

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, DECEMBER 12, 2008

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The meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C., at 12:23 p.m., Abigail Thernstrom, Vice Chair, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)
ABIGAIL THERNSTROM, Vice Chairman
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
DEBRA CARR, Associate Director
DEMITRIA DEAS
LATRICE FOSHEE
MAHA JWEIED
ROBERT LERNER, Assistant Staff Director
SOCK-FOON MacDOUGALL
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
KIMBERLY TOLHURST
AUDREY WRIGHT
MICHELLE YORKMAN

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COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECKEL

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

(12:23) p.m.

VICE CHAIR THERNSTROM: So, the meeting is called to order.

I. APPROVAL OF AGENDA

VICE CHAIR THERNSTROM: The first item on the agenda is approval of the agenda. Is there a motion to approve the agenda?

COMMISSIONER GAZIANO: So moved.

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: Any discussion on that and I'm about to as I said make a motion to amend it. But any discussion on --

STAFF DIRECTOR DANNENFELSER: Well, why don't you make your motion?

VICE CHAIR THERNSTROM: Okay. I'll make my motion. Okay. I move to amend the agenda to make the discussion of a Commission personnel matter the second item of business after approval of the agenda. Is there a second to that?

COMMISSIONER GAZIANO: Second.

VICE CHAIR THERNSTROM: So all in favor of the agenda as amended please say aye.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Any opposition?

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1 (No audible response.)

2 VICE CHAIR THERNSTROM: Okay. The motion
3 to amend the agenda is approved unanimously.

4 **II. COMMISSION PERSONNEL MATTER**

5 VICE CHAIR THERNSTROM: Mr. Staff
6 Director, you have a personnel matter that you would
7 like to discuss with the Commission.

8 The agenda was accepted as amended.
9 That's what happens the two things got collapsed as I
10 understand it.

11 STAFF DIRECTOR DANNENFELSER: Okay. Thank
12 you, Madam Vice Chair.

13 In recent months, we've had a couple of
14 resignations. I had a resignation in the Office of
15 the Staff Director with an attorney advisor. We also
16 had a resignation in the Southern Regional Office of a
17 civil rights analyst. So we have not yet filled
18 either one of those positions.

19 In our 2010 budget submission that we made
20 to OMB one of the positions we proposed to add was a
21 deputy staff director and in recent weeks the Chairman
22 and I have had some discussions along these lines and
23 the Chairman did ask that we add a discussion of this
24 subject to the agenda today and there's a feeling that
25 that position with that savings that might be a good

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1 use of the savings from those two positions even
2 though we're still under the continuing resolution we
3 have made savings to adapt to the continuing
4 resolution, but these savings, personnel savings from
5 those two positions, going unfilled would provide us
6 with the budgetary room to hire a deputy staff
7 director and there is some sentiment that that would
8 be a very good position to fill for the agency in
9 terms of giving us the ability to better manage all of
10 our programs and also to give us more depth, if you
11 will, in terms of our leadership within the
12 organization. So I would like to just put that topic
13 on the table for discussion.

14 COMMISSIONER MELENDEZ: What does that
15 mean as far as the region in the southeast, did you
16 say?

17 STAFF DIRECTOR DANNENFELSER: Yes.

18 COMMISSIONER MELENDEZ: Are you saying
19 that we had an analyst and what does it actually mean
20 to the operation out in the southeast?

21 STAFF DIRECTOR DANNENFELSER: We have a
22 very active and very effective regional director in
23 our southeastern office and he's done very well in
24 terms of getting the SACs approved and having meetings
25 and issuing reports and so on, bringing in lots of

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1 interns -- I spoke to him about this and his main
2 concern is administrative support. So he has -- I've
3 authorized a part-time secretary for him and he feels
4 that that's something that really is very helpful to
5 him, that he's not bogged down with answering the
6 phone all the time and the filing and the mailings and
7 things like that. So he believes that he can continue
8 to operate that office effectively with some
9 administrative support and the cost of that part-time
10 administrative support is much less than what the
11 salary would be for another civil rights analyst.

12 VICE CHAIR THERNSTROM: Mr. Staff
13 Director, is it appropriate at this moment to remind
14 people that we are about to lose our General Counsel
15 as well and I for one would like to express an
16 appreciation for the work that David Blackwood has
17 done for us. I will sorely miss him, but that's
18 another vacancy.

19 STAFF DIRECTOR DANNENFELSER: It is. That
20 was something I was planning to discuss during the
21 staff director's report. But I think that is another
22 vacancy that would not be good for us to let go
23 unfilled. We have two talented people remaining will
24 be remaining in the General Counsel's Office after the
25 General Counsel's departure. But we have a great deal

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1 of work that needs to be done and I think we would
2 want to replenish our people within that office
3 including trying to bring on another general counsel.

4 VICE CHAIR THERNSTROM: Anyway, back to
5 the previous question.

6 STAFF DIRECTOR DANNENFELSER: At this
7 point, I would just like to see what kind of sentiment
8 there is among the Commissioners for that idea of
9 hiring a deputy staff director.

10 COMMISSIONER MELENDEZ: I have another
11 question. What would this deputy staff director do
12 and have we had one before?

13 STAFF DIRECTOR DANNENFELSER: We have had
14 in the past. There has been a position that's been
15 there, but it's been unfilled for a number of years
16 and we've had a number of discussions here in the past
17 about succession and so on. So that's one issue in
18 certainly the area of succession that gives you some
19 additional high level person for succession purposes.
20 But just in general the management of all the things
21 that we have to do within the agency would be helpful
22 to have another person who could be really a hands-on
23 person on the day-to-day basis within helping to do
24 that and I myself would be more involved in policy
25 aspects of the agency but also remaining in concert

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1 with the deputy staff director involved in the
2 management part as well.

3 VICE CHAIR THERNSTROM: I don't think --
4 I'm sorry.

5 STAFF DIRECTOR DANNENFELSER: Commissioner
6 Gaziano.

7 COMMISSIONER GAZIANO: I can wait. Go
8 ahead.

9 VICE CHAIR THERNSTROM: I just was about
10 to say I'm glad that you brought up this succession
11 issue because we don't want again to have a question
12 of who takes over if you do indeed decide to leave
13 and, you know, I mean there never should be an
14 uncertain line of succession in an agency and have a
15 make-do period.

16 STAFF DIRECTOR DANNENFELSER: Yes, we do
17 currently have a line of succession with our AI. The
18 AI does actually say though that the first line of
19 succession is the deputy staff director but that
20 particular position has been unfilled. So if that
21 position was filled, then that would be clear about
22 the line of succession.

23 VICE CHAIR THERNSTROM: I'm sorry.

24 COMMISSIONER GAZIANO: I see several
25 advantages in a difficult situation where I'm sure

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1 that we all agree that we would like to have a
2 congressional affairs director, a human resources
3 director, a public affairs director and all these
4 needs, but I think many advantages in trying to have
5 the deputy staff director fill some of these critical
6 needs. Could you describe to us the kind of role
7 including what I'm guessing is flexibility in that
8 position and how you might be able to work with that
9 person if that person were hired to meet some of our
10 critical needs?

11 STAFF DIRECTOR DANNENFELSER: Yes.
12 Someone would help with the overall management of the
13 agency and I think flexibility would be a very
14 important point. Keeping our reports and our moving
15 along and that whole process is certainly important.
16 The largest number of our reports come through the
17 Office of Civil Rights Evaluation and several through
18 the Office of General Counsel. Of course, we have the
19 statutory report every year which is a big
20 undertaking. So helping with that process of helping
21 them monitor that process and how those reports are
22 continuing to move along is certainly part of it. But
23 helping with the development and monitoring of the
24 budget would be another area and, of course, you
25 mentioned the fact that we have not filled now for

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1 some time the congressional affairs and public affairs
2 positions. We have had people doing a very good job
3 in filling in in those positions as well as handling
4 their other responsibilities. But it would be another
5 area that I think such a person could be very helpful
6 in helping us to step up our activities in those two
7 areas as well.

8 COMMISSIONER GAZIANO: So it's
9 theoretically possible -- I mean, I see this as you
10 have responsibility for the whole staff and the deputy
11 staff director under your direction could do a lot of
12 this same work. You two could kind of figure out
13 where the critical needs are. So if we filled other
14 than the general counsel position I certainly concur
15 that's a very -- that whole office is a very vital
16 office that the Commission shouldn't shortchange in
17 our mission, but other than that, that this is,
18 repeating myself a little bit, someone could fill in
19 different needs as they arise.

20 VICE CHAIR THERNSTROM: When is the last
21 time we had a deputy staff director? I can't
22 remember.

23 STAFF DIRECTOR DANNENFELSER: I don't have
24 the exact dates.

25 VICE CHAIR THERNSTROM: But it's like how

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1 long ago?

2 MS. MONROIG: I believe Eddie Hailes was
3 the last deputy staff director and he was before Ruby
4 Moy came in as staff director as I recall. Possibly
5 her dates are somewhere on our photograph there. But
6 that would be in the `90s.

7 VICE CHAIR THERNSTROM: Yes. I thought I
8 remembered that.

9 COMMISSIONER GAZIANO: And my sincere
10 hope, of course, is that we get a huge budget increase
11 and that we can actually fill a lot of these staff
12 positions.

13 VICE CHAIR THERNSTROM: We're all counting
14 on that.

15 (Laughter.)

16 COMMISSIONER GAZIANO: But until then it
17 seems somewhat prudent as you're describing it to me
18 to consider this hire.

19 STAFF DIRECTOR DANNENFELSER: I agree.
20 The general counsel is a critical position and these
21 are not mutually exclusive positions.

22 COMMISSIONER GAZIANO: Right.

23 STAFF DIRECTOR DANNENFELSER: I actually
24 look at this more as the attorney advisor who left and
25 then the person in the Southern Regional Office would

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1 be more productive for the agency to be able to use
2 those funds to hire a deputy staff director or to
3 potentially try to fill those two positions and I
4 think that for the overall versatility and for the
5 agency and the overall depth of the agency I think
6 deputy staff director would be a better fit for us.

7 VICE CHAIR THERNSTROM: Mr. Chairman,
8 would you like to come in on this at all?

9 CHAIRMAN REYNOLDS: No, I don't have much
10 to add. There's the policy work, but I think that
11 this is --

12 VICE CHAIR THERNSTROM: Well, it seems to
13 me we can abbreviate this whole conversation if I
14 simply ask. Is there anybody opposed to this notion
15 and if so please state your reasons.

16 COMMISSIONER MELENDEZ: I guess the issue
17 I would have and I'm sure Michael would probably agree
18 that because we're in a transition year with a new
19 President coming on board we're probably -- There's a
20 possibility of seeing changes here at the Commission
21 whether or not the staff director changes and one
22 thing, the real question, is I never heard us really
23 pushing for this position because we could have pushed
24 for the staff director at the last business meeting or
25 previous to that. So I kind of -- It almost seems

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1 like with the Presidential transition coming on board
2 -- a new staff director. Well, he'd better be able
3 to -- it would seem logical that the new -- If that
4 change was inevitable that the new staff director
5 would probably make those changes because he would
6 look at the organization and probably recommend to us
7 that this is needed or it's not needed.

