduct compliance
25 reviews and impose sanctions as necessary to ensure

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1 that states, agencies and personnel are in compliance
2 with the MEPAs as Section 1808(c), strict limitations
3 on the use of race in placement decisions."

4 Is there a second?

5 COMMISSIONER TAYLOR: Second.

6 COMMISSIONER HERIOT: I thought you wanted
7 to amend that one.

8 COMMISSIONER TAYLOR: I will. Second, and
9 then I want to move to amend.

10 CHAIRMAN REYNOLDS: Okay. Is it a
11 friendly amendment?

12 COMMISSIONER TAYLOR: It is a friendly
13 amendment.

14 CHAIRMAN REYNOLDS: Okay. Let's hear it.

15 COMMISSIONER TAYLOR: It would be
16 rewritten as follows: "HHS should continue to conduct
17 compliance reviews and impose sanctions as necessary
18 to ensure that states, agencies and personnel are in
19 compliance with the MEPA provisions prohibiting the
20 use of race in placement decisions."

21 CHAIRMAN REYNOLDS: Okay. I'll accept
22 that as a friendly amendment.

23 Discussion?

24 (No response.)

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

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1 COMMISSIONER YAKI: Abstain.

2 CHAIRMAN REYNOLDS: Commissioner Melendez.

3 COMMISSIONER MELENDEZ: No.

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

5 VICE CHAIR THERNSTROM: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIRMAN REYNOLDS: What was that?

9 VICE CHAIR THERNSTROM: What was it?

10 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
11 was that a yes?

12 COMMISSIONER KIRSANOW: It was.

13 CHAIRMAN REYNOLDS: Commissioner Gaziano.

14 COMMISSIONER GAZIANO: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Heriot.

16 COMMISSIONER HERIOT: I'm abstaining
17 again.

18 CHAIRMAN REYNOLDS: I vote for it. The
19 motion passes.

20 I move that the Commission approve
21 rewritten Recommendation No. 8, which reads as
22 follows: "The practice of actively recruiting same
23 race foster and adoptive parents must not result in
24 discouraging transracial adoptions and placements, and
25 it must not result in diminished efforts to find

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1 qualified adoptive parents regardless of their race."

2 Is there a second?

3 VICE CHAIR THERNSTROM: Second.

4 CHAIRMAN REYNOLDS: Is there a friendly
5 amendment?

6 COMMISSIONER TAYLOR: No.

7 CHAIRMAN REYNOLDS: Discussion?

8 (No response.)

9 CHAIRMAN REYNOLDS: Commissioner Yaki?

10 COMMISSIONER YAKI: Abstain.

11 CHAIRMAN REYNOLDS: Commissioner Melendez.

12 COMMISSIONER MELENDEZ: Abstain.

13 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

14 VICE CHAIR THERNSTROM: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

16 COMMISSIONER KIRSANOW: Yes.

17 CHAIRMAN REYNOLDS: And that was a yes?

18 COMMISSIONER KIRSANOW: Yes.

19 COMMISSIONER YAKI: What? Two clicks on
20 your microphone for a yes, one click for a no.

21 VICE CHAIR THERNSTROM: Or spell it out.

22 CHAIRMAN REYNOLDS: Okay. I will
23 interpret what was just -- I will interpret the sound
24 that came over and I will interpret that as a yes.

25 VICE CHAIR THERNSTROM: Is that correct,

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1 Commissioner Kirsanow?

2 CHAIRMAN REYNOLDS: Just nod.

3 (Laughter.)

4 VICE CHAIR THERNSTROM: That was one
5 click. I only hear one click. That was a no.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano.

7 COMMISSIONER GAZIANO: Yes.

8 CHAIRMAN REYNOLDS: Abstention?

9 COMMISSIONER HERIOT: Abstain, yeah.

10 CHAIRMAN REYNOLDS: And I vote in favor of
11 it. The motion passes.

12 Okay. Next up is consideration for the
13 timetable for MEPA concurring and dissenting opinions
14 and rebuttals.

15 **II(C). CONSIDERATION OF TIME LINE FOR MEPA**

16 CHAIRMAN REYNOLDS: Taking into account
17 that we have deferred consideration of the findings
18 and recommendations in the illegal immigration report
19 to a later meeting, I recommend that concurring and
20 dissenting statements on MEPA be submitted by February
21 15th, 2010, and rebuttals by March 15th, 2010.

22 That's a slight change from the dates
23 recommended by the Staff Director's report, which was
24 circulated in your meeting materials, since MEPA is
25 ready to go first -- okay. Let me finish -- okay.

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1 Commissioner Yaki.

2 COMMISSIONER YAKI: Notwithstanding that
3 that's the date of my birthday, it is also President's
4 Day and a holiday, and we have this bad habit --

5 CHAIRMAN REYNOLDS: Hold on, hold on, hold
6 on.

7 COMMISSIONER YAKI: -- of having these --

8 CHAIRMAN REYNOLDS: Okay. I have to make
9 a note of this.

10 COMMISSIONER YAKI: -- a bad habit of
11 having these reports being done on holidays.

12 CHAIRMAN REYNOLDS: Okay. Would you like
13 to offer up an alternative date?

14 COMMISSIONER YAKI: I'd like to push it
15 back a week to the 22nd.

16 CHAIRMAN REYNOLDS: Any objections?

17 COMMISSIONER HERIOT: I'd like to push it
18 back even another week if that's possible.

19 CHAIRMAN REYNOLDS: Okay. Let me turn to
20 the Staff Director for a moment. What does that do to
21 your life?

22 MR. DANNENFELSER: Well, it just backs us
23 up in general if we're going to be taking up the other
24 illegal immigration report. It depends on when we
25 take that up. If we take that up in two weeks or if

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1 we take it up in a month.

2 CHAIRMAN REYNOLDS: Okay. Bear with me
3 while I get a calendar in front of me.

4 VICE CHAIR THERNSTROM: Mr. Chairman, we
5 are already so backed up that it would be nice if we
6 could get these out the door.

7 CHAIRMAN REYNOLDS: But it's his birthday.

8 VICE CHAIR THERNSTROM: No, I understand
9 not wanting it on --

10 COMMISSIONER YAKI: A holiday.

11 VICE CHAIR THERNSTROM: -- a holiday.
12 That I understand.

13 CHAIRMAN REYNOLDS: More importantly --

14 VICE CHAIR THERNSTROM: His birthday is
15 not important.

16 COMMISSIONER YAKI: That's right, except
17 for the coincidental of immense national significance,
18 yes.

19 VICE CHAIR THERNSTROM: Right.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER HERIOT: It seems to me with
22 things like getting the subpoenas out the door in
23 Title IX, those actually should take priority over
24 getting, you know, the --

25 VICE CHAIR THERNSTROM: Well, wait a

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1 minute.

2 CHAIRMAN REYNOLDS: Okay, okay, okay,
3 okay, folks. Let's not go down that road. We're
4 making a little progress here. We may be able to get
5 out of here at a decent hour. So, Commissioner
6 Heriot, you can live with it?

7 MR. DANNENFELSER: Then that's March 1st
8 and April 1st then at that point.

9 CHAIRMAN REYNOLDS: That would be March
10 1st, and so understand that this may have impact, and
11 it's likely to have impacts on other things that we're
12 doing. So --

13 VICE CHAIR THERNSTROM: And, Mr.
14 Chairman --

15 COMMISSIONER YAKI: I only requested one
16 week.

17 VICE CHAIR THERNSTROM: -- I mean --

18 COMMISSIONER HERIOT: I've got a
19 compromise. I've got a compromise. Put it back two
20 weeks, but for the second round, move that up a week
21 so that it doesn't put us back two whole weeks. It
22 only puts us back one week.

23 CHAIRMAN REYNOLDS: Okay. So March 15th.
24 So we would have statements initially on the 1st.
25 Well, actually everything would be due on the 1st.

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1 COMMISSIONER GAZIANO: Well, we have
2 rebuttal statements.

3 COMMISSIONER HERIOT: Have rebuttal
4 statements. That gets to the second four-week period
5 or second month period, but let's not make that a
6 month. Let's make that less than a month.

7 COMMISSIONER YAKI: Make it two weeks.

8 CHAIRMAN REYNOLDS: Okay. Does that
9 cause --

10 COMMISSIONER HERIOT: So statements due on
11 the 1st.

12 CHAIRMAN REYNOLDS: -- heartburn?

13 COMMISSIONER HERIOT: Rebuttals on the
14 15th? Does that work?

15 COMMISSIONER YAKI: If you're not too busy
16 doing taxes that day.

17 CHAIRMAN REYNOLDS: It works for me, but
18 Vice Chair Thernstrom, I believe?

19 VICE CHAIR THERNSTROM: Well, I just do
20 not want current briefing projects to take precedence
21 over getting stuff out the door that we have had on
22 the table too long.

23 COMMISSIONER HERIOT: I think we're
24 talking about actually not being outside the schedule.
25 If the rebuttals are due on the 15th --

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1 MR. DANNENFELSER: That still leaves us
2 with a total of 60 days --

3 COMMISSIONER HERIOT: Yeah, that's the
4 same period.

5 MR. DANNENFELSER: -- from now. So I
6 think we're fine.

7 VICE CHAIR THERNSTROM: All right.

8 CHAIRMAN REYNOLDS: Okay. We have a
9 consensus. So concurring and dissenting statements
10 would be due on March 1st, and rebuttal on the 15th.

11 COMMISSIONER GAZIANO: Ordinarily I would
12 not want to shorten the rebuttal period, but I think
13 for this particular one, I'm satisfied with the
14 compromise.

15 COMMISSIONER HERIOT: I agree with that.
16 I think ordinarily we shouldn't shorten the rebuttal
17 period, but I think we'll be able to do it this time.

18 CHAIRMAN REYNOLDS: Okay. Okay. Next up.

19 COMMISSIONER YAKI: Louisiana?

20 CHAIRMAN REYNOLDS: Yes, indeed.

21 **II(D). APPROVAL OF FOLLOW-UP LETTER RE.**

22 **LOUISIANA JUSTICE OF THE PEACE**

23 COMMISSIONER YAKI: Apparently their
24 conclusion is just let them be in the swamp and that's
25 it.

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1 CHAIRMAN REYNOLDS: Okay. On October
2 22nd, 2009, the U.S. Commission on Civil Rights sent a
3 letter to the Chief Executive Office of the Judiciary
4 Commission on Louisiana concerning the refusal of a
5 parish justice of the peace to issue marriage licenses
6 to interracial couples. In that letter, we requested
7 the Louisiana Judiciary Commission notify us if it was
8 going to conduct an investigation to determine if
9 violations of the law or local ethics rules had
10 occurred, whether any member of the judiciary or Bar
11 were aware of this conduct, whether there was a duty
12 to report the conduct to the appropriate authorities,
13 and whether any corrective actions had been taken or
14 sanctions imposed.

15 We received a response on December 4th,
16 2009 that was included in the meeting binder
17 Commissioners received in preparation for this
18 business meeting. In the response, the Assistant
19 Counsel states that since the Justice of the Peace
20 resigned his judicial office, effective November 3rd,
21 2009, the Judiciary Commission no longer has
22 jurisdiction over the matter.

23 I have drafted a follow-up letter
24 concerning this matter which was E-mailed to all
25 Commissioners and Special Assistants on January 8th,

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1 2010.

2 I move to approve sending the follow-up
3 letter to the Louisiana Judiciary Commission. Is
4 there a second?

5 COMMISSIONER GAZIANO: Second.

6 CHAIRMAN REYNOLDS: Discussion?

7 COMMISSIONER GAZIANO: Yeah, I think your
8 letter is very good, and one of the reasons I think we
9 need to send it is there was some suggestion in the
10 news reports that other justices of the peace -- in
11 other words, other people within the Commission's
12 jurisdiction -- knew about this and were in some ways
13 facilitating this person's continued practice, and I'm
14 glad they were facilitating the marriages, but there's
15 still a question of whether the Commission and these
16 other justices of the peace should have been doing
17 more to correct the situation.

18 So it's for those additional reasons that
19 I think this letter is very appropriate.

20 CHAIRMAN REYNOLDS: Questions, comments,
21 statements?

22 COMMISSIONER YAKI: I will take the -- I
23 would agree with Commissioner Gaziano. It was clear
24 from news reports --

25 CHAIRMAN REYNOLDS: I'm sorry. What did

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1 you say?

2 (Laughter.)

3 COMMISSIONER YAKI: It was clear from --

4 CHAIRMAN REYNOLDS: No, no, the other
5 part.

6 (Laughter.)

7 COMMISSIONER YAKI: I'm glad that
8 Commissioner Gaziano agrees with me.

9 (Laughter.)

10 COMMISSIONER YAKI: That it was clear from
11 news reports that there were other justices who were
12 well aware of this one judge's predilection for
13 refusal to marry interracial couples. In fact, it
14 seemed like they knew of the so-called referral
15 service, and that is extremely troubling, given the
16 cannon of judicial ethics that I think all of us were
17 steeped in in law school and in other situations.

