

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, JANUARY 13, 2017

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The Commission convened in Suite 1150 at
1331 Pennsylvania Avenue, Northwest, Washington, D.C.
at 10:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner*

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

* *Present via telephone***NEAL R. GROSS**

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STAFF PRESENT:

ROBERT AMARTEY

LASHONDRA BRENSON

BARBARA DE LA VIEZ

PAMELA DUNSTON, Chief, ASCD

LATRICE FOSHEE

ALFREDA GREENE

JENNIFER HELPER, Parliamentarian

JEFF KNISHKOWY

JOHN RADCLIFFE

MICHELE RAMEY

BRIAN WALCH

MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

ALISON SOMIN

IRENA VIDULOVIC

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P R O C E E D I N G S

(10:02 a.m.)

CHAIR LHAMON: I'll call this meeting of the U.S. Commission on Civil Rights to order at, I think it is 10:02 on January 13th, 2017. We are having this meeting take place at our Commission headquarters, which is at 1331 Pennsylvania Avenue, N.W., Washington, DC. I'm chair Catherine Lhamon. That's my gavel used for the first time.

In addition to me, Commissioners who are present at this meeting are Vice Chair Timmons-Goodson, Commissioner Heriot, Commissioner Narasaki, Commissioner Kladney and Commissioner Adegbile. Commissioner Kirsanow is joining us by phone.

Do we know if Commissioner Kirsanow is on the phone? He can announce himself when he joins us. Is the court reporter present? She is. Is our staff director, Mr. Mauro Morales, present?

MR. MORALES: I am present.

CHAIR LHAMON: Terrific. The meeting now comes to order. Before we approve the agenda, I understand that the Vice Chair has a few words to say.

VICE CHAIR TIMMONS-GOODSON: Good morning, all. I want to take this opportunity to welcome our two newest Commissioners, Debo Adegbile and

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1 Catherine Lhamon, both of whom have in the words of
2 President Obama a demonstrated knowledge and
3 dedication throughout their careers.

4 Commissioner Adegbile comes to us with a
5 distinguished civil rights career. He was counsel and
6 director, among other positions, at the NAACP Legal
7 Defense and Educational Fund, and senior counsel for
8 the U.S. Senate Judiciary Committee.

9 Currently, he's a partner at the
10 prestigious law firm of Wilmer Cutler Pickering Hale
11 and Dorr. He's argued cases before the U.S. Supreme
12 Court and often speaks about the Supreme Court and
13 anti-discrimination law topics. We welcome you,
14 Commissioner Adegbile.

15 COMMISSIONER ADEGBILE: Thank you.

16 VICE CHAIR TIMMONS-GOODSON: Chairman
17 Lhamon also comes to us with a distinguished civil
18 rights career. Since 2013, she's served as Assistant
19 Secretary of the Office of Civil Rights at the U.S.
20 Department of Education. She was an attorney and legal
21 director, among other positions, at the Southern
22 California ACLU.

23 She has served as director of Impact
24 Litigation at Public Counsel, that I understand is the
25 nation's largest pro bono law firm. With such a

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1 breadth and depth of civil rights knowledge, there's
2 no doubt that Commissioner Adegbile and Chair Lhamon
3 will be fine additions to this Commission.

4 Now following the appointment in December
5 of last year, President Obama designated Catherine
6 Lhamon our chair. Her fellow Commissioners unanimous
7 confirmed that appointment.

8 Chairman Lhamon, we are and believe that
9 you're going to be an exceptional leader in the finest
10 tradition of this great Commission, and together we're
11 all going to work to ensure that the Commission
12 continues to be a vital part of the efforts to make an
13 America that is truly equal.

14 So again, on behalf of the Commission, we
15 all welcome you and look forward to working with you
16 on important civil rights matters on behalf of the
17 American public.

18 CHAIR LHAMON: Thank you very much.

19 VICE CHAIR TIMMONS-GOODSON: Having said
20 that, I don't know if you want to say anything or reserve
21 your remarks for later or what. But just know that you
22 are welcome.

23 CHAIR LHAMON: Well, I will say thank you
24 very much for those remarks.

25 Commissioner Adegbile, do you have

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1 anything else?

2 COMMISSIONER ADEGBILE: So I just wanted
3 to begin with a thanks for being here and being your
4 colleague, and a thanks to the folks that make these
5 meetings happen.

6 Every agency has people that keep it
7 running and I'd like to thank Ms. Dunston and Tina
8 Louise Martin, Mauro Morales, our wonderful general
9 counsel Maureen, and I look forward to collaborating
10 with each of you and to serving on the Commission in
11 service of the American people. Thank you.

12 **APPROVAL OF AGENDA**

13 CHAIR LHAMON: Thank you, thank you. So
14 we will now begin approval of the agenda. I understand
15 that before we actually consider approval of the
16 agenda, we may have a few amendments. Are there any
17 amendments to the proposed agenda?

18 COMMISSIONER KLADNEY: Yes, Madam Chair.
19 Dave Kladney here. I'd like to amend the agenda as is
20 written to ask that we seek approval of the letters that
21 the Michigan SAC requested us to send that were
22 circulated by my office, as well as the North Dakota
23 Freedom of Information Act letters that my office also
24 circulated, I think, to all the Commissioners. Thank
25 you.

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1 CHAIR LHAMON: Is there a second?

2 COMMISSIONER NARASAKI: I second.

3 CHAIR LHAMON: Terrific, thank you. Do
4 you have any -- oh, we should vote on -- do you have
5 any other amendments. Yes.

6 COMMISSIONER NARASAKI: Thank you Madam
7 Chair. I would like to add to the agenda a discussion
8 vote on the disposition of the State Immigration and
9 Civil Rights of Vets reports, and also to clarify the
10 vote that we took on the HITECH report.

11 COMMISSIONER KLADNEY: I'll second that
12 motion.

13 CHAIR LHAMON: Okay. Do we have any other
14 amendments?

15 COMMISSIONER KLADNEY: We can do that
16 later.

17 CHAIR LHAMON: Okay. So no other
18 amendments? Okay. Do we have a motion to approve the
19 agenda, as amended?

20 VICE CHAIR TIMMONS-GOODSON: So moved.

21 COMMISSIONER KLADNEY: I'll second.

22 CHAIR LHAMON: Terrific. So let's go
23 ahead with the vote. If there are no further
24 amendments, let's vote to approve it. All those in
25 favor say aye?

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1 (Chorus of ayes.)

2 CHAIR LHAMON: Any opposed? Any
3 abstentions?

4 (No response.)

5 CHAIR LHAMON: Looks like we have
6 unanimous approval of the amended agenda. So why don't
7 we now start with our agenda items.

8 **PROGRAM PLANNING**

9 **OCRE PROGRAM PLANNING UPDATES**

10 CHAIR LHAMON: First, we'll talk about
11 program planning, and I understand we have four agenda
12 items under discussion now for program planning. The
13 OCRE Program Planning discussion and vote. Should we
14 start there?

15 COMMISSIONER KLADNEY: Madam Chair, I
16 believe it's in order to consider what Commissioner
17 Narasaki has requested, in terms of consideration of
18 changing two of the reports, and I believe the general
19 counsel and head of our OCRE, Maureen Rudolph, has
20 recommended three dates for planning for the briefings.

21 She wants to hold a telephonic meeting in
22 another week or two to get into more detail as to her
23 rationale and what the status of those reports are,
24 because I know those are the top consideration of
25 Commissioners. Certainly, she's added additional

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1 staff and she's working through assignment of the
2 topics and will come forward in a few weeks in terms
3 of -- a week or so, when she has communication with all
4 of you as to what the schedule for those reports are.

5 So I believe Commissioner Narasaki has
6 made her motion to look at two of those reports. So
7 I'll defer to Commissioner Narasaki at this time.

8 COMMISSIONER NARASAKI: Thank you. So we
9 -- the Vice Chair had asked actually the general counsel
10 to provide some thoughts about how to clear out our
11 backlog of reports, and she recommended that the report
12 for the Veterans and State Immigration hearings be the
13 release of existing briefing transcripts, because both
14 of those hearings were over three and four years ago.

15 In the case of the State Immigration
16 hearing, there has been a lot of litigation in the
17 intervening years that has pretty much mooted out 90
18 percent of that report. So we think it is not the best
19 use of resources, because we'd basically have to start
20 over.

21 The other report, the veterans report, is
22 also very extensive. A lot has taken place again, with
23 the agencies involved. We think that the topics raised
24 were very good topics and important to get out into the
25 public, because they do reflect some ongoing issues

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1 that are relevant for what vets face today. So we would
2 like to get the transcripts out for the public to have.

3 Then the third thing that I wanted to do
4 was it was brought to my attention that the transcript
5 around our vote on the HITECH report was not clear.