8 We have so many, you know, like I've
9 always said, issue on the lack of a finance director,
10 lack of personnel person that I've brought up many
11 times that this is critical to this position in our
12 budget hearing. So to try to put this one though, it
13 just seems like the timing is not really right as far
14 as I'm concerned because we would have talked about
15 this at the last meeting if it was that critical.

16 STAFF DIRECTOR DANNENFELSER: Well, we did
17 bring it up again in the context of the 2010 budget
18 and of course now we're into the 2009 budget and these
19 were unanticipated developments in terms of these two
20 people leaving and actually in terms of if you look at
21 the -- even if you factor in some money for this part-
22 time secretary in that office. When you combine the
23 salary and benefits that would be involved for the two
24 people who left that does give you the capacity to
25 hire a deputy staff director for slightly less than

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1 what you would paying those two people.

2 CHAIRMAN REYNOLDS: And another thing is I
3 think -- Commissioner Melendez, you mentioned
4 transition and I just want to inject another thing.
5 The Commission is an independent agency. The Staff
6 Director who runs the agency under -- until the end of
7 their term. So in terms of a transition, you have
8 quite a bit of -- to get to that point.

9 VICE CHAIR THERNSTROM: Well, is there not
10 an additional point and I turn to the staff director
11 on this. I mean, this is not a process. This hiring
12 process can't occur overnight. So it's not -- I mean,
13 it's likely that nobody new would come on board before
14 January 20th. Am I wrong on that?

15 STAFF DIRECTOR DANNENFELSER: I think that
16 that's uncertain. I guess it's possible that could be
17 done, but it's not certain that it would be done.
18 There certainly are holidays and things that are
19 coming up that might be a difficult thing. But I
20 think we have to see how that developed.

21 VICE CHAIR THERNSTROM: Yes. So I --

22 COMMISSIONER MELENDEZ: Even if it weren't
23 the transition, I brought up time and time again that
24 I felt that there were more important issues like the
25 personnel person and because we were behind on the

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1 financial submittals to Congress and all those
2 different things, I said that we needed to have a
3 hands-on person that were separated from finances from
4 the personnel office. It sounded to me at one point
5 we had one person doing two jobs and I thought for
6 this Commission to run efficiently we needed to either
7 separate those and gear up in those positions for
8 efficiency.

9 It's nice to have a secondary person, you
10 know, and say that they're going to direct somebody to
11 do this and do that, but who are going to direct when
12 we're short-staffed with people that actually do the
13 numbers crunching and addressing all these issues. So
14 that's been my position all along when we've talked
15 about this in Budgets that I think there were some key
16 positions that come up time and time again like the
17 personnel, like the finance director, and I thought it
18 was raised at every Budget meeting, but then I never
19 heard of us really saying, "Okay. The deputy staff
20 director," because at that time I would say, "Well,
21 lay out what these positions would actually do to get
22 the job done here" and this one coming up kind of late

23 I would still ask the question "What's the person
24 going to do?" It's nice to have a second in command
25 and to have somebody if you should not be there and

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1 the issue of who is next in charge alone isn't the --
2 I wouldn't hire somebody just on that. I would
3 basically want to know that we're paying that amount
4 of salary, GS or whatever it is, that they're going to
5 be able to move this organizations and get those
6 reports, those budgets into Congress in a timely
7 manner. So that's --

8 STAFF DIRECTOR DANNENFELSER: I think part
9 of it is that we do multiple needs and this is a
10 person that could help lighten the load in several
11 areas and help us fill in the gaps that we have in
12 certain areas so that perhaps could help us indirectly
13 on the personnel front, on the human resources front,
14 on the report front, on the public
15 affairs/Congressional affairs and so on. So I think
16 this is a person that could help us in a number of
17 different areas.

18 VICE CHAIR THERNSTROM: Well, what would
19 you prefer, Commissioner Melendez?

20 COMMISSIONER MELENDEZ: I would prefer to
21 hold off until Commissioner Yaki had some input into
22 this at the next business meeting. I know he would
23 have a concern about it also.

24 CHAIRMAN REYNOLDS: I'm sorry. What is
25 the preference?

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1 VICE CHAIR THERNSTROM: The preference is
2 to hold this discussion until, Commissioner Yaki had
3 to leave, he can participate in it.

4 CHAIRMAN REYNOLDS: I'm sure Commissioner
5 Yaki has an opinion on this. Would there be
6 disagreement to have a teleconference so that
7 Commissioner Yaki could participate?

8 VICE CHAIR THERNSTROM: Commissioner
9 Melendez, would you accept that?

10 COMMISSIONER MELENDEZ: I think we're
11 supposed to have a human capital plan as required for
12 Federal agencies that really talks about from this
13 agency how we're supposed to staffed and some type of
14 plan instead of just keep throwing people at the spur
15 of the minute into -- Which I think that we have to
16 kind of look at.

17 VICE CHAIR THERNSTROM: Well, could we
18 have a teleconference that Commissioner Yaki could
19 participate in to continue this discussion that we've
20 started today because I agree with you that his
21 presence is sorely missed?

22 COMMISSIONER MELENDEZ: Right. If
23 Commissioner Yaki agrees, that's fine with me.

24 VICE CHAIR THERNSTROM: I would vote for
25 that. Let's continue this discussion in a conference

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1 call that Commissioner Yaki can participate in.

2 STAFF DIRECTOR DANNENFELSER: See what the
3 Chairman is feeling about that.

4 VICE CHAIR THERNSTROM: I think that the
5 Chairman just said that would be okay with him. Did I
6 misunderstand you?

7 CHAIRMAN REYNOLDS: I feel that
8 Commissioner Yaki has a point of view on this and it's
9 not the type of issue where I have confidence that he
10 agrees with me. So while it is -- to slow down the
11 process, I think that we should extend the courtesy.

12 COMMISSIONER KIRSANOW: If I could just
13 make a counter argument. With all due respect to the
14 Chairman, it does seem as if we could use some of the
15 deputy staff director position. I think it's probably
16 an aggressive schedule to try and get somebody in even
17 within the next two months. Nonetheless the longer we
18 delay the longer we're going to have a manpower
19 vacancy in a critical position, I perceive to be a
20 critical position, given that we're going to have a
21 loss of these two individuals.

22 And I'm wondering if the further
23 discussion really moves the issue. I'm not sure --

24 VICE CHAIR THERNSTROM: It's a matter of
25 courtesy as the Chair just said and I don't think

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1 we're going to be hurt by holding it up at this point
2 for a limited period of time.

3 COMMISSIONER GAZIANO: I could see a
4 possibility of being hurt.

5 CHAIRMAN REYNOLDS: I know.

6 COMMISSIONER GAZIANO: The succession
7 issue is not the only reason, but it certainly did
8 come up repeatedly and mostly from Commissioner Yaki
9 that he wanted certainty in this regard.

10 VICE CHAIR THERNSTROM: Well, yes. But I
11 mean again from a courtesy point of view, I think he
12 needs to be included in this discussion. There are
13 only two Democrats on this Commission. We cannot make
14 it a decision without one of them.

15 COMMISSIONER GAZIANO: Well, how about
16 this proposal that Mr. Yaki could provide us all of
17 his thoughts in an email. We can all provide each
18 other our thoughts in an email, but we see if we have
19 a majority to indicate the Staff Director to proceed
20 absent one of us changing each other's mind.

21 VICE CHAIR THERNSTROM: If we have a
22 conference call that is more efficient than endless
23 exchanges of email back and forth and email is the
24 most easily misunderstood form of communication there
25 is out there.

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1 COMMISSIONER GAZIANO: Okay. Do you
2 contemplate? Let's set some parameters. Does this
3 have to be the kind of -- Do we need to make a
4 collective decision or are we just providing input?

5 COMMISSIONER KIRSANOW: I have an insight.

6 COMMISSIONER GAZIANO: I'm just asking
7 that technical question.

8 COMMISSIONER KIRSANOW: And I think it's a
9 good question. I guess my question is similar to
10 yours and maybe preliminary, a predicate, to yours.
11 Is this --

12 CHAIRMAN REYNOLDS: How about I tried
13 Commissioner Yaki on the supposition that he would
14 have an opportunity to weigh on this issue at our next
15 meeting and no one was -- about the point that he
16 would have an opportunity to discuss the issue on the
17 record.

18 VICE CHAIR THERNSTROM: That is fine with
19 me.

20 COMMISSIONER TAYLOR: But what does that
21 mean as a practical matter? Does that mean that the
22 staff director is proceeding a pace to fill the
23 position because it does not require a vote for you to
24 do that. Correct?

25 CHAIRMAN REYNOLDS: And, no, it is not

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1 critically -- for the staff director.

2 COMMISSIONER TAYLOR: Correct.

3 STAFF DIRECTOR DANNENFELSER: But there is
4 a procedure in the AI if the staff director was
5 prepared to add a particular person was prepared to
6 propose to fill the deputy staff director position
7 that he would need to notify the Commission of that
8 particular person and then the Commission would have
9 an opportunity, would not have to approve,
10 affirmatively approve that, but the Commission would
11 have an opportunity to act on that, for instance, if
12 the Commission could vote to veto that choice.

13 COMMISSIONER MELENDEZ: I have a question.

14 VICE CHAIR THERNSTROM: Yes.

15 COMMISSIONER MELENDEZ: So this that
16 you're presenting really doesn't have any bearing on
17 Mr. Blackwood leaving or the person in Southeast.
18 That's not really a reason for bringing this person
19 on. Is that what you're -- Because I kind of heard
20 somebody kind of say the situation of people leaving
21 puts us in dire straits. So I'm just trying to
22 clarify whether or not Mr. Blackwood leaving and the
23 person in Southeast doesn't really have anything to do
24 with the present --

25 STAFF DIRECTOR DANNENFELSER: Mr.

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1 Blackwood leaving is not related to this. That's
2 another issue that obviously the General Counsel's
3 Office is a critical office within the agency. That
4 needs to be addressed.

5 The issue with respect to the person in
6 Southeast was that you had two people who left that
7 were unexpected departures. That created an
8 opportunity even though we had within the continuing
9 resolution we had adjusted our budget to adapt the
10 lower numbers in the continuing resolution, but
11 provide the opportunity to address a position of this
12 nature.

13 COMMISSIONER MELENDEZ: My point is that
14 given that Mr. Blackwood wasn't leaving and we still
15 had the person in Southeast, then you would just be
16 coming up with -- So it has to be something that's
17 critical. In other words, you would say there was
18 because you've been operating all this time with you
19 alone without a deputy director. So if I were to ask
20 you, "Okay. Why?" you would say something like "I'm
21 finding out that I'm so overwhelmed with the amount of
22 work that I can't do the job effectively. Therefore I
23 need a deputy director" which I would have heard way
24 before now as far as we would have been dealing with
25 this issue sometime during the year if it was that

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1 critical. But it coming up right now then it kind of
2 goes into, "Okay, explain to Commissioner Yaki and
3 myself exactly." I'm still not sure what --

4 STAFF DIRECTOR DANNENFELSER: Well, I did
5 lose within -- The Office of Staff Director did lose
6 an attorney advisor in October and that position has
7 not been filled and that was a person who provided
8 very significant support to me in the day-to-day
9 operations. So this would be someone who could help
10 fill in the gap that has been left by that person
11 leaving in the more immediate sense of my personal
12 office.

