

## U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING ON THE EFFECTIVENESS OF  
HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

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FRIDAY,  
MAY 5, 2006

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

PRESENT:

GERALD A. REYNOLDS, Chairman  
 ABIGAIL THERNSTROM, Vice Chairman  
 JENNIFER C. BRACERAS, Commissioner  
 PETER N. KIRSANOW, Commissioner  
 ARLAN D. MELENDEZ, Commissioner  
 ASHLEY L. TAYLOR, JR., Commissioner  
 MICHAEL YAKI, Commissioner

Kenneth L. Marcus, Staff Director

STAFF PRESENT:

JOHN BLAKELEY  
 TERESA BROOKS  
 MARGARET BUTLER  
 CHRISTOPHER BYRNES  
 DEBRA CARR, ESQ., Associate Deputy Staff  
 Director  
 RANILA CARTER  
 IVY DAVIS, Regional Director  
 BARBARA DELAVIEZ  
 PAMELA A. DUNSTON, Chief, Administrative  
 Services and Clearinghouse Division  
 BARBARA FONTANA, Library  
 LATRICE FOSHEE

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STAFF PRESENT (Continued):

PATRICIA JACKSON, Chief, Budget and  
Finance Division  
SOCK-FOON MACDOUGALL  
TINALOUISE MARTIN, Director of Management  
EMMA MONROIG, Solicitor/Parliamentarian  
EILEEN RUDERT  
VANESSA WILLIAMSON  
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS

PANELISTS PRESENT:

LOUIS W. SULLIVAN, Chair of the President's  
Board of Advisors on Historically Black  
Colleges and Universities, Founding Dean  
and First President of Morehouse School of  
Medicine, and Former Secretary of Health  
and Human Services

EARL S. RICHARDSON, Professor, Morgan State  
University, and Former Chair of the  
President's Board of Advisors on  
Historically Black Colleges and  
Universities

JAMIE P. MERISOTIS, President, Institute  
for Higher Education Policy

RAYMOND C. PIERCE, Dean and Professor, North  
Carolina Central University School of Law  
and Former Deputy Assistant Secretary for  
Civil Rights, U.S. Department of Education

MIKYONG MINSUN KIM, Associate Professor of  
Higher Education and Director of the  
Virginia Campus Higher Education  
Administration Doctoral Program, George  
Washington University

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C O N T E N T S

	<u>PAGE</u>
Introduction, CHAIRMAN Reynolds .....	4
Presentation of Dr. Louis W. Sullivan .....	10
Presentation by Dr. Earl S. Richardson .....	15
Presentation of Jamie P. Merisotis .....	21
Presentation of Professor Raymond C. Pierce .....	31
Presentation Professor Mikyong Minsun Kim .....	41
Questions .....	47
Adjourn	

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

(9:31 a.m.)

1  
2  
3 CHAIRMAN REYNOLDS: In any event, on  
4 behalf of the Commission on Civil Rights, I welcome  
5 everyone to this briefing on the effectiveness of  
6 historically black colleges and universities.

7 The Commission frequently arranges such  
8 public briefings with presentations from experts  
9 outside the agency in order to inform itself and the  
10 nation of civil rights issues. At this briefing, a  
11 panel of experts will advise the U.S. Commission on  
12 Civil Rights concerning the effectiveness of  
13 historically black colleges and universities. These  
14 institutions have been pivotal in educating students,  
15 especially African American students. And this was  
16 being done when blacks had no other opportunities.

17 Amongst the topics to be addressed is how  
18 these schools adequately prepare students for the 21st  
19 Century.

20 This morning we are pleased to welcome  
21 five experts on the effectiveness of historically  
22 black colleges and universities:

23 The Honorable Dr. Louis Sullivan, Chair of  
24 the President's Board of Advisors on HBCUs;

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1 Dr. Earl Richardson, President of Morgan  
2 State University;

3 Mr. Jamie Merisotis -- and if I  
4 mispronounce anyone's name, please, stop me and let me  
5 know -- he is the founding President of the Institute  
6 for Higher Education Policy;

7 Raymond Pierce, the Dean of North Carolina  
8 Central University School of Law;

9 And Dr. Mikyong Minsun Kim, Associate  
10 Professor of Higher Education and the Director of the  
11 Virginia campus of Higher Education Administration  
12 Doctoral Program at George Washington University.

13 I welcome all of you on behalf of the  
14 Commission. I will introduce everyone and describe  
15 your activities, and then I will call on you according  
16 to the order in which you have been given for the  
17 record.

18 The Honorable Louis W. Sullivan is the  
19 founding dean and the first President of Morehouse  
20 School of Medicine in Atlanta, Georgia. With the  
21 exception of his tenure as Secretary of the U.S.  
22 Department of Health and Human Services from 1989 to  
23 1993, Dr. Sullivan was President of the Morehouse  
24 School of Medicine for more than two decades.

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1           On July 1st, 2002, he left the presidency,  
2 but continues to assist in national fund raising  
3 activities on behalf of the school and he is an  
4 adjunct Professor of Medicine.

5           A native of Atlanta, Dr. Sullivan  
6 graduated magna cum laude from Morehouse College and  
7 earned his medical degree cum laude from Boston  
8 University School of Medicine. He is certified in  
9 internal medicine and hematology.

10           Dr. Sullivan became the founding dean and  
11 Director of the Medical Education Program at Morehouse  
12 College in 1975. He left Morehouse School of Medicine  
13 in 1989 to join President George H.W. Bush's cabinet  
14 as the Secretary of the U.S. Department of Health and  
15 Human Services. Dr. Sullivan's tenure, 47 months  
16 stands as the longest of any HHS Secretary in history.

17           Dr. Sullivan's accomplishments are too long to list.

18           Welcome.

19           Next we will have Dr. Earl Richardson, who  
20 was appointed the 11th President of Morgan State  
21 University on November 1st, 1984, after serving eight  
22 months as interim President.

23           Dr. Richardson holds a Bachelor's of Arts  
24 degree in social science from the University of

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1 Maryland, Eastern Shore, and both a Master's of  
2 Science degree and a Doctorate in education  
3 administration from the University of Pennsylvania.

4 He was Assistant to the President of the  
5 University of Maryland system and Executive Assistant  
6 to the Chancellor, Director of Career Planning and  
7 Placement and Acting Director of Admissions and  
8 Registration at the University of Maryland's Eastern  
9 Shore.

10 Again, we will have the same problem with  
11 all of our panelists. Their CVs run page after page.

12 So I'll cut it off here, but needless to say, we have  
13 an accomplished group of men and women here today.

14 Next we have Jamie Merisotis, who is the  
15 founding President of the Institute for Higher  
16 Education Policy established in 1993 in Washington,  
17 D.C. The institute is regarded as one of the world's  
18 premier research and policy organizations concerned  
19 with higher education policy development.

20 As the institute's President, Mr.  
21 Merisotis has worked extensively on nearly every  
22 aspect of the institute's work. He is recognized as a  
23 leading authority on college and university financing,  
24 particularly student financial aid and has published

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1 major studies and reports on topics ranging from  
2 higher education ranking systems to technology based  
3 learning.

4 Mr. Merisotis has managed the institute's  
5 growing global portfolio working to further  
6 educational opportunity and access primarily in  
7 nations in transition, such as in southern Africa and  
8 the former Soviet Union.

9 Raymond Pierce. Raymond and I have  
10 crossed paths in the past. We have both spent some  
11 time in the Office of Civil Rights at the Department  
12 of Education. That's where I got to know Raymond  
13 initially. We didn't serve at the same time, but I  
14 guess it's like it becomes a club.

15 In any event, Raymond C. Pierce was  
16 appointed Dean of North Carolina Central University  
17 School of Law in July of 2005. Prior to his  
18 appointment, Dean Pierce had a successful career in  
19 the national law firm of Baker, Hostetler.

20 As a partner in the firm's office in  
21 Cleveland, Ohio, Dean Pierce, his legal practice  
22 concentrated in business transactions and public  
23 policy. In addition he served state governments with  
24 higher education and pension investment related

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1 matters and was also a member of the law firm's  
2 federal policy group based in Washington, D.C., where  
3 he assisted clients with government related issues.

4 Prior to joining Baker & Hostetler, dean  
5 Pierce was a candidate for the Mayor of Cleveland, and  
6 despite the fact that I belong to a different tribe  
7 politically, I was rooting for you.

8 (Laughter.)

9 CHAIRMAN REYNOLDS: From 1993 to 2000,  
10 Dean Pierce served as Deputy Assistant Secretary for  
11 Civil Rights at the U.S. Department of Education.  
12 While Deputy Assistant Secretary, Dean Pierce managed  
13 the enforcement of federal civil rights laws and  
14 education and the development of federal civil rights  
15 education policies.

16 Pierce led the development of the  
17 administration's federal education and civil rights  
18 policy in response to the 1992 U.S. Supreme Court  
19 decision in Ayers v. Fordice, which addressed equal  
20 protection and higher education opportunities for  
21 African American students and the impact of state  
22 policies on historically black colleges and  
23 universities.