6 When I offered that, the intention was to
7 say that we would consider that report subject to having
8 sufficient capacity. By that, we had talked about the
9 fact that we did have a large backlog of reports, that
10 we were bringing on new staff, and we wanted to make
11 sure that we had sufficient attention to get those
12 quality reports out.

13 So what I would like to also include is my
14 intent was not to actually move forward on that report,
15 but at a later time, after we had a sense of where we
16 could get to with the backlog and with the reports that
17 we had already approved, to consider it at that time.

18 CHAIR LHAMON: Thank you.

19 COMMISSIONER NARASAKI: So that's
20 basically my motion, is to -- sorry -- is to make the
21 State Immigration report and Veterans, Rights of
22 Veterans report, just the release of transcripts, and
23 to clarify that the HITECH briefing will be revisited
24 at a later time, once we have a better sense of where
25 we are in terms of our staff capacity.

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1 COMMISSIONER KLADNEY: I'll second that
2 motion.

3 CHAIR LHAMON: Okay. Why don't we go
4 ahead and -- sorry, do you have something to say?

5 COMMISSIONER HERIOT: May I just add one
6 thing about one thing about HITECH, and I don't know
7 whether this fits in the -- I'm sorry. I don't know
8 if this fits in well with what we're doing right now,
9 but I just want to say it.

10 You know, there was a talk a few years ago
11 that like we shouldn't have a meeting in August because
12 Washington is dead in August, and I just wanted to put
13 forward the point, the opposite point, and that is
14 because things are always dead in August, we are a
15 shoo-in for C-SPAN if we have a decent briefing in
16 August, and therefore one thing we might want to keep
17 in mind in the coming months, when we're trying to
18 figure out when to schedule HITECH employment, August
19 is a good month for that kind of thing.

20 CHAIR LHAMON: I'm certainly in favor of
21 using all the time that we have as well as we can so
22 --

23 COMMISSIONER HERIOT: Yeah. I'm in favor
24 of using August specially, because we will get
25 attention in August, because we are the only game in

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1 town.

2 MR. MORALES: May I opine on that? I just
3 want to caution Commissioners to keep in mind that in
4 August we are, you know, moving quickly to get out the
5 annual statutory enforcement report, and we're also
6 moving quickly to end the fiscal year. We have audit
7 issues come up. So sometimes August may be a bit of
8 a challenge, given some of our resource challenges here
9 at the Commission.

10 But having said that, we'll take it under
11 consideration and we'll advise you as we get closer to
12 those dates. So thank you.

13 CHAIR LHAMON: Perfect. So I think we
14 have a motion and a second. We should go ahead and vote
15 on the motion. Vice Chairman Timmons-Goodson, how do
16 you vote?

17 VICE CHAIR TIMMONS-GOODSON: I vote aye,
18 yes.

19 CHAIR LHAMON: Commissioner Heriot, how
20 do you vote?

21 COMMISSIONER HERIOT: Yes.

22 CHAIR LHAMON: Commissioner Narasaki, how
23 do you vote?

24 COMMISSIONER NARASAKI: Yes.

25 CHAIR LHAMON: Commissioner Adegbile, how

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1 do you vote?

2 COMMISSIONER ADEGBILE: Aye.

3 CHAIR LHAMON: Sorry Commissioner
4 Kladney, I skipped you. How do you vote?

5 COMMISSIONER KLADNEY: Yes.

6 CHAIR LHAMON: And I vote aye. I believe
7 that Commissioner Kirsanow still has not joined us?

8 COMMISSIONER KIRSANOW: I'm on the
9 phone.

10 CHAIR LHAMON: Terrific. How do you
11 vote?

12 COMMISSIONER KIRSANOW: No.

13 CHAIR LHAMON: Okay. So with one no and
14 zero abstentions, the motion passes.

15 COMMISSIONER KLADNEY: Madam Chair, I'd
16 like to make a motion, following up on the program
17 planning schedule. We have -- in March, we're going
18 to have a hearing on fines and fees, and I have talked
19 to the generalcounsel and we'd like -- I'd like to make
20 a motion that we schedule collateral consequences,
21 which was approved by the Commission for a hearing in
22 May.

23 And then I would also like to make a motion
24 that even though Women in Prison was scheduled for 2017,
25 that we move that off to the next fiscal year, and then

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1 as we move along we will figure out what we're going
2 to put in some other time like August maybe.

3 CHAIR LHAMON: It's a great month.

4 COMMISSIONER KLADNEY: That's my motion.

5 VICE CHAIR TIMMONS-GOODSON: I'll second
6 that motion.

7 CHAIR LHAMON: And I just want to clarify,
8 that you're making that motion in consultation with the
9 general counsel, so we have confidence about staff
10 capacity.

11 COMMISSIONER KLADNEY: Yes.

12 CHAIR LHAMON: Perfect, thanks. So with
13 a motion and a second, go ahead and vote. I'll try to
14 do our votes in order again this time. Vice Chair
15 Timmons-Goodson, how do you vote?

16 VICE CHAIR TIMMONS-GOODSON: Yes.

17 CHAIR LHAMON: Commissioner Kirsanow, how
18 do you vote?

19 COMMISSIONER KIRSANOW: Yes.

20 CHAIR LHAMON: Commissioner Heriot, how
21 do you vote?

22 COMMISSIONER HERIOT: Yes.

23 CHAIR LHAMON: Commissioner Kladney, how
24 do you vote?

25 COMMISSIONER KLADNEY: Yes.

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1 CHAIR LHAMON: Commissioner Narasaki, how
2 do you vote?

3 COMMISSIONER NARASAKI: Yes.

4 CHAIR LHAMON: Commissioner Adegbile, how
5 do you vote?

6 COMMISSIONER ADEGBILE: Aye.

7 CHAIR LHAMON: I vote yes as well. So
8 that one was unanimous, thank you. Okay. So then
9 given that last vote, do we need to vote on the 2017
10 briefing schedule or was that --

11 MR. MORALES: That was it.

12 CHAIR LHAMON: That was it. So we're
13 good, okay. Then we're going to discuss and vote the
14 Michigan SAC letter.

15 So Commissioner Kladney, will you lead our
16 discussion?

17 COMMISSIONER KLADNEY: Thank you. We had
18 the Michigan SAC chair come speak to us about their
19 latest, their latest report, and asked us to write
20 letters to certain state folks. I believe Amy worked
21 with the staff and got those letters written, and it
22 was on civil rights and civil forfeiture.

23 Those letters have been circulated, and I
24 would like to make a motion that we approve them and
25 send them off to the appropriate people that they're

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1 addressed to, per the request of the state of Michigan
2 -- the Michigan State Advisory Committee.

3 CHAIR LHAMON: Thank you. In the middle
4 of discussion, before I ask for a second, I might modify
5 some of the text of the letters. It's, I think, just
6 a little bit of editing, but I think we asked that the
7 various recipients of the letters both review and
8 implement the recommendations. I would like them to
9 review and take necessary steps to assure civil rights.

10 So if folks are comfortable with that minor
11 modification to the letters, I'd be comfortable with
12 the motion.

13 COMMISSIONER KLADNEY: That's fine with
14 me.

15 CHAIR LHAMON: Thank you.

16 COMMISSIONER HERIOT: Now that might
17 alter my plans here, because what I had thought that
18 I would do is not sign on to this letter, but send like
19 a separate letter that is a little bit less forward.
20 I was concerned about the implement language as well.

21 But I actually think that I can write
22 something that -- a separate letter, two paragraphs
23 that would be helpful, to point out that this is an issue
24 that is much more bipartisan than I think some of the
25 issues that we deal with, and so I'm happy if you change

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1 the language.

2 But I think I'm still going to write a
3 separate letter, rather than this one, but it's
4 basically going to be a supportive letter.

5 CHAIR LHAMON: Thank you.

6 VICE CHAIR TIMMONS-GOODSON: Well, I
7 guess I'm a bit puzzled. So there would then be two
8 letters coming from the Commission?

9 COMMISSIONER HERIOT: No. A letter from
10 me and possibly Commissioner Kirsanow, saying that we
11 basically and we also would like for the entities to
12 review and think about the issues. I didn't agree with
13 all the recommendations in the Michigan report. So I
14 can't say review and implement. But I can say review
15 and consider, and I think I can add some things that
16 are not in the letter. So I think you're going to like
17 my letter, Madam Vice Chair.

18 VICE CHAIR TIMMONS-GOODSON: Well, I'm a
19 bit concerned about the Commission sending two pieces
20 of correspondence relating to the same topic to any
21 entity.