13 VICE CHAIR THERNSTROM: Commissioner
14 Melendez, I will repeat my point before that I don't
15 think anybody is going to be -- We're going to sneak
16 anybody in the door here before the Inauguration of
17 the new President. I mean this is something that
18 takes some time.

19 But at that same time, I personally am
20 very eager to have some consensus on this issue. I
21 don't want to go forward with a split Commission.
22 It's too important in terms of the functioning of this
23 Commission.

24 CHAIRMAN REYNOLDS: I mean, consensus
25 would be nice, but that has been a goal that we have

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1 failed to achieve.

2 VICE CHAIR THERNSTROM: We can try again.

3 CHAIRMAN REYNOLDS: But in any event the
4 compromise that I also want that's what I put on the
5 table and I will track Commissioner Yaki down again
6 and let him know I suspect that he had an opinion on
7 this issue and we could have a conversation, the two
8 of us, in addition to Commissioner Yaki having the
9 opportunity to discuss this on the record at the next
10 meeting.

11 COMMISSIONER GAZIANO: If we're going to
12 have a call, what we've skipped even further than the
13 call, I was going to ask for the call to take place
14 within a week and now we're slipping to January 16. I
15 certainly am very happy, Mr. Chairman, that you want
16 to reach out to Commissioner Yaki who couldn't stay
17 today, but I was just going to ask that we have this
18 telephone conversation in the next few days or week or
19 whatever since we were supposed to talk about it
20 today. Is that not possible?

21 VICE CHAIR THERNSTROM: We were supposed
22 to is an exaggeration. We decided rather at the last
23 minute to talk to it which is why it's not on the
24 original agenda.

25 CHAIRMAN REYNOLDS: But to Todd's point, I

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1 don't see any reason why we couldn't have a
2 teleconference after we jump through the required
3 hoops in terms of --

4 COMMISSIONER GAZIANO: It doesn't. That
5 was going to be my question. I mean, can't we just
6 have a conversation without making any decision?
7 We're just talking, but, if so, of course, it has to
8 be done with all the required notices. But it depends
9 on the nature of the conversation I suppose.
10 Commissioner Taylor wanted to be recognized.

11 COMMISSIONER TAYLOR: I mean I have no
12 objection to having this discussion at the next
13 meeting in January with the understanding that the
14 staff director is proceeding in the process. I don't
15 think we need to have a conference call between now
16 and the next meeting.

17 VICE CHAIR THERNSTROM: But I would like
18 the Chairman to reach out to Commissioner Yaki.

19 COMMISSIONER TAYLOR: Absolutely, all of
20 that should take place before the meeting. But we can
21 walk him through at the same time.

22 VICE CHAIR THERNSTROM: Yes.

23 COMMISSIONER TAYLOR: And we should
24 continue our discussion.

25 COMMISSIONER KIRSANOW: I agree with

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1 Commissioner Taylor.

2 COMMISSIONER TAYLOR: Okay.

3 COMMISSIONER KIRSANOW: A preliminary
4 question though. This discussion we're having is for
5 what administrative purpose. This is a career
6 position we're talking about. I mean, what role or
7 function does --

8 STAFF DIRECTOR DANNENFELSER: Do we get,
9 right.

10 COMMISSIONER KIRSANOW: Is this just
11 something that we're just talking about?

12 STAFF DIRECTOR DANNENFELSER: Again, the
13 Commissioners do have to be notified for both the
14 deputy staff director position and the general counsel
15 position. They do have to be notified that there is
16 an intention on the part of the staff director to fill
17 those positions and then if the Commissioners don't
18 act on it in effect to veto that decision, then the
19 staff director can proceed if the Commissioners could
20 act to affirm that decision as well.

21 COMMISSIONER KIRSANOW: Okay.

22 STAFF DIRECTOR DANNENFELSER: But it's not
23 required as when the staff director is appointed the
24 Commissioners have to actually vote to affirm that
25 appointment by the President of the staff director.

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1 This is different, but you do in these two positions
2 have to give the Commissioners notice and they then
3 have an opportunity to act on that proposal, that
4 proposed decision, by the staff director.

5 VICE CHAIR THERNSTROM: Do you think we
6 could -- Do we have an agreement so that we could move
7 forward here and take our lunch break and come back
8 for the regular meeting? I think we have a way of
9 proceeding.

10 COMMISSIONER MELENDEZ: Okay. Are you
11 saying that we're going to agendize this for the next
12 business meeting?

13 VICE CHAIR THERNSTROM: Well, one step at
14 a time here. The Chair will get in touch with
15 Commissioner Yaki. The Staff Director will start the
16 process of looking at what our options are here. This
17 is not an overnight procedure. And we will have a
18 chance to further discuss this. Let's take one step
19 at a time and the first step is for Chairman Reynolds
20 to get a hold of Commissioner Yaki.

21 CHAIRMAN REYNOLDS: That is right and
22 again this is not to impede the Staff Director from
23 starting to take a look. I'll reach out to Yaki. The
24 process will continue and if need be we will have a
25 teleconference to allow Commissioners Yaki and

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1 Melendez to have further discussion on the issue.

2 COMMISSIONER MELENDEZ: I would object
3 because the question that was brought first is whether
4 or not we should agendize this for the next business
5 meeting. At that point, we would give the okay to go
6 ahead and start the paperwork. Otherwise, why would
7 we agendize this for the next meeting if we're already
8 starting paperwork to hire somebody.

9 VICE CHAIR THERNSTROM: Well, we're not
10 starting the paperwork.

11 COMMISSIONER MELENDEZ: What does that
12 mean?

13 CHAIRMAN REYNOLDS: That's exactly what I
14 meant. What I would process the Staff Director was
15 about to initiate on the mission would continue. This
16 does not require at this point a vote by the
17 Commission. This was -- The purpose of this
18 conversation was to have a discussion to inform people
19 of the personnel needs, but I don't see why the
20 process should slow down especially since no decision
21 is being made.

22 VICE CHAIR THERNSTROM: I don't know --
23 I'm sorry because this is ignorance on my part. What
24 does the term "starting the paperwork" mean?

25 CHAIRMAN REYNOLDS: I've been in the

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1 Federal Government a few times. Nothing gets done
2 without paperwork.

3 VICE CHAIR THERNSTROM: I see.

4 CHAIRMAN REYNOLDS: The specific actions
5 that are required to do this, I don't know what they
6 are. The Staff Director is in a better position to
7 describe what I meant by paperwork.

8 VICE CHAIR THERNSTROM: Okay. But
9 whatever he's doing doesn't lock us into anything
10 without further discussion and an attempt to agree on
11 a process here as I understand it.

12 CHAIRMAN REYNOLDS: That's correct.
13 That's the point that you made at the beginning of
14 this process, this conversation and I believe that
15 your statement is true.

16 COMMISSIONER MELENDEZ: I would still
17 object to starting any paperwork until we have a face-
18 to-face meeting with all the Commissioners and Michael
19 Yaki at the next business meeting that we discuss
20 everything about hiring and the alternatives, whether
21 or not the positions I talked about are even
22 considered, and I think it's important to do. That's
23 just my position.

24 VICE CHAIR THERNSTROM: Well, why don't we
25 let the Chair see what Michael Yaki's position is on

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1 this and again one step at a time here since I know
2 you don't want to speak for him. I don't want to
3 speak for him.

4 COMMISSIONER MELENDEZ: Right. My
5 position on this also is that we've operated with
6 status quo so far on this whole year without a deputy
7 director. Going another month without one and waiting
8 until after the business meeting sure isn't going to
9 sink the ship here. So that's my position. I mean
10 bringing somebody on unless you're saying --

11 VICE CHAIR THERNSTROM: Nothing definitive
12 is going to happen before the January meeting. I
13 promise you. Commissioner Heriot.

14 COMMISSIONER HERIOT: I'm just confused.
15 We're talking about career position here, right?

16 COMMISSIONER GAZIANO: Yes.

17 COMMISSIONER HERIOT: It's not something
18 the Commissioners are ordinarily asked to weigh in on
19 at all and yet we're delaying the process. That's --

20 CHAIRMAN REYNOLDS: That's what they're
21 saying.

22 COMMISSIONER HERIOT: We should be able to
23 because we're going to consider this inappropriate to
24 take action.

25 VICE CHAIR THERNSTROM: I'm trying to

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1 suggest here that whether or not --

2 CHAIRMAN REYNOLDS: It's a career
3 position.

4 VICE CHAIR THERNSTROM: I would like to
5 see a sign of consensus on a process going forward
6 here. We may not be able to get it, but it would be
7 nice to do so.

8 COMMISSIONER HERIOT: There's no consensus
9 from my part in delaying. I'm against that.

10 VICE CHAIR THERNSTROM: I know, but you
11 might join in a consensus. I mean, again one step at
12 a time. We don't know what exactly the plan might be
13 that you would say yes or no to or the process might
14 be. Give the Chairman a few days to see how this can
15 be handled in a way that doesn't --

16 COMMISSIONER HERIOT: So I think I'm on
17 the Chairman's side.

18 VICE CHAIR THERNSTROM: Well, it's the
19 Chairman's suggestion that we would like to follow.

20 CHAIRMAN REYNOLDS: I'm sorry. If you
21 made a recommendation, I didn't hear it.

22 COMMISSIONER HERIOT: I was just hoping
23 that we would have the paperwork started and I thought
24 that was also your position.

25 CHAIRMAN REYNOLDS: That's correct.

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1 COMMISSIONER HERIOT: Okay.

2 CHAIRMAN REYNOLDS: It is unlikely that we
3 would start a hiring process for a career SES in 30
4 days. If we were able to do that, that would be a new
5 level of productivity, a level that we never achieved
6 in the past.

7 VICE CHAIR THERNSTROM: A new level that
8 no corner of the Federal Government has achieved in
9 the past.

10 CHAIRMAN REYNOLDS: That's right. So
11 since there is no risk with respect to having someone
12 hired I think that we should just process the
13 paperwork. We will have -- I'll have a conversation
14 with Commissioner Yaki. If need be, we will have to
15 schedule a teleconference to have this conversation
16 put on the record.

17 VICE CHAIR THERNSTROM: Or if it looks as
18 if it makes more sense to postpone it to the next
19 meeting, we can do that, too, since as we just said
20 nothing going to happen in 30 days.

21 COMMISSIONER HERIOT: Well, the paperwork
22 can get started.

23 COMMISSIONER GAZIANO: Or whatever beyond
24 paperwork. It looks like obviously we're going to
25 have an opportunity to vote up or down as the staff

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1 director described for these two positions. We can
2 acquiesce or we can -- But there may be several steps
3 beyond paperwork and if we -- the staff director would
4 be imprudent not to raise this with us. So I'm glad
5 he has, but I don't want him to limit it in any
6 artificial way if there seems to be a majority of us
7 that at least want him to proceed through all the
8 steps.

9 VICE CHAIR THERNSTROM: Well, I don't
10 think anybody here is leaving for the moon. So let us
11 again take one step at a time and he will be -- I'm
12 sure the Chairman will be back in touch with us and we
13 can continue this discussion in one form or another.

