U.S. COMMISSION ON CIVIL RIGHTS

COMMISSION MEETING

FRIDAY, DECEMBER 12, 2008

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

PRESENT:

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

STAFF PRESENT:

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

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECKEL
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I.</strong></td>
<td>Approval of Agenda</td>
</tr>
<tr>
<td><strong>II.</strong></td>
<td>Commission Personnel Matter</td>
</tr>
<tr>
<td><strong>III.</strong></td>
<td>Approval of Minutes November 7, 2008 Meeting</td>
</tr>
<tr>
<td><strong>IV.</strong></td>
<td>Announcements</td>
</tr>
<tr>
<td><strong>V.</strong></td>
<td>Staff Director's Report</td>
</tr>
<tr>
<td><strong>VI.</strong></td>
<td>Program Planning</td>
</tr>
<tr>
<td></td>
<td>- Briefing Report on Minorities in Special Education</td>
</tr>
<tr>
<td></td>
<td>- Update on Status of 2009 Statutory Report</td>
</tr>
<tr>
<td><strong>VII.</strong></td>
<td>Adjourn</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>39</td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td>44</td>
</tr>
<tr>
<td>53</td>
</tr>
<tr>
<td>69</td>
</tr>
<tr>
<td>85</td>
</tr>
</tbody>
</table>
VICE CHAIR THERNSTROM: So, the meeting is called to order.

I. APPROVAL OF AGENDA

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

COMMISSIONER GAZIANO: So moved.

COMMISSIONER KIRSANOW: Second.

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

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

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

COMMISSIONER GAZIANO: Second.

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

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Any opposition?
(No audible response.)

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

II. COMMISSION PERSONNEL MATTER

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

The agenda was accepted as amended.

That's what happens the two things got collapsed as I understand it.

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

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

In our 2010 budget submission that we made to OMB one of the positions we proposed to add was a deputy staff director and in recent weeks the Chairman and I have had some discussions along these lines and the Chairman did ask that we add a discussion of this subject to the agenda today and there's a feeling that that position with that savings that might be a good
use of the savings from those two positions even though we're still under the continuing resolution we have made savings to adapt to the continuing resolution, but these savings, personnel savings from those two positions, going unfilled would provide us with the budgetary room to hire a deputy staff director and there is some sentiment that that would be a very good position to fill for the agency in terms of giving us the ability to better manage all of our programs and also to give us more depth, if you will, in terms of our leadership within the organization. So I would like to just put that topic on the table for discussion.

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

STAFF DIRECTOR DANNENFELSER: Yes.

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

STAFF DIRECTOR DANNENFELSER: We have a very active and very effective regional director in our southeastern office and he's done very well in terms of getting the SACs approved and having meetings and issuing reports and so on, bringing in lots of
interns -- I spoke to him about this and his main concern is administrative support. So he has -- I've authorized a part-time secretary for him and he feels that that's something that really is very helpful to him, that he's not bogged down with answering the phone all the time and the filing and the mailings and things like that. So he believes that he can continue to operate that office effectively with some administrative support and the cost of that part-time administrative support is much less than what the salary would be for another civil rights analyst.

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

STAFF DIRECTOR DANNENFELSER: It is. That was something I was planning to discuss during the staff director's report. But I think that is another vacancy that would not be good for us to let go unfilled. We have two talented people remaining will be remaining in the General Counsel's Office after the General Counsel's departure. But we have a great deal
of work that needs to be done and I think we would want to replenish our people within that office including trying to bring on another general counsel.

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

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

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

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

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

STAFF DIRECTOR DANNENFELSER: Commissioner
Gaziano.

COMMISSIONER GAZIANO: I can wait. Go
ahead.

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

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

VICE CHAIR THERNSTROM: I'm sorry.

COMMISSIONER GAZIANO: I see several
advantages in a difficult situation where I'm sure
that we all agree that we would like to have a congressional affairs director, a human resources director, a public affairs director and all these needs, but I think many advantages in trying to have the deputy staff director fill some of these critical needs. Could you describe to us the kind of role including what I'm guessing is flexibility in that position and how you might be able to work with that person if that person were hired to meet some of our critical needs?