22 COMMISSIONER HERIOT: Well, it's not the
23 Commission sending it. It is Commissioner Heriot
24 sending it.

25 VICE CHAIR TIMMONS-GOODSON: Okay.

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1 That's a bit clearer.

2 COMMISSIONER NARASAKI: May I ask a
3 question?

4 COMMISSIONER HERIOT: Yes.

5 COMMISSIONER NARASAKI: So Commissioner
6 Heriot, is it -- do you think it's not possible for us
7 to work with you on trying to get one letter out, or
8 --

9 (Simultaneous speaking.)

10 COMMISSIONER HERIOT: I don't see how
11 we're going to be able to do it in this situation right
12 here, you know. The words have to be thought about and
13 it's not --

14 COMMISSIONER NARASAKI: No. What I was
15 contemplating is maybe we wait and see if we could work
16 out something.

17 COMMISSIONER HERIOT: Yeah. I'm happy
18 with that.

19 COMMISSIONER NARASAKI: If you think
20 that's possible. If you think --

21 COMMISSIONER HERIOT: Yes, I do think
22 that's possible.

23 COMMISSIONER NARASAKI: You know us, so if
24 you think it not possible, then we could go ahead.

25 COMMISSIONER HERIOT: Yeah. I think that

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1 is possible.

2 CHAIR LHAMON: Terrific. We talked about
3 having a telephonic meeting in about a week's time. So
4 maybe we can add this to the agenda of the telephonic
5 meeting, after we've had a chance to take a look at
6 language.

7 COMMISSIONER HERIOT: Fine.

8 CHAIR LHAMON: Commissioner Kladney, this
9 is your motion.

10 COMMISSIONER ADEGBILE: Can I raise one
11 more question? One of the things I was thinking about
12 as I read the letter is whether or not the letter is
13 directed to the right people in the respective
14 agencies, and there are certain people that actually
15 have the responsibility for administering some of the
16 programs.

17 So while I understand why the letter would
18 be directed to the head of civil rights, because it
19 raises civil rights concerns, it may be appropriate to
20 send it to more than one recipient, so that there can
21 be some internal conversation about the
22 recommendations of the report and due consideration
23 between the respective responsible parties at DOJ.

24 COMMISSIONER KLADNEY: I think that's a
25 very good idea. We should include, I think,

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1 legislative leaders as well because they actually wrote
2 the law. And I do agree that since this is my motion,
3 can we table it until we have our telephonic meeting,
4 and see if we can all get together and make this happen?

5 CHAIR LHAMON: Surely.

6 COMMISSIONER KLADNEY: Thank you.

7 MR. MORALES: May I comment? I'd like to
8 offer obviously our offices to work with special
9 assistants and try to come up with something that's
10 agreeable to all the Commissioners. So we'll work, you
11 know, if that's amenable to the Commissioners. Thank
12 you.

13 CHAIR LHAMON: I think we'd welcome that.
14 Thank you very much. Okay. So next we will discuss
15 and vote on the information request for Standing Rock.
16 Commissioner Kladney, it turns to you again.

17 COMMISSIONER KLADNEY: I believe Amy
18 Royce circulated a summary of her notes of what happened
19 out at Standing Rock. I know that Commissioner Heriot
20 and her assistant were not on the trip, as well as
21 Commissioner Narasaki and two new Commissioners. The
22 Chair and Commissioner Adegbile were not there.

23 So we sent around that little summary. I
24 didn't hear any objections to the summary or amendments
25 or anything like that, and I think it pretty well

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1 summarized what occurred.

2 So as a result of our inability to get
3 information from the government sources, as a result
4 of them actually being involved in a lawsuit, I'm sure
5 that's why they didn't want to give it up, I have drafted
6 these two letters of FOIA requests, which I feel is the
7 most unintrusive form of trying to seek additional
8 information since we made the trip, and really spoke
9 mostly with one side of this equation.

10 So I move that we approve these letters and
11 send them off, and see if we get a response. Thank you.

12 CHAIR LHAMON: Okay. Any further
13 discussion?

14 VICE CHAIR TIMMONS-GOODSON: Well, I
15 would second the motion. I think one, if a second is
16 needed.

17 CHAIR LHAMON: It is and welcome. Thank
18 you. I think that Commissioner Heriot also had maybe
19 some --

20 COMMISSIONER HERIOT: I just have, you
21 know, a question here. I'm concerned about our
22 jurisdiction issues here. I mean I haven't even heard
23 allegations that any of this is motivated by race. Is
24 there some evidence of that, something that gives us
25 ability to do this jurisdictionally?

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1 COMMISSIONER KLADNEY: Commissioner
2 Heriot, I'm not exactly sure whether this is a race only
3 type of issue. There was a use of force. Like I said,
4 we were focusing on the bridge incident that occurred
5 on I believe it was November 20th. Are you familiar
6 with that at all?

7 COMMISSIONER HERIOT: I know that there's
8 a concern about a bridge that was closed down.

9 COMMISSIONER KLADNEY: Right.

10 COMMISSIONER HERIOT: But what I -- you
11 say that you don't know whether it's a race only. Is
12 it a race any? I mean is there any evidence of race
13 as being the motivation here? I mean where's our
14 jurisdictional hook here?

15 COMMISSIONER KLADNEY: Oh, I think it's
16 excessive force on the evening of November 20th.

17 COMMISSIONER HERIOT: But what's the
18 evidence that it was race related?

19 CHAIR LHAMON: I think there's no question
20 that those allegations, that it was race related --

21 COMMISSIONER KLADNEY: It's -- I'm sorry.
22 I'm going blank right now, but an application of justice
23 -- hold on just a second. That's it. Sorry.
24 Administration of justice.

25 COMMISSIONER HERIOT: We have a

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1 disagreement, then, about what our jurisdiction is.
2 But the Chair was just saying that there's no question
3 that there are allegations. Is there any evidence of
4 it?

5 CHAIR LHAMON: Well, I think that's the
6 reason I prefer for the request, is to be able to
7 identify what evidence there is or is not. So this is
8 not taking a position about the conclusion. It's about
9 gathering information sufficient to be able to draw a
10 conclusion.

11 COMMISSIONER HERIOT: I'll go, okay.

12 COMMISSIONER KLADNEY: Thank you.

13 CHAIR LHAMON: So we have a motion and a
14 second. Is there any further discussion? So then
15 we'll go down our vote. Vice Chair Timmons-Goodson,
16 how do you vote?

17 VICE CHAIR TIMMONS-GOODSON: Yes.

18 CHAIR LHAMON: Commissioner Kirsanow, how
19 do you vote?

20 COMMISSIONER KIRSANOW: No.

21 CHAIR LHAMON: Commissioner Heriot, how
22 do you vote?

23 COMMISSIONER HERIOT: I vote yes.

24 CHAIR LHAMON: Commissioner Kladney, how
25 do you vote?

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1 COMMISSIONER KLADNEY: Yes.

2 CHAIR LHAMON: Commissioner Narasaki, how
3 do you vote?

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR LHAMON: Commissioner Adegbile, how
6 do you vote?

7 COMMISSIONER ADEGBILE: Aye.

8 CHAIR LHAMON: I vote aye as well. So
9 with one no, that motion passes. Next, I think we have
10 an update from Brian Walch on the state of our 60th
11 anniversary plans.

12 **UPDATE ON STATUS OF 60TH ANNIVERSARY PLANS**

13 MR. WALCH: Thank you, Madam Chair, Vice
14 Chair, staff director, Commissioners. The staff
15 director asked me to give a brief update about where
16 we stand on the 60th anniversary. We've undertaken a
17 lot of preliminary planning, the internal group which
18 includes myself and Alison, one of the special
19 assistants and Barbara, one of our staff.

20 We were a little bit slowed down obviously
21 because of the holidays, and we also lost one member
22 of our planning team, Alec, who is no longer with the
23 Commission and of course we miss him. But we do, I
24 think one thing that we view as important to relay is
25 the selection of a date.

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1 There has been a lot of internal discussion
2 about what month might be the best for the anniversary
3 event, and I think we're looking towards November
4 versus September, and there's a couple of reasons for
5 this, and this would be obviously juxtaposed to a
6 business meeting. The business meeting in November is
7 the 17th.

8 There's a couple of challenges that exist
9 before November, that we think November makes more
10 feasible. There is end of work on the fiscal year,
11 which always occupies a great amount of staff time,
12 staff resources themselves, the statutory enforcement
13 report that the staff director mentioned and possible
14 budget challenges.

15 In terms of 1957, as you know the
16 Commission was established by the Civil Rights Act in
17 September of '57. So that would be the actual 60th
18 anniversary. I think it's September 8th. But the
19 Commission, and this is somewhat nuanced from what I
20 can tell in the history. The entry and operations of
21 the Commission was probably November of that year.