14 COMMISSIONER HERIOT: I'm completely
15 confused. Every time I hear what's being said I think
16 I understand the paperwork is going to proceed and
17 then you will end it with let's take it one step at a
18 time.

19 VICE CHAIR THERNSTROM: Yes. I said that.
20 The first step.

21 COMMISSIONER HERIOT: You're agreeing --

22 VICE CHAIR THERNSTROM: The paperwork
23 starts but I just heard from Commissioner Gaziano "We
24 don't want to stop with the paperwork starting." I'm
25 simply reiterating. Let us start at the beginning.

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1 Take the step, the first steps. We will hear from the
2 Chair and we can take it from there.

3 COMMISSIONER HERIOT: If we can somehow
4 unbelievably we get a -- opportunity and he is
5 available the day before our meeting, but not after
6 that, and that we have some mechanism for moving if
7 that's appropriate.

8 COMMISSIONER TAYLOR: If I may, Mr. Staff
9 Director, let's assume that the perfect candidate were
10 to appear. Are you required to notify us before a
11 hiring decision or an offer is extended?

12 STAFF DIRECTOR DANNENFELSER: I would be
13 required to notify you before the hiring decision.

14 COMMISSIONER TAYLOR: And then we --
15 Right?

16 MR. BLACKWOOD: An offer could be extended
17 contingent upon your --

18 COMMISSIONER TAYLOR: Contingent. Okay.
19 And we then have an opportunity to veto or not.

20 STAFF DIRECTOR DANNENFELSER: Yes.

21 COMMISSIONER GAZIANO: This is going to be
22 publicly noticed at some point if we go through the
23 hiring.

24 STAFF DIRECTOR DANNENFELSER: Another
25 meeting will be publicly noticed.

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1 COMMISSIONER GAZIANO: No, the position.

2 STAFF DIRECTOR DANNENFELSER: Well, the
3 position would have to be --

4 COMMISSIONER GAZIANO: The position would
5 be advertised.

6 STAFF DIRECTOR DANNENFELSER: The position
7 would have to be publicly advertised.

8 COMMISSIONER GAZIANO: Is that what we're
9 talking about paperwork? I hope so. Okay. Fine. I
10 just don't -- Some people will think paperwork only
11 means -- I hope paperwork -- I'm fine if paperwork
12 means doing whatever the steps the Federal Government
13 requires to fill this type of position.

14 COMMISSIONER MELENDEZ: I have a question
15 for Martin.

16 STAFF DIRECTOR DANNENFELSER: Yes.

17 COMMISSIONER MELENDEZ: You didn't mention
18 in what you were saying that it was a career position.
19 Evidently some of the Commissioners know that it was a
20 career position even before I did because I didn't
21 know that. So I'm just saying you didn't say it was a
22 career position. Or let me ask you. Is it a career
23 position just for the record?

24 STAFF DIRECTOR DANNENFELSER: The
25 intention would be that it would be career position.

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1 It could conceivably be one I guess that over time
2 could be done as a non-career position. But the
3 intention in this particular case would be that it be
4 a career position.

5 VICE CHAIR THERNSTROM: If it makes you
6 feel any better, I didn't realize that.

7 COMMISSIONER GAZIANO: I don't know who
8 said that first, but there are very few political
9 positions in this Commission. I think that's a
10 natural assumption we had.

11 COMMISSIONER MELENDEZ: Because I know
12 that in the past having to do with the secondary and -
13 - we were talking about non-career SES, Schedule Cs
14 and I remember in the past all those different
15 discussions came into play. I didn't know exactly
16 what it meant, but I know that in the past we got into
17 that type of status. So I just -- What is new to me
18 was what we were talking about here. That's why when
19 it was mentioned career I didn't know what we were
20 talking about.

21 STAFF DIRECTOR DANNENFELSER: A non-career
22 would not go through the same public announcement
23 process that a career position would. Well, it would
24 still be something where even if it was a non-career
25 position it would still have the same situation where

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1 the Commissioners would then have to be notified and
2 provided an opportunity to weigh in on that decision.

3 COMMISSIONER MELENDEZ: I guess for the
4 record I don't have a problem about filling positions
5 like Mr. Blackwood's that we already have the position
6 in place. Then there is a discretion to give you this
7 type of ad hoc dialogue over the phone and all that
8 stuff. But I think that when new positions come on
9 board because it's almost like changing the structure
10 a little bit I think those types should be agendized,
11 that all of us should discuss all of the whole issues,
12 make a motion on it in a meeting rather than the way
13 we're kind of proceeding with it. That's just my
14 position on new positions.

15 The ones that were refilled I don't have a
16 problem with the way we would proceed. But the new
17 ones I'm going to always be asking that it be
18 agendized and we talk about it in a formal meeting.

19 VICE CHAIR THERNSTROM: Now, of course, if
20 we had a teleconference all that would be a formal
21 meeting. Well, can we leave it at this point and, Mr.
22 Chairman, do you think we can leave it at this point?

23 CHAIRMAN REYNOLDS: Yes, it's 1:07 p.m.
24 your time. I don't think I have much more to add.
25 So, folks, I bid you a fond farewell.

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1 VICE CHAIR THERNSTROM: A fond farewell to
2 you. Have a great afternoon.

3 CHAIRMAN REYNOLDS: You too.

4 VICE CHAIR THERNSTROM: We're taking a 45
5 minute break for lunch. Off the record.

6 (Whereupon, the above-entitled matter went
7 off the record at 1:08 p.m. and resumed at 2:05 p.m.)

8 VICE CHAIR THERNSTROM: On the record.
9 The meeting will come to order. This is a
10 continuation of the business meeting that we began
11 before we had a 45 minute break and we are the point
12 at which -- Let's look here.

13 **III. APPROVAL OF MINUTES OF**

14 **NOVEMBER 7, 2008 MEETING**

15 VICE CHAIR THERNSTROM: We need to approve
16 the minutes.

17 COMMISSIONER GAZIANO: Move to approve the
18 minutes.

19 VICE CHAIR THERNSTROM: I second it. I
20 and who else seconded it, somebody over there. Any
21 discussion of the minutes?

22 (No audible response.)

23 Hearing no discussion, we'll take a vote.
24 All in favor of accepting the minutes.

25 (Chorus of ayes.)

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1 Any opposition?

2 (No audible response.)

3 I hear none. The motion to accept the
4 minutes has been approved unanimously.

5 STAFF DIRECTOR DANNENFELSER: That was the
6 minutes to the November 7, 2008 meeting.

7 VICE CHAIR THERNSTROM: Sorry about that.
8 I should have said that. Yes. Thank you. Right.
9 I'm slowly waking up here.

10 **IV. ANNOUNCEMENTS**

11 VICE CHAIR THERNSTROM: Next are the
12 announcements for the month of December and two
13 announcements. On December 10, 1964, Martin Luther
14 King Jr. was awarded the Nobel Peace Prize for his
15 work as the leader of the Southern Christian
16 Leadership Conference and for his philosophy on
17 nonviolence. At 35 he was the youngest man to receive
18 the Nobel Peace Prize. And on November 1, 1955, Rosa
19 Parks refused to give up her seat to a white passenger
20 on a Montgomery, Alabama bus. She was arrested and
21 fined for violating a city ordinance. But her brave
22 act led to the Montgomery bus boycott and began the
23 movement to dismantle the state-enforced racial caste
24 system in America. December 1st, I didn't say December
25 1st.

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1 STAFF DIRECTOR DANNENFELSER: No, you said
2 November.

3 VICE CHAIR THERNSTROM: I'm sorry.
4 December 1st which I do know and I want to say a couple
5 of words actually about Rosa Parks because it was such
6 a turning point and you know the bus seating in
7 Montgomery, the segregation ordinances differed quite
8 a bit from city to city and in Montgomery there were
9 seats in the front for whites and then obviously seats
10 in the back for blacks, but there was a middle portion
11 of the bus and if not enough whites needed those seats
12 blacks could sit in them. But if a white then came on
13 the bus, the bus driver would say, "Move to the back."

14 And there had been a couple of incidences
15 before where blacks protested and they were simply
16 asked to get off the bus and they did. And in this
17 case, the order to move to the back when a white
18 passenger boarded and there were already -- the white
19 seats were already occupied. In this case, three out
20 of the four blacks who had to move did so and the only
21 person not to do so was Rosa Parks and the driver had
22 her arrested. So this was the first arrest.

23 Now there is the legend that she was just
24 an ordinary woman who had gotten tired that day and
25 ran afoul with the law. But in fact Rosa Parks had

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1 been a long time activist and she had been planning to
2 do this. She had not been planning to do it that day
3 and as I said this was the first arrest that occupied.

4 And in my view her decision that day was
5 one of these kind of fascinating and mysterious
6 moments in history in which the system of social
7 control that had been in effect and worked effectively
8 for decades suddenly broke down and her arrest of
9 course was the catalyst for a defiant, determined,
10 disciplined movement led in good part by the city's
11 black churches and among the clergymen who joined in
12 discussion of what to do after her arrest, and of
13 course it was dangerous for a black woman to sit in
14 jail in Montgomery, among those who joined the
15 discussion was Martin Luther King Jr.

16 And the rest as it were was history, but
17 it is -- not many people really know this. At the
18 outset of the boycott which turned into a radical,
19 unflinching challenge to white supremacy, at the
20 outset, what came and the group wanted was a very
21 modest change. They wanted to go in the direction of
22 Mobile, Alabama which had segregated buses but nobody
23 had to move. So they were asking for a modification
24 of segregation and the protest really escalated into a
25 fight for the complete abolition of segregation only

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1 after there were two months of futile negotiations
2 with the city which was a tragedy.

3 And it was as I think probably everybody
4 here knows during the Montgomery bus boycott that King
5 first articulated this principle of nonviolent
6 resistance which was so integral to the Civil Rights
7 Movement. And it's also and this is less well known
8 it wasn't the boycott which lasted for 381 days. It
9 wasn't the boycott that finally resolved the issue.
10 The city never backed down. It was the Federal Court
11 order that the racial segregation of the buses had to
12 be -- It was unconstitutional and it was a decision
13 affirmed by the Supreme Court in 1956.

14 But that really doesn't matter that the
15 boycott itself wasn't successful because, of course,
16 Reverend King's, Dr. King's, charismatic presence and
17 his wonderful oratorical skills served to inspire the
18 nation and King said at the time, "There is a new
19 Negro in the south with a new sense of dignity and
20 dynasty." And it was in fact true.

21 So when I looked at these three sentences
22 in the script, I thought something needs to be more --
23 Something more than that needs to be said because this
24 was such an important turning point in American
25 history. That's my little Rosa Parks. I was

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1 scribbling this out as I was listening this morning
2 for a few minutes and I hope it wasn't a waste of
3 everybody's time.

