The Commission convened via teleconference at 11:30 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
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
DEBRA CARR, Associate Director
DEMITRIA DEAS
PAMELA DUNSTON, Chief, ASCD
MAHA JWEIED
ROBERT LERNER, Assistant Staff Director, OCRE
TINALOUISE MARTIN, Director, Office of Management
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
KIMBERLY TOLHURST
AUDREY WRIGHT
COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
KIMBERLY SCHULD
RICHARD SCHEMECHEL
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CHAIRMAN REYNOLDS: Okay. Good morning.

This is Chairman Reynolds.

This is a telephonic meeting of the U.S. Commission on Civil Rights. It is 11:38 a.m. Eastern Standard Time on Monday, March 30, 2009.

Our Commissioners are participating from different locations. I will call the name of each Commissioner to determine if there is a quorum to hold a meeting. Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Here.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Here.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez?

(No response.)

Commissioner Melendez?

(No response.)

Commissioner Yaki? Commissioner Yaki?

COMMISSIONER YAKI: I'm here. I'm here.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Here.
CHAIRMAN REYNOLDS: Okay. The Staff Director is present.

Will the Court Reporter please confirm that she is still on the line?

THE COURT REPORTER: He is.

CHAIRMAN REYNOLDS: Very good.

Okay. Well, then, the meeting will come to order. If a Commissioner wishes to make a statement, please identify yourself first. When it is necessary to take a vote, please state your name, then your vote. After the voting is concluded, I will read back how each of you has voted to ensure that the tally is correct.

I want to start off by noting the passing of Dr. John Hope Franklin, who died this past Wednesday at the age of 94. Most recently, Dr. Franklin was the James B. Duke Professor Emeritus of History at Duke University, where he taught for a decade. He is best known for his pioneering scholarship in the area of African-American Studies.

He is the author of numerous books, including "From Slavery to Freedom: A History of African-Americans," a seminal text on the black experience in the United States that integrated black voices into American history. Some 60 years after its
publication, the book is still relevant, and it is now in its seventh edition.

As a scholar, Dr. Franklin lent his perspective as a historian to Thurgood Marshall and his legal team at the NAACP to help persuade the Supreme Court to outlaw the government's use of racial classifications in public schools and the landmark case of Brown v. Board of Education.

During his lifetime, Dr. Franklin earned honors too numerous to list, including more than 130 honorary degrees, the NAACP's Spingarn Medal, the Charles Franklin Prize, and the Presidential Medal of Freedom.

He also served as Chairman of President Clinton's Initiative on Race. It was said of Dr. Franklin that he gave eloquence and meaning to our ideas, hopes, and dreams of American citizens. Today we honor his life, his work, and his enduring legacy as we mourn his passing.

Next up, approval of the agenda.

I. APPROVAL OF AGENDA

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

COMMISSIONER HERIOT: Second. This is Heriot.
CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: I would like to offer a motion to amend, Mr. Chairman. This is Abigail Thernstrom, the Vice Chair.

CHAIRMAN REYNOLDS: Okay. Please, Abby, go forward and let's hear your proposed amendment.

VICE CHAIR THERNSTROM: Okay. As you know, we have received copies of two motions only this past weekend of motions -- the motion to respond to EEOC --

COMMISSIONER HERIOT: Wait. Don't you have to just make the motion and get a second?

VICE CHAIR THERNSTROM: Well, I'm going to make --

COMMISSIONER HERIOT: And then you explain it.

CHAIRMAN REYNOLDS: I second it. Continue, Abby.

THE COURT REPORTER: I'm sorry. Who was that seconding?

VICE CHAIR THERNSTROM: Motion to respond to EEOC's February 6, 2009 letter regarding our English-in-the-Workplace document request. And motion to collect and make public data on the Federal Government's civil rights enforcement efforts.
I, for one, would like more time to consider these motions. I do believe that receiving them on Saturday is -- in fact, violates our own procedural rules, and I move that we strike them from today's agenda, and, instead, put them on the April 17th meeting.

I have, you know, utmost respect for my colleagues who offer these motions. At first glance, they seem to be within the purview of this Commission. But I think it would be useful for Commissioners and the senior staff to take the time to get a handle on what we are going to do with this information, assuming we receive any of it.

And I also have a concern with our backlog of briefing reports. If we can get some more of these reports out the door, I might feel more comfortable in committing staff resources to the data collection and analysis implied by these motions.

COMMISSIONER GAZIANO: May I speak to the motion to amend, Mr. Chairman.

CHAIRMAN REYNOLDS: Commissioner Gaziano, go ahead.

VICE CHAIR THERNSTROM: And I also have another -- a subsequent motion, but after this.
COMMISSIONER GAZIANO: Those may be meritorious objections, although I am not sure the timing one is. I think the timing is. But I would certainly want to discuss the motions. I think we may have enough information to actually vote on them today, but that seems to -- Vice Chair's concerns seem to go to the merits of them. And I certainly think we should --

VICE CHAIR THERNSTROM: No, I --

COMMISSIONER GAZIANO: I certainly think we should discuss them, have them on the agenda and discuss them, if we have any hope of voting for them at any particular time. So I would like at least a discussion of the motions and see if we can amend them, perfect them, vote on them today, or, if we find merit in the request to postpone, we can at least understand what the basis of -- that we need to do to them, so that we might be able to vote on them next time.

THE COURT REPORTER: This is the Court Reporter. Who was that speaking?

COMMISSIONER GAZIANO: Gaziano.

THE COURT REPORTER: I'm sorry?

COMMISSIONER GAZIANO: Todd Gaziano.

THE COURT REPORTER: Thank you.
COMMISSIONER KIRSANOW: This is Kirsanow. I just have a question as to when it is that Commissioners received copies of these proposed motions.

VICE CHAIR THERNSTROM: Saturday morning.

COMMISSIONER HERIOT: But there was an announcement that there would be such motions. It is just Saturday morning is the time we got the exact wording.

CHAIRMAN REYNOLDS: That's correct. This is Chairman Reynolds. It is also important to note that these are not lengthy documents.

COMMISSIONER HERIOT: And I think it is worth pointing out as well that there had been a request to put this on the meeting from March, and that was postponed. So this would be the second postponement.

VICE CHAIR THERNSTROM: Well, I mean, it -- I have a preference in general for discussing things in person, of course, than on the phone. But we need to review why we are asking for them, what we are going to do with them, and our priorities at the Commission. In other words, our purpose, our goal, and how it fits -- how they fit into the -- I mean, this is -- you are asking here for quite a document
dump. How this, you know, fits in with the work priorities of the staff and our own priorities as Commissioners.

COMMISSIONER HERIOT: I agree that it is better to discuss things in person, and that is why I wanted to discuss it at our prior meeting. But I was willing to do this.

CHAIRMAN REYNOLDS: Gail, let's just make sure the Court Reporter knows who you are.

COMMISSIONER HERIOT: I'm Gail.

(Laughter.)

CHAIRMAN REYNOLDS: Commissioner Heriot. That was Commissioner Heriot.

Now, Vice Chair Thernstrom, you bring up some important points, but I think that that -- we should have that discussion. You --

VICE CHAIR THERNSTROM: I am not prepared to have it without a lot more information. And I do think we would be fully informed by the staff at the next meeting.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, are you expecting additional paper? Because I believe that this is all that is coming.

VICE CHAIR THERNSTROM: No. I think that my impression anyway is -- and I may be wrong -- that
we might get better briefed by the staff. But also, I really think that this requires a fuller discussion than anybody has the patience for on the phone.

COMMISSIONER YAKI: This is Commissioner Yaki. I would just like to second what Commissioner Thernstrom is saying. I don't know about your schedules, but I am not budgeting four hours or three hours for this particular meeting. I have a lot of other things that are on my calendar today.