24 Once again, a very long CV.

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1                   And next we have Dr. Mikyong Minsun Kim,  
2                   and she is an Associate Professor of higher education  
3                   and the Director of the Virginia campus Higher  
4                   Administration Doctoral Program of George Washington  
5                   University. Former posts includes faculty positions  
6                   at the University of Arizona at Tucson and the  
7                   University of Missouri at Columbia.

8                   She also served as a grant panelist and  
9                   consultant for the National Science Foundation. She  
10                  has been actively engaged in contributing to the field  
11                  of higher education. Her teaching and research  
12                  interests include college impact, comparative higher  
13                  education, finance, equity, and opportunity issues.

14                 While she encompasses a wide range of  
15                 interests, she has dedicated a great deal of her focus  
16                 on the impact and effectiveness of historically black  
17                 colleges and universities on African American  
18                 students.

19                         Welcome.

20                         Dr. Sullivan, you're up first.

21                         DR. SULLIVAN: Well, thank you very much,  
22                         Mr. Chairman and members of the Commission.

23                         My remarks are entitled "Contributions of  
24                         Historically Black Colleges and Universities to the

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1 Nation." I appreciate very much this opportunity to  
2 appear before you.

3 For more than two centuries, our country  
4 has struggled with the social and economic  
5 consequences of former systems of legally sanctioned  
6 slavery of its black citizens in our southern states,  
7 followed by decades of legally sanctioned segregation  
8 and discrimination based upon race.

9 The majority of the nation's historically  
10 black colleges and universities were created in the  
11 second half of the 19th Century, following the  
12 Emancipation Proclamation by President Lincoln which  
13 abolished slavery on January 1st, 1863.

14 Many of our nation's black colleges were  
15 created by religious organizations and others by state  
16 governments following that time. With passage of  
17 voting rights legislation in the 1960s and other  
18 legislation designed to eliminate the vestiges of  
19 segregation and discrimination, the question has  
20 arisen about the need for or the educational  
21 effectiveness of historically black colleges and  
22 universities.

23 For most young people entering college,  
24 this is their first experience away from home for an

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1 extended period. It is a time of socialization, of  
2 developing a clear identity, and a time for  
3 reinforcing their values. It is during this time that  
4 young people move from the familiar, protected  
5 environment of home to the new, more open and  
6 challenging, less secure ambiance of the college  
7 campus.

8 For some African American young people,  
9 this interplay of academic, social, and personal  
10 development which occurs on the campus of historically  
11 black colleges and universities during their  
12 transition from home to the wider world can have a  
13 profound influence on their development as scholars,  
14 as future family members, as members of the country's  
15 work force, and as responsible citizens.

16 An example of this is illustrated by the  
17 number and percentage of graduates of some HBCUs who  
18 are successful in gaining entry to and graduation from  
19 schools of medicine, engineering, law, and other  
20 fields.

21 For a number of HBCUs, these percentages  
22 are equal to or even exceed the outcomes achieved by  
23 African American students and graduates from  
24 predominantly white colleges and universities which

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1 are usually wealthier and older. Among the nation's  
2 HBCUs who have demonstrated this level of success and  
3 their graduates are such institutions as Xavier  
4 University in New Orleans, Spelman College in Atlanta,  
5 Morehouse College, Atlanta, Florida A&M in  
6 Tallahassee, Florida, North Carolina A&T University in  
7 Greensboro, Jackson State University, among others.

8 This phenomenon may also be seen at the  
9 professional school level. Here I wish to share with  
10 you an experience I've had at the Morehouse School of  
11 Medicine, a predominantly African American medical  
12 school founded in 1975 by Morehouse College for the  
13 purpose of increasing the number of African American  
14 and other minority positions in Georgia and the  
15 nation.

16 Our institution began with modest  
17 financial resources, getting its first class as a  
18 medical school in 1978, becoming a four year school of  
19 medicine in 1981 and receiving full accreditation in  
20 1985.

21 Today we have 800 M.D. alumnae. They  
22 include the Commissioner for Health of the State of  
23 Georgia, a Vice President of a large, prestigious  
24 medical school and the personal physician of the

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1 President of South Africa, and physicians who are  
2 providing services in medically under served rural and  
3 inner city areas.

4 Today our students pass medical  
5 examinations given nationally at rates equal to or  
6 exceeding the rates of all medical students  
7 nationwide, although we are one of the youngest  
8 medical schools in the nation.

9 What accounts for this experience of our  
10 students, as well as the graduates of other HBCUs?  
11 There are multiple factors, including the dedication  
12 of the faculty to their teaching responsibilities, the  
13 support of social environment, the strong  
14 encouragement given to the students to explore a full  
15 range of career responsibilities, including leadership  
16 roles in those careers. That includes business, the  
17 sciences, public service, education, and other fields.

18 And the fourth item is the role model for  
19 these students that they see among the faculties of  
20 HBCUs.

21 As U.S. citizens, all of us look forward  
22 to the time when the lingering vestiges of segregation  
23 and discrimination will no longer be present in our  
24 society, but our experience as a nation has shown us

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1 that we have not yet reached that goal and to reach it  
2 will require the sustained, dedicated efforts of all  
3 of us. That includes the contributions of our  
4 nation's HBCUs to our nation's higher education  
5 communities and the effectiveness of HBCUs in  
6 facilitating the academic, social, and personal  
7 development of a significant number of our nation's  
8 African American and other minority citizens.

9 Thank you.

10 CHAIRMAN REYNOLDS: Thank you.

11 I should have mentioned at the onset that  
12 the comments will be restricted to ten minutes.

13 Next up we have Dr. Richardson.

14 DR. RICHARDSON: Thank you very much, and  
15 thank you for inviting me to present at this  
16 particular forum.

17 Obviously when you are following Lou  
18 Sullivan, someone who has been at this a long time,  
19 you always have a sense of trepidation that he's going  
20 to say everything that you planned to say, and he did.

21 (Laughter.)

22 DR. RICHARDSON: But I think that the fact  
23 that he did say what he said speaks to the topic  
24 today, the effectiveness of our historically black

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1 colleges and universities.

2 I'm not good for following text. So if I  
3 deviate, you'll understand, and it comes from the soul  
4 rather than the paper.

5 I think that Dr. Sullivan referred to the  
6 legislation that kind of changed the landscape for us.

7 One piece of legislation was the Civil Rights Act of  
8 1964. I think that since the Civil Rights Act of 1964  
9 and the early efforts of our federal government to  
10 enforce those acts, that, in fact, there has been that  
11 discussion about the future role of historically black  
12 colleges in contemporary higher education.

13 And I think it has been that concern  
14 primarily because there was some misunderstanding from  
15 the very beginning as to the sum total of our  
16 historically black colleges, that is, they were often  
17 thought of simply as institutions for black citizens.

18 Well, the fact of the matter is they were  
19 founded as institutions that did not discriminate, but  
20 that were open to students regardless of their race.  
21 The circumstance was, in fact, that that was the only  
22 place for many of our black students to get an  
23 education in the southern states. And because there  
24 was such a high concentration of African Americans in

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1 the South, then today many of our prominent African  
2 American leaders, Dr. Sullivan being one of those, as  
3 you went through his dossier, are graduates of our  
4 historically black colleges and universities.

5 In our own State of Maryland, of course,  
6 that is, indeed, the history. Among the Morgan  
7 graduates who would be the first black Senator in the  
8 state, would be the first judge of the state court,  
9 would be the first Chief of the Court of Appeal, the  
10 highest court in Maryland, would be the first to be  
11 elected or to be appointed to a statewide office, the  
12 State Treasurer's Office, and you could go on and on  
13 and on with that.

14 And I think that it is very, very  
15 significant that but for the historically black  
16 colleges, those leaders would not be in those  
17 positions.

18 I think, yes, the Civil Rights Act did  
19 change the game a bit, and changed the game a bit  
20 because I believe that it was, again, the notion  
21 that we were looking at how we integrated white  
22 institutions by bringing black students to those  
23 universities rather than how do we create open access  
24 and choice for students regardless of their race,

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1 meaning, of course, that you could increase the number  
2 of African Americans going to our traditionally white  
3 institutions and hopefully attract more white students  
4 to our black institutions for a fully integrated, a  
5 fully desegregated system of higher education.

6 I think we all know the story that, in  
7 fact, much of the effort initially was increasing the  
8 number of blacks in traditionally white institutions,  
9 which then was a little devastating for our  
10 historically black colleges, one, because there were  
11 great financial incentives offered to those black  
12 students as they often are now to come to their  
13 institutions.

14 The other was because our historically  
15 black colleges had not been developed to the level of  
16 the traditionally white institutions, meaning the  
17 investment had not been made, you did not have the  
18 quality of facilities. You did not have, in fact, the  
19 variety of programs. So the program options were  
20 limited.

21 But even with all of that, the  
22 historically black colleges became the mainstay of  
23 access for our black students.

24 Of course, when we looked at the public

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1 schools, that devastation was quite clear to us. For  
2 K through 12, many of our black schools were closed  
3 throughout the country as black students were brought  
4 to the better supported white elementary and secondary  
5 schools.