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

5 VICE CHAIR THERNSTROM: Staff Director's
6 report. Mr. Staff Director.

7 STAFF DIRECTOR DANNENFELSER: Thank you,
8 Madam Vice Chair.

9 At the outset, I would like to provide
10 Commissioners with a status report on our statutory
11 and briefing reports. The 2008 statutory report on
12 enforcing religious freedom in prison has been posted
13 to the Commission's website. This report has also
14 been sent to GPO for printing of CDs and hard copies
15 of the report. The CDs will be sent to every member
16 of Congress within the next ten days along with a
17 letter that informs them that hard copies will be made
18 available upon request.

19 Interrogatories for the 2009 statutory
20 report have been sent to Commissioners for their
21 comments. I proposed to extend the period for
22 comments until noon on Monday, December 15th. We will
23 need to extend our internal time line for the agencies
24 to respond accordingly. OGC and OCRE staff have met
25 with officials from HUD, FTC and have some other

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1 meetings scheduled. Additional meetings will be
2 pursued and we will notify you as they take place.

3 The racial categorization in the 2010
4 census commissioner concurring and dissenting
5 statements have been received. We are currently
6 awaiting a friendly revision to a statement that has
7 been a topic of discussion between two commissioners
8 of different political parties and a report will then
9 be ready to go to GPO for printing.

10 VICE CHAIR THERNSTROM: I promise I will
11 get my act together on that.

12 STAFF DIRECTOR DANNENFELSER: And there
13 are two briefing reports that are available for
14 scheduling and at a certain point one would be the
15 Educational Effectiveness of Historically Black
16 Colleges and Universities and the Department of
17 Justice Voting Rights Enforced for the 2008 U.S.
18 Presidential Election. Of course, the Briefing Report
19 on Minorities and Special Education is scheduled for
20 consideration at today's meeting.

21 A draft report on the Impact of Illegal
22 Immigration on the Wages and Employment of Black
23 Workers is under review in the Office of the Staff
24 Director. The Briefing Report on the Provision of the
25 Supplemental Education Services under No Child Left

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1 Behind and another Briefing Report on Title IX have
2 been reviewed in the Office of the Staff Director.
3 Both of these reports have been sent back to the
4 Office of Civil Rights Evaluation for minor
5 modifications and are expected back in my office in a
6 few days.

7 The Office of General Counsel is
8 finalizing the Briefing Report on Covert Wire Tapping
9 and the War on Terror and I expect that to be sent to
10 my office very soon as well. The Briefing Report on
11 Race and Foster Care and Adoption has received
12 preliminary review in the Office of the Staff Director
13 and is being sent to the OCRE writer/editor for
14 further modification.

15 A few additional briefing reports are
16 pending. I anticipate that School Choice, the Blaine
17 Amendments on Anti-Catholicism will be sent to the
18 Office of the Staff Director hopefully by the end of
19 December. The Report on Discrimination Against Native
20 Americans in Border Towns is being prepared in OCRE.
21 Its timetable has slipped with the focus on the two
22 statutory reports and we may explore whether to
23 finalize this report in an abbreviated fashion if it
24 cannot be completed in the near future with the press
25 of other business.

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1 The Briefing Report on Religious
2 Discrimination in Prisons and Prisoners' Rights inform
3 the Statutory Report for 2008. So we plan to issue an
4 abbreviated report to avoid redundancy on that topic.

5 And to the OCREs involvement with the 2009
6 Statutory Report, the Office of Staff Director will
7 take the lead in preparing the briefing report on
8 Increasing Minority Enrollment in Science, Engineering
9 Technology and Mathematics fields in college and
10 beyond and I expect to receive an initial draft for
11 review in late January.

12 And regarding the Office of the General
13 Counsel, we discussed this topic a little earlier.
14 But clearly the major news in OGC is that David
15 Blackwood has accepted an appointment as General
16 Counsel with the Election Assistance Commission and
17 will be leaving us on January 2nd and I've relied on
18 David's counsel a great deal over the past seven
19 months and want to thank him for the great job he has
20 done on behalf of the Commission.

21 He leaves very big shoes to fill, but has
22 established a very solid foundation that I hope we can
23 build upon. We have two talented attorney advisors in
24 OGC and we will be looking to replenish our legal team
25 as soon as possible.

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1 Regarding our website, during the last
2 meeting a number of questions were raised about our
3 ability to measure visits to our website and while we
4 were awaiting further word from GPO about their
5 ability to provide us with the information we would
6 like to receive we have received some initial reports.
7 There were 41,510 visits to the Commission website in
8 October. About 16 percent were international visits.
9 There were 20,906 visitors; 17,557 visited one and
10 3,349 visited more than once. The average visits per
11 visitor was 1.99. There were 194,987 page views, The
12 average page view per visit was 4.7.

13 And we've made a request to GPO to
14 retrieve domain names of users visiting or
15 downloading. Our request has been referred to GPO's
16 chief privacy officer and we have emphasized to them
17 that we're not looking for individual names of people.
18 We're not trying to capture individual names. We just
19 want to be able to capture them by whether they are a
20 member of Congress or Congressional law office,
21 whether it's an educational institution, so we can get
22 a better idea of the kind of categories of people who
23 are visiting our website.

24 VICE CHAIR THERNSTROM: Probably half of
25 them will be Commissioners.

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1 STAFF DIRECTOR DANNENFELSER: There will
2 be a few of them.

3 Meanwhile the library staff received 87
4 telephone inquiries. In the past month, they
5 completed 25 simple reference requests and performed
6 15 research projects of various sizes. An additional
7 46 research requests were completed utilizing
8 automated search services. One hundred and thirty-six
9 written requests and 103 email requests for
10 publications were received during this period and 259
11 publications were mailed and 40 different publications
12 were requested. There were no Congressional requests
13 for publications this reporting period via email, but
14 hopefully they did visit our website as we just noted.

15 "Getting Uncle Sam to Enforce Your Civil
16 Rights," "Compilation of Civil Rights Laws" and a
17 catalog of publications were our most requested
18 publications this reporting period and there are
19 currently 52 requests for publications in process.

20 The auditors have completed their field
21 work and the agency received a clean audit for the
22 third straight year. The Budget and Finance division
23 has disseminated office budgets for FY `09 and has
24 processed cuts to the budget to match FY `08 budget
25 funding level during the period that we are under the

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1 continuing resolution.

2 On November 20th, employees were trained
3 on the new E-2 Travel System that is to be implemented
4 in January 2009 and the regional offices are
5 continuing to assist state advisory committees and
6 conducting meetings and briefings as well as preparing
7 reports and we're expecting some SAC packages for
8 review in the next few weeks and anticipate
9 rechartering activity to be considered at the January
10 2009 Commission meeting and that's my report.

11 VICE CHAIR THERNSTROM: Well, I want to
12 repeat what I repeated earlier, what I said earlier,
13 which is that speaking for myself I will very much
14 miss David Blackwood's presence at the Commission. I
15 think he's done superb work here and I hope he's left
16 us in good hands in terms of the Daily, Jack Daily's
17 suit. But in general he - We are in good shape I
18 should say.

19 But in general I think we've been very,
20 very fortunate to have him and I think EAC is very
21 fortunate to be getting him. So, David, thank you.

22 (Applause.)

23 VICE CHAIR THERNSTROM: Okay. Now --

24 COMMISSIONER GAZIANO: May I --

25 VICE CHAIR THERNSTROM: Yes. I'm sorry.

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1 COMMISSIONER GAZIANO: Just a question and
2 brief comment.

3 STAFF DIRECTOR DANNENFELSER: Sure. Okay.

4 COMMISSIONER GAZIANO: I'll wait until
5 later in the agenda and maybe after the meeting to ask
6 a follow-up question or two about the 2009 Statutory
7 Report.

8 But I just wanted to -- The first question
9 is as I understood the issue relating to when we were
10 going to move on the HBCU report was that there was an
11 interest in some and preliminary sounded fine to me to
12 sort of merge that with the STEM report and if no
13 other Commissioner objects, I would request -- I just
14 understood from your briefing, from your statement, a
15 few minutes ago, that you were taking that in your
16 office. Is it possible that you could accelerate work
17 on that so that we could do the combined group work
18 that some of us are interested in or at least consider
19 that?

20 STAFF DIRECTOR DANNENFELSER: Yes. The
21 purpose of bringing that into my office, the STEM
22 report, is to try to accelerate it because we did
23 perceive that that would be an issue of particular
24 interest to the Commissioners to try to move along.

25 COMMISSIONER GAZIANO: That's great. I'm

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1 glad you're thinking ahead and it doesn't sound like
2 any other Commissioner objects.

3 COMMISSIONER HERIOT: I was going to
4 endorse that, but I definitely think that those two
5 reports go together, the STEM and the --

6 VICE CHAIR THERNSTROM: Yes. If you could
7 save the other thing, Commissioner GAZIANO, we're
8 going to lose Commissioner Taylor before too long and
9 I just wonder if we could go back to whatever other
10 thing you had and go onto the publication of the
11 report on minorities and special education.

12 COMMISSIONER GAZIANO: I yield if I could
13 finish it a little later.

14 VICE CHAIR THERNSTROM: Of course, you can
15 finish it a little later. Let's just get this out of
16 the way so we can let Commissioner Taylor go.

17 COMMISSIONER MELENDEZ: I have to leave
18 too in about another half hour.

19 VICE CHAIR THERNSTROM: Well, he has to --
20 What time is it now? My watch has stopped.

21 STAFF DIRECTOR DANNENFELSER: 2:20 p.m.

22 VICE CHAIR THERNSTROM: It's 2:20 p.m. He
23 has to leave in less than a half an hour. So let's
24 get this underway.

25

VI. PROGRAM PLANNING

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1 (BRIEFING REPORT ON MINORITIES
2 IN SPECIAL EDUCATION)

3 VICE CHAIR THERNSTROM: So I need to a
4 motion to approve for the publication along with any
5 concurring and dissenting statements submitted by any
6 Commissioner by December 28, 2008, Part A produced by
7 staff effecting Commission and panelists, input on a
8 briefing held on December 3rd on minorities and special
9 education, Part A as distributed in draft form to
10 Commissioners on December 4th contained in briefing
11 overview and summary of the issue why the Commission
12 chose to conduct this briefing, a summary of the
13 proceeding consisting of a synapses of the panelists'
14 oral statements during briefing and synopsis of the
15 question and answer sessions and copies of the
16 panelists' written statements. Yes?

17 COMMISSIONER MELENDEZ: I still had a
18 question on the Staff Director's report.

19 COMMISSIONER HERIOT: Reserve that until
20 after.

21 VICE CHAIR THERNSTROM: Could you just
22 reserve that because we have ten minutes here to get
23 this out the door?

24 COMMISSIONER GAZIANO: So moved.

25 COMMISSIONER HERIOT: So moved for the --

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1 COMMISSIONER GAZIANO: So moved for the
2 Part A.

3 VICE CHAIR THERNSTROM: Part A.

4 COMMISSIONER GAZIANO: Part A of the
5 report.

6 VICE CHAIR THERNSTROM: Any discussion on
7 that?

8 (No audible response.)

9 Can we get a vote on Part A? All in favor
10 aye.

11 (Chorus of ayes.)

12 Anybody opposed?

13 (No audible response.)

14 Okay. Part A is approved.

15 So Part B. As distributed in draft form,
16 the Commissioners on December 4 contains the
17 Commissioners' findings and recommendations.

