

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, MARCH 12, 2010

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:30 a.m., GERALD A. REYNOLDS, Chairman, presiding.

PRESENT:

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

MARTIN DANNENFELSER, Staff Director

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STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
CHRISTOPHER BYRNES, Director, RPCU
DEBRA CARR
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MAJA JWEIDE
ROBERT LERNER, Assistant Staff Director,
OCRE (via telephone)
EMMA MONROIG, Solicitor
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, Budget and Finance
KIMBERLY TOLHURST
AUDREY WRIGHT
MICHELLE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
JOHN MARTIN
ALISON SCHMAUCH

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

2 (9:34 a.m.)

3 CHAIRPERSON REYNOLDS: The meeting
4 will come to order. This is a meeting of the U.S.
5 Commission on Civil Rights. It is 9:34 a.m.
6 Eastern Standard Time on March 12th, 2010.
7 Commissioner Kirsanow and I are participating by
8 phone. Vice Chair Thernstrom is in and out. She
9 hasn't arrived yet.

10 Commissioner Melendez, was that you
11 who just joined us?

12 COMMISSIONER MELENDEZ: Yes. Good
13 morning.

14 CHAIRPERSON REYNOLDS: Very good.
15 Commissioner Melendez will also participate by
16 phone. Commissioners Heriot, Gaziano, and Yaki
17 are present at 624 9th Street, Northwest, Room 540
18 in Washington, D.C., where the meeting is being
19 held. Commissioners participating by phone,
20 please be sure to state your name before making a
21 statement or tasking a vote to make it easier on
22 our court reporter.

23 Before I begin, I would like to note
24 the passing of former Commissioner Juanita

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1 Goggins, who died last month at the age of 75.
2 She was a woman of many firsts, the first black
3 woman to serve on the U.S. Commission on Civil
4 Rights and the first black woman elected to the
5 South Carolina General Assembly.

6 She represented House District 49 in
7 Rock Hill, South Carolina from 1974 until 1980,
8 serving on the House Ways and Means Committee.
9 She was also the first black woman from South
10 Carolina elected to the Democratic National
11 Committee.

12 Today we celebrate her life and
13 acknowledge her contribution to this Commission.

14 I. APPROVAL OF AGENDA

15 CHAIRPERSON REYNOLDS: The first item
16 on the agenda is the approval of the agenda. Is
17 there a motion to approve the agenda?

18 COMMISSIONER GAZIANO: So moved.

19 CHAIRPERSON REYNOLDS: Second?

20 COMMISSIONER KIRSANOW: Second.

21 COMMISSIONER YAKI: This is
22 Commissioner Yaki. When would the appropriate
23 time be to make an amendment to the agenda?

24 CHAIRPERSON REYNOLDS: Let's do that

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1 now.

2 COMMISSIONER YAKI: Commissioner
3 Melendez and I would like to have an item added to
4 the agenda to just discuss how the immigration
5 report findings and recommendations were handled
6 at the last teleconference meeting.

7 CHAIRPERSON REYNOLDS: I'm sorry,
8 please repeat yourself.

9 COMMISSIONER YAKI: Commissioner
10 Melendez and I would like to have an agenda item
11 added for discussion on how the immigration report
12 was handled at the last business meeting.

13 CHAIRPERSON REYNOLDS: Okay. All
14 right. I second the motion. Discussion?

15 COMMISSIONER GAZIANO: Do you have
16 other agenda amendments yourself, Mr. Chair?
17 Should we vote them one at a time or all together?

18 CHAIRPERSON REYNOLDS: Let's do it one
19 at a time. I anticipate there will be unanimity,
20 but I am not sure.

21 Commissioner Melendez, how do you
22 vote?

23 COMMISSIONER MELENDEZ: Yes.

24 CHAIRPERSON REYNOLDS: Commissioner

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1 Kirsanow?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRPERSON REYNOLDS: Commissioner

4 Yaki?

5 COMMISSIONER YAKI: Aye.

6 CHAIRPERSON REYNOLDS: Commissioner

7 Heriot?

8 COMMISSIONER HERIOT: Aye.

9 CHAIRPERSON REYNOLDS: Commissioner

10 Gaziano?

11 COMMISSIONER GAZIANO: Sure.

12 CHAIRPERSON REYNOLDS: And I vote for

13 it also. So it passes unanimously.

14 Next up, Commissioner Kirsanow, I

15 understand that you have some amendments to the

16 agenda.

17 COMMISSIONER KIRSANOW: I do. Mr.

18 Chair, I would move to amend the agenda to add

19 consideration of the two letters I circulated

20 Wednesday and Thursday.

21 The first is advising the House of the

22 preferences in the Senate's version of the health

23 care bill, a letter that we sent out in December.

24 This one will go out to House members.

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1 The second letter is a letter to
2 officials of the City of Youngstown, Ohio, who are
3 using a racially bifurcated hiring list in hiring
4 police and firefighters.

5 So I would move that we place those
6 two items on the agenda.

7 CHAIRPERSON REYNOLDS: Okay. I second
8 the motion. Discussion.

9 (No response.)

10 CHAIRPERSON REYNOLDS: Commissioner
11 Melendez?

12 COMMISSIONER MELENDEZ: Yes.

13 CHAIRPERSON REYNOLDS: Commissioner
14 Kirsanow?

15 COMMISSIONER KIRSANOW: Yes.

16 CHAIRPERSON REYNOLDS: Commissioner
17 Yaki?

18 COMMISSIONER YAKI: No.

19 CHAIRPERSON REYNOLDS: Commissioner
20 Heriot?

21 COMMISSIONER HERIOT: Yes.

22 CHAIRPERSON REYNOLDS: Commissioner
23 Gaziano?

24 COMMISSIONER GAZIANO: Yes.

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1 CHAIRPERSON REYNOLDS: I vote for it
2 also. Commissioner Yaki votes against it. The
3 remaining commissioners vote for it. The motion
4 passes.

5 Okay. So now let's vote on the agenda
6 as amended. I move that we do so. Is there a
7 second?

8 COMMISSIONER HERIOT: Second.

9 COMMISSIONER GAZIANO: Could I add one
10 other agenda item?

11 CHAIRPERSON REYNOLDS: Yes.

12 COMMISSIONER GAZIANO: Just a
13 discussion item, really, on the Department of
14 Education's information, I suppose, or statement
15 that it may investigate schools for disparate
16 impact relating to discipline in AP courses and
17 related matters.

18 CHAIRPERSON REYNOLDS: All right. I
19 second the motion. Discussion?

20 (No response.)

21 CHAIRPERSON REYNOLDS: Commissioner
22 Melendez, how do you vote?

23 COMMISSIONER MELENDEZ: Yes.

24 CHAIRPERSON REYNOLDS: Commissioner

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1 Kirsanow?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRPERSON REYNOLDS: Commissioner

4 Yaki?

5 COMMISSIONER YAKI: No.

6 CHAIRPERSON REYNOLDS: Commissioner

7 Heriot?

8 COMMISSIONER HERIOT: Yes.

9 CHAIRPERSON REYNOLDS: Commissioner

10 Gaziano?

11 COMMISSIONER GAZIANO: Yes.

12 CHAIRPERSON REYNOLDS: I vote for it

13 also. Commissioner Yaki votes against the motion.

14 And the remaining commissioners voted for it. The

15 motion passes.

16 At this point we are going to vote for
17 the agenda as amended. Second?

18 COMMISSIONER GAZIANO: I am glad to
19 vote before, but will you tell us where on the
20 agenda you are going to place these different
21 items or do you want to do it after?

22 CHAIRPERSON REYNOLDS: Okay. Let's
23 see. I'll put them on the front end. Well, I'll
24 put them after the approval on the briefing report

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1 on HBCUs.

2 And the order, I'll take the order as
3 we received them: immigration; then the two
4 letters; and, finally, issues related to OCR.

5 Okay. Commissioner Melendez, how do
6 you vote?

7 COMMISSIONER MELENDEZ: Yes.

8 CHAIRPERSON REYNOLDS: Commissioner
9 Kirsanow?

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIRPERSON REYNOLDS: Commissioner
12 Yaki?

13 COMMISSIONER YAKI: Aye.

14 CHAIRPERSON REYNOLDS: Commissioner
15 Heriot?

16 COMMISSIONER HERIOT: Yes.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Gaziano?

19 COMMISSIONER GAZIANO: Yes.

20 CHAIRPERSON REYNOLDS: Okay. The
21 motion passes unanimously.

22 II. STATE ADVISORY COMMITTEE ISSUES

23 - PENNSYLVANIA

24 CHAIRPERSON REYNOLDS: First up will

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1 be the State Advisory Committees. I move that the
2 Commission recharter the Pennsylvania State
3 Advisory Committee.

4 Under this motion, the Commission
5 appoints the following individuals to that
6 committee based on recommendations of the Staff
7 Director: Christopher Armstrong, Elisa Basnight,
8 Richard Baulding, Alberro Cardelle, ImJa Choi,
9 Heather Heidelbaugh, James Frazier, Nancy Gippert,
10 Patricia Hopson-Shelton, Craig Hymowitz, Steven
11 Irwin, Faye Ritter, William Rothman, Lawrence
12 Tabas, and Connie Tarr. Pursuant to this motion,
13 the Commission also appoints James Frazier as the
14 chair of this rechartered Pennsylvania State
15 Advisory Committee.

16 They will serve as uncompensated state
17 government employees. And the Commission
18 appreciates the hard work that they will no doubt
19 contribute to the State Advisory Committee.

20 Under this motion, the Commission
21 authorizes the Staff Director to execute the
22 appropriate work for the appointment.

23 Is there a second? Is there a second?

24 COMMISSIONER KIRSANOW: Kirsanow.

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1 Second.

2 CHAIRPERSON REYNOLDS: Thank you.

3 Discussion?

4 (No response.)

5 CHAIRPERSON REYNOLDS: Commissioner
6 Melendez, how do you vote?

7 COMMISSIONER MELENDEZ: Discussion.
8 This seems to be not real balanced. It's balanced
9 as far as women and men, but it seems to be there
10 are more Republicans than Democrats on this one.
11 It seems to be skewed way to the right.

12 CHAIRPERSON REYNOLDS: Eight
13 Republicans, five Democrats, two Independents. We
14 also tried to tease out the viewpoints of the
15 folks under consideration. And if you look at
16 their viewpoints, their ideology, by my scorecard,
17 we have seven individuals who lean to the left,
18 five who lean to the right, and three unknown.

19 COMMISSIONER GAZIANO: Commissioner
20 Melendez?

21 CHAIRPERSON REYNOLDS: I assume,
22 Commissioner Melendez, that you are more
23 interested in their ideology. And, if I am right,
24 this is probably a balanced commission. I say

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1 "probably" only because there are three
2 individuals where we were unable to tease out
3 their viewpoints.

4 COMMISSIONER GAZIANO: Commissioner
5 Melendez, I am concerned that it may lean to the
6 left. So I may abstain on lack of balance but
7 going the other way.

8 CHAIRPERSON REYNOLDS: Any other
9 comments?

10 (No response.)

11 CHAIRPERSON REYNOLDS: Commissioner
12 Melendez, how do you vote?

13 COMMISSIONER MELENDEZ: I vote no.

14 CHAIRPERSON REYNOLDS: Commissioner
15 Kirsanow?

16 COMMISSIONER KIRSANOW: Yes.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Yaki?

19 COMMISSIONER YAKI: No.

20 CHAIRPERSON REYNOLDS: Commissioner
21 Heriot?

22 COMMISSIONER HERIOT: Yes.

23 CHAIRPERSON REYNOLDS: Commissioner
24 Gaziano?

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1 COMMISSIONER GAZIANO: Pass.

2 CHAIRPERSON REYNOLDS: I am sorry?
3 Did you say "Pass"?

4 COMMISSIONER GAZIANO: Pass.

5 CHAIRPERSON REYNOLDS: I vote for it.
6 Commissioner Gaziano, how do you vote?

7 COMMISSIONER GAZIANO: What is the
8 vote right now?

9 CHAIRPERSON REYNOLDS: It is three
10 votes for it, two votes against it.

11 COMMISSIONER GAZIANO: Where is
12 Commissioner Thernstrom? Can we get back? I
13 abstain. I abstain.

14 CHAIRPERSON REYNOLDS: Thank you.
15 Okay. The motion passes: three votes for it, two
16 against, one abstention.

17 - NEVADA SAC

18 CHAIRPERSON REYNOLDS: Next up is the
19 Nevada State Advisory Committee. I move that the
20 Commission recharter the Nevada State Advisory
21 Committee.

22 Under this motion, the Commission
23 appoints the following individuals to that
24 committee based on the recommendations of the

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1 Staff Director: Robert Beers, Onie Cooper, Belen
2 Gabato, Kay Kindred, Peggy Micco-Koning, Theresa
3 Navarro, Michael Pennington, Dennis Perea, Devin
4 Reiss, Cheryl Russo-Campbell, Matthew Saltzman,
5 and Michael Spurlock. Pursuant to this motion,
6 the Commission also appoints Michael Pennington as
7 the chair of the rechartered Nevada State Advisory
8 Committee.

9 These committee members will also
10 serve as uncompensated state government employees.

11 Under this motion, the Commission authorizes the
12 Staff Director to execute the appropriate
13 paperwork.

14 Discussion? I'm sorry. Is there a
15 second?

16 COMMISSIONER GAZIANO: Second.

17 CHAIRPERSON REYNOLDS: Discussion?

18 (No response.)

19 CHAIRPERSON REYNOLDS: Okay.
20 Commissioner Melendez?

21 COMMISSIONER MELENDEZ: It looks okay
22 to me. I'll vote yes.

23 CHAIRPERSON REYNOLDS: Commissioner
24 Kirsanow?

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1 COMMISSIONER KIRSANOW: Yes.

2 CHAIRPERSON REYNOLDS: Commissioner
3 Yaki?

4 COMMISSIONER YAKI: Abstain.

5 CHAIRPERSON REYNOLDS: Commissioner
6 Heriot?

7 COMMISSIONER HERIOT: Yes.

8 CHAIRPERSON REYNOLDS: Commissioner
9 Gaziano?

10 COMMISSIONER GAZIANO: Yes.

11 CHAIRPERSON REYNOLDS: I, too, vote
12 for it. One abstention. And the remaining
13 commissioners vote for it. It passes.

14 - KANSAS SAC

15 CHAIRPERSON REYNOLDS: Next up is the
16 Kansas State Advisory Committee. I move that the
17 Commission recharter the Kansas State Advisory
18 Committee.

19 Under this motion, the Commission
20 appoints the following individuals to that
21 committee: Michael Abrams, Laurie Bagby, Susan
22 Berson, Melanie Caro, Chiquita Coggs, Marsha Frey,
23 Michelle Johnson, Jennifer Kassebaum, Robert
24 Mandel, Sarah McIntosh, Phyllis Nolan, Kirk

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1 Perucca, Charles Scott, Kimberly Shankman, Ewa
2 Unoke. Pursuant to this motion, the Commission
3 also appoints Kimberly Shankman as chair of the
4 rechartered State Advisory Committee.