6 At higher education, the same thing had  
7 started to occur until the initiative to enhance our  
8 black colleges. You had our black students being  
9 attracted away, and we did not have in return the  
10 white students coming to our black institutions, and  
11 so the enrollment that many of these black schools had  
12 declined significantly in the '70s, and only now have  
13 we been able to regain that posture as, in fact, our  
14 institutions have been developed to a greater point  
15 here.

16 I think it was, indeed, a certain set of  
17 circumstances that caused our black colleges and  
18 universities to be different from our elementary and  
19 secondary schools in terms of their fate. One was  
20 that around '75 or there about was the initiative to  
21 enhance our black colleges, to create parity and  
22 comparability between our black institutions and our  
23 white institutions so that they could be equally  
24 competitive to students regardless of their race.

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1           Of course, that is still a task that is  
2 yet to be accomplished, and that is the creating of  
3 comparability and parity between our institutions.

4           But there were also other positive  
5 factors, and one is that there was a core of African  
6 Americans who, regardless of their choices, felt loyal  
7 to the black colleges and so stayed with the black  
8 college community.

9           The third was the changing demographics.  
10 During the '60s, there was significant increase in the  
11 young African American population, that by 1980,  
12 meaning that the college age students had grown  
13 significantly, while at the same time there was a  
14 little decline in the numbers of white students that  
15 were going to college or of college age.

16           The fourth factor, of course, was that of  
17 the selectivity, the increasing selectivity of our  
18 traditionally white institutions. Fascinated with the  
19 various rankings, the U.S. news report, and some of  
20 the other rankings, our institutions began to look at  
21 the SAT scores of the entering class as being the  
22 indicator of how effective and how prestigious they  
23 would be.

24           All of that being said then, our

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1 historically black colleges continued then to be  
2 institutions very, very important for granting access  
3 to African Americans, but even with all of the success  
4 of our African American institutions, the educational  
5 attainment of African Americans still lagged  
6 significantly that of white students. And if you look  
7 at the indicator that we can sometimes use, perhaps  
8 one of the best indicators, and that is the  
9 educational attainment of young people, ages 25 to 29,  
10 students with Bachelor's degrees or greater.

11           There's a great disparity there, as you  
12 know, between blacks and whites. In 1970, if you use  
13 1970 as the base date because that is, in fact, the  
14 time when we began to put so much emphasis on parity,  
15 equity, affirmative action, in 1970 the differential  
16 was about ten percentage points.

17           Today it's about 17 percentage points, and  
18 if you look at the increase in population, that  
19 represents significant numbers in terms of how many it  
20 would take in black American graduates to then have  
21 parity with the percentages in white student graduates  
22 with a Bachelor's degree and above.

23           In 1970, you could have created parity  
24 with about 160,000 more African American

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1 baccalaureates and above. Now that number is about  
2 400,000, which means that we would have to double the  
3 number of graduates, African Americans, in order to  
4 achieve parity in the age group 25 to 29 with a  
5 Bachelor's degree and higher.

6 Well, with all of that, our historically  
7 black colleges have been the mainstay. Okay. Time is  
8 getting up, but the point is that our historically  
9 black colleges are the institutions that are producing  
10 the largest number and could have the greatest impact,  
11 and therefore, should be the group of institutions  
12 that we give a lot of attention as we move forward  
13 this next century and beyond.

14 CHAIRMAN REYNOLDS: Thank you, Dr.  
15 Richardson.

16 Mr. Merisotis.

17 MR. MERISOTIS: Thank you very much, Mr.  
18 Chairman, and thank you, members of the Commission for  
19 this opportunity to be here at this briefing.

20 Improving the educational effectiveness of  
21 higher education continues to be one of the most  
22 important contributions that I think the federal  
23 government, states, individuals and the private sector  
24 can make to our national well-being. The simple fact

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1 remains that increasing educational opportunities for  
2 all Americans results in tremendous public, private,  
3 social, and economic benefits.

4           Going to college is much more than just a  
5 process of enhancing your own person economic status.

6           The combination of societal and individual benefits  
7 of higher education must continue to motivate what we  
8 do at many levels, and I hope it will be an important  
9 consideration for the Commission as it takes up this  
10 important issue of the educational effectiveness of  
11 HBCUs.

12           At this briefing you're hearing from many  
13 distinguished leaders from the community of HBCUs,  
14 individuals who speak with a great deal of authority  
15 and experience. As a complement to their testimony,  
16 I'd like to focus my remarks on several issues  
17 regarding the effectiveness of HBCUs that draw from  
18 the Institute for Higher Education Policy's combined  
19 experience both as an independent research and  
20 analytical organization and also as an organization  
21 that manages programs on behalf of HBCUs and other  
22 minority serving institutions. You can read more  
23 about those in my written testimony.

24           My remarks address four areas concerning

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1 the educational effectiveness of HBCUs. These are  
2 somewhat lesser known, but nonetheless critically  
3 important ways in which we should be viewing the  
4 effectiveness of HBCUs.

5 They are, first, HBCUs as leaders in  
6 student engagement;

7 Second, HBCUs as community based  
8 institutions that promote civic engagement and service  
9 learning;

10 Third, HBCU's as drivers of educational  
11 attainment for low income, first generation, and  
12 disabled students;

13 And, fourth, HBCUs as examples of success  
14 in a national effort to improve the quality of  
15 science, technology, engineering, and mathematics, the  
16 so-called stem fields in education and research. In  
17 each case, I'll point to a specific example of the  
18 effectiveness of HBCUs in this area as illustrations  
19 of the type of accomplishments that we've seen in  
20 recent years.

21 Let's begin with the issue of HBCUs in  
22 student engagement. One of the most important trends  
23 in higher education in the last decade has been an  
24 effort to document how well institutions engage in

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1 effective educational practices, that is, activities  
2 that are empirically related to desired learning and  
3 personal development outcomes of college.

4 Perhaps the best example of this is the  
5 work that has been conducted by the National Survey of  
6 Student Engagement, sometimes called NSSE,  
7 administered by the Indiana University Center for Post  
8 Secondary Research.

9 NSSE is designed to obtain information  
10 from colleges and universities nationwide about  
11 student participation in programs and activities that  
12 institutions provide for their learning and personal  
13 development. The results provide an estimate of how  
14 undergraduates spend their time and what they gain  
15 from attending college.

16 Nearly 1,000 higher education institutions  
17 have administered NSSE since it began national  
18 administration in the year 2000. According to the  
19 2004-2005 NSSE, African American students at HBCUs  
20 report more frequent interactions with faculty than  
21 African American students at predominantly white  
22 institutions.

23 HBCUs also generally appear to provide  
24 more supportive learning environments for students,

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1 including more contact with faculty. Students at  
2 these HBCUs report a greater belief that their  
3 institutions contribute to their personal spiritual  
4 growth and report a higher likelihood that they will  
5 vote compared to their counterparts at predominantly  
6 white institutions.

7 These data from NSSE, combined with a  
8 significant body of research undertaken by others,  
9 suggest that HBCUs provide a superior level of student  
10 engagement and, therefore, offer an educational  
11 experience that enhances the intellectual gains and  
12 accomplishments of students. This increased  
13 engagement of students is an important indicator of  
14 the effectiveness of HBCUs that deserves closer  
15 examination.

16 Next is the issue of HBCUs and civic  
17 engagement. A key national issue is the extent to  
18 which institutions of higher education contribute to  
19 civic engagement and participation in our democratic  
20 institutions, such as voting, volunteering and  
21 community involvement. In general, we know that  
22 higher education attainment is highly correlated with  
23 increased civic engagement.

24 For example, a 50-state study of the

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1 benefits of higher education published last year by  
2 the Institute for Higher Education Policy found that  
3 36 percent of Americans over the age of 25 with a  
4 bachelor's degree volunteer compared to just 21  
5 percent of those with a high school diploma.

6 Similarly, voting rates in national  
7 elections for individuals with Bachelor's degrees are  
8 nearly 50 percent higher than for those with a high  
9 school diploma. Clearly, higher education makes a  
10 profound difference in terms of our national civic  
11 well-being.

12 The question for higher education  
13 institutions is what specifically they may be doing to  
14 foster those goals and values. What opportunities do  
15 colleges and universities provide to students in order  
16 to foster increased civic engagement?

17 According to the National Campus Compact,  
18 which represents over 950 colleges and universities  
19 committed to the civic purposes of higher education,  
20 HBCUs do a remarkable job of civically engaging  
21 students. The 2004 Campus Compact membership survey  
22 found that these institutions are more likely than  
23 others to require service and service learning for  
24 graduation.

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1           They also found that HBCUs and other  
2 minority serving institutions are more likely than  
3 other colleges than other colleges and universities to  
4 have a community service or service learning office,  
5 to have a director of community service or service  
6 learning, and to have partnerships with K-12 schools  
7 and faith based organizations.

8           These intentional strategies by HBCUs to  
9 engage their students at the community and civic level  
10 are not well documented in the national literature  
11 about service learning and civic engagement. As an  
12 example of the effectiveness of institutions, they  
13 point to a profoundly different approach to student  
14 success than what is seen at many other colleges and  
15 universities.