18 COMMISSIONER HERIOT: I have a motion on
19 that.

20 VICE CHAIR THERNSTROM: And that's --

21 COMMISSIONER HERIOT: I think it might be
22 different from what you have.

23 COMMISSIONER GAZIANO: Just ask for a
24 motion with respect to --

25 VICE CHAIR THERNSTROM: Yes. Can we have

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1 a motion with respect to Part B?

2 COMMISSIONER HERIOT: I move that we do
3 not publish Part B.

4 VICE CHAIR THERNSTROM: I never know. One
5 of these days that I learn procedure but I never have.
6 Can that just supersede any --

7 COMMISSIONER GAZIANO: That's the motion.

8 COMMISSIONER HERIOT: That's the motion.
9 That's why I wanted to make a motion.

10 COMMISSIONER GAZIANO: That's perfect.

11 VICE CHAIR THERNSTROM: Okay. That's
12 fine. I will second that. So now the motion on the
13 table --

14 COMMISSIONER HERIOT: I can speak to it on
15 the record here.

16 VICE CHAIR THERNSTROM: Yes.

17 COMMISSIONER HERIOT: That I looked at the
18 recommendations and I felt that on the whole they
19 really were not that significant. I disagreed with a
20 number of them and it really seems to me that the
21 briefing report speaks for itself and that the
22 findings and recommendations for this particular
23 report did not add much or did not add anything of
24 significance. That's why I thought it might be better
25 simply to publish it for what it's worth. There is a

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1 lot of conflicting evidence in the actual report and
2 we're not really in a position to resolve all of that
3 and the part that we can resolve doesn't really need
4 resolution because people would agree that all the
5 evidence goes in one particular direction.

6 VICE CHAIR THERNSTROM: So the motion on
7 the floor in case anybody is confused and I know,
8 Commissioner Melendez, you were talking to your
9 assistant at the time is simply to accept Part A. We
10 already have voted on that and to vote down -- and
11 Part A would include any separate statements that
12 Commissioners want to submit on the report and I have
13 already submitted a separate statement in fact but
14 would simply --

15 But in voting down Part B we would be
16 eliminating the recommendations and findings which are
17 always a matter of controversy or almost always. So
18 does anybody have any further discussion on that
19 because I'm frankly ready to vote on that.

20 COMMISSIONER GAZIANO: Just very briefly
21 to give one example.

22 VICE CHAIR THERNSTROM: Yes.

23 COMMISSIONER GAZIANO: I'm at a
24 disadvantage because I wasn't on the Commission during
25 the hearing. So I couldn't even ask questions or

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1 evaluate the witnesses. But the recommendations, the
2 draft recommendations, seem kind of milk toast, but
3 some of the findings bother me. Just one example at
4 the end of Proposed Finding 1, "mistakes in placement
5 occur with equal frequency regardless of race or
6 ethnicity." But I think we had conflicting testimony
7 on that.

8 VICE CHAIR THERNSTROM: We did.

9 COMMISSIONER GAZIANO: And Assistant
10 Secretary of Education Monroe, for example, spoke that
11 while it was getting a little better, she thought the
12 mistakes in placement were not of equal frequency.
13 So that was just one of the reasons why I was going to
14 abstain if the rest of you all want it. But I would
15 support the motion on the table right, on the floor
16 right, now because I do have some questions.

17 These are the appropriate things that we
18 might be able to find if we had data in addition to,
19 if we did a serious analysis. Some of the witnesses
20 by the way like Secretary Monroe testified regarding
21 some data. But unless we are going to reevaluate
22 those studies I would have felt uncomfortable voting
23 on them. I just wanted the record to be clear that it
24 wasn't -- that that was the type of thing that I had a
25 little bit of discomfort.

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1 VICE CHAIR THERNSTROM: Right. And I
2 don't think we need an extended discussion on this.

3 COMMISSIONER GAZIANO: No.

4 VICE CHAIR THERNSTROM: I suspect that
5 there is no disagreement here, that we can simply go
6 with Part A.

7 COMMISSIONER HERIOT: Just to know for the
8 record that I think Part A is genuinely useful.

9 COMMISSIONER TAYLOR: Yes, let me say that
10 as well. I am very pleased with Part A and I think it
11 highlights the benefits of the No Child Left Behind in
12 terms of bringing issues to the surface that in the
13 past have been ignored and the over representation
14 issue is one that to me requires one to ask whether or
15 not you believe that African Americans, Hispanics,
16 people are over represented by virtue of lack of
17 intellectual ability or capacity or whether there is
18 something systemic and that's an important question
19 that people have been going for years and I hope this
20 report forces people to face it.

21 VICE CHAIR THERNSTROM: Good. Do we need
22 more discussion on this or can we take a vote?

23 (No audible response.)

24 Okay. All in favor simply cutting Part B
25 from this report and letting it go out the door with

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1 however Commissioners concurrences and dissents that
2 will be due on December 28th. All in favor of doing it
3 please say aye.

4 (Chorus of ayes.)

5 Are there any nays here?

6 (No audible response.)

7 There is an unanimous decision that this
8 report may be done and out the door on December 28th
9 when the Staff Director has received the last of the
10 separate concurrences and dissents if any come in.

11 STAFF DIRECTOR DANNENFELSER: Okay.

12 VICE CHAIR THERNSTROM: A done deal.

13 STAFF DIRECTOR DANNENFELSER: Thank you
14 all.

15 VICE CHAIR THERNSTROM: And now we can go
16 back to both Commissioner Melendez and Commissioner
17 Gaziano. I think Commissioner Gaziano had the floor
18 and then we'll turn to you, Commissioner Melendez.

19 COMMISSIONER GAZIANO: My additional point
20 was very brief and maybe if we can't keep Commissioner
21 Melendez I can follow up on my statutory report
22 questions afterward, but I thank you for giving us
23 some time now.

24 I just wanted to thank you for following
25 up on the website information, commend you for getting

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1 as much information as you did in the first month.
2 But I want to comment on that a little bit and also
3 make one request.

4 I'm not surprised that compared to the 40
5 different publications that were sent out and the 259
6 requests we received that it was 194,987 page views in
7 the same period. This is just the way most people
8 access that information. They may want a handy dandy
9 bound copy of something and I hope that they request
10 it. But again that there were over 20,000, close to
11 21,000, individual viewers, several of who returning,
12 does speak a lot to how people are using our
13 information.

14 My two other possible requests besides
15 that which you've already undertaken is that you
16 provide the top three for the written requests. If
17 it's possible to find that out I'd want to know what
18 our most popular downloads are. It might be my bio or
19 my picture. There may be teenage girls who are
20 downloading my picture for their dartboard, but I
21 don't know.

22 VICE CHAIR THERNSTROM: I think you should
23 put it up on Facebook and that way it would --

24 COMMISSIONER GAZIANO: They may create it
25 on their own and the most popular page view is a

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1 separate statistic or top three or whatever because
2 that may be a little bit different. Again whether the
3 technology that we have allows it is just one of the
4 questions. You could tell us and maybe we could get
5 it. Maybe there are privacy issues, but I would hope
6 they're not privacy issues just in what are the top
7 three things, top three page views, or top three
8 downloads.

9 STAFF DIRECTOR DANNENFELSER: I wouldn't
10 think there would be any issue there. I think the
11 only issue was you get into identifying individuals.

12 COMMISSIONER GAZIANO: Okay. Thank you.

13 VICE CHAIR THERNSTROM: Anything? Yes,
14 Commissioner Melendez, you did have something else.

15 COMMISSIONER MELENDEZ: Yes. Martin, were
16 there any inquiries about from the Presidential
17 transition team to the Civil Rights Office on
18 anything?

19 STAFF DIRECTOR DANNENFELSER: Very many.
20 We had numerous meetings with the transition team.

21 VICE CHAIR THERNSTROM: Well, one member,
22 right? Was there more than one member?

23 STAFF DIRECTOR DANNENFELSER: There were
24 two in particular. There were a few more here, but
25 there was the one member who was the lead member who

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1 was here today in the audience and he met with many of
2 the senior staff and there was another individual who
3 interviewed the staff that he did not. So virtually
4 every staff member was interviewed and these regional
5 people I believe they were contacted by phone because
6 we had numerous requests for documents and we did --
7 as far as I can tell we supplied all the information
8 that was requested.

9 COMMISSIONER MELENDEZ: The other
10 question, as far as charters, which ones will we
11 expect at the next business meeting or will there any?

12 STAFF DIRECTOR DANNENFELSER: The one that
13 is most likely is Oklahoma and there was some
14 possibility I believe with New Jersey, California,
15 Arizona, but those we're going to look a little closer
16 to see. But Oklahoma is the one that seems to be the
17 closest to being ready.

18 COMMISSIONER MELENDEZ: And then finally
19 the issue on combining reports, was that discussed
20 before because it's the first time I've heard about
21 it?

22 VICE CHAIR THERNSTROM: Yes, there was
23 discussion for the STEM.

24 COMMISSIONER HERIOT: The STEM and HBCU.

25 VICE CHAIR THERNSTROM: Yes. It was

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1 discussed before, wasn't it?

2 COMMISSIONER MELENDEZ: I don't know. I
3 haven't heard. I could ask Michael, but I don't
4 remember us discussing about combining reports and my
5 concern would be that there are some other reports
6 that are still in the pipeline. I hate to see reports
7 jumping over things like --

8 VICE CHAIR THERNSTROM: I understand that.
9 That's perfectly reasonable.

10 STAFF DIRECTOR DANNENFELSER: Well, I'm
11 hopeful on these ones that are pretty far down the
12 track that we will be able to just do the final steps
13 with those and then get them moving along so that
14 they're ready for the Commissioners' consideration.
15 There are a few of them that I noted that may take a
16 little longer than the others, but we can address some
17 individual reports if you'd like to.

18 COMMISSIONER MELENDEZ: Okay. Because I
19 know the discrimination against Native Americans and
20 border towns is long overdue, too.

21 VICE CHAIR THERNSTROM: Right.

22 STAFF DIRECTOR DANNENFELSER: Yes.

23 COMMISSIONER MELENDEZ: I didn't know
24 where we were.

25 STAFF DIRECTOR DANNENFELSER: That's being

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1 worked on in OCRE. I haven't seen the draft of it yet
2 and I don't believe it's been sent to the office
3 director but that's one I'll be interested to see
4 where that stands and whether we do it in a full sense
5 like we do with most reports or whether we do
6 something like an executive summary and perhaps
7 findings without as detailed a write-up. But I do
8 want to get a look at what's been done so far and I
9 expect to see something coming down probably within
10 the next month or so to get a better idea of where
11 that stands.

12 COMMISSIONER MELENDEZ: If you could
13 report on it at the next business meeting where we
14 stand on it. Thank you.

15 STAFF DIRECTOR DANNENFELSER: Yes. Right.

16 VICE CHAIR THERNSTROM: Is there anything
17 else that we need to discuss before I ask for a motion
18 to adjourn?

19 COMMISSIONER GAZIANO: I suppose if you
20 think the time line needs to be addressed in light of
21 where we are with the interrogatories.