5 These members will serve as
6 uncompensated government employees. Under this
7 motion, the Commission authorizes the Staff
8 Director to execute the appropriate paperwork for
9 the appointment.

10 Is there a second?

11 COMMISSIONER GAZIANO: Second.

12 CHAIRPERSON REYNOLDS: Discussion?

13 COMMISSIONER YAKI: This is
14 Commissioner Yaki. Kansas has had a rather
15 substantial and measurable growth in its Latino
16 population. I think it's almost ten percent of
17 the state. Were there any efforts directed
18 towards recruiting members of that community for
19 inclusion on the SAC?

20 CHAIRPERSON REYNOLDS: Mr. Staff
21 Director, please respond to Commissioner Yaki's
22 question. And also do you know if any of the
23 candidates are Hispanic?

24 STAFF DIRECTOR DANNENFELSER: There

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1 was outreach from the region to El Centro
2 Incorporated, which I believe was an Hispanic
3 organization in Kansas. I don't have a breakdown
4 in front of me on whether or not any of the
5 members themselves are Hispanics.

6 CHAIRPERSON REYNOLDS: Thank you.

7 COMMISSIONER MELENDEZ: This is
8 Commissioner Melendez here. Was anybody rejected?

9 CHAIRPERSON REYNOLDS: Mr. Staff
10 Director?

11 STAFF DIRECTOR DANNENFELSER: Well, I
12 don't believe so, not from the ones that were sent
13 from the regional office. Now, the regional
14 office does not necessarily include every
15 application that they receive. It's not someone
16 that they necessarily put forward. But I don't
17 recall dropping anybody that came from the
18 regional office on this particular SAC.

19 CHAIRPERSON REYNOLDS: Other
20 questions?

21 (No response.)

22 CHAIRPERSON REYNOLDS: Commissioner
23 Melendez, how do you vote?

24 COMMISSIONER MELENDEZ: No.

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1 CHAIRPERSON REYNOLDS: Commissioner
2 Kirsanow?
3 COMMISSIONER KIRSANOW: Yes.
4 CHAIRPERSON REYNOLDS: Commissioner
5 Yaki?
6 COMMISSIONER YAKI: No.
7 CHAIRPERSON REYNOLDS: Commissioner
8 Heriot?
9 COMMISSIONER HERIOT: Yes.
10 CHAIRPERSON REYNOLDS: I am sorry?
11 Commissioner Heriot?
12 COMMISSIONER HERIOT: Yes.
13 CHAIRPERSON REYNOLDS: Commissioner
14 Gaziano?
15 COMMISSIONER GAZIANO: Yes.
16 CHAIRPERSON REYNOLDS: I vote for this
17 slate of candidates also. We have two votes:
18 Commissioners Melendez and Yaki. The remaining
19 commissioners voted for it. The motion passes.
20 - MISSOURI SAC
21 CHAIRPERSON REYNOLDS: Next up we have
22 the Missouri State Advisory Committee. I move
23 that the Commission recharter the Missouri State
24 Advisory Committee.

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1 Under this motion, the Commission
2 appoints the following individuals to that
3 committee based on the recommendations of the
4 Staff Director: Michael Podgursky, Timothy Asher,
5 Joan Bergstrom, James Buford, Shamed Dogan, Eugene
6 Dokes, Tyrone Flowers, John Grimwade, Sandra
7 Mayer, Jalesia McQueen, Ronnie Podolefsky, Beverly
8 Randles, Steven Schieber, and Donayle Whitmore.
9 Pursuant to this motion, the Commission also
10 appoints Michael Podgursky as chair of the
11 rechartered Missouri State Advisory Committee.

12 These members will serve as
13 uncompensated government employees. Under this
14 motion, the Staff Director is authorized to
15 execute the appropriate paperwork.

16 Is there a second?

17 COMMISSIONER GAZIANO: Second.

18 CHAIRPERSON REYNOLDS: Discussion?

19 COMMISSIONER YAKI: This is
20 Commissioner Yaki. I have real concerns and
21 continuing concerns over the appointment of
22 Timothy Asher to the Missouri State Advisory
23 Committee. I spoke against him prior.

24 He is someone who has continued to --

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1 has had three different ballot initiatives and was
2 already struck down because they were misleading
3 in terms of what they purported to say versus what
4 they purported to do on the issue of affirmative
5 action/civil rights.

6 He is someone who I think has the
7 absolute wrong qualifications for a body related
8 to this Commission. And I strongly oppose his
9 inclusion in the SAC.

10 CHAIRPERSON REYNOLDS: Commissioner
11 Yaki, if I understand you -- correct me if I am
12 wrong -- the primary reason you are opposing him
13 is his opposition to racial preferences?

14 COMMISSIONER YAKI: No. I am talking
15 about the fact that he has had three different
16 ballot initiatives kicked out by courts of law
17 because they were attempting to mislead the voters
18 as to what he said he was doing versus what he is
19 trying to do.

20 The fact that what he is doing is
21 objectionable to me is interesting and salient in
22 terms of my objection to his ideology, but the
23 fact that he has three times been knocked down by
24 the courts for attempting to mislead voters is

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1 something that does trouble me.

2 COMMISSIONER GAZIANO: Mr. Chairman?

3 CHAIRPERSON REYNOLDS: Did the court
4 conclude that he attempted to mislead the voters?

5 COMMISSIONER YAKI: They knocked his
6 stuff off the ballot because they said what it was
7 ascribed versus what it would do did not comport.

8 COMMISSIONER GAZIANO: Mr. Chairman,
9 this is Commissioner Gaziano. The outrageousness
10 of the courts' rulings subject to appropriate
11 public commentary and review can -- certainly this
12 Commission should not do further injury to this
13 gentleman by adopting court decisions that are
14 outrageous or implying that we agree with
15 outrageous and obnoxious court rulings that are
16 against the real law of the State of Missouri and
17 the democratic process.

18 CHAIRPERSON REYNOLDS: I have not
19 reviewed the court opinion. And that is why I
20 asked Commissioner Yaki whether the court
21 concluded that Mr. Asher attempted to mislead the
22 voters of Missouri. And if I understand --

23 COMMISSIONER GAZIANO: There was no --

24 CHAIRPERSON REYNOLDS: -- it right,

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1 the answer is no.

2 COMMISSIONER GAZIANO: Yes. There was
3 no finding on intent, nor could there be. These
4 ballot initiatives were very close to those that
5 ran in California, Washington State, Colorado.
6 Most passed. The Colorado one failed. But the
7 ballot initiative was very close to Michigan and
8 all of those other states.

9 COMMISSIONER YAKI: It may have been
10 close, but apparently it didn't hit muster.

11 CHAIRPERSON REYNOLDS: So but for the
12 court's decision, Commissioner Yaki, would you
13 have an objection to him?

14 COMMISSIONER YAKI: Of course, I would
15 have an objection to him. That goes without
16 saying.

17 CHAIRPERSON REYNOLDS: Well, no.
18 Actually --

19 COMMISSIONER YAKI: An objection, Mr.
20 Chair --

21 CHAIRPERSON REYNOLDS: -- it would be
22 helpful if you did say --

23 COMMISSIONER YAKI: An objection, Mr.
24 Chair, on ideology is one thing. An objection to

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1 the fact that I think he is unfit to serve on the
2 SAC is another.

3 CHAIRPERSON REYNOLDS: Yes. But I'm
4 trying to find out what is the basis for your
5 belief that he is unfit.

6 COMMISSIONER YAKI: I believe that his
7 continued efforts that have met with successful
8 court challenges time after time on these issues,
9 where the lawsuits as they were filed were
10 alleging a number of serious substantive and
11 procedural errors --

12 CHAIRPERSON REYNOLDS: But for that,
13 you would support him?

14 COMMISSIONER YAKI: No. I didn't say
15 that. Why would you think --

16 CHAIRPERSON REYNOLDS: That was the
17 question.

18 COMMISSIONER YAKI: -- I would say
19 that? I am saying that those factors for me --
20 there are a number of people on these commissions,
21 these State Advisory Committees, Mr. Chair, that I
22 object to.

23 I object to the fact that the majority
24 removed people with substantial institutional

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1 memory in history who brought a lot of good things
2 to the table.

3 I object to the fact that the State
4 Advisory Committees have in many instances been
5 skewed, both politically, demographically, and by
6 gender.

7 I object to the fact that there are
8 people on there who I believe in their hearts have
9 no interest at all in civil rights other than the
10 dismantling of the civil rights laws of this
11 country. I object to the fact that this has been
12 a continuing practice for five years, and I cannot
13 wait for the moment when that ceases.

14 But I particularly object in this
15 particular instance to this one individual, who I
16 believe has shown time and again by his actions
17 that his view of civil rights is contrary to the
18 mission of this Commission.

19 And what people express in their
20 writings, what people express in public versus
21 what people have done time and again is to me
22 worthy of at least some exceptional notice by me
23 at this Commission.

24 But no. By no means does this mean

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1 that absent his activities, I would object to his
2 inclusion on the Commission. I think the fact
3 that I abstain or have no votes on probably 90
4 percent of the SACs as they have been presented to
5 this Commission speaks for itself.

6 CHAIRPERSON REYNOLDS: Okay. Thank
7 you. Thank you for the clarification. You raise
8 some interesting points. If I understood you --

9 COMMISSIONER YAKI: You will never
10 understand me, Mr. Chair.

11 CHAIRPERSON REYNOLDS: Well, I thought
12 that I said "if." And I'm sure that you'll
13 correct if I get it wrong. But if I understood
14 you, Commissioner Kirsanow probably would not
15 qualify in your estimation to being on the
16 Commission because of his views.

17 COMMISSIONER YAKI: I am not going to
18 answer hypotheticals, but you can draw your own
19 conclusions.

20 CHAIRPERSON REYNOLDS: Okay. Any
21 other discussion?

22 COMMISSIONER MELENDEZ: Yes.
23 Commissioner Melendez. It seems this one is
24 skewed to the right also. They've got two solid

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1 Dems, it seems like to me. And the rest are six
2 Republicans, five Independents. I just have a
3 problem with that.

4 CHAIRPERSON REYNOLDS: Okay. Just to
5 give you a better sense of how I approach it,
6 Commissioner Melendez, I don't pay all that much
7 attention to the party affiliations. I look at
8 the ideology. I am trying to ensure that there is
9 a diversity of viewpoint.

10 And so according to my view of their
11 ideology, we have three folks who have tagged to
12 the left, four who tag to the right, and seven
13 unknowns.

14 I guess we have a different method for
15 determining balance.

16 COMMISSIONER MELENDEZ: My other
17 comment -- let's just vote.

18 CHAIRPERSON REYNOLDS: Commissioner
19 Melendez, how do you vote?

20 COMMISSIONER MELENDEZ: No.

21 CHAIRPERSON REYNOLDS: Commissioner
22 Kirsanow?

23 COMMISSIONER KIRSANOW: Yes.

24 CHAIRPERSON REYNOLDS: Commissioner

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1 Yaki?

2 COMMISSIONER YAKI: No.

3 CHAIRPERSON REYNOLDS: Commissioner

4 Yaki?

5 COMMISSIONER YAKI: Oh, sorry. I
6 thought my mike was somewhere else. No.

7 CHAIRPERSON REYNOLDS: Commissioner

8 Heriot?

9 COMMISSIONER HERIOT: I vote yes, but
10 I want to note that I am casting my vote
11 especially for Tim Asher, who has done more for
12 the principle of nondiscrimination and civil
13 rights than Commissioner Yaki has ever done.

14 CHAIRPERSON REYNOLDS: Commissioner
15 Gaziano?

16 COMMISSIONER GAZIANO: Yes and for Tim
17 Asher.

18 CHAIRPERSON REYNOLDS: I, too, vote
19 for this slate, especially for Mr. Asher, who has
20 done some fine work in my view. And it's clear
21 that my view is not shared by all.

22 COMMISSIONER YAKI: Therein lies the
23 difference.

24 - DISTRICT OF COLUMBIA SAC

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1 CHAIRPERSON REYNOLDS: Okay. I move
2 that the Commission recharter the District of
3 Columbia State Advisory Committee.

4 Under this motion, the Commission
5 appoints the following individuals to that
6 committee based on the recommendations of the
7 Staff Director: Virginia Ford, Sonia Gutierrez,
8 Clyde Hart, Vernon Dexter Ingram, Winona Lake
9 Scott, Daniel Lips, Alan Palmer, Laurence Pearl,
10 Denyse Sabagh, James Sandman, Gregory Squires,
11 Steven Wagner, Ken Weinstein. Pursuant to this
12 motion, the Commission also appoints Daniel Lips
13 as the chair of the rechartered District of
14 Columbia State Advisory Committee.

15 These committee members will serve as
16 uncompensated government employees. Under this
17 motion, the Commission authorizes the Staff
18 Director to execute the appropriate paperwork.

19 Is there a second?

20 COMMISSIONER GAZIANO: Second.

21 CHAIRPERSON REYNOLDS: Discussion?

22 COMMISSIONER YAKI: Mr. Chair, this is
23 Commissioner Yaki. If you go beneath the
24 D-R-I-unknown category, this is a commission that

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1 is seriously out of whack.

2 I would say nearly a third or more
3 than a third of the members are concerned only in
4 charter schools that are school choice.
5 Three-quarters of the slate is male.

6 I mean, in any iteration of how you
7 would have anything that would be roughly
8 representative at all of the District of Columbia,
9 this does not scour at all.

10 And I think that this is an
11 interesting body considering the demographics and
12 characteristics of the District of Columbia
13 unless, of course, you are excluding the people
14 who live here. So I am going to be voting a
15 strong no on this.

16 And just a slight response to
17 Commissioner Heriot, I would rather be known for
18 doing no harm to civil rights and being seen as
19 having done nothing, as apparently you seem to
20 think, versus to be seen as someone who has
21 actively sought to dismantle and destroy the gains
22 made under the Civil Rights Act over the past 50
23 years. And if that is our point of difference,
24 that certainly is our point of difference, I

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1 think, between the two of us.

2 CHAIRPERSON REYNOLDS: And it is an
3 extremely important difference. And, quite
4 frankly, I think that we should seek opportunities
5 to discuss this difference.

6 I think that Commissioner Heriot
7 embraces the view of nondiscrimination. Now, that
8 does not exclude supporting policies that would
9 help the disadvantaged, but her view -- and I
10 guess I shouldn't speak for her. I'm sure I'm
11 going to pay a price for this. But her view of
12 civil rights, arguably, is the traditional view of
13 civil rights, that the government should not
14 distribute burdens and benefits on the basis of
15 race.

16 The civil rights movement fought for a
17 long time to get this country in a position where
18 the majority of Americans embrace the view that
19 the government should not distribute burdens and
20 benefits on the basis of race.

21 So it is an important difference. And
22 I welcome opportunities to continue this dialogue.

23 And, Commissioner Yaki, maybe we should put our
24 heads together to put something on the agenda

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1 where we can have an expanded discussion of this
2 point.