18 So I would agree that a follow-up letter
19 is required, and further action should be taken
20 because they are simply dumping this guy in the bayou
21 and figuring that no one is going to care after that.

22 CHAIRMAN REYNOLDS: All in favor, please
23 say aye.

24 (Chorus of ayes.)

25 CHAIRMAN REYNOLDS: Okay. All in favor,

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1 please say aye.

2 (Chorus of ayes.)

3 CHAIRMAN REYNOLDS: Any objections?

4 (No response.)

5 CHAIRMAN REYNOLDS: Any abstentions?

6 (No response.)

7 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

8 (No response.)

9 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

10 (No response.)

11 CHAIRMAN REYNOLDS: Okay. Glad I checked.

12 VICE CHAIR THERNSTROM: Well, the record
13 should show that Commissioner Kirsanow is no longer in
14 the meeting, participating in the meeting.

15 CHAIRMAN REYNOLDS: That is correct.

16 COMMISSIONER GAZIANO: He may be out for a
17 minute.

18 VICE CHAIR THERNSTROM: Well, then --

19 CHAIRMAN REYNOLDS: Well, he didn't
20 participate in this vote.

21 COMMISSIONER GAZIANO: Did he?

22 CHAIRMAN REYNOLDS: He did not.

23 Okay. The vote was unanimous. The record
24 should reflect that Commissioner Kirsanow did not
25 participate in the vote.

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1 Next up is a discussion of a possible
2 letter to the Securities and Exchange Commission
3 regarding its new corporate board diversity policy.

4 **II(E). DISCUSSION OF NEW SEC CORPORATE**

5 **DISCLOSURE RULE RE. DIVERSITY**

6 CHAIRMAN REYNOLDS: On December 23rd,
7 2009, the SEC published a final rule in the Federal
8 Register requiring regulated corporations to disclose
9 how they consider diversity in identifying candidates
10 to serve on their boards of directors. The new rule
11 also requires corporations with such policies to
12 disclose how they have implemented their policies and
13 how they assess the effectiveness of such diversity
14 policies. The letter asks the SEC for documents
15 concerning the development and implementation of this
16 new rule.

17 I move that the Commission approve sending
18 the proposed letter to the Securities and Exchange
19 Commission. I understand that Commissioner Heriot
20 would like to propose some minor revisions to the
21 letter that was E-mailed to you on January 8th, 2010.

22 Her Special Assistant distributed a red-lined version
23 to all Commissioners at the start of the meeting.

24 COMMISSIONER HERIOT: Except for she
25 hasn't.

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1 CHAIRMAN REYNOLDS: Oh.

2 COMMISSIONER HERIOT: I took home the
3 draft. I took it to the hotel last night by mistake.

4 So I ultimately did not get a chance to do that.

5 CHAIRMAN REYNOLDS: So it's not her fault.

6 COMMISSIONER HERIOT: No. Blame
7 Commissioner Heriot.

8 CHAIRMAN REYNOLDS: Okay. Is there a
9 second?

10 PARTICIPANT: Well, what are we --

11 COMMISSIONER HERIOT: Why don't we second
12 subject to -- to --

13 COMMISSIONER GAZIANO: Whether revisions
14 get majority support.

15 COMMISSIONER HERIOT: -- revisions being
16 supported by a majority of those who finally sign onto
17 the letter, which is the procedure that we've been
18 using with previous letters. And I can discuss those
19 changes here or we may even be able to get a red-lined
20 version by the end of the day, but I'm not sure that
21 it's necessary.

22 VICE CHAIR THERNSTROM: I mean we can't
23 vote on a letter that's going to be substantially
24 revised.

25 COMMISSIONER HERIOT: It's not going to be

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1 substantially revised. We've done this many times.

2 CHAIRMAN REYNOLDS: If there's an
3 understanding that there won't be a substantial
4 revision, are folks comfortable with that?

5 COMMISSIONER GAZIANO: And that it still
6 needs to get a majority support for the final. That's
7 been our procedure.

8 COMMISSIONER HERIOT: Yeah, that's the
9 thing we've been doing, you know, for the last six,
10 ten months, and I'd be happy to talk about what the
11 revisions are right now.

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER HERIOT: Basically there are
14 a couple of stylistic changes, you know, words being
15 used too many times, but the main changes are in the
16 list of requested documents. I've cleaned it up a
17 little bit so that we have a standardized style of
18 asking for documents. When we're asking for
19 correspondence, we consistently say under the new
20 version "E-mails, letters or other correspondence,"
21 rather than using different styles in different
22 sections.

23 And I've tried to reduce some of the
24 overlap between the six requests so that it's clear
25 that the date that we're using June 1st, 2008, where

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1 we're not going any further back in time on diversity
2 issues; that that applies across the board to
3 documents that are not specifically related to the
4 amendments to CFR.

5 I don't think these are changes that
6 anybody is going to have any objection to.

7 CHAIRMAN REYNOLDS: Other comments?

8 COMMISSIONER YAKI: (Speaking from an
9 unmiked location.)

10 COMMISSIONER HERIOT: I could also pass
11 around this document so people can see the kind of
12 changes I'm talking about.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: Stop talking about
15 me.

16 (Laughter.)

17 COMMISSIONER GAZIANO: Mr. Chairman,
18 here's the changes.

19 While we're examining the changes, since
20 we went reconsidered, is there any objection to
21 authorizing the Chairman to add a sentence to the
22 letter to the Louisiana Commission that specifically
23 raises this point about other justices of the peace
24 who may have facilitated the referral?

25 This point that I agree with Commissioner

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1 Yaki on, if there's no objection, then I'd leave that
2 to your discretion, Mr. Chairman whether to add a
3 sentence to that effect to the letter.

4 CHAIRMAN REYNOLDS: Is there an objection?

5 VICE CHAIR THERNSTROM: I'm sorry. I'm
6 trying to read this.

7 COMMISSIONER HERIOT: My changes have
8 stalled there at your desk, Abby. Those are the pass-
9 around for the --

10 VICE CHAIR THERNSTROM: Right, but I'm
11 trying to read the Federal Register here.

12 What is the change you want? I'm sorry.

13 CHAIRMAN REYNOLDS: Todd.

14 COMMISSIONER GAZIANO: Oh, just to
15 authorize the Chairman to add a sentence that
16 specifically mentions looking into those other
17 justices who may have facilitated the other justices.

18 And I'll leave that to the Chairman's discretion, but
19 I wanted to make sure that everyone is comfortable
20 with that.

21 CHAIRMAN REYNOLDS: Okay. Where are we
22 folks?

23 COMMISSIONER HERIOT: We're passing around
24 the SEC amendments.

25 (Pause in proceedings.)

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1 COMMISSIONER YAKI: May I ask what the
2 purpose of this letter is?

3 COMMISSIONER HERIOT: The SEC letter?

4 COMMISSIONER YAKI: yes.

5 COMMISSIONER HERIOT: The SEC letter is
6 simply an inquiry to find out about what were the
7 thoughts that went behind this change. Maybe at some
8 point we'll have more to do, but right now we're just
9 trying to find out what the SEC thought about what it
10 was doing, and we'll decide later if we might want to
11 take further action like in a briefing.

12 COMMISSIONER YAKI: This is more than just
13 a letter asking. This is a letter asking for
14 discovery as well.

15 COMMISSIONER HERIOT: That's right.

16 COMMISSIONER YAKI: This is not a question
17 of inquiry. It's a question of it's a letter for
18 discovery.

19 COMMISSIONER HERIOT: Well, discovery is
20 an inquiry.

21 VICE CHAIR THERNSTROM: What was the
22 previous language? This can't be -- come out of --

23 COMMISSIONER HERIOT: What was the
24 previous language of what?

25 CHAIRMAN REYNOLDS: Is this a revision of

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1 an existing rule or is this a new concept, a new
2 obligation --

3 COMMISSIONER HERIOT: It's a new --

4 CHAIRMAN REYNOLDS: -- that's being
5 imposed on corporations?

6 COMMISSIONER HERIOT: It's a new
7 obligation being imposed upon corporations, or do you
8 mean the previous language in the letter?

9 VICE CHAIR THERNSTROM: No, the previous
10 language in the statute.

11 CHAIRMAN REYNOLDS: It's a new regulation.

12 COMMISSIONER HERIOT: Abby, the previous
13 regulation had had all sorts of disclosures of
14 completely different nature, nothing to do with the
15 jurisdiction of this Commission. This is the first
16 time they're requiring corporations to disclose their
17 efforts at diversity for their board.

18 CHAIRMAN REYNOLDS: Can someone find the
19 Staff Director and let him know that he's up next?

20 Okay. Why don't we take a ten-minute
21 break. Vice Chair Thernstrom can continue to look at
22 the document. We could track down the Staff Director.

23 COMMISSIONER YAKI: Can we take a break or
24 can we just pass this over and keep on moving on the
25 agenda?

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1 CHAIRMAN REYNOLDS: We need the Staff
2 Director.

3 VICE CHAIR THERNSTROM: Let's take a break
4 here.

5 CHAIRMAN REYNOLDS: All right.

6 (Whereupon, the foregoing matter went off the record
7 at 10:32 a.m. and went back on the record
8 at 10:52 a.m.)

9 CHAIRMAN REYNOLDS: Okay. We're back.
10 Most of us are miked up.

11 There was lots of discussion during the
12 break regarding the proposed letter. Let's continue
13 with the discussion and then have a vote.

14 COMMISSIONER HERIOT: Has the letter made
15 it down the line yet?

16 CHAIRMAN REYNOLDS: No.

17 VICE CHAIR THERNSTROM: Oh, there's only
18 one copy?

19 CHAIRMAN REYNOLDS: Correct. Okay, and
20 just so that folks understand, this is seeking
21 information. At this point it's not clear to me that
22 there's an intention to do anything else. I suppose
23 it would depend in large part on what --

24 COMMISSIONER HERIOT: It depends on the
25 time. If we get the documents and decide this is an

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1 issue that we want to hold a briefing on, then we
2 will. If we get the information and we decide we want
3 to do a letter on, a substantive letter, then we will.
4 Right now we're just asking for information.

5 CHAIRMAN REYNOLDS: Okay. Any more
6 comments?

7 COMMISSIONER YAKI: Yeah.

8 CHAIRMAN REYNOLDS: Are we ready to vote?
9 Commissioner Yaki.

10 COMMISSIONER YAKI: Well, first of all, as
11 I'm going over a red line, which is more of a -- it
12 looks like the changes are just discovery gobbly-gook.
13 I really have to --

14 COMMISSIONER HERIOT: (Inaudible.)

15 COMMISSIONER YAKI: I really have to
16 question what the Commission is doing with regard to
17 this letter. We are looking at a disclosure
18 requirement of policies that may or may not be adopted
19 by corporate boards registering under the Securities
20 and Exchange Commission. It is a rule of inquiry
21 only. It is a rule that does not imply, implicate or
22 otherwise pass judgment on any corporation in terms of
23 whether it does or does not have a diversity policy
24 with regard to a corporate board and in so doing, go
25 on a rather extended fishing expedition for

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1 information going as far back as June 1st, 2008.

2 In terms of whether the SEC will even
3 answer us, I don't know. In terms of the information
4 that they could send to us, I have no idea. If
5 members of this Commission are concerned about
6 corporate boards having diversity policies, they
7 should direct their attention toward that, not whether
8 or not the federal government inquires whether they
9 have such things or not.

10 I happen to believe that diversity
11 policies have been a welcome development in American
12 corporate life over the past ten or 20 years, given
13 the composition of board rooms in the past and how
14 this has affected how corporations deal with vendors,
15 contractors, their own policies regarding diversity in
16 recruitment.

17 Instead we are focusing simply on the
18 elite of the elite, and that is members who are being
19 nominated to the board of the corporation as if that
20 is somehow something that we should look at and be
21 concerned about, because that is certainly what the
22 intent of this letter is. And I think that is the
23 very least thing that this Commission should be
24 worried about and, indeed, should be applauding
25 private parties on their own seeking to increase

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1 diversity among its board of directors.

2 Somehow or other what this letter is
3 saying and the tone of this letter is twisting that
4 all around, and I find that extremely troubling. I
5 don't understand why we are doing it other than to
6 create some displeasure with this aspect of what
7 corporate boards have done as a matter of course in
8 the private sector, and I am going to vote -- not only
9 am I going to vote strongly against it. I am going to
10 write a letter, hopefully signed by other members of
11 this Commission who agree with me, to the Securities
12 and Exchange Commission urging them to ignore this
13 letter.

14 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

15 VICE CHAIR THERNSTROM: I've got a problem
16 with the letter, too. It has got -- it seems to me
17 the letter is built on a lot of reading into this
18 language material that may or may not be there. We've
19 got two ifs in a row, whether the nominees recommended
20 by a security holder and whether and if so, how the
21 nominating committee or the board considers diversity.

