

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC MEETING

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WEDNESDAY, DECEMBER 16, 2009

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The Commission convened via teleconference at 11:30 a.m., GERALD A. REYNOLDS, Chairperson, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

ARLAN D. MELENDEZ, Commissioner

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC

MARGARET BUTLER

CHRISTOPHER BYRNES, Parliamentarian

DEMETRIA DEAS

PAMELA A. DUNSTON, Chief, ASCD

ROBERT LERNER, Asst. Deputy Staff Director

JOHN RATCLIFF

LENORE OSTROWSKY

EILEEN RUDERT

KIMBERLY TOLHURST

AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SCHMAUCH

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

2 (11:48 a.m.)

3 THE OPERATOR: U.S. Commission on Civil
4 Rights, December 16th, 2009. You may begin.

5 CHAIRMAN REYNOLDS: Good morning. This is
6 Chairman Reynolds. It's 11:47 a.m., Eastern Standard
7 Time, on December 16th, 2009. We have a telephonic
8 meeting with commissioners participating from
9 different locations. I will call the name of each
10 commissioner in order to determine if there is a
11 quorum to hold the meeting.

12 Vice Chair Thernstrom?

13 (No response.)

14 CHAIRMAN REYNOLDS: Commissioner Gaziano?

15 COMMISSIONER GAZIANO: Here.

16 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: Here.

18 CHAIRMAN REYNOLDS: Commissioner Heriot?

19 COMMISSIONER HERIOT: Here.

20 CHAIRMAN REYNOLDS: Commissioner Melendez?

21 COMMISSIONER MELENDEZ: Here.

22 CHAIRMAN REYNOLDS: And I make five. Is
23 the Staff Director present?

24 STAFF DIRECTOR DANNENFELSER: Present.

25 CHAIRMAN REYNOLDS: Is the court reporter

1 on the line?

2 THE REPORTER: Yes, present.

3 CHAIRMAN REYNOLDS: Thank you.

4 The meeting will come to order. To assist
5 our court reporter, I would like to remind any
6 commissioners wishing to make statements to identify
7 themselves first.

8 Whenever it is necessary to take a vote, I
9 will call out the name of each commissioner. The
10 commissioner should then answer "Yes," "No," or
11 "Abstain."

12 After the voting is concluded, I will read
13 out how each of you is voted to ensure that the tally
14 is correct.

15 I. APPROVAL OF AGENDA

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

18 COMMISSIONER KIRSANOW: So moved.
19 Kirsanow.

20 CHAIRMAN REYNOLDS: Is there a second?

21 COMMISSIONER GAZIANO: Second. Gaziano.

22 II. STATE ADVISORY COMMITTEE ISSUES

23 - PENNSYLVANIA

24 CHAIRMAN REYNOLDS: Okay. Discussion
25 time. I would like to move to table discussion of the

1 state advisory committee issues. There needs to be
2 some additional vetting done with respect to that SAC
3 package.

4 Is there a second?

5 COMMISSIONER KIRSANOW: Kirsanow. Second.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano,
7 how do you vote?

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Heriot?

12 COMMISSIONER HERIOT: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Melendez?

14 COMMISSIONER MELENDEZ: Yes.

15 CHAIRMAN REYNOLDS: And I also vote in
16 favor of the motion. The motion passes. Any other
17 discussion regarding the agenda as amended?

18 COMMISSIONER HERIOT: That was just a
19 motion to table, wasn't it?

20 CHAIRMAN REYNOLDS: Yes, you're correct,
21 but any other discussion about the agenda? Any other
22 changes?

23 COMMISSIONER MELENDEZ: Commissioner
24 Melendez. Has the agenda been changed from what was
25 sent to me in the book?

1 CHAIRMAN REYNOLDS: Mr. Staff Director,
2 can you confirm that we are working off the same
3 document except for the fact that we have just tabled
4 discussion of the state advisory committee issues.

5 STAFF DIRECTOR DANNENFELSER: Yes. It is
6 the same agenda with that one item deleted.

7 COMMISSIONER MELENDEZ: Okay. Thank you.

8 CHAIRMAN REYNOLDS: Okay. I move that we
9 adopt the agenda as amended. Is there a second?

10 COMMISSIONER GAZIANO: Second. Gaziano.

11 CHAIRMAN REYNOLDS: Discussion?

12 (No response.)

13 CHAIRMAN REYNOLDS: Okay. Commissioner
14 Gaziano, how do you vote? Commissioner Gaziano?

15 COMMISSIONER GAZIANO: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Heriot?

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Melendez?

21 COMMISSIONER MELENDEZ: Yes.

22 CHAIRMAN REYNOLDS: Okay. And I also vote
23 for it. It's unanimous.

24 III. PROGRAM PLANNING

25 - UPDATE ON STATUS OF TITLE IX PROJECT

1 CHAIRMAN REYNOLDS: Next up, on December
2 9th, the Staff Director sent commissioners a list of
3 the institutions of higher education that will be
4 asked to produce documents and electronically stored
5 information pursuant to the Commission's Project on
6 Sex Discrimination and Undergraduate Admissions
7 Policy.

8 Before we vote on this list, I ask that
9 Dr. Lerner provide us with an update on the status of
10 the project.

11 DR. LERNER: Thank you, Mr. Chairman.
12 This is Robert Lerner.

13 Basically we have been working with the
14 Office of General Counsel to clear some of the
15 preliminaries about the documents. They had some
16 suggestions about some things we might incorporate.
17 We have also been refining our request of what we are
18 asking for and extending it a bit.

19 The other thing we have been, of course,
20 students doing some of the preliminary work, the
21 background work to the report itself, but the main
22 item of business for us, of course, is the approval of
23 the --

24 COMMISSIONER HERIOT: What background work
25 is that, Dr. Lerner?

1 DR. LERNER: A couple of things. One, I
2 am doing an analysis of all of the previous data I
3 could find on admissions, for general reference in
4 admissions, where we have information about that.

5 Secondly, we put together a database of
6 institutional rates, male and female admissions rates.

7 I think we're putting together a very extensive
8 database. For most institutions of higher education
9 that are relevant, I think it's fairly complete.

10 So we've got an idea of not just the
11 sampling list, from which we selected the samples, but
12 we also have an idea nationwide for undergraduate
13 institutions. That gives you kind of a bit of an idea
14 about which institutions may or may not be just based
15 on race and gender.

16 Of course, those are only associative
17 kinds of results. They don't prove anything. But
18 they do give some clues. Essentially that is what we
19 have been working on.