3 COMMISSIONER YAKI: Well, Mr. Chair,
4 it's Commissioner Yaki. I had thought that that
5 was perhaps the intent of the national conference
6 that you were doing. But, of course, I would
7 always be glad to discuss this. I just will not
8 do so in quite the same manner as perhaps some of
9 my colleagues would.

10 Going on to the District of Columbia
11 SAC, I would just again say I think this SAC, for
12 lack of a better word, is out of whack. And we
13 could have done a much better job.

14 I think it is a disservice to the
15 District in which we sit, in which our offices are
16 housed that we have a SAC that is so skewed out of
17 the people who live, reside, and work here every
18 day.

19 CHAIRPERSON REYNOLDS: You are right.
20 This SAC is heavily weighted with people who have
21 a strong interest in education reform. And,
22 looking at the District's academic performance
23 over an extended period of time, I think that that
24 focus is appropriate.

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1 Any other comments?

2 COMMISSIONER MELENDEZ: Yes.

3 Commissioner Melendez. You know, I think we
4 wouldn't have such a problem if this were more of
5 a conservative state, you know. But when you
6 really look at the District of Columbia, you know,
7 the SAC really doesn't match up with that.

8 So I think it is skewed to the right,
9 and District of Columbia is not skewed to the
10 right. So I have a problem with this one. So I
11 will probably vote against it.

12 CHAIRPERSON REYNOLDS: Okay. Any
13 other comments?

14 VICE CHAIR THERNSTROM: Yes. Mr.
15 Chairman? I don't have a mike. Hold on. I
16 didn't get my mike.

17 COMMISSIONER YAKI: Are you still
18 driving? Do you still think you're driving?

19 VICE CHAIR THERNSTROM: I feel as if I
20 am still driving. It took me close to two hours
21 to get in this morning, totally traumatized.

22 In any case, look, I don't think it is
23 fair to characterize the question here as a
24 division between those who are in favor of school

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1 reform, which includes -- I mean, I happen to be a
2 big charter advocate myself, but includes charter
3 advocates and only charter advocates and those who
4 are not are not in favor of school reform.

5 And I refer you to Diane Ravitch's new
6 book, where she -- Diane Ravitch, of course, is
7 the most distinguished educational historian in
8 the country and has been a long supporter of both
9 vouchers and charters and has changed her mind.
10 These are very complicated issues, how one defines
11 school reform. She has now come out in opposition
12 to charters and vouchers.

13 And so I want us to be very careful in
14 how we characterize people as pro or against
15 trying to remediate the problem of schools that
16 are failing to educate our kids.

17 CHAIRPERSON REYNOLDS: Thank you, Vice
18 Chair Thernstrom. I just want to note I don't
19 believe the issue is framed that way.
20 Commissioner Melendez earlier -- and I don't know
21 if you were present at the time.

22 VICE CHAIR THERNSTROM: No. I just
23 walked in. So, you know, I just heard the end of
24 this.

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1 CHAIRPERSON REYNOLDS: All right. Any
2 other comments?

3 (No response.)

4 CHAIRPERSON REYNOLDS: Commissioner
5 Melendez, how do you vote?

6 COMMISSIONER MELENDEZ: No.

7 CHAIRPERSON REYNOLDS: Commissioner
8 Kirsanow?

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRPERSON REYNOLDS: Vice Chair
11 Thernstrom?

12 VICE CHAIR THERNSTROM: I am
13 abstaining. I wish I had been here for the
14 discussion. I am terribly sorry.

15 CHAIRPERSON REYNOLDS: Commissioner
16 Yaki?

17 COMMISSIONER YAKI: No.

18 CHAIRPERSON REYNOLDS: Commissioner
19 Heriot?

20 COMMISSIONER HERIOT: Yes.

21 CHAIRPERSON REYNOLDS: Commissioner
22 Gaziano?

23 COMMISSIONER GAZIANO: Yes.

24 CHAIRPERSON REYNOLDS: And I vote for

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1 it. So we have one abstentions, two nos, and four
2 votes in favor of the motion. The motion passes.

3 II. PROGRAM PLANNING

4 - APPROVAL OF BRIEFING REPORT ON HISTORICALLY BACK
5 COLLEGES AND UNIVERSITIES

6 CHAIRPERSON REYNOLDS: Okay. Next up
7 is the HBCU briefing report. I know that the
8 Commission approved part A of this report on the
9 educational effectiveness of historically black
10 colleges and universities.

11 The report was based on a Commission
12 briefing held on May 5th, 2006. It reflects
13 commissioner and panelist input. Part A was
14 distributed in draft form to commissioners and
15 contains a briefing overview and summary of the
16 issue and why the Commission chose to conduct its
17 briefing: a summary of the proceedings consisting
18 of a synopsis of the panelists' full testimony and
19 a synopsis of the question and answer session and,
20 finally, copies of the panelists' written
21 statements.

22 Under this motion, if the majority of
23 the Commission votes to adopt part A of the
24 briefing report, the Commission will then open

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1 discussion of part B. If part A fails to obtain a
2 majority of votes, discussion of part B becomes
3 moot. This bifurcated vote was taken pursuant to
4 a policy adopted by commissioners at its April
5 13th, 2007 business meeting.

6 Is there a second?

7 COMMISSIONER YAKI: Second.

8 CHAIRPERSON REYNOLDS: Discussion?

9 COMMISSIONER HERIOT: Well, I have got
10 one comment.

11 CHAIRPERSON REYNOLDS: Yes?

12 COMMISSIONER HERIOT: On page 27 --
13 this is just a minor comment, but we might as well
14 get it out here. Page 27, the last full line of
15 text, the word used, "sophistical," I believe they
16 mean sophisticated. I don't think Dr. Kim would
17 appreciate his procedures being referred to as
18 sophistical.

19 CHAIRPERSON REYNOLDS: If there are no
20 objections, Mr. Staff Director, could you please
21 make that correction?

22 COMMISSIONER YAKI: Wait,
23 Commissioner. This is Commissioner Yaki. Hang
24 on. Let me just look at this for a second.

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1 CHAIRPERSON REYNOLDS: I'm sorry?
2 Does Commissioner Yaki have a comment?

3 COMMISSIONER YAKI: We may just want
4 to double check that.

5 COMMISSIONER GAZIANO: While he is
6 double checking, -- this is Commissioner Gaziano
7 -- I would ask if there is unanimous consent to
8 change the -- we refer to HBCUs, which are defined
9 in statute. And then we have these other funny
10 terms, "TWIs," traditionally white institutions,
11 which I think is very awkward. Can't we just say
12 "compare HBCUs with non-HBCUs" and substitute
13 "non-HBCUs" throughout in the report?

14 COMMISSIONER HERIOT: Yes. Mr.
15 Chairman, I would support that because I think
16 there is a big difference between an institution
17 like Old Miss, which was segregated and, hence,
18 traditionally white, and a school like Oberlin or
19 Harvard, which accepted African American students
20 going back very far. So I would say that Oberlin
21 and Harvard are traditionally open to all races
22 and not traditionally white.

23 So I think non-HBCU is probably the
24 right term here.

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1 VICE CHAIR THERNSTROM: I am sorry.
2 Is the term "TWI" in all my reading on HBCU --

3 COMMISSIONER GAZIANO: Pull your
4 microphone closer.

5 VICE CHAIR THERNSTROM: Oh, I'm sorry.
6 In all my reading on HBCUs, I've actually never
7 seen the term "TWI."

8 COMMISSIONER GAZIANO: Nor have I.
9 Nor have I.

10 COMMISSIONER HERIOT: We don't like
11 it.

12 COMMISSIONER GAZIANO: There's a
13 similar one, too, that I don't like, which is
14 "historically white colleges and universities." I
15 don't know that we need to be using that term
16 either.

17 VICE CHAIR THERNSTROM: If those terms
18 are never used --

19 COMMISSIONER GAZIANO: Why don't we
20 just say "HBCUs" and "non-HBCUs"?

21 COMMISSIONER HERIOT: You get a school
22 like Dartmouth that historically was actively, you
23 know, Native American. So it's really not
24 appropriate to refer to the schools across the --

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1 CHAIRPERSON REYNOLDS: Is there any
2 commissioner who objects to this approach?

3 COMMISSIONER YAKI: This is
4 Commissioner Yaki. I don't know if I necessarily
5 object to the approach, but I do know and I have
6 seen the literature term of arts for a descriptive
7 that does use -- I think there were either elite
8 or historical or what have you.

9 I just think that there is an
10 historical context here that is important not to
11 minimize. I doubt that TWI because I have
12 actually never seen it either is the exact term of
13 art, but I have been in statistical comparisons on
14 admission rates, et cetera, and test scores that
15 various sociologists and demographers and others
16 have had some type of characterization for at
17 least the elite institutions that have often been
18 used as a measure of comparison.

19 I would just want to make sure that we
20 are consistent with the scholarship on this. To
21 the extent that we're inconsistent by using TWIs,
22 I support the amendment, but I don't want us to
23 substitute simply "non-HBCU" if there, in fact, is
24 a substantial body of scholarship that uses a

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1 different term of art as a measure of comparison?

2 VICE CHAIR THERNSTROM: Mr. Chairman,
3 can we somehow -- I would be actually glad to look
4 at this question myself because I think that is a
5 legitimate statement on the part of Commissioner
6 Yaki. There are distinctions between majority
7 white institutions. I mean, some have very
8 different histories than others.

9 So I would be glad to look at what he
10 common terminology is if people would like, but it
11 seems to me we could vote on this and then
12 subsequently amend the language slightly to
13 reflect how the scholarship literature handles
14 this.

15 CHAIRPERSON REYNOLDS: Commissioner
16 Heriot, are you agreeable with that approach?

17 COMMISSIONER HERIOT: I would rather
18 just make the change to "non-HBCUs," but, I mean,
19 I am agreeable.

20 COMMISSIONER GAZIANO: The text does
21 explain that there are different types of
22 non-HBCUs. And so I think the -- I just don't
23 know that we need to use these two terms,
24 "historically white colleges and universities" and

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1 "traditionally white institutions," even if there
2 is some better term.

3 VICE CHAIR THERNSTROM: The current
4 draft --

5 COMMISSIONER GAZIANO: For purposes of
6 this draft, there are some comparisons made
7 between HBCUs and others. And unless the
8 comparison is to some other group, I don't know
9 that we need to search for what those other
10 appropriate terms might be.

11 CHAIRPERSON REYNOLDS: I take it we
12 are in agreement Vice Chair Thernstrom will review
13 the literature and report back via e-mail?

14 VICE CHAIR THERNSTROM: Absolutely.
15 That's fine.

16 COMMISSIONER YAKI: That is fine.

17 VICE CHAIR THERNSTROM: That is fine.

18 CHAIRPERSON REYNOLDS: Any other
19 comments?

20 (No response.)

21 CHAIRPERSON REYNOLDS: Okay.
22 Commissioner Melendez, how do you vote?

23 COMMISSIONER MELENDEZ: This is just
24 on the main body?

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1 CHAIRPERSON REYNOLDS: That's correct,
2 part A.

3 COMMISSIONER MELENDEZ: I vote yes.

4 CHAIRPERSON REYNOLDS: Commissioner
5 Kirsanow?

6 COMMISSIONER KIRSANOW: Is this part
7 of a reconciliation vote?

8 CHAIRPERSON REYNOLDS: No. No, it
9 isn't.

10 COMMISSIONER KIRSANOW: Oh, okay.
11 Yes.

12 CHAIRPERSON REYNOLDS: Vice Chair
13 Thernstrom?

14 VICE CHAIR THERNSTROM: Yes.

15 CHAIRPERSON REYNOLDS: Commissioner
16 Yaki?

17 COMMISSIONER YAKI: Move for
18 reconciliation. Aye.

19 CHAIRPERSON REYNOLDS: Commissioner
20 Heriot?

21 COMMISSIONER HERIOT: Yes.

22 CHAIRPERSON REYNOLDS: I'm sorry? Was
23 that a yes?

24 COMMISSIONER HERIOT: That's a yes.

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1 VICE CHAIR THERNSTROM: That's a very
2 depressed yes.

3 COMMISSIONER HERIOT: Yes.

4 CHAIRPERSON REYNOLDS: I will take it.
5 Commissioner Gaziano?

6 COMMISSIONER GAZIANO: I will abstain
7 because I just have some other concerns about some
8 legal statements that are summarized that kind of
9 just hang out there, but I'll probably join in the
10 findings and recs and statements.

11 CHAIRPERSON REYNOLDS: Okay. I vote
12 in favor of the motion. We have one abstention
13 from Commissioner Gaziano. The motion passes.

14 Next up, part B. Under this motion,
15 the Commission will vote individually on each
16 finding and recommendation. Those findings and
17 recommendations receive a majority of votes.
18 Receiving a majority of votes would be included in
19 the report with a vote tally and a sentence
20 explaining any opposition vote for that item.

21 Okay. I am going to read each of the
22 findings and recommendations.

23 VICE CHAIR THERNSTROM: Give me a page
24 number.

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1 PARTICIPANT: Forty-five.

2 COMMISSIONER HERIOT: Mr. Chairman, I
3 am not certain that we are ready to go through
4 these findings and recommendations now.

5 CHAIRPERSON REYNOLDS: Okay.
6 Commissioner Gaziano, how do you feel about that
7 point?

8 COMMISSIONER GAZIANO: I would prefer
9 some more time myself.

10 CHAIRPERSON REYNOLDS: Vice Chair
11 Thernstrom?

12 VICE CHAIR THERNSTROM: Well, wait a
13 minute. Wait a minute. This briefing was held on
14 May 5th, 2006. I am really concerned that we just
15 keep kicking these reports down the road.

16 I mean, I am sure, Mr. Chairman, you
17 agree with me there is an element of delinquency
18 here. I don't pin it on any one commissioner, but
19 it is. When we put out reports two years after
20 the actual briefing, three -- I'm sorry. Three
21 years. I've lost track of time here.

22 COMMISSIONER YAKI: Four years,
23 actually. It is going to be four. May 5th, 2006.

24 VICE CHAIR THERNSTROM: Okay. That is

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1 right. It will be four years. I mean, there is
2 something troubling here. Would you agree with
3 that?

4 COMMISSIONER GAZIANO: Mr. Chair, one
5 of the reasons I am not ready to go forward is I
6 thought we agreed many, many, many, many, many
7 times we would release this report with the STEM
8 report. So I don't want to do findings and
9 recommendations in isolation of the STEM report
10 findings and recommendations.

11 I kind of think the two could have
12 been bound together. There may be a majority that
13 doesn't want them bound together, but I thought we
14 agreed we were going to release them at the same
15 time.

16 So I don't want to go through findings
17 and recs. I will if there is a majority but --

18 CHAIRPERSON REYNOLDS: Let me jump in
19 for a moment. Vice Chair Thernstrom, as a general
20 proposition, I do agree with you. I think that we
21 have -- and "we," it's not just the commissioners.
22 I think that it is the entire organization. We
23 have contributed to this backlog of briefing
24 reports. And I think that we need to have, yes,

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1 more discipline in moving these briefing reports
2 along.