22 If the nominating committee or board has a policy
23 with regard to the consideration of diversity, blah,
24 blah, blah.

25 I mean, it is a rule of inquiry only, as

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1 Commissioner Yaki just said. If we simply had a very
2 short letter that said the mission of the U.S.
3 Securities and Exchange Commission is to protect
4 investors, maintain fair and orderly and efficient
5 markets and facilitate capital formation, in this
6 context we are concerned about recent SEC rules that
7 may require corporations to disclose to investors
8 nonfinancial data, such as racial, gender or ethnic
9 composition of their boards. Such a rule would
10 introduce a political and social litmus test into
11 investment decision making, and you know, fill that
12 out a bit.

13 If it was too short paragraphs, but this
14 is built on very -- on language that seems to me
15 doesn't support this letter, and I for one in terms of
16 the whole diversity question, I describe myself as in
17 favor of aggressive nondiscrimination, not in favor of
18 racial and ethnic or gender double standards and so
19 that I had no problem as I wrote at length in a
20 Newsweek piece a long time ago, I had no problem with
21 the insistence that Colin Powell at one point in his
22 life be on a list that he was not on because he
23 deserved to be on that list, and the rest is history,
24 as it were. He did get on the list that he deserved
25 to be on and was chosen and went forward.

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1 So, you know, what exactly this regulation
2 is saying and whether it crosses the line for me
3 between this kind of what I call aggressive
4 nondiscrimination and actual ethnic-racial quotas,
5 double standards and so forth is not clear to me from
6 this language at all, and I can't support such a
7 letter that assumes that the meaning is clear here.

8 CHAIRMAN REYNOLDS: Commissioner Heriot.

9 COMMISSIONER HERIOT: I'm not sure what
10 letter Vice Chair Thernstrom is reading. The actual
11 letter that we have before us that I'm proposing
12 doesn't go nearly as far to drawing conclusions as the
13 one she has suggested. The letter is, in fact, --
14 doesn't take any stand on anything the SEC has done.

15 It's simply a letter of inquiry so that we
16 will know a little bit better about what the SEC is
17 doing, what they expect, how they expect this language
18 will be interpreted, how they expect it will be
19 carried out, what sort of comments have been made to
20 them, what sort of objections have been raised. This
21 letter draws absolutely no conclusions about the
22 merits of this particular proposal or regulation by
23 the SEC. It's simply trying to find out a little bit
24 more information.

25 There may be at some future point a time

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1 when I would be willing to sign on to a letter like
2 the one Vice Chair Thernstrom has just proposed, but I
3 don't think we're there yet. I think we should find
4 out a little bit more about this proposal. As Vice
5 Chairman Thernstrom herself suggests, it's not clear
6 what's meant by some of this language, and that's why
7 we're asking about it.

8 I would not be willing to send a letter at
9 this point that does anything more than ask.

10 CHAIRMAN REYNOLDS: Okay. Commissioner
11 Yaki, how do you vote?

12 COMMISSIONER YAKI: No.

13 CHAIRMAN REYNOLDS: Commissioner Melendez.

14 COMMISSIONER MELENDEZ: No.

15 CHAIRMAN REYNOLDS: Commissioner Taylor.

16 COMMISSIONER TAYLOR: Abstain.

17 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

18 VICE CHAIR THERNSTROM: No.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano.

20 COMMISSIONER GAZIANO: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Heriot.

22 COMMISSIONER HERIOT: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

24 COMMISSIONER KIRSANOW: Yes.

25 CHAIRMAN REYNOLDS: And I vote in favor of

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1 it. The motion passes.

2 Next step. Mr. Staff Director, please
3 provide us with an update on the status of the
4 collection and Web posting of documents for the
5 Commission Clearinghouse Project.

6 **II(F). UPDATE RE. COMMISSION CLEARINGHOUSE PROJECT**

7 MR. DANNENFELSER: Thank you, Mr.
8 Chairman.

9 The Commission has asked the Justice
10 Department for documents in an electronic form
11 relating to DOJ civil rights enforcement month by
12 month in the following categories: all complaints
13 filed in court that month, all consent decrees and
14 settlements not under seal signed that month, all
15 appellate briefs filed in court that month, all
16 letters of potential violations sent that month, all
17 letters to jurisdictions refusing pre-clearance under
18 Section 5 of the Voting Rights Act, all amicus briefs
19 filed that month.

20 The department has complied with our
21 request and sent month-by-month documents starting
22 with July 2009, with the most recent being from
23 November 2009. Some of the recent documents have been
24 mixed together by category, but we expect DOJ to send
25 them by section again beginning next month. Staff

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1 will see if DOJ can re-send these particular documents
2 by category or sort through them to organize them
3 accordingly.

4 The designated contact person at DOJ has
5 moved to another section, and we have not been
6 notified of the new contact person. However, we
7 expect a new person to be designated very soon.

8 The Commission has also asked the
9 Department of Labor for documents relating to civil
10 rights enforcement by month in the following
11 categories: amendments to the federal contract
12 compliance manual, and directives for memoranda from a
13 Deputy Assistant Secretary or Acting Deputy Assistant
14 Secretary for federal contract compliance by month.

15 The Department of Labor's Office of
16 Federal Contract Compliance Programs sent a newly
17 revised manual in September and said it would not
18 change for quite a while. They also sent a federal
19 contractor's fact sheet, a technical assistance guide
20 for federal contractors, and a technical assistance
21 guide for federal supply and service contractors.

22 They have subsequently begun posting
23 directives that have been issued as interpretive
24 guidance, and we are linking to that section of their
25 Website.

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1 We have asked the Secretary of Education
2 to direct the Office for Civil Rights to furnish us
3 the following documents relating to civil rights
4 enforcement efforts in electronic format when we get
5 to the close of each month:

6 Number one, all complaints filed in call
7 home cases;

8 Number two, all resolution agreements
9 obtained in call home cases;

10 Number three, any new regulation, rule, or
11 subregulatory policy guidance, and which cases require
12 call home; and

13 Number four, all dear colleague letters.

14 In a letter dated October 23rd, 2009, OCR
15 responded that the term "call home" was not currently
16 in use at OCR, but that in the past it had referred to
17 cases of particular interest to OCR management. OCR
18 advised that a similar interest level had been given
19 to the following categories of cases:

20 Number one, access for girls and women to
21 math and science courses in school;

22 Number two, discipline class-wide;

23 Number three, First Amendment, including
24 speech codes and harassment cases involving insults,
25 slurs or other derogatory expressions;

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1 Number four, race-based programs;
2 Number five, resource compatibility;
3 number six, segregation; number seven, single sex; and
4 Number eight, intersection of religion and
5 national origin.

6 As such, OCR promised to provide case
7 related information and resolution agreements for the
8 types of cases detailed above redacted in accordance
9 with Freedom of Information Act and the Privacy Act.
10 OCR also promised to provide new policy in those same
11 areas and copies of all dear colleague letters issued
12 during that month.

13 On December 15th, 2009, OCR provided the
14 requested files for cases that closed during the month
15 of November 2009. However, the files were sent on a
16 CD as one document, and we are asking them to resend
17 them as individual files.

18 With respect to the EEOC, we asked them to
19 furnish the following documents relating to civil
20 rights enforcement efforts in electronic format one
21 week after the close of each month:

22 Number one, all complaints filed in court
23 by the EEOC during that month;

24 Number two, all nonconfidential settlement
25 agreements entered into by the EEOC during that month;

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1 Number three, all appellate briefs filed
2 in court during that month;

3 Number four, all amicus briefs, whether or
4 not appellate in nature, filed in court during that
5 month;

6 Number five, all letters of determination
7 finding cause on a systemic basis during that month;

8 Number six, all Commissioners' charges
9 alleging discrimination of a systemic nature during
10 that month;

11 Number seven, all letters of determination
12 indicating the expansion of an individual charge into
13 a class proceeding censure in that month;

14 Number eight, all court filings to allow
15 the EEOC to intervene in a class action filed during
16 that month; and

17 Number nine, any new regulation, rule or
18 sub-regulatory policy guidance, such as compliance
19 manual chapter, issued or proposed by the EEOC during
20 that month.

21 In a letter dated August 11th, 2009, the
22 EEOC responded that it was unable to honor our request
23 citing Title VII of the Civil Rights Act of 1964 and
24 the Privacy Act, EEOC advised that it was proscribed
25 from making public items number five through seven.

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1 They further stated that it would be unduly burdensome
2 to provide items one through four, eight and nine.

3 Finally, the EEOC stated that the
4 Commission could post on its Website links to EEOC
5 proposed and final rules, policy guidance documents,
6 compliance manuals, appellant and amicus briefs, and
7 civil filings when they appeared on the EEOC or
8 certain other Websites, for example, the Federal
9 Register, regulations.gov, or PACER.

10 We are working with Commissioner Heriot's
11 Special Assistant to identify sections of the EEOC
12 Website that address the Commission's request
13 sufficiently and plan to prepare a renewed request for
14 the Chairman's signature that addresses the gaps in
15 information that still exist as a result of the EEOC's
16 response.

17 With the Office of the Staff Director and
18 the Commission's IT Director have designed a demo
19 Website that will utilize the Civil Rights USA Website
20 to display this information. We will show you this
21 draft site momentarily.

22 The Department of Commerce's National
23 Technical Information Service has begun coding this
24 site, and the Commission's IT Director will be meeting
25 with the NTIS Project Director next Friday to discuss

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1 layout changes based on feedback we receive from
2 Commissioners today.

3 At this point I'd like to ask our IT
4 Director, Michelle Ramey to show us some elements of
5 the Commission's demo site, which is posted up above
6 at the moment.

7 This is the -- oh, I'm sorry. Michelle,
8 can you just go back a moment? This is the main page
9 of the site, and this is linked to a broader federal
10 initiative, the Civil Rights USA Website. So there
11 are some other standard things that you'll see on the
12 left side, but the main things that we would be
13 linking to for purposes of this project are on the
14 right there underneath the civil rights complaint
15 resources, and we then list the four agencies that
16 we've requested the information from, and then I think
17 Michelle can link to an example, I believe, of the
18 Department of Justice, what happens when you go there.

19 Now, we did break it down by these nine
20 categories within the Department of Justice, and then
21 I believe under voting there are a few examples, and
22 we would plan to post them by the most recently
23 received documents since they'll be continuing to come
24 in on a regular basis, and then, of course, when you
25 click on those, you'll see.

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1 Can you click on one or two of those
2 documents there, Michelle? Just pick one.

3 That's one of the documents there. So
4 they'll all be laid out there in that manner, and then
5 we'll go through each section in Justice in that
6 manner.

7 And with the Department of Education,
8 these are the categories that I described, and we'll
9 list each document under those categories, and as I
10 mentioned the CD they sent us has it all lumped
11 together in one document. So we're going to need to
12 get that broken out into individual documents so that
13 we can post them in each section.

14 And then we do have, I think, some of the
15 documents up there for the Department of Labor that we
16 have received from them, and these are the two main
17 categories, and then these are the four areas I
18 mentioned that we received from them relating to the
19 manual.

20 And, Michelle, if you could just go to
21 that other main category in Department of Labor.

22 And this is the -- there's a link. They
23 have started to post directives on the Department of
24 Labor site, and they're quite comprehensive, and you
25 can see it here. So we believe that this may satisfy

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1 our request in this particular area to bring people
2 directly to this particular part of their Website.

3 And then, again, with respect to the EEOC,
4 we have not really gotten any documents from them. So
5 I think that may be something we do want to get some
6 further feedback from Commissioners about, but again,
7 what we propose to do is to work with some of the
8 special assistants and so on and with Office of Staff
9 Director, staff attorneys to take a look at the EEOC
10 site, see what's there already that might satisfy our
11 needs, but I suspect that we're going to find that
12 there's still some significant gaps, and then it's a
13 question of how do we want to go back.

14 We could draft a letter at the staff level
15 for the Chairman's signature that would renew the
16 request and identify those gaps, but if the
17 Commissioners feel that there should be some stronger
18 action than that, we certainly would be interested in
19 receiving that feedback.

20 And at this point I'd invite any
21 questions.

22 CHAIRMAN REYNOLDS: Commissioner Heriot.

23 COMMISSIONER HERIOT: Mine is not a
24 question to the Staff Director but more general. If
25 we want to have questions to the Staff Director first,

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1 I will wait.

2 CHAIRMAN REYNOLDS: All right. Just a
3 comment, I think that the format looks good, but it
4 also reminds me though that are we planning to revamp
5 our Website? Because this looks good. It looks like
6 it will be easy to use, and I know that there have
7 been some complaints about our Website in terms of its
8 organization.

9 Is there any thought to reorganize our
10 information?

11 MR. DANNENFELSER: Yes. We have a demo
12 site that's been developed relating to our own
13 Website, and we have a few reviews that are still to
14 be provided to the IT Director, but we do expect that
15 to be done pretty soon so that we can then share that
16 with Commissioners to get feedback with Commissioners
17 on the proposed revamping, broader revamping of their
18 Website.