20 The other thing -- oh, one more thing.
21 I'm sorry, Commissioner Heriot. One more thing is we
22 are developing an interrogatory to submit. We haven't
23 finished it yet.

24 We're developing an interrogatory to
25 submit to the Office of Civil Rights, the Department

1 of Education, to understand how they -- to their
2 complaints and for how they deal with ones that are
3 dismissed or not.

4 There are some that clearly are not
5 relevant. And we are going to do an analysis of that
6 the way we ordinarily do this kind of work. That is
7 basically it.

8 CHAIRMAN REYNOLDS: Okay. Any other
9 questions for Dr. Lerner?

10 (No response.)

11 - MOTION TO APPROVE INSTITUTIONS

12 TO BE INCLUDED IN PROJECT

13 CHAIRMAN REYNOLDS: Okay. I move that the
14 Commission authorize the issuance of subpoenas for the
15 production of documents and electronically stored
16 information for this project under the signature of
17 the Chairman as authorized by section 3 of the Civil
18 Rights Commission's Amendments Act of 1994 to the
19 following institutions: Lincoln University of
20 Pennsylvania; University of Maryland-Eastern Shore;
21 Virginia Union University; Howard University; Catholic
22 University of America; Loyola College in Maryland;
23 Messiah College; Georgetown University; the Johns
24 Hopkins University; Gettysburg College; University of
25 Richmond; York College, Pennsylvania; Goucher College;

1 Goldey-Beacom College; Washington College; Shepherd
2 University; Shippensburg University of Pennsylvania;
3 the University of Delaware; and, finally, the
4 University of Maryland at Baltimore County.

5 The date, place of delivery, and substance
6 of the request will be determined by the Chairman
7 after consultation with the Staff Director. Is there
8 a second?

9 COMMISSIONER HERIOT: I'll second.

10 CHAIRMAN REYNOLDS: Discussion?

11 (No response.)

12 CHAIRMAN REYNOLDS: Commissioner Gaziano,
13 how do you vote? Commissioner Gaziano?

14 COMMISSIONER GAZIANO: I'm sorry. I
15 muted. Yes.

16 CHAIRMAN REYNOLDS: All right.
17 Commissioner Kirsanow?

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Heriot?

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Melendez?

22 COMMISSIONER MELENDEZ: Abstain.

23 CHAIRMAN REYNOLDS: And I vote for it. So
24 Commissioner Melendez abstained. The remaining
25 commissioners voted in favor of the motion. The

1 motion passes.

2 COMMISSIONER GAZIANO: May I raise one
3 other issue?

4 CHAIRMAN REYNOLDS: Sure.

5 COMMISSIONER GAZIANO: This is
6 Commissioner Gaziano. Given some recent press
7 accounts about William and Mary, I understand they
8 depending on how we interpret our subpoena authority
9 may be beyond subpoena authority. Is there a problem
10 with just sending them a request and seeing if they
11 will comply?

12 CHAIRMAN REYNOLDS: When you say,
13 "request," you are not suggesting that we send a
14 subpoena, are you?

15 COMMISSIONER GAZIANO: No. The same type
16 of request but not under a subpoena. Does anyone else
17 see a problem with that? Again, I think that our
18 subpoena authority for production of documents might
19 be broader than the range for compelling testimony of
20 persons.

21 But, without getting into that, I just
22 wondered if we could send a request without a subpoena
23 to William and Mary.

24 CHAIRMAN REYNOLDS: I don't have any
25 concerns with that. Does anyone else?

1 (No response.)

2 CHAIRMAN REYNOLDS: Okay. Is this
3 something we need to vote on or can we just with the
4 understanding that --

5 COMMISSIONER HERIOT: Well, I would think
6 we want to get out what we have just approved. And
7 maybe next month or the next meeting, which is less
8 than a month away, if we need to vote on this, we can
9 vote on it.

10 COMMISSIONER GAZIANO: Sure. That sounds
11 fine.

12 - UPDATE ON STATUS OF 2010 ENFORCEMENT REPORT

13 CHAIRMAN REYNOLDS: Okay. All right. The
14 next item on the agenda is an update on the status of
15 the 2010 enforcement report. Mr. General Counsel,
16 please provide us with an update.

17 MR. BLACKWOOD: Thank you. David
18 Blackwood.

19 Since the last meeting, as most of you are
20 aware, we did issue a subpoena to the Department of
21 Justice. Since that time, I have sent subsequent
22 correspondence or e-mails to the Department requesting
23 an early time to meet. I believe the time has only
24 been, I believe today is day eight.

25 With regard to individual subpoenas, which

1 I am not going to mention any individuals
2 specifically, I can tell you that we have been in
3 contact with additional individuals in the
4 Philadelphia area and are going to proceed to schedule
5 their depositions.

6 What I propose to do is send everybody a
7 schedule of the proposed depositions in the next day
8 or two so you all can line up. Some of the
9 commissioners want to participate in them.

10 I am trying to nail down, though, with
11 some of these witnesses a specific time and place for
12 their appearance. As soon as I feel that we are
13 confident about that, I would send a list to you all
14 with the time and place.

15 COMMISSIONER GAZIANO: Mr. Blackwood,
16 maybe I missed something. You said you are trying to
17 contact the Justice Department representative just to
18 meet and talk about this. And have you gotten a
19 response to your meeting request yet?

20 MR. BLACKWOOD: No, I have not. As you
21 know, the letter that accompanied the subpoena
22 requested an early meeting to discuss those matters
23 that there might be any controversy about or issues of
24 confidentiality.

25 I also expressed that same interest when I

1 talked to Mr. Hunt before I sent over the subpoena.
2 And I sent an e-mail just the other day to Mr. Hunt
3 again, saying early meeting. And I haven't gotten a
4 response yet.

5 COMMISSIONER GAZIANO: Yes. I think that
6 is just absolutely outrageous. It is absolutely
7 outrageous, of course, that the Justice Department has
8 been stonewalling the Commission's requests for almost
9 six months. Maybe it is today, I think, actually
10 marks the six month anniversary.

11 And, yet, I read in the newspaper that
12 they want further information from us, which seems --
13 which we have provided but seems like another
14 outrageous excuse to stall.

15 But they are not even returning your
16 telephone calls or e-mails to talk about this?

17 MR. BLACKWOOD: Just to be specific, the
18 phone call that I had, actually, we did talk. That
19 was not a voice mail. Subsequent to that time the
20 only communication was an e-mail. And I have not yet
21 received a response back.