16           The third area of effectiveness concerns  
17 HBCUs and success for low income, first generation,  
18 and disabled students. HBCUs are well known for the  
19 opportunities it provides the students who come from  
20 educationally and economically disadvantaged  
21 circumstances. In so doing, these institutions work  
22 hard to provide these students with additional  
23 support, guidance, and mentoring that will improve  
24 their opportunities to get into and succeed in

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1 college.

2 For example, the federal government has  
3 long supported increased opportunity for these  
4 populations through the federally funded TRIO  
5 programs. These programs with well known names, such  
6 as Upward Bound, Talent Search and Student Support  
7 Services authorized under the Higher Education Act  
8 provide a continuum of services from pre-college to  
9 pre-graduate level study for the nation's low income,  
10 first generation and disabled students.

11 HBCUs demonstrate a high level of  
12 commitment to these low income, first generation and  
13 disabled students by working hard to participate in  
14 the TRIO programs and serve these populations.  
15 According to the Council for Opportunity in Education,  
16 nearly three-quarters of all HBCUs have TRIO programs,  
17 serving nearly 70,000 students.

18 This compares to less than one-quarter of  
19 all other colleges and universities. The more than  
20 \$70 million in support provided by these programs to  
21 serve students at HBCUs goes a long way towards  
22 increasing the odds of student success than students  
23 who do not have the benefit of these programs.

24 Finally, there is the issue of quality of

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1 science, technology, engineering, and mathematics,  
2 STEM, education and research. At the national level,  
3 investments in STEM have been universally accepted as  
4 a national imperative. The President's proposed 2007  
5 budget, for example, advocates significant new  
6 investments in these efforts as key drivers of the  
7 nation's global competitiveness and economic capacity.

8           However, research indicates that African  
9 Americans are significantly under represented both as  
10 a percentage of the national STEM work force and as  
11 proportion of those enrolling and succeeding in STEM  
12 programs at colleges and universities.

13           One way to enhance the nation's capacity  
14 in the STEM fields is to enhance the quality and  
15 success of STEM at HBCUs. One example of a very  
16 successful program in this regard is the historically  
17 black colleges' and universities' undergraduate  
18 program, HBCU UP, at the National Science Foundation.

19           This program includes a variety of activities,  
20 including curriculum enhancement, faculty professional  
21 development, undergraduate research, collaborations  
22 with research institutions, and other activities that  
23 meet institutional needs.

24           According to the National Science

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1 Foundation, Math gatekeeper passing rates, that is,  
2 courses that are critical to STEM success, such as  
3 algebra, pre-calculus and Calculus I, have improved at  
4 all 14 of the HBCU UP grantee sites that have had  
5 projects in place for five years.

6 Improvements have also been seen in other  
7 STEM gatekeeper courses, such as Biology I and Physics  
8 I. Approximately 25 percent of STEM graduates from  
9 these HBCUs now have had an undergraduate research  
10 experience that better prepares them for success in  
11 graduate school.

12 These brief examples of the educational  
13 effectiveness of the HBCUs are not intended to be  
14 definitive or conclusive. Rather, they're designed to  
15 illustrate that the educational effectiveness of HBCUs  
16 has many dimensions that go beyond the simple  
17 calculation of aggregate graduation rates, retention  
18 rates or job placements.

19 In assessing the effectiveness of HBCUs,  
20 it's critical to consider a wide array of information  
21 and data that paint a more complete portrait of  
22 effectiveness than might be indicated by more narrowly  
23 drawn measures. This more comprehensive picture of  
24 educational effectiveness can then be used to provide

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1 a fair assessment of HBCU performance, and in so  
2 doing, help to improve the targeting of strategies to  
3 continuously upgrade quality and performance at these  
4 nationally essential institutions of higher learning.

5 Thank you very much for this opportunity.

6 CHAIRMAN REYNOLDS: Thank you.

7 Dean Pierce.

8 PROF. PIERCE: Thank you, Mr. Chairman.

9 I appreciate you all inviting me to this  
10 event, and for your comment about OCR being a club.  
11 Yes, I do consider that a club, and I'm glad to see  
12 another member of the club, Mr. Marcus, here also.  
13 Members of the OCR, we don't go away. We continue in  
14 our duties.

15 The value of historically black colleges  
16 and universities to our nation is clear. Our nation  
17 or any nation benefits from an educated population.  
18 Historically black colleges and universities continue  
19 to provide educational opportunities for African  
20 Americans in significant numbers.

21 There is no indication that closing public  
22 HBCUs would create a comparable shift in African  
23 American student enrollment and graduation from  
24 traditionally white institutions. The case has been

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1 made for HBCUs in terms of their effectiveness and  
2 contribution toward the education of the people of  
3 this nation.

4 My presentation, however, focuses on a  
5 real and continuing threat to HBCUs in large part due  
6 to the federal government's refusal to enforce federal  
7 civil rights laws as they relate to African Americans  
8 attending public historically black colleges and  
9 universities.

10 This threat puts in jeopardy the  
11 significant contribution HBCUs provide in allowing our  
12 nation to be competitive in a world where higher  
13 education is necessary for participation in a fast  
14 moving, global economy.

15 For the most part federal civil rights  
16 laws affecting historically black colleges and  
17 universities came in the aftermath of Brown v. Board  
18 of Education and it can pretty much be pulled together  
19 in the Adams cases, Adams v. Richardson or Adams v.  
20 Caliafano where, at that time, the Secretary of  
21 Health, Education and Welfare, Mr. Caliafano, was the  
22 subject of litigation along with the Department of  
23 Health Education and Welfare and the Office for Civil  
24 Rights. Action was brought by private litigants

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1 claiming that the nation's federal civil rights laws  
2 as they impact African Americans attending  
3 historically black colleges and universities were not  
4 being enforced by the agency that was created to  
5 actually enforce those laws.

6 The Office of Civil Rights at that time  
7 found 19 states in violation of Title VI of the 1964  
8 Civil Rights Act for failure to equally protect the  
9 rights of African Americans attending historically  
10 black colleges and universities pursuant to the  
11 Fourteenth Amendment of the United States  
12 Constitution.

13 These 19 states were required to submit  
14 plans to OCR designed to bring themselves into  
15 compliance with the 1964 Civil Rights Act. Fourteen  
16 of the states submitted acceptable plans and entered  
17 into agreement with OCR to implement those plan in  
18 order to correct the Title VI violations.

19 Four states were unable to reach agreement  
20 with the federal government and they each proceeded to  
21 litigation. Those states were Louisiana, Tennessee,  
22 Alabama, (Knight v. Alabama), and of course, the  
23 Mississippi case (Ayers v. Fordice) that went all the  
24 way to the United States Supreme Court. A fifth

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1 state, Ohio, also was unable to reach an agreement  
2 with the federal government and that state was  
3 referred by OCR to the U.S. Department of Justice for  
4 litigation along with the other four states. Although  
5 the Department of Justice prepared papers for  
6 litigation against Ohio the case was never filed in  
7 court.

8 The fourteen Adams states that entered  
9 into agreements with OCR were required to implement  
10 Title VI compliance plans that were based on 1978  
11 federal civil rights policy that was developed by OCR  
12 in the wake of the Adams cases. That 1978 federal  
13 policy was "The Revised Criteria for the Desegregation  
14 of State Systems of Higher Education". That federal  
15 civil rights policy really had two parts to it.

16 Part one was the strengthening or  
17 enhancement of historically black colleges and  
18 universities, as Dr. Richardson talked about, and the  
19 second part was affirmative action. It was not  
20 affirmative action in terms of admissions. It was  
21 affirmative action in terms of affirmatively  
22 recruiting African Americans to attend traditionally  
23 white institutions.

24 The enhancement of historically black

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1 colleges and universities, part on of the policy, was  
2 designed to address the real problem that historically  
3 black colleges and universities, public HBCUs, were  
4 born in apartheid during an era of lawful segregation,  
5 and these institution were constricted and restricted  
6 in the educational offering they could provide. In  
7 addition, the facilities and other resources provided  
8 by the states for these institution were substandard  
9 in comparison to the state supported traditionally  
10 white institutions.

11 The idea was to strengthen these HBCUs by  
12 enhancing existing educational programs and adding new  
13 programs that would attract a more diverse student  
14 population. These programs were placed at  
15 historically black colleges and universities so that  
16 they would not only be known as historically black  
17 colleges, but as good colleges. And student would  
18 select an institution of higher learning not based on  
19 just this congregation on the basis of race, but by  
20 what it offers in terms of education programming. In  
21 addition, enhancing HBCUs was also to address the  
22 limited educational opportunity provided African  
23 Americans attending HBCUs due to state practices of  
24 restricting resources at these institutions.

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1           Now, we understand that historically black  
2 colleges and universities for the most part remain  
3 predominantly African American, but you cannot say it  
4 has been racially steered that way. You cannot say it  
5 is because of a state government policy of limitation  
6 of educational programs at HBCUs that reduces the  
7 attraction of a diverse student population.