19 But we felt that we might -- utilizing the
20 services of the National Technical Information
21 Service, that we would be able to get a lot of
22 additional resources, and given the volume of this
23 particular project, we thought it would be advisable
24 to link to another site in order to better handle the
25 capacity.

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1 CHAIRMAN REYNOLDS: Okay. Commissioner
2 Heriot.

3 COMMISSIONER HERIOT: I guess I've got two
4 things. I'm not sure which motion I want to make
5 first. But I think this is a really important project
6 for the Civil Rights Commission, and I think that
7 we've let it slide in 2009. It's a shame that we're
8 not getting around to this until now.

9 But for one thing, the letter that we got
10 from the EEOC was really a rather serious slap in the
11 face, I thought. I'm happy that we're getting
12 cooperation from some of the other departments here,
13 other agencies, but in particular -- I don't think
14 we've gotten perfect cooperation from anyone, but
15 EEOC, I think, is a real problem case, and so I have
16 two thoughts.

17 One, I think we should ask the staff to
18 prepare a subpoena for the EEOC, for them to produce
19 the document that they have failed to produce. I
20 don't think we should be acting as if we were not
21 slapped in the face by the EEOC. We surely were, and
22 I don't think it's a good idea to just go into
23 ordinary negotiations at this point.

24 I think what we should do is take a
25 careful look at what's available on their Website and

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1 anything that is available on their Website, we don't
2 need the subpoena obviously, but those things --

3 COMMISSIONER GAZIANO: If it's easily
4 transferable. It may not be.

5 COMMISSIONER HERIOT: That's true. That's
6 true, but we need to put together a subpoena probably,
7 I think, for action by the Commission next month or
8 maybe at the telephone conference next month so that
9 we can deal with the EEOC.

10 The other thing I think we probably --

11 COMMISSIONER GAZIANO: Can't we just
12 authorize the issuance of the subpoena and leave the
13 content of it to the Chairman?

14 COMMISSIONER HERIOT: Yeah, I'd be happy
15 to.

16 COMMISSIONER GAZIANO: I'd propose to
17 amend your motion.

18 COMMISSIONER HERIOT: I haven't made the
19 motion yet. I just said it.

20 The other thing that I think we need to be
21 doing here is putting together a subcommittee to move
22 along the Website issue. You know, my understanding
23 is that this needs to be streamlined. The procedures
24 need to be streamlined so that we can get this back as
25 quickly as possible, and I would propose that we

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1 create a subcommittee and deal with some of the staff
2 members.

3 I know that Lenore and I believe Chris has
4 also worked on this issue, and I would propose that we
5 have a subcommittee where members of the Commission
6 who are interested in being on a subcommittee, anyone
7 who's interested in being on it work with Lenore and
8 Chris to get this thing up as quickly as possible.

9 So that's two motions that I could make.
10 Would you like me to make one of them now?

11 CHAIRMAN REYNOLDS: I was about to ask
12 whether those motions -- but before we go there, Vice
13 Chair Thernstrom.

14 VICE CHAIR THERNSTROM: Why do we need a
15 subcommittee? I mean, that --

16 COMMISSIONER HERIOT: This has been
17 hanging around for a year now.

18 VICE CHAIR THERNSTROM: But any of us can
19 weigh in on this.

20 COMMISSIONER HERIOT: All right.

21 CHAIRMAN REYNOLDS: Okay. Well, then
22 let's make the motion --

23 COMMISSIONER HERIOT: I think this will
24 move faster.

25 CHAIRMAN REYNOLDS: -- in this and --

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1 COMMISSIONER GAZIANO: Why don't we do one
2 at a time?

3 COMMISSIONER HERIOT: Let's do one at a
4 time. I move that the staff prepare a subpoena
5 requiring the EEOC to turn over those documents that
6 are not readily available --

7 COMMISSINIONER GAZIANO: That we
8 previously asked.

9 COMMISSIONER HERIOT: Yeah, we've
10 previously asked for and we have received something
11 way in excess, I would say, of a lack of cooperation
12 on, just basically rudeness.

13 I move that the staff prepare such a
14 subpoena and that the Chairman be authorized to size
15 that subpoena and have it served upon the EEOC.

16 CHAIRMAN REYNOLDS: Is there a second?

17 COMMISSIONER GAZIANO: Second.

18 CHAIRMAN REYNOLDS: Discussion? Vice
19 Chair Thernstrom.

20 VICE CHAIR THERNSTROM: I really have a
21 very strong preference for letters not going out from
22 this Commission that I have not seen, and we haven't
23 had a chance to respond to as Commissioners.

24 CHAIRMAN REYNOLDS: You're referring to
25 the subpoena?

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1 VICE CHAIR THERNSTROM: Yes.

2 CHAIRMAN REYNOLDS: Commissioner Yaki was
3 next.

4 COMMISSIONER YAKI: Yeah, I mean, I
5 understand that we have a subpoena happy majority on
6 the Commission right now, but if this meets with as
7 much success as our previous set of subpoenas, I think
8 we're just wasting our time and the time of our staff
9 of our General Counsel, who are already, as I
10 understand, overworked pursuing phantoms and windmills
11 on any number of different occasions right now.

12 I think that if the Staff Director says
13 that he may be able to discuss this further with them
14 and move the agenda, we give him that opportunity. I
15 think moving immediately to a subpoena, I think, is a
16 little trigger happy and probably will set back any
17 possibility of getting this thing worked out, again,
18 given our success with other subpoenas to date.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano.

20 COMMISSIONER GAZIANO: I think that the
21 content of the subpoena and the letter will be the
22 content that we've already approved, and that's why I
23 wanted the motion to reflect that. So that's why I
24 think that we have already approved essentially what
25 will be in the content of the subpoena, and I think we

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1 should be ready to vote on it today.

2 CHAIRMAN REYNOLDS: Commissioner Taylor.

3 COMMISSIONER TAYLOR: One, can somebody
4 give me a better sense of the EEOC's response?

5 COMMISSIONER HERIOT: Yeah, we've got the
6 letter here.

7 COMMISSIONER GAZIANO: Actually I would
8 appreciate if we do have copies that we read some of
9 it into the record.

10 VICE CHAIR THERNSTROM: That's --

11 COMMISSIONER TAYLOR: And the second
12 point, I think this is where Commissioner Yaki was
13 going; if not, it's something I want to discuss from
14 the Staff Director's perspective. Do we go from --
15 have they told us that they are not going to give us
16 the information; they're not going to cooperate; and
17 they have said they're going to stonewall, or have
18 they said something which suggests that we send the
19 Staff Director in an effort to reach some
20 accommodation on the issue before issuing a subpoena,
21 or is it something we give up on now and move to a
22 subpoena?

23 More of a question than anything else.

24 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

25 VICE CHAIR THERNSTROM: Well, I agree with

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1 what Commissioner Taylor just said, but also
2 Commissioner Gaziano said, well, it would be
3 essentially the same.

4 Well, essentially the same, "essentially"
5 is a loaded word. "Essentially" isn't good enough. I
6 want to see the precise language of anything that my
7 name is associated with.

8 COMMISSIONER YAKI: Okay. I read it. Mr.
9 Chair, I read this letter. What EEOC -- first of all,
10 if we all can remember from past days, past
11 experiences, what have you, about the case load and
12 other things that come up before EEOC, it is a rather
13 daunting number. What they propose in the last
14 paragraph of the first page, I think, is both
15 reasonable and doable.

16 What they're essentially talking about are
17 hyperlinks from that particular resource page to the
18 applicable public guidance documents, compliance
19 manual sections. I mean, we could do a hyperlink to
20 the EEOC's portion of their Website that talks about
21 or that gives information about how to file a
22 complaint.

23 But I agree that asking them to collate
24 all of this information according to our particular
25 needs, given their case load, I think is burdensome

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1 and it is just as reasonable and just as accessible
2 for members of the public who are interested.

3 And as a lawyer, and I would hope that
4 Commissioner Taylor would agree with me, when you're
5 accessing the EEOC site for information, you are
6 looking essentially at the documents that they are
7 talking about that are public, that are available that
8 would make more sense to members of the public than
9 going into all of the items that we were asking that I
10 think are extremely burdensome for another agency to
11 handle.

12 I think hyperlinks, appropriate hyperlinks
13 as enunciated in the letter are appropriate. I think
14 the subpoena is an overreaction. I don't see anything
15 insulting in this at all, other than a desire by some
16 members of the Commission to try and grind the EEOC
17 process down to a halt with another fishing
18 expedition.

19 CHAIRMAN REYNOLDS: Now, why would you --
20 how did you arrive at that conclusion that that was
21 the intention of this letter?

22 COMMISSIONER YAKI: I don't know. Maybe
23 perhaps from the previous letter that we just approved
24 to the SEC, perhaps the --

25 CHAIRMAN REYNOLDS: We're going to grind

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1 the SEC. If I heard you right --

2 COMMISSIONER YAKI: Perhaps the -- perhaps
3 the --

4 CHAIRMAN REYNOLDS: -- the letter that we
5 proposed to send to the SEC --

6 COMMISSIONER YAKI: I'm sorry. I'm trying
7 to answer your question.

8 CHAIRMAN REYNOLDS: Well, I'm trying to
9 pose a question and frame it properly.

10 COMMISSIONER YAKI: I'm not saying that --
11 I'm not saying that the motivation has any sound basis
12 in fact. I'm not saying that the motivation has any
13 rational basis in fact.

14 CHAIRMAN REYNOLDS: I'm trying --

15 COMMISSIONER YAKI: I'm saying that there
16 may be a hope that this kind of -- when it's very
17 clear that EEOC has responded to us, has given us ways
18 in which to incorporate information to the public
19 through appropriate hyperlinks to their --

20 CHAIRMAN REYNOLDS: Commissioner Yaki.

21 COMMISSIONER YAKI: -- Website, I just
22 don't understand why we would then --

23 CHAIRMAN REYNOLDS: Commissioner Yaki.

24 COMMISSIONER YAKI: -- send a bunch of
25 subpoenas saying, "No, we want you to do all of this

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1 stuff anyway," and keep on. Because essentially, --

2 CHAIRMAN REYNOLDS: Commissioner Yaki,
3 that's not what we're --

4 COMMISSIONER YAKI: -- if -- if --

5 CHAIRMAN REYNOLDS: That's not what was
6 said.

7 COMMISSIONER YAKI: Because essentially--

8 CHAIRMAN REYNOLDS: We agreed that to the
9 extent that we can download the information from the
10 Website, that that's what we would do.

11 COMMISSIONER YAKI: But you're talking
12 about that section which they say would be unduly
13 burdensome to assemble and produce, which are
14 essentially asking for continuing production through a
15 subpoena, and I think that is unduly burdensome.

16 CHAIRMAN REYNOLDS: For them to provide us
17 with information on a regular basis you believe would
18 be overly burdensome?

19 COMMISSIONER YAKI: I think the same
20 information, the information that --

21 CHAIRMAN REYNOLDS: How much
22 information --

23 COMMISSIONER YAKI: -- would be important
24 to the public can be sent --

25 CHAIRMAN REYNOLDS: They have given us no

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1 information --

2 COMMISSIONER YAKI: -- on the other way.

3 CHAIRMAN REYNOLDS: --on what would be
4 required --

5 COMMISSIONER YAKI: I mean perhaps if we
6 hadn't --

7 CHAIRMAN REYNOLDS: -- to provide the --

8 COMMISSIONER YAKI: -- ended our federal
9 funding reports back in 2008, 2009, we wouldn't be
10 having quite the same questions, but you know, this
11 Commission has decided to only open doors that it
12 believes it wants to close.

13 So, you know, I'm just saying it seems to
14 me that what EEOC's response to us was not insulting,
15 was reasonable, and that if a similar agency came to
16 us and said, "Would you please on a monthly basis
17 download and send to our staff" -- and we all have
18 limited staffs in the federal government. We don't
19 have unlimited resources, unlimited people, unlimited
20 interns, unlimited Special Assistants.

21 I think what they -- their response is
22 perfectly appropriate.

23 CHAIRMAN REYNOLDS: Well, one point. It's
24 not clear to me what the burden is, especially in
25 light of, if I understood our earlier conversation,

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1 that what we're requesting is a subset of the original
2 request since, to the extent that we can get this
3 information, to the extent this information is
4 publicly available and accessible, we will get that
5 ourselves.

6 So what we're looking at -- so in a sense,
7 we have agreed with the EEOC's suggestion. Now --

8 COMMISSIONER HERIOT: Accessible on a
9 timely basis.

10 COMMISSIONER GAZIANO: Yeah, I would add
11 that leaving it to them to necessarily put it on their
12 Website, if they don't --

13 COMMISSIONER HERIOT: Yeah.

14 COMMISSIONER GAZIANO: -- put stuff on
15 their Website --

16 COMMISSIONER HERIOT: Yeah, we'd need
17 assurances that they're going to post these things on
18 a timely chair.

19 COMMISSIONER GAZIANO: Mr. Chair, it's
20 clear from this that the Acting Chairman of the EEOC
21 has indicated that they just have no intent to provide
22 us relevant documents that other documents agree are
23 relevant and are providing to us if they're not
24 already posted on their Website.

