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

PRESENT:

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

MARTIN DANNENFELSER, Staff Director
STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
MARGARET BUTLER
CHRISTOPHER BYRNES, Director, RPCU
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
HANNA GUYER, Intern
MAHA JWEIED
ROBERT LERNER, Asst. Staff Director for OCRE
LENORE OSTROWSKY
TINALOUISE MARTIN, Director, OM (via telephone)
EMMA MONROIG, Solicitor and Parliamentarian
LENORE OBSTROWSKY
JOHN RATCLIFFE, Chief, Budget and Finance
KIMBERLY TOLHURST
AUDREY WRIGHT
MICHelle YORKMAN-RAMEY
COMMISSIONER ASSISTANTS PRESENT:
NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD
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CHAIRMAN REYNOLDS: Okay. Good morning. This is Chairman Gerald Reynolds. This meeting will come to order.

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

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

As we pause to honor Dr. King's inspiring leadership, let us rededicate ourselves to standing together against discrimination and ensuring that his dream is fully realized.
Before getting into the agenda, I would like to welcome a new addition to the Commission family. Nick Colten, who is the Special Assistant for Commissioner Melendez, welcome aboard.

Commissioner Melendez, would you like to say anything about your new superstar?

COMMISSIONER MELENDEZ: Just glad to have him aboard, and I thank everybody for expediting it; that he has been affirmed by the President's office. So we're ready to go.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: Thank you.

CHAIRMAN REYNOLDS: You think he's ready?

VICE CHAIR THERNSTROM: Does he know what he's in for?

(Laughter.)

CHAIRMAN REYNOLDS: I mean, did you tell him the truth?

VICE CHAIR THERNSTROM: Yeah, I was going to say, Nick, not too late to bow out.

CHAIRMAN REYNOLDS: Okay. The first item on the agenda is the approval of the agenda.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: I move that we approve the agenda. Is there a second?
COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER GAZIANO: Second.

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

COMMISSIONER TAYLOR: Oh, sorry. All right.

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

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

COMMISSIONER HERIOT: I don't know.

CHAIRMAN REYNOLDS: Actually --

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

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

CHAIRMAN REYNOLDS: No.

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

MR. DANNENFELSER: Oh, okay.

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

CHAIRMAN REYNOLDS: Well, actually --
COMMISSIONER TAYLOR: Just make sure it gets through the pipeline.

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

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

COMMISSIONER TAYLOR: That's fine, yeah.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes.

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

II. PROGRAM PLANNING

A. APPROVAL OF BRIEFING REPORT RE. IMPACT OF ILLEGAL IMMIGRATION
CHAIRMAN REYNOLDS: Part A, as distributed to Commissioners on January 8th, 2010, was produced by staff and reflects Commissioners' and panelists' input on the briefing the Commission held on the same topic on April 4th, 2008.

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

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

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

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

Commissioner Yaki.

COMMISSIONER YAKI: Yes. Thank you very
much, Mr. Chair.

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

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

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

I understand where you're coming from with respect to folks not participating, but just looking
at the document on its merits?

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

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

CHAIRMAN REYNOLDS: Comments? Pete?

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

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

COMMISSIONER KIRSANOW: Not currently.

CHAIRMAN REYNOLDS: Okay. Vice Chair Ternstrom?

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

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

CHAIRMAN REYNOLDS: Okay. Commissioner Gaziano.
COMMISSIONER GAZIANO: (No audible response.)

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

(Chorus of ayes.)

COMMISSIONER GAZIANO: Abstain.

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

CHAIRMAN REYNOLDS: Okay. Hold on.

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

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: I'm abstaining also.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Aye.

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

COMMISSIONER HERIOT: Did you get me?

CHAIRMAN REYNOLDS: No, I didn't.

COMMISSIONER HERIOT: I'm an aye.
CHAIRMAN REYNOLDS: Okay. All right. The motion passes.

Next up is Part B.

COMMISSIONER YAKI: What's the vote, please?

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

COMMISSIONER YAKI: Thank you.

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

COMMISSIONER KIRSANOW: Yes, Mr. Chairman.

I'd like to move to postpone consideration of Part B for a later meeting. I've got a possibly amended findings and recommendations that I'll circulate to all Commissioners for consideration if we do postpone it and would like the Commissioners to have sufficient time to consider the amended findings and recommendations before we vote.

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Further discussion?

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

VICE CHAIR THERNSTROM: Well, I think that
we need a motion.

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

CHAIRMAN REYNOLDS: I believe Pete made the motion.

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

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

CHAIRMAN REYNOLDS: Okay. I am going to
interpret what Mr. --

COMMISSIONER HERIOT: It's not on the agenda.

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

COMMISSIONER YAKI: Yes.

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

(Laughter.)

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

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

CHAIRMAN REYNOLDS: Yes, Michael.

Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: Okay. The motion passes unanimously.
Next up, covert wiretapping.

II(B). APPROVAL OF BRIEFING REPORT ON

COVERT WIRETAPPING

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

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

COMMISSIONER HERIOT: What are we talking about here?

COMMISSIONER GAZIANO: You talking about Part A, right?

CHAIRMAN REYNOLDS: Yes.

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

CHAIRMAN REYNOLDS: Okay. Part A contains a briefing, overview and summary of the issue, why the Commission chose to conduct this briefing, any description of subsequent events, a summary of proceedings consisting of synopses of panelists' oral
statements during the briefing, and a synopsis of the
question and answer sessions, and copies of panelists' written statements.

Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objection?

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

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

COMMISSIONER GAZIANO: To adopt Part A.

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

COMMISSIONER YAKI: Aye.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Abstain for now.

CHAIRMAN REYNOLDS: You're confusing me.

Vice Chair Thernstrom.
VICE CHAIR THERNSTROM: Aye.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

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

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I guess no.

CHAIRMAN REYNOLDS: Okay, and I vote no also.