8           Most of the 19 states entered into these  
9 compliance plans. As I mentioned, five states did not  
10 enter into those plans, and one of those states went  
11 all the way to the United States Supreme Court.

12           In 1988, then U.S. Secretary of Education,  
13 William Bennett, directed the Office for Civil Rights  
14 to conduct reviews of those states that had entered  
15 into agreements to make determinations as to whether  
16 or not they were brought into compliance with Title VI  
17 of the 1964 Civil Rights Act.

18           The method of determining compliance was  
19 basically a checklist analysis. OCR simply referred  
20 to a checklist and asked, "State of Georgia, did you  
21 put in affirmative action plans to attract African  
22 American students to attend the University of Georgia?

23           And did you, State of Georgia enhance your public  
24 HBCUs by placing engineering programs at Savannah

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1 State or Fort Valley State? If you did these things,  
2 check, check, check, and your state is now in  
3 compliance with Title VI."

4 Eight states were found in compliance  
5 using this checklist analysis policy and were then  
6 released from OCR monitoring: Those states were  
7 Arkansas, Missouri, West Virginia, Oklahoma, Missouri,  
8 Delaware, North Carolina and South Carolina.

9 That left six states that were not  
10 released: Kentucky, Maryland, Pennsylvania, Texas,  
11 Florida, and Virginia.

12 Another state as I mentioned earlier, the  
13 State of Ohio, was still lingering over at the  
14 Department of Justice awaiting litigation where  
15 actually it never was filed.

16 In 1993, the United States Supreme Court  
17 ruled on the the Mississippi case. There the court  
18 ruled that states have an affirmative duty, to the  
19 greatest extent practical, to remove all vestiges of  
20 the past practice of segregation that have a present  
21 day effect.

22 An initial response from the state of  
23 Mississippi was to offer to correct the constitutional  
24 issue and desegregate the state system of higher

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1 education by shutting down the historical black  
2 colleges and universities. There were some  
3 conversation by the state that went so far as to  
4 propose shutting down Mississippi Valley State  
5 University and turning it into a prison.

6 In 119, OCR publish new federal guidelines  
7 for states involved in desegregating their state  
8 systems of higher education. This new policy was  
9 done in direct response to the Supreme Court decision  
10 in Ayers v. Fordice. The new policy elevated the  
11 standard of the 1978 guidelines. Pursuant to the 1994  
12 guidelines OCR would now use a vestiges analysis to  
13 review states for determination of their compliance  
14 with Title VI regarding higher education  
15 desegregation. The new standard is no longer a  
16 question of whether or not a state instituted programs  
17 to enhance HBCUs and affirmative action programs to  
18 attract African Americans to traditionally white  
19 colleges. The standard now pursuant to the 1994  
20 policy is whether or not a state has taken affirmative  
21 action, to the greatest extent practicable, to remove  
22 all vestiges of the past practice of segregation in  
23 higher education have a present day effect on the  
24 educational opportunities of African Americans

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1 attending historically black colleges and  
2 universities. It should be understood that Title VI  
3 does not protect HBCUs. Title VI protects people. In  
4 this situation the protected class of people are  
5 African Americans seeking educational opportunity at  
6 HBCUs. This allows the remedy to attach to the  
7 institution that serves the people resulting in HBCUs  
8 receiving increased funding for enhancement as a means  
9 of correcting a civil rights violation.

10 The 1994 "Fordice" policy was used to  
11 negotiate resolution agreements with the remaining six  
12 states; Pennsylvania, Florida, Texas, Kentucky,  
13 Virginia and Maryland. The Ohio case was returned to  
14 OCR from the Department of Justice and that state also  
15 entered into an agreement based on the Fordice policy.

16 The plans basically were the same as those for  
17 the eight states that were based on the 1978 policy.  
18 The only difference was that there was no affirmative  
19 action to attract African Americans to traditionally  
20 white institution. The focus on these plans was to  
21 strengthen those historically black colleges and  
22 universities that had been restricted in their  
23 educational offerings and to address the remaining  
24 vestiges of that past practice of apartheid that were

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1 found to have continuing and present day effects.

2 The plans based on the 1994 policy were  
3 five year plans as were those based on the 1978  
4 policy. However, unfortunately we began to see in the  
5 year 2000, 2001, particularly definitely in 2002,  
6 states backing out of these agreements, basically non-  
7 performing on these agreements. I would even go so  
8 far as to say as a breach of contract, to actually  
9 back away from the commitments they had made to the  
10 federal government to address violations of federal  
11 civil rights laws, while at the same time receiving  
12 federal funds to support a state system of higher  
13 education.

14 The problem we face today is almost a  
15 revisitation of the situation that led to the Adams  
16 cases in the 1970s. There is substantial indication  
17 that many of the seven states have ceased performance  
18 pursuant to the new agreements, and some of the  
19 states, Ohio, particularly, there is actually action  
20 being taken to revert back to a policy of constraining  
21 HBCUs and their ability to offer attractive  
22 educational programs.

23 I would also add that the same thing is  
24 happening in the State of Maryland which has a

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1 devastating impact on Morgan State University.

2           Clearly, in many cases in these states  
3 there is no focus on compliance with federal civil  
4 rights laws. In addition, there is strong evidence  
5 that HBCUs in some of the eight states that were  
6 closed out in 1988 based on the 1978 policy are being  
7 negatively impacted by state actions that are in  
8 direct contradiction of federal higher education  
9 desegregation policy.

10           The most egregious of these state actions  
11 is unnecessary program duplication.

12           Duplication of programs in colleges within close  
13 proximity of HBCUs was historically done for apartheid  
14 reasons, and we see that happening again where  
15 programs are being placed in close proximity to  
16 historically black colleges and universities to once  
17 again bring about segregation with the result of  
18 weakening the HBCU.

19           I believe that we will find ourselves in a  
20 situation where the litigation that was brought in the  
21 Adams cases will once again find its way to the courts  
22 again.

23           Thank you.

24           CHAIRMAN REYNOLDS:           Thank you, Dean

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1 Pierce.

2 Dr. Kim.

3 DR. KIM: Thank you. Thank you for the  
4 opportunity to testify before the Commission.

5 I will try to present some of the content  
6 from my PowerPoint and written testimony.

7 For your reference, I studied the impact  
8 and effectiveness of women only colleges before I  
9 studied the impact and effectiveness of HBCUs. I will  
10 speak from my data and research perspective.

11 First I'll briefly compare the institution  
12 and student characteristics of HBCUs with those of  
13 historically white colleges and universities.

14 Second, I'll review the findings of my  
15 studies on the effectiveness of HBCUs and compare my  
16 findings with those of other previous studies.

17 Third, I will discuss how HBCUs contribute  
18 to the development of African American students in the  
19 higher education community

20 And, fourth, I'll discuss whether and why  
21 HBCUs merit strong support.

22 Briefly talking about demographic  
23 information, there are 103 HBCUs in this country.  
24 About 30 percent of university degrees are awarded to

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1 African American students from the 89 four-year  
2 institutions, 41 public, and 48 private HBCUs.

3 As some of the panelists already  
4 indicated, some reports said a higher percentage of  
5 political leaders, lawyers, doctors, and Ph.D.  
6 recipients have graduated from HBCUs.

7 Before we talk about the effectiveness of  
8 HBCU's, let me review basic institutional and student  
9 characteristics.

10 HBCUs tend to have academically less  
11 prepared students and poorer institutional resources  
12 than HWCUs, and HBCUs also tend to have a lower  
13 student-factual ration, a lower enrollment, and a  
14 somewhat higher student-faculty interaction, which is  
15 somewhat consistent with previous panelists.

16 African American students are more likely  
17 to be involved in faculty's research projects at HBCUs  
18 (almost one and a half times more likely, based on my  
19 national data set).

20 The degree completion rate for African  
21 American students is 55 percent for HBCUs and 63  
22 percent for HWCUs, but college GPAs of African  
23 American students did not differ between the two types  
24 of institutions.

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1                   Let me show you some of my findings. For  
2 your inference, for my studies, I used national  
3 longitudinal sets, especially Higher Education  
4 Research Institute data from UCLA. I also used  
5 institutional effectiveness models and rigorous multi-  
6 level statistical techniques, so-called hierarchical  
7 linear and nonlinear modeling, for the design and  
8 analysis of my HBCUs studies.

9                   Initially, the finding of no significant  
10 difference throughout three academic outcomes,  
11 (especially overall academic ability, writing ability,  
12 and math ability) was rather surprising. However, I  
13 found the same pattern of no significant difference  
14 between HBCUs and HWCUs in their graduates' early  
15 career earnings as well as the probability of  
16 obtaining a baccalaureate degree.

17                   Compared with previous studies, my initial  
18 research findings that attending HBCUs is not more  
19 beneficial in developing black students overall  
20 academic ability, writing ability and math ability  
21 than attending white institutions, is somewhat  
22 consistent with previous studies by the following  
23 people. I don't think I need to list them, but I just  
24 listed Centra and colleagues, and Bohr and colleagues,

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1 and Pascarella and colleagues, which were all  
2 published at least ten years ago.