25 For example, briefs, copies of appellate

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1 amicus briefs is one of the categories that they think
2 would be too burdensome to make an extra copy of.
3 Obviously they know when they file amicus briefs. A
4 general order could go out in that agency, as it is in
5 other divisions, saying, "When we file an amicus
6 brief, let's remember to put it in the pile that we
7 send over to the Commission on Civil Rights."

8 Another category it appears to me that the
9 Acting Chairman of EEOC says would be too burdensome
10 are civil actions and requests or motions to
11 intervene, nonconfidential settlement agreements, too
12 burdensome. This is an insulting proposition --

13 COMMISSIONER YAKI: Oh, come on.

14 COMMISSIONER GAZIANO: -- for an agency
15 that has gotten so many millions of dollars increase
16 in its budget that it cannot respond to reasonable
17 requests from the Commission on Civil Rights.

18 It would not -- it should not -- it would
19 only take -- it would only be burdensome if they
20 invented a system that is so bizarre that I don't
21 understand it to provide those kinds of things.

22 CHAIRMAN REYNOLDS: Okay. Let me ask the
23 two of you a question. Since we have to a certain
24 degree agreed to the compromise contained in this
25 letter, that information that is publicly available

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1 and accessible on a timely basis, that we will gather
2 that stuff ourselves; is it worth going back to them
3 before sending a subpoena and saying, "We accept your
4 compromise provided we can get it in a timely
5 fashion"?

6 COMMISSIONER GAZIANO: That's not an offer
7 of compromise unless --

8 CHAIRMAN REYNOLDS: Well, but hold on.

9 COMMISSIONER GAZIANO: -- they agree to
10 give us something else.

11 COMMISSIONER HERIOT: I think that was
12 one --

13 COMMISSIONER GAZIANO: You can always --
14 people can always --

15 CHAIRMAN REYNOLDS: But hold on.

16 COMMISSIONER GAZIANO: -- link to your
17 Website. So they've offered us nothing.

18 CHAIRMAN REYNOLDS: Let me say this
19 thought. We have, by agreeing to go down that path,
20 we have effectively reduced the scope of the request
21 from the EEOC.

22 COMMISSIONER HERIOT: What we've done is
23 we've reduced what they are required to do to comply
24 with it. These documents are being subpoenaed, but if
25 they say, "We put it up on the Website," that's fine.

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1 But we need -- you know, in order to have an
2 assurance that they'll do this in a timely manner, you
3 make it part of the subpoena. You tell them fine. If
4 you put it up on the Website, you don't have to send
5 us a copy, but let me -- you know, we've got to
6 remember here. We're dealing with an agency that has
7 a duty to cooperate --

8 CHAIRMAN REYNOLDS: Yeah.

9 COMMISSIONER HERIOT: -- with the
10 Commission on Civil Rights. The statute is very
11 specific. It says all federal agencies shall
12 cooperate fully with the Commission to the end that it
13 may effectively carry out its function and duties.

14 Our main function is to be a civil rights
15 watchdog. We are supposed to be examining other
16 agencies to see whether they are doing their job
17 appropriately. I do not see how we can fulfill that
18 requirement if we do not have any idea what sort of
19 things the EEOC is up to.

20 This is dead center of what we are
21 supposed to do as an agency.

22 Also, every agency has to comply with very
23 similar requests from both houses of Congress. This
24 is not, you know, an unusual kind of request for any
25 sort of agency --

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1 CHAIRMAN REYNOLDS: So -- so -- so --

2 COMMISSIONER HERIOT: -- and you can bet
3 that the EEOC has a very similar list of documents
4 that they --

5 CHAIRMAN REYNOLDS: So my --

6 COMMISSIONER HERIOT: -- have to provide.

7 CHAIRMAN REYNOLDS: So my question,
8 whether we should, before issuing a subpoena, go back
9 to them and see if they comply in light of the fact
10 that we have --

11 COMMISSIONER HERIOT: I think the
12 negotiations go on after the subpoena. We have to get
13 their attention, and --

14 CHAIRMAN REYNOLDS: Okay. I've got --

15 COMMISSIONER HERIOT: -- it took us months
16 and months --

17 CHAIRMAN REYNOLDS: I've got my answer.

18 COMMISSIONER HERIOT: It took them months
19 and months to issue this letter.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER HERIOT: And it's a shame
22 that it has taken us so long to get back to it. We
23 should have done this earlier, but you know, once the
24 subpoena goes out, there's probably going to be some
25 negotiation on how to produce things that will be, you

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1 know, reasonably accommodating to their needs and to
2 ours.

3 CHAIRMAN REYNOLDS: Okay. First, Vice
4 Chair Thernstrom and then Commissioner Yaki.

5 VICE CHAIR THERNSTROM: I'm a little lost
6 here. The letter from them says, "Likewise links can
7 be created when the EEOC publishes its appellate and
8 amicus briefs on its Website. Finally, CCR can access
9 EEOC civil findings on PACER and CourtLink,
10 LexisNexis, download them, post them to the CCR
11 Website."

12 I mean, this is not stuff that they're
13 hiding.

14 CHAIRMAN REYNOLDS: We've already agreed
15 that to the extent that it's available, accessible --

16 VICE CHAIR THERNSTROM: Well, but what's
17 the definition of available and accessible?

18 COMMISSIONER GAZIANO: To the extent that
19 they really do.

20 VICE CHAIR THERNSTROM: I mean, I think
21 that Commissioners Gaziano --

22 COMMISSIONER HERIOT: We're finding that
23 these documents are not on their Website.

24 VICE CHAIR THERNSTROM: -- and Heriot
25 don't think that that constitutes accessibility and

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1 availability.

2 CHAIRMAN REYNOLDS: Is that your position?

3 COMMISSIONER HERIOT: Pardon?

4 CHAIRMAN REYNOLDS: Is that your position?

5 COMMISSIONER HERIOT: That if it's on the
6 Website then -- then -- then --

7 VICE CHAIR THERNSTROM: No. That if that
8 links can be created -- I mean, look at the end of the
9 fourth paragraph of their letter.

10 COMMISSIONER GAZIANO: As I understand it,
11 and this is second hand, they're not putting some of
12 the stuff on their Website, and so that's part of the
13 issue.

14 COMMISSIONER HERIOT: This stuff is not --

15 VICE CHAIR THERNSTROM: Well, you might
16 have to go to PACER or LexisNexis. It's true. Is
17 that availability and accessibility? I mean --

18 COMMISSIONER GAZIANO: So we have to --

19 VICE CHAIR THERNSTROM: -- that is my
20 question.

21 COMMISSIONER GAZIANO: So a citizen
22 entering our Website has to -- you know, they have
23 copies of all their settlements, all their whatever,
24 and they're saying, "What we'll allow you to do is go
25 to Lexis and download anything on Lexis.

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1 CHAIRMAN REYNOLDS: Okay. Let's --

2 COMMISSIONER GAZIANO: That's absurd.
3 That's absurd.

4 CHAIRMAN REYNOLDS: Let's hear from
5 Commissioner Yaki, and then let's vote.

6 COMMISSIONER YAKI: I just think that it's
7 highly ironic that a Commission which because of its
8 own budgetary issues has troubles producing reports
9 that were done two years ago, that has trouble putting
10 -- that to this date has not put up many of the
11 letters that Commissioner Melendez and I have written
12 regarding various issues, despite an AA that those
13 letters all should be published on our Website, should
14 be calling an agency that deals with civil enforcement
15 matters, charging decisions of a much more complicated
16 and sensitive nature and saying, "Well, you're just
17 not doing this fast enough for us."

18 CHAIRMAN REYNOLDS: Well, no.

19 COMMISSIONER YAKI: We are hardly in a
20 position --

21 CHAIRMAN REYNOLDS: Commissioner Yaki.

22 COMMISSIONER YAKI: -- to tell anyone that
23 they should be faster about putting stuff on their
24 Website or on their links.

25 And I would just say this. The idea that

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1 this letter is insulting is only in the eye of the
2 beholder, and apparently this particular beholder --

3 CHAIRMAN REYNOLDS: Agreed.

4 COMMISSIONER YAKI: -- believes it is
5 insulting. I do not see anything insulting about it.

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER YAKI: I would agree with
8 you, Mr. Chairman, that the proper route would be to
9 go back to the EEOC, explain to them what it is we are
10 seeking and would like to see, have a better dialogue
11 with them to understand what their issues are with
12 regard to the number and cases, what have you is on
13 the production issue before we send a freaking
14 subpoena, which they're just going to laugh at anyway.

15 I would laugh at it. If you were over
16 there and you received it from us, you would laugh at
17 it, too, because you'd say, "Go ahead."

18 CHAIRMAN REYNOLDS: You were doing so
19 well.

20 COMMISSIONER YAKI: No, I'm just saying --

21 CHAIRMAN REYNOLDS: You were doing so
22 well.

23 COMMISSIONER YAKI: I'm just saying I'm
24 trying to be realistic. It's sending -- it's sending
25 a Hellfire missile, you know, at a provocation that

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1 really may not be there. The question is: what do
2 you do?

3 I would urge you to ask the Staff
4 Director. If you want me to be involved in these
5 discussions because I may speak better language with
6 those folks than others, I would be glad to. I would
7 be glad to, but the fact of the matter is that I think
8 that we diminish the subpoena power, we diminish
9 ourselves by simply firing off something and then
10 saying, "Here it is. Now negotiate with us. We're
11 the big, bad Commission on Civil Rights."

12 CHAIRMAN REYNOLDS: Okay.

13 COMMISSIONER HERIOT: Mr. Chairman, can I
14 say something? Yeah, just a little bit.

15 CHAIRMAN REYNOLDS: Go ahead. Go ahead.
16 Go ahead. Go ahead.

17 COMMISSIONER HERIOT: I think Commissioner
18 Yaki is making the argument in favor of a subpoena
19 here. You know, we're going to send a subpoena. We
20 don't have the ability to actually enforce the
21 subpoena ourselves, and that, I think, is why it's all
22 the more important to issue it now because it's going
23 to take, you know, six more steps to get to the point
24 where it's enforced.

25 The EEOC already has a legal duty to

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1 cooperate with us, but they haven't done it. The
2 subpoena simply adds a second layer of legal duty to
3 cooperate with us, and it will mean, you know, if they
4 fail to cooperate with us, if they fail to cooperate
5 based on the statutory duty and then the duty under
6 the subpoena, we can go to the Department of Justice.

7 But things tend to move pretty slowly
8 around here. I think it's time to take this step and
9 move from there. I'm hoping that we will actually get
10 cooperation out of them after this.

11 CHAIRMAN REYNOLDS: Commissioner Melendez.

12 COMMISSIONER MELENDEZ: Yes. Well, one
13 thing is that this letter has just surfaced, and there
14 are a couple of things on the agenda that we're at
15 because I kind of knew they were coming, but two
16 letters to Louisiana and the other one, the SEC, but
17 this one kind of sprung out and didn't give us an
18 opportunity to really know that we were formulating a
19 letter. For one thing, I just wish we would have got
20 this earlier.

21 But you know, I agree. I guess in this
22 whole issue is there something, because this has gone
23 on a while I'm understanding, about us, you know,
24 whether or not we've pursued after this letter here on
25 August 11th, pursued some more from the Staff Director

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1 of anybody else on trying to follow up on this letter
2 or did we just let it sit since this letter came out
3 in August of 2009?

4 I would be of the opinion that we try to
5 make another try at it and let's just say there's
6 something that's really -- it sat this long, I mean.
7 If we made another stab at trying to be reasonable on
8 this, and let's just say this is holding back some
9 great issue that we need something from them right now
10 on a specific issue. So I would say make another try
11 to try to make contact with them in a more pleasant
12 way than trying to hammer them with a subpoena at this
13 point.

14 Then the next meeting, we come back and if
15 you don't get a response, maybe we can do a letter,
16 but I just don't think it was really an agenda item.
17 It's sprung on us.

18 COMMISSIONER HERIOT: Could I? Do you
19 want to take a break?

20 VICE CHAIR THERNSTROM: No.

21 COMMISSIONER YAKI: No.

22 VICE CHAIR THERNSTROM: We want to get out
23 of here.

24 CHAIRMAN REYNOLDS: Yes, I'd like to take
25 a break.

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1 COMMISSIONER YAKI: Well, you'd better
2 hope that Peter stays on the line then.

3 CHAIRMAN REYNOLDS: That is always my
4 hope.

5 (Whereupon, the foregoing matter went off the record
6 at 11:40 a.m. and went back on the record
7 at 10:51 a.m.)