22 That's when I believe the slate of the
23 final six first Commissioners was set up and things
24 started. So I think November is, you know, there's a
25 good hook in that sense. Obviously, the most important

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1 thing is that we do it in 19 -- well, from 1957 that
2 we do it in 2017.

3 We've got a couple of options under
4 consideration of the timing, how we juxtapose it to the
5 November 17th business meeting. We'll flesh that out
6 a little more. Commissioner Narasaki, you mentioned
7 the African-American Museum as a possibility in the
8 last meeting and we are talking to them. We are talking
9 to a couple of other venues, the National Press Club.

10 There's also obviously the consideration
11 of here in the Commission because of budget resources.
12 So that will be a little bit pending.

13 So to summarize, we will have a formal
14 proposal with some elements to you all well in advance
15 of the February 24th meeting, so you can take a look
16 at it and I'll continue working with the internal
17 planning team and staff and the staff director to make
18 that happen. Thank you.

19 CHAIR LHAMON: Okay, thank you. Are
20 there any discussion or questions?

21 (No response.)

22 CHAIR LHAMON: I appreciate the work.
23 Thanks very much.

24 So next, I think we're turning to our
25 advisory committees, and I believe we have a telephonic

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1 presentation from the Indiana SAC Chair Diane
2 Clements-Boyd on the report on the school to prison
3 pipeline in Indiana.

4 Ms. Clements-Boyd.

5 **STATE ADVISORY COMMITTEES**

6 **INDIANA SAC REPORT: SCHOOL TO PRISON PIPELINE**

7 MS. CLEMENTS-BOYD: Yes. Good morning.

8 CHAIR LHAMON: Good morning.

9 MS. CLEMENTS-BOYD: To the Chair,
10 Catherine Lhamon and the Commissioners, thank you for
11 this opportunity. My name is Diane Clements-Boyd, and
12 I have the privilege of serving as chairperson of the
13 Indiana Advisory Committee. I had initially
14 anticipated having Indiana Advisory Committee member
15 Carlton Waterhouse on the call, but he does have a
16 teaching conflict.

17 But nevertheless, if he's able to join at
18 some point during this presentation, I have certainly
19 invited him to do so. But I would be remiss if I did
20 not take this opportunity to acknowledge and thank
21 David Mussatt, Chief of the Regional Programs Unit and
22 Melissa Wojnaroski, Civil Rights Analyst,
23 administrative support Carolyn Allen and the Civil
24 Rights interns Christina Rosales and Marshall Hatch.

25 They really made this a seamless process

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1 for us, and it has been an extreme pleasure to work with
2 such a knowledgeable, dedicated and professional group
3 of individuals. But I also want to thank the members
4 of the Indiana Advisory Committee for their extreme
5 attention to detail with this report, and their
6 commitment to civil rights in Indiana.

7 On March 19, 2015, the newly-appointed
8 Indiana Advisory Committee convened in Indianapolis
9 for a face-to-face meeting, to discuss preliminary
10 matters as well as our mission and charge as an advisory
11 board. Once we had an understanding of jurisdiction
12 and scope of duties, Melissa led the group in a
13 discussion on examples for projects.

14 Following that discussion, I asked each
15 member to share with the group civil rights issues that
16 in their opinion warranted further examination. We
17 then entered into a discussion on current civil rights
18 concerns for Indiana. Each member then identified one
19 to three issues that he or she felt deserved the
20 attention of the Advisory Committee.

21 Following that session, members were given
22 an opportunity to provide a draft of a short project
23 concept, describing their topic of interest. Members
24 were allowed to send in multiple project concepts and
25 provide a summary of that issue that they would propose

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1 to study. But during all of that, what did seem to rise
2 to the top was the civil rights and the school to prison
3 pipeline in Indiana.

4 After hearing more about this phenomenon
5 and hearing the testimony, I am convinced that the
6 Committee made the right decision. Working on this
7 project has been one of the most meaningful endeavors
8 that I have had the privilege of working on.

9 Just to give you some background on how we
10 did arrive at the report, the Committee established a
11 subcommittee to draft a project proposal. The
12 subcommittee developed a depository of reports and
13 organizations that had relevant perspective. The
14 subcommittee had always had the benefit of reviewing
15 the Oklahoma Committee's approach, which we expressed
16 general agreement with that, and the only difference
17 was that Indiana decided to examine how school
18 discipline and policies impacted students with
19 disabilities. But we'll talk more on that later.

20 The next few months, the subcommittee
21 worked with the staff and interns on a draft proposal,
22 and identified potential panelists. The staff
23 presented the draft of the proposal on October of 2015,
24 and the first of two hearings was held on January 20th
25 of 2016, which was a web conference. The second

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1 hearing was held on February 17th at Ivy Tech Community
2 College in Indianapolis.

3 The Advisory Committee heard testimony
4 from academics, community advocates, government
5 liaisons, school administrators, educators and of
6 course the general public. The testimony was
7 compelling and the phenomena is complex. But what
8 became apparent to me throughout this process and
9 looking at it from a panoramic view is that this is
10 certainly a problem with a lot of moving parts.

11 But at the end of the day, the utilization
12 of school discipline policies and practices that
13 results in taking away the opportunities for children
14 to learn and achieve academically creates more damage
15 than the average person would imagine.

16 What was reiterated throughout the
17 testimony is a problem that disproportionately impacts
18 African-American children, children with disabilities
19 and the intersection of race, sex and disability.
20 African-American males with disabilities are the most
21 vulnerable and bear the brunt of school discipline
22 policies and practices.

23 According to the testimony, academics have
24 known about the over-representation of
25 African-American students in school suspensions since

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1 the work of the Children's Defense Fund in the 70's.
2 But more recently, the U.S. Department of Education
3 produced federal guidance on school discipline
4 policies, and while the testimony indicated that the
5 problem is gaining more attention, there is certainly
6 more work to be done.

7 The Office of Civil Rights Data collected
8 in 1973, as far as back as '73 indicated that
9 African-American students were twice as likely to be
10 suspended out of school. But now, fast forward,
11 they're now three and a half times more likely than
12 other students.

13 But this is also a problem with Latino
14 students, which not necessarily is showing that same
15 uptick in elementary. But by the time they hit middle
16 school and high school they too are disproportionately
17 affected by these policies.

18 Through the testimony, we found that
19 African-American females are not exempt as well, and
20 that there have been an increase as it relates to
21 Indiana, where back in I think the statistics are from
22 2014, African-American females were fourth in the
23 nation when it came to suspensions and out of school
24 suspensions for African-American females, and for
25 African-American males, second in the nation.

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1 A lot of this testimony came from leading
2 authorities on this issue, and I just really most
3 recently outlined some of the findings presented by
4 Russell Skiba, Director of the Equity Project at
5 Indiana University, and he is the leading authority and
6 his testimony was very useful in this process.

7 But one thing that we also know, that has
8 been proven is that suspensions and expulsions have
9 consistently been found to be ineffective. It's been
10 proven and supported by the Psychological Association
11 and others. But the rationale for the use of school
12 discipline to keep schools safe and reduce disruption
13 is really a myth, and that students suspended from
14 school in elementary are more likely to be suspended
15 from school in middle school, which makes them more at
16 risk for the pipeline.

17 The research indicates that schools with
18 high rates of suspensions and expulsions have a more
19 poor school climate. Suspension and expulsions is a
20 risk factor in which students become disengaged from
21 school, and tend to have a higher dropout rate.
22 Indiana is one of five states above the national average
23 of out of school suspensions for all racial and ethnic
24 groups.

25 So that was just an overview of some of the

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1 findings of the report, and we also wanted to look at
2 this through a historical lens, and that really was
3 useful and putting this in the context of -- for race.

4 What the academics did share with us in
5 terms of this historical perspective is that this is
6 really something that started back after the
7 abolishment of slavery, where there were very
8 restrictive laws put in place to basically thwart the
9 progress that was being made by African-Americans as
10 a result of the abolishment of slavery.

11 That was the first wave, and then the
12 second wave was during the Great Migration, as
13 African-American families moved to northern cities
14 such as my own to look for a better way of life. These
15 opportunities didn't necessarily present themselves,
16 and what they did find, upon arrival, were very
17 segregated and oppressive neighborhoods.

18 From a historical perspective, this school
19 to prison pipeline represents a third wave in terms of
20 how the country has turned to an over-reliance on penal
21 discipline in communities of color. So looking at it
22 from that historical perspective was very eye-opening,
23 I think, for the group in general.

24 But we also looked in-depth at the issues
25 of race bias, implicit bias and we do know that those

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1 issues are very germane to this discussion. Indiana,
2 as I said earlier, ranks second in the country in its
3 rate of black male out of school suspensions and fourth
4 in the rate of black female out of school suspensions,
5 compared to nationally.