22 STAFF DIRECTOR DANNENFELSER: I mean the
23 most --

24 COMMISSIONER GAZIANO: If you could let us
25 know as soon as possible.

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1 STAFF DIRECTOR DANNENFELSER: The most
2 direct thing is with the agencies themselves when we
3 were saying that we ask them to respond within 30
4 days. So if we get these out on Monday, if
5 Commissioners respond by noon on Monday and there's
6 whatever changes are recommended or can be
7 incorporated on Monday, we can get them out Monday.
8 Then we would be 30 days from that point as opposed to
9 30 days from December 1st.

10 COMMISSIONER GAZIANO: Okay.

11 STAFF DIRECTOR DANNENFELSER: So we have
12 to factor that in.

13 COMMISSIONER MELENDEZ: A question. As
14 far as combining reports, is that something we should
15 put on the next business meeting to formally make a
16 decision? I know Michael probably doesn't know about
17 this either. So I think we need to somehow make a
18 decision whether to combine those formally in a
19 meeting.

20 COMMISSIONER GAZIANO: I would assume that
21 we would. I don't remember where I first heard the
22 suggestion. I thought primarily it made sense to me.

23 COMMISSIONER MELENDEZ: Yes.

24 COMMISSIONER GAZIANO: And so obviously we
25 would have to vote on that.

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1 COMMISSIONER MELENDEZ: Yes, put it in the
2 next meeting or something.

3 COMMISSIONER HERIOT: We don't think we
4 have vote on it at the next meeting.

5 COMMISSIONER GAZIANO: Yes. I don't know.

6 STAFF DIRECTOR DANNENFELSER: I think his
7 question is vote on whether to combine them.

8 COMMISSIONER MELENDEZ: Yes.

9 STAFF DIRECTOR DANNENFELSER: And then at
10 that point if the vote was to combine then there would
11 be a vote on the package.

12 VICE CHAIR THERNSTROM: Yes. We need to
13 have --

14 COMMISSIONER HERIOT: We can't vote on the
15 package at the next meeting because they're not ready.
16 What I'm saying is we wouldn't have to vote to combine
17 them until you're ready to combine them.

18 VICE CHAIR THERNSTROM: No. We don't want
19 them to go ahead and combine them without a go-ahead
20 from the Commission, do we?

21 COMMISSIONER HERIOT: I don't know. Just
22 simply combine. I'm not sure if that is --

23 STAFF DIRECTOR DANNENFELSER: I don't
24 know. It's just what's been articulated here. I
25 guess he's suggesting he's not entirely clear on what

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1 that proposal is.

2 VICE CHAIR THERNSTROM: I've just been --
3 Lenore has just said to me nobody knows what this word
4 "combination" means here. Is this an entirely new
5 document to be written that combines the two? That's
6 a lot of additional staff work and then we have to
7 arguing about exactly the language that we come up
8 with on these.

9 COMMISSIONER HERIOT: I thought the
10 suggestion was simply we're going to have two reports
11 to release at the same time.

12 VICE CHAIR THERNSTROM: Back to back.

13 COMMISSIONER HERIOT: Approve them on the
14 same day. Release them on the same day. That's how
15 we can do it.

16 VICE CHAIR THERNSTROM: Okay. That seems
17 fair.

18 STAFF DIRECTOR DANNENFELSER: I wasn't
19 clear about combining two into one report or two
20 separate reports.

21 COMMISSIONER HERIOT: Have two separate
22 reports and just release them.

23 VICE CHAIR THERNSTROM: All right. Nobody
24 understood that but you.

25 COMMISSIONER HERIOT: Maybe other people

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1 understood that.

2 VICE CHAIR THERNSTROM: Well, I just got a
3 look from him. Lenore just said all that this means.
4 I didn't understand that.

5 COMMISSIONER HERIOT: Fantastic.

6 VICE CHAIR THERNSTROM: Maybe some other
7 people did.

8 MS. OSTROWSKY: May I say something? I
9 don't mean to drag this out. But since I'm going to
10 be writing the STEM report, it would be so helpful to
11 know whether I'm going to be writing both them over
12 again.

13 COMMISSIONER HERIOT: Do you want copy
14 because I don't have a copy of that.

15 VICE CHAIR THERNSTROM: Wait a minute.
16 We're not writing both of them over again. Is that
17 correct?

18 COMMISSIONER HERIOT: I would be shocked.

19 STAFF DIRECTOR DANNENFELSER: HBCU has
20 been drafted.

21 VICE CHAIR THERNSTROM: Yes.

22 STAFF DIRECTOR DANNENFELSER: So that's
23 right. Okay.

24 VICE CHAIR THERNSTROM: So we're just
25 getting documents that are related out the door at the

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1 same time.

2 COMMISSIONER HERIOT: Yes. That's right.

3 VICE CHAIR THERNSTROM: All right. That
4 makes things fairly simple. Right, Commissioner
5 Melendez?

6 COMMISSIONER MELENDEZ: Yes. It's a
7 little clearer now.

8 VICE CHAIR THERNSTROM: Nobody can object
9 to that.

10 COMMISSIONER GAZIANO: It makes sense to
11 me.

12 VICE CHAIR THERNSTROM: Just got a date on
13 which both of them are out the door. How about we
14 adjourn the meeting? Anybody object? I move that we
15 adjourn this meeting.

16 STAFF DIRECTOR DANNENFELSER: Do anything
17 more? I was going to follow up later. Do you have
18 any more? Do you or David have any more to tell us on
19 where we are on the statutory report?

20 **VI. PROGRAM PLANNING**

21 **(UPDATE ON STATUS OF 2009 STATUTORY REPORT)**

22 STAFF DIRECTOR DANNENFELSER: David and
23 Bob Lerner are members of both the offices have had
24 some meetings with agencies. We could ask one or both
25 of them to provide an update on those meetings if that

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1 would be helpful.

2 COMMISSIONER HERIOT: Yes, I think that
3 would be.

4 STAFF DIRECTOR DANNENFELSER: They are
5 both going to come forward.

6 MR. BLACKWOOD: For the record, this is
7 David Blackwood. We have met with HUD, Ginnie Mae,
8 FTC. In fact we met with FTC yesterday.

9 MR. LERNER: You mean Freddie Mac.

10 MR. BLACKWOOD: Freddie Mac, I'm sorry.
11 Those have been very informative about the scope.
12 From my own perspective, it has given us a feel for
13 where we can head into the report. At the same time,
14 it gives you a feeling too of there's a fire hose of
15 information out there and we have to decide how we're
16 going to direct that and use it. That was one of my
17 concerns frankly, internal concerns, as I heard the
18 information.

19 That said at least from my perspective
20 there's a great deal of reassurance that most of this
21 information is going to be public information and that
22 there is a great deal of it out there.

23 MR. LERNER: This is Bob Lerner. This is
24 the Staff Director for OCRE. We've sent letters to
25 get a contact from 11 different agencies. We've

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1 gotten responses from all but four and we've made
2 appointments or will have shortly made appointments
3 with seven. We have indeed met as David has said with
4 Freddie. We have met with the FTC. Next week we're
5 going to meet with FHFA and with the Office of the
6 Comptroller of the Currency. We have also talked to
7 the Fed and we're expecting to be able to meet with
8 them in the first week of the year.

9 These appointments and meetings have been
10 very helpful because we've gotten a sense of the
11 perspectives of the agencies on the tasks that are
12 relevant to what we're doing and in many cases offered
13 to help us find documents and find stuff that we're
14 looking for. So I believe it's been very fruitful and
15 we ought to be able to wrap this part of it fairly
16 quickly.

17 One of the useful things about the
18 context, let me just give one example, our original
19 letter, our original interrogatory, was sent to the
20 Treasury Department. But upon inquiry we discovered
21 that the Treasury Department really doesn't have much
22 say over its two components, the Office of Thrift
23 Supervision and the Office of the Comptroller of the
24 Currency. They really operate as independent entities
25 even though they're official rubric.

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1 So in fact we wound up redirecting our
2 inquiries to those two components of the agency. They
3 really do operate more or less independently and that
4 was very helpful if nothing else because it would save
5 a lot of time when we sent out an interrogatory and
6 also it's helpful because we're going to meet with
7 them and already with the phone conversations that
8 I've had learned a lot about how they enforce the
9 Community Reinvestment Act, learned a lot about how
10 they make referrals to Justice and to HUD on fair
11 lending matters and things like that. And in the case
12 of the Fed, we have very interesting discussions about
13 some of the data that they have collected for some of
14 the ones we hope to get a hold of and they're going to
15 make a special presentation for us about that
16 particular point. That's what I would like to add to
17 this.

18 COMMISSIONER GAZIANO: I know that the
19 interrogatories also have document requests, but I
20 assume these are cooperative meetings and cooperative
21 agencies. Have you begun the download of the data?

22 MR. LERNER: Yes.

23 COMMISSIONER GAZIANO: I hope that you can
24 make up for time on the schedule and obviously if the
25 schedule needs to be adjusted somewhat on some things

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1 that's fine but there is so much work to do that I
2 hope that you're adjusting it in other ways so that we
3 can still get the draft early on and we can provide
4 the right kind of guidance. So if you don't mind me
5 asking right now, what kind of databases do you think
6 are going to be more productive, when you do think in
7 answering the questions that we want to be answered
8 and when do you think you all would have them to start
9 analyzing them?

10 MR. LERNER: It depends. I assume,
11 Commissioner Gaziano, when you say databases you mean
12 information from documents as well as actual
13 quantitative datasets or something.

14 COMMISSIONER GAZIANO: Correct.

15 MR. LERNER: So in terms of the document
16 information for documents we've already been
17 downloading, quite a few from any number of these
18 agencies, we've established a part, a section, on our
19 what's called our LCRE share drive which I believe you
20 folks have access to. I'm not sure. So we're trying
21 to actually share all of those.

22 One of the advantages and disadvantages
23 about a topic that's current is there's a good deal of
24 information and I guess some of that may be
25 misinformation on this subject. So we have actually

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1 compiled a huge number of documents and we've got
2 requests, informal requests, to some of these agencies
3 to help us get more. But they pointed us to their
4 Congressional testimony. They pointed us to GAO
5 studies that have been done about either fair lending
6 that's relevant to mortgage lending discrimination.
7 They've been extraordinarily helpful.

8 In addition, we could download basically
9 statutes and regulations as well. That's the
10 informational dump as opposed to the data. Do you --

11 COMMISSIONER GAZIANO: The dataset I'm
12 just a teeny bit more interested in. There was a Fed
13 study that was highlighted for the briefing paper.