So if this is going to be a longer discussion, and as I have been watching this, and if the materials themselves may not be that lengthy, the history behind these materials and why and wherefore, and how it fits in with our entire work schedule, as the Vice Chair has pointed out, is something that might and should merit a much longer discussion.

In any case, I second Commissioner Thernstrom's motion, and --

COMMISSIONER HERIOT: Already been seconded.

CHAIRMAN REYNOLDS: Okay. Well --

COMMISSIONER YAKI: Just for the purposes of rhetorical value, Ms. Heriot, not necessarily --

CHAIRMAN REYNOLDS: Okay. This is Chairman Reynolds. It seems to me that we are chewing
up a lot of time that could be spent discussing this
issue on the merits. I would not assume that this is
going to take up an inordinate amount of time.

I would suggest that we just open up the
floor to the sponsor or sponsors of the motion and
hear what they have to say.

COMMISSIONER HERIOT: But we have to vote
on the motion to change the agenda.

CHAIRMAN REYNOLDS: Yes. But I am trying
to get consensus around having the discussion.

COMMISSIONER HERIOT: Yes. But we can't
discuss the substance until we -- it has been approved
for the agenda.

COMMISSIONER MELENDEZ: This is
Commissioner Melendez. I just joined the call. I had
the wrong ID and call-in number, so I just -- I'm not
sure where we're at.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: Commissioner
Melendez, we should catch you up on what the issue is.
Could the chair do so?

CHAIRMAN REYNOLDS: Commissioner Melendez,
we are debating whether we should move forward with an
item on the agenda, and that is the motion to respond
to the EEOC's February 6th letter regarding English-in-the-Workplace document request.

And Vice Chair Thernstrom has voted to amend the agenda so that that issue would be tabled. And the rationale offered -- one is procedural, that the actual language was not distributed until this past Saturday. And I guess the other is also -- the other issue is also procedural, that I believe -- and correct me if I'm wrong, Vice Chair Thernstrom -- that you believe that this will take up an inordinate amount of time.

VICE CHAIR THERNSTROM: Well, I think -- it is not only -- in the first place, it's too -- it's a motion to -- it is the -- the motion is two parts. One was postponing the discussion of the EEOC letter and also the motion to collect and make public -- make public the data on the Federal Government's -- I was up until 3:00 in the morning, sorry -- on the Federal Government's civil rights enforcement efforts.

Look, this is -- this is -- these are serious moves on our part to ask a great deal of federal agencies, and to collect, if they were to respond, an enormous amount of data that without any prior understanding from the staff of what they are
going to be able to do with this data, these data -- I should correct my syntax.

And, you know, I just need a fuller discussion, really at the Commission, with answers from Commission staff, as to exactly what our resources are, whether we can do something better with our time, what -- you know, a discussion of what our priorities are. It just does seem to me --

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, listening to you, it sounds like you have some definite ideas on the topic, and it doesn't seem like you are struggling to frame the issue.

VICE CHAIR THERNSTROM: No. You are completely wrong.

CHAIRMAN REYNOLDS: Let me finish, Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Would you be willing to withdraw your motion to allow discussion? We can always vote it down during the program planning agenda.

VICE CHAIR THERNSTROM: I'm not going to withdraw my motion at this point. I really want it postponed until --
COMMISSIONER GAZIANO: I think there are some very --

VICE CHAIR THERNSTROM: -- more documentation than I have now.

COMMISSIONER GAZIANO: This is Commissioner Gaziano. There are I think some very simple answers to those, but I hasten to give them until we have it on the agenda. It still may not pass today.

CHAIRMAN REYNOLDS: Okay. Let's --

COMMISSIONER GAZIANO: Call the question?

CHAIRMAN REYNOLDS: Yes, indeed.

COMMISSIONER MELENDEZ: This is Commissioner Melendez. Just for my comments, I don't really -- I got this late also, and I'm trying to understand, also agreeing with Commissioner Thernstrom, that I don't totally understand.

Even if there is a relationship between the first motion to the EEOC, then the second one having to do with collecting public data on the Federal Government's civil rights enforcement efforts, I think -- it sounds to me like those are kind of, you know, requiring information that will be given to staff and analyzed, and all those different things.
I don't totally understand if those are kind of related in a way, because I just got this late. And, hopefully, we can put it on until the next meeting, so that I can actually ask staff and any of you as to what this actually means, because I don't think we have had adequate time to analyze it.

And I know that even if I am sending something to the Commission later having to do with, you know, kind of assessing where the heck we are to see if we are meeting our statutory mandates, and whether or not we are meeting all of those goals, and all of the things that we have set forth, I think we are kind of maybe getting off track, and so you will receive that later in the week.

But I think it also ties to things like this, so I hope that we could have a little more time by April 20th to kind of gather our questions, because I know we are not going to have time today to get into all of this discussion. So that is just my opinion.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: Thank you.

CHAIRMAN REYNOLDS: This is Chairman Reynolds. Todd, I would suggest that we -- at least I am inclined to have a discussion, but postpone voting
so that we can have further discussion and a vote in
the April business meeting. Is that agreeable to you?

COMMISSIONER GAZIANO: Why don't we -- I
would prefer -- I am not the principal sponsor of
this, but I would still prefer to have a discussion
and see -- we may -- that may be the result. We may
decide that we can vote on it.

COMMISSIONER HERIOT: Yes.

COMMISSIONER GAZIANO: Especially the EEOC
letter. I think the EEOC letter is even easier. I
proposed a couple sentence substitution, but I would
like to get that EEOC letter out.

COMMISSIONER YAKI: Commissioner Yaki. I
have a question. Having never seen the first EEOC
letter in the first place, I am not comfortable
shooting in the dark without having seen the first
response.

COMMISSIONER GAZIANO: You should have.
You were copied on the original e-mail.

COMMISSIONER YAKI: Well, I don't have it.

CHAIRMAN REYNOLDS: Okay. Commissioner
Heriot, the proposal that I put on the table, any
response?

COMMISSIONER HERIOT: It seems to me that
this -- that doesn't go to this motion. We should
simply vote this motion down, and then, if we choose
not to vote on the issue later, that's -- you know,
that's what we choose to do.

VICE CHAIR THERNSTROM: I am willing to
amend my motion so that it conforms to the suggestion
made by the chair. I do not want to vote today. I
would like to have the time to think about this, to
gather some more information myself.

I would hope that at the next meeting we
would be provided with more information. These are
not --

COMMISSIONER HERIOT: I don't think there
is such a thing as a motion not to vote. You just
don't vote.

VICE CHAIR THERNSTROM: No, I'm -- there
can be a motion, as the chair described it, to have a
discussion today, but to postpone any vote on this
subject until the following meeting, at which point we
would have further discussion.

COMMISSIONER YAKI: Second. Commissioner
Yaki. Second.

CHAIRMAN REYNOLDS: Okay. Vice Chair
Ternstrom, how do you vote?

VICE CHAIR THERNSTROM: We are voting on
what you suggested, isn't that correct?
CHAIRMAN REYNOLDS: Yes. Commissioner

Yaki seconded the --

COMMISSIONER GAZIANO: Could I clarify what --

COMMISSIONER HERIOT: Well, the first motion, then -- we need to sort of do this --

COMMISSIONER GAZIANO: Yes. The motion originally was to approve the agenda. Then, it was to strike these discussion items. Are we striking even a vote on the EEOC letter?

VICE CHAIR THERNSTROM: Yes. We are postponing both until the next meeting. I feel a need to do that.

COMMISSIONER GAZIANO: I am voting no. We can always vote it down anyway. I just don't understand why we can't just approve the agenda.