22 COMMISSIONER GAZIANO: And, as I recall
23 your letter, of course, it also wanted to resolve
24 those matters, to identify those matters about which
25 there could be no conceivable objection based on an

1 OPR review or anything else. And that is for the
2 files on previous investigations.

3 And you have gotten no indication one way
4 or the other about when they will even talk about
5 that?

6 MR. BLACKWOOD: No response as of this
7 date.

8 COMMISSIONER GAZIANO: Okay.

9 CHAIRMAN REYNOLDS: Any other comments or
10 questions?

11 COMMISSIONER YAKI: Yes. Commissioner
12 Yaki. How are you?

13 CHAIRMAN REYNOLDS: Welcome. Commissioner
14 Yaki, the General Counsel just provided us with an
15 update on our 2010 enforcement report. I don't know
16 if you support any of it, but if you have any
17 questions, please ask.

18 (No response.)

19 CHAIRMAN REYNOLDS: If we don't have any
20 additional comments or questions, we will move on.

21 Next up is the Multi-Ethnic Placement Act
22 briefing report. At the December 4th --

23 COMMISSIONER YAKI: Hang on. Was someone
24 reading? I just got cut off the line for about a
25 minute. I was on, but I was cut off.

1 I was trying to raise the issue of whether
2 there had been a vote on Title IX subpoenas.

3 CHAIRMAN REYNOLDS: Yes.

4 COMMISSIONER YAKI: I would like the
5 privilege of simply reopening that vote.

6 CHAIRMAN REYNOLDS: Okay. I second the
7 motion. Discussion?

8 COMMISSIONER HERIOT: Not reopen in the
9 sense of take another vote, I assume?

10 CHAIRMAN REYNOLDS: Well, I believe that's
11 what Commissioner Yaki has requested.

12 COMMISSIONER MELENDEZ: I assume it is
13 just to reopen to record his vote. No, we don't have
14 to reopen it for discussion.

15 CHAIRMAN REYNOLDS: Commissioner Yaki, is
16 that your intent?

17 COMMISSIONER YAKI: That's fine.

18 CHAIRMAN REYNOLDS: I'm sorry.
19 Commissioner Yaki, what did you say?

20 COMMISSIONER YAKI: I said that's fine
21 since he wouldn't listen to me anyway.

22 CHAIRMAN REYNOLDS: Okay. So please let
23 the record reflect that, in connection with the Title
24 IX, the subpoenas in connection with the Title IX
25 project, that Commissioner Yaki voted against the

1 motion.

2 COMMISSIONER YAKI: Thank you.

3 - MULTI-ETHNIC PLACEMENT ACT BRIEFING REPORT

4 CHAIRMAN REYNOLDS: Okay. At the December
5 4, 2009 meeting, commissioners approved part A of the
6 Multi-Ethnic Placement Act briefing report.
7 Commissioners voted individually on each finding and
8 recommendation.

9 - CONSIDERATION OF FINDINGS & RECOMMENDATIONS

10 CHAIRMAN REYNOLDS: At that meeting, we
11 agreed to table finding 9 and recommendations 3 and 8
12 until the next Commission meeting. Commissioners
13 asked that staff provide better supporting
14 documentation and cite the appropriate authorities for
15 those three items.

16 The rewritten finding and two
17 recommendations along with supporting documentation,
18 were sent to commissioners by the Staff Director on
19 December 8th.

20 - MOTION TO APPROVE MEPA FINDING #9

21 CHAIRMAN REYNOLDS: I move the Commission
22 approve the rewritten finding number 9, which reads as
23 follows, "Since the enactment of the 1996 amendments
24 to MEPA, the removal of barriers to the Inter-Ethnic
25 Adoption Act, HHS has conducted compliance reviews,

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

7 Is there a second?

8 COMMISSIONER GAZIANO: Second for purposes
9 of discussion. Commissioner Gaziano.

10 CHAIRMAN REYNOLDS: Okay. Discussion?

11 COMMISSIONER GAZIANO: Looking at the
12 statute, it is far from clear that the statute makes
13 anything subject to strict scrutiny. I think a more
14 natural reading of the statute absolutely prohibits
15 any consideration of race.

16 So I would propose the following hopefully
17 friendly amendment to the last sentence, but I stand
18 ready to be -- I understand that there are some
19 regulations that HHS may have sent out saying strict
20 scrutiny applies.

21 How about this for an amendment? For the
22 last sentence, "MEPA prohibits any consideration of
23 race in making placement decisions." And it seems
24 contradictory with outreach or may be contradictory
25 with outreach, but there is a way to square that.

1 Have others looked at the statutory
2 language or have it before them or should I try to --

3 COMMISSIONER HERIOT: I do not have it
4 before me.

5 COMMISSIONER GAZIANO: -- quote the
6 language?

7 CHAIRMAN REYNOLDS: Please quote the
8 language, Todd.

9 COMMISSIONER GAZIANO: Section 1996(b),
10 which is the statutory cite, not the -- I mean, the
11 code, would be the code section, "Prohibited conduct.

12 A person or government that is involved in adoption
13 or foster care placement may not: a) deny to any
14 individual the opportunity to become an adoptive or a
15 foster parent" -- and I think this is the key language
16 -- "on the basis of race, color, or national origin of
17 the individual or of the child involved; or b) delay
18 or deny the placement of a child for adoption or in
19 foster care on the basis of race, color, or national
20 origin of the adoptive foster parent or of the child
21 involved."

22 Maybe that incorporates strict scrutiny,
23 but, at a minimum, it is not clear that it allows any
24 consideration of race.

25 COMMISSIONER HERIOT: I agree with Todd

1 that this is basically the key to this whole statute.

2 I wouldn't have drafted it this way, but it doesn't
3 say what HHS says it says.

4 COMMISSIONER GAZIANO: And, if we're
5 unsure, the alternative to my friendly amendment is
6 just to strike that last sentence and leave the
7 previous sentence says, "Some personnel have
8 circumvented MEPA's provisions against consideration
9 of race in placement."

10 CHAIRMAN REYNOLDS: Folks, what's the
11 preference? To strike the sentence or to adopt the
12 friendly amendment?

13 COMMISSIONER HERIOT: My preference is to
14 look more closely at the legislative history than we
15 have so far.

16 COMMISSIONER YAKI: This is Commissioner
17 Yaki. I would also add this briefing with intent
18 interest to Commissioner Taylor. And I would be
19 hesitant to read too much into language without the
20 appropriate letters of intent and without the input of
21 Commissioner Taylor at this time.