It's a tie. So the motion --

COMMISSIONER HERIOT: Fails.

CHAIRMAN REYNOLDS: -- fails.

Next up, Multi-Ethnic Placement Act briefing report.

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

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

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

CHAIRMAN REYNOLDS: Okay. It was three in
favor of the motion, three against and two
abstentions.

COMMISSIONER YAKI: Who were the
abstentions?

CHAIRMAN REYNOLDS: Taylor and Kirsanow.

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

Publication of even that part of the
report, I find it chilling. I find it extremely
disturbing, and the mere fact that one person believes
that we had no jurisdiction over this I think is (a)
completely wrong. (b) If that is the case, then the
reach of this Commission to protect the civil rights
of protected citizens, discrete communities by
religion or by ethnicity is basically one that a
majority of this Commission has decided is not worthy,
and that is, indeed, a sad statement of the state of
the United States Commission on Civil Rights.
COMMISSIONER GAZIANO: Mr. Chair, can I just explain? Certainly there was a potential question that is well within our jurisdiction, and that is whether there was profiling of an ethnic or racial nature. The hearing itself, although attempted to get at that, produced no evidence one way or the other on that issue, and the remainder of the examination of the national security questions that the report did produce, I submit, is not within our jurisdiction, but I also just as this point want to ask the Staff Director.

It is the case that the transcript is either on our Website or can be placed on our Website. I have no objection to the actual views, the actual testimony that was produced being available, and let citizens judge for themselves whether there's really something for the Commission to comment on. I believe certainly there's nothing for Commissioner statements within our jurisdiction that was produced at this hearing, but certainly it would be fine for me and good if the statements were available on the Website.

Is that the case?

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

COMMISSIONER GAZIANO: That's fine.
MR. DANNENFELSER: The prepared statements are not on the Website.

COMMISSIONER GAZIANO: Okay. Thank you.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

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

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

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

VICE CHAIR THERNSTROM: You mean how young you are.

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

We, by not having this available, have missed some of those very important debates. No doubt, in the wake of more recent events, those debates have and will still continue. To claim that it is beyond our jurisdiction now and essentially akin to burying our head in the sand on issues that are of
immense importance to the civil rights of certain religious and ethnic communities in this country, I would stipulate that Mr. Eastman did challenge whether we even had the authority to do it. But I would argue that part of what our mission has been since the inception of the Commission, indeed, the very nature of why this Commission was created, was to challenge preconceived notions of what was allowable jurisdiction and what was allowable for this Commission to go into.

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

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

Quite frankly, I did not expect there would be findings and recommendations in this report,
given the composition of this Commission. So why we will not simply publish A and leave it at that because I don't think we're going to get anything better than that is beyond me.

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

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

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

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

CHAIRMAN REYNOLDS: Well, we voted on Part A.

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

COMMISSIONER GAZIANO: If we were to approve Part A --
VICE CHAIR THERNSTROM: Yeah.

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

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

COMMISSIONER TAYLOR: The vote is still open, correct?

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

CHAIRMAN REYNOLDS: Well, you raise an interesting issue, an interesting point since it was three in favor, three against, and two abstentions. The way I am looking at -- well, my interpretation, I'm looking at the folks who voted against it, but I'm
not sure that in this particular instance that that's
the right way to look at it since there really was no
majority.

The bottom line is we have vote.

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

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

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

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

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

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

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

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

CHAIRMAN REYNOLDS: That's a different question.

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

CHAIRMAN REYNOLDS: What was the answer?

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

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

MS. MONROIG: I would think that an abstention would be even less than someone who voted against it, someone who chose not to participate at
COMMISSIONER YAKI: Well, I move to suspend the rule with regard to the requirement for someone on the prevailing side of the vote to be able to move for reconsideration.

CHAIRMAN REYNOLDS: And just to clarify --

COMMISSIONER YAKI: With regard to this particular vote.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion.

(No response.)

CHAIRMAN REYNOLDS: All right. All in favor.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Aye.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: I'll pass.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Same.

CHAIRMAN REYNOLDS: You're up.

COMMISSIONER HERIOT: Okay.

COMMISSIONER GAZIANO: What about Gail?
Did Gail vote?

COMMISSIONER HERIOT: No. I was against that motion.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Nothing personal actually.

COMMISSIONER TAYLOR: No slight taken.

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

CHAIRMAN REYNOLDS: In this particular case.

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

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

(Laughter.)

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

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

COMMISSIONER HERIOT: Or Commissioners'
statements, I think.

COMMISSIONER YAKI: That's right.

CHAIRMAN REYNOLDS: Let's start with Commissioner Heriot.

COMMISSIONER TAYLOR: Can I --

COMMISSIONER HERIOT: There's no second yet.

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

CHAIRMAN REYNOLDS: Thank you.

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

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

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

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

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

COMMISSIONER TAYLOR: Effectively Part A.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: There hasn't been a
second yet.

CHAIRMAN REYNOLDS: I seconded. I seconded.

COMMISSIONER YAKI: Ashley seconded.

COMMISSIONER HERIOT: No, he hadn't.

COMMISSIONER YAKI: Yeah, he did.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

COMMISSIONER MELENDEZ: Aye.

COMMISSIONER TAYLOR: Aye.

VICE CHAIR THERNSTROM: Aye.

CHAIRMAN REYNOLDS: Vice Chair.

COMMISSIONER GAZIANO: No.

COMMISSIONER HERIOT: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

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

CHAIRMAN REYNOLDS: Abstain.

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

(Laughter.)

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

CHAIRMAN REYNOLDS: Oh, just having a little fun. That's all.
COMMISSIONER YAKI: Even the Mets won a game in '62.

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

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

II(C). MULTI-ETHNIC PLACEMENT ACT BRIEFING REPORT

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

VICE CHAIR THERNSTROM: Why is that so shocking?