8 CHAIRMAN REYNOLDS: Okay. I think that we
9 may have what I would characterize as a compromise.
10 Ashley, would you like to offer up the compromise?

11 COMMISSIONER TAYLOR: Let me say before I
12 try to outline the motion as best I can that a couple
13 of points I think are important to give you all a
14 sense of where I'm coming from.

15 One, I think this inquiry is directly in
16 our wheelhouse. It's something that we should do
17 This clearinghouse function is one that we should
18 exercise, I believe, in a very serious way.

19 Two, they clearly have an obligation to
20 respond. We're in a unique position to ask these
21 questions, and they have a statutory obligation to
22 respond, and not only respond, but to fully cooperate.

23 Unfortunately, I don't see in their
24 response, in terms of its responsiveness and its
25 omission in terms of asking that we get together and

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1 meet in person, reflecting the type of cooperation
2 that I would have hoped to see in an agency like this
3 when they get a letter from the Commission.

4 And for that reason, I think we should
5 make an effort to go back to them and say the
6 following:

7 One, we should by way of this motion here
8 direct our Staff Director to contact the EEOC
9 immediately.

10 CHAIRMAN REYNOLDS: Via letter?

11 COMMISSIONER TAYLOR: Via letter.

12 CHAIRMAN REYNOLDS: Requesting a meeting?

13 COMMISSIONER TAYLOR: Requesting a meeting
14 within a time certain. I see ten days or 14 days to
15 resolve these issues.

16 I think we should acknowledge or narrow
17 the issues as best we can in the process, and having
18 said that, I think we should -- that would be my
19 motion, and that we not issue the subpoena today, and
20 then after we vote on that, I think I would say I
21 would vote in favor of that motion with the
22 understanding that if we don't receive the cooperation
23 we deem to be fully cooperative that we issue the
24 subpoena.

25 COMMISSIONER HERIOT: Second.

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1 CHAIRMAN REYNOLDS: Discussion?
2 Hearing none, all in favor please say aye.
3 (Chorus of ayes.)
4 COMMISSIONER YAKI: Abstain.
5 COMMISSIONER MELENDEZ: I vote for.
6 COMMISSIONER TAYLOR: Aye.
7 CHAIRMAN REYNOLDS: Okay.
8 VICE CHAIR THERNSTROM: That was an aye
9 for the court reporter.
10 CHAIRMAN REYNOLDS: Well, he's skilled. I
11 mean, nods, grunts, he can interpret that.
12 (Laughter.)
13 CHAIRMAN REYNOLDS: Commissioner Kirsanow.
14 COMMISSIONER KIRSANOW: Yes.
15 CHAIRMAN REYNOLDS: Okay. We have one
16 abstention. The motion passes.
17 You have a second motion? Do you remember
18 that right?
19 COMMISSIONER HERIOT: Yeah, I think it
20 will be a good idea to create a subcommittee to work
21 with Lenore and Chris in getting this stuff, you know,
22 done in a timely manner.
23 So I would move that we have a
24 subcommittee on which any member of the Commission may
25 join.

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1 CHAIRMAN REYNOLDS: Okay. I second it.

2 Discussion?

3 Okay. Commissioner Yaki, how do you vote?

4 COMMISSIONER YAKI: No.

5 CHAIRMAN REYNOLDS: Commissioner Melendez?

6 COMMISSIONER MELENDEZ: That's fine with
7 me, yes.

8 COMMISSIONER TAYLOR: Yes.

9 CHAIRMAN REYNOLDS: Vice Chair.

10 VICE CHAIR THERNSTROM: No. It's just a
11 means of harassing staff.

12 CHAIRMAN REYNOLDS: Commissioner Gaziano.

13 COMMISSIONER GAZIANO: Yes.

14 COMMISSIONER HERIOT: Yes.

15 CHAIRMAN REYNOLDS: Your motion.

16 Commissioner Kirsanow.

17 COMMISSIONER KIRSANOW: Yes.

18 CHAIRMAN REYNOLDS: Okay. My vote for it
19 also. We have -- is that right? -- how many noes?

20 COMMISSIONER YAKI: Two.

21 CHAIRMAN REYNOLDS: Okay, yes. Okay. The
22 motion passes.

23 Next up.

24 COMMISSIONER HERIOT: I think everybody
25 who would want to join should sort of speak up at this

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1 point. I'm willing to be on the subcommittee.

2 COMMISSIONER YAKI: I don't think there's
3 any requirement.

4 VICE CHAIR THERNSTROM: No, there's no
5 need for that. I may want to join; I may not. Don't
6 know.

7 COMMISSIONER HERIOT: Okay.

8 COMMISSIONER YAKI: If you don't join now
9 there's no --

10 COMMISSIONER HERIOT: No, I'm not saying
11 you can't join later. I'm saying, you know, if you're
12 going to join, join now. If you're going to join
13 later, well, we'll worry about that later.

14 CHAIRMAN REYNOLDS: Okay. You will --

15 COMMISSIONER HERIOT: I will need somebody
16 on the committee. So I guess I'm on the committee.

17 CHAIRMAN REYNOLDS: You're on the
18 committee and, in fact, you're going to run the
19 committee here. So --

20 COMMISSIONER HERIOT: Joy.

21 CHAIRMAN REYNOLDS: -- in terms of --

22 COMMISSIONER HERIOT: Harassing.

23 CHAIRMAN REYNOLDS: -- arranging
24 teleconferences and what have you, it all rests in
25 your hands.

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1 Okay. Next up. At the December 16th,
2 2009 meeting the Commission authorized me to set the
3 date for a hearing on the 2010 Enforcement Report
4 involving the New Black Panther Party.

5 **II(G). UPDATE ON 2010 ENFORCEMENT REPORT**

6 CHAIRMAN REYNOLDS: As I notified you via
7 E-mail this past Monday, I directed that notice be
8 sent to the Federal Register for a hearing schedule on
9 February 12, 2010, the date of our next in person
10 Commission meeting here in Washington, D.C.

11 Staff has informed me that the notice
12 appeared in the Register this past Wednesday.

13 Okay. Next up we will need an update from
14 Mr. Blackwood on the progress of our New Black Panther
15 Party investigation which requires us to go into
16 closed session pursuant to the Commission's
17 regulations implementing the Sunshine Act.

18 General Counsel and Deputy
19 Parliamentarian, please certify that the meeting can
20 be closed pursuant to Commission regulations.

21 COMMISSIONER YAKI: What are the grounds?

22 MS. MONROIG: So certified.

23 CHAIRMAN REYNOLDS: Okay.

24 MS. MONROIG: So certified.

25 COMMISSIONER YAKI: What are the grounds?

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1 CHAIRMAN REYNOLDS: The grounds are that
2 we're going to discuss the subpoena, and also we're
3 discussing issues that if it became public, our
4 efforts could become undermined.

5 COMMISSIONER GAZIANO: We also adopted
6 some special rules of confidentiality that I suspect
7 we could not -- we could not discuss. We could not
8 uphold those special rules of confidentiality if we
9 discussed some of the updates in the public meeting.

10 CHAIRMAN REYNOLDS: Okay. So --

11 COMMISSIONER YAKI: Sorry. I need
12 clarification on the statement regarding undermine our
13 efforts. This is a report, Enforcement Report, that
14 requires, I understand, some investigation. We have
15 adopted some confidentiality rules involving the
16 identity of individuals subpoenaed. I can understand
17 that.

18 But I do not understand the general, broad
19 statement that you made in terms of other things that
20 may undermine our ability to go forward. Are you
21 talking about that our strategy is privileged
22 information that --

23 CHAIRMAN REYNOLDS: I wouldn't call it
24 privileged.

25 COMMISSIONER YAKI: -- that the nature of

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1 the briefing on the 12th is confidential information
2 about -- I just don't understand this catch-all phrase
3 because it seems to undermine the transparency of this
4 process, which I believe, as I have said before,
5 should be very carefully looked at so as not to
6 undermine our own efforts with regard to this report.

7 The last we need is to be told that
8 everything we did was done in secret outside of the
9 public eye, and it seems to me that we are just doing
10 exactly that.

11 COMMISSIONER GAZIANO: Mr. Chairman, it
12 seems to me that some issues that may relate to
13 matters that we should discuss in the public may
14 reflect those confidential -- what it seems like the
15 General Counsel's suggestion that we go into executive
16 session first to get those out of the way makes sense,
17 but as I have said before, we should discuss in a
18 public session as much as we can.

19 So I would suggest that we come back in
20 after the executive session and then Commissioners in
21 compliance with our confidentiality rules can put on
22 the public record all those matters that we should
23 discuss in the public.

24 CHAIRMAN REYNOLDS: Agreed. Okay. At
25 this point I move to close this meeting, pursuant to

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1 Exemptions 9 and 10 of the Closed Meeting Procedures
2 for Commission Meetings, and furthermore to authorize
3 the Staff Director to place in a location accessible
4 to the public within one working day the public vote
5 to close the meeting and explanation of a decision to
6 close the meeting, and a list of all persons attending
7 the meeting.

8 Is there a second?

9 COMMISSIONER GAZIANO: Second.

10 CHAIRMAN REYNOLDS: Okay. Commissioner
11 Yaki?

12 COMMISSIONER YAKI: No.

13 CHAIRMAN REYNOLDS: Commissioner Melendez?

14 COMMISSIONER MELENDEZ: No.

15 CHAIRMAN REYNOLDS: Commissioner Taylor.

16 COMMISSIONER TAYLOR: Aye.

17 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

18 VICE CHAIR THERNSTROM: Abstain.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano.

20 COMMISSIONER GAZIANO: Aye.

21 CHAIRMAN REYNOLDS: Commissioner Heriot.

22 COMMISSIONER HERIOT: Aye.

23 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

24 COMMISSIONER KIRSANOW: Yes.

25 CHAIRMAN REYNOLDS: And I vote for it

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1 also. The motion passes.

2 Okay. So at this point we need to clear
3 the room, except for the Staff Director, General
4 Counsel, Commissioners, the Parliamentarian, Special
5 Assistants for the Commissioners, everyone else, I
6 believe.

7 MR. BLACKWOOD: And attorney advisors of
8 the Office of General Counsel.

9 CHAIRMAN REYNOLDS: Okay. Thank you.

10 VICE CHAIR THERNSTROM: That leaves two
11 people who have to leave.

12 (Laughter.)

13 CHAIRMAN REYNOLDS: Okay.

14 (Whereupon, at 12:01 p.m., the meeting was
15 adjourned to reconvene immediately in executive
16 session, reconvening in open session at 12:29 p.m.)

17 COMMISSIONER GAZIANO: Are we back in
18 regular session?

19 CHAIRMAN REYNOLDS: Yes, and we're all
20 here. Pete?

21 COMMISSIONER KIRSANOW: I'm here.

22 CHAIRMAN REYNOLDS: That was an "I'm
23 here."

24 COMMISSIONER YAKI: Never mind. I'll come
25 up and talk to you about it.

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1 CHAIRMAN REYNOLDS: Okay. All right. At
2 the December 16th, 2009 meeting, Commissioner Yaki
3 requested that a discussion of reporting procedures
4 for the Discovery Subcommittee on the 2010 Enforcement
5 Report be placed on the agenda for this meeting.

6 **II(H). CONSIDERATION OF REPORTING PROCEDURES**
7 **ON 2010 ENFORCEMENT REPORT**

8 CHAIRMAN REYNOLDS: Commissioner Yaki, do
9 you have a proposal or would you like to discuss this
10 further at this time?

11 COMMISSIONER YAKI: Yeah. I mean, my
12 proposal at the previous meeting was that the
13 Discovery Subcommittee provide a written report on its
14 efforts to date and a summary of its meeting, actions
15 taken at its meetings so that members could have an
16 opportunity to review and question and raise questions
17 about it rather than have to rely upon a report at the
18 actual meeting, in which case we're always trying to
19 close the barn door after the horses have left.

20 So my motion is that the Discovery
21 Subcommittee give a written report of its activities
22 to the extent that they occur that are included in the
23 agenda for each meeting, whether they be by phone or
24 in person.

25 CHAIRMAN REYNOLDS: Okay. Would members

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1 of the subcommittee have heartburn with preparing
2 minutes of meetings? Yes.

3 COMMISSIONER GAZIANO: Yeah. First of
4 fall, I don't recall Commissioner Yaki asking exactly
5 for this at the last meeting, and I'm still not sure I
6 understand with much clarity what his current motion
7 is, but I think the fact that he didn't reduce it to
8 writing and he didn't circulate it to us reflects the
9 time consuming nature of such writing requests.

10 COMMISSIONER YAKI: Well --

11 COMMISSIONER GAZIANO: Let me finish. Let
12 me finish.

13 COMMISSIONER YAKI: Do you want me to go
14 to the transcript? I'll go to the transcript.

15 COMMISSIONER GAZIANO: Let me finish. The
16 fact that Commissioner Yaki's motion was not
17 circulated to us in advance, I think -- and I still
18 don't quite understand what it is -- it sounds to me
19 like a recipe for future objection.