22 CHAIRMAN REYNOLDS: Okay. So between
23 Commissioners Heriot and Yaki, I believe that we have
24 a request to table this particular issue.

25 COMMISSIONER YAKI: Yes. This is

1 Commissioner Yaki. That would be correct.

2 COMMISSIONER GAZIANO: That's fine with
3 me, too. I would feel more comfortable if we had
4 Commissioner Taylor's input and further study. I sort
5 of noticed these questions late last night and this
6 morning.

7 CHAIRMAN REYNOLDS: Okay. I suspect that
8 we won't have violent opposition to this suggestion.
9 So we will table a discussion of that particular item.

10 - MOTION TO APPROVE MEPA RECOMMENDATION #3

11 CHAIRMAN REYNOLDS: Next up, I move the
12 Commission approve rewritten recommendation number 3,
13 which reads as follows, "HHS should continue to
14 conduct compliance reviews and impose sanctions as
15 necessary to ensure that state agencies and personnel
16 are in compliance with MEPA section 1501(c), strict
17 limitations on the use of race in placement
18 decisions."

19 Should we table all of this and just
20 consider these three items together or are people
21 comfortable dealing with the other two issues?

22 - MOTION TO APPROVE MEPA RECOMMENDATION #8

23 COMMISSIONER GAZIANO: If we're going to
24 table one, why don't we? I would suggest all three.

25 CHAIRMAN REYNOLDS: Anyone object?

1 COMMISSIONER HERIOT: I agree with that.

2 COMMISSIONER YAKI: I would second that.

3 CHAIRMAN REYNOLDS: Okay. That's what we
4 will do.

5 - CONSIDERATION OF DEADLINES FOR CONCURRING OR
6 DISSENTING STATEMENTS & REBUTTALS

7 CHAIRMAN REYNOLDS: The next item on the
8 agenda is consideration of deadlines for concurring
9 and dissenting statements and rebuttals for the MEPA
10 report.

11 Mr. Staff Director, please share your
12 recommendations with us regarding these time lines.

13 STAFF DIRECTOR DANNENFELSER: Yes. Thank
14 you, Mr. Chairman.

15 I was going to recommend time lines of
16 January 20th with statements to be submitted, which
17 would be 35 days from today, building in 5 extra days
18 for the holidays and then with the assumption that the
19 statements would then be circulated to all
20 commissioners on January 21st and then have a date of
21 February 21st for rebuttals.

22 I guess, in light of the tabling of the
23 three items here, it is a question of whether
24 commissioners want to move forward with those time
25 lines or do they want to wait until these three items

1 are resolved until we start the clock on the
2 statements being submitted?

3 COMMISSIONER HERIOT: Well, it is hard to
4 write a statement if you don't know what the
5 recommendations are.

6 CHAIRMAN REYNOLDS: Okay. I would propose
7 that, in order to prevent the loss of time and
8 momentum on this issue, that we consider a
9 teleconference where we would deal with these
10 remaining issues. Are folks comfortable with that
11 approach?

12 COMMISSIONER YAKI: Hello. This is
13 Commissioner Yaki.

14 Why at a teleconference? Why not at a
15 regular meeting?

16 CHAIRMAN REYNOLDS: When is our next
17 meeting scheduled?

18 STAFF DIRECTOR DANNENFELSER: January
19 15th.

20 CHAIRMAN REYNOLDS: Well, that would cause
21 us to lose quite a bit of time.

22 COMMISSIONER YAKI: We have a
23 teleconference scheduled before then?

24 CHAIRMAN REYNOLDS: Before the 15th?

25 COMMISSIONER YAKI: Yes.

1 CHAIRMAN REYNOLDS: Marty, help me out.

2 STAFF DIRECTOR DANNENFELSER: No, we
3 don't. That is our next scheduled meeting, the 15th
4 of January.

5 CHAIRMAN REYNOLDS: So next in-person
6 meeting on the 15th. And if we were inclined to go
7 with the teleconference, we would have to schedule it.
8 And the soonest that we would be able to do it would
9 be ten days. Is that right?

10 STAFF DIRECTOR DANNENFELSER: Well, we
11 have the weekend. If we did it today, it would be
12 about 10 or 11 days from now. Of course, that takes
13 us right -- that would take us, I believe, until maybe
14 the Tuesday after Christmas or so.

15 PARTICIPANT: Twelve days would be the
16 29th.

17 STAFF DIRECTOR DANNENFELSER: If we sent
18 it today, it would publish on Tuesday. And then the
19 Wednesday would be actually the 30th. The 30th would
20 be the first day.

21 CHAIRMAN REYNOLDS: Okay. Folks, I'm
22 trying to get --

23 STAFF DIRECTOR DANNENFELSER: I'm sorry.
24 I'm sorry. No. Wait a minute. Friday would be. We
25 get in on Friday, conceivably get in on Friday. And

1 then --

2 COMMISSIONER YAKI: We have had some
3 trouble with the publishing dates.

4 STAFF DIRECTOR DANNENFELSER: It would be
5 like the 26th or so. December 26th would be. So
6 that's a weekend.

7 COMMISSIONER HERIOT: Saturday.

8 STAFF DIRECTOR DANNENFELSER: So the 28th,
9 December 28th, would be the first date.

10 CHAIRMAN REYNOLDS: Okay. I'm trying to
11 get a sense of whether there is a strong preference
12 one way or the other. Folks, do you want to weigh in?
13 Would you mind just waiting until the next in-person
14 meeting knowing that we're going to lose a little time
15 or do you want to schedule a teleconference?

16 COMMISSIONER HERIOT: I'm available any of
17 those days for a telephone conference.

18 COMMISSIONER YAKI: I'm not.

19 COMMISSIONER MELENDEZ: Commissioner
20 Melendez. I would prefer to wait. I am on vacation
21 starting this Friday, and I won't be back until
22 January 6th or something. And who knows where I will
23 be.

24 CHAIRMAN REYNOLDS: Todd?

25 COMMISSIONER GAZIANO: I could make myself

1 available before the first of the year, but I'd
2 probably have a slight preference not to. If we need
3 to take this up separately, maybe we could do it when
4 Commissioner Melendez returns from his vacation but
5 not take up the next in-person meeting.

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER GAZIANO: But I could go
8 either way, whatever you all want.