STAFF DIRECTOR DANNENFELSER: Yes. Someone would help with the overall management of the agency and I think flexibility would be a very important point. Keeping our reports and our moving along and that whole process is certainly important. The largest number of our reports come though the Office of Civil Rights Evaluation and several through the Office of General Counsel. Of course, we have the statutory report every year which is a big undertaking. So helping with that process of helping them monitor that process and how those reports are continuing to move along is certainly part of it. But helping with the development and monitoring of the budget would be another area and, of course, you mentioned the fact that we have not filled now for
some time the congressional affairs and public affairs positions. We have had people doing a very good job in filling in in those positions as well as handling their other responsibilities. But it would be another area that I think such a person could be very helpful in helping us to step up our activities in those two areas as well.

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

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

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

VICE CHAIR THERNSTROM: But it's like how
MS. MONROIG: I believe Eddie Hailes was the last deputy staff director and he was before Ruby Moy came in as staff director as I recall. Possibly her dates are somewhere on our photograph there. But that would be in the '90s.

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

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

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

(Laughter.)

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

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

COMMISSIONER GAZIANO: Right.

STAFF DIRECTOR DANNENFELSER: I actually look at this more as the attorney advisor who left and then the person in the Southern Regional Office would
be more productive for the agency to be able to use those funds to hire a deputy staff director or to potentially try to fill those two positions and I think that for the overall versatility and for the agency and the overall depth of the agency I think deputy staff director would be a better fit for us.

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

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

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

COMMISSIONER MELENDEZ: I guess the issue I would have and I'm sure Michael would probably agree that because we're in a transition year with a new President coming on board we're probably -- There's a possibility of seeing changes here at the Commission whether or not the staff director changes and one thing, the real question, is I never heard us really pushing for this position because we could have pushed for the staff director at the last business meeting or previous to that. So I kind of -- It almost seems
like with the Presidential transition coming on board -- a new staff director. Well, he'd better be able to -- it would seem logical that the new -- If that change was inevitable that the new staff director would probably make those changes because he would look at the organization and probably recommend to us that this is needed or it's not needed.

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

STAFF DIRECTOR DANNENFELSER: Well, we did bring it up again in the context of the 2010 budget and of course now we're into the 2009 budget and these were unanticipated developments in terms of these two people leaving and actually in terms of if you look at the -- even if you factor in some money for this part-time secretary in that office. When you combine the salary and benefits that would be involved for the two people who left that does give you the capacity to hire a deputy staff director for slightly less than
CHAIRMAN REYNOLDS: And another thing is I think -- Commissioner Melendez, you mentioned transition and I just want to inject another thing. The Commission is an independent agency. The Staff Director who runs the agency under -- until the end of their term. So in terms of a transition, you have quite a bit of -- to get to that point.

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

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

VICE CHAIR THERNSTROM: Yes. So I --

COMMISSIONER MELENDEZ: Even if it weren't the transition, I brought up time and time again that I felt that there were more important issues like the personnel person and because we were behind on the
financial submittals to Congress and all those
different things, I said that we needed to have a
hands-on person that were separated from finances from
the personnel office. It sounded to me at one point
we had one person doing two jobs and I thought for
this Commission to run efficiently we needed to either
separate those and gear up in those positions for
efficiency.

It's nice to have a secondary person, you
know, and say that they're going to direct somebody to
do this and do that, but who are going to direct when
we're short-staffed with people that actually do the
numbers crunching and addressing all these issues. So
that's been my position all along when we've talked
about this in Budgets that I think there were some key
positions that come up time and time again like the
personnel, like the finance director, and I thought it
was raised at every Budget meeting, but then I never
heard of us really saying, "Okay. The deputy staff
director," because at that time I would say, "Well,
lay out what these positions would actually do to get
the job done here" and this one coming up kind of late
I would still ask the question "What's the person
going to do?" It's nice to have a second in command
and to have somebody if you should not be there and
the issue of who is next in charge alone isn't the --
I wouldn't hire somebody just on that. I would
basically want to know that we're paying that amount
of salary, GS or whatever it is, that they're going to
be able to move this organizations and get those
reports, those budgets into Congress in a timely
manner. So that's --

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

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

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

CHAIRMAN REYNOLDS: I'm sorry. What is
the preference?
VICE CHAIR THERNSTROM: The preference is to hold this discussion until, Commissioner Yaki had to leave, he can participate in it.