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

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

VICE CHAIR THERNSTROM: And let the spirit of compromise be contagious.
CHAIRMAN REYNOLDS: Okay. It's a new year. You heard the Vice Chair. Show more flexibility, damn it.

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

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

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

"Since enactment of the 1996 amendments to MEPA, the removal of barriers to Inter-Ethnic Adoption Act, HHS has conducted compliance reviews which found that a number of agencies and personnel have
circumvented MEPA's provisions against consideration of race in placements. MEPA makes it clear that the use of race in making placement decisions is subject to strict scrutiny and must represent a compelling interest."

Is there a second? Please.

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Okay. Someone has some --

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

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: Yes, indeed.

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

CHAIRMAN REYNOLDS: I will treat that as a
COMMISSIONER YAKI: An amendment to the amendment? 
CHAIRMAN REYNOLDS: Let's hear it. 
COMMISSIONER YAKI: No, that was an amendment to the amendment, what he just read. 
CHAIRMAN REYNOLDS: Yes. 
COMMISSIONER YAKI: okay. 
CHAIRMAN REYNOLDS: Discussion? 
(No response.) 
CHAIRMAN REYNOLDS: All in favor, please say aye. 
(Chorus of ayes.) 
CHAIRMAN REYNOLDS: Objections? 
COMMISSIONER YAKI: Point of order. 
CHAIRMAN REYNOLDS: Yes. 
COMMISSIONER YAKI: I heard beeps in and out. Is Commissioner Kirsanow with us? 
CHAIRMAN REYNOLDS: Commissioner Kirsanow? 
COMMISSIONER KIRSANOW: I'm here. 
CHAIRMAN REYNOLDS: How do you vote? 
COMMISSIONER KIRSANOW: Aye. 
CHAIRMAN REYNOLDS: Okay. Commissioner Yaki, how do you vote? 
COMMISSIONER YAKI: Abstain.
CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: No.

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Aye.

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

COMMISSIONER KIRSANOW: Aye.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Aye.

CHAIRMAN REYNOLDS: Commissioner Heriot.

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

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

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

COMMISSIONER YAKI: In song?

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

Okay. I move that the Commission approve rewritten Recommendation No. 3, which reads as follows: "HHS should continue to conduct compliance reviews and impose sanctions as necessary to ensure
that states, agencies and personnel are in compliance with the MEPAs as Section 1808(c), strict limitations on the use of race in placement decisions."

Is there a second?

COMMISSIONER TAYLOR: Second.

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

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

CHAIRMAN REYNOLDS: Okay. Is it a friendly amendment?

COMMISSIONER TAYLOR: It is a friendly amendment.

CHAIRMAN REYNOLDS: Okay. Let's hear it.

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

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

Discussion?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Abstain.
CHAIRMAN REYNOLDS: Commissioner Melendez.
COMMISSIONER MELENDEZ: No.
CHAIRMAN REYNOLDS: Vice Chair Thernstrom.
VICE CHAIR THERNSTROM: Yes.
CHAIRMAN REYNOLDS: Commissioner Kirsanow.
COMMISSIONER KIRSANOW: Yes.
CHAIRMAN REYNOLDS: What was that?
VICE CHAIR THERNSTROM: What was it?
CHAIRMAN REYNOLDS: Commissioner Kirsanow, was that a yes?
COMMISSIONER KIRSANOW: It was.
CHAIRMAN REYNOLDS: Commissioner Gaziano.
COMMISSIONER GAZIANO: Yes.
CHAIRMAN REYNOLDS: Commissioner Heriot.
COMMISSIONER HERIOT: I'm abstaining again.
CHAIRMAN REYNOLDS: I vote for it. The motion passes.

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

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Is there a friendly amendment?

COMMISSIONER TAYLOR: No.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: And that was a yes?

COMMISSIONER KIRSANOW: Yes.

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

VICE CHAIR THERNSTROM: Or spell it out.

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

VICE CHAIR THERNSTROM: Is that correct,
Commissioner Kirsanow?

CHAIRMAN REYNOLDS: Just nod.

(Laughter.)

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

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Abstention?

COMMISSIONER HERIOT: Abstain, yeah.

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

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

II(C). CONSIDERATION OF TIME LINE FOR MEPA

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

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

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

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

COMMISSIONER YAKI: -- of having these --

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

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

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

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

CHAIRMAN REYNOLDS: Any objections?

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

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

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

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

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

CHAIRMAN REYNOLDS: But it's his birthday.

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

COMMISSIONER YAKI: A holiday.

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

CHAIRMAN REYNOLDS: More importantly --

VICE CHAIR THERNSTROM: His birthday is not important.

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

VICE CHAIR THERNSTROM: Right.

CHAIRMAN REYNOLDS: Okay.

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

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

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

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

VICE CHAIR THERNSTROM: And, Mr. Chairman --

COMMISSIONER YAKI: I only requested one week.

VICE CHAIR THERNSTROM: -- I mean --

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

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

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

COMMISSIONER YAKI: Make it two weeks.

CHAIRMAN REYNOLDS: Okay. Does that cause --

COMMISSIONER HERIOT: So statements due on the 1st.

CHAIRMAN REYNOLDS: -- heartburn?

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

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

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

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

COMMISSIONER HERIOT: I think we're talking about actually not being outside the schedule.

If the rebuttals are due on the 15th --
MR. DANNENFELSER: That still leaves us with a total of 60 days --

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

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

VICE CHAIR THERNSTROM: All right.

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

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

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

CHAIRMAN REYNOLDS: Okay. Okay. Next up.

COMMISSIONER YAKI: Louisiana?

CHAIRMAN REYNOLDS: Yes, indeed.