9 CHAIRMAN REYNOLDS: Okay. Well, I just --
10 well, in light of the fact that we don't know whether
11 Commissioner Taylor would be available for a
12 teleconference, combined with the preferences
13 expressed by Commissioners Gaziano, Yaki, and
14 Melendez, let's just push it off until the next
15 in-person meeting.

16 - DISCUSSION OF TIMETABLE FOR FUTURE BRIEFINGS

17 CHAIRMAN REYNOLDS: Okay. Mr. Staff
18 Director, please share your thoughts regarding a
19 timetable for future briefings.

20 STAFF DIRECTOR DANNENFELSER: Thank you,
21 Mr. Chairman.

22 I would like to point out also just
23 relating to briefing reports, that the illegal
24 immigration report is currently with commissioners.
25 And we have a time line for recommended edits to that

1 report, comments on that report and recommended edits
2 to the report, of January 3rd and that the staff would
3 then send out an amended report by January 8th so that
4 we could consider it at the January 15th meeting.

5 The other topic regarding timetables for
6 future briefings, we did have some e-mail discussion
7 about the possibility of having an in-person meeting
8 on January 29th. But it appears that that is not
9 going to work very well for some commissioners. So
10 the next in-person meeting would be February 12th.

11 Of course, the first topic that
12 commissioners chose was the age discrimination and
13 employment issue. So that's just a matter of whether
14 February 12th would be a good time to do that or is
15 that potentially going to be a date on which another
16 hearing or other action might be considered by the
17 Commission?

18 CHAIRMAN REYNOLDS: Comments?

19 COMMISSIONER GAZIANO: That might be a
20 time when we would be ready to have a hearing on the
21 New Black Panther matter, but that is something that I
22 suppose we can get a better feel for by the end of
23 this week.

24 COMMISSIONER HERIOT: Well, I would be
25 inclined to prioritize a hearing on a New Black

1 Panther matter if that's possible, and, if that turns
2 out not to be possible, to put in the age
3 discrimination briefing.

4 STAFF DIRECTOR DANNENFELSER: We would
5 have to know pretty soon about picking a date for the
6 age discrimination just for lining up panelists and
7 getting them to commit their schedules for
8 participation.

9 COMMISSIONER YAKI: This is Commissioner
10 Yaki. I don't see why we wouldn't go ahead with the
th

11 age discrimination for February 12 , given that
12 anything regarding the NBPP is going to be in flux
13 anyway.

14 If you're going to have a hearing, I
15 suppose that we could discuss what might be a
16 convenient time for everyone to adjust, and putting an
17 extra hearing date in on just that particular matter
18 anyway because, at a hearing, if I recall from
19 previous engagements on this, a quorum is not
20 necessary for a hearing to go forward.

21 So it's a much more flexible procedure
22 than our regular schedules and dealing with the
23 regularly scheduled meeting, we would take the 12th
24 for the age discrimination hearing and just get that
25 one down so we can move on to the next.

1 COMMISSIONER HERIOT: Well, I assume the
2 same is true for a briefing. If we don't need a
3 quorum for a hearing, I assume we also do not need a
4 quorum for a briefing.

5 COMMISSIONER YAKI: Yes, except that we
6 have certainty in terms of a topic right now with age
7 discrimination. And we have been sort of lining
8 people up for that now. Given the fact that we may
9 be, and maybe it's speculative, we might have an idea
10 on whether the NBPP could be done in February or not.

11 I would say let that one play looser, given our rules
12 on hearing.

13 It's not a briefing. It's a hearing.

14 COMMISSIONER HERIOT: Again, the same
15 rules apply in this regard. I still would maintain
16 that we should prioritize the hearing over --

17 COMMISSIONER YAKI: Why should we have a
18 hearing when we don't know exactly what the date is --

19 COMMISSIONER GAZIANO: The reason to give
20 it --

21 COMMISSIONER YAKI: If the Staff Director
22 needs to move in order to get witnesses for age
23 discrimination, why not let him do that? And then as
24 things are up with the New Black Panther party --

25 COMMISSIONER HERIOT: Because there's a

1 deadline on the enforcement reports.

2 COMMISSIONER GAZIANO: Exactly.

3 CHAIRMAN REYNOLDS: But there is not a
4 deadline on briefing reports.

5 COMMISSIONER GAZIANO: Exactly.

6 COMMISSIONER YAKI: Well, I know we have
7 no deadline on briefing reports. The issue here is
8 whether or not there is even one percent of a chance
9 that we would have enough information to go forward on
10 February 12th.

11 Otherwise we miss all opportunities on the
12 12th. I would rather get at least one thing in for
13 sure that we know we can do. And then if we have to
14 go on February 11th with the New Black Panther party,
15 why not?

16 COMMISSIONER GAZIANO: Well, I think I've
17 heard this informally, but this is for the Staff
18 Director. Why couldn't we be ready January 15th for
19 the age discrimination briefing?

20 STAFF DIRECTOR DANNENFELSER: Well, right
21 now we are inside a month. Our main concern with
22 January 15th for the age discrimination is that
23 panelists getting statements in, as far as lining them
24 up, getting them confirmed, and then having them write
25 their statements over the holidays and getting those

1 statements to commissioners in time for them to have
2 sufficient time to review, would be very difficult at
3 this point in time.

4 COMMISSIONER YAKI: I think what the Staff
5 Director is trying to say, I am trying to say, is that
6 the quality of and possibly quantity of witnesses who
7 would be willing to engage in a testimony-writing
8 process during the holidays would probably inhibit the
9 number of people who might want to volunteer. That's
10 having a hearing where all of our A choices may not be
11 available.

12 COMMISSIONER HERIOT: Again, given that we
13 have a deadline on the enforcement report, it would
14 strike me as prudent to prioritize that over this
15 briefing.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER YAKI: We can prioritize it,
18 but I don't understand why we prioritize it over a
19 date when we have flexibility in dates for the New
20 Black Panther party because, at a hearing, you don't
21 need a quorum.

22 (Cross-talk.)

23 COMMISSIONER HERIOT: As I said --

24 COMMISSIONER YAKI: -- up there by himself
25 pontificating, whatever.

1 COMMISSIONER HERIOT: That's also true of
2 a briefing. We can hold a special date on which we
3 don't need a quorum.

4 CHAIRMAN REYNOLDS: Okay. Folks, we've
5 heard apparently all of the arguments.

6 STAFF DIRECTOR DANNENFELSER: We want to
7 look at March 12th for the age discrimination and with
8 the --

9 COMMISSIONER GAZIANO: Why don't just
10 agree on the priority and we're going to have one of
11 these on the 12th and leave that to the discretion of
12 -- maybe we'll leave it to the discretion of the
13 Chairman based on the report of the Discovery
14 Subcommittee and other factors that the Staff Director
15 will provide to him.