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

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

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

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

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

VICE CHAIR THERNSTROM: I would vote for that. Let's continue this discussion in a conference
call that Commissioner Yaki can participate in.

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

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

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

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

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

VICE CHAIR THERNSTROM: It's a matter of
courtesy as the Chair just said and I don't think
we're going to be hurt by holding it up at this point for a limited period of time.

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

CHAIRMAN REYNOLDS: I know.

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

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

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

VICE CHAIR THERNSTROM: If we have a conference call that is more efficient than endless exchanges of email back and forth and email is the most easily misunderstood form of communication there is out there.
COMMISSIONER GAZIANO: Okay. Do you contemplate? Let's set some parameters. Does this have to be the kind of -- Do we need to make a collective decision or are we just providing input?

COMMISSIONER KIRSANOW: I have an insight.

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

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

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

VICE CHAIR THERNSTROM: That is fine with me.

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

CHAIRMAN REYNOLDS: And, no, it is not
critically -- for the staff director.

COMMISSIONER TAYLOR: Correct.

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

COMMISSIONER MELENDEZ: I have a question.

VICE CHAIR THERNSTROM: Yes.

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

STAFF DIRECTOR DANNENFELSER: Mr.
Blackwood leaving is not related to this. That's another issue that obviously the General Counsel's Office is a critical office within the agency. That needs to be addressed.

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

COMMISSIONER MELENDEZ: My point is that given that Mr. Blackwood wasn't leaving and we still had the person in Southeast, then you would just be coming up with -- So it has to be something that's critical. In other words, you would say there was because you've been operating all this time with you alone without a deputy director. So if I were to ask you, "Okay. Why?" you would say something like "I'm finding out that I'm so overwhelmed with the amount of work that I can't do the job effectively. Therefore I need a deputy director" which I would have heard way before now as far as we would have been dealing with this issue sometime during the year if it was that
critical. But it coming up right now then it kind of goes into, "Okay, explain to Commissioner Yaki and myself exactly." I'm still not sure what --

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

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

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

CHAIRMAN REYNOLDS: I mean, consensus would be nice, but that has been a goal that we have
failed to achieve.

VICE CHAIR THERNSTROM: We can try again.

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

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

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

CHAIRMAN REYNOLDS: But to Todd's point, I
don't see any reason why we couldn't have a
teleconference after we jump through the required
hoops in terms of --

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

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

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

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

VICE CHAIR THERNSTROM: Yes.

COMMISIONER TAYLOR: And we should
continue our discussion.

COMMISIONER KIRSANOW: I agree with
Commissioner Taylor.

COMMISSIONER TAYLOR: Okay.

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

STAFF DIRECTOR DANNENFELSER: Do we get, right.

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

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

COMMISSIONER KIRSANOW: Okay.

STAFF DIRECTOR DANNENFELSER: But it's not required as when the staff director is appointed the Commissioners have to actually vote to affirm that appointment by the President of the staff director.
This is different, but you do in these two positions have to give the Commissioners notice and they then have an opportunity to act on that proposal, that proposed decision, by the staff director.

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

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

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

CHAIRMAN REYNOLDS: That is right and again this is not to impede the Staff Director from starting to take a look. I'll reach out to Yaki. The process will continue and if need be we will have a teleconference to allow Commissioners Yaki and
Melendez to have further discussion on the issue.

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

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

COMMISSIONER MELENDEZ: What does that mean?

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

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

CHAIRMAN REYNOLDS: I've been in the
Federal Government a few times. Nothing gets done without paperwork.

VICE CHAIR THERNSTROM: I see.