3 The finding of no differential effect of  
4 HBCUs on obtaining a Bachelor's degree is somewhat  
5 inconsistent with previous studies. Cross and Astin,  
6 Pascarella, and Ehrenberg's studies were conducted at  
7 least 10 to and 15 years ago, but that's inconsistent.

8 Of course, there are many different reasons, as well.

9 Regarding early career earnings, my  
10 findings show that HBCUs are doing as well as HWCUs in  
11 producing African American graduates who are  
12 financially successful at least in the early part of  
13 their careers. The finding of no difference in HBCUs'  
14 impact on their graduates' early income is consistent  
15 with that of Pascarella, Smart, and Stoecker and with  
16 that of Ehrenberg and Rothstein's, but it is  
17 contradictory to some of the other studies.

18 In conclusion, we should take the findings  
19 of no significant difference as a positive sign that  
20 African American students, as a group, now benefit  
21 equally in their academic development and early career  
22 earnings, whether they attend HBCUs or HWCUs.

23 Let me talk about students' learning  
24 opportunities as previous panelists discussed.

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1 African American students at HBCUs are more actively  
2 and deeply involved in the academic community than are  
3 their counterparts at HWCUs, and HBCUs seem to provide  
4 more academically supportive and engaging environment  
5 for African American students.

6 One of my previous studies also indicates  
7 less satisfying and more difficult academic  
8 experiences among African American female students, at  
9 HWCUs.

10 There are obvious compensating factors and  
11 the two types of institutions contribute to student  
12 learning in different ways. HWCUs provide more  
13 visible monetary resources and prestige, while HBCUs  
14 offer greater humane support and deeper involvement.  
15 I speculate that the discriminatory climate at HWCUs  
16 might have eased since the desegregation movement.

17 Let me conclude this presentation. HBCUs  
18 appear to be more cost effective in achieving their  
19 mission of educating black students. How they manage  
20 to produce the same level outcomes as HWCUs in spite  
21 of poorer academic and financial resources needs to be  
22 investigated further in future studies.

23 Given that, HBCUs are significantly under  
24 funded relative to HWCUs, the findings of my studies

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1 and of other reports lend support to the proposition  
2 that HBCUs contributes significantly to higher  
3 education in this country and merit strong support.

4 Thank you very much for this valued  
5 opportunity.

6 CHAIRMAN REYNOLDS: Thank you, Dr. Kim.

7 And I'd like to thank all of the panelists  
8 for the fine presentations.

9 At this point I'd like to open up the  
10 floor for questions or comments.

11 Commissioner Kirsanow.

12 COMMISSIONER KIRSANOW: Thank you, Mr.  
13 Chairman.

14 Thanks to all of the panelists for coming.

15 A really distinguished group. I'm very pleased to  
16 see Dean Pierce, that would be mayor of Cleveland, and  
17 then he sobered up and decided to take a better job.

18 I have a number of questions, but the  
19 first question I would have would be to Professor Kim.

20 You noted that there was no difference, at least no  
21 effective difference between the quality of education  
22 or at least the outcomes between HBCUs and HWCUs, but  
23 isn't the picture probably even a little bit better  
24 than that given that you're starting out with a cohort

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1 of students at HBCUs that at least according to some  
2 of your own material have lower SAT scores than those  
3 that traditionally go to or go to traditionally white  
4 institutions? The parental income of HBCU students is  
5 lower. So the predictive outcome for HBCUs would  
6 generally be lower than for HWCUs; isn't that correct?

7 PROF. KIM: That's a very good question.  
8 In these studies, I controlled for institutional  
9 selectivity and enrollment size. HBCUs tend to be  
10 smaller than HWCUs, and smaller institutions are  
11 usually more conducive for student-faculty  
12 interactions and seem a little better for academic  
13 outcomes.

14 In addition to the institutional  
15 characteristics, I controlled for SAT and grades, some  
16 high school GPA, as well as parental income and  
17 education level.

18 COMMISSIONER KIRSANOW: Okay.

19 PROF. KIM: I even controlled for some  
20 pre-test measures. Controlling for all of these  
21 characteristics, I found there is no significant  
22 difference between HBCUs and HWCUs.

23 COMMISSIONER KIRSANOW: One other. When  
24 you say you controlled, did you also control for the

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1 nature of the institution?

2 For example, a lot of HBCUs, I think it  
3 may not be appropriate to compare them to large  
4 traditionally white universities. HBCUs may have a  
5 better correlative among, say, urban universities  
6 like, say -- I don't know -- a Cleveland State  
7 University. The demographics are similar in that  
8 regard.

9 Did you compare HBCUs against all types of  
10 traditionally white universities or was it against a  
11 certain cohort of traditionally white universities?

12 PROF. KIM: Actually I compared the two  
13 types of institutions using HERI data, samples of  
14 African American students who completed a nine-year  
15 follow-up survey.

16 My data did not allow for me to  
17 investigate and compare specific regional effects.

18 COMMISSIONER KIRSANOW: Good. Thank you.

19 DR. RICHARDSON: Let me just respond by  
20 saying, Commissioner, I think you have hit on a very  
21 important thing, and that is the notion that when  
22 you're doing these measurements to compare apples with  
23 apples and oranges with oranges.

24 If you're looking at the graduation rate

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1 for Morgan State University, for example, it's about  
2 43 percent after about six years. That sounds modest  
3 when you first hear it. However, when you compare it,  
4 Morgan is an urban university. With other urban  
5 institutions across the country, what you will find is  
6 that Morgan does much better on the retention  
7 graduation than other similarly situated urban  
8 universities in urban settings.

9 So you're right on it when you say let's  
10 make sure that we control for all of the variables and  
11 we control in a way that compares apples with apples  
12 and oranges with oranges.

13 COMMISSIONER KIRSANOW: It seems though  
14 that even if you take all of the controls that Dr. Kim  
15 mentions, that given that what I think many of the  
16 panelists described as the generally lower funding  
17 level for HBCUs, they're doing a much better job --

18 DR. RICHARDSON: Absolutely.

19 COMMISSIONER KIRSANOW: -- than  
20 traditionally white universities in educating African  
21 American students.

22 DR. RICHARDSON: Yes.

23 COMMISSIONER KIRSANOW: And you mentioned  
24 the figure 43 percent. It strikes me because I recall

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1 that there's data that indicates that 43 percent of  
2 black students that matriculate to law schools  
3 eventually drop out, and the question is for Dean  
4 Pierce.

5 Do you have any idea as to what the  
6 dropout rate is for -- I know there are only five  
7 black law schools -- what the dropout rate is for  
8 those institutions?

9 PROF. PIERCE: No, I don't, but I would  
10 say this. Given that -- and, again, you've got to  
11 compare apples to apples and oranges to oranges -- we  
12 would differ from Howard University, but I would say  
13 that Southern University, Baton Rouge and Texas  
14 Southern and FAMU, which is more equivalent to our law  
15 school at North Carolina Central University. We do  
16 experience a higher attrition rate, particularly  
17 amongst African American males, and that is because we  
18 will take a chance on students with perhaps a lower  
19 predictive indicator, particularly the LSAT GPA.  
20 We'll bring them in with a high GPA but perhaps a  
21 lower LSAT score, and we do seem to have a higher  
22 attrition rate, but, again, we're taking in more.

23 COMMISSIONER KIRSANOW: Yes. Could that  
24 also be attributable -- I know in some of Dr. Kim's

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1 material I think something like 84 percent of students  
2 that attend historically black colleges need financial  
3 aid versus 55 percent of traditionally white students  
4 that matriculate to traditional white institutions.

5 PROF. PIERCE: And that continues to this  
6 day, yes.

7 CHAIRMAN REYNOLDS: Dr. Sullivan.

8 DR. SULLIVAN: If I could comment on that  
9 question, I'd like to say that Spelman College in  
10 Atlanta has a graduation rate of 77 percent of the  
11 students who enter, and that percentage exceeds the  
12 rate, let me tell you, of these following white  
13 institutions: Bates, Colby, University of California  
14 at Berkeley, UCLA, University of Michigan, Claremont  
15 College, and Carnegie-Mellon University. All of those  
16 institutions have greater resources, financial  
17 resources, than Spelman College, but it is doing  
18 better.

19 Secondly, in my remarks I stated that the  
20 scores of our students at Morehouse School of Medicine  
21 are greater than the scores of all medical students  
22 around the country, black or white. That is in spite  
23 of the fact that if you look at the SAT scores of the  
24 students when they enter, they're lower.

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1           So in other words, they progress much more  
2 because our motto at Morehouse is we're flexible  
3 coming in, but we're rigid going out.

4           (Laughter.)

5           DR. SULLIVAN:     So that means that our  
6 students -- because we want there to be no question  
7 about the quality of our graduates, but we, indeed, as  
8 stated by others, recognize the potential that a  
9 number of students have which has not been developed  
10 frequently because of the institutions that they have  
11 had for their education, as well as their high school  
12 experiences.