16 COMMISSIONER YAKI: I have a point of
17 order here. Where is this Discovery Subcommittee? I
18 have yet to hear a single report on it.

19 COMMISSIONER GAZIANO: You resigned twice,
20 as I recall.

21 COMMISSIONER HERIOT: Yes.

22 COMMISSIONER YAKI: Commissioner Gaziano,
23 what the heck does that have to do with any
24 transparency process that would have the Discovery
25 Committee report to the entire Commission? I have not

1 seen a single report from the Discovery Subcommittee
2 to the Commission on what it is you or whoever else is
3 on that is doing. I think I demand that --

4 COMMISSIONER GAZIANO: Yes, you have.
5 Yes, you have. We give oral reports at every meeting.
6 And usually you try to cut me off.

7 (Cross-talk.)

8 COMMISSIONER GAZIANO: Usually you try to
9 cut me off, as you are right now, as you are right
10 now.

11 COMMISSIONER YAKI: Are there written
12 reports, Commissioner Gaziano? I seem to recall you
13 speaking over me three times already today. So excuse
14 me. I am just trying to figure out, have there been
15 written Discovery Committee reports?

16 COMMISSIONER GAZIANO: No.

17 CHAIRMAN REYNOLDS: Commissioner Yaki, one
18 at a time. I am not sure that there was an
19 expectation that there would be written reports from
20 the Subcommittee.

21 In fact, I am not sure that, at least in
22 my memory, that has ever been done. In most
23 instances, the updates have been done verbally.

24 COMMISSIONER YAKI: Commissioner Braceras
25 used to produce written reports when we were working

1 on some of the fundamental changes early on when we
2 were dealing with this four years ago.

3 COMMISSIONER GAZIANO: Okay. Don't expect
4 them from the Discovery Committee.

5 COMMISSIONER YAKI: I just want that on
6 the record that you have no intention of producing
7 anything in writing other than whatever you choose to
8 say in public. I think that is wrong. I think that
9 minutes should be required. I think that there should
10 be written reports.

11 CHAIRMAN REYNOLDS: Commissioner Yaki?

12 COMMISSIONER YAKI: And I think that
13 Commissioner Melendez and myself will have a hard time
14 approving anything today with regard to this kind of
15 prioritization without some commitment that we get
16 Discovery Subcommittee minutes and written reports. I
17 assumed this is the enforcement report, but
18 apparently, I guess, it is not so critical that there
19 be any written record or transparency as part of the
20 process.

21 I would urge Commissioner Melendez to join
22 me in not engaging in this process, prioritization
23 process, that you seem to be engaging without some
24 commitment that the Discovery Subcommittee opens
25 itself up to the process.

1 CHAIRMAN REYNOLDS: Commissioner Yaki, in
2 just about every meeting since we elected to do this,
3 we have received updates. The General Counsel has
4 provided us with updates on a regular basis.

5 Now, if you want to have a different
6 procedure, if you want to have formal procedures where
7 we have a write-up of what is going on in any
8 subcommittee, as you know, you are welcome to draft
9 some procedures and to see if you can garner a
10 majority of votes to support your position.

11 COMMISSIONER YAKI: I want it on the
12 agenda for January.

13 CHAIRMAN REYNOLDS: That's fine.
14 Anything else?

15 COMMISSIONER MELENDEZ: Yes. This is
16 Commissioner Melendez. Would it be a problem to write
17 something up?

18 CHAIRMAN REYNOLDS: That would be up to
19 the folks who support Commissioner Yaki's suggestion.

20 COMMISSIONER MELENDEZ: Or, else, in the
21 minutes, is there a section that says this is from the
22 subcommittee to support what they say if it's orally
23 to the Committee?

24 There's a section in the minutes that, if
25 we are going to substitute an oral report, then it

1 should be designated in the minutes that this is it.

2 And whatever you say is whatever it is.

3 CHAIRMAN REYNOLDS: We have a transcript.

4 We have a transcript for each meeting. So the
5 presentation that is made by the General Counsel
6 regarding what is going on in the subcommittee, we
7 have a written document already.

8 COMMISSIONER YAKI: Yes. But here is the
9 problem. The problem is that we hear about this
10 orally at the time. For example, at the last meeting,
11 the last in-person meeting we had, there was a
12 discussion about written interrogatories or questions
13 going over to DOJ.

14 Now, for those of us who are interested in
15 this project for reasons other than Commissioner
16 Gaziano, the fact that there were written
17 interrogatories going over and we were just being
18 informed about it at the meeting and those
19 interrogatories were headed over by the end of the
20 day, it is hardly enough notice for us to participate
21 in any meaningful way.

22 If the Discovery Subcommittee, as part of
23 the agenda, was required to submit a report to what
24 activities it was doing so that we knew what the heck
25 was going on, we would have had, I would have had more

1 time.

2 As it was, I spent time during the meeting
3 rapidly drafting up some questions to be handed in. I
4 do not know if they were incorporated or not. I have
5 not seen the final version of those, but I assume they
6 were.

7 CHAIRMAN REYNOLDS: Commissioner Yaki,
8 isn't this --

9 (Cross-talk.)

10 CHAIRMAN REYNOLDS: Commissioner Yaki,
11 your inconvenience, isn't that a direct consequence of
12 your decision to leave the subcommittee?

13 COMMISSIONER YAKI: Well, why should I --
14 it is a direct consequence of the fact that there has
15 to be transparency in this, at this Commission and in
16 this process.

17 The fact that I chose not to join the
18 subcommittee or the kangaroo court is irrelevant to
19 whether or nor the entire Commission should be
20 afforded the opportunity to know what the Discovery
21 Subcommittee is doing ahead of time so that we can
22 prepare questions to be answered during our regularly
23 scheduled briefing.

24 COMMISSIONER GAZIANO: Commissioner Yaki,
25 to answer your question, the General Counsel could as

1 well. He held up the interrogatories to include
2 yours. And they were so included.

3 Thank you for your bipartisan support.

4 COMMISSIONER YAKI: Well, you know, it's
5 interesting that you talk about that, Commissioner
6 Gaziano was ranting about stonewalling, because the
7 fact is that I feel that there is a lot of
8 stonewalling going on regarding exactly what the
9 Discovery Subcommittee is doing in terms of its
10 pursuit of this. We have to basically extract it as
11 best we can from the oral presentations at our
12 meetings. And I think that is simply unacceptable.
13 Therefore --

14 CHAIRMAN REYNOLDS: Commissioner Yaki,
15 would you like to rejoin the subcommittee? Would you
16 like to serve on the subcommittee?