20 But the Discovery Subcommittee, as I hope
21 Pete and the General Counsel will say, cannot always
22 meet at the same time or the same location, and, yes,
23 preparing -- but we do -- the General Counsel always
24 accurately reports what our subcommittee has done, at
25 least those matters that ought to be brought to the

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1 Commission's behalf. And if the General Counsel or
2 other members of the Subcommittee fail to draw to the
3 attention of Commissioners matters that Commissioners
4 believe they needed notice on, they will suffer the
5 consequences. They will not have their motions acted
6 upon.

7 I'm glad that some of the motions that
8 were generated by the Discovery Subcommittee received
9 the support and vote of members of both independents,
10 Democrats and Republicans. So I think that our
11 performance reflects that when there is a matter that
12 we believe Commissioners should see in writing,
13 extraordinary efforts are made to get it to fellow
14 Commissioners. Anything more than that seems rather
15 burdensome, particularly for someone who refuses to
16 join the Commission -- the Discovery Subcommittee.

17 CHAIRMAN REYNOLDS: How would you respond
18 to a request for some minutes that provide a general
19 description of the topics that were discussed.

20 COMMISSIONER GAZIANO: What's the -- I
21 don't -- what's the point of that? There's also --

22 COMMISSIONER HERIOT: What about this oral
23 report to both the regular and telephonic meanings?
24 That's going to get a report every two weeks basically
25 if we do it that way.

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1 VICE CHAIR THERNSTROM: I don't know why
2 we have these continuing telephonic meetings, but --

3 COMMISSIONER HERIOT: Because we get
4 things done during the telephonic meetings.

5 VICE CHAIR THERNSTROM: There are lots of
6 things that we could get done at these meetings.

7 CHAIRMAN REYNOLDS: We voted on the issue.

8 VICE CHAIR THERNSTROM: No, we didn't
9 vote. If we go back to the transcript, we did not
10 vote.

11 CHAIRMAN REYNOLDS: Would you like to vote
12 on it now then?

13 COMMISSIONER HERIOT: No.

14 COMMISSIONER GAZIANO: No, we voted. We
15 voted on the schedule. We voted on the schedule with
16 me --

17 COMMISSIONER HERIOT: We voted on the
18 schedule. This is ridiculous.

19 CHAIRMAN REYNOLDS: Commissioner Yaki.

20 COMMISSIONER YAKI: At the last meeting, I
21 specifically said I would like a motion prepared that
22 would ask for a written report of the activities of
23 the Discovery Subcommittee to be prepared as part of
24 the written agenda.

25 Now, we can interpret that to say I should

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1 have done it, and maybe I should have. I thought I
2 made it very clear that I wanted it. Regardless --

3 CHAIRMAN REYNOLDS: You know, I'm not
4 going to get wrapped around the axle --

5 COMMISSIONER YAKI: Neither am I.

6 CHAIRMAN REYNOLDS: -- that it wasn't
7 circulated. Let's just address it on the merits and
8 continue the discussion on the merits.

9 COMMISSIONER YAKI: Then I would say, Mr.
10 Chairman, what you propose is reasonable, and I would
11 accept that.

12 CHAIRMAN REYNOLDS: Okay. Does it have
13 any support? It is a general discussion or
14 description of the topics that were discussed. No
15 decisions can be made in subcommittee. So it's not a
16 description of decisions that have been made because
17 no decisions should be made in subcommittee.

18 COMMISSIONER GAZIANO: Well, for example,
19 the subcommittee at times has suggested to you the
20 chairman certain people who were on the approved list
21 to subpoena or to serve for depositions, and that
22 was --

23 CHAIRMAN REYNOLDS: Just imagine a bullet
24 point, discussion of strategy; another bullet point --

25 VICE CHAIR THERNSTROM: Well, wait a

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1 minute. That's too vague.

2 COMMISSIONER YAKI: No, I would say
3 suggestion of individuals for the Chairman to consider
4 for subpoena. That would be fine. I don't need to
5 know the names, whatever, but --

6 CHAIRMAN REYNOLDS: But if you drafted the
7 minutes.

8 COMMISSIONER GAZIANO: let me ask the
9 General Counsel. If the General Counsel would have --
10 if this is burdensome apart from the oral reports that
11 the General Counsel has been given.

12 CHAIRMAN REYNOLDS: I don't have any --
13 what I don't have in mind, I don't have in mind a 20-
14 page report. I don't have in mind -- if I receive two
15 pages, I'd be surprised.

16 COMMISSIONER YAKI: It's almost like
17 essentially an agenda. If you were to take the
18 discussion and create an agenda post hoc from it --

19 CHAIRMAN REYNOLDS: Agenda. Share your
20 concerns to the extent you have them.

21 MR. BLACKWOOD: If you all vote for me to
22 do it, I will do it.

23 CHAIRMAN REYNOLDS: No, no, no, no. We're
24 asking. We're asking your opinion at this point. If
25 you ask my opinion, I think, quite honestly, it's much

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1 more flexible to report on a biweekly basis, which I
2 have no problem doing, and answering all the
3 questions. You will probably get more information
4 faster that way than my doing something which,
5 frankly, we don't even have regularly scheduled
6 meetings.

7 CHAIRMAN REYNOLDS: Isn't there a
8 substantive down side to providing a general
9 description of the topics that were discussed?

10 MR. BLACKWOOD: No. I will -- let me back
11 up for one minor -- well, not in my mind not a minor
12 point. When you're talking about sensitive matters,
13 especially matters that should be held in executive
14 session, executive session is the best way to have
15 them. And I say that despite the fact that I know the
16 burden of having executive session and having the
17 audience leave.

18 A free wheeling discussion where everybody
19 can ask me any question they want is the better way to
20 do it, but since you asked my opinion, that is what I
21 would say.

22 COMMISSIONER YAKI: But point of order.
23 Obviously discussions of the subcommittee are not in
24 executive session, are they?

25 MR. BLACKWOOD: No, aside from --

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1 COMMISSIONER GAZIANO: Except for the fact
2 that the only people --

3 MR. BLACKWOOD: -- no one else -- the
4 public is not present.

5 COMMISSIONER GAZIANO: Except that the
6 only people on them are those who would be in
7 executive session if we had an executive session.

8 CHAIRMAN REYNOLDS: Okay.

9 COMMISSIONER YAKI: No, but they are not
10 -- they are to the extent that Commissioners or
11 Commission staff --

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: -- were there.

14 CHAIRMAN REYNOLDS: Commissioner, pretty
15 please, could you just prepare a brief discussion, a
16 brief document that contains a general discussion. It
17 should be no more than one page unless there's
18 substantive down side.

19 COMMISSIONER GAZIANO: There's some of the
20 concerns the General Counsel mentioned are the only
21 real down sides. I understand from you it would be
22 helpful. Before I -- before I --

23 CHAIRMAN REYNOLDS: It wouldn't be helpful
24 to me. It wouldn't be helpful to me. The
25 information, I want to hear directly from David.

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1 COMMISSIONER GAZIANO: Right. No, I
2 understand.

3 CHAIRMAN REYNOLDS: But -- but --

4 COMMISSIONER GAZIANO: You think it would
5 be helpful -- if Commissioner --

6 CHAIRMAN REYNOLDS: Commissioner Yaki --

7 COMMISSIONER GAZIANO: -- Taylor and --

8 CHAIRMAN REYNOLDS: -- believes --

9 COMMISSIONER GAZIANO: -- and Commissioner
10 Heriot and Commissioner -- think that that would be
11 helpful, then we will -- we will get that kind of a
12 topic summary.

13 CHAIRMAN REYNOLDS: Okay. I move that
14 members -- that Todd oversee the creation of a set of
15 -- well, a brief description of the topics discussed
16 at each meeting where the subcommittee meets.

17 COMMISSIONER HERIOT: I take it we're
18 talking about a discussion that is at level of detail
19 to where if the document were to end up in the wrong
20 hands, it would not reveal anything.

21 CHAIRMAN REYNOLDS: That's correct.
22 That's correct.

23 Is there a second?

24 COMMISSIONER MELENDEZ: Second.

25 COMMISSIONER TAYLOR: Prospective or

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1 retroactive?

2 CHAIRMAN REYNOLDS: Okay. Prospective,
3 and it's limited to this particular --

4 COMMISSIONER GAZIANO: I will agree --
5 since it puts me on the hook -- agree if I am able to
6 delegate the actual responsibility --

7 CHAIRMAN REYNOLDS: Yeah, yeah, yeah,
8 okay.

9 COMMISSIONER GAZIANO: -- for doing it --

10 CHAIRMAN REYNOLDS: Okay, okay, okay.

11 COMMISSIONER GAZIANO: -- to someone else.

12 CHAIRMAN REYNOLDS: Okay, all right. All
13 in favor, please say aye.

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Any objections?

16 (No response.)

17 CHAIRMAN REYNOLDS: Any abstentions?

18 (No response.)

19 COMMISSIONER KIRSANOW: Abstain, Kirsanow.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER HERIOT: Yeah, I abstain too.

22 CHAIRMAN REYNOLDS: All right.

23 COMMISSIONER HERIOT: If anybody is
24 actually involved in the committee is abstaining, then
25 I will abstain with them.

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1 COMMISSIONER TAYLOR: I'd like to talk
2 about this some more; is that okay?

3 CHAIRMAN REYNOLDS: No. Commissioner
4 Melendez, will you please --

5 COMMISSIONER GAZIANO: Oh, can I -- can I
6 ask? By the way, to clarify yours, I think it would
7 be burdensome --

8 CHAIRMAN REYNOLDS: Is it on the topic
9 that we just discussed?

10 COMMISSIONER GAZIANO: Yes. Since it
11 would be burdensome to try to go back --

12 CHAIRMAN REYNOLDS: I'm sorry, but we
13 voted.

14 COMMISSIONER GAZIANO: -- to past
15 recollection --

16 CHAIRMAN REYNOLDS: Well, no. It's
17 prospective.

18 COMMISSIONER GAZIANO: -- past. It's
19 prospective only. Okay. I wanted to clarify.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER GAZIANO: Prospective only.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER YAKI: As opposed to on the
24 past.

25 CHAIRMAN REYNOLDS: Dr. Lerner, would you

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1 please provide us with an update on the Title IX
2 Project?

3 It's not too late for you to circulate
4 your CV. It's not too late.

5 COMMISSIONER YAKI: Three areas of
6 agreement today. Come on, yeah.

7 **II(I). UPDATE ON TITLE IX PROJECT**

8 DR. LERNER: Mr. Chairman, thank you.

9 Very briefly, we're putting the subpoenas
10 together, as some of you received an E-mail yesterday.

11 Four of them have gone out. It has been our main
12 task and that's what we've been working on, and we
13 hope to get the rest of them out very, very shortly
14 indeed. Out of 19 total, we have so far gotten out
15 four. That's the basic summary here.

16 CHAIRMAN REYNOLDS: Okay. That's it?

17 DR. LERNER: Yeah.

18 COMMISSIONER HERIOT: I have a question.

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER HERIOT: How soon are we
21 expecting to get the other 15 out?

22 DR. LERNER: If you need exact dates and
23 details, I have to defer to General Counsel since
24 they're in his office being processed.

25 CHAIRMAN REYNOLDS: Okay.

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1 COMMISSIONER HERIOT: General Counsel?

2 MR. BLACKWOOD: We have prepared a list of
3 all the registered agents for these entities, which
4 are all corporate entities. That will take longer
5 than contacting them directly. The four that were
6 served yesterday we instances where the General
7 Counsel of the institutions contacted me preemptively
8 and indicated they would accept voluntarily the
9 service.

10 CHAIRMAN REYNOLDS: And you discussed that
11 in that E-mail.

12 MR. BLACKWOOD: That's correct, and in
13 fact, they were served by fax in each case.

14 As to the other individuals, I think the
15 feedback I got from the general counsels that did
16 contact me was twofold. One, don't send it to us over
17 the Christmas break. We're not here.

18 Two, please send it to -- if you send it
19 to us the regular way, by sending it to a registered
20 agent, they may not get it or a week or two as it
21 works through the system. Some of these institutions
22 are rather large. A lot of registered agents are
23 outside attorneys. They were afraid that it would not
24 get to them, and the general counsel internally said
25 they were the ones that were going to handle it.

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1 So what I have tried to do is contact
2 other general counsel, which does cause a delay, but I
3 think will actually move things along faster. So if
4 that is not possible in the new few days, we will send
5 it to the registered agent. That will also be more
6 expensive because we will have to use a process
7 server.

8 CHAIRMAN REYNOLDS: But to the extent you
9 get an agreement with an office of general counsel to
10 accept service, you're not waiting --

11 MR. BLACKWOOD: Not at all.

12 CHAIRMAN REYNOLDS: -- to get it done.
13 They're going out as soon as you have confidence that
14 you have someone who is going to accept service.