3 I think that we also need to be
4 mindful that objections based on non-substantive
5 grounds that we need to check ourselves -- but
6 Todd does raise the point that I was going to
7 raise in that this report had been married and may
8 have been a shotgun wedding but had been married
9 to the STEM briefing report.

10 VICE CHAIR THERNSTROM: Was there a
11 consensus on that, Mr. Chairman?

12 COMMISSIONER GAZIANO: I thought we
13 had either an understanding or a vote, but --

14 CHAIRPERSON REYNOLDS: We have
15 discussed this issue on several occasions. Now, I
16 have not reviewed the transcripts. So I don't
17 know if there is a vote. But from my
18 recollection, STEMs and HBCU reports were going to
19 be dealt with at the same time.

20 VICE CHAIR THERNSTROM: In your view,
21 Mr. Chairman, is that really at this point, almost
22 four years later, a reason for holding this report
23 up? I mean, you know, there is going to become a
24 day at which all of this work of ours is basically

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1 moot. I mean, we're talking about, you know, a
2 never never world in which things are promised,
3 things don't materialize.

4 CHAIRPERSON REYNOLDS: Vice Chair
5 Thernstrom, things are not as good as they need to
6 be, but they're not that bad. In this particular
7 issue, I don't think that this particular briefing
8 report has a shelf life that is similar to, say,
9 something that we did and the report that we did
10 on health care, for example.

11 I don't think that this report will be
12 stale if we really pass part A and take care of
13 the findings and recommendations at the next
14 business meeting.

15 COMMISSIONER GAZIANO: I would
16 propose, Mr. Chairman, that we advance the STEM
17 report. We are going to get to that, I think,
18 later in the agenda but when we do that we advance
19 the STEM report. But that is the way to act
20 consistently with the understanding we have been
21 operating on on these reports since I have joined
22 the Commission.

23 VICE CHAIR THERNSTROM: If we can
24 discuss the findings and recommendations at the

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1 next in-person meeting, I will be happy with that.

2 But I do want to mention, Mr.
3 Chairman, that, actually, this is not a static
4 world, the question of the HBCUs. There is a
5 whole new issue in Mississippi once again about
6 given the budget, state budget, crunch, about what
7 to do with the HBCUs and whether to merge them,
8 and what with the majority white institutions.
9 And this is a very complicated issue. And things
10 have changed since this report.

11 You know, yes and no on your point
12 about its shelf life. I mean, this is a very
13 fluid situation and actually a very emotional
14 situation seen in Mississippi at the moment.

15 COMMISSIONER MELENDEZ: Mr. Chairman,
16 this is Commissioner Melendez. Let's go ahead and
17 decide whether we're going to postpone this or
18 not.

19 I would concur that it happen at the
20 next face-to-face meeting. I am sporadic on
21 making the conference calls that are not the
22 designated face-to-face meetings. So I hope that
23 we could schedule it for the next face-to-face
24 meeting.

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1 CHAIRPERSON REYNOLDS: Okay. Mr.
2 Staff Director, will the STEM report be ready by
3 the next in-person meeting?

4 STAFF DIRECTOR DANNENFELSER: Yes, it
5 will. It is ready now. So we can have it at the
6 next meeting.

7 CHAIRPERSON REYNOLDS: Okay. All
8 right. I hear a consensus to postpone a vote on
9 the findings and recommendations until the next
10 in-person meeting. That being the case --

11 STAFF DIRECTOR DANNENFELSER: Mr.
12 Chairman? Mr. Chairman?

13 CHAIRPERSON REYNOLDS: Yes?

14 STAFF DIRECTOR DANNENFELSER:
15 Actually, the report was sent to commissioners for
16 their consideration, but it has not actually been
17 sent for their review. So we have not had the
18 comment period on the STEM report. So we could do
19 that --

20 CHAIRPERSON REYNOLDS: Let's start
21 that clock.

22 STAFF DIRECTOR DANNENFELSER: We can
23 start that clock as soon as today if commissioners
24 are agreeable to it.

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1 VICE CHAIR THERNSTROM: Yes.

2 STAFF DIRECTOR DANNENFELSER: But it
3 was sent to commissioners, just for the point of
4 information, in September, I think September 25th.
5 But I can resend it again today to commissioners.
6 And then we can start the clock on the review
7 period.

8 Depending on the timing of the April
9 meeting, whether or not and the amount of the
10 review period commissioners would be agreeable to
11 a shorter than 30-day review period, then we could
12 certainly have it ready in April.

13 I think one of the things on the
14 agenda today is to also decide on the scheduling
15 of the meetings in April given that the new Black
16 Panther Party hearing is likely to be on April
17 23rd.

18 So that is another issue we have to
19 resolve. So that is something commissioners might
20 want to take into consideration in making that
21 decision on the date.

22 - DISCUSSION OF IMMIGRATION REPORT AT PRIOR

23 MEETING

24 CHAIRPERSON REYNOLDS: Okay. Next up

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1 is the -- let's see. Commissioner Yaki, you had
2 some questions regarding a recent briefing report?

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

5 This has two parts. One is a general
6 comment on the fact that it is very difficult, I
7 believe, to with a high degree of scholastic
8 integrity to vote for items that have been amended
9 and for which the final amendments have not been
10 circulated at least 24 hours prior to actual
11 voting.

12 I refer to the fact that the findings
13 and recommendations and the immigration reform
14 report -- all we had in our packets, we thought,
15 was the final, but, in fact, there was a final
16 final that contained other comments and changes
17 made by other commissioners.

18 And, by the way, I never even saw a
19 circulated version of the modified final, even for
20 circulation purposes, prior to the actual meeting,
21 much less getting an e-mail during the meeting
22 that would even enable me to follow along with any
23 degree of certainty as to what changes were going
24 to be made. That's number one.

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1 Number two is that it also points out
2 the difficulty of having any substantive
3 discussion on briefing reports during
4 teleconferences. I simply do not and cannot
5 believe that we can fairly and adequately as a
6 whole conduct an entire review of a briefing
7 report simply by teleconference when documents and
8 other things that may be required have to be
9 e-mailed out.

10 E-mail has problems. The government
11 server especially has been very actively weird
12 lately. And I have been getting e-mails sent and
13 receiving it two or three hours later.

14 Commissioner Kirsanow at one point
15 said -- he had asked me -- he had e-mailed me the
16 revised findings and recommendations, which I
17 never ever saw at all. And I don't doubt that he
18 did it, but I just don't know exactly where it
19 ended up.

20 So I would simply say this is
21 something -- and then we had a minor debacle about
22 an e-mail vote, which I don't even want to bring
23 up because I think it is not even worth bringing
24 up other than to note it for the record that

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1 someone didn't attempt but sort of attempted to
2 try and do an e-mail vote on it, that which I
3 think leads us to far too much potential abuse.

4 I would simply state that I don't
5 believe that we should have briefing reports done
6 via teleconference and that if there is a final
7 final final that apparently has been circulated
8 amongst people with tacit support or agreement,
9 that common courtesy and transparency demand that
10 that be released and circulated at least 24 hours
11 prior to our actual consideration of it at a
12 meeting.

13 CHAIRPERSON REYNOLDS: Comments?

14 COMMISSIONER HERIOT: Mr. Chairman, I
15 don't think it's possible for us to ever be voting
16 on findings and recommendations under a rule that
17 changes can't be made in the meeting.

18 COMMISSIONER YAKI: I didn't say that.

19 COMMISSIONER HERIOT: That's not
20 something that's possible.

21 COMMISSIONER YAKI: That's not what I
22 said. Commissioner Heriot --

23 COMMISSIONER HERIOT: Anything that --

24 COMMISSIONER YAKI: -- that's not what

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1 I said.

2 COMMISSIONER HERIOT: -- converges on
3 that I don't think would work.

4 CHAIRPERSON REYNOLDS: Commissioner
5 Yaki, what did you think?

6 COURT REPORTER: We're not getting a
7 record. One person at a time, please.

8 COMMISSIONER YAKI: Commissioner Yaki,
9 what did you say?

10 COMMISSIONER YAKI: What Commissioner
11 Heriot did not understand apparently, whether
12 intentionally or unintentionally, is that I was
13 talking about the fact that we were there on the
14 teleconference considering a final version of the
15 findings and recommendations that apparently some
16 people had and other people did not.

17 Of course, there are always going to
18 be amendments and changes at a meeting, but at
19 least we would be working off the same text. We
20 did not have that opportunity at the last meeting
21 because that final text with the changes and
22 additions was not there.

23 So if there are any changes made to
24 that text which we did not have, then we were in a

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1 position, such as myself and others, of having to
2 try and figure out what changes had been made,
3 what were the changes being made during the
4 meeting to those changes, which we did not have.
5 And that will make --

6 CHAIRPERSON REYNOLDS: Commissioner
7 Yaki, you are essentially saying that the
8 commissioners who did not receive a copy of the
9 proposed changes -- and that would include me --
10 were at a disadvantage in terms of following the
11 discussions.

12 COMMISSIONER YAKI: I think a
13 substantial disadvantage given that it was being
14 presented as a final recommendation. It would be
15 much different and I fully understand and agree
16 that we cannot simply vote up and down on a final
17 at a meeting where there are always going to be
18 changes.

19 People are going to discover typos.
20 There are going to be differences in wording,
21 phrasing, shading, or tone. That is
22 understandable. But when you don't have a set
23 document to begin with, that becomes the problem.

24 And the problem at that last meeting

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1 was that there was a final to be considered to
2 which changes or amendments might have been or
3 could be made or had been made that many of us did
4 not have any clue as to what text we were working
5 off of in the beginning.

6 COMMISSIONER HERIOT: Commissioner
7 Yaki --

8 COMMISSIONER GAZIANO: Mr. Chairman?
9 Mr. Chairman, this is Todd Gaziano. I agree, I
10 think, with the thrust of Commissioner Yaki's
11 statement. And you don't need to say that's
12 extraordinary because we did that last meeting.

13 It's obviously better if we can share
14 our proposed drafts and changes with each other.
15 A week is best, but where we have busy day jobs,
16 three days is better than two days. Two days is
17 better than one day.

18 And commissioners who don't circulate
19 such drafts early enough bear the burden that
20 their draft will be rejected. And if people will
21 object, they haven't had time to do so.

22 Where I think we come out is that I
23 think we all agree that the earlier we can share
24 our proposed drafts with each other, the better.

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1 And we all strive to do a good job on that.

2 But if push comes to shove, we should
3 all also try to work with the text that is sent
4 because even that is better than oral
5 modifications during a meeting. And what went on
6 last time, although not ideal, is better than
7 sometimes us formulating recommendations orally.

8 COMMISSIONER HERIOT: Mr. Chairman, my
9 recollection is that I had sent in some notions
10 about how these things should be changed maybe a
11 week before. I think maybe Commissioner Gaziano
12 actually sent in some proposed changes.

13 COMMISSIONER GAZIANO: Yes. I don't
14 remember whether I circulated mine. Mine were
15 just more -- I understood that Pete was working on
16 a version. And so, rather than have three
17 different drafts going around, I think I sent some
18 of my mostly grammatical changes to Pete.

19 Sometimes that is the most efficient
20 way of doing it. But we all should then work to
21 make sure that we circulate whatever it is we want
22 to propose at a meeting as soon as we practicably
23 can.

24 COMMISSIONER HERIOT: The point is

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1 some minor modifications got sent. I am not sure
2 whether I circulated mine broadly or just to the
3 Chairman's special assistant, but they didn't get
4 made. And that was just error. Ordinary office
5 procedure, things don't always get put the way
6 they should be.

7 You know, that's why there seemed to
8 be more last minute changes at that meeting than
9 were actually last minute. They were, in fact,
10 changes that had been suggested earlier and I
11 think were generally going to be noncontroversial.

12 CHAIRPERSON REYNOLDS: Well, I think
13 what I am hearing is that we are in agreement that
14 there will be changes, but it is better that
15 substantive changes be bound and circulated as
16 soon as practicable.

17 Now, I think that we have always been
18 in agreement on this point. And it's a good thing
19 that Commissioner Yaki raised this issue. But
20 should there be a penalty for failing to provide a
21 written revision in a timely fashion in a
22 substantive manner?

23 COMMISSIONER GAZIANO: Whenever they
24 are shared, they are generally better than oral

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1 modifications. So I don't think that we should
2 try to have some sort of automatic penalty.
3 They're still preferable to the kind of oral
4 musings we sometimes come up with, which still
5 improve the document from time to time.

6 COMMISSIONER YAKI: This is
7 Commissioner Yaki. The problem is not whether we
8 as eight individuals can understand and follow one
9 another's musings during a discussion. There is a
10 greater principle here at stake involving the
11 transparency of the actions that we take at the
12 Commission.

13 My point about this was twofold, one
14 which I have still not heard a response on. One,
15 I don't believe that because of the nature of how
16 we treat briefing reports and the kinds of things
17 that go on and changes that get made that I would
18 strongly, strongly believe that we should not be
19 doing briefing reports during teleconferences,
20 number one.

21 Number two is that if we are going to
22 be working from a text that is deemed as final and
23 understood by others -- and I am going to say it
24 the way it is, that the majority has deemed to be

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1 what it is to be their final document that they
2 are working on or a majority of the commissioners,
3 that there is some obligation to at least have
4 that in a readily available format that is
5 publicly available the day before. So when we are
6 making changes the day of, there is a constant and
7 consistent base of reference from which to view
8 and read these changes.

9 When we do this on a teleconference,
10 the public has no idea what it is that we're
11 working off of. We cannot photocopy them and put
12 them out here for the public to come and pick up
13 during the course of a meeting.

14 We cannot e-mail it out to the general
15 -- to people who are on the line as a matter of
16 course or posted on our website immediately for
17 anyone to follow.

18 That is a serious I think
19 transgression of part of our role, which is to do
20 this openly, publicly, and in a way that inspires
21 confidence in the integrity of our process.

22 CHAIRPERSON REYNOLDS: Commissioner
23 Yaki, you raise two points. The last one I don't
24 believe we have ever used that procedure where

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1 proposed revisions to --

2 COMMISSIONER YAKI: No, no.

3 CHAIRPERSON REYNOLDS: -- reports of

4 --

5 COMMISSIONER YAKI: No.

6 CHAIRPERSON REYNOLDS: -- assumptions

7 at the meeting --

8 COMMISSIONER YAKI: Mr. Chair? Mr.

9 Chair, I did not say prior to a meeting. Let's

10 not confuse things here. With regard to the

11 specifics of the immigration report, there was a

12 final draft being worked off of in the position of

13 Commissioner Kirsanow and some others, not you,

14 not me and others, that I had issues with because

15 we were working off the same --

16 CHAIRPERSON REYNOLDS: It wasn't a

17 final draft.