17 COMMISSIONER YAKI: Absolutely not. Why
18 should I give any legitimacy to a process that I
19 believe is a kangaroo court to begin with? And why
20 should that matter in terms of the other members of
21 the Commission, Commissioner Melendez, Commissioner
22 Thernstrom, Commissioner Taylor, who may wish to know
23 what is going on and be able to have access to that
24 information to know that you prepare questions to the
25 General Counsel and have it ready prior to the

1 meeting, rather than having to discover on the fly and
2 after the fact?

3 Whether or not I am on the committee is
4 irrelevant to the greater obligation to this
5 Commission.

6 CHAIRMAN REYNOLDS: Okay. Well, we are
7 going to put this issue on the agenda for the next
8 business meeting. I assume that you will have some
9 formal procedures that you would present to the
10 commissioners and we'll have a discussion and vote on
11 it.

12 COMMISSIONER YAKI: Well, until it
13 happens, I am not going to vote on prioritizing NBPP.
14 It will be the age discrimination provisions. I
15 don't think that we should vote on it. I don't think
16 that we should do that until this is done.

17 And at this point, I think I will probably
18 be leaving the briefing.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER GAZIANO: I don't know that
21 we need a vote. Do we need a vote, Mr. Chair?

22 CHAIRMAN REYNOLDS: Not on this issue.

23 COMMISSIONER GAZIANO: Just to decide
24 which matter to put on the February calendar?

25 COMMISSIONER HERIOT: I think the Chairman

1 has that inherent authority.

2 COMMISSIONER GAZIANO: I think so. So I
3 think you can decide what to put on. Would you like a
4 motion and a vote, Mr. Chairman?

5 CHAIRMAN REYNOLDS: Yes.

6 COMMISSIONER GAZIANO: Okay. I move to
7 give the Chair discretion to decide that based on
8 various appropriate inputs.

9 CHAIRMAN REYNOLDS: Commissioner Gaziano,
10 how do you vote?

11 COMMISSIONER GAZIANO: Yes.

12 COMMISSIONER HERIOT: Wait, wait, wait.
13 Back up. Second.

14 COMMISSIONER GAZIANO: Okay. Yes. I vote
15 yes, too.

16 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Heriot?

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Melendez?

21 COMMISSIONER MELENDEZ: I'll abstain. I'm
22 not sure.

23 CHAIRMAN REYNOLDS: Okay. Commissioner
24 Yaki?

25 (No response.)

1 CHAIRMAN REYNOLDS: And I vote for it. So
2 let the record reflect that Commissioner Melendez
3 abstained. Commissioners Gaziano, Kirsanow, Heriot,
4 and Reynolds voted in favor of the motion. The motion
5 passes.

6 IV. APPROVAL OF DECEMBER 4, 2009 MEETING MINUTES

7 CHAIRMAN REYNOLDS: Next up is the
8 approval of the December 4, 2009 meeting. I move that
9 these minutes be accepted. Is there a second?

10 COMMISSIONER GAZIANO: Second.

11 CHAIRMAN REYNOLDS: Discussion?

12 COMMISSIONER GAZIANO: Could I just ask
13 that the two discussion on the letter to Congress be
14 merged together so someone reading our minutes will
15 sort of -- I think that it could or that first section
16 could also be edited down on page.

17 And then I would ask one word change on
18 page 5, in the discussion on the letter to Congress on
19 the health care bill that the motion I made was that
20 "The Commission adopt the following procedure to
21 consider the letter," rather than "to adopt the
22 letter," but that those two sections be merged
23 together.

24 CHAIRMAN REYNOLDS: Okay. I'll treat
25 those as friendly amendments unless someone has an

1 objection. Any other changes?

2 STAFF DIRECTOR DANNENFELSER: Mr. Chair,
3 it is the Staff Director. I got a couple of e-mails
4 from Commissioner Gaziano's assistant pointing, out a
5 few typos. And we will make those corrections.

6 And also the Vice Chair's assistant has
7 pointed out that, regarding findings 1, 2, 3, and 5
8 from MEPA, I would also like to point out that the
9 findings were approved as amended. So I think those
10 are technical corrections that we could make to the
11 minutes.

12 CHAIRMAN REYNOLDS: Okay. All right.
13 With Todd's amendment and making the grammatical and
14 technical changes described by the Staff Director,
15 Commissioner Gaziano, how do you vote?

16 COMMISSIONER GAZIANO: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Heriot?

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Melendez?

22 COMMISSIONER MELENDEZ: Just for the
23 record, I'll abstain based on the fact that the
24 minutes weren't in the booklet that was sent to me.

25 CHAIRMAN REYNOLDS: Okay. I vote for it.

1 Commissioner Yaki?

2 COMMISSIONER YAKI: Abstain.

3 CHAIRMAN REYNOLDS: Okay. We have two
4 abstentions: one from Commissioner Melendez.

5 COMMISSIONER YAKI: Excuse me. I didn't
6 hear you record my vote on the other motion.

7 COMMISSIONER HERIOT: I didn't hear your
8 vote.

9 COMMISSIONER YAKI: There is something
10 weird where I'm cutting in and out on the -- I'm in my
11 mobile, and I am cutting in and out on the briefing
12 right now.

13 CHAIRMAN REYNOLDS: Okay. Kind sir, how
14 did you vote?

15 COMMISSIONER YAKI: No.

16 CHAIRMAN REYNOLDS: Okay. Please let the
17 record reflect that Commissioner Yaki voted no to
18 Todd's motion to provide the Chair with the authority
19 to prioritize the agenda.

20 COMMISSIONER HERIOT: The agenda, yes.

21 CHAIRMAN REYNOLDS: Yes. Bear with me.

22 V. STAFF DIRECTOR'S REPORT

23 CHAIRMAN REYNOLDS: Next up, Mr. Staff
24 Director, please provide us with your report.

25 STAFF DIRECTOR DANNENFELSER: Thank you,

1 Mr. Chairman. I just have a couple of points to make
2 today.

3 I may turn to Commissioner Melendez in a
4 moment. Commissioner Melendez has selected a new
5 special assistant. And that individual will be
6 beginning next Monday. I believe he will be based in
7 Washington, D.C. And I would just ask if Commissioner
8 Melendez would like to just tell us a little bit more
9 about this person at this point in time.