14 MR. LERNER: Right.

15 COMMISSIONER GAZIANO: Are there datasets
16 associated with that?

17 MR. LERNER: Yes. There's a Fed study
18 that was a part of a study commission by Congress in
19 2003 jointly with the Federal Trade Commission. The
20 Fed study was designed to do a study, what I would
21 call a validity study of credit scoring as it's used
22 in evaluating credit and the validity study in part
23 was determined whether there is in fact racial bias in
24 such scoring and the Fed engaged in extraordinary
25 effort to compile a dataset that I don't believe exist

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1 anywhere and they published this report although my
2 own personal opinion is, and I'm a trained
3 statistician, this is a very difficult report to read.
4 If they were actually going to expect sending it to
5 Congress with the expectation that anybody would read
6 it even if they had the time to read it --

7 VICE CHAIR THERNSTROM: I'm shocked to
8 hear this.

9 MR. LERNER: I'm sorry, Madam Vice
10 Chairman. All I'm doing is reporting my impression.

11 VICE CHAIR THERNSTROM: And that would be
12 accurate and Congress is --

13 MR. LERNER: But it's a very interesting
14 report because that bears on one of the central
15 contentions in my view on this whole business of
16 mortgage lending discrimination. In other words, it's
17 easy to compile information about disparities which
18 would get me -- I don't want to go too far off the
19 field to answer your point. But one of the datasets
20 we expect to be getting is called HMDA, Home Mortgage
21 Disclosure Act data, which is a dataset collected by
22 the, I'm sorry, I apologize for throwing out acronyms,
23 the FFIEC agencies which is the counsel of financial
24 agencies that enforces a community reinvestment Act
25 and it includes the FED, the OCC, OTS and the FDIC and

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1 that's a dataset that does not -- The HMDA data which
2 is one that we're going to take a quick look at is one
3 that does not have certain kinds of loan information
4 in terms of loan-to-value information and more
5 importantly it doesn't have credit score information
6 which is decisive in approval or rejection for the
7 loans and that tends to make it very limited in my
8 view, in my opinion, as a way of considering
9 discrimination for those disparities.

10 Getting back to the Fed study, I'm sorry
11 to take up a long about route like this, the Fed study
12 has this data and they've agreed to give us a two hour
13 presentation about how to do it. We told them we
14 either want it or we want them to do runs for us from
15 it which in many ways would be preferable because in
16 the interest of time if they're willing to do all the
17 runs we want, that would be great and even some of the
18 re-packaging, some of the things that are already in
19 the report, will do very nicely because in my view (a)
20 it's important to what we're doing and (b) this is not
21 a study that was going on.

22 I have to be honest. Before we started
23 working on this, I was not familiar with this dataset.

24 But I think it's extremely valuable and it allows us
25 to explore a little bit this whole notion of credit

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1 scores. I don't know if that helps, Commissioner
2 GAZIANO.

3 COMMISSIONER GAZIANO: No, it definitely
4 does. What kind of time frame do you think?

5 MR. LERNER: Well, we're going to meet
6 with them the week of January 5th.

7 COMMISSIONER GAZIANO: Okay.

8 MR. LERNER: I mean I pressed them pretty
9 hard to try to meet with them next week. They kept
10 saying, "Well, we have employees with use or lose
11 leave" which as you may or may not know that there's a
12 certain limit on civil service employees leave that
13 they're able to carry over from one year to the next
14 and therefore they have to use it or they lose it and
15 I think it's understood in many agencies that you let
16 them use it instead of losing it.

17 But from my perspective the problem with
18 the scheduling is there is a lot of people who are not
19 here. We have that at our agency, too. The Staff
20 Director can say more about that, but I know at least
21 one member of my staff is going to be going out after
22 Tuesday of this week and she's not going to be back
23 until after the New Year. So that was the problem. I
24 pressed them hard on it, but they promised they would
25 give us an extensive presentation on that dataset on

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1 the view of the Community Reinvestment Act in which
2 they take a position that the Community Reinvestment
3 Act does not have any contribution, did not make any
4 contribution, to the mortgage crisis and I'm anxious
5 to hear their discussion of that and they also are
6 going to discuss with us how they enforce it, how they
7 make referrals and topics of that sort and that will
8 be very helpful and we put it altogether.

9 MR. BLACKWOOD: There's one matter I would
10 like to bring up from the FTC yesterday and we may run
11 into this with other agencies. Their staff attorneys
12 basically told if we send a set of formal
13 interrogatories over there they will escalate that and
14 that will have to be voted on by the Commissioners and
15 they made it quite clear they will be tied down
16 bureaucratically and we expect very expansive answers.

17 At the same time, they made a counter offer of work
18 with us informally and we'll give you just about
19 anything you're looking for public information.

20 They understand our need. At some point
21 we will need answers to interrogatories. So I would
22 say to you contrary to our regular plan is what I
23 would suggest is we've worked with staff. They have
24 given us the assurances that they will work with us to
25 provide the information on an informal basis and meet

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1 with us to discuss it and then we sent the
2 interrogatories towards the end. That's normally not
3 something I would suggest but I think that would work
4 out in that particular case.

5 MR. LERNER: I would like to endorse that
6 comment. We haven't had a chance to discuss it, but I
7 agree completely.

8 VICE CHAIR THERNSTROM: That is a very
9 interesting point and I just wonder how often that
10 where it's true more often than we have understood in
11 the past.

12 MR. BLACKWOOD: Possibly, except this one,
13 they made it quite clear something formal, legalistic,
14 gets the attention of the Commissioners and has to be
15 vetted multiple times. Whereas talking, as long as we
16 keep it on public information basis, they'll be glad
17 to give it to us. They want us off their radar screen
18 and they were trying to be helpful in mind to give us
19 the information.

20 VICE CHAIR THERNSTROM: Right. Of course,
21 that could be true of other agencies as well. I mean
22 it's extremely interesting to me.

23 MR. LERNER: I would just -- I'm sorry.
24 Go ahead.

25 MR. BLACKWOOD: Part of the reason I

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1 believed that it's always helpful to talk with the
2 agencies is we get a lot more information talking with
3 them. I got some criticism two years ago that "Gee,
4 the interrogatories to DOJ went out later than they
5 should of." Well, that's because we had several
6 meetings beforehand.

7 VICE CHAIR THERNSTROM: Yes.

8 MR. BLACKWOOD: I found that much more
9 helpful. But I understand why others would not.

10 COMMISSIONER GAZIANO: I'm not surprised
11 with that, but I'm in some sense endorsing part of
12 that. We have to leave something to Staff Director
13 and your all's judgment as long as we are going to get
14 some very important material that will answer the
15 basic questions that we expect the Commission to be
16 able to answer. And so obviously I may ask a few
17 questions before informally of you all to understand
18 this without keeping Commissioner Melendez. But
19 certainly by our January 16 meeting if you've already
20 met with the Fed and they've given you and you tell
21 them that we want to know timelines and deadlines so
22 that we know and then as far as them having do runs
23 and you doing runs, you need to explain to me what
24 assurances you have that we can make adequate findings
25 out on that. But that's another matter that I'd like

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1 to hear more about and I'd trust your judgment. At
2 least from my standpoint I would.

3 MR. LERNER: Well, it's mostly an issue of
4 practicality. If they're willing to do it and we only
5 talked about it in general terms and they haven't
6 committed themselves to us. By the way, this is one
7 case where we might very well need to send formal
8 interrogatories because this is a fairly substantial
9 request. The virtue of their doing it as an
10 alternative, they're giving us the dataset, is speed,
11 is convenience, if they're cooperative and they're
12 going to do what we ask them to do. It should be
13 fairly easy. By not having to do the runs, staff can
14 be doing other things. We can write it out.

15 On the other hand, if they're not
16 cooperative, then we would have to do this ourselves
17 and we couldn't expect them -- it depends on the
18 nature of the relationship we have. So far it's been
19 very cooperative. That was the reason I suggested it
20 as an alternative.

21 COMMISSIONER GAZIANO: Assuming they were
22 willing to do some of the runs you'd have to be able
23 to assure us that it was done in the right way.
24 That's my other question.

25 MR. LERNER: Okay.

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1 COMMISSIONER GAZIANO: And we can talk
2 about that later.

3 MR. LERNER: That's true.

4 COMMISSIONER GAZIANO: We can talk about
5 that later. Just one.

6 MR. LERNER: Well, we would probably check
7 out the code and get a code book and check out the
8 dataset and I would assume this is stuff that I or
9 members of my staff could have done ourselves and we
10 would go over it and make sure we're getting what
11 we're promised. My staff and I have had a lot of
12 experience with this sort of data and dealing with
13 institutions in this sort of way and we would expect
14 that they would do what we asked them to do or if they
15 can't do it for reasons of privacy then we can spell
16 that out too.

17 That's the other virtue for us in terms of
18 getting more information we would need from them is
19 they wouldn't have to worry about Privacy Act type
20 violations. This is a very sensitive dataset of
21 course and we would want to protect that. On the
22 other hand, we would want the information. I think we
23 can get it that way.

24 I mean I can't, Commissioner GAZIANO, give
25 you a definite answer until we actually have a chance

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1 to sit down and meet with them and get a sense of what
2 this is like and as I said if that doesn't work, if
3 they are not willing to do it, then I would recommend
4 going through the interrogatory route and getting it
5 that way. I believe they would have to turn over some
6 of it to us no matter what. It's just that it would
7 be a matter of speed and efficiency from my
8 perspective. Yes, and I would insist that we get the
9 information that we're looking for, some of the ones,
10 things that I had described and some of the things
11 that were discussed in the concept paper.

12 I think in itself that would be a
13 contribution of our report because as I said I don't
14 believe even has heard of this study or knows about it
15 or even if they have they probably can't read it or
16 make sense of it I must say. I was kind of surprised
17 when I worked through it. I'm a trained statistician.

18 I can read it pretty well, but I wouldn't call it
19 accessible.

20 COMMISSIONER GAZIANO: Okay. And with
21 some agencies unless -- I don't know. You might be
22 able to deliver the interrogatory and then negotiate
23 something sort of it.

24 MR. BLACKWOOD: Every meeting we have had
25 I've made it clear (1) we'd appreciate no game

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1 playing, that this isn't litigation, that we have
2 unlimited number of interrogatories, all in a very
3 friendly way, of course, but (2) that I would expect
4 their help. If they thought something was wrong or
5 we've worded it wrong not to play a game and wait 30
6 days and give me a technical answer but to tell us.
7 That we'll go away a lot faster if everybody
8 cooperates, tells us what information is out there and
9 also that we will negotiate absolutely issues of
10 privacy. That's open-ended. But I think we're
11 getting good feedback, too, that people want to
12 cooperate with us because they don't -- they want to
13 be able to give us the information and have us end our
14 oversight.

15 MR. LERNER: David, can I add one more
16 point which is that some of the agencies I believe
17 would like a chance to get some of their views and
18 practices on record and I pointed out this is a chance
19 for you to do that. I'm not saying it's not going to
20 be edited or it's not going to be comment enough from
21 the Commissioner's point of view. But nonetheless by
22 giving us, by cooperating with us fully and directly,
23 we don't have to write a report that says, "Well, we
24 asked Department X something like this and then they
25 didn't reply. So you can draw whatever conclusions

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1 you want, to the fact they didn't respond." This way
2 this gives them a chance to basically show good faith
3 effort.

4 **VII. ADJOURN**

5 VICE CHAIR THERNSTROM: I would love to go
6 home. I'd like to make a motion that we adjourn the
7 meeting. Do I have a second?

8 COMMISSIONER KIRSANOW: Second.

9 VICE CHAIR THERNSTROM: All in favor?
10 (Chorus of ayes.)

11 VICE CHAIR THERNSTROM: No dissents I
12 hope. Thank you everybody. Off the record.

13 (Whereupon, the above-entitled matter was
14 concluded at 3:00 p.m.)

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