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

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

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

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

VICE CHAIR THERNSTROM: Well, why don't we let the Chair see what Michael Yaki's position is on
this and again one step at a time here since I know you don't want to speak for him. I don't want to speak for him.

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

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

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

COMMISSIONER GAZIANO: Yes.

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

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

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

VICE CHAIR THERNSTROM: I'm trying to
suggest here that whether or not --

CHAIRMAN REYNOLDS: It's a career position.

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

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

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

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

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

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

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

CHAIRMAN REYNOLDS: That's correct.
COMMISSIONER HERIOT: Okay.

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

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

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

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

COMMISSIONER HERIOT: Well, the paperwork can get started.

COMMISSIONER GAZIANO: Or whatever beyond paperwork. It looks like obviously we're going to have an opportunity to vote up or down as the staff
director described for these two positions. We can acquiesce or we can -- But there may be several steps beyond paperwork and if we -- the staff director would be imprudent not to raise this with us. So I'm glad he has, but I don't want him to limit it in any artificial way if there seems to be a majority of us that at least want him to proceed through all the steps.

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

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

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

COMMISSIONER HERIOT: You're agreeing --

VICE CHAIR THERNSTROM: The paperwork starts but I just heard from Commissioner Gaziano "We don't want to stop with the paperwork starting." I'm simply reiterating. Let us start at the beginning.
Take the step, the first steps. We will hear from the Chair and we can take it from there.

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

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

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

COMMISSIONER TAYLOR: And then we -- Right?

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

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

STAFF DIRECTOR DANNENFELSER: Yes.

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

STAFF DIRECTOR DANNENFELSER: Another meeting will be publicly noticed.
COMMISSIONER GAZIANO: No, the position.

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

COMMISSIONER GAZIANO: The position would be advertised.

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

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

COMMISSIONER MELENDIZ: I have a question for Martin.

STAFF DIRECTOR DANNENFELSER: Yes.

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

STAFF DIRECTOR DANNENFELSER: The intention would be that it would be career position.
It could conceivably be one I guess that over time could be done as a non-career position. But the intention in this particular case would be that it be a career position.

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

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

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

STAFF DIRECTOR DANNENFELSER: A non-career would not go through the same public announcement process that a career position would. Well, it would still be something where even if it was a non-career position it would still have the same situation where
the Commissioners would then have to be notified and provided an opportunity to weigh in on that decision.

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

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

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

CHAIRMAN REYNOLDS: Yes, it's 1:07 p.m. your time. I don't think I have much more to add. So, folks, I bid you a fond farewell.
VICE CHAIR THERNSTROM: A fond farewell to you. Have a great afternoon.

CHAIRMAN REYNOLDS: You too.

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

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

VICE CHAIR THERNSTROM: On the record.

The meeting will come to order. This is a continuation of the business meeting that we began before we had a 45 minute break and we are the point at which -- Let's look here.

III. APPROVAL OF MINUTES OF

NOVEMBER 7, 2008 MEETING

VICE CHAIR THERNSTROM: We need to approve the minutes.

COMMISSIONER GAZIANO: Move to approve the minutes.

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

(No audible response.)

Hearing no discussion, we'll take a vote.

All in favor of accepting the minutes.

(Chorus of ayes.)
Any opposition?

(No audible response.)

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

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

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

IV. ANNOUNCEMENTS

VICE CHAIR THERNSTROM: Next are the announcements for the month of December and two announcements. On December 10, 1964, Martin Luther King Jr. was awarded the Nobel Peace Prize for his work as the leader of the Southern Christian Leadership Conference and for his philosophy on nonviolence. At 35 he was the youngest man to receive the Nobel Peace Prize. And on November 1, 1955, Rosa Parks refused to give up her seat to a white passenger on a Montgomery, Alabama bus. She was arrested and fined for violating a city ordinance. But her brave act led to the Montgomery bus boycott and began the movement to dismantle the state-enforced racial caste system in America. December 1st, I didn't say December 1st.
STAFF DIRECTOR DANNENFELSER: No, you said November.