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

LOUISIANA JUSTICE OF THE PEACE

COMMISSIONER YAKI: Apparently their conclusion is just let them be in the swamp and that's it.
CHAIRMAN REYNOLDS: Okay. On October 22nd, 2009, the U.S. Commission on Civil Rights sent a letter to the Chief Executive Office of the Judiciary Commission on Louisiana concerning the refusal of a parish justice of the peace to issue marriage licenses to interracial couples. In that letter, we requested the Louisiana Judiciary Commission notify us if it was going to conduct an investigation to determine if violations of the law or local ethics rules had occurred, whether any member of the judiciary or Bar were aware of this conduct, whether there was a duty to report the conduct to the appropriate authorities, and whether any corrective actions had been taken or sanctions imposed.

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

I have drafted a follow-up letter concerning this matter which was E-mailed to all Commissioners and Special Assistants on January 8th,
I move to approve sending the follow-up letter to the Louisiana Judiciary Commission. Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

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

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

CHAIRMAN REYNOLDS: Questions, comments, statements?

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

CHAIRMAN REYNOLDS: I'm sorry. What did
you say?

(Laughter.)

COMMISSIONER YAKI: It was clear from --

CHAIRMAN REYNOLDS: No, no, the other part.

(Laughter.)

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

(Laughter.)

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

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

CHAIRMAN REYNOLDS: All in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Okay. All in favor,
please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

(No response.)

CHAIRMAN REYNOLDS: Okay. Glad I checked.

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

CHAIRMAN REYNOLDS: That is correct.

COMMISSIONER GAZIANO: He may be out for a minute.

VICE CHAIR THERNSTROM: Well, then --

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

COMMISSIONER GAZIANO: Did he?

CHAIRMAN REYNOLDS: He did not.

Okay. The vote was unanimous. The record should reflect that Commissioner Kirsanow did not participate in the vote.
Next up is a discussion of a possible letter to the Securities and Exchange Commission regarding its new corporate board diversity policy.

II(E). DISCUSSION OF NEW SEC CORPORATE DISCLOSURE RULE RE. DIVERSITY

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

I move that the Commission approve sending the proposed letter to the Securities and Exchange Commission. I understand that Commissioner Heriot would like to propose some minor revisions to the letter that was E-mailed to you on January 8th, 2010. Her Special Assistant distributed a red-lined version to all Commissioners at the start of the meeting.

COMMISSIONER HERIOT: Except for she hasn't.
CHAIRMAN REYNOLDS: Oh.

COMMISSIONER HERIOT: I took home the draft. I took it to the hotel last night by mistake. So I ultimately did not get a chance to do that.

CHAIRMAN REYNOLDS: So it's not her fault.

COMMISSIONER HERIOT: No. Blame Commissioner Heriot.

CHAIRMAN REYNOLDS: Okay. Is there a second?

PARTICIPANT: Well, what are we --

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

COMMISSIONER GAZIANO: Whether revisions get majority support.

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

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

COMMISSIONER HERIOT: It's not going to be
substantially revised. We've done this many times.

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

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

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

CHAIRMAN REYNOLDS: Okay.

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

And I've tried to reduce some of the overlap between the six requests so that it's clear that the date that we're using June 1st, 2008, where
we're not going any further back in time on diversity issues; that that applies across the board to documents that are not specifically related to the amendments to CFR.

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

CHAIRMAN REYNOLDS: Other comments?

COMMISSIONER YAKI: (Speaking from an unmiked location.)

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

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Stop talking about me.

(Laughter.)

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

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

This point that I agree with Commissioner
Yaki on, if there's no objection, then I'd leave that to your discretion, Mr. Chairman whether to add a sentence to that effect to the letter.

CHAIRMAN REYNOLDS: Is there an objection?

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

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

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

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

CHAIRMAN REYNOLDS: Todd.

COMMISSIONER GAZIANO: Oh, just to authorize the Chairman to add a sentence that specifically mentions looking into those other justices who may have facilitated the other justices. And I'll leave that to the Chairman's discretion, but I wanted to make sure that everyone is comfortable with that.

CHAIRMAN REYNOLDS: Okay. Where are we folks?

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

(Pause in proceedings.)
COMMISSIONER YAKI: May I ask what the purpose of this letter is?

COMMISSIONER HERIOT: The SEC letter?

COMMISSIONER YAKI: yes.

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

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

COMMISSIONER HERIOT: That's right.

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

COMMISSIONER HERIOT: Well, discovery is an inquiry.

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

COMMISSIONER HERIOT: What was the previous language of what?

CHAIRMAN REYNOLDS: Is this a revision of
an existing rule or is this a new concept, a new obligation --

COMMISSIONER HERIOT: It's a new --

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

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

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

CHAIRMAN REYNOLDS: It's a new regulation.

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

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

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

COMMISSIONER YAKI: Can we take a break or can we just pass this over and keep on moving on the agenda?
CHAIRMAN REYNOLDS: We need the Staff Director.

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

CHAIRMAN REYNOLDS: All right.

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

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

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

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

CHAIRMAN REYNOLDS: No.

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

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

COMMISSIONER HERIOT: It depends on the time. If we get the documents and decide this is an
issue that we want to hold a briefing on, then we will. If we get the information and we decide we want to do a letter on, a substantive letter, then we will. Right now we're just asking for information.

CHAIRMAN REYNOLDS: Okay. Any more comments?

COMMISSIONER YAKI: Yeah.

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

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

COMMISSIONER HERIOT: (Inaudible.)

COMMISSIONER YAKI: I really have to question what the Commission is doing with regard to this letter. We are looking at a disclosure requirement of policies that may or may not be adopted by corporate boards registering under the Securities and Exchange Commission. It is a rule of inquiry only. It is a rule that does not imply, implicate or otherwise pass judgment on any corporation in terms of whether it does or does not have a diversity policy with regard to a corporate board and in so doing, go on a rather extended fishing expedition for
information going as far back as June 1st, 2008.