COMMISSIONER HERIOT: Well, we could do the EEOC letter, which seems -- I'm surprised we even have to pass this. Since they hadn't given us the documents we had asked for, I would have expected staff to follow up. But, you know, they weren't doing that, so --

VICE CHAIR THERNSTROM: You know, we have enough material to have a reasonable report already.
CHAIRMAN REYNOLDS: Okay. Let's finish -- let's find out what we are voting about and vote. Let's go back to Abby's original amendment.

VICE CHAIR THERNSTROM: I have withdrawn it in favor of a new one. And Michael Yaki has seconded it.

CHAIRMAN REYNOLDS: Okay. If that's --

COMMISSIONER GAZIANO: I think that's out of order.

COMMISSIONER HERIOT: No, no, no. Gerry has --

COMMISSIONER GAZIANO: I think it's --

COMMISSIONER HERIOT: -- to withdraw his second, then, as well.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: You have to withdraw your second as well.

CHAIRMAN REYNOLDS: Okay, fine. Second withdrawn.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER GAZIANO: I think it's --

VICE CHAIR THERNSTROM: And we've got a substitute motion from me now, which allows discussion but not vote today on this matter, and allows further discussion and a vote on the 20th.
COMMISSIONER YAKI: Second.

COMMISSIONER HERIOT: I don't think such a motion is possible, to make a motion that no motion be made.

VICE CHAIR THERNSTROM: What? That's --

COMMISSIONER YAKI: Sure you can.

CHAIRMAN REYNOLDS: Okay. Folks, let's not get -- let's get out of the weeds. We are trying to accomplish something here. I think -- does everyone understand the issue that we are voting on at this point? Do I need to restate it?

VICE CHAIR THERNSTROM: No. I'll restate it, if you -- I think we all understand it. We are --

CHAIRMAN REYNOLDS: Well, I asked for --

VICE CHAIR THERNSTROM: -- proceeding with a discussion. We are not proceeding with a vote. We are proceeding with a discussion again at the next meeting if we feel we need to. And we will vote at that time.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: I vote yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: No.

CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIRMAN REYNOLDS: And I will --

COMMISSIONER MELENDEZ: Commissioner Melendez here. Yes.

CHAIRMAN REYNOLDS: Oh, I’m sorry. Commissioner Melendez?

COMMISSIONER MELENDEZ: I vote yes.

CHAIRMAN REYNOLDS: I am going to vote no.

Okay. So let the record reflect that Commissioners Melendez, Yaki, and Thernstrom voted in the affirmative. The remaining Commissioners voted no.

So now the issue -- the original motion is still in play. Do we want to vote at this point?

COMMISSIONER HERIOT: Call the question.

VICE CHAIR THERNSTROM: Wait a minute.

What --

COMMISSIONER GAZIANO: To approve the agenda.
COMMISSIONER HERIOT: To adopt the agenda.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: The original motion is to adopt the agenda.

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER HERIOT: I call the question.

VICE CHAIR THERNSTROM: Well, wait a minute. I have another motion. I want to amend the agenda in one other way. I want to amend the agenda to include under the program planning portion a discussion of the HBCU briefing report, why we have not been able to approve it, and get it out the door.

CHAIRMAN REYNOLDS: Okay. Wouldn't that be covered in the Staff Director's report, the update on -- oh, I'm sorry, no. That's statutory reports.

Never mind. Is there a second?

COMMISSIONER TAYLOR: Second. Taylor.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. Could I have an explanation on the motion to collect and make public data on Federal Government's civil rights enforcement efforts? That is -- that is what we are voting on also, including it in this agenda?

THE COURT REPORTER: I'm sorry. Who was that speaking?
COMMISSIONER MELENDEZ: Commissioner Melendez.

THE COURT REPORTER: Thank you.

CHAIRMAN REYNOLDS: There is a motion to amend the agenda to add a discussion about -- well, basically, Vice Chair Thernstrom wants a status update on the briefing report related to HBCUs.

COMMISSIONER HERIOT: Why that one in particular? Why not all of them, then?

VICE CHAIR THERNSTROM: That one could get out the door tomorrow. We did that briefing in May of 2006. July 2007 there was action on the report, but the action on the report was tabled. It has been repeatedly tabled.

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIR THERNSTROM: Yes. Ashley already seconded it.

CHAIRMAN REYNOLDS: Okay. Continue, Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Oh. Well, I mean, that is my motion, to have a discussion of the HBCU briefing and why we haven't been able to approve it and get it out the door. I want it out the door.

But I was -- just to go back to Commissioner Melendez, since he came in late, look --
that was my concern about -- in raising those two issues. The second issue was the motion to collect and make public data on the government's civil rights enforcement efforts. I want it postponed. But I have been shot down on that.

COMMISSIONER MELENDEZ: Okay. All right. Thank you.

CHAIRMAN REYNOLDS: Any other comments from Commissioners?

VICE CHAIR THERNSTROM: I've got a motion on the table to amend the agenda to --

CHAIRMAN REYNOLDS: Yes, we're discussing your amendment right now.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Marty, do you have any information that you are able to provide at this time?

STAFF DIRECTOR DANNENFELSER: Well, the briefing was held in May of 2006. It was placed on the agenda in July of 2007. There was discussion at that time about adding two studies to the report, and then the further action on the report was tabled at that time. There was discussion of it again in August of 2007.
CHAIRMAN REYNOLDS: Before you go on -- this is Chairman Reynolds -- were the two reports added?

STAFF DIRECTOR DANNENFELSER: In August of 2007, it was reported that one report was added in the appendix, and that other information relative to that report was incorporated into the report itself. Information relative to that study was incorporated into the report itself.

CHAIRMAN REYNOLDS: And why wasn't the second report added to the -- I mean, the second study, why wasn't it added?

STAFF DIRECTOR DANNENFELSER: I'm not clear on that. I would need to do some more research to find out --

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR DANNENFELSER: -- what happened with that second study.

COMMISSIONER HERIOT: I think I can be helpful here.

STAFF DIRECTOR DANNENFELSER: Okay.

COMMISSIONER HERIOT: You know, I have taken the position with several Commissioners that the HBCU report would have exponentially greater impact if it were released at the same time as the STEM report.
COMMISSIONER YAKI: Why?

COMMISSIONER HERIOT: Why? Because HBCUs do a particularly good job at educating students in science, technology, engineering, and mathematics. And I think that -- those two reports I think are very much related to each other. I would actually prefer that they be integrated into one report, but releasing them at the same time I think would have a similar effect.

COMMISSIONER YAKI: This is Commissioner Yaki. I don't understand that at all. The briefings were separated in time by two years.

COMMISSIONER HERIOT: But they're related topics.

COMMISSIONER YAKI: I mean, they're only related insofar as you have some pieces that you want to approve there, Commissioner. And I think that --

COMMISSIONER HERIOT: And what's wrong with that if that is what the Commission wants to do?

COMMISSIONER YAKI: And I think that when it comes to, your bootstrapping down an HBCU report to the STEM report, no matter how or what -- how or why we think HBCUs do a good job with STEM or not, the STEM report is much broader than the HBCU report. And
that was not the purpose of the HBCU report back in 2006.

I really see no reason why we are holding the decision on -- if it's something that you have instigated, then I would like to know -- I would like to know why and when and how this has gone on, what correspondence you had with the Executive Director and the staff regarding this, because this is completely new to me.

And if that's the reason why it is being held, I want an explanation from the chair and the Staff Director as to why -- as to why that would be the case.

CHAIRMAN REYNOLDS: Okay. Marty, please finish walking us through where we are with respect to the HBCU briefing report.

COMMISSIONER HERIOT: Aren't you treating the motion as if it has passed already?

COMMISSIONER GAZIANO: Yes. Can we just either amend the agenda to include it in due time, at some point on the agenda, or not? Is that possible?

CHAIRMAN REYNOLDS: The motion -- Vice Chair Thernstrom has asked for a status report.
VICE CHAIR THERNSTROM: I have moved to amend the agenda to include under the program planning portion a discussion of the HBCU briefing report.

COMMISSIONER GAZIANO: Yes. I would prefer to take it after we do the EEOC and the other two motions. So can we -- is it possible we could just vote on the motion to amend the agenda, see if it passes? And if it passes, we'll take it up at that point?

CHAIRMAN REYNOLDS: Okay. Let's --

COMMISSIONER YAKI: I don't see why the Staff Director just doesn't agree to put it in the Staff Director's report.

CHAIRMAN REYNOLDS: Hold on. Let's finish up with the two motions that were in play initially. Right now we are voting on the original agenda. After that vote is done, we will have discussion -- further discussions and a possible vote on Vice Chair Thernstrom's request for an update on the HBCU briefing report.

COMMISSIONER GAZIANO: I think she has moved to amend the agenda to put this in Section 3 under program planning.

CHAIRMAN REYNOLDS: That's correct.
COMMISSIONER GAZIANO: And so shouldn't we vote on that amendment to the agenda?

CHAIRMAN REYNOLDS: It works that way also. So --

COMMISSIONER KIRSANOW: Call the question.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I would call the question.

CHAIRMAN REYNOLDS: Oh, very good. Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I am not sure what we are voting on at this point.

COMMISSIONER KIRSANOW: To amend the agenda to include a discussion of HBCUs under Item 3.

VICE CHAIR THERNSTROM: Okay. Then, we are --

COMMISSIONER YAKI: Your motion.

VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER YAKI: We're voting on -- this is Commissioner Yaki. We are voting on your motion.

VICE CHAIR THERNSTROM: Okay. The answer is yes. I guess we -- the prior amendments I suggested are off the table at this point. The answer is yes.
CHAIRMAN REYNOLDS: Commissioner Gaziano?
COMMISSIONER GAZIANO: No.

CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor?
COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: And I also vote in the affirmative. Commissioners Gaziano and Heriot voted against the motion. The remaining Commissioners voted in the affirmative. The motion passes.

Okay. Any more amendments?

(No response.)

Very good.

Are we ready to vote on the agenda as amended?

COMMISSIONER GAZIANO: Please.

COMMISSIONER MELENDEZ: This is Commissioner Melendez again. I still don't understand -- you talked about the EEOC, but I -- maybe I was
late on the call in the agenda addition to collect and make public data on Federal Government's civil rights enforcement efforts. Is that -- that is another thing that I -- I don't know enough about whether or not -- you know, how it affects staff, similar to the EEOC one. So I'm not in agreement. I would rather have that discussed at the April 20th meeting. So have you already decided that --

VICE CHAIR THERNSTROM: Well, that was my motion, Commissioner Melendez.

COMMISSIONER HERIOT: Yes. We lost that motion.

VICE CHAIR THERNSTROM: I didn't get -- I made a motion, for precisely the reasons you articulate, to postpone it until April 20th. But I was defeated on that.

COMMISSIONER MELENDEZ: Okay. All right.

Thank you.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: I abstain also.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: And I also vote in the affirmative. Commissioners Yaki and Melendez abstained. The remaining Commissioners voted in the affirmative. The motion passes.

That was painful, folks.

VICE CHAIR THERNSTROM: Well, you know, I mean, if I thought it would do any good, I would have just abstained on that, but whatever. Doesn't matter.

CHAIRMAN REYNOLDS: Okay. Moving right along, at this point we are up to the Staff Director's report.

II. STAFF DIRECTOR'S REPORT

CHAIRMAN REYNOLDS: Mr. Staff Director?

UPDATE ON FY09 APPROPRIATION

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman. As I noted in a recent e-mail to Commissioners, the President has signed legislation on
March 11th where he signed into law the Omnibus Appropriations Bill for fiscal year 2009. We had been operating under a continuing resolution, but at a funding level for the Commission of $8.46 million. And this Omnibus Appropriations Bill increases that level to $8.8 million.

There was also language in the bill that the Commission was asked to provide a report to the Appropriations Committees in the House and Senate within 60 days, which would be May 10th -- but that's a Sunday, so I notified the House Appropriations Committee we would report to them by May 8th, the Friday -- about certain aspects of our budget, transparency, issues relating to briefing reports.

So we will be getting that information together and sending -- probably sending a letter to the chairs and the ranking members of both of those committees.

We have also had a development where, with respect to the FY2009 budget, that the President has a more expansive budget, or he is doing more -- further review of his budget and may be submitting an updated budget by about April 21st.

So while we initially thought, after we approved our budget here at the February 20th meeting,
that we would be submitting that right away to the committees, we have been asked by OMB to wait until they give us the go ahead to submit the budget, which will probably be about April 21st.

At this point, we don't expect that they will be coming back to us, that the administration will be coming back to us with any further requests to amend our budget. The main purpose of that extended period, extended review by the administration, is to see how their priorities will be incorporated into the budget.

For instance, the President has talked about health care reform. He has a major initiative on health care reform, so that presumably would affect the budget of the Department of Health and Human Services. So they want to work with the Department of Health and Human Services to see how the budget might be revised to reflect that Presidential priority.

So I am just asking that we hold off on submitting our budget until that time. But as I said, I believe that will be about April 21st that we will be able to submit it.

We have had it reviewed by our OMB examiner. She proposed some changes in terms of moving some information from the back of the report to
the front of the report, and then a few other very small technical changes which we have incorporated. But we are holding off on actually submitting it until we get the go ahead from OMB about April 21st.

CHAIRMAN REYNOLDS: Questions?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez. On the May -- is it 10th or 11th -- appropriation sent to Congress, is there supposed to be inclusion of Commissioners' comments with that?

STAFF DIRECTOR DANNENFELSER: It wasn't clear to that effect. It just asks that we report to the committee. And I would interpret that to be a letter either from myself or from the Chairman to the committee explaining what we plan to do in the areas that are delineated in the report language from the Omnibus Appropriations Bill.

COMMISSIONER MELENDEZ: Okay. Also, we have $8.8 million now as -- we had anticipated $8.4-something, so we have about $340,000 more for -- that we will be working with for this year, is that correct?

STAFF DIRECTOR DANNENFELSER: That is correct, Commissioner.

COMMISSIONER MELENDEZ: Okay. I had asked for an update, you know, for the first quarter, which
I was started I believe October 1st through December 31st. But I haven't received -- just to find out where we are. Now we're in the second quarter, and I still haven't received anything as to how we are managing the budget. So I requested that quite a while ago. You know, am I still going to get that?

CHAIRMAN REYNOLDS: Commissioner Melendez, are you referring to the quarterly budget update?

COMMISSIONER MELENDEZ: Yes. Yes, I had asked for that, but I haven't received it.

CHAIRMAN REYNOLDS: Mr. Staff Director?

STAFF DIRECTOR DANNENFELSER: Yes. I am assembling material. I have some information, actually, up until -- through February, through the end of February. And I just think that the numbers there need some explanation. Where there are some variances in particular areas, I have asked the Director of the Office of Management to provide me with a little more detail on explaining why we might be over in some categories, under in some other categories.

There are basically three major categories, and so she has provided me with some of that information. I spoke to her again this morning, and she is working on providing some additional
details. So I expect to have that within the next day or two, hopefully, to be able to provide that to Commissioners.

COMMISSIONER MELENDEZ: Okay. The other question, are we still doing this conference, you know, that required a certain amount of appropriations? And when was it supposed to be? And are we still on target? Because it seems like if it is still going to happen, we are probably kind of running out of time on preparation for that event, if that is still on the agenda.

CHAIRMAN REYNOLDS: It is still on the agenda. No date has been selected. And the planning is just starting to get underway.

COMMISSIONER MELENDEZ: Are we saying we are trying to have this happen before the end of the fiscal year, which is September 30th?

CHAIRMAN REYNOLDS: That is correct.

COMMISSIONER MELENDEZ: Okay. Thank you.

CHAIRMAN REYNOLDS: Other questions?

(No response.)

Okay. At this point, during our February 20th business meeting Commissioners unanimously approved a motion that the moratorium on the hiring of special assistants be lifted in fiscal
year 2010. Funding was to be allocated for three additional special assistants, and the Staff Director was charged with identifying funding for a fourth additional special assistant, to be assigned to Commissioner Kirsanow or his successor, if Commissioner Kirsanow or his successor should make such a request.

In light of our improved funding circumstances for the remainder of 2009, and the Commissioners' need for their own special assistants, I move to lift the moratorium on special assistant hiring for all Commissioners who indicated that they would be hiring special assistants in 2010, so that they may be permitted to hire such personnel immediately.

Is there a second?


CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. Are we going to see -- I am in support of that, but I just wanted to see -- because it has to do with the budget, and I would like to see what line item and where that is going to come out of. I am just -- I haven't seen too much as far as financial budget information. So I
think when you -- when we do this, I would like to see some type of budget line item that it is coming out of.

THE COURT REPORTER: I'm sorry. Who was just speaking?

COMMISSIONER MELENDEZ: Mr. Melendez.

THE COURT REPORTER: Thank you.

STAFF DIRECTOR DANNENFELSER: This is the Staff Director. As we noted, there was an additional $340,000 that is now going to be provided to the Commission for our use between now and September 30th. So that would more than cover the cost of bringing on these additional special assistants for the remainder of the fiscal year.

COMMISSIONER MELENDEZ: And the reason I asked this, I think we really need to go over even budget savings, whether or not there is anything saved from not hiring, you know, certain positions. And I think we need to have a better look at the current financial situation as to the previous budget and future budgets. That's all I'm saying.

CHAIRMAN REYNOLDS: Well, Commissioner Melendez, I am in agreement that we need to do a better job of discussing where we are in terms of our monthly spend.
COMMISSIONER MELENDEZ: All right. Thank you.

CHAIRMAN REYNOLDS: Any other questions? Comments?

COMMISSIONER MELENDEZ: One more question. I have -- I think we had talked about staff time being spent or money on the campaign -- the campus anti-Semitism campaign, and I think we asked that in January as to what we were doing there. I just needed -- whether or not that is part of this budget also?

CHAIRMAN REYNOLDS: No, it is not. Commissioner Melendez, we can deal with that, but that issue is unrelated to the motion that is on the table now.

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: Okay. At this point, Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: I'm sorry. What is the motion on the table?

CHAIRMAN REYNOLDS: This is to lift the moratorium on the hiring of special assistants.

VICE CHAIR THERNSTROM: Oh, yes, of course. Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.
CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.
CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: Yes.
CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Yes.
CHAIRMAN REYNOLDS: Commissioner Taylor?

(No response.)

Okay. And I vote in the affirmative. Let the record reflect that Commissioner Taylor did not vote on this matter. The remaining Commissioners voted in the affirmative. The motion passes.

VICE CHAIR THERNSTROM: So what is the timetable here?

CHAIRMAN REYNOLDS: At this point, Commissioners who don't have special assistants have the ability to immediately hire a special assistant.

STAFF DIRECTOR DANNENFELSER: Well, we probably have to go through a process with the White House and OPM on that, but we can certainly get that process underway.
CHAIRMAN REYNOLDS: Yes. But the hiring process could --

STAFF DIRECTOR DANNENFELSER: Right.

CHAIRMAN REYNOLDS: -- start immediately.

COMMISSIONER GAZIANO: And I assume that means advising us on how to do that, who haven't had special assistants before. But I am certainly eager to start.

CHAIRMAN REYNOLDS: I am sure you are.

Okay. Mr. Staff Director, please update us on the progress made on the 2009 statutory report.

UPDATE ON STATUTORY REPORT STATUS

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman. The staff has been meeting very regularly on the statutory report, and they have put together a great deal of research. We are having good success in getting response from the agencies that we have asked to provide us with such information.

And the draft report I understand is now more than 100 pages, and it is being fine-tuned. And I expect to receive an even more fine-tuned version of it by the end of this week. And we do plan to send the draft to Commissioners by April 27th.

CHAIRMAN REYNOLDS: Questions? Comments?

(No response.)
Okay. Next up is the motion to respond to the EEOC's February 6, 2009 letter regarding English-in-the-Workplace document request.

III. PROGRAM PLANNING

MOTION TO RESPOND TO EEOC'S FEBRUARY 6, 2009 LETTER REGARDING ENGLISH-IN-THE-WORKPLACE DOCUMENT REQUEST

CHAIRMAN REYNOLDS: On October 29, 2008, the Commission issued a letter to the then-Chairman of the EEOC, Naomi Earp, requesting that the agency turn over various documents related to English language policies in the workplace, in conjunction with the Commission's December 2008 briefing on the same subject.

EEOC's then-legal counsel, Reed Russell, who appeared at the briefing, the agency turned over some, but not all, of the materials that the Commission requested. Much of it is in aggregate form. Commissioner Heriot expressed to me in advance of my agenda planning for this meeting that she wanted to circulate a draft letter at our next business meeting requesting that the EEOC turn over some information it had not yet provided.

With that, I turn the floor over to Commissioner Heriot.
COMMISSIONER HERIOT: Oh, okay. And I just move that we send a followup letter. This is, actually, I think kind of routine. You know, we didn't get everything we asked for, and so this request that -- that what we asked for be delivered -- except for, you know, they had raised Privacy Act objections.

And rather than go to the mat on that, this just requests that they redact the things that they think will be covered by the Privacy Act, and asks them to either deliver the documents that they -- in one of the sections that they hadn't mentioned in their letter, or tell us that they don't have any such documents.

CHAIRMAN REYNOLDS: Okay. And just to be clear, Commissioner Heriot, we basically want them to wipe any personal identifiable information from the records.

COMMISSIONER HERIOT: Yes. I don't see any reason to go to the mat at this point. Just -- you know, this is just basic followup, trying to get what we have asked for and to accommodate their privacy objections, without waiving our right to do something more in the future if we chose to do so.
COMMISSIONER GAZIANO: Mr. Chairman, I don't know if -- this is Commissioner Todd Gaziano -- if you saw my suggested revisions to the letter. I can read them into the record if --

COMMISSIONER HERIOT: Which I accept as a friendly amendment. So my motion includes your suggestions, Todd.

COMMISSIONER GAZIANO: Right. I just recirculated them via e-mail, and I have sent now to Commissioner Yaki both the original draft letter, EEOC's response, and my slight revisions to it. Does anyone else want me to -- who may not have e-mail access to read my slight revisions to the letter?

COMMISSIONER MELENDEZ: This is Commissioner Melendez. If you could send me whatever you sent Michael, it would be helpful.

COMMISSIONER GAZIANO: I sent it to everyone just now.

COMMISSIONER MELENDEZ: Okay.

COMMISSIONER GAZIANO: Sometimes these electrons move slow.

COMMISSIONER MELENDEZ: Can I ask a question as to how the information that we are asking for will be used by staff? Or what are we trying to do here?
CHAIRMAN REYNOLDS: Okay. Commissioner Heriot?

COMMISSIONER HERIOT: I'm sorry?

CHAIRMAN REYNOLDS: Do you want to respond to Commissioner Melendez's question?

COMMISSIONER HERIOT: I'm sorry. I didn't hear it.

COMMISSIONER MELENDEZ: I was asking -- we are asking for information from the EEOC, and I was wondering how -- how staff will use that information.

COMMISSIONER HERIOT: On the English language report. You know, we can't -- we don't know how it is going to be used until we see it. But, you know, wanting to know how many of these letters get sent out, that I think is significant information.

VICE CHAIR THERNSTROM: You know -- this is the Vice Chair -- I am back to my point before that it seems to me we have -- and this brings up a larger point, actually. We already have enough information to issue a reasonable report.

Now, there has never, in all the years I have been on the Commission, been the kind of backlog that there is now. But that is in part because we have issued very simple briefing reports. They -- they have the record of the briefing itself, the
statements of the witnesses, and then any responses that Commissioners have. Period.

COMMISSIONER HERIOT: Well, I understand, and that --

VICE CHAIR THERNSTROM: It has just gotten immensely complicated, and the result is we have got reports just in a pipeline that sit there. This is -- I mean, if Congress wanted to go after us, this is really a red carpet asking them to do so.

CHAIRMAN REYNOLDS: This is Chairman Reynolds. Vice Chair Thernstrom, I mean, the backlog issue -- I mean, the causes of the backlog, we are looking into that. It is an empirical question. I don't think that we have reached any firm conclusions. So I -- I don't --

VICE CHAIR THERNSTROM: I understand that. I just don't understand why we need more information at this point from EEOC in order to get this particular briefing out the door.

COMMISSIONER GAZIANO: This was part of our original request. This was part of our original request, so we deemed it appropriate back in October, or whenever it was. I think it was October. And I still deem it appropriate.
It won't take us -- it won't take staff or us very long at all to look through it and see whether it seems significant, relevant, irrelevant, useless. It would probably only take 20 minutes to review.

COMMISSIONER HERIOT: I really think Abby's objection is untimely. If we have an objection to collecting information like this, it should have been made back in the fall. We did request this information, and I think we need to make sure that the EEOC understands that when we ask for something they shouldn't blow it off.

VICE CHAIR THERNSTROM: Well, they may blow it off again. My concern is, you know, yes, we asked for it back in the fall. It is now the end of March. So the question is whether it isn't time to just get -- move forward with what we have got. And, you know, I -- as I said, my understanding is that we have enough to issue a briefing report on.

COMMISSIONER GAZIANO: This won't stop us from working on other reports. But if we don't maintain the integrity of our requests, I think that is a much more serious issue.

CHAIRMAN REYNOLDS: Folks, I want to remind you to identify yourself before you chat. And this is Chairman Reynolds. Any other comments?
VICE CHAIR THERNSTROM: Well, I don't know what "maintaining the integrity of our request" means. I'm sorry, I don't.

COMMISSIONER GAZIANO: If we don't -- if the agency said no, they would really rather not give us information, if we just let that go, then I don't think we are maintaining the agency's integrity to follow up on its request.

VICE CHAIR THERNSTROM: Look, if the agency says in effect you are not getting the information --

COMMISSIONER GAZIANO: They interposed a particular legal objection that we don't think is merited, but it -- that is normally the way these things go. We are trying to accommodate their concerns, and that is what the --

COMMISSIONER YAKI: When you say "we," who do you mean by "we"?

COMMISSIONER GAZIANO: The Commission in this letter. The letter will come from our Chairman, but the -- in the language of the letter it says, "To accommodate EEOC's concerns and to avoid unnecessary disagreement." This is how these things are resolved. The Commission is willing to review such redacted documents to see if that satisfies our research needs.
So this is a way of getting what we think will be sufficient, but honoring their concerns.

VICE CHAIR THERNSTROM: On the assumption that we really do have -- still have research needs.

COMMISSIONER GAZIANO: We don't know until -- well, we have some research questions. Whether they will be answered in a significant way or not we don't know yet. But we have some research questions. How many of these documents are there? How many letters are sent out? But that's somewhat relevant.

COMMISSIONER HERIOT: It's not somewhat relevant. It is relevant.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN REYNOLDS: Okay. Any other comments?

(No response.)

Okay. At this point, Vice Chair Ternstrom, how do you vote?

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: I'm sorry?
COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor?
COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: And I vote in the affirmative. So Commissioners Thernstrom, Melendez, and Yaki voted against the motion. The remaining Commissioners voted against it. The motion --

COMMISSIONER HERIOT: For it.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: You said against it.

CHAIRMAN REYNOLDS: Oh, I'm sorry. Thank you for the correction. The remaining Commissioners voted for it. So the motion passes.

MOTION TO COLLECT AND MAKE PUBLIC DATA ON FEDERAL GOVERNMENT'S CIVIL RIGHTS ENFORCEMENT EFFORTS

CHAIRMAN REYNOLDS: Okay. Next issue, Commissioner Kirsanow has indicated to me that he has -- that he -- Commissioner Kirsanow, while we were in the process of planning for this meeting, indicated
that he had a motion that he intended to raise at this
business meeting concerning the Commission's
monitoring of Federal Government's civil rights
efforts.

I indicated to Commissioners in an e-mail
sent by my special assistant on behalf of all
Commissioners this fact. Commissioner Kirsanow, would
you like to walk through your -- describe your motion?

COMMISSIONER KIRSANOW: Yes. I mean, it
is I think in the e-mail that was sent around. The
motion is set forth in detail there. But to give you
a summary, it really is a motion designed to implement
our clearinghouse function. That is consistent with
our statutory authority to act as a clearinghouse with
respect to civil rights matters.

This motion seeks to elicit from various
civil rights agencies information relevant to our
monitoring of civil rights and civil rights
enforcement in various federal agencies. And it is
consistent with -- beyond our statutory mandate, it is
consistent with other strategic goals that we have set
for ourselves with respect to the analysis of the
enforcement responsibilities and to issue guidances to
the executive branch on enforcement efforts by federal
agencies.
So the purpose of this is to gather in a timely fashion the enforcement data pertaining to the enforcement efforts of the various civil rights agencies in the Federal Government, including Civil Rights Division at the Department of Justice, Office of Civil Rights at Education, EEOC, and the OFCCP.

CHAIRMAN REYNOLDS: Okay. And let me just read some of the types of information that we would be seeking if this motion passes. From the Civil Rights Division over at the Department of Justice, one week after the close of each month we would seek the following information: all complaints filed in court during that month, all consent decrees and settlements not under seal entered into during that month, all appellate briefs filed in court that month, all letters of potential violations sent out during that month, all letters to jurisdictions refusing to -- refusing requests to pre-clear changes under Section 5 of the Voting Rights Act during that month, and all amicus briefs, whether or not they are appellate in nature, filed in court during that month.

That is just an example of the type of information that we would seek. It is my understanding that this information -- and correct me if I'm wrong, Pete -- would go up on our website, so
that the public could go to a -- go to a single place and get these types of -- well, this type of statistical information regarding the enforcement efforts of the Civil Rights Division, the Office for Civil Rights at the Department of Education, EEOC, and, finally, OFCCP.

VICE CHAIR THERNSTROM: Could you repeat for me the question with respect to Section 5 of the Voting Rights Act?

CHAIRMAN REYNOLDS: All letters to jurisdictions refusing requests to pre-clear changes under Section 5 of the Voting Rights Act during that month.

VICE CHAIR THERNSTROM: All right. Well, that doesn't give us any information at all. Most of that is -- most of those Section 5 pre-clearances are worked out on the phone without a letter.

COMMISSIONER KIRSANOW: Yes, Gerry. To get to your point, yes, the idea was, at minimum, to see if we can, first of all, get this either in hard data or maybe in electronic form -- an electronic form that could easily be simply placed on our website, so that any interested parties -- universities, academics, whomever -- could access it at their
leisure. And we would be discharging our oversight or clearinghouse responsibilities.

And then, to the extent the Commission at some later point months or years from now decides to take a look -- a close look at this data ourselves, you know, we can choose to do so. But it is simply gathering information.

CHAIRMAN REYNOLDS: So, Commissioner Kirsanow, am I correct in assuming that the information would be placed on our website without commentary? It would just be the statistics generated from our monthly request?

COMMISSIONER KIRSANOW: Right. That is what I envisioned.

COMMISSIONER HERIOT: Yes. They wouldn't be statistics. They would be the actual documents. Am I not right on that?

COMMISSIONER KIRSANOW: Yes. Sure, the briefs and --

COMMISSIONER HERIOT: Yes. So it is not statistics. It is, you know, the documents they produced. That is what would go up.

COMMISSIONER KIRSANOW: Gotcha.

COMMISSIONER GAZIANO: Could I speak to the motion, please?
CHAIRMAN REYNOLDS: Sure.

COMMISSIONER GAZIANO: Yes. First of all, I'd support an understanding, or a motion if necessary -- or a modification if necessary to allow the Chairman and the -- or the Staff Director to work with the affected agencies to -- I don't think we need to have the final form in which they are going to deliver it, and to reword any of these in a manner that reflects the kind of information that we are seeking.

Secondly, it is my understanding that most of these agencies have been providing this to Congress for some number of years. I don't know if the current Congress is requesting it, but this is a typical -- there has been a standing order I know to the Civil Rights Division, I believe some of the others, so they are used to producing this to agencies that are reviewing their effectiveness. So I don't think it is going to be a burden on them.

Third, I think this is -- this is our -- satisfies our clearinghouse function, which we haven't been doing a very good job of lately. This is one of our statutory purposes, and I think this is the -- among the most basic information that we could be providing to scholars.
I don't know that we necessarily have to make use of them ourselves, but the final point is is we may, after many, many months of collecting this, we, our special assistants, our staff, OCR, General Counsel's office at some point we may want to focus on some point of it. If we are not collecting it, I don't think anyone else will at this point.

And we may find something very valuable. But it is not just for us. It is -- under our clearinghouse function, it is for all of the scholars and journalists and everyone else who wants to look at it.

THE COURT REPORTER: I'm sorry. Who is that speaking, please?

VICE CHAIR THERNSTROM: This is the Vice Chair.

CHAIRMAN REYNOLDS: One at a time, one at a time.

THE COURT REPORTER: I'm sorry. Who was that speaking?

COMMISSIONER GAZIANO: Todd Gaziano.

THE COURT REPORTER: Thank you.

VICE CHAIR THERNSTROM: I'm sorry. I thought you were finished.
COMMISSIONER GAZIANO: Oh, I have. I'm just identifying myself.

VICE CHAIR THERNSTROM: Oh. For the Vice Chair -- no, for the Staff Director. This is the Vice Chair. Do you envision this taking up time of staff that -- who is going to do this? That is really the question? What kind of time, and is there a resource problem here?

COMMISSIONER GAZIANO: If the agencies send us in electronic form, it would just be --

COMMISSIONER YAKI: The question was directed at the Staff Director.

COMMISSIONER GAZIANO: And I'm helping with a suggestion. With a suggestion that it -- wouldn't it -- it wouldn't take very much time to upload electronic information to our website sent from the agencies, would it?

CHAIRMAN REYNOLDS: Mr. Staff Director?

STAFF DIRECTOR DANNENFELSER: Well, I have not had an opportunity to discuss that with staff, but I would think that if we received it in electronic form it would not be difficult. If we received various hard copies, that would be a more involved process. There is also the issue of cataloguing all of the information, but I believe that we have staff
that could do that. It would conceivably be a
significant amount of information, but I believe we
could establish a system for doing that.

COMMISSIONER YAKI: This is Yaki. I just
find it highly ironic that we are having a discussion
about being a clearinghouse when three years ago the
Commission majority voted to kill what had been a
yearly clearinghouse function of the Commission for
decades, and that was the federal funding reports,
which delineated expenditures on civil rights issues
throughout the Federal Government by agency, by
department, broken down into individual functions.

And it was seen as something that would
not be either useful or a drain on staff time. To me,
you know, if we are -- if this is something that was
so important, we should have been doing it in 2007.
And when we discontinued the federal funding
requirement at that time, obviously, the majority did
not want to get the stats at that time, for reasons I
can't understand.

But I just -- I just think that this is --
this may be within our clearinghouse function. I
wonder whether or not, seriously, if we have the staff
authority. I think it is more than just simply
uploading stats to a database.
At some point, that database -- unless you want our website to look like -- you know, have typeface in the nanobytes, we are going to have to have an electronic system of collections, recall, collating, transferring to PDF, whatever, to preserve our bandwidth, because this could be a very significant amount of, as you pointed out, raw data that may not be as simple as simply uploading something onto our particular website.

The interesting thing about websites, it is not just data in. It is also data out, and the ability to -- and, conversely, it is not just data out. It is also data in. And we have to make sure that we have the ability to absorb that within our pipes and our servers for the purposes of distribution to the general public.

And, finally, I ask the question that follows up on what Commissioner Gaziano said, which is, how much of this is publicly available anyway? And why haven't we done a little bit of research on our own to figure out what there is? And simply then limit what we are asking for to that which has not already been made public.

COMMISSIONER GAZIANO: It is my understanding that the material made available to the
congressional committees may or may not continue. We don't know that. But it is not available to the -- it is not on the website. It is not available to, necessarily, the public or to journalists to download. So that is our function, or seems to suit our function even more than the members of Congress who request the information for their own uses.

As far as your funding issue, I don't quite understand that issue, but I am willing to work with you to see if we can add that as well, if the rest of the Commission would entertain it.

COMMISSIONER MELENDEZ: This is Commissioner Melendez. You know, this is -- this issue is just one of many that I -- I was going to send out this document today. And I think that, you know, there are some issues having to do with whether or not we are meeting our statutory mandates, whether or not they are addressing them.

I mean, things that -- the last time we talked about whether or not we actually conducted investigations ourselves or whether or not we were just passing those on to some other agency. I think -- and then, we talked about whether or not we are actually doing the public service announcements and advertising campaigns.
I know that, you know, we don't even have a person that is devoted totally to that mandate. And the point I am making is that there is also -- you know, when we go back to our strategic plan and the performance targets for 2009, in 2009 I think we have to go back and review whether or not we are meeting all of those performance targets that we had mandated to the Staff Director.

And those include a lot of things in there, you know, that help us to establish congressional contacts and issue guidance to the executive branch on civil rights, and it holds press conferences. There is a number of them -- about 10 of them or so -- that the Staff Director was mandated.

And it just sounds to me like all of the things on the agenda are part of this bigger picture, but it is kind of like we are -- we are kind of just throwing things out there without going back and really assessing where the heck we are, and see if we are meeting those statutory mandates or even the strategic plans, because if you are saying that the clearinghouse was part of this, then where is it in the strategic plan? And where is it in --

COMMISSIONER GAZIANO: Strategic Goal 2.

COMMISSIONER MELENDEZ: Well, in --
COMMISSIONER HERIOT: Yes. Strategic Goal 2 is the guidance to the executive branch.

COMMISSIONER MELENDEZ: In the performance of our Staff Director -- and we could also -- at one time we talked about having a subcommittee that would work with the Staff Director and get input from the Commissioners as to, are there some gaps in this bigger picture, the strategic plan and performance goals for the year, and --

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: -- it ties to the budget also, I would think, you know? So I just --

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes?

CHAIRMAN REYNOLDS: The motion -- I mean, the motion that is on the table right now, it is not directly related to the items that you are discussing. You are raising good issues, but I think that we need to finish our discussion on the motion that is on the table, and then vote.

VICE CHAIR THERNSTROM: You know, with all due respect, Mr. Chairman, I think that the questions Commissioner Melendez is raising is -- are related, because they all go back to the question I raised
earlier. What are our priorities? What -- you know, what kind of time, what kind of resources --

CHAIRMAN REYNOLDS: Can we agree that the --

VICE CHAIR THERNSTROM: -- what are our options here? I mean, these things require more discussion than this, once again.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, can we agree that if it's in the strategic plan that that is a high priority?

VICE CHAIR THERNSTROM: Look, not necessarily, because we are just throwing so much else into -- onto our plate. You know, I would like to see whether -- in this case, you know, exactly how this could be done most expeditiously and with as much -- providing as much information as possible. Maybe we can just provide some links to other -- to other sources of information on these questions.

You know, I don't -- once again, I don't know enough to vote on this, frankly.

CHAIRMAN REYNOLDS: Okay. At this point, I call the question. Vice Chair Thernstrom, how do you vote?
VICE CHAIR THERNSTROM: I'm abstaining on this. No, I'm going to vote no. I'm voting no. I don't know enough.

CHAIRMAN REYNOLDS: Okay. Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: I vote no, just because I don't have enough time in to looking at this as a total issue. Thank you.

CHAIRMAN REYNOLDS: I vote in the affirmative. So --

COMMISSIONER HERIOT: Did you get Kirsanow?

COMMISSIONER KIRSANOW: Kirsanow, yes.

CHAIRMAN REYNOLDS: Oh, okay.

Commissioners Thernstrom and Melendez voted no. Commissioner Melendez abstained.
COMMISSIONER TAYLOR: Yaki abstained.

CHAIRMAN REYNOLDS: Oh, I'm sorry.

Commissioner Yaki abstained. And the remaining Commissioners voted yes. So the motion carries.

Next up is the --

VICE CHAIR THERNSTROM: I want to make it clear that if I had some more information I might be totally for it. I just don't like voting in the dark here.

CHAIRMAN REYNOLDS: Okay. Next is the approval of the rechartering package for the Georgia Advisory Committee.

IV. STATE ADVISORY COMMITTEE ISSUES

GEORGIA SAC

CHAIRMAN REYNOLDS: Ten of the 11 previously-appointed members were eligible for reappointment. Two of these ten declined reappointment. The remaining eight previously-appointed members are being recommended for reappointment. Recommended Advisory Committee members were selected in compliance with the State Advisory Committee membership selection guidelines.

Following the Six Sigma process approved by the Commission on January -- in January 2008, Commission staff reached out to Commissioners, the
current SAC members, the entire Georgia Congressional Delegation, municipalities, unions, religious organizations, universities, civil rights organizations, newspapers, etcetera.

I move to recharter the Georgia State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based on the recommendations of the Staff Director: Charles Tanksley, Tony Boatwright, Constance Curry, Julius Dudley, Herbert Garrett, Shannon Goessling, Edna Jackson, Ann Kasun, John Mayes, Arch Stokes, Pamela White-Colbert.

Furthermore, the Commission appoints Charles Tanksley as the chair of the rechartered Georgia State Advisory Committee. These members will serve as uncompensated government employees. Under the motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

Okay.
THE COURT REPORTER: This is the Court Reporter. Who did we have seconding that motion?

COMMISSIONER GAZIANO: Gaziano.

THE COURT REPORTER: Thank you.

CHAIRMAN REYNOLDS: Okay. At this point, let's vote. Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I'm abstaining. I haven't had a chance to look at any of these SACs --

CHAIRMAN REYNOLDS: Vice Chair --

VICE CHAIR THERNSTROM: -- any of the SAC material.

CHAIRMAN REYNOLDS: Okay. Thank you, Vice Chair Thernstrom. Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.
CHAIRMAN REYNOLDS: And I also vote in the affirmative. Okay. Please let the record reflect that the following Commissioners abstained -- Commissioners Thernstrom, Yaki, and Melendez. The remaining Commissioners voted in the affirmative. The motion passes.

The HBCU report was added to the discussion -- added to the agenda. At this point, Vice Chair Thernstrom, would you like to lead this discussion?

VICE CHAIR THERNSTROM: Well, I would just like some more information on what is holding it up, and why we can't get this out of the door, and I am not happy with simply waiting until whatever happens with the STEM report. I would like to know exactly what is supposed to happen with that. But in any case, too much time has passed.

They were, as Commissioner Yaki said, two different briefings, and I don't think the one is dependent on the other. And it is time to get our act together and get this out the door.

CHAIRMAN REYNOLDS: Okay. First off, Commissioner Heriot has indicated her preference that the two briefing reports either be combined or released at the same time. I do not believe that that
recommendation has been acted on. I turn to the Staff Director for confirmation.

STAFF DIRECTOR DANNENFELSER: Mr. Chairman, that is correct. There has been discussion at a couple of committee meetings to that effect, but there has not been a formal vote by the Commission.

CHAIRMAN REYNOLDS: Okay. So --

COMMISSIONER HERIOT: Would it be in order for me to make a motion that we do so? Or would you prefer that we have that at a later meeting?

CHAIRMAN REYNOLDS: I would prefer that we have it at a later meeting.

COMMISSIONER HERIOT: Okay.

CHAIRMAN REYNOLDS: Could you continue your discussion of where we are with respect to the HBCU report? What needs to be done?

STAFF DIRECTOR DANNENFELSER: Well, the HBCU report is ready. It went to the Commissioners for -- and a deadline for comments was set for June 30, 2008. There had been some discussion of putting it on the agenda in July of 2008, but we took up the Omaha briefing issue instead. And I think at about that same time Commissioner Heriot raised her suggestion that we hold off on issuing the report until we completed the STEM report.
COMMISSIONER HERIOT: I would be happy to make that motion at the next meeting, if that would resolve the problem here.

VICE CHAIR THERNSTROM: We are now talking about almost a year since that last motion was made.

COMMISSIONER HERIOT: What last motion?

STAFF DIRECTOR DANNENFELSER: It wasn't a motion per se.

VICE CHAIR THERNSTROM: Oh, it wasn't a motion per se. I see. Okay.

CHAIRMAN REYNOLDS: In other words, there is nothing -- I mean, if we wanted to vote on this at the next meeting, we would be in a position to do so.

STAFF DIRECTOR DANNENFELSER: Yes.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Part A, is that correct?

CHAIRMAN REYNOLDS: I'm sorry? Please identify yourself.

COMMISSIONER GAZIANO: Todd Gaziano. It's -- we would only be ready to vote on it, Part A.

CHAIRMAN REYNOLDS: Do we have findings of fact? Do we have findings of fact and recommendations?
STAFF DIRECTOR DANNENFELSER: I'm not sure we do. I need to clarify that point, whether we have findings.

VICE CHAIR THERNSTROM: Well, wait a minute. And if we don't, why not? It is, again, the most enormous amount of time we are talking about that has passed here.

COMMISSIONER HERIOT: We have lots of things that -- lots of reports that haven't been done. I'm curious why you are focusing on this one. But at any rate, we can take this up in the next meeting. I will make the motion that those two reports be released at the same time.

VICE CHAIR THERNSTROM: Yes. Well, I want, at the next meeting, a review of all of the reports, and why they are not out the door. This is really an unprecedented situation for the Commission. And I believe it is -- it is something that needs to be fixed.

V. ADJOURN

CHAIRMAN REYNOLDS: Okay. At this point, I move to adjourn the meeting. Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Is anyone going to object?
Okay. Any abstentions?

(No response.)

Am I correct that everyone has voted in the affirmative?

COMMISSIONER YAKI: Sure. Why not?

CHAIRMAN REYNOLDS: Very good.

COMMISSIONER YAKI: You've got to have one at least.

CHAIRMAN REYNOLDS: Good. Good enough for me. Folks, thank you very much.

(Whereupon, at 12:56 p.m., the proceedings in the foregoing matter were adjourned.)