13           So our experience is similar to what your  
14 question directs.

15           PROF. PIERCE:   And if I might add, just to  
16 further demonstrate that, North Carolina Central  
17 University School of Law, our Bar passage rate last  
18 year was 81 percent, tied with Duke, and we bring in  
19 students, lower resources, lower predictive  
20 indicators, but the ultimate and final measure is  
21 first time Bar passage, and our first time Bar passage  
22 rate is 81 percent, and we tied Duke University School  
23 of Law.

24           CHAIRMAN REYNOLDS:   I find it interesting

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1 that the -- well, you mentioned that you take a chance  
2 on students on the front end. Some traditional white  
3 schools do the same, but the outcomes seem to be quite  
4 different. There seems to be a much higher attrition  
5 rate among traditional white schools, and based on the  
6 conversations, based on the discussions today, it  
7 seems to me that there is a different teaching model,  
8 and I just want someone to comment on the fact that it  
9 could make a significant difference if a student,  
10 especially a student who has not received a rigorous  
11 preparation, enters into a college that focuses on  
12 research that uses a lot of teaching assistants as  
13 opposed to an environment where students are going to  
14 have professors who concentrate on teaching.

15 PROF. PIERCE: I have to comment on that.

16 I'm new to this world of academia. I'm a first time  
17 dean. I read up on what you have to do to be dean of  
18 a law school and took on the job.

19 (Laughter.)

20 CHAIRMAN REYNOLDS: Is there a  
21 correspondence course for that?

22 PROF. PIERCE: Two days in Jackson Hole,  
23 Wyoming. It's true.

24 And one of the things it says was, you

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1 know, you're measured by your scholarship, the  
2 scholarship that your faculty produce for publication,  
3 and I get mounds of journals every day from law  
4 schools around the country because we're all doing the  
5 same thing, sending out the scholarship produced by  
6 our faculty so we can get our rankings up in U.S. News  
7 & World Report, and it didn't take me long to back off  
8 of that because I sent a memo out to the faculty that  
9 I expect them to produce more scholarship and I want  
10 to put money to this, but then I realized the reason  
11 why we could match Duke in our Bar passage rate was  
12 students who have lower predictive indicators coming  
13 in. It's because of the high level of engagement the  
14 faculty have with the students outside of the  
15 classroom.

16 Faculty spend a great deal of time with  
17 the students, and this is something that Mikyong  
18 mentioned earlier in her studies and her reports, and  
19 I'm quite sure Dr. Sullivan and Dr. Richardson would  
20 say the same thing. There just appears to be this  
21 legacy, this history of this nurturing at historically  
22 black -- I attended an HBCU. I didn't know this, but  
23 that's just what it is, and it has carried on through  
24 the ages, where the faculty -- it's just a culture of

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1 engaging the students and spending time with the  
2 students, having them in their classes, having them at  
3 their homes, and it works, and the students are  
4 focused, and they don't feel that they're just a  
5 number.

6 So yes. So if I have to sacrifice from  
7 the scholarship end in terms of my faculty being able  
8 to produce a scholarly piece to be produced in the UVA  
9 Law Journal on the confirmation of Judge Alito, I will  
10 sacrifice that because I'm going to get five more  
11 students through my law school.

12 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

13 VICE CHAIRMAN THERNSTROM: And I apologize  
14 for having to leave for a few minutes and I missed  
15 Commissioner Kirsanow's questions. So I hope I'm not  
16 repeating them.

17 I have a bunch of questions. I should  
18 start out by saying that I'm a fan of HBCUs, and my  
19 husband and I had a wonderful experience giving a talk  
20 at and spending a couple of days looking at Savannah  
21 State a couple of years ago, and I came away so  
22 overwhelmed by the quality of education that was being  
23 offered there.

24 And a lot of their students come in, of

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1 course. I mean, it's the old story of the racial gap  
2 in academic achievement at the end of high school. A  
3 lot of their students come in with low academic skills  
4 and not only the dedication to really getting those  
5 students up academically, but also the quality of what  
6 they were doing I thought was just stunningly good.

7 Oh, well, that's -- you know.

8 I don't think anybody has mentioned a  
9 statistic that I came across a number of years ago. I  
10 don't know whether it's still true, but it was very  
11 striking to me that if you look at the colleges in  
12 America that are sending the highest number of black  
13 students on to graduate programs, that nine out of ten  
14 of those colleges are the historically black colleges  
15 and universities.

16 COMMISSIONER KIRSANOW: Actually it's  
17 higher than that. I mean, the top 20 are historically  
18 black colleges and it depends on the discipline, too.

19 In STEM programs, depending on the discipline, in  
20 biology it's 12 out of 15. In physical sciences it's,  
21 I think, about 15 or 14 out of 15.

22 VICE CHAIRMAN THERNSTROM: Well, that  
23 reinforces the point. In the data I looked at, the  
24 tenth was Wayne State, which of course is also -- its

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1 student population is overwhelmingly black, and that  
2 again says something. This additional data reinforces  
3 the point says something about the strength of the  
4 education that's being provided.

5 A couple of questions. The first to Dr.  
6 Sullivan.

7 It wasn't absolutely clear to me how  
8 Morehouse Medical School differs from other medical  
9 schools. That is, what is the heart of the difference  
10 in having a predominantly African American student  
11 population there?

12 I've got about four questions for each of  
13 you. Why don't we just do one at a time?

14 DR. SULLIVAN: Surely, right. Well, as I  
15 mentioned, we have higher scores on national U.S.  
16 medical licensing examination of our students than is  
17 the case with black students from other institutions.

18 VICE CHAIRMAN THERNSTROM: But I was  
19 interested in the curricular differences. I mean,  
20 you've got an anatomy course in one medical school and  
21 you've got one in the other. What's the heart of the  
22 difference in the training?

23 DR. SULLIVAN: It is not in the curricula.  
24 The difference is in the commitment of the faculty.

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1 Our faculty are very committed to the success of our  
2 students.

3 VICE CHAIRMAN THERNSTROM: I see.

4 DR. SULLIVAN: And spend inordinate  
5 amounts of time there.

6 But I also maintain that there's another  
7 factor at Morehouse and I think for other historically  
8 black colleges and universities as well. It's the  
9 environment. We have an environment that encourages  
10 students to take risks, risk asking a question.

11 You know, learning is a two-way process.  
12 You not only have to have a good teacher, but you have  
13 to have a student who is willing to engage in that,  
14 and I maintain that the environment of black colleges  
15 that are successful is an environment that encourages  
16 the students to, indeed, engage in that process.

17 Many students don't for fear of being  
18 embarrassed, of exposing the fact that they don't  
19 know, et cetera.

20 The other thing that I know at Morehouse  
21 School of Medicine and would adhere at other HBCUs, we  
22 encourage our students to think of themselves and  
23 their future careers as leaders, not simply as members  
24 of the pack. And that's why I cited some of our

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1 graduates who are in leading positions both in  
2 academic institutions, one of them, for example, the  
3 Vice President at Baylor Medical College, one of the  
4 nation's strongest academic institutions.

5 So I think it really is the environment.  
6 It's not that the curriculum is different, but in  
7 fact, the commitment of the faculty and the supportive  
8 environment.

9 CHAIRMAN REYNOLDS: Excuse me, Vice Chair  
10 Thernstrom.

11 VICE CHAIRMAN THERNSTROM: Yes.

12 CHAIRMAN REYNOLDS: Could I ask a second  
13 question? Wouldn't another explanation be one of  
14 pace? If you assume that the black students who  
15 attend a school that's traditionally white, and you  
16 look at the total population, if the white kids have  
17 higher SAT scores and have better preparation, that  
18 would enable the teacher, the professor, to teach at a  
19 faster pace, and that faster pace would have a  
20 negative impact, assuming that the black students did  
21 not have the same preparation.

22 So wouldn't another explanation be that at  
23 HBCUs you have students there who are synced up in  
24 terms of the pace at which the material is being

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1 taught?

2 DR. SULLIVAN: Well, in one sense I would  
3 say yes, and that would lead me to modify the  
4 statement I made before in terms of the difference in  
5 our curriculum. We have the earliest opening date for  
6 first year medical students to be at the medical  
7 school in the country. Our students being mid-July,  
8 and that is something that happened where we learned  
9 by experience.

10 We opened with our first class of students  
11 in 1978. We identified among the students we had  
12 admitted the students we felt would need some academic  
13 support or preparation. So we invited those students  
14 to come in early July. The experience of the students  
15 was, "Why did you have us come earlier? That means  
16 you have already determined that we are not going to  
17 be successful."

18 When the other students came in September,  
19 their question was, "Why didn't you bring us? What  
20 could the students" --

21 (Laughter.)

22 DR. SULLIVAN: The next year we started  
23 everyone in mid-July, and the reason we started that  
24 was for those students who may have some deficiencies

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1 or some borderline areas. We use that time in the  
2 summer to bring them up to speed.

3 Once the curriculum gets going in  
4 September though, no, it's the same as the curriculum  
5 in any medical school around the country. Our faculty  
6 do, however, spend time with those students who are  
7 having difficulty, and we have many stories.