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

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

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

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

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

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

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

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

If it was too short paragraphs, but this is built on very -- on language that seems to me doesn't support this letter, and I for one in terms of the whole diversity question, I describe myself as in favor of aggressive nondiscrimination, not in favor of racial and ethnic or gender double standards and so that I had no problem as I wrote at length in a Newsweek piece a long time ago, I had no problem with the insistence that Colin Powell at one point in his life be on a list that he was not on because he deserved to be on that list, and the rest is history, as it were. He did get on the list that he deserved to be on and was chosen and went forward.
So, you know, what exactly this regulation is saying and whether it crosses the line for me between this kind of what I call aggressive nondiscrimination and actual ethnic-racial quotas, double standards and so forth is not clear to me from this language at all, and I can't support such a letter that assumes that the meaning is clear here.

CHAIRMAN REYNOLDS: Commissioner Heriot.

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

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

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

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

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

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Abstain.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: And I vote in favor of
Next step. Mr. Staff Director, please provide us with an update on the status of the collection and Web posting of documents for the Commission Clearinghouse Project.

II(F). UPDATE RE. COMMISSION CLEARINGHOUSE PROJECT

MR. DANNENFELSER: Thank you, Mr. Chairman.

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

The department has complied with our request and sent month-by-month documents starting with July 2009, with the most recent being from November 2009. Some of the recent documents have been mixed together by category, but we expect DOJ to send them by section again beginning next month. Staff
will see if DOJ can re-send these particular documents
by category or sort through them to organize them
accordingly.

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

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

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

They have subsequently begun posting
directives that have been issued as interpretive
guidance, and we are linking to that section of their
Website.
We have asked the Secretary of Education to direct the Office for Civil Rights to furnish us the following documents relating to civil rights enforcement efforts in electronic format when we get to the close of each month:

Number one, all complaints filed in call home cases;

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

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

Number four, all dear colleague letters.

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

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

Number two, discipline class-wide;

Number three, First Amendment, including speech codes and harassment cases involving insults, slurs or other derogatory expressions;
Number four, race-based programs;

Number five, resource compatibility;

number six, segregation; number seven, single sex; and

Number eight, intersection of religion and national origin.

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

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

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

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

Number two, all nonconfidential settlement agreements entered into by the EEOC during that month;
Number three, all appellate briefs filed in court during that month;

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

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

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

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

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

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

In a letter dated August 11th, 2009, the EEOC responded that it was unable to honor our request citing Title VII of the Civil Rights Act of 1964 and the Privacy Act, EEOC advised that it was proscribed from making public items number five through seven.
They further stated that it would be unduly burdensome to provide items one through four, eight and nine.

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

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

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

The Department of Commerce's National Technical Information Service has begun coding this site, and the Commission's IT Director will be meeting with the NTIS Project Director next Friday to discuss
layout changes based on feedback we receive from Commissioners today.

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

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

Now, we did break it down by these nine categories within the Department of Justice, and then I believe under voting there are a few examples, and we would plan to post them by the most recently received documents since they'll be continuing to come in on a regular basis, and then, of course, when you click on those, you'll see.
Can you click on one or two of those documents there, Michelle? Just pick one.

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

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

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

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

And this is the -- there's a link. They have started to post directives on the Department of Labor site, and they're quite comprehensive, and you can see it here. So we believe that this may satisfy
our request in this particular area to bring people
directly to this particular part of their Website.

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

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

And at this point I'd invite any
questions.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Mine is not a
question to the Staff Director but more general. If
we want to have questions to the Staff Director first,
I will wait.

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

Is there any thought to reorganize our information?

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

But we felt that we might -- utilizing the services of the National Technical Information Service, that we would be able to get a lot of additional resources, and given the volume of this particular project, we thought it would be advisable to link to another site in order to better handle the capacity.
CHAIRMAN REYNOLDS: Okay. Commissioner Heriot.

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

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

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

I think what we should do is take a careful look at what's available on their Website and
anything that is available on their Website, we don't need the subpoena obviously, but those things --

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

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

The other thing I think we probably --

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

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

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

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

The other thing that I think we need to be doing here is putting together a subcommittee to move along the Website issue. You know, my understanding is that this needs to be streamlined. The procedures need to be streamlined so that we can get this back as quickly as possible, and I would propose that we
create a subcommittee and deal with some of the staff members.

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

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

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

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

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

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

COMMISSIONER HERIOT: All right.

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

COMMISSIONER HERIOT: I think this will move faster.

CHAIRMAN REYNOLDS: -- in this and --
COMMISSIONER GAZIANO: Why don't we do one at a time?

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

COMMISSIONER GAZIANO: That we previously asked.

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

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

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion? Vice Chair Thernstrom.

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

CHAIRMAN REYNOLDS: You're referring to the subpoena?
VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki was next.

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

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

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: I think that the content of the subpoena and the letter will be the content that we've already approved, and that's why I wanted the motion to reflect that. So that's why I think that we have already approved essentially what will be in the content of the subpoena, and I think we
should be ready to vote on it today.

CHAIRMAN REYNOLDS: Commissioner Taylor.

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

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

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

VICE CHAIR THERNSTROM: That's --

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

More of a question than anything else.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Well, I agree with
what Commissioner Taylor just said, but also
Commissioner Gaziano said, well, it would be
essentially the same.

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

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

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

But I agree that asking them to collate
all of this information according to our particular
needs, given their case load, I think is burdensome
and it is just as reasonable and just as accessible for members of the public who are interested.

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

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

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

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

CHAIRMAN REYNOLDS: We're going to grind
the SEC. If I heard you right --

COMMISSIONER YAKI: Perhaps the -- perhaps

the --

CHAIRMAN REYNOLDS: -- the letter that we

proposed to send to the SEC --

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

CHAIRMAN REYNOLDS: Well, I'm trying to

pose a question and frame it properly.

COMMISSIONER YAKI: I'm not saying that --

I'm not saying that the motivation has any sound basis

in fact. I'm not saying that the motivation has any

rational basis in fact.