6 Twenty percent of black boys and 12 percent
7 of black girls receive an out of school suspension,
8 compared to six percent of white boys and two percent
9 of white girls. So the issue is the disparity based
10 upon race and sex was a recurrent theme. I don't think
11 that there was any doubt that those disparities exist.
12 They were presented by presenter after presenter. I
13 think that it's well documented.

14 In terms of disability bias, we know that
15 students with disabilities are too at risk for the
16 pipeline. They are 20 percent more likely to receive
17 an out of school suspension, and the problems of
18 disability and discrimination are complex as well, that
19 range from not being diagnosed to not having the proper
20 supports and schools that support children with
21 disabilities.

22 We know that special education is not a
23 place, it's a system of services that students with
24 disabilities do not necessarily always receive. The
25 testimony that we receive indicated that there is more

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1 room and what is necessary is that we educate parents,
2 as well as administrators and teachers on the issues
3 impacting students with disabilities.

4 There seems to be a disconnect there,
5 particularly in reference to African-American students
6 with disabilities. They are the most affected. So
7 again, as I said, that these issues are very complex,
8 but looking at the intersectionality of race, sex and
9 disability is very pertinent to understanding this
10 problem.

11 So we understand or at least we have a
12 perspective of why we are using these policies that seem
13 to have come from some of the other policy issues, the
14 policies that deal with drugs and policies that deal
15 with not having guns in schools. These really punitive
16 policies have wreaked havoc on our students.

17 So we really need to take a paradigm shift
18 in looking at these policies that obviously have not
19 worked, have had a disparate impact on students of color
20 and students with disabilities, and look at
21 alternatives to these punitive exclusionary policies
22 that -- as a result of the war on drugs and other policy
23 issues.

24 So we also looked at the role of poverty
25 and economic disparities between school districts, and

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1 we certainly found that there is a disparity with
2 students that have well-resourced schools and schools
3 that don't. We did hear that, for example, in Gary,
4 Indiana that there was a 50 percent decrease in the
5 property tax revenue for that city, which results in
6 a low tax base for that community.

7 Just most recently, some of the grades,
8 they do grade school or school corporations in Indiana
9 based upon ISTEP and a number of other things, and Gary
10 was the only school to receive an F. I believe that
11 the economic impact of the closing of the steel mills
12 and the economic condition that that community finds
13 itself in has had an impact on their school districts
14 and their communities.

15 But we do know that African-American
16 students are more likely to attend high poverty schools
17 than whites, their white peers. We know that there are
18 still segregated neighborhoods, that our neighborhoods
19 are just as segregated as they were when the 1968 Civil
20 Rights Act was passed, the Fair Housing Act.

21 So we know that again, the poverty economic
22 disparities in schools plays a big part. But you know,
23 what supports are we giving these students considering
24 the issues that they're bringing to the table, and what
25 was discussed throughout this report is that our

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1 students are bringing issues to the table that maybe
2 they weren't bringing 50 years ago.

3 There was testimony that there are some
4 students that have severe trauma. They're coming to
5 school with severe trauma and history of abuse, and some
6 students even coming to school having been exposed to
7 marijuana, and that being -- and that they wreaked of
8 that in the classroom, and what are our educators to
9 do? These are issues that we just don't think that our
10 educators are really prepared to deal with these issues
11 that some of the students are bringing to the table.

12 So again, as I said, this is a very complex
13 problem. But the way in which we deal with students
14 with difficult backgrounds and issues is unacceptable,
15 and then I'll get to this a little more when we talk
16 about recommendations.

17 But we just think that having policies
18 that, exclusionary policies that take children out of
19 the classroom from being absent from school just
20 absolutely is regressive and is only hurting the
21 student and hurts us as a society, as we look at those,
22 the implications of a student that doesn't matriculate.

23 CHAIR LHAMON: Ms. Clements-Boyd, I
24 really appreciate your presentation. I want to make
25 sure that we do have time for discussion. I also want

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1 to encourage you to share with us the recommendations
2 too.

3 MS. CLEMENTS-BOYD: Okay. I'm very
4 sorry.

5 CHAIR LHAMON: No, no. Thank you.

6 MS. CLEMENTS-BOYD: So let me get to some
7 of the recommendations. We did find that -- we felt
8 that government organizations work in silos and we
9 would recommend that they start to work together with
10 other departments with common interests, particularly
11 Department of Education and Department of Justice, and
12 that one of the recommendations is that the Department
13 -- a recommendation for the Department of Education is
14 that the Department Office of Civil Rights establish
15 a review committee to study the impact of school
16 discipline policies on disparities in educational
17 outcomes on the basis of race, color, sex, national
18 origin and disability, and that the department should
19 require that states impose mandatory reforms to
20 disciplinary policies for schools that demonstrates
21 significant disparities in disciplinary actions on the
22 basis of race, color, sex and disability.

23 We don't think that they're starting from
24 ground zero because of the reforms and the guidance that
25 has been presented by the U.S. Department of Education,

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1 the 2004 Guiding Principles Resource Guide for
2 Improving School Climate.

3 But other recommendations are to study the
4 possibility of requiring anti-bias, cultural
5 competence and trauma-informed training, and employ
6 the assistance of the psychologist, social workers and
7 community organizations as opposed to a reliance on law
8 enforcement officers or school resource officers.

9 That would be some of them for the
10 Department of Education, and moving on to the
11 Department of Justice, the recommendation is that the
12 Department of Justice examine educational outcome and
13 disparities on the basis of race, color, sex and
14 disability among youth and reside in juvenile detection
15 and correctional facilities.

16 There is also that same recommendation for
17 the Department of Justice to establish a joint task
18 force. There is also recommendations that we would
19 like to pass along to the Indiana General Assembly, and
20 they include finding alternatives to expulsion and
21 suspension and particularly with a special focus on
22 truancy.

23 So you can find all of these
24 recommendations in the report, and we do think that
25 there are current legal hooks that could be more -- that

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1 could be enforced in a more robust way.

2 In particular, Title VI of the Civil Rights
3 Act, because we -- the testimony revealed that we do
4 think that there are elements of a prima facie case of
5 discrimination based upon these protected classes, and
6 that a more robust enforcement of Title VI is something
7 that is already in place, and that the entities,
8 Department of Education, Department of Justice, make
9 it a priority to look at these policies and look at best
10 practices, look at this from a historical perspective
11 and provide a guide or a path or a preventive trajectory
12 for school corporations to strive for. We know it's
13 a lofty goal, but we do believe that we can do it.

14 CHAIR LHAMON: Ms. Clements-Boyd, thank
15 you so much for your moving testimony and for your
16 thorough report and for the SAC's report on the issue.
17 I want to make sure that we open the floor for discussion
18 among the Commissioners now. Commissioner Narasaki?

19 COMMISSIONER NARASAKI: Yes, thank you.
20 I really want to commend the SAC and the staff working
21 on the report for a really thorough and very interesting
22 report and good recommendations. I have three short
23 things.

24 One is I found particularly interesting
25 the link between poverty and the intersection with

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1 race, and the lack of school supports like counseling
2 that contribute to the problem. We had a hearing last
3 year about the lack of sufficient public school
4 funding, particularly in an increasingly segregated
5 schools. So I think this is an angle to that that I
6 hadn't really considered and that I'm very interested
7 in.

8 The second is that the report mentioned the
9 issue of people with disabilities, and the prison to
10 pipeline issues, that they are twice as likely in fact
11 to face the same issues and that is an issue I have been
12 thinking about asking the Commission to take on.

13 I'm wondering whether you think, whether
14 your discussion has led you to believe that that would
15 be worthwhile for us to take up here in Washington.
16 Then my second question is I was also very taken by the
17 issue raised about the extent to which schools are
18 recommending to parents that they take their kids out
19 of the public school to alternative forms of education
20 or to avoid expulsion.

21 Because I've heard that issue raised in
22 California by Latino parents, who are being told the
23 same thing, because schools are trying to --
24 potentially schools are trying to make their numbers
25 on expulsion look better and instead trying to push

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1 parents to look like it's a voluntary withdrawal. I'm
2 wondering what you recommend around that?

3 MS. CLEMENTS-BOYD: Sure, yes. I do
4 think that further examination of the issues affecting
5 children with disabilities would be an admirable study
6 and project for the U.S. Commission, simply because
7 there's so much intersection there. I think that you
8 would help a lot of students, not just students with
9 disabilities but all of the ethnic and racial groups
10 that are impacted by that issue as well. So I applaud
11 that recommendation.