18 COMMISSIONER YAKI: Well, whatever it

19 is that --

20 CHAIRPERSON REYNOLDS: We had

21 revisions. Some people received copies of the

22 revisions prior to the meeting. Some

23 commissioners didn't. There was a discussion

24 regarding these revisions, and there was a vote.

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1 Now, these revisions could have been
2 accepted or rejected.

3 VICE CHAIR THERNSTROM: Mr. Chairman,
4 see, I've got a problem with that statement. Some
5 commissioners received copies prior to the
6 meeting. I mean, I have had a general feeling
7 that there have been a number of instances in
8 which chosen, trusted commissioners receive copies
9 of documents that I don't see, Commissioner Yaki
10 doesn't see, Commissioner Melendez doesn't see.

11 CHAIRPERSON REYNOLDS: Are you
12 referring to revisions because --

13 COMMISSIONER GAZIANO: Yes. Let me be
14 clear. I assume that --

15 CHAIRPERSON REYNOLDS: Well, hold on a
16 minute. The point at play here is revisions.

17 COMMISSIONER GAZIANO: Yes.

18 CHAIRPERSON REYNOLDS: I don't expect
19 Commissioner Yaki to share his confidential
20 communications that he has with the Vice Chair or
21 any other commissioner with me. Now, as for
22 substantive changes that he is going to make at a
23 Commission meeting, I think that it's better. I
24 think that there is a consensus of folks who

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1 believe that it's better if those issues were
2 circulated.

3 COMMISSIONER GAZIANO: It is certainly
4 better if they're -- Mr. Chairman, if I know
5 Ashley is taking the lead on some issue and I
6 don't feel strongly about it but I want to make
7 some suggestions to him, it's certainly more
8 efficient for me to share them, my thoughts and
9 reactions, with him or with the Vice Chair if
10 there is an issue I know she is working on a
11 revision on.

12 So I doubt seriously that anyone is
13 even claiming that our staff or the Staff Director
14 is sending things out selectively. But if we want
15 to confer with each other, that not only is --
16 there's nothing improper in that, but that's
17 efficient.

18 Sometimes my suggestions are just in
19 the form of a or my revisions are just in the form
20 of a suggestion to the person whom I know is going
21 to be circulating something to the rest of the
22 group.

23 VICE CHAIR THERNSTROM: But if five
24 people come into a meeting having seen a draft --

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1 COMMISSIONER GAZIANO: That was not
2 the case in the last time. I don't know how many
3 people saw it. I sent some things to --

4 CHAIRPERSON REYNOLDS: As I said, I
5 didn't receive the -- well, at least at the time
6 of the meeting, I had not reviewed the revisions.

7 I'm not sure if they were sent to me or not, but
8 the bottom line is sharing, having conversations
9 with like-minded commissioners, having discussions
10 with like-minded commissioners, that is not
11 improper. We are prevented from making decisions
12 unless we follow the appropriate procedures. But
13 our procedures do not prevent us from having
14 discussions about substantive issues.

15 COMMISSIONER YAKI: Mr. Chair, this is
16 going way off my topic. That has --

17 CHAIRPERSON REYNOLDS: Okay. You know
18 what, let's --

19 COMMISSIONER YAKI: That has nothing,
20 nothing --

21 CHAIRPERSON REYNOLDS: Let's also talk
22 about the issue that you put on the table about
23 briefing reports being discussed and voted on
24 during teleconferences.

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1 COMMISSIONER YAKI: I think it is part
2 and parcel of the problem that we have here. Let's
3 just review. Let's just review these facts so
4 that we understand where it is I am coming from.

5 At the meeting, at the teleconference
6 meeting, Commissioner Kirsanow starts reading from
7 his latest draft of findings and recommendations.

8 Now, we had in our packet two sets of
9 findings and recommendations, one proposed by
10 staff, one proposed by Commissioner Kirsanow. It
11 became quickly apparent as Commissioner Kirsanow
12 was reading off of his proposed findings and
13 recommendations that they were distinctly
14 different than what we had in our agenda packets,
15 number one.

16 Number two, we never got an e-mail of
17 that beforehand when apparently some of these
18 changes had been made.

19 Number three, we never got an e-mail
20 during the entire meeting about any of these
21 changes that were going on. So it was very
22 difficult to follow along.

23 That was my concern. It is not about
24 the conferring process. It is not about the

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1 sharing of notes. It is not about the fact that
2 we need to have every single amendment in writing
3 ahead of time before the Commission meeting
4 published and in 30 copies or what have you.

5 It has everything to do with simply
6 the fact that we were there. Commissioner
7 Kirsanow was working off a final version for
8 comment and for comment and amendment by others
9 that many of us had never seen and never did see
10 during the point of that.

11 That brings me, then, to the next
12 question, which is it is difficult to do briefing
13 reports under those sorts of conditions, because,
14 unlike a situation where we could raise here, we
15 could not say, "Well, that is a lot of changes.
16 Could I see that in writing?" And we could kick
17 it over toward later in the day, have someone type
18 it up, make some copies. We'll have it for all of
19 us to follow along.

20 We can't seem to do that, nor can we
21 make those copies available to anyone here who
22 wants to follow along and find out what it is that
23 we're doing, which I think is part of what we
24 should be able to do as well.

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1 I mean, it should not just simply be a
2 bunch of people sitting around stirring the magic
3 brew and then presenting it to people as a fait
4 accompli without understanding what went into it.

5 We should be able to if we need to
6 give people the opportunity to understand and
7 follow along what it is that we're doing. And
8 that simply is not available in a teleconference.

9 E-mail. The e-mail system is
10 inherently unreliable. There are time lags
11 involved, et cetera, et cetera. And if you choose
12 not to be here in person to do it, then you do so
13 at your peril. But when we are all doing it in
14 this way, it just becomes especially, I think,
15 troublesome for efficiency, accuracy, integrity,
16 and transparency reasons.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Yaki?

19 COMMISSIONER KIRSANOW: Mr. Chairman?
20 Mr. Chairman, this is Kirsanow. If I may? I
21 think Commissioner Yaki makes a perfectly valid
22 point. And I think a better practice is clearly
23 to endeavor to do these things in person. And I
24 share his concern.

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1 I don't know that I would have been
2 able to follow along had I not had something in
3 front of me. And even if you're doing it by
4 phone, it's more difficult to do that, obviously,
5 than in person.

6 Second, with respect to the e-mails, I
7 know that there was some type of a screw-up with
8 respect to circulating revised versions. I know
9 that in the course of the teleconference itself.

10 An e-mail that I had sent to
11 Commissioner Yaki had bounced back a couple of
12 times. I am not sure, Commissioner Yaki, if it
13 finally went through. You had given me another
14 e-mail address. But clearly that highlights the
15 difficulty with doing it by teleconference.

16 COMMISSIONER YAKI: Yes. Actually,
17 Commissioner Kirsanow, it never went through on
18 any of the alternatives I gave you.

19 COMMISSIONER KIRSANOW: Yes. And that
20 I think goes to the point that Commissioner Yaki
21 is making. I think that we tried to do our best
22 last time around.

23 Commissioner Yaki I think is
24 describing a best practice that we should endeavor

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1 to follow.

2 CHAIRPERSON REYNOLDS: Okay. So is
3 there a consensus that we will endeavor to discuss
4 and vote on briefing reports at in-person
5 meetings?

6 COMMISSIONER HERIOT: Yes.

7 COMMISSIONER KIRSANOW: Yes.

8 VICE CHAIR THERNSTROM: Yes.

9 COMMISSIONER GAZIANO: I think that is
10 generally best, but I don't know that we should
11 think of this as any hard and fast rule,
12 especially when we're talking about the backlog of
13 reports. There might be some that are simpler and
14 we anticipate a large amount of agreement on that
15 we can cover in a telephone meeting.

16 CHAIRPERSON REYNOLDS: Okay. I think
17 that we have a consensus around this issue. I
18 think that it is clear that we didn't vote on a
19 hard and fast rule, but that will be our default
20 position.

21 COMMISSIONER YAKI: Thank you.

22 - DISCUSSION OF LETTERS TO HOUSE OF
23 REPRESENTATIVES AND YOUNGSTOWN, OHIO

24 CHAIRPERSON REYNOLDS: Next up, Pete,

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1 health care letter and Youngstown, Ohio.

2 COMMISSIONER KIRSANOW: Yes. I would
3 move that we adopt and send out these two letters.

4 I'll just make a brief point as to both. I think
5 the first letter, the health care letter, went out
6 on Wednesday. And I trust that that was
7 sufficient time for people to review it,
8 especially since it is virtually identical to a
9 letter that had been considered a couple --

10 COMMISSIONER YAKI: Commissioner
11 Kirsanow, this is Commissioner --

12 COMMISSIONER KIRSANOW: -- a months
13 ago. It was simply sent to House members since
14 they will be voting on the Senate version of the
15 bill that was the subject matter of the previous
16 letter that we sent out.

17 The second letter only went out
18 yesterday, again because of an e-mail
19 misunderstanding. I don't know if commissioners
20 have had sufficient time to review that.

21 And I would be more than willing to
22 defer consideration of that letter to the next
23 business meeting. However, I do think that that
24 is simple enough that maybe we could consider it

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1 today. That letter is to the City of Youngstown.
2 That is maintaining the bifurcated hiring list for
3 police and fire in clear violation of Title VII
4 and the Ohio vice code and a host of the second
5 prong of Steelworkers versus Weber in its progeny,
6 Johnson versus Transportation, and even some equal
7 protection cases. And we would be inconsistent
8 with Grots and Grutter versus Bollinger in
9 addition to, let me see, City of Cleveland versus
10 Firefighters.

11 What is peculiar about it is that the
12 Seventh District Court of Appeals here in Ohio had
13 already ruled that the city officials would not
14 have sovereign immunity upon a final adjudication
15 on the merits of this matter. Yet, they are
16 proceeding to move forward with it.

17 So it alerts them as to the legal
18 perils involved and that this is in clear
19 violation of a considerable amount of precedent.

20 COMMISSIONER YAKI: Mr. Chair, this is
21 Commissioner Yaki.

22 CHAIRPERSON REYNOLDS: Yes?

23 COMMISSIONER YAKI: I did receive the
24 Youngstown letter. I did not receive the health

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1 care letter.

2 VICE CHAIR THERNSTROM: Neither did I.

3 COMMISSIONER YAKI: And neither did
4 Commissioner Melendez, and neither did
5 Commissioner --

6 COMMISSIONER GAZIANO: It is
7 essentially one paragraph and one sentence long.
8 I think it has been distributed in this room. Is
9 it possible we could take 30 seconds for you all
10 to read it?

11 COMMISSIONER KIRSANOW: Mr. Chair, I'm
12 sorry. This is Kirsanow again. There must be
13 something really wrong with my computer, then. I
14 sent this to everyone on, at least according -- I
15 am looking at the e-mail right now.

16 COMMISSIONER YAKI: What date?

17 COMMISSIONER KIRSANOW: On Wednesday
18 at 6:00 p.m. And the e-mail address that I sent
19 it to -- and, again, I'm not disputing anything
20 that anyone is saying here.

21 COMMISSIONER YAKI: Wednesday at 6:00
22 p.m.

23 COMMISSIONER KIRSANOW: I would like
24 to verify what the appropriate e-mail addresses

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1 are because I have here that I sent it to -- I'm
2 trying to determine what the e-mail is. I don't
3 want to waste all my time, but --

4 COMMISSIONER GAZIANO: John Martin
5 sent the health care letter out yesterday on your
6 behalf, Pete.

7 COMMISSIONER KIRSANOW: Yes. And I
8 personally sent out the health care letter on
9 Wednesday at 6:09 p.m. Eastern time. And I did
10 send it to Commissioner Thernstrom at least
11 according to this -- and maybe my e-mail is
12 incorrect, but Commissioners Thernstrom, Yaki,
13 Melendez, in addition to the remaining
14 commissioners on the Commission.

15 COMMISSIONER YAKI: I am looking at my
16 e-mail right now for that date, and I don't show
17 it. I do have John's e-mail from yesterday, but I
18 did not get yours, Commissioner.

19 COMMISSIONER KIRSANOW: Commissioner
20 Yaki, offline --

21 COMMISSIONER YAKI: I am going to --

22 COMMISSIONER KIRSANOW: -- if I can
23 get your correct e-mail address?

24 COMMISSIONER YAKI: I will send you my

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1 e-mail online.

2 COMMISSIONER KIRSANOW: I have in the
3 past sent out e-mails to you that have not --

4 COMMISSIONER YAKI: Maybe I just have
5 a spam filter for Kirsanow.

6 CHAIRPERSON REYNOLDS: Okay. This
7 letter, at least from my vantage point, which may
8 not be shared by others, is a letter that can be
9 reviewed in short order. The health care letter
10 is similar to one that we have already reviewed.
11 I mean, if commissioners would like to take time
12 to review that. Would that approach work?

13 COMMISSIONER YAKI: Mr. Chair, this is
14 Commissioner Yaki. Since this is essentially a
15 cover letter to a letter we have already sent and
16 it simply triggers the merry-go-round by which
17 Commissioner Melendez and I sent another letter,
18 that is fine. I am ready to deal with it.

19 CHAIRPERSON REYNOLDS: Okay. That is
20 in connection with the health care. What about
21 the Youngstown letter?

22 COMMISSIONER GAZIANO: Why don't we
23 take them one at a time?

24 COMMISSIONER YAKI: Well, I would like

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1 more time on the Youngstown, as Commissioner
2 Kirsanow offered, to go over it more.

3 COMMISSIONER KIRSANOW: Mr. Chair, I
4 have absolutely no problem with that. This is not
5 a matter of greater urgency. This thing is going
6 to be pending for at least the next several weeks.

7 CHAIRPERSON REYNOLDS: Okay. So in
8 connection with the health care letter,
9 Commissioner Melendez, how do you vote?

10 COMMISSIONER MELENDEZ: I vote no
11 because I don't have it, but I'll try to read it
12 later.

13 CHAIRPERSON REYNOLDS: Commissioner
14 Kirsanow?

15 COMMISSIONER KIRSANOW: Yes.

16 CHAIRPERSON REYNOLDS: Vice Chair
17 Thernstrom?

18 VICE CHAIR THERNSTROM: No. I voted
19 no on the original one. I am going to vote no on
20 this one, too.

21 CHAIRPERSON REYNOLDS: Commissioner
22 Yaki?

23 COMMISSIONER YAKI: Nope.

24 CHAIRPERSON REYNOLDS: Commissioner

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1 Heriot?

2 COMMISSIONER HERIOT: Yes.

3 CHAIRPERSON REYNOLDS: Commissioner
4 Gaziano?

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRPERSON REYNOLDS: I vote for it.

7 We have four votes for it and three against. The
8 motion passes.

9 We will postpone consideration of the
10 Youngstown letter.

11 Next up would be --

12 COMMISSIONER HERIOT: Wait, wait. Mr.
13 Chairman, I have a comment on the Youngstown
14 letter.

15 CHAIRPERSON REYNOLDS: Yes?

16 COMMISSIONER HERIOT: And that is, has
17 any thought been given to whether or not this
18 would violate the race norming prohibitions of the
19 Civil Rights Act of 1991?