8 We just lost our first Chairman of  
9 Biochemistry who happened to have been a great cook,  
10 but really had won teaching awards from our students  
11 because he always had students at his home over the  
12 weekends learning actually, and he was very popular.  
13 In fact, he got into difficulty with the other basic  
14 science faculty because he didn't limit his teaching  
15 to biochemistry, but he involved anatomy and  
16 microbiology and physiology, et cetera.

17 So I think it really is the commitment of  
18 the faculty.

19 VICE CHAIRMAN THERNSTROM: Dr. Richardson,  
20 you talked about equally competitive -- creating a  
21 parity between black and white institutions. I wasn't  
22 clear what your definition of parity was there.

23 DR. RICHARDSON: Yes. I think the whole  
24 notion of parity has to do with providing equitable

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1 resources, resources consistent with the magnitude of  
2 the task. Oftentimes we hear that the cost per  
3 student at our historically black college is greater  
4 than that at some of our white institutions, and at  
5 first glance we think that that means that you have  
6 more resources than the white institutions.

7 The fact of the matter is because you  
8 start with students who are under prepared, because  
9 the magnitude of the task for getting them from where  
10 they are to where they have to be four, five, six  
11 years later is that you have a greater work load for  
12 faculty and staff.

13 I oftentimes give the example of let's  
14 just take -- before we even get to the academic part  
15 of it, let's just take the notion of getting them in  
16 school, providing financial resources. Oftentimes our  
17 students come and the Pell grant, for example covers  
18 less than half of the total cost of their going to  
19 school.

20 When they come with the Pell grants, they  
21 don't have other dollars. Neither do they have a  
22 family contribution, and therefore, the institution  
23 has the responsibility of trying to make up the  
24 difference.

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1 Well, often many of us take monies that  
2 ordinarily come through tuition and fees that normally  
3 go for faculty and equipment and then we take that  
4 money and augment Pell grants. That means a total  
5 amount of money that we have now to spend toward  
6 operating the institution, hiring more faculty,  
7 putting in new equipment and whatnot, is no longer  
8 there.

9 So we have to be careful of what we're  
10 saying when we look at the measure and what we're  
11 determining is comparability or not. No, the absolute  
12 dollars are greater in some instances, but the  
13 workload is far different.

14 Let's take that in a different  
15 perspective. The number of staff, one would normally  
16 look at two campuses, historically black, historically  
17 white campus, and say each having 5,000 students. You  
18 should have relatively the same staffing and whatnot.

19 Not so. When my students come to me even  
20 with the latest technology, we can't just run them  
21 through on an assembly line in terms of processing  
22 them.

23 If you had the money, then you could apply  
24 over the Internet. You could register over the

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1 Internet. You could make your payment over the  
2 Internet.

3 The fact of the matter is they don't have  
4 it. What does that mean? That means that they have  
5 to come to the campus. They have to stand in long  
6 lines. We have to talk with each of them, determine  
7 their credit worthiness, and try to work out ways.  
8 The staffing for that is horrendous.

9 If you talk just about how many times that  
10 means that a staff person has to see almost every  
11 member of the student body, if you go to most of our  
12 majority institutions with that same 5,000, they are  
13 middle and upper middle class. They either have the  
14 money or have the credit worthiness to get the credit  
15 to do it, and so they come in. You give them their  
16 invoice. They pay. You don't have to see them  
17 anymore for that semester.

18 Well, at most of our historically black  
19 colleges, you've got to come back at the end of the  
20 month for an installment payment, and we have to go  
21 through the records again to work it, and you've got  
22 to come back at the end of the next month and work it  
23 again. You've got to do this each of the months.  
24 Workload measure.

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1           Then that means more resources, more  
2 staffing and whatnot. So when you begin to dissect  
3 it, disaggregate the cost centers of our historically  
4 black college vis-a-vis a traditional white institute,  
5 you begin to see this disparity.

6           But let's go to another level. Let's go  
7 in terms of our facilities. I have at Morgan an  
8 architectural program. It's now 30 years old. I  
9 moved that architectural program into almost every  
10 building on the campus just to tuck it away and get  
11 accredited.

12           There's a traditionally white institution.  
13 I'm one of two state supported architectural programs.  
14 It has a beautiful, state of the art architectural  
15 school building. That's a disparity. That's not  
16 comparability. My students don't have the same  
17 opportunity in terms of the state of the art.

18           If there's any profession that should have  
19 state of the art facilities, it is an architectural  
20 program because it's all about art design and built  
21 environment. That's not comparable. That's a lack of  
22 comparability.

23           If I'm looking at my institution of Morgan  
24 State University, we have one of the best engineering

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1 programs you'll find anywhere, and we had references  
2 to that. By the way, Morgan is the largest producer  
3 of African Americans in engineering in the State of  
4 Maryland, yet it's the youngest, and it has done that  
5 at the undergraduate level and now is doing it at the  
6 doctoral level.

7 But usually where there are institutions  
8 with engineering programs and business programs, they  
9 have well established, in Maryland at least,  
10 technology transfer and commercialization centers.

11 There are two such centers in Maryland.  
12 The two majority institutions that have business and  
13 engineering combinations. Morgan State University has  
14 a combination, but it does not have the commercial  
15 transfer, not that it hasn't requested it. It's that  
16 the state hasn't provided the facilities.

17 That's a disparity. That's not  
18 comparability. That's not parity, and you can move  
19 along each of those indices and see the issue of  
20 comparability or lack of comparability played out  
21 across the whole spectrum.

22 VICE CHAIRMAN THERNSTROM: What are the  
23 faculty -- and I have kind of a larger question for  
24 everybody in a minute though. I'm going to skip my

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1 question in the interest of time to Dean Pierce so I  
2 can get in this larger question -- but just a smaller  
3 one, what do the faculty salaries look like in general  
4 at the HBCUs?

5 And is it in terms of achieving that  
6 parity, has it been a problem that the predominately  
7 white elite institutions have been rating the  
8 historically black colleges and universities?

9 DR. RICHARDSON: Well, let me answer  
10 first. Yes, indeed, Commissioner. Faculty salaries  
11 are always an issue, but it goes back to the amount of  
12 resources you have at your disposal from the very  
13 beginning, and how you have to distribute those over  
14 the various cost centers in order to have viable  
15 institutions.

16 But in most instances, yes, faculty  
17 salaries at historically black colleges still lag  
18 those at majority institutions, even when you control  
19 for classification.

20 Morgan does reasonably well compared to  
21 other black colleges, but when you compare it to  
22 majority institutions, then there's a large disparity  
23 there.

24 Now, the interesting part of that is that

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1 most of our faculty come with the same Ph.D.s from the  
2 same prestigious institutions as any other, but when  
3 you're competing for faculty and you're not offering  
4 them the same salaries that are being offered next  
5 door, and that's part of the struggle. That's part of  
6 the difficulty of it all.

7 VICE CHAIRMAN THERNSTROM: Right, and,  
8 Dean Pierce, if there's time I'll come back to you  
9 later, but let me pose a kind of larger question here,  
10 which is, I guess, a political question, which is:  
11 are there still significant voices, politically  
12 significant voices that are questioning whether there  
13 should be a racially identifiable institutions of  
14 higher education?

15 I mean, you know, if I think of K through  
16 12 education and think about academics writing on K  
17 through 12 education, I mean, there are voices like  
18 Gary Orfield at Harvard, a leading spokesman for  
19 integrated schools and, indeed, still for busing to  
20 achieve that integration. I mean if he and others  
21 like him are going to be consistent, they would  
22 naturally have grave questions about the HBCUs.

23 You know, I wonder how much of that  
24 conversation persists, and I would like a part of that

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1 for you to remind me because I forget this story of  
2 exactly at the time of the Fordice decision if I  
3 remember there was a significant split within the  
4 civil rights community and among specifically black  
5 spokesmen for civil rights on the issue of exactly --  
6 on precisely that issue. So, you know, I'd be  
7 interested in -- well, the question is obvious.

8 PROF. PIERCE: If I may, Commissioner, two  
9 things. Again, back to comparing apples and apples  
10 and oranges to oranges, when you talk about K through  
11 12 segregation or racial identifiable schools, it's  
12 totally different from racially identifiable schools  
13 in higher education because you have the different  
14 dynamic there.

15 K through 12 students are assigned by  
16 district.

17 VICE CHAIRMAN THERNSTROM: Right. I just  
18 wondered whether this was still a matter of  
19 conversation, controversy.

20 PROF. PIERCE: I wouldn't count it much.  
21 With all due respect to Mr. Orfield, and I understand  
22 his argument, but it just doesn't play in the world of  
23 higher education particularly as it impacts  
24 historically black colleges and universities,

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1 particularly given everything you've heard here today.

2           Secondly, when the Ayers case was about to  
3 be argued before the United States Supreme Court,  
4 there was a bit of concern because folk thought that  
5 it could backfire on HBCUs, and that it could be seen  
6 as a way of dismantling and shutting down HBCUs as a  
7 way of thrusting integration into higher education.

8           And, secondly, it was perceived by some as  
9 counter to the Gary Orfield type integration in K  