12 In terms of schools making recommendations
13 that students opt out or drop out to go to alternative
14 schools was discussed in our testimony. There was very
15 spirited discussion in terms of principals actually
16 recommending that students go to a home school
17 environment, and because of their being very loose
18 regulations on home schooling, community advocates
19 felt that that was one way that students were falling
20 between the cracks and were not actually receiving that
21 home schooling instruction, and were calling for a
22 possible tighter regulation or enforcement, or just
23 having a better relationship between the home school
24 community and the school district.

25 That came with some pushback from the home

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1 school community, that prides themselves on being, you
2 know, separate and having that autonomy over their
3 children's education. So we had to address that, and
4 I think that it really wasn't meant in that spirit, the
5 community advocate that discussed that.

6 But just it was one instance where kids
7 were falling between the cracks and, you know, that
8 there were certainly students that are thriving success
9 in a home school environment. But there's that small
10 demographic, that small cohort that is possibly falling
11 between the cracks, just simply because the family
12 maybe doesn't have the resources, you know, mom works,
13 and just doesn't have the capacity to provide the
14 education.

15 CHAIR LHAMON: Thank you. Any further
16 discussion from the Commissioners?

17 COMMISSIONER KLADNEY: I have a question.
18 I was wondering if as a result of putting school
19 resource officers who are really police officers on
20 campus have resulted in more arrests and being sent to
21 juvenile hall and suspensions and expulsions than prior
22 to their placement in schools?

23 MS. CLEMENTS-BOYD: I'm sorry. Could you
24 repeat the question?

25 COMMISSIONER KLADNEY: I don't know. I

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1 was wondering did the Committee look at all to see if
2 as a result of placing school resource officers or
3 actually -- who are police officers on campuses
4 resulted in more arrests in schools, resulting in
5 suspensions and expulsions than prior them being there?
6 I mean I know --

7 MS. CLEMENTS-BOYD: I see.

8 COMMISSIONER KLADNEY: I can give an
9 example, which is like, I don't know, 55 years ago.
10 When I was in school, we didn't have police resource
11 officers. We had a vice principal, and say if a fist
12 fight broke out between students, you would both be
13 hauled to the vice principal's office, dressed down.
14 They'd give you some kind of discipline and that would
15 be that until the next time.

16 And today, when you have police officers
17 on campus, it's my understanding that they actually
18 arrest people and take them to juvenile hall.

19 MS. CLEMENTS-BOYD: Right, yes.

20 COMMISSIONER KLADNEY: So I was wondering
21 if -- so my question to follow is as a result of having,
22 for lack of a better term, abdicated their
23 responsibility to discipline, the school staff, and
24 leaving it to these officers, has that resulted in more
25 expulsions and suspensions from school?

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1 MS. CLEMENTS-BOYD: That certainly is
2 indicated in the report, that having that police
3 presence has resulted in more arrests, oftentimes for
4 non-violent offenses, and that just changing that whole
5 paradigm and that -- and that is one of the
6 recommendations, that school corporations cannot rely
7 exclusively on police to make disciplinary decisions
8 that impact education.

9 Only should police be used in the most
10 extreme circumstances, where there is a potential for
11 violence. But we find that police are responding to
12 very subjective things for students, like being
13 defiant, you know. Even dress, hairstyles, things
14 like that, that these issues were not -- and
15 historically, as you stated, were dealt with by the
16 school administrators and not by police officers. So
17 yes, that has been a big part of the problem.

18 COMMISSIONER KLADNEY: So your
19 recommendation in F has to do with a school, 1-F is
20 school resource officers to be working in the schools
21 to establish licensing requirements. Would that be
22 training and things like that in this regard?

23 MS. CLEMENTS-BOYD: Yes, and I do think
24 that Indiana currently has that statute on the books,
25 that they do have to go through, I think, 40 hours of

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1 training. But you know, of course the devil is in the
2 details.

3 What does that training look like? Are
4 they receiving anti-bias training, cultural diversity
5 training, that really gets at some of these other issues
6 that unfortunately I haven't had enough time to talk
7 about, implicit bias, so that they understand the
8 dynamics of the students that they're working with.

9 So I think we want not just training, but
10 we're asking for quality training.

11 COMMISSIONER KLADNEY: Wouldn't you also
12 be asking training for when they should intercede and
13 when they shouldn't intercede in disciplinary
14 procedures at schools? I mean --

15 MS. CLEMENTS-BOYD: Exactly, which does
16 require that we take a closer look at the code of
17 conduct, because that is the bible for how they
18 implement discipline.

19 I think if we start looking closer at the
20 code of conduct in school corporations, and shining a
21 light on that and how discipline is handed out, we can
22 better wrap our minds around this whole disparity based
23 upon certain classes, because we know that certain
24 students are being disciplined based upon something in
25 the code of conduct, but it's not being done on an

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1 evenhanded basis.

2 COMMISSIONER KLADNEY: Okay. I actually
3 have three more questions, so I don't want to take all
4 of the Commission's times, but I do have these
5 questions. In 1-B, you call for mandatory reforms to
6 disciplinary policies for schools that demonstrate
7 significant disparities in disciplinary actions on the
8 base of race, color, sex, disability or national
9 origin.

10 These mandatory reforms would take the
11 form of what? To try and narrow that gap with -- of
12 the disparities? In other words, only give range of
13 disciplines and those types of things, or are you trying
14 to objectify the discipline?

15 MS. CLEMENTS-BOYD: I think -- I think
16 that it would be a number of reforms, and there were
17 so many in the recommendations. But I think that
18 requires that we look at a host of issues. Who are we
19 employing in our schools? Do they have the capacity
20 to handle some of these really serious social,
21 psychological issues that students are dealing with?

22 I think that we want the staff to be trained
23 on these issues of bias and having historical context,
24 knowing how to look at the issues through a disability
25 lens. But without there being this oversight, we think

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1 that these issues are going unaddressed.

2 So I think the mandatory reforms are a
3 number of things. But we did cite that the 2004 Guiding
4 Principles Resource Guide is a start for that being a
5 resource for making those reforms.

6 COMMISSIONER KLADNEY: Did you find at all
7 or did you look into at all whether there were
8 disparities in discipline between students of the same
9 race, ethnicity, etcetera in schools?

10 MS. CLEMENTS-BOYD: I'm sorry, if there
11 were disparities between the same race?

12 COMMISSIONER KLADNEY: Right, how they
13 applied discipline. In other words, between students
14 of the same race?

15 MS. CLEMENTS-BOYD: I don't know if we did
16 drill down. I can't recall any instances where that
17 was an issue. The only thing that comes close to that
18 is we did wonder if, for example, African-American
19 students that are in affluent schools received the same
20 type of discipline or are disproportionately
21 represented in disciplinary, exclusionary practices,
22 and we found that they were.

23 So even when you control for poverty and,
24 you know, issues like that, socioeconomic/class, that
25 we still find the disparities are still there for race.

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1 So I don't think that answers your question, but that
2 was the closest thing that I could think of, that
3 addressed what maybe you were trying to address.

4 COMMISSIONER KLADNEY: And one last
5 question. In 1-E, your committee states the
6 Department should examine and recommend an expansion
7 of evidence-based restorative justice and other
8 alternative disciplinary models to reduce exclusionary
9 discipline. How would you apply restorative justice
10 in these regards?

11 MS. CLEMENTS-BOYD: Well, certainly I am
12 not an educator, I'm not a lawyer. I'm a lowly
13 executive director of a government agency. So
14 restorative justice, from what I understand from
15 educators, is that it is a way to produce rehabilitation
16 and it's a learning opportunity for students, as
17 opposed to a punishment.

18 So they learn from whatever they did, and
19 there's an opportunity for even peer involvement, where
20 peers can determine what the punishment would be for
21 what they did. But I think the bottom line is that it's
22 an opportunity to learn from the issue that they've had
23 in the school, and not just impose an out of school
24 suspension or something that's going to take them out
25 of the classroom.

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1 COMMISSIONER KLADNEY: Thank you very
2 much for tolerating my questions.

3 CHAIR LHAMON: Thank you for hearing our
4 discussion.

5 MS. CLEMENTS-BOYD: Sure.

6 CHAIR LHAMON: I understand that there may
7 be more discussion still? The Vice Chair.

8 VICE CHAIR TIMMONS-GOODSON: Yes. Good
9 afternoon Ms. Clements-Boyd, and I join the others in
10 thanking you and your committee for this excellent
11 report. It's my understanding that Indiana is one of
12 far too many states that have bought into the terrible
13 notion that it's appropriate to grade our public
14 schools.

15 One of the several factors in grading
16 performance in individual schools is the test
17 performance of their students. I was wondering
18 whether the committee looked at the intersection of or
19 whether there was an intersection between the grading
20 of schools and the voluntary withdrawal of students to
21 attend alternative schools, or the recommendation that
22 they -- that the parents look into home schooling.