10 COMMISSIONER MELENDEZ: All right. Yes.
11 Nick Colten will be coming on board. And I appreciate
12 the fact that we have kind of expedited getting him on
13 board because I need some help. He is a young guy
14 that should be able to help me out. So hopefully you
15 will all be able to meet him in the office because he
16 will be based there.

17 So thank you.

18 CHAIRMAN REYNOLDS: Okay.

19 COMMISSIONER GAZIANO: Commissioner
20 Melendez, may I just ask? I hope that the White House
21 has provided its speedy approval, but could you just
22 tell me if that process has happened yet?

23 COMMISSIONER MELENDEZ: They submitted the
24 paperwork for the White House clearance, my
25 understanding. So I don't think it has been approved

1 at this point, but he will be on board, as we have
2 with other special assistants, if the clearance
3 actually happens.

4 COMMISSIONER GAZIANO: Okay. I certainly
5 have no objection to us using one of our emergency
6 authorities, but let the record reflect that I think
7 other commissioners had to wait a month or more before
8 we employed that emergency authority.

9 I see no reason why we necessarily should
10 do that in your case since the White House is so slow,
11 but I think you are getting special treatment.

12 COMMISSIONER MELENDEZ: Well, whatever.

13 COMMISSIONER YAKI: Commissioner Gaziano
14 says what?

15 CHAIRMAN REYNOLDS: I'm sorry,
16 Commissioner Yaki, please repeat your question.

17 COMMISSIONER YAKI: Commissioner Gaziano
18 is what?

19 COMMISSIONER GAZIANO: That Commissioner
20 Melendez was getting special treatment.

21 COMMISSIONER YAKI: And do you have your
22 allegation is to reinforce that comment or you just --

23 COMMISSIONER GAZIANO: You see --

24 COMMISSIONER YAKI: -- are talking off the
25 top of your head?

1 COMMISSIONER GAZIANO: -- conspiracy
2 theories everywhere, Commissioner Yaki.

3 COMMISSIONER YAKI: I don't see conspiracy
4 theories, Commissioner Gaziano. You're the one who
5 sees the --

6 CHAIRMAN REYNOLDS: Why don't you --

7 COMMISSIONER YAKI: Commissioner Gaziano,
8 I think, needs a little calming down.

9 CHAIRMAN REYNOLDS: Commissioner Yaki,
10 Commissioner --

11 COMMISSIONER GAZIANO: The pot calling the
12 kettle what?

13 CHAIRMAN REYNOLDS: You can call each
14 other and insult each other after we're done here.
15 Okay, folks. That would be --

16 COMMISSIONER YAKI: I'm just asking him
17 about his comment. That's all.

18 CHAIRMAN REYNOLDS: Mr. Staff Director, do
19 you have anything else?

20 STAFF DIRECTOR DANNENFELSER: Just that I
21 sent commissioners some follow-up information relating
22 to the commissioners' special assistants, the grade
23 level situation.

24 So that was sent by e-mail to
25 commissioners yesterday. So anybody who has any

1 questions or would like to act on that paperwork that
2 was sent to them, please feel free to do so. And if
3 you have any questions, please direct them to
4 TinaLouise Martin or myself.

5 CHAIRMAN REYNOLDS: All right. Well,
6 folks, that's it.

7 COMMISSIONER YAKI: I have a question of
8 the Staff Director.

9 CHAIRMAN REYNOLDS: Commissioner Yaki,
10 what's your question?

11 COMMISSIONER YAKI: What was our funding
12 level in the omnibus appropriations bill that passed
13 the House this week?

14 STAFF DIRECTOR DANNENFELSER: It was \$9.4
15 million.

16 COMMISSIONER YAKI: Okay.

17 STAFF DIRECTOR DANNENFELSER: Thanks for
18 pointing that out. The House did, Thursday of last
19 week, pass the omnibus appropriations bill. And the
20 Senate passed it on Sunday. So that did. And we
21 expect the President, if he hasn't already signed it,
22 will be signing it very soon. And that will provide a
23 \$9.4 million level for fiscal year 2010.

24 COMMISSIONER MELENDEZ: Commissioner
25 Melendez. I have a question here. Is there any new

1 staff that has come on board that we should know
2 about?

3 STAFF DIRECTOR DANNENFELSER: No, there
4 has not been any new staff.

5 CHAIRMAN REYNOLDS: Well, other than the
6 budget?

7 STAFF DIRECTOR DANNENFELSER: I'm sorry.
8 Well, the Budget Chief came on board. I announced
9 that at the last meeting. So he has been on board for
10 a few weeks now.

11 COMMISSIONER MELENDEZ: Who is that?

12 STAFF DIRECTOR DANNENFELSER: John
13 Ratcliff.

14 COMMISSIONER MELENDEZ: Okay. I thank
15 you, Martin. And thank you for your help in the
16 special assistant. I wasn't looking for any special
17 treatment. I was just asking, how can we expedite
18 getting me some help. So that was the extent that I
19 inquired. So thank you.

20 STAFF DIRECTOR DANNENFELSER: You're
21 welcome. Thanks.

22 COMMISSIONER YAKI: So apparently,
23 Commissioner Gaziano, he had special treatment from
24 the Staff Director. Perhaps you should address your
25 comment there.

1 COMMISSIONER GAZIANO: Commissioner Yaki,
2 for the record, please, since I have been insulted
3 three times now --

4 CHAIRMAN REYNOLDS: Well, why don't you --

5 COMMISSIONER GAZIANO: No. For the
6 record, for the record, for the record, I spoke up to
7 approve the favorable treatment that Commissioner
8 Melendez was getting. And I don't know how
9 Commissioner Yaki decides that is not only wrong but
10 invidious. He's obviously in a very bad mood, but I
11 wanted the record to reflect --

12 (Cross-talk.)

13 COMMISSIONER YAKI: Commissioner Gaziano,
14 it's a great time of the year.

15 CHAIRMAN REYNOLDS: Okay, folks.

16 COMMISSIONER YAKI: Being around you is
17 like being around the Grinch.

18 CHAIRMAN REYNOLDS: Commissioner Yaki,
19 just to tie a bow around this, I believe that
20 Commissioner Melendez, because he conducts himself as
21 a gentleman, is entitled to a little special
22 treatment.

23 On that note, folks, we adjourn.

24 (Whereupon, the foregoing matter was
25 concluded at 12:43 p.m.)

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