CHAIRMAN REYNOLDS: I'm trying --

COMMISSIONER YAKI: I'm saying that there

may be a hope that this kind of -- when it's very

clear that EEOC has responded to us, has given us ways

in which to incorporate information to the public

through appropriate hyperlinks to their --

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: -- send a bunch of

subpoenas saying, "No, we want you to do all of this
stuff anyway," and keep on. Because essentially, --

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

COMMISSIONER YAKI: -- if -- if --

CHAIRMAN REYNOLDS: That's not what was said.

COMMISSIONER YAKI: Because essentially--

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

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

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

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

CHAIRMAN REYNOLDS: How much information --

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

CHAIRMAN REYNOLDS: They have given us no
COMMISSIONER YAKI: -- on the other way.

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

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

CHAIRMAN REYNOLDS: -- to provide the --

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

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

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

CHAIRMAN REYNOLDS: Well, one point. It's not clear to me what the burden is, especially in light of, if I understood our earlier conversation,
that what we're requesting is a subset of the original request since, to the extent that we can get this information, to the extent this information is publicly available and accessible, we will get that ourselves.

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

COMMISSIONER HERIOT: Accessible on a timely basis.

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

COMMISSIONER HERIOT: Yeah.

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

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

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

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

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

COMMISSIONER YAKI: Oh, come on.

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

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

CHAIRMAN REYNOLDS: Okay. Let me ask the two of you a question. Since we have to a certain degree agreed to the compromise contained in this letter, that information that is publicly available
and accessible on a timely basis, that we will gather
that stuff ourselves; is it worth going back to them
before sending a subpoena and saying, "We accept your
compromise provided we can get it in a timely
fashion"?

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

CHAIRMAN REYNOLDS: Well, but hold on.

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

COMMISSIONER HERIOT: I think that was
one --

COMMISSIONER GAZIANO: You can always --

people can always --

CHAIRMAN REYNOLDS: But hold on.

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

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

COMMISSIONER HERIOT: What we've done is
we've reduced what they are required to do to comply
with it. These documents are being subpoenaed, but if
they say, "We put it up on the Website," that's fine.
But we need -- you know, in order to have an assurance that they'll do this in a timely manner, you make it part of the subpoena. You tell them fine. If you put it up on the Website, you don't have to send us a copy, but let me -- you know, we've got to remember here. We're dealing with an agency that has a duty to cooperate --

CHAIRMAN REYNOLDS: Yeah.

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

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

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

Also, every agency has to comply with very similar requests from both houses of Congress. This is not, you know, an unusual kind of request for any sort of agency --
CHAIRMAN REYNOLDS: So -- so -- so --

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

CHAIRMAN REYNOLDS: So my --

COMMISSIONER HERIOT: -- have to provide.

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

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

CHAIRMAN REYNOLDS: Okay. I've got --

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

CHAIRMAN REYNOLDS: I've got my answer.

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

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

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

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

COMMISSIONER GAZIANO: To the extent that they really do.

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

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

VICE CHAIR THERNSTROM: -- and Heriot don't think that that constitutes accessibility and
availability.

CHAIRMAN REYNOLDS: Is that your position?

COMMISSIONER HERIOT: Pardon?

CHAIRMAN REYNOLDS: Is that your position?

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

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

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

COMMISSIONER HERIOT: This stuff is not --

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

COMMISSIONER GAZIANO: So we have to --

VICE CHAIR THERNSTROM: -- that is my question.

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

COMMISSIONER GAZIANO: That's absurd.

That's absurd.

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

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

CHAIRMAN REYNOLDS: Well, no.

COMMISSIONER YAKI: We are hardly in a position --

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

And I would just say this. The idea that
this letter is insulting is only in the eye of the beholder, and apparently this particular beholder --

    CHAIRMAN REYNOLDS: Agreed.

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

    CHAIRMAN REYNOLDS: Okay.

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

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

    CHAIRMAN REYNOLDS: You were doing so well.

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

    CHAIRMAN REYNOLDS: You were doing so well.

    COMMISSIONER YAKI: I'm just saying I'm trying to be realistic. It's sending -- it's sending a Hellfire missile, you know, at a provocation that
really may not be there. The question is: what do
you do?

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

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: Go ahead. Go ahead.

Go ahead. Go ahead.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Melendez.

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

But you know, I agree. I guess in this whole issue is there something, because this has gone on a while I'm understanding, about us, you know, whether or not we've pursued after this letter here on August 11th, pursued some more from the Staff Director
of anybody else on trying to follow up on this letter
or did we just let it sit since this letter came out
in August of 2009?

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

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

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

VICE CHAIR THERNSTROM: No.

COMMISSIONER YAKI: No.

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

CHAIRMAN REYNOLDS: Yes, I'd like to take
a break.
COMMISSIONER YAKI: Well, you'd better hope that Peter stays on the line then.

CHAIRMAN REYNOLDS: That is always my hope.

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

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

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

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

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

Unfortunately, I don't see in their response, in terms of its responsiveness and its omission in terms of asking that we get together and
meet in person, reflecting the type of cooperation that I would have hoped to see in an agency like this when they get a letter from the Commission.

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

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

CHAIRMAN REYNOLDS: Via letter?
COMMISSIONER TAYLOR: Via letter.

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

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

COMMISSIONER HERIOT: Second.
CHAIRMAN REYNOLDS: Discussion?

Hearing none, all in favor please say aye.

(Chorus of ayes.)

COMMISSIONER YAKI: Abstain.

COMMISSIONER MELENDEZ: I vote for.

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: That was an aye for the court reporter.

CHAIRMAN REYNOLDS: Well, he's skilled. I mean, nods, grunts, he can interpret that.

(Laughter.)

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Okay. We have one abstention. The motion passes.

You have a second motion? Do you remember that right?

COMMISSIONER HERIOT: Yeah, I think it will be a good idea to create a subcommittee to work with Lenore and Chris in getting this stuff, you know, done in a timely manner.

So I would move that we have a subcommittee on which any member of the Commission may join.
CHAIRMAN REYNOLDS: Okay. I second it.