23 The argument or the thought goes something
24 like if low performing students are not among a school's
25 student population, then those low scores would not be

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1 factored into the assessment of the performance of
2 their students. Thus, a school might achieve a higher
3 grade if certain students were not available. I was
4 just wondering whether you looked at that or if it had
5 come to your attention --

6 MS. CLEMENTS-BOYD: Yes. It is in the
7 report under High Stakes Testing. We did look at that
8 as being another prong in this very complex issue, that
9 high stakes testing is driving this conversation and
10 that teachers don't want to divert their attention and
11 resources to deal with these very difficult
12 social-emotional needs that the kids have, because of
13 high stakes testing. In Indiana, it's ISTEP.

14 So yes. I think that it's easier for them
15 to -- children that do present more of a challenge to
16 discipline away that student, as opposed to the time
17 and resources that it would take to bring that child
18 back into the fold. So yes, we certainly addressed
19 high stakes testing. There were several sources and
20 authorities that indicated that that is part of this
21 conversation.

22 VICE CHAIR TIMMONS-GOODSON: Thank you.

23 CHAIR LHAMON: Further discussion? So
24 before we close this portion, I want to thank you again,
25 Ms. Clements-Boyd.

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1 COMMISSIONER KIRSANOW: Oh Chairman,
2 Madam Chair?

3 CHAIR LHAMON: Yes.

4 COMMISSIONER KIRSANOW: I'm sorry, this
5 is Kirsanow. I did have a question, if you might
6 indulge me.

7 CHAIR LHAMON: Please.

8 COMMISSIONER KIRSANOW: Ms.
9 Clements-Boyd, thanks very much for your presentation
10 and for your report. I went through it not with a fine
11 tooth comb. Unfortunately I skimmed through it and so
12 maybe I missed something. I'm hopeful you might be
13 able to direct me to some data on this.

14 By the way, it won't surprise my fellow
15 Commissioners that when I was in high school, I was
16 probably responsible for approximately 45 percent of
17 our out of school suspensions all by myself.

18 But nonetheless, I saw in the report that
19 black males are responsible for approximately, and I
20 think you mentioned this, two and a half to three and
21 a half times, it looks like 20 percent of out of school
22 suspensions, versus about six percent for white males.

23 I didn't see any data, and maybe it's in
24 there, but is there data with respect to the percentage
25 of offenses committed by black males versus white

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1 males, and also any data on the type of offenses
2 committed by black males versus white males?

3 MS. CLEMENTS-BOYD: We don't, I don't
4 think that there is specific data on that. But of
5 course there's the disparities. The numbers are what
6 they are. We know that black males are certainly being
7 disciplined more than their white counterparts, but
8 what the testimony indicated is that they are not
9 exhibiting more problems or having more problems in
10 school or more criminals than white males.

11 We think that that's really why we're
12 having this discussion, that black children are no
13 more, you know, acting out in schools than their white
14 counterparts, but they're being held to a different
15 level of accountability. Of course, we think there are
16 a number of reasons. This historical piece; it goes
17 back to the legacy of slavery to this -- to the newer
18 social science information on bias.

19 But we do know that groups, all groups are,
20 you know, committing infractions in school, but we know
21 that black males, that discipline is being visited on
22 them disproportionately. But I don't think that we
23 have the exact -- and I'm sure the data is there, and
24 you know, I maybe will have to take a deeper dive into
25 this report, and would certainly like to bring that to

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1 the attention perhaps through the state, I'm sorry, our
2 liaisons to your committee, to bring that information
3 to the committee if you're so inclined.

4 But yes, I'm sure the data is there, but
5 I think it's really the whole purpose of this study is
6 that we know that all kids, you know, have youthful
7 indiscretions and they're all doing things that they
8 probably ought not to do. But should it result in this
9 form of punishment that we know is impacting our society
10 in such dire ways.

11 COMMISSIONER KIRSANOW: One other
12 question also. Is there any evidence that you're aware
13 of, I didn't see it in the report, and I'm not sure that
14 the report was geared toward this, but we had a hearing
15 in 2011 at the Civil Rights Commission on this very
16 issue, and we had a little bit of testimony around it,
17 but not sufficient testimony to reach any conclusions,
18 at least in my estimation.

19 Do you know of any information that you may
20 have seen related to Indiana that would shed some light
21 on the performance of students not suspended, once the
22 allegedly disruptive student is removed from the class?
23 In other words, we had some testimony in 2011 from some
24 school superintendents.

25 I don't mean to defame or misstate

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1 anything, but there was someone from Philadelphia, a
2 principal or superintendent who said once the
3 disruptive students were removed, the performance,
4 academic performance and behavior of the remaining
5 students improved. Is there any kind of evidence that
6 you have related to that Indiana?

7 MS. CLEMENTS-BOYD: Well, exactly we do,
8 and it was to the contrary, that it was not the case
9 that once the problem student was removed, that it was
10 just the opposite. The schools had a lower climate for
11 students and that when students are in the classroom,
12 all students do better.

13 That's part of the myth that I alluded to
14 earlier, that you know, this approach that this is some
15 type of utilitarian approach, the greatest number of
16 good for the greatest number of people is just a myth,
17 and that when all students do better, are in the
18 classroom, are having an opportunity to learn, the
19 school climate increases. So that, in our report at
20 least it reflects a different perspective.

21 COMMISSIONER KIRSANOW: Is that
22 reflected in grades?

23 MS. CLEMENTS-BOYD: The actual
24 indicators, I would have to look a little bit closer
25 at the testimony. But if you do reference Russell

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1 Skiba, if you go to the actual report, I think that you
2 will find that he discusses that at length. But I
3 really haven't had a chance to go back and look at the
4 transcript in great detail, but it is addressed in the
5 report.

6 COMMISSIONER KIRSANOW: Thanks very
7 much.

8 MS. CLEMENTS-BOYD: You're welcome.

9 CHAIR LHAMON: Thank you. I think
10 without further discussion from my fellow
11 Commissioners, I will just say again how much I
12 appreciate the thoroughness of the report. I also was
13 pleased to note in it that in addition to identifying
14 disparities on the basis of race that raised
15 significant concerns for your State Advisory
16 Committee, you also talked about what could be
17 underneath those disparities and took a look at
18 implicit bias, among other possible explanations for
19 whether discrimination does exist.

20 The disparities are, as we all know, an
21 indicator that there may be something more to look at
22 and your report included information about what could,
23 in addition, you were looking at. So I appreciate
24 that.

25 I also want to acknowledge the presence in

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1 our audience today of an expert from the Department of
2 Education who has worked on this issue. Her name is
3 Carolyn Seugling. It's S-E-U-G-L-I-N-G. I am sure
4 that she or her colleagues would be pleased to share
5 further information with us on this topic, if the
6 Commission would welcome it going forward. But I am
7 pleased that she could be present here today as we
8 discuss this important topic. So thank you.

9 Having completed this discussion, I want
10 to make a motion that we ask for staff to draft letters
11 to the appropriate agencies that we could vote on in
12 our next business meeting, either if they're available
13 in our telephonic meeting, and failing that in our next
14 in-person meeting. Can I have a second?

15 COMMISSIONER KLADNEY: I'll second that
16 motion.

17 CHAIR LHAMON: Thank you. Sounds like
18 there might be discussion from Commissioner Narasaki?

19 COMMISSIONER NARASAKI: I was just going
20 to move it, since you're the Chair.

21 CHAIR LHAMON: Thank you, thank you.
22 Appreciate it. So why don't we here, all those in favor
23 say aye?

24 (Chorus of ayes.)

25 CHAIR LHAMON: Any opposition? Any

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1 abstentions?

2 (No response.)

3 CHAIR LHAMON: Unanimous motion. Thank
4 you.

5 MS. CLEMENTS-BOYD: Thank you so much.

6 CHAIR LHAMON: Thank you very much, Ms.
7 Clements-Boyd. We really appreciate your
8 participation by phone.

9 So next I'll turn the floor to our staff
10 director for his Management and Operations report.

11 **STAFF DIRECTOR'S MANAGEMENT AND OPERATIONS REPORT**

12 MR. MORALES: Thank you, Madam Chair. I
13 want to just take a few moments here, a few minutes,
14 maybe about ten minutes here to talk a little bit about
15 staff and stuff. As always, the staff report, which
16 I forwarded all of you and if you have any questions
17 about that, we can talk about that. If not, we can
18 talk, you know, you can reach out to me individually
19 about that.

20 I wanted to get into more in-depth on a
21 couple of matters. One, it's been brought to my
22 attention the passing of a member of one of our state
23 advisory committees. Ivy Davis from our Regional
24 Eastern Office had mentioned to me and asked that I
25 express our Commission's, you know, condolences. She

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1 said, you know, she prepared something for me. I'm
2 going to read it real briefly here.