20 COMMISSIONER KIRSANOW: Commissioner
21 Heriot, I had given that some thought. I haven't
22 looked into it in any great detail, although I did
23 revisit it last night, in fact. I simply thought
24 that letter was fine as it stood. And if someone

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1 wants to make an amendment to it in the interim
2 between now and the next business meeting, I will
3 be more than interested in receiving it.

4 COMMISSIONER HERIOT: Okay.

5 - DISCUSSION OF STATEMENT OF DEPARTMENT OF
6 EDUCATION

7 CHAIRPERSON REYNOLDS: Okay. Next up,
8 recent developments on OCR. Who raised this
9 issue? Was it Commissioner Gaziano?

10 COMMISSIONER GAZIANO: Yes. And I
11 don't know enough about the details to talk in any
12 length. And that's I suppose the point that I
13 want to raise. Unless other commissioners are
14 that familiar and can talk on it, that's fine, but
15 I was going to suggest that we instruct the Staff
16 Director. And maybe he could task some of his
17 attorney advisers to make some inquiries from the
18 Department of Education, OCR, and elsewhere as to
19 what exactly they have in mind.

20 The Commission has sent a letter to
21 one school district, I believe it was, at the
22 negative effect of trying to norm discipline, that
23 that may cause them to give too little discipline
24 to some students who need it and too much on

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1 others.

2 The Department of Education's sort of
3 threat that they may engage in disparate impact
4 reviews of that issue and AP and other issues is
5 just worthy of us looking into, I think.

6 So I don't know if other commissioners
7 want to comment, but I at least want appropriate
8 inquiries to be made so that we can discuss that
9 at a future meeting.

10 COMMISSIONER HERIOT: Mr. Chairman, I
11 just wanted to say that I think that this is a
12 very important issue, particularly the disparate
13 impact analysis used in school discipline. So I
14 would very much like the Commission staff to look
15 into this.

16 VICE CHAIR THERNSTROM: Mr. Chairman,
17 for those of you who are not aware of it, although
18 it was circulated this morning, I have a very long
19 piece on the issue of disparate impact and
20 discipline actions and the implications of the
21 policy for that.

22 I decided, for once, to use the
23 American Enterprise Institute website, instead of
24 my usual, since that is my ostensible home. And I

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1 believe that that has been circulated. It is, as
2 I said, quite a long article exploring that whole
3 issue.

4 COMMISSIONER GAZIANO: I take it, Vice
5 Chair Thernstrom, that you would agree this is
6 something that we need to look into further at the
7 Commission?

8 VICE CHAIR THERNSTROM: I see that Tim
9 has copies of it right here. Yes, sure. I mean,
10 I know a lot about this issue, some of which is in
11 this and some of which is in my book No Excuses,
12 which has a very close statistical analysis of
13 disciplinary problems, as correlated with, for
14 instance, single parent households and so forth,
15 but I always welcome more work on it.

16 But it is important to say that a
17 little head start, there is a little head start,
18 here in this, you know, as blog articles go are
19 rather extensive, piece of mine.

20 CHAIRPERSON REYNOLDS: Okay. Next up
21 is a discussion of our schedule for April.

22 COMMISSIONER GAZIANO: Could I just
23 ask, Mr. Chair -- I don't think we need a vote,
24 but from the Staff Director whether that's

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1 acceptable to you to begin a review of this and to
2 ask for appropriate information from OCR.

3 STAFF DIRECTOR DANNENFELSER: Yes. We
4 will do that. I guess just a clarification, if
5 you would like us to request a meeting or to see
6 what kind of information we get through telephone
7 inquiries and so on and then perhaps follow-up
8 meeting once we can get some information.

9 COMMISSIONER GAZIANO: At this point I
10 would leave it to your discretion as to what is
11 reasonable and necessary.

12 STAFF DIRECTOR DANNENFELSER: Okay.
13 Thank you.

14 - DISCUSSION OF COMMISSION MEETING SCHEDULE IN
15 APRIL

16 CHAIRPERSON REYNOLDS: Okay. At the
17 October 30th, 2009 meeting, the commissioners
18 voted to hold a business meeting, an in-person
19 business meeting, on April 16th and a telephonic
20 business meeting on April the 30th, 2010.

21 At the February 26th, 2010 telephonic
22 meeting, the commissioners agreed to reschedule
23 the hearing date for the new Black Panther Party
24 investigation to April 23rd, of course, the

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1 witnesses if their circumstances changed on a date
2 that would secure the participation of a critical
3 mass of both witnesses and commissioners.

4 Because a hearing and a business
5 meeting the same month might necessitate
6 commissioners to travel to D.C. twice, I want to
7 open up for discussion whether commissioners are
8 happy with the existing meeting schedule for that
9 month.

10 I would just add that we have a lot of
11 work to do. And I would recommend that we keep
12 the current schedule, but I wanted to open it up
13 for discussion.

14 COMMISSIONER YAKI: Mr. Chair, this is
15 Commissioner Yaki. I am fine with it.

16 COMMISSIONER MELENDEZ: Commissioner
17 Melendez here. On the 16th if we hold -- I can't
18 come out twice, you know, on the 16th and the
19 following week. So if we take the 16th, I'm going
20 to call in again on that date and then come for
21 the hearing the following week. So that is kind
22 of my schedule.

23 CHAIRPERSON REYNOLDS: Okay.

24 COMMISSIONER HERIOT: Mr. Chairman, I

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1 am fine with it.

2 CHAIRPERSON REYNOLDS: Vice Chair
3 Thernstrom?

4 VICE CHAIR THERNSTROM: I am sorry. I
5 got distracted. What are we fine with?

6 COMMISSIONER YAKI: Vice Chair
7 Thernstrom, I am fine with the fact that there are
8 two in-person business meetings in April: on the
9 16th and on the 23rd.

10 VICE CHAIR THERNSTROM: I have to look
11 at my calendar here. I will be back to you in a
12 minute.

13 COMMISSIONER YAKI: And the --

14 VICE CHAIR THERNSTROM: The 16th?
15 That's --

16 COMMISSIONER YAKI: The Western
17 contingent seems to be okay.

18 VICE CHAIR THERNSTROM: The 16th and
19 23rd?

20 COMMISSIONER MELENDEZ: A question.

21 CHAIRPERSON REYNOLDS: Yes?

22 COMMISSIONER MELENDEZ: On the 23rd,
23 how solid is that date? You know, are we saying
24 there's a 50/50 chance that that could change?

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1 CHAIRPERSON REYNOLDS: Well, unless we
2 have another snowstorm, I think that it's up above
3 98 percent.

4 COMMISSIONER MELENDEZ: Okay. Sounds
5 good.

6 CHAIRPERSON REYNOLDS: Now, before we
7 go on --

8 COMMISSIONER HERIOT: Hurricanes,
9 earthquakes, and tsunamis.

10 VICE CHAIR THERNSTROM: Mr. Chairman,
11 I am fine with the 16th and 23rd. It's okay,
12 works.

13 - DISCUSSION OF TIMELINES FOR CONSIDERATION OF
14 BRIEFING REPORTS & SCHEDULING OF BRIEFINGS

15 CHAIRPERSON REYNOLDS: Okay. Next up
16 is a discussion of timelines for consideration on
17 briefing reports and scheduling of briefings.
18 Yesterday the Staff Director e-mailed a list of
19 many of the Commission's pending projects.

20 Several briefing reports are currently
21 available for commissioner review. Others are in
22 final stages of staff preparation. The Staff
23 Director's list also contains currently scheduled
24 due dates for certain projects and proposed dates

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1 for others.

2 Mr. Staff Director, please provide us
3 with an update on the status of these and other
4 pending briefing reports. Also please discuss
5 your suggestion for scheduling the pending
6 briefing on age discrimination and employment.

7 STAFF DIRECTOR DANNENFELSER: Thank
8 you, Mr. Chairman.

9 I think the most immediate thing would
10 be the STEM report that we discussed a little
11 while ago, the decision out to have the meeting on
12 April 16th in person, which is five weeks from
13 today.

14 We have to allow for the commissioners
15 to review the draft, then to send comments back to
16 staff or staff to make appropriate changes and
17 then send the report back out to commissioners so
18 that they can review it, usually a week in advance
19 of the meeting.

20 If we factor in that week of review
21 for the commissioners and a week for the staff to
22 incorporate the changes that come from the
23 commissioner comments, that would leave three
24 weeks from today for the review period.

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1 And so I would just put on the table
2 the idea of if commissioners would approve a
3 three-week review period to submit their comments
4 on the STEM report.

5 And if so, I think we could then
6 accommodate making that report available for
7 consideration at the April 16th meeting.

8 CHAIRPERSON REYNOLDS: Is that
9 acceptable to everyone?

10 (No response.)

11 CHAIRPERSON REYNOLDS: Okay. I'll
12 take silence as yes, that's fine.

13 STAFF DIRECTOR DANNENFELSER: Okay.
14 Right now you did make note of the list I sent out
15 yesterday. Let me just review that and then go to
16 some of these questions that were raised.

17 Just a reminder that the rebuttals on
18 the MEPA report are due Monday evening at midnight
19 Pacific Time and that we also then have the
20 statements, commissioner statements, on the
21 illegal immigration report due on March 30th.

22 I believe that the May 14th meeting
23 would be a good time to do the age discrimination
24 and employment. I think that if we make that

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1 decision today, that would give staff enough time
2 to contact panelists and to put a meeting, a
3 briefing binder together and get that out to
4 commissioners. So that would be --

5 CHAIRPERSON REYNOLDS: Mr. Staff
6 Director, what was that date?

7 STAFF DIRECTOR DANNENFELSER: May
8 14th.

9 CHAIRPERSON REYNOLDS: Thank you.

10 STAFF DIRECTOR DANNENFELSER: The
11 other report that is out there right now is the
12 Native Americans in border towns that was sent out
13 on March 2nd. And commissioners were asked to
14 submit comments by April 1st.

15 The statements on the HBCU report
16 would be postponed from this April 11th date.
17 That was based on the premise that the report
18 would be finalized today.

19 But since we are going to presumably
20 do the findings and recommendations at the April
21 16th meeting, I guess we would have to agree on a
22 timetable of perhaps 30 days from that point if
23 the findings and recommendations are approved at
24 that point, that by the middle of May perhaps the

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1 statements could be due.

2 And, therefore, the rebuttals on the
3 HBCU, which is now listed as May 12th, would
4 presumably be pushed back to the second week or
5 the third week in June.

6 COMMISSIONER GAZIANO: Mr. Staff
7 Director, if you don't mind me going back to the
8 age discrimination and employment briefing? I do
9 remember we discussed that topic. Did we vote to
10 approve that briefing? I just don't remember.

11 STAFF DIRECTOR DANNENFELSER: That was
12 the one that, yes, commissioners did vote to
13 approve that as the first choice.

14 COMMISSIONER GAZIANO: And, if you
15 don't mind, I will have someone request the
16 concept paper for that one. Which commissioner
17 took the lead on that if he or she won't own up?

18 STAFF DIRECTOR DANNENFELSER: I know.
19 Yes, Commissioner Melendez had --

20 COMMISSIONER GAZIANO: That's right.
21 That's right. Okay.

22 STAFF DIRECTOR DANNENFELSER: --
23 proposed that, right. And it was one that
24 produced a good deal of consensus, but I believe

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1 Commissioner Melendez is the one who proposed it.

2 COMMISSIONER GAZIANO: Sure.

3 COMMISSIONER YAKI: He was nice.

4 COMMISSIONER GAZIANO: That was the
5 tie-breaker. He was nice.

6 STAFF DIRECTOR DANNENFELSER: The
7 Blaine Amendments report is one I sent out on
8 Tuesday of this week, on March 9th. So that is
9 another report that is available for
10 commissioners. That would be one that we have to
11 set a timetable for review on that. But I think
12 with some of these other things going on right
13 now, that commissioners might want to wait a
14 little while on that but hopefully not too long.

15 The health disparities report is one
16 that I know the commissioners are very anxious to
17 consider that very soon. And there was some
18 discussion today about that being a time-sensitive
19 report. And I would concur with that description.

20 So the editorial and legal sufficiency
21 reviews are now being conducted. I have received,
22 actually, one editorial review has been submitted.

23 And the legal sufficiency review has been
24 submitted. So we are waiting on two of the

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1 editorial reviews to come back on the health
2 disparities report.

3 I did give people a deadline of March
4 19th. And perhaps they will be able to get those
5 back a few days before that date.

6 So we will give that a high priority
7 at the staff level once we get all the comments on
8 the health disparities report to get that one
9 ready for commissioners' consideration. But that
10 would be one I think that might be considered in
11 June. We'll look at that as a possibility to do
12 in June.

13 The English in the workplace draft, I
14 got the final draft submitted from the Office of
15 General Counsel this morning. And that has
16 received some review.

17 We still need a legal sufficiency
18 review on that particular report, but that one
19 will be available for commissioners' consideration
20 very soon as well.

21 There is also a question of whether we
22 might have a hearing on the college admissions
23 project. I know the General Counsel will be
24 speaking to that subject in a few minutes, but

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1 that is another topic that we have to consider if
2 we are going to have a briefing or a hearing on
3 that particular topic.

4 And, of course, the other major item
5 that will be scheduled is the National Civil
6 Rights Conference.

7 CHAIRPERSON REYNOLDS: Okay. At a
8 prior meeting Commissioner Yaki asked for an
9 update on that. I sent Commissioner Yaki an
10 e-mail yesterday letting him know that I wasn't
11 ready to discuss it. I apologized.

12 There is one variable that I need to
13 nail down before I am comfortable going forward
14 with the discussion. But whether that variable is
15 nailed down by the next in-person business meeting
16 or not, you will receive a report at the next
17 in-person business meeting.

18 STAFF DIRECTOR DANNENFELSER: Mr.
19 Chairman, I guess would there be a consensus,
20 then, amongst commissioners to plan on the age
21 discrimination for the May 14th meeting, that we
22 have a briefing at that time?

23 CHAIRPERSON REYNOLDS: I am checking
24 my calendar. We have a business meeting scheduled

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1 on that date. Is that correct?

2 STAFF DIRECTOR DANNENFELSER: Yes.

3 CHAIRPERSON REYNOLDS: Okay. Yes.

4 Then I've already afforded that the time.

5 STAFF DIRECTOR DANNENFELSER: Okay.

6 So I will start the clock. I will resend the STEM
7 report to commissioners today with the
8 understanding that we are starting the clock on
9 commissioner review of that today and that
10 commissioner comments would be due three weeks
11 from today, which I don't have a calendar in front
12 of me now but that would be the beginning of
13 April. That would be April 2nd, I believe, would
14 be when those comments would be due. And then we
15 would work to get that out to commissioners by
16 April 9th in advance of the meeting on April 16th.