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

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

Now there is the legend that she was just an ordinary woman who had gotten tired that day and ran afoul with the law. But in fact Rosa Parks had
been a long time activist and she had been planning to do this. She had not been planning to do it that day and as I said this was the first arrest that occupied.

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

And the rest as it were was history, but it is -- not many people really know this. At the outset of the boycott which turned into a radical, unflinching challenge to white supremacy, at the outset, what came and the group wanted was a very modest change. They wanted to go in the direction of Mobile, Alabama which had segregated buses but nobody had to move. So they were asking for a modification of segregation and the protest really escalated into a fight for the complete abolition of segregation only
after there were two months of futile negotiations with the city which was a tragedy.

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

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

So when I looked at these three sentences in the script, I thought something needs to be more -- Something more than that needs to be said because this was such an important turning point in American history. That's my little Rosa Parks. I was
scribbling this out as I was listening this morning for a few minutes and I hope it wasn't a waste of everybody's time.

V. STAFF DIRECTOR'S REPORT

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

STAFF DIRECTOR DANNENFELSER: Thank you, Madam Vice Chair.

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

Interrogatories for the 2009 statutory report have been sent to Commissioners for their comments. I proposed to extend the period for comments until noon on Monday, December 15th. We will need to extend our internal time line for the agencies to respond accordingly. OGC and OCRE staff have met with officials from HUD, FTC and have some other
meetings scheduled. Additional meetings will be pursued and we will notify you as they take place.

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

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

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

A draft report on the Impact of Illegal Immigration on the Wages and Employment of Black Workers is under review in the Office of the Staff Director. The Briefing Report on the Provision of the Supplemental Education Services under No Child Left
Behind and another Briefing Report on Title IX have been reviewed in the Office of the Staff Director. Both of these reports have been sent back to the Office of Civil Rights Evaluation for minor modifications and are expected back in my office in a few days.

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

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

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

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

He leaves very big shoes to fill, but has established a very solid foundation that I hope we can build upon. We have two talented attorney advisors in OGC and we will be looking to replenish our legal team as soon as possible.
Regarding our website, during the last meeting a number of questions were raised about our ability to measure visits to our website and while we were awaiting further word from GPO about their ability to provide us with the information we would like to receive we have received some initial reports. There were 41,510 visits to the Commission website in October. About 16 percent were international visits. There were 20,906 visitors; 17,557 visited one and 3,349 visited more than once. The average visits per visitor was 1.99. There were 194,987 page views, The average page view per visit was 4.7.

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

VICE CHAIR THERNSTROM: Probably half of them will be Commissioners.
STAFF DIRECTOR DANNENFELSER: There will be a few of them.

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

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

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

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

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

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

(Applause.)

VICE CHAIR THERNSTROM: Okay. Now --

COMMISSIONER GAZIANO: May I --

VICE CHAIR THERNSTROM: Yes. I'm sorry.
COMMISSIONER GAZIANO: Just a question and brief comment.

STAFF DIRECTOR DANNENFELSER: Sure. Okay.

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

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

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

COMMISSIONER GAZIANO: That's great. I'm
glad you're thinking ahead and it doesn't sound like any other Commissioner objects.

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

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

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

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

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

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

STAFF DIRECTOR DANNENFELSER: 2:20 p.m.

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

VI. PROGRAM PLANNING
(BRIEFING REPORT ON MINORITIES
IN SPECIAL EDUCATION)

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

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

COMMISSIONER HERIOT: Reserve that until
after.

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

COMMISSIONER GAZIANO: So moved.

COMMISSIONER HERIOT: So moved for the --
COMMISSIONER GAZIANO: So moved for the Part A.

VICE CHAIR THERNSTROM: Part A.

COMMISSIONER GAZIANO: Part A of the report.

VICE CHAIR THERNSTROM: Any discussion on that?

(No audible response.)

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

(Chorus of ayes.)

Anybody opposed?

(No audible response.)

Okay. Part A is approved.

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

COMMISSIONER HERIOT: I have a motion on that.

VICE CHAIR THERNSTROM: And that's --

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

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

VICE CHAIR THERNSTROM: Yes. Can we have
a motion with respect to Part B?