3 "I am saddened to report the recent passing
4 of Leanna Brown, former member of the New Jersey State
5 Advisory Committee. Ms. Brown was first appointed to
6 the New Jersey Committee in 2002. Her last appointment
7 as chair of the Committee was from 2008 to 2010. She
8 was remembered at a recent memorial service held in her
9 home town of Chatham, New Jersey as a trail-blazing
10 politician and policy expert, who favored friends and
11 family with her sharp wit and caring style.

12 "In 1983, she was the first Republican
13 woman to hold a seat in the New Jersey State Senate.
14 In her application for appointment to the New Jersey
15 SAC, State Advisory Committee, she explained that she
16 opposed redlining in New Jersey suburban communities
17 in the 1960's, advocated always for women's pay equity
18 and supported increasing accessibility for persons
19 with disability.

20 "She was very proud of the New Jersey
21 Committee's reports on overcoming the barriers facing
22 immigrants in New Jersey and teacher quality and
23 student achievement. The Eastern Regional Office
24 remembered that she often wore hats, was very direct
25 in her comments and passionate about politics.

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1 "Leanna always ended her calls with the
2 Committee with cheers. From the Commission family
3 members and to the family of Ms. Leanna Brown, we
4 express our condolences. She was 81 years old."

5 I'd like to get into one, welcome the new
6 Chair, Commissioner Lhamon and Commissioner Adegbile.
7 On behalf of the staff, we want to welcome you and I
8 want to mention that we're looking forward to working
9 with you. So whatever questions you may have and
10 whatever concerns, please feel free to contact me and
11 the staff, and obviously through your special
12 assistants as well.

13 I wanted also to mention to the staff and
14 the Commissioners now that I have you all here, that
15 next week there will be a lot of challenges in security.
16 Our agency, our building is within the security
17 perimeter zone, and so emails are going out to staff,
18 and we'll include you as well, as to access to the
19 building.

20 For those of you that may be attending the
21 inauguration, there will be some security issues you
22 need to be addressed if you're going to come into the
23 building on those days. So please work with Pam and
24 we'll address whatever kind of questions you may have.
25 So I just want to put that on your radar.

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1 Last, I want to acknowledge our staff. I
2 want to thank all the staff for the team work they've
3 done on in-boarding the new Commissioners. I really
4 appreciate how everybody worked together as a team
5 during the holiday and under extraordinary
6 circumstances to get new Commissioners sworn in, to
7 schedule a telephonic business meeting, and to onboard
8 some new staff.

9 Particularly I want to thank Maureen,
10 Tina, Irena, Sheryl, Brian, Wanda, Michelle, Pam,
11 Jennifer and Janice for the work they did above and
12 beyond the call and step in, and how all this happened.
13 So thank you very much.

14 Now I want to get into some of the new staff
15 we've got on board. You probably have seen some of
16 these faces, you don't know who they are and you'll be
17 meeting them over the next few months here. So I just
18 wanted to, just to highlight that.

19 We have a detail who's come over from the
20 U.S. Department of Agriculture, Civil Rights Division.
21 His name is Jeff Knishkowy. He's going to be on detail
22 with us for the next six months. He'll be working on
23 reports with OCRE and on some administrative legal
24 matters with OCRE.

25 We had a retirement last month. Myrna

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1 Hernandez, who you all know. She retired from the
2 Commission. She served the Commission as a Human
3 Resource Specialist, and she was a dedicated federal
4 employee for 42 years, and she spent 25 of those years
5 working here at the Commission.

6 She worked hard and understood the
7 importance of human resources in the overall mission
8 of our Commission. Her commitment and dedication is
9 an example of the service provided by federal employees
10 every day to the country. She'll be missed, but we're
11 very excited for her as she enjoys a new chapter in her
12 life as a retiree.

13 We've had a departure, Alec Deull, who you
14 all know. He left the Commission last month. Alec
15 served as a special assistant, most recently with
16 Commissioner Achtenberg. As a lawyer and a special
17 assistant, Alec had dedicated his career and his life
18 to civil rights. His service to the Commission and to
19 the Commissioners has been exceptional, and he is to
20 be commended.

21 His expertise and knowledge about civil
22 rights was significant, and his expertise will be
23 missed. All of his friends and colleagues here at the
24 Commission enjoyed his collaboration and his hard work,
25 and we'll miss his association with the Commission. We

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1 wish him well.

2 Some new employees. I want to take a
3 moment to acknowledge some new employees that have
4 recently joined the Commission. In the Office of Civil
5 Rights Evaluation, OCRE, we have Dr. Marik
6 Xavier-Brier, who joins us after being a professor at
7 Georgia State University. He has taught classes on the
8 Introduction to Sociology and Social Problems, Deaf and
9 Dying.

10 Dr. Xavier-Brier received his Ph.D. in
11 Sociology from Georgia State, his M.A. from San
12 Francisco State University and his B.A. from Georgia
13 State. We also have on board in OCRE Dr. LaShonda
14 Benson. She joins us from being a research director
15 on Project Vote.

16 Dr. Benson earned her Ph.D. in Political
17 Science from the University of Michigan-Ann Arbor, and
18 a B.A. in Mathematics and Political Science from the
19 University of Rochester. Dr. Benson's thesis focused
20 on minority representation in Congress.

21 In Budget and Finance, we have Robert
22 Amartey -- sorry, I'm terrible with names -- Amartey
23 has joined us as Budget and Finance Division, in our
24 Budget and Finance Division as a budget analyst.
25 Robert most recently worked as a contractor supporting

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1 the Department of Justice. He has extensive
2 experience in Financial Research and Analysis,
3 Budgeting, Forecasting and Grants Management.

4 He has a Masters of Finance from the
5 University of Maryland and a B.A. from Xavier
6 University.

7 I'm going to move on to the Regional
8 Programs Unit. We have two people there. I want to
9 thank David for, you know, really working hard to
10 onboard his team. We have David Barreras, who joined
11 the Commission as a civil rights analyst. He's going
12 to be working out of the Chicago office.

13 David comes to our agency from the U.S.
14 Department of Housing and Urban Development, Office of
15 Native American Programs. David worked nine years as
16 a senior policy analyst for Capital Policy and
17 Compliance Analysis, a non-partisan policy research
18 company. David holds a Juris Doctor from the
19 University of Wisconsin-Madison, and is a veteran of
20 the United States Navy.

21 Lastly in the Regional Programs Unit we
22 have Ana Victoria Fortes, who joined the Commission as
23 a civil rights analyst working out the Los Angeles
24 office. Ana comes to our agency from the U.S.
25 Department of Labor, Women's Bureau Division, where she

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1 worked as an analyst since 2012.

2 Ana has also served as a regional advisor
3 to the White House Initiative on Asian American and
4 Pacific Islander since February of 2015. Ana holds a
5 Masters of Public Policy from Cal Poly-Pomona, where
6 her thesis focused on temporary assistance to needy
7 families in federal welfare programs.

8 So with that, we have a really great team.
9 We're looking forward -- I know they're all looking
10 forward to carrying out our mission here at the
11 Commission. When you get an opportunity, please feel
12 free to say hello to them, and that's all I have, Madam
13 Chair. Any questions?

14 CHAIR LHAMON: I have no -- oh,
15 Commissioner Narasaki.

16 COMMISSIONER NARASAKI: I just wanted to
17 add my thanks to Alec, because when I first came on,
18 he was one of the special assistants and offered,
19 volunteered to help me on board, and support me until
20 I was able to hire Jason. So I just wanted to
21 appreciate that. He and Kim were extremely helpful to
22 me. The same thing is I just want to commend both the
23 staff director and the general counsel for their hard
24 work in the hiring process, and coming up with some
25 incredible candidates and new colleagues.

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1 So I know that's always a challenge in
2 terms of hiring in the federal government, and I just
3 wanted to appreciate the work that went into that.

4 CHAIR LHAMON: So I will second those
5 thanks. I really appreciate my fellow Commissioners
6 and also all of the staff here at the Commission for
7 their assistance in welcoming me, and in helping me come
8 up to speed, and I know also in welcoming Commissioner
9 Adegbile. I know that transitions can be hard. This
10 was a trying time and short notice, and I am very much
11 enjoying being here, looking forward to the continued
12 work that we will do together.

13 I really appreciate the collegiality and
14 the outreach. So thank you for that. Thank you also
15 for the report from the staff director, and if there
16 is no further discussion, I'll pause here, then we will
17 conclude this meeting at 11:29 Eastern Daylight Time
18 on the 13th. Thanks very much.

19 (Whereupon, the above-entitled matter
20 went off the record at 11:29 a.m.)

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