17 COMMISSIONER GAZIANO: Mr. Staff
18 Director, I didn't even learn until a few days ago
19 that the STEM report had been sent out.
20 Apparently one theory is that it bounced back
21 because it's got a lot of charts because when
22 someone else tried to send it, forward it, to me,
23 it bounced back.

24 STAFF DIRECTOR DANNENFELSER: Okay.

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1 COMMISSIONER GAZIANO: And so just be
2 aware of that. If things would bounce back, maybe
3 commissioners, like me, like printed copies
4 anyway.

5 STAFF DIRECTOR DANNENFELSER: Okay.

6 COMMISSIONER GAZIANO: So, for the
7 record, I always want a printed copy on
8 three-hole. You can save the binders. I've got
9 binders. If that happens, then mail might be
10 best.

11 STAFF DIRECTOR DANNENFELSER: That has
12 happened in a number of occasions with some of the
13 larger reports that most of the commissioners'
14 servers have not been able to handle. And the
15 special assistants have received them internally,
16 but in a number of cases, that hasn't happened
17 with the commissioners.

18 We will make that all available by
19 hard copy and dig that out to anyone.

20 COMMISSIONER YAKI: Can you break it
21 up into separate .pdfs?

22 STAFF DIRECTOR DANNENFELSER: We can
23 try that.

24 COMMISSIONER YAKI: Actually, not pdfs

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1 because we can't --

2 COMMISSIONER GAZIANO: I think it's
3 the attachments and charts that are very important
4 in that particular --

5 COMMISSIONER YAKI: The charts you can
6 probably do as a .pdf because I think we're --

7 STAFF DIRECTOR DANNENFELSER: I will
8 check. I will have to check with our IT people
9 and see what we can do in that regard.

10 - UPDATE ON STATUS OF THE 2010 ENFORCEMENT REPORT
11 AND RELATED HEARING

12 CHAIRPERSON REYNOLDS: Okay. Next is
13 the update on the status of the 2010 enforcement
14 report and related hearings. Mr. General Counsel,
15 please provide us with an update on the project.

16 MR. BLACKWOOD: Yes, sir. This is
17 David Blackwood for the record.

18 As all the commissioners received on
19 February 26, we have received additional
20 information from the Department of Justice. This
21 information was useful as background information
22 relating to other intimidation cases and 11(b)
23 matters but did not address the main focus of the
24 report.

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1 At this point, in response to that
2 letter, I did contact the Department of Justice
3 again, specifically with regard to the issue of
4 whether they would allow Mr. Coats, Mr. Adams, and
5 other Department of Justice officials to testify.

6 This was the fifth time I have asked
7 them to address that issue and asked that they
8 give us a response by today. Typically those
9 responses do come in late on Friday. If and when
10 I receive that, I will forward it to the
11 commissioners.

12 Nonetheless, it is my intention to try
13 to bring matters to a head with regard to the
14 Department of Justice so they clarify this matter
15 so we know well before April 23rd whether the
16 department will participate.

17 The only other matter outstanding is
18 with regard to the enforcement of the subpoena
19 with regard to Malik Zulu Shabazz. This has been
20 referred to the U.S. Attorney's office in the
21 District of Columbia. And I am dealing with an
22 assistant U.S. attorney with regard to that
23 enforcement. It is not scheduled. It has not
24 been filed yet. But I have no education that we

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1 are having any difficulty with that.

2 With regard to a small matter, but I
3 want others to be aware of it since our last
4 hearing did get canceled. One of the suggestions
5 was that we put an alternative date in our hearing
6 notice.

7 The hearing notice has not gone to the
8 Federal Register yet, but it will have an
9 alternative date of May 14th. And that is our
10 next meeting after April 23rd.

11 I would view that as a placeholder. I
12 don't expect another 100-year storm, but I wanted
13 you people to be aware that that is why there is
14 an alternative date on there.

15 COMMISSIONER YAKI: You just jinxed it
16 right there, Mr. General Counsel.

17 MR. BLACKWOOD: Maybe so. Right when
18 the hurricane comes, we're headed to your place.

19 - UPDATE ON STATUS OF TITLE IX PROJECT

20 CHAIRPERSON REYNOLDS: Okay. Mr.
21 General Counsel, please provide us with an update
22 on the response to the subpoena sent out for
23 documents pertaining to the Title IX project.

24 MR. BLACKWOOD: Yes, sir. Fourteen of

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1 the 19 schools have provided the data information
2 that we requested. As I indicated before, we were
3 contacted by numerous schools that requested that
4 we bifurcate the discovery process, specifically
5 that the data information under document request
6 number 7 be separated from the other requests.

7 We agreed to that in an overwhelming
8 number of cases and actually extended additional
9 time to some schools. But 14 out of the 19 have
10 provided the data. One will provide data today.
11 So that brings us 15 out of 19 have had no
12 difficulty providing the data information that we
13 have requested.

14 Four schools, however, specifically
15 Johns Hopkins, Georgetown University, Gettysburg
16 College, and Messiah College, have indicated that
17 they are refusing to provide the data. They have
18 objected to providing this information for a
19 variety of reasons, which I will read into the
20 record in just a minute. But I do want to
21 indicate, too, that they have offered what they
22 believe is a viable alternative, which is to
23 provide information in an aggregate form but not
24 on an individualized format.

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1 We have discussed this matter with
2 these schools on several occasions. I've had
3 phone calls with the individual general counsels
4 on the matter and have consulted with Dr. Lerner
5 about the formats and potential information that
6 can be received and whether that was a viable
7 alternative. The short answer is it is not.

8 As indicated by the 15 schools that
9 have responded, we do not believe that providing
10 the individualized data is in any way a violation
11 of any privilege. We have indicated that we will
12 preserve the confidentiality of the individual
13 identities, but 15 out of 19 schools have no
14 difficulty in providing the information.

15 Now I will read a short --

16 CHAIRPERSON REYNOLDS: Mr. General
17 Counsel?

18 MR. BLACKWOOD: Yes, sir?

19 CHAIRPERSON REYNOLDS: Let's be clear.

20 We're not asking for personally identifying
21 information from the schools. Is that correct?
22 We don't want names. We don't want birth dates.
23 We don't want Social Security numbers. Is that
24 right?

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1 MR. BLACKWOOD: That is absolutely
2 correct.

3 CHAIRPERSON REYNOLDS: So when you say
4 that we are looking for individual data, what do
5 you mean by that?

6 MR. BLACKWOOD: Well, perhaps if Dr.
7 Lerner were on the phone, maybe he could best
8 speak to it. But I can give my layman's
9 understanding of it.

10 CHAIRPERSON REYNOLDS: Well, let's
11 turn to the doctor if he is available. Dr.
12 Lerner, are you on the line?

13 STAFF DIRECTOR DANNENFELSER: He was
14 not able to make it, Mr. Chairman. He had some
15 logistical issues that came up, and he was not
16 able to be on the line.

17 CHAIRPERSON REYNOLDS: Okay. Well,
18 then, Mr. General Counsel, I will have to rely on
19 your layman's view.

20 MR. BLACKWOOD: When I use the term
21 "individualized data," it is done on a
22 student-by-student basis. As you pointed out, it
23 is not that each student can be identified but
24 that certain characteristics of each student can

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1 be identified.

2 These are necessary as control factors
3 to focus them on the largest issue of gender
4 disparities at the schools. This is a standard
5 technique. Dr. Lerner has used it in other
6 analyses. He has indicated to me that it is
7 something that is provided as a matter of course
8 in many public schools to the Department of
9 Education. And, as I say, 15 of the 19 schools
10 did not have any difficulty in providing it.

11 The four schools that I did mention
12 seem to be coordinating their responses. I in a
13 very short way can indicate the following. This
14 is from a letter I received from Georgetown
15 University yesterday, which narrows down some of
16 the broad-brush objections that they made. Many
17 of those objections have now faded to the
18 background as many other schools responded.

19 This is from Georgetown, who
20 indicated, "The university believes that providing
21 the information in the form requested by the
22 Commission would undermine sensitive and
23 proprietary business practices, interfere with
24 academic decision-making, create confusion about

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1 the manner in which the university makes
2 undergraduate admission decisions, and place the
3 university at a competitive disadvantage."

4 CHAIRPERSON REYNOLDS: Did they cite
5 any case law to defend their position?

6 MR. BLACKWOOD: No, they have not.
7 And in our discovery request, part of the
8 procedures or the instructions request, "If you
9 object to things, please on a matter of privilege
10 or otherwise, that you identify any specific cases
11 or case law that you are relying upon."

12 None of these schools has provided any
13 basis other than basically the summary that I just
14 gave you.

15 CHAIRPERSON REYNOLDS: So 15 out of
16 the 19 schools managed to provide the information
17 in a manner that doesn't release personally
18 identifying information. They released it in a
19 manner that doesn't disrupt their admission
20 process. But Georgetown, Johns Hopkins, and --
21 I'm sorry. What are the names of the two other
22 schools?

23 MR. BLACKWOOD: Gettysburg College and
24 Messiah College.

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1 CHAIRPERSON REYNOLDS: So these four
2 institutions had not been able to figure out how
3 to do this. Have you recommended that these
4 schools consult with the other 15 schools that
5 managed to do this to get some direction?

6 MR. BLACKWOOD: I didn't have to make
7 that suggestion. They have indicated all along
8 that all of these schools are in contact with each
9 other. And it has been very clear in my
10 communications that they absolutely are aware that
11 the other schools have provided the data.

12 Especially Georgetown and Johns
13 Hopkins have indicated they simply have a very
14 strong objection to providing the information.

15 COMMISSIONER HERIOT: Mr. Chairman?

16 CHAIRPERSON REYNOLDS: Yes?

17 COMMISSIONER HERIOT: I just want to
18 note that this looks very bad for these schools to
19 be resisting an effort to look into the issue of
20 sex discrimination. I am quite surprised that
21 they are putting up this kind of a fight. I think
22 it may well be that many Americans will be
23 interested in this, but I think that this should
24 be referred to the Department of Justice to

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1 enforce the subpoena reasonably promptly here.

2 If you believe there is still some
3 room for negotiation, you know, I am willing to
4 defer to that. But I think we need to move
5 reasonably rapidly on this in order to get the
6 data that we need.

7 CHAIRPERSON REYNOLDS: Commissioner
8 Heriot, I would ask for your indulgence. I would
9 like to have some additional interactions with
10 these four schools to get a better understanding
11 of what their objections are.

12 If they have a legitimate basis for
13 refusing to provide the information, if they can
14 distinguish themselves from the other 15
15 institutions that have provided the information,
16 then I think that they deserve to be heard.

17 But after that, after we have met and
18 discussed this issue, if they don't put something
19 on the table that demonstrates that they have a
20 legal basis for their position, then I fully
21 support your recommendation that refer this to the
22 Department of Justice.

23 COMMISSIONER HERIOT: I have got a
24 hunch on this that I think I can talk to the

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1 General Counsel about after the meeting, but, you
2 know, my bottom line is we need to be prepared to
3 move very quickly on this in referring this to the
4 Department of Justice.

5 COMMISSIONER GAZIANO: Mr. Chair?

6 CHAIRPERSON REYNOLDS: Yes?

7 COMMISSIONER GAZIANO: I also want the
8 record to reflect my view that this is very sad
9 and doesn't speak very highly of these
10 universities who do want to hide their information
11 on possible discrimination matters.

12 Particularly there are two matters
13 which particularly are bothersome to me. The
14 first is that they throw in the kitchen sink. And
15 most of their objections are completely frivolous.

16 With regard to this revealing
17 proprietary information, it's somewhat odd when
18 we're just asking for a list of the applicants and
19 some of their criteria.

20 But, even if this may reveal in some
21 way to someone some sort of proprietary
22 information, that can't be a defense to a
23 government agency investigating not only
24 discrimination but any other law enforcement

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1 matter. There are many firms, of course, that
2 would rather keep their practices that may be
3 illegal from the public scrutiny.

4 You know, something again, I would
5 like to think that if the public finds out which
6 universities are doing it, that may be bring
7 additional pressure. And that may help you and
8 the General Counsel convince them to do the right
9 thing so that they don't need to be sued by the
10 U.S. government.

11 But prior to that, I think it ought to
12 be emphasized that these are shameful excuses that
13 they are raising. If they had some legal reason
14 or if they had some other accommodation,
15 reasonable accommodation, they were requesting, I
16 would be much more favorably disposed to them.
17 But this is really unacceptable.

18 COMMISSIONER YAKI: Mr. Chair, this is
19 Commissioner Yaki. I just think that before we go
20 uttering potential libelous statements about at
21 least two institutions with which I am very
22 familiar with, Georgetown and Johns Hopkins, who
23 have great reputations for educational excellence
24 and integrity, that I agree with you we should

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1 explore as much as possible the nature of their
2 objections.

3 Quite frankly, if I were in their
4 shoes, I don't know what I would do other than
5 judging by the statements made by some of the
6 commissioners here today, I would be very worried
7 about what would happen to the data I would
8 provide to this Commission.

9 CHAIRPERSON REYNOLDS: Well,
10 Commissioner Yaki, I am in agreement with you to
11 the extent that you said that we need to engage
12 with them some more to get a better understanding
13 of the bases of their positions.

14 I believe we have a consensus. That
15 is the approach we will take.

16 - UPDATE ON ATTACK AGAINST ASIAN-AMERICAN STUDENTS
17 AT SOUTH PHILADELPHIA HIGH SCHOOL

18 CHAIRPERSON REYNOLDS: Okay. Next up.
19 At our last two meetings, we discussed and I
20 asked staff to track developments in what appears
21 to have been racial violence directed against
22 Asian American students at South Philadelphia High
23 School by black students. Information related to
24 the incident was included in the meeting binder

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1 that was sent to the commissioners by the Staff
2 Director on March 4th.

3 I would also like to note that Vice
4 Chair Thernstrom and a special assistant, Tim Fay,
5 they have a recent piece on this very issue in
6 AEI, the American publication.

7 Mr. Staff Director, please provide us
8 with an update on staff's efforts to obtain
9 additional information.

10 STAFF DIRECTOR DANNENFELSER: Thank
11 you, Mr. Chairman.

12 Pursuant to your request at the
13 February 26th meeting, I sent commissioners a memo
14 on March 4th with the meeting binders summarizing
15 the developments in the South Philadelphia High
16 School matter to date, including a conversation
17 between a member of my staff and the lawyer for
18 the Asian American Legal Defense and Education
19 Fund, known as AALDEF. Her name is Ms. Cecilia
20 Chen.

21 I also sent commissioners statements
22 by involved students and the executive director of
23 Asian Americans United that we obtained from the
24 AAU website as well as a copy of the report by

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1 U.S. District Court Judge James Giles, former U.S.
2 District Court Judge James Giles, whose law firm
3 was commissioned to conduct an independent
4 investigation to ascertain causative events and
5 circumstances surrounding the attacks on Asian
6 students last December.

7 Ms. Chen declined our request for a
8 copy of the complaint that AALDEF sent to the
9 Department of Justice but said she is willing to
10 speak with our commissioners about the incident.