15 MR. BLACKWOOD: And, indeed, last night we
16 got a fifth person who agreed to accept the service,
17 and they got service.

18 COMMISSIONER HERIOT: So that means that
19 they'll all be going out in the next week or so.
20 You'll either get some agreement, some general
21 counsel's office, or you'll use the registered agent?

22 MR. BLACKWOOD: That's correct.

23 COMMISSIONER HERIOT: Within this upcoming
24 week.

25 MR. BLACKWOOD: Yes.

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1 COMMISSIONER HERIOT: Okay.

2 CHAIRMAN REYNOLDS: All right. Very good.

3 I move that the Commission recharter the Pennsylvania
4 State Advisory Committee.

5 **III. STATE ADVISORY COMMITTEE ISSUED,**

6 **PENNSYLVANIA**

7 CHAIRMAN REYNOLDS: Under this motion, the
8 committee appoints the following individuals to that
9 committee based on the recommendations of the Staff
10 Director, Christopher Armstrong:

11 Elisa Basnight

12 Richard Bockol

13 Alberto Cardelle

14 ImJa Choi

15 John Crews

16 Heather Heidelbaugh

17 James Frazier

18 Nancy Gippert

19 Patricia Hopson-Shelton

20 Craig Hymowitz

21 Steven Irwin

22 Faye Ritter

23 William Rothman

24 Lawrence Tabas

25 Connie Tarr.

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1 Pursuant to this motion, the Commission
2 appoints James Frazier as Chair of this rechartered
3 Pennsylvania State Advisory Committee. These members
4 will serve as uncompensated government employees.

5 Under this motion the Commission
6 authorizes the State Director to execute the
7 appropriate paper work for the appointment.

8 Is there a second?

9 COMMISSIONER HERIOT: Second.

10 CHAIRMAN REYNOLDS: Thank you.

11 Commissioner Yaki.

12 COMMISSIONER YAKI: Yes. I move to
13 recommit it back to staff for additional review. We
14 have turned up some information about some other
15 individuals that I think would be wise to be reviewed,
16 and not talk about in open session.

17 CHAIRMAN REYNOLDS: Would you -- this is
18 the information that he's referring to?

19 VICE CHAIR THERNSTROM: I don't know what
20 he's referring to, but this is about one the -- this
21 is about Mr. Crews.

22 COMMISSIONER YAKI: Oh, geez. Given that
23 this is the second individual --

24 CHAIRMAN REYNOLDS: I agree.

25 COMMISSIONER HERIOT: What?

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1 COMMISSIONER GAZIANO: That we should
2 postpone. Based on their agreement, I would agree to
3 postpone.

4 COMMISSIONER HERIOT: I'm utterly
5 confused. We have got some concern about Mr. Crews;
6 is that right?

7 CHAIRMAN REYNOLDS: Well, no.

8 COMMISSIONER YAKI: It may be him. It may
9 be someone else, or the fact is this is the second or
10 third problem that has turned up in the SAC on a sort
11 of rotating basis, and the Commissioner and I have
12 been talking about this quietly to try and deal with
13 it quietly.

14 CHAIRMAN REYNOLDS: And to the extent
15 anyone comes up with information that is
16 problematic --

17 COMMISSIONER YAKI: I just received it
18 this morning, which is why.

19 CHAIRMAN REYNOLDS: Well, no, no.

20 COMMISSIONER HERIOT: I'm utterly
21 confused.

22 CHAIRMAN REYNOLDS: This is not directed
23 at you.

24 COMMISSIONER HERIOT: You know something
25 about the issue that's being discussed here. I'm

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1 confused.

2 MR. BLACKWOOD: This is David Blackwood.

3 If we are going to talk about individuals,
4 we need to go into executive session.

5 COMMISSIONER YAKI: We're not. We're not.

6 I move to re --

7 CHAIRMAN REYNOLDS: We've --

8 COMMISSIONER HERIOT: There's a pending
9 motion. You have to move to substitute.

10 COMMISSIONER MELENDEZ: I'll second. I'll
11 second that motion.

12 COMMISSIONER YAKI: I move --

13 COMMISSIONER HERIOT: Move to substitute.

14 COMMISSIONER YAKI: On a substitute
15 motion, to resubmit this item back to staff.

16 VICE CHAIR THERNSTROM: I apologize for --

17 CHAIRMAN REYNOLDS: She seconds the
18 motion.

19 (Laughter.)

20 CHAIRMAN REYNOLDS: All in favor please
21 say aye.

22 (Chorus of ayes.)

23 CHAIRMAN REYNOLDS: Any objections?

24 COMMISSIONER YAKI: No.

25 CHAIRMAN REYNOLDS: Any --

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1 COMMISSIONER HERIOT: I abstain because I
2 have no idea what's going on.

3 CHAIRMAN REYNOLDS: Very good. We have
4 one abstention. The motion passes.

5 COMMISSIONER YAKI: Mr. Chair.

6 CHAIRMAN REYNOLDS: Un-huh.

7 COMMISSIONER YAKI: May I ask for an item
8 be placed on the next in person meeting?

9 CHAIRMAN REYNOLDS: What do you want to
10 talk about

11 COMMISSIONER YAKI: I'd like to talk about
12 what is going on with the National Conference and the
13 budget for that.

14 CHAIRMAN REYNOLDS: The next in person
15 meeting, which is on which date?

16 COMMISSIONER YAKI: Oh, yes. That's
17 February 12th. So that probably wouldn't work.

18 COMMISSIONER GAZIANO: Unless we could
19 have a business meeting after the hearing.

20 CHAIRMAN REYNOLDS: Okay. Yes.

21 COMMISSIONER GAZIANO: So it's either
22 going -- if we have a business meeting after the
23 hearing will be then. If not it will the following
24 month.

25 COMMISSIONER YAKI: I've already changed

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1 my flight to next day in anticipation of this.

2 CHAIRMAN REYNOLDS: Okay. I move to
3 approve the minutes of the December 16th, 2009
4 meeting.

5 **IV. APPROVAL OF MEETING MINUTES,**

6 **DECEMBER 16, 2009**

7 CHAIRMAN REYNOLDS: Is there a second?

8 COMMISSIONER TAYLOR: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 (No response.)

11 CHAIRMAN REYNOLDS: All in favor please
12 say aye.

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Objections?

15 (No response.)

16 CHAIRMAN REYNOLDS: Abstentions?

17 (No response.)

18 CHAIRMAN REYNOLDS: The vote passes
19 unanimously.

20 Next up is the Staff Director's report.

21 **V. STAFF DIRECTOR'S REPORT**

22 MR. DANNENFELSER: Thank you, Mr.
23 Chairman.

24 I think we've already welcomed the new
25 staff member, Nick Colten, who is now the Special

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1 Assistant to Commissioner Melendez.

2 I'd also like to welcome Hanna Geyer, who
3 is a spring intern in the Office of the General
4 Counsel, and I believe she's in the audience waving
5 here hand there. So welcome, Hanna. Thank you for
6 your service.

7 COMMISSIONER YAKI: Did you say spring
8 intern?

9 MR. DANNENFELSER: Spring, spring intern.

10 COMMISSIONER YAKI: Isn't it still dead
11 winter right now?

12 MR. DANNENFELSER: Well, she's getting a
13 jump start on things. Spring semester.

14 COMMISSIONER YAKI: You're an early
15 bloomer, I suppose.

16 MR. DANNENFELSER: Regarding OGC program
17 activities, OGC sent a draft of the English in the
18 Workplace briefing report to the Office of the Staff
19 Director on January 8th, 2010. OSD is completing its
20 review of the draft, and I expect to designate an
21 editorial review board for that briefing report next
22 week.

23 OGC is also finalizing the Blaine
24 amendments briefing report draft and expecting to send
25 it to the Office of Staff Director by the end of

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1 January.

2 OGC staff have performed Sunshine Act and
3 Federal Advisory Committee Act research on closed and
4 canceled meetings. They also provided litigation hold
5 training to the rest of the Commission staff. Our
6 Acting Chief of the Public Affairs Unit has been
7 providing Commissioners with frequent updates when the
8 Commission is mentioned in news reports. She has also
9 been responding to an increasing number of press
10 inquiries about Commission initiatives and sending out
11 press releases about Commission activities at
12 headquarters and in the regions. These activities
13 were described in more detail in the Staff Director's
14 report that was included in the meeting binders.

15 The Office of Civil Rights Evaluation has
16 processed 270 complaints during this most recent
17 reporting period. OCRE is also finalizing a draft
18 briefing report on health care disparities which
19 should be submitted to the Office of the Staff
20 Director next week.

21 I would also remind commissioners of the
22 need to set a date for the age discrimination in
23 employment briefing that has been approved. We did
24 have some scheduling conflicts with the hearing
25 relating to the New Black Panthers, but we probably do

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1 need to address that issue of setting a date so that
2 we can then contact potential panelists for that
3 briefing.

4 The Office of Management has overseen or
5 had been in contact with the building management about
6 the building's fire alarm system as far as completing
7 a review of that. The building management did
8 schedule a fire drill that was delayed due to system
9 upgrades.

10 The library staff received 87 telephone
11 inquiries. They completed 21 simple reference
12 requests and performed 30 research projects of various
13 sizes, an additional 55 research requests were
14 completed utilizing automated search services.

15 We had 186 written requests and 188 E-mail
16 requests for publications by E-mail during this most
17 recent period, and we had 329 publications mailed and
18 41 different publications requested. Getting Uncle
19 Sam to Enforce Your Civil Rights was, again, the most
20 frequently requested item. There are currently 48
21 requests for publications in process.

22 Numerous updates about SAC rechartering
23 status and activities were included in the Staff
24 Director's report. That was with the meeting binders,
25 and I'd also like to note that we did receive a pass-

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1 back from the Office of Management and Budget.
2 Commissioners did approve a budget request for \$9.95
3 million, and that was sent to OMB. We got a pass-back
4 from them of \$9.4 million, and they had earlier
5 requested that we submit two budget options, one with
6 a \$9.4 million budget and one five percent less.

7 So in a sense we didn't get our highest
8 request, which was 9.95, but we did not get the five
9 percent reduction number as our pass-back number. So
10 we had that 9.4.

11 The President's State of the Union
12 address, the date, I believe, is not firm yet, but it
13 will be the late January, early February, and within a
14 few days after that we are expected to submit our
15 budget request to Congress. So unless we hear
16 otherwise we would operate on the assumption that the
17 Commissioners approved the underlying issues leading
18 to the \$9.4 million budget at that time, and then did
19 ask us to add some things like someone in the office
20 of General Counsel and some other positions that we
21 had previously requested. Those would have to come
22 out under this premise, that we'd go back to the \$9.4
23 million budget.

24 So there were also come other changes
25 based on small changes that will occur because the

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1 Office of Personnel Management has subsequently come
2 up with what the exact COLA, cost of living adjustment
3 will be. We are working on projections of what it
4 would be previously, and now we know what that number
5 is. So there is a slight variation.

6 We were previously now looking forward to
7 2011. We were projecting that it would be a 2.1
8 percent increase in payroll, and now based on this
9 revised assumption, it looks like it would be \$1.4
10 million.

11 There are some issues relating to some pay
12 raises, potential pay raises that were approved by
13 Commissioners recently, and we'll have to factor that
14 into our equation in terms of the final budget for
15 2011.

16 So with that I will answer any other
17 questions that Commissioners might have.

18 COMMISSIONER GAZIANO: I just wanted to
19 thank you actually for incorporating within your
20 monthly report those Web statistics even if they're
21 not in sequence. We asked have you read some of the
22 numbers, again, that we received in writing. We have
23 hundreds of thousands of page views and tens of
24 thousands of downloads.

25 Sad to see that my bio still is not in the

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1 top ten, but it is relevant because I think that's the
2 way the public accesses these documents these days, is
3 by downloads rather than mailing them.

4 COMMISSIONER TAYLOR: I also wanted to
5 commend the staff on the progress they're making on
6 the briefing reports, in particular, the health care
7 disparity report. I'm pleased to see the progress
8 you're all making.

9 MR. DANNENFELSER: Thank you.

10 COMMISSIONER MELENDEZ: One question on
11 the SACs. Are we going to be expecting a number of
12 SACs coming up all at once on the next meeting like
13 the ones that are mentioned here, Kansas, Missouri?
14 The Nevada one came up some time and I don't know
15 where it went, where it stands now.

16 MR. DANNENFELSER: We're close to
17 completion with Nevada, and yes, Kansas and Missouri
18 are also close. We expect the Washington, D.C. SAC,
19 that is a rechartering. We expect that to be coming
20 up shortly. The State of Washington and the State of
21 South Carolina are also close to consideration as
22 well.

23 COMMISSIONER MELENDEZ: Okay.

24 CHAIRMAN REYNOLDS: Any other questions or
25 comments?

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1 (No response.)

2 CHAIRMAN REYNOLDS: We are adjourned.

3 (Whereupon, at 12:55 p.m., the meeting was
4 concluded.)

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