Discussion?

Okay. Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Melendez?

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

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Vice Chair.

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

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Your motion.

Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

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

COMMISSIONER YAKI: Two.

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

Next up.

COMMISSIONER HERIOT: I think everybody who would want to join should sort of speak up at this
point. I'm willing to be on the subcommittee.

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

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

COMMISSIONER HERIOT: Okay.

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

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

CHAIRMAN REYNOLDS: Okay. You will --

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

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

COMMISSIONER HERIOT: Joy.

CHAIRMAN REYNOLDS: -- in terms of --

COMMISSIONER HERIOT: Harassing.

CHAIRMAN REYNOLDS: -- arranging teleconferences and what have you, it all rests in your hands.
Okay. Next up. At the December 16th, 2009 meeting the Commission authorized me to set the date for a hearing on the 2010 Enforcement Report involving the New Black Panther Party.

II(G). UPDATE ON 2010 ENFORCEMENT REPORT

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

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

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

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

COMMISSIONER YAKI: What are the grounds?

MS. MONROIG: So certified.

CHAIRMAN REYNOLDS: Okay.

MS. MONROIG: So certified.

COMMISSIONER YAKI: What are the grounds?
CHAIRMAN REYNOLDS: The grounds are that we're going to discuss the subpoena, and also we're discussing issues that if it became public, our efforts could become undermined.

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

CHAIRMAN REYNOLDS: Okay. So --

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

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

CHAIRMAN REYNOLDS: I wouldn't call it privileged.

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

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

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

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

   CHAIRMAN REYNOLDS: Agreed. Okay. At this point I move to close this meeting, pursuant to
Exemptions 9 and 10 of the Closed Meeting Procedures for Commission Meetings, and furthermore to authorize the Staff Director to place in a location accessible to the public within one working day the public vote to close the meeting and explanation of a decision to close the meeting, and a list of all persons attending the meeting.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Okay. Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Aye.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Aye.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: And I vote for it
also. The motion passes.

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

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

CHAIRMAN REYNOLDS: Okay. Thank you.

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

(Laughter.)

CHAIRMAN REYNOLDS: Okay.

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

COMMISSIONER GAZIANO: Are we back in regular session?

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

COMMISSIONER KIRSANOW: I'm here.

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

COMMISSIONER YAKI: Never mind. I'll come up and talk to you about it.
CHAIRMAN REYNOLDS: Okay. All right. At the December 16th, 2009 meeting, Commissioner Yaki requested that a discussion of reporting procedures for the Discovery Subcommittee on the 2010 Enforcement Report be placed on the agenda for this meeting.

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

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

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

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

CHAIRMAN REYNOLDS: Okay. Would members
of the subcommittee have heartburn with preparing minutes of meetings? Yes.

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

COMMISSIONER YAKI: Well --

COMMISSIONER GAZIANO: Let me finish. Let me finish.

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

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

But the Discovery Subcommittee, as I hope Pete and the General Counsel will say, cannot always meet at the same time or the same location, and, yes, preparing -- but we do -- the General Counsel always accurately reports what our subcommittee has done, at least those matters that ought to be brought to the
Commission's behalf. And if the General Counsel or other members of the Subcommittee fail to draw to the attention of Commissioners matters that Commissioners believe they needed notice on, they will suffer the consequences. They will not have their motions acted upon.

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

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

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

COMMISSIONER HERIOT: What about this oral report to both the regular and telephonic meanings? That's going to get a report every two weeks basically if we do it that way.
VICE CHAIR THERNSTROM: I don't know why we have these continuing telephonic meetings, but --

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

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

CHAIRMAN REYNOLDS: We voted on the issue.

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

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

COMMISSIONER HERIOT: No.

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

Now, we can interpret that to say I should
have done it, and maybe I should have. I thought I made it very clear that I wanted it. Regardless --

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

COMMISSIONER YAKI: Neither am I.

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

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

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

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

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

VICE CHAIR THERNSTROM: Well, wait a
COMMISSIONER YAKI: No, I would say a suggestion of individuals for the Chairman to consider for subpoena. That would be fine. I don't need to know the names, whatever, but --

CHAIRMAN REYNOLDS: But if you drafted the minutes.

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

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

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

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

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

CHAIRMAN REYNOLDS: No, no, no, no. We're asking. We're asking your opinion at this point. If you ask my opinion, I think, quite honestly, it's much
more flexible to report on a biweekly basis, which I have no problem doing, and answering all the questions. You will probably get more information faster that way than my doing something which, frankly, we don't even have regularly scheduled meetings.

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

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

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

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

MR. BLACKWOOD: No, aside from --
COMMISSIONER GAZIANO: Except for the fact that the only people --

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

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

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: -- were there.

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

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

CHAIRMAN REYNOLDS: It wouldn't be helpful to me. It wouldn't be helpful to me. The information, I want to hear directly from David.
COMMISSIONER GAZIANO:  Right.  No, I understand.

CHAIRMAN REYNOLDS:  But -- but --

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

CHAIRMAN REYNOLDS:  Commissioner Yaki --

COMMISSIONER GAZIANO:  -- Taylor and --

CHAIRMAN REYNOLDS:  -- believes --

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

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

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

CHAIRMAN REYNOLDS:  That's correct.

That's correct.

Is there a second?

COMMISSIONER MELENDEZ:  Second.

COMMISSIONER TAYLOR:  Prospective or
retroactive?

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

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

CHAIRMAN REYNOLDS: Yeah, yeah, yeah, okay.

COMMISSIONER GAZIANO: -- for doing it --

CHAIRMAN REYNOLDS: Okay, okay, okay.

COMMISSIONER GAZIANO: -- to someone else.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

COMMISSIONER KIRSANOW: Abstain, Kirsanow.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Yeah, I abstain too.

CHAIRMAN REYNOLDS: All right.