11 Ms. Chen alleged that the students are
12 still being harassed. Local human relations
13 commissions are involved at both the state and
14 city level to some extent. A local Human
15 Relations had voted to open a general
16 investigation on December 28, 2009, but on January
17 5th, 2010, in a meeting in which the school was
18 supposed to address the problem, only third
19 parties, students called "ambassadors," not the
20 students involved, appeared with school
21 representatives, according to Ms. Chen.

22 She stated that the school claimed
23 that the assaulted students could not be allowed
24 to miss classes, unlike apparently the ambassador

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1 students, who did miss classes. Ms. Chen viewed
2 this as inadequate.

3 Ms. Chen felt that the students had
4 never been given a chance to present their
5 accounts of what had happened. She also noted the
6 school had hired an independent investigator,
7 former District Judge James Giles, who conducted
8 what the students called a perfunctory hearing to
9 determine facts.

10 Ms. Chen also charged that with the
11 exception of hiring temporary guards and
12 installing some security cameras, no changes have
13 been made in the school to address the problems
14 brought to light by the incident.

15 According to news accounts, the
16 attacks against Asian students at South
17 Philadelphia High School began December 2nd, 2009,
18 when a Vietnamese student was jumped by 14
19 students across the street from the school.

20 On December 3rd, 2009, news reports
21 indicate that "large groups of African American
22 and Asian students" attacked 26 Asian students.
23 Victims and witnesses state that attackers roamed
24 the halls of the school searching for victims to

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1 target. The attacks included punching and
2 kicking.

3 Seven victims were treated at
4 Methodist Hospital for scrapes and bruises.

5 CHAIRPERSON REYNOLDS: Excuse me. Mr.
6 Staff Director, did you say that black and Asian
7 students attacked another group of Asian students?

8 STAFF DIRECTOR DANNENFELSER: Yes.
9 That was an allegation, that there were African
10 American and some Asian students involved in the
11 attack on the 26th.

12 VICE CHAIR THERNSTROM: I believe that
13 the allegation is that there was one Cambodian
14 student, not Asian students, plural.

15 STAFF DIRECTOR DANNENFELSER: Okay.
16 Thank you for that clarification.

17 VICE CHAIR THERNSTROM: But, look, the
18 facts, as I repeatedly point out in my article,
19 the facts are not 100 percent clear. It's not
20 clear whether as charged, the black students were
21 roaming the school looking for Asian students,
22 rushing up to the second floor, whether lunchroom
23 personnel were basically egging them on, et
24 cetera, et cetera.

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1 This is a very -- I mean, I gave the
2 facts to the best of my ability by going through a
3 lot of material. And Tim did as well. In fact,
4 Tim did the primary research on what the basic
5 facts were.

6 This is a very confused story and
7 worth a briefing, by the way.

8 COMMISSIONER YAKI: This is
9 Commissioner Yaki. I just wanted to second
10 Commissioner Thernstrom's comment that this could
11 require a briefing.

12 I think this is an issue that is
13 certainly I don't think isolated to South
14 Philadelphia. I think that there are a lot of
15 urban centers where this kind of activity may be
16 occurring.

17 It is serious. It is something that
18 needs to be addressed in a very proactive way. I
19 think the Commission is one of the ideal, formerly
20 used to be one of the ideal, candidates to try and
21 deal with these types of issues.

22 I would also just raise, although it
23 is not on the agenda, the allegations or,
24 actually, not allegations, the racial incidents at

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1 UC-San Diego that have been in the news lately
2 regarding the Compton cookout connected by a
3 fraternity during --

4 COMMISSIONER GAZIANO: I think it was
5 a black comedian who conducted the cookout.

6 COMMISSIONER YAKI: Well, whatever the
7 fraternity was, it certainly got --

8 COMMISSIONER GAZIANO: I don't think
9 it was a fraternity.

10 COMMISSIONER YAKI: Whatever it was.

11 COMMISSIONER GAZIANO: There was one
12 story, but I think that that has been clarified
13 that it was not a fraternity.

14 COMMISSIONER YAKI: Well, I think it's
15 something that you and I have different facts
16 about. And it is something that I have described
17 as something that has been a problem on college
18 campuses and is continuing to be to this day.

19 VICE CHAIR THERNSTROM: And let me say
20 that this Philadelphia incident was a long time in
21 coming. And Commissioner Yaki is perfectly right
22 to say there is nothing unique about it. It is
23 part of a larger picture of disorder and violence
24 in too many inner city schools. And sometimes it

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1 has a racist aspect to it. Sometimes it does not.

2 And, again, this is no kind of
3 isolated little story here. And it is one of the
4 few topics in which factions in this Commission
5 could get together and work together. And I think
6 there would be a lot of agreement on what the
7 chief concerns would be.

8 CHAIRPERSON REYNOLDS: What factions?

9 VICE CHAIR THERNSTROM: What factions?

10 CHAIRPERSON REYNOLDS: Think of this
11 as an attempt at humor.

12 VICE CHAIR THERNSTROM: Right.

13 CHAIRPERSON REYNOLDS: Vice Chair
14 Thernstrom, I agree with you. And I think that,
15 if you wouldn't mind, you are working with, for
16 example, Commissioner Kirsanow and involve other
17 commissioners. Let's have a discussion and see if
18 we can come up with a game plan to address this
19 issue.

20 VICE CHAIR THERNSTROM: Okay. I would
21 actually like to make a motion, Mr. Chairman, that
22 we schedule a briefing when we can manage to fit
23 it in.

24 COMMISSIONER YAKI: It would probably

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1 be a briefing.

2 VICE CHAIR THERNSTROM: Do you want to
3 try a concept paper first? Yes.

4 COMMISSIONER YAKI: This is
5 Commissioner Yaki.

6 CHAIRPERSON REYNOLDS: I think that we
7 need to do a little more leg work before we vote.

8 VICE CHAIR THERNSTROM: That's fine.

9 COMMISSIONER YAKI: I would also
10 suggest that if we were going to do something,
11 given the nature of the individuals involved, that
12 this is more appropriate for a site hearing than a
13 briefing in D.C.

14 VICE CHAIR THERNSTROM: It is
15 appropriate for a site hearing, actually. There's
16 very strong sentiment on the part of a lot of
17 Asian students that they have not been properly
18 heard.

19 COMMISSIONER YAKI: Especially if you
20 want the students, then I think, then, going there
21 would make it a lot easier than --

22 VICE CHAIR THERNSTROM: Right. And
23 there is very strong sentiment that the Giles
24 report really is totally inadequate in reviewing

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1 this story.

2 CHAIRPERSON REYNOLDS: I think these
3 are good ideas. And we just need to get this
4 stuff poured into a concept paper so that we can
5 review it and have a vote.

6 VICE CHAIR THERNSTROM: That is fine.

7 COMMISSIONER GAZIANO: I don't know
8 that I necessarily want to have a vote of this in
9 isolation, as opposed to some other ideas. There
10 was one concept paper that related to this that
11 got a lot of support.

12 I also am hearing from the Vice Chair
13 that some of the facts as reported aren't true.

14 VICE CHAIR THERNSTROM: No. They are
15 just in dispute. Basic facts here are in dispute.

16 COMMISSIONER GAZIANO: Yes.

17 VICE CHAIR THERNSTROM: For instance,
18 did the principal of the school walk the Asian
19 students out of the school in order to protect
20 them when there was a group, a large group, of
21 black students seemingly in wait for those
22 students? And did she turn around very quickly
23 and basically deliver those Asian students to the
24 black students who were waiting for them or did

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1 she lose control of the situation because the
2 Asian students got frightened and started to run,
3 at which point -- and they weren't able to escape
4 those who were waiting to attack them.

5 You know, there are very basic
6 questions about the conduct of the authorities
7 within the school here that are worth exploring.

8 COMMISSIONER GAZIANO: I understand.
9 And maybe I'll think that a site visit and a
10 hearing specifically on this -- there seem to be
11 two suggestions.

12 One is that we ought to do something
13 on the larger issue, in which case I am not sure a
14 site visit is necessary. Whether it is important
15 enough that we look into this particular incident
16 would depend, in part, in my mind as to how the
17 authorities have responded.

18 Our primary responsibility is not to
19 investigate the facts of a particular incident
20 unless there is some law enforcement or other
21 problem involved that merits it.

22 So I'm not opposed to it, but my other
23 suggestion is I don't know that we necessarily
24 should vote on the next briefing in isolation of

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1 other issues that other commissioners have
2 proposed. But I suppose we can take that up --

3 CHAIRPERSON REYNOLDS: Let's get to
4 first base as the initial step. The Vice Chair
5 will work in consultation with the Staff Director
6 to put together a concept paper. And we'll take a
7 look at it. And then we will go from there.

8 IV. MANAGEMENT AND OPERATIONS

9 CHAIRPERSON REYNOLDS: Next up the
10 General Counsel has prepared a written opinion on
11 the terms of office of the current commissioners
12 in light of United State versus Wilson. And this
13 opinion was included in the meeting binders that
14 were sent to the commissioners.

15 In Wilson, the court examined the
16 method by which such appointments should be
17 calculated, focusing on the relevant provision of
18 the agency's enabling legislation.

19 Mr. General Counsel, would you please
20 discuss your findings and the consequences of your
21 findings?

22 - OFFICE OF GENERAL COUNSEL PRESENTATION REGARDING

23 COMMISSIONER TERMS

24 MR. BLACKWOOD: Again, this is David

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1 Blackwood for the record.

2 I have circulated previously, about
3 six weeks ago and then before that, a memo dated
4 June 25, 2007, which I think is nothing more than
5 a factual description of the decision in United
6 States versus Wilson. There were two opposing
7 ways to calculate the commissioners' terms. And
8 the court came down and clarified the issue that
9 the way the White House had been designating
10 commissioners' terms was accurate.

11 This causes a bit of confusion here,
12 however, because Congress, even after the
13 decision, even after cert was denied, continued to
14 name commissioners' terms that were directly
15 contrary to Wilson.

16 We are bound by the decision. I
17 wanted to bring this to the attention of
18 commissioners again so that there is time to take
19 corrective action.

20 In this case, on December 5th, the
21 terms of Commissioners Reynolds and Taylor end.
22 They were both presidential appointments. I don't
23 see any difficulty there. The White House under
24 all sorts of administrations has taken a

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1 consistent view of how these appointments should
2 be measured.

3 The two congressional appointments,
4 Commissioner Yaki and Commissioner Melendez, do
5 need to be acted on prior to in Commissioner
6 Yaki's case December 15th and Commissioner
7 Melendez December 12th.

8 I just wanted to bring that to
9 everybody's attention so that action is taken
10 before. There will probably be some resistance by
11 Congress along the lines of, "Well, we really
12 don't care what Wilson said." And I say that
13 specifically because, for example, in Commissioner
14 Yaki's case, in 2005, three years after Wilson,
15 they put a term description on his term that it
16 wouldn't end until May 3rd, 2011, which is
17 directly contrary to the way you should calculate
18 the terms in Wilson.

19 So I will say that the Commission is
20 going to be taking a position that Wilson
21 controls. And I urge the other commissioners to
22 take action.

23 COMMISSIONER YAKI: This is
24 Commissioner Yaki. I just wanted to state

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1 regarding that, my appointment, at the time, we
2 were actually told that my term expired May 3rd,
3 2005 by the Commission.

4 The Commission formally sent a letter
5 to the Speaker saying that -- because I remember I
6 had been appointed on February 15th. And then
7 they said, "Well, your term actually is up May
8 3rd, 2005." And so the Commission actually sent a
9 letter to the Speaker, which generated the
10 reappointment of me on May 3rd.

11 So if we are going to be consistent,
12 we at least ought to own up to the fact that we
13 were inconsistent beforehand. I think there will
14 be no problem, but we should note that this was
15 not a congressional issue. This was in direct
16 response to a letter sent by Ken Marcus to the
17 Speaker stating that my appointment was ending on
18 May 3rd, 2005.

19 MR. BLACKWOOD: It is actually 2011.

20 COMMISSIONER YAKI: Whatever. But no.
21 That is why they had to reappoint me on May 3rd,
22 2005, because they said that Chris Edley was
23 expiring in May 3rd, 2005.

24 MR. BLACKWOOD: All I can say is since

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1 2007, the Commission has taken a consistent point
2 of view.

3 I have nothing further.

4 CHAIRPERSON REYNOLDS: Okay. Thank
5 you.

6 Mr. Staff Director, please provide
7 your report.

8 STAFF DIRECTOR DANNENFELSER: Thank
9 you, Mr. Chairman.

10 V. STAFF DIRECTOR'S REPORT

11 STAFF DIRECTOR DANNENFELSER: A copy
12 of the report was included in the binders. And
13 there were some details about a number of
14 activities that have been taking place in the
15 Public Affairs Unit. And commissioners have been
16 receiving frequent updates on news reports about
17 the Commission.

18 Also, there is a reference to the
19 Office of Civil Rights Evaluation and the
20 complaints processing, that during this particular
21 period noted, that OCRE received 74 written
22 complaints, one walk-in complaint, 11 e-mail
23 complaints, 2 faxed complaints, and 161 telephone
24 complaints, of which 63 were repeat calls. In

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1 total, staff received and processed 249 complaints
2 during the reporting period.

3 We have received a recent mock-up from
4 National Technical Information Service regarding
5 the clearinghouse project. And the review from
6 the Office of the Staff Director is that it looks
7 good. There are a few very minor technical
8 changes that we think need to be made. And we
9 will be communicating those very soon.

10 We had a meeting scheduled for this
11 afternoon with the EEOC to discuss their response
12 to us pertaining to our request. But we are
13 presently rescheduling that meeting. We hope to
14 get that rescheduled soon.

15 Regarding library statistics, the
16 library staff received 97 telephone inquiries.
17 They completed 65 simple reference requests,
18 performed 33 research projects of various sizes,
19 and an additional 84 research services. There
20 were 201 written requests and 193 e-mail requests
21 for publications. And 376 publications were
22 mailed, and 41 different publications were
23 requested.

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1 Civil Rights and A Compilation with Civil Rights
2 Laws continue to be the most requested
3 publications. And there are currently 50 requests
4 for publications in process.

5 Staff has sent the F.Y. 2012 budget
6 call to office heads. And they are presently in
7 the process of putting together their proposed
8 2012 budgets.

9 We have also forwarded the 2011
10 congressional appropriations request to the House
11 and Senate Appropriations and Judiciary
12 Committees. We also recently sent a report that
13 had been requested by the Appropriations
14 Committees pertaining to the status of the SAC
15 charters and the activities of the SACs.

16 And that is my report at this time,
17 Mr. Chairman.

18 CHAIRPERSON REYNOLDS: Any questions?

19 (No response.)

20 CHAIRPERSON REYNOLDS: Okay. Hearing
21 none, the meeting is adjourned. Thank you, folks.

22 (Whereupon, the foregoing matter was
23 concluded at 11:45 a.m.)

24

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