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

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

COMMISSIONER GAZIANO: That's the motion.

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

COMMISSIONER GAZIANO: That's perfect.

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

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

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: That I looked at the recommendations and I felt that on the whole they really were not that significant. I disagreed with a number of them and it really seems to me that the briefing report speaks for itself and that the findings and recommendations for this particular report did not add much or did not add anything of significance. That's why I thought it might be better simply to publish it for what it's worth. There is a
lot of conflicting evidence in the actual report and
we're not really in a position to resolve all of that
and the part that we can resolve doesn't really need
resolution because people would agree that all the
evidence goes in one particular direction.

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

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

COMMISSIONER GAZIANO: Just very briefly
to give one example.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER GAZIANO: I'm at a
disadvantage because I wasn't on the Commission during
the hearing. So I couldn't even ask questions or
evaluate the witnesses. But the recommendations, the
draft recommendations, seem kind of milk toast, but
some of the findings bother me. Just one example at
the end of Proposed Finding 1, "mistakes in placement
occur with equal frequency regardless of race or
ethnicity." But I think we had conflicting testimony
on that.

VICE CHAIR THERNSTROM: We did.

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

These are the appropriate things that we
might be able to find if we had data in addition to,
if we did a serious analysis. Some of the witnesses
by the way like Secretary Monroe testified regarding
some data. But unless we are going to reevaluate
those studies I would have felt uncomfortable voting
on them. I just wanted the record to be clear that it
wasn't -- that that was the type of thing that I had a
little bit of discomfort.
VICE CHAIR THERNSTROM: Right. And I don't think we need an extended discussion on this.

COMMISSIONER GAZIANO: No.

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

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

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

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

(No audible response.)

Okay. All in favor simply cutting Part B from this report and letting it go out the door with
however Commissioners concurrences and dissents that will be due on December 28th. All in favor of doing it please say aye.

(Chorus of ayes.)

Are there any nays here?

(No audible response.)

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

STAFF DIRECTOR DANNENFELSER: Okay.

VICE CHAIR THERNSTROM: A done deal.

STAFF DIRECTOR DANNENFELSER: Thank you all.

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

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

I just wanted to thank you for following up on the website information, commend you for getting
as much information as you did in the first month. But I want to comment on that a little bit and also make one request.

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

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

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

COMMISSIONER GAZIANO: They may create it on their own and the most popular page view is a
separate statistic or top three or whatever because that may be a little bit different. Again whether the technology that we have allows it is just one of the questions. You could tell us and maybe we could get it. Maybe there are privacy issues, but I would hope they're not privacy issues just in what are the top three things, top three page views, or top three downloads.

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

COMMISSIONER GAZIANO: Okay. Thank you.

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

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

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

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

STAFF DIRECTOR DANNENFELSER: There were two in particular. There were a few more here, but there was the one member who was the lead member who
was here today in the audience and he met with many of
the senior staff and there was another individual who
interviewed the staff that he did not. So virtually
every staff member was interviewed and these regional
people I believe they were contacted by phone because
we had numerous requests for documents and we did --
as far as I can tell we supplied all the information
that was requested.

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

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

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

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

COMMISSIONER HERIOT: The STEM and HBCU.

VICE CHAIR THERNSTROM: Yes. It was
discussed before, wasn't it?

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

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

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

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

VICE CHAIR THERNSTROM: Right.

STAFF DIRECTOR DANNENFELSER: Yes.

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

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

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

STAFF DIRECTOR DANNENFELSER: Yes. Right.

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

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

STAFF DIRECTOR DANNENFELSER: I mean the
most --

COMMISSIONER GAZIANO: If you could let us
know as soon as possible.
STAFF DIRECTOR DANNENFELSER: The most direct thing is with the agencies themselves when we were saying that we ask them to respond within 30 days. So if we get these out on Monday, if Commissioners respond by noon on Monday and there's whatever changes are recommended or can be incorporated on Monday, we can get them out Monday. Then we would be 30 days from that point as opposed to 30 days from December 1st.

COMMISSIONER GAZIANO: Okay.

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

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

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

COMMISSIONER MELENDEZ: Yes.

COMMISSIONER GAZIANO: And so obviously we would have to vote on that.
COMMISSIONER MELENDEZ: Yes, put it in the next meeting or something.

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

COMMISSIONER GAZIANO: Yes. I don't know.

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

COMMISSIONER MELENDEZ: Yes.

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

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

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

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

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

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

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

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

VICE CHAIR THERNSTROM: Back to back.

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

VICE CHAIR THERNSTROM: Okay. That seems fair.

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

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

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

COMMISSIONER HERIOT: Maybe other people
understood that.

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

COMMISSIONER HERIOT: Fantastic.

VICE CHAIR THERNSTROM: Maybe some other people did.

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

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

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

COMMISSIONER HERIOT: I would be shocked.

STAFF DIRECTOR DANNENFELSER: HBCU has been drafted.

VICE CHAIR THERNSTROM: Yes.

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

VICE CHAIR THERNSTROM: So we're just getting documents that are related out the door at the
same time.

COMMISSIONER HERIOT: Yes. That’s right.

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

COMMISSIONER MELENDEZ: Yes. It’s a little clearer now.

VICE CHAIR THERNSTROM: Nobody can object to that.

COMMISSIONER GAZIANO: It makes sense to me.

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

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

VI. PROGRAM PLANNING

(UPDATE ON STATUS OF 2009 STATUTORY REPORT)

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

COMMISSIONER HERIOT: Yes, I think that would be.

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

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

MR. LERNER: You mean Freddie Mac.

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

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

MR. LERNER: This is Bob Lerner. This is the Staff Director for OCRE. We've sent letters to get a contact from 11 different agencies. We've
gotten responses from all but four and we've made appointments or will have shortly made appointments with seven. We have indeed met as David has said with Freddie. We have met with the FTC. Next week we're going to meet with FHFA and with the Office of the Comptroller of the Currency. We have also talked to the Fed and we're expecting to be able to meet with them in the first week of the year.

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

One of the useful things about the context, let me just give one example, our original letter, our original interrogatory, was sent to the Treasury Department. But upon inquiry we discovered that the Treasury Department really doesn't have much say over its two components, the Office of Thrift Supervision and the Office of the Comptroller of the Currency. They really operate as independent entities even though they're official rubric.
So in fact we wound up redirecting our inquiries to those two components of the agency. They really do operate more or less independently and that was very helpful if nothing else because it would save a lot of time when we sent out an interrogatory and also it's helpful because we're going to meet with them and already with the phone conversations that I've had learned a lot about how they enforce the Community Reinvestment Act, learned a lot about how they make referrals to Justice and to HUD on fair lending matters and things like that. And in the case of the Fed, we have very interesting discussions about some of the data that they have collected for some of the ones we hope to get a hold of and they're going to make a special presentation for us about that particular point. That's what I would like to add to this.

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

MR. LERNER: Yes.

COMMISSIONER GAZIANO: I hope that you can make up for time on the schedule and obviously if the schedule needs to be adjusted somewhat on some things...
that's fine but there is so much work to do that I
hope that you're adjusting it in other ways so that we
can still get the draft early on and we can provide
the right kind of guidance. So if you don't mind me
asking right now, what kind of databases do you think
are going to be more productive, when you do think in
answering the questions that we want to be answered
and when do you think you all would have them to start
analyzing them?

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

COMMISSIONER GAZIANO: Correct.

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

One of the advantages and disadvantages
about a topic that's current is there's a good deal of
information and I guess some of that may be
misinformation on this subject. So we have actually
compiled a huge number of documents and we've got requests, informal requests, to some of these agencies to help us get more. But they pointed us to their Congressional testimony. They pointed us to GAO studies that have been done about either fair lending that's relevant to mortgage lending discrimination. They've been extraordinarily helpful.

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

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

MR. LERNER: Right.

COMMISSIONER GAZIANO: Are there datasets associated with that?

MR. LERNER: Yes. There's a Fed study that was a part of a study commission by Congress in 2003 jointly with the Federal Trade Commission. The Fed study was designed to do a study, what I would call a validity study of credit scoring as it's used in evaluating credit and the validity study in part was determined whether there is in fact racial bias in such scoring and the Fed engaged in extraordinary effort to compile a dataset that I don't believe exist
anywhere and they published this report although my own personal opinion is, and I'm a trained statistician, this is a very difficult report to read. If they were actually going to expect sending it to Congress with the expectation that anybody would read it even if they had the time to read it --

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

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

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

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

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

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

I have to be honest. Before we started working on this, I was not familiar with this dataset. But I think it's extremely valuable and it allows us to explore a little bit this whole notion of credit
scores. I don't know if that helps, Commissioner GAZIANO.

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

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

COMMISSIONER GAZIANO: Okay.

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

But from my perspective the problem with the scheduling is there is a lot of people who are not here. We have that at our agency, too. The Staff Director can say more about that, but I know at least one member of my staff is going to be going out after Tuesday of this week and she's not going to be back until after the New Year. So that was the problem. I pressed them hard on it, but they promised they would give us an extensive presentation on that dataset on
the view of the Community Reinvestment Act in which
they take a position that the Community Reinvestment
Act does not have any contribution, did not make any
contribution, to the mortgage crisis and I'm anxious
to hear their discussion of that and they also are
going to discuss with us how they enforce it, how they
make referrals and topics of that sort and that will
be very helpful and we put it altogether.

MR. BLACKWOOD: There's one matter I would
like to bring up from the FTC yesterday and we may run
into this with other agencies. Their staff attorneys
basically told if we send a set of formal
interrogatories over there they will escalate that and
that will have to be voted on by the Commissioners and
they made it quite clear they will be tied down
bureaucratically and we expect very expansive answers.
At the same time, they made a counter offer of work
with us informally and we'll give you just about
anything you're looking for public information.

They understand our need. At some point
we will need answers to interrogatories. So I would
say to you contrary to our regular plan is what I
would suggest is we've worked with staff. They have
given us the assurances that they will work with us to
provide the information on an informal basis and meet
with us to discuss it and then we sent the interrogatories towards the end. That's normally not something I would suggest but I think that would work out in that particular case.

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

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

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

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

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

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

VICE CHAIR THERNSTROM: Yes.

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

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

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

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

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

MR. LERNER: Okay.
COMMISSIONER GAZIANO: And we can talk about that later.

MR. LERNER: That's true.

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

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

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

I mean I can't, Commissioner GAZIANO, give you a definite answer until we actually have a chance
to sit down and meet with them and get a sense of what this is like and as I said if that doesn't work, if they are not willing to do it, then I would recommend going through the interrogatory route and getting it that way. I believe they would have to turn over some of it to us no matter what. It's just that it would be a matter of speed and efficiency from my perspective. Yes, and I would insist that we get the information that we're looking for, some of the ones, things that I had described and some of the things that were discussed in the concept paper.

I think in itself that would be a contribution of our report because as I said I don't believe even has heard of this study or knows about it or even if they have they probably can't read it or make sense of it I must say. I was kind of surprised when I worked through it. I'm a trained statistician. I can read it pretty well, but I wouldn't call it accessible.

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

MR. BLACKWOOD: Every meeting we have had I've made it clear (1) we'd appreciate no game
playing, that this isn't litigation, that we have unlimited number of interrogatories, all in a very friendly way, of course, but (2) that I would expect their help. If they thought something was wrong or we've worded it wrong not to play a game and wait 30 days and give me a technical answer but to tell us. That we'll go away a lot faster if everybody cooperates, tells us what information is out there and also that we will negotiate absolutely issues of privacy. That's open-ended. But I think we're getting good feedback, too, that people want to cooperate with us because they don't -- they want to be able to give us the information and have us end our oversight.

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

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

VII. ADJOURN

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

COMMISSIONER KIRSANOW: Second.

VICE CHAIR THERNSTROM: All in favor?

(Chorus of ayes.)

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

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