COMMISSIONER HERIOT: If anybody is actually involved in the committee is abstaining, then I will abstain with them.
COMMISSIONER TAYLOR: I'd like to talk about this some more; is that okay?

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

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

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

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

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

COMMISSIONER GAZIANO: -- to past recollection --

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

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

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Prospective only.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: As opposed to on the past.

CHAIRMAN REYNOLDS: Dr. Lerner, would you
please provide us with an update on the Title IX Project?

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

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

II(I). UPDATE ON TITLE IX PROJECT

DR. LERNER: Mr. Chairman, thank you.

Very briefly, we're putting the subpoenas together, as some of you received an E-mail yesterday. Four of them have gone out. It has been our main task and that's what we've been working on, and we hope to get the rest of them out very, very shortly indeed. Out of 19 total, we have so far gotten out four. That's the basic summary here.

CHAIRMAN REYNOLDS: Okay. That's it?

DR. LERNER: Yeah.

COMMISSIONER HERIOT: I have a question.

CHAIRMAN REYNOLDS: Yes.

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

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

CHAIRMAN REYNOLDS: Okay.
COMMISSIONER HERIOT: General Counsel?

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

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

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

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

Two, please send it to -- if you send it to us the regular way, by sending it to a registered agent, they may not get if or a week or two as it works through the system. Some of these institutions are rather large. A lot of registered agents are outside attorneys. They were afraid that it would not get to them, and the general counsel internally said they were the ones that were going to handle it.
So what I have tried to do is contact other general counsel, which does cause a delay, but I think will actually move things along faster. So if that is not possible in the next few days, we will send it to the registered agent. That will also be more expensive because we will have to use a process server.

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

MR. BLACKWOOD: Not at all.

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

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

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

MR. BLACKWOOD: That's correct.

COMMISSIONER HERIOT: Within this upcoming week.

MR. BLACKWOOD: Yes.
COMMISSIONER HERIOT: Okay.

CHAIRMAN REYNOLDS: All right. Very good.

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

III. STATE ADVISORY COMMITTEE ISSUED, PENNSYLVANIA

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

Elisa Basnight
Richard Bockol
Alberto Cardelle
ImJa Choi
John Crews
Heather Heidelbaugh
James Frazier
Nancy Gippert
Patricia Hopson-Shelton
Craig Hymowitz
Steven Irwin
Faye Ritter
William Rothman
Lawrence Tabas
Connie Tarr.
Pursuant to this motion, the Commission appoints James Frazier as Chair of this rechartered Pennsylvania State Advisory Committee. These members will serve as uncompensated government employees.

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

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Thank you.

Commissioner Yaki.

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

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

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

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

CHAIRMAN REYNOLDS: I agree.

COMMISSIONER HERIOT: What?
COMMISSIONER GAZIANO: That we should postpone. Based on their agreement, I would agree to postpone.

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

CHAIRMAN REYNOLDS: Well, no.

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

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

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

CHAIRMAN REYNOLDS: Well, no, no.

COMMISSIONER HERIOT: I'm utterly confused.

CHAIRMAN REYNOLDS: This is not directed at you.

COMMISSIONER HERIOT: You know something about the issue that's being discussed here. I'm
MR. BLACKWOOD: This is David Blackwood.

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

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

I move to re --

CHAIRMAN REYNOLDS: We've --

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

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

COMMISSIONER YAKI: I move --

COMMISSIONER HERIOT: Move to substitute.

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

VICE CHAIR THERNSTROM: I apologize for --

CHAIRMAN REYNOLDS: She seconds the motion.

(Laughter.)

CHAIRMAN REYNOLDS: All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Any --
COMMISSIONER HERIOT: I abstain because I have no idea what's going on.

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

COMMISSIONER YAKI: Mr. Chair.

CHAIRMAN REYNOLDS: Un-huh.

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

CHAIRMAN REYNOLDS: What do you want to talk about

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

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

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

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

CHAIRMAN REYNOLDS: Okay. Yes.

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

COMMISSIONER YAKI: I've already changed
CHAIRMAN REYNOLDS: Okay. I move to approve the minutes of the December 16th, 2009 meeting.

IV. APPROVAL OF MEETING MINUTES, DECEMBER 16, 2009

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

(No response.)

CHAIRMAN REYNOLDS: Abstentions?

(No response.)

CHAIRMAN REYNOLDS: The vote passes unanimously.

Next up is the Staff Director's report.

V. STAFF DIRECTOR'S REPORT

MR. DANNENFELSER: Thank you, Mr. Chairman.

I think we've already welcomed the new staff member, Nick Colten, who is now the Special
Assistant to Commissioner Melendez.

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

COMMISSIONER YAKI: Did you say spring intern?

MR. DANNENFELSER: Spring, spring intern.

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

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

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

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

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

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

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

I would also remind commissioners of the need to set a date for the age discrimination in employment briefing that has been approved. We did have some scheduling conflicts with the hearing relating to the New Black Panthers, but we probably do
need to address that issue of setting a date so that we can then contact potential panelists for that briefing.

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

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

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

Numerous updates about SAC rechartering status and activities were included in the Staff Director's report. That was with the meeting binders, and I'd also like to note that we did receive a pass-
back from the Office of Management and Budget. Commissioners did approve a budget request for $9.95 million, and that was sent to OMB. We got a pass-back from them of $9.4 million, and they had earlier requested that we submit two budget options, one with a $9.4 million budget and one five percent less.

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

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

So there were also come other changes based on small changes that will occur because the
Office of Personnel Management has subsequently come up with what the exact COLA, cost of living adjustment will be. We are working on projections of what it would be previously, and now we know what that number is. So there is a slight variation.

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

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

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

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

Sad to see that my bio still is not in the
top ten, but it is relevant because I think that's the way the public accesses these documents these days, is by downloads rather than mailing them.

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

MR. DANNENFELSER: Thank you.

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

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

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: Any other questions or comments?
(No response.)

CHAIRMAN REYNOLDS: We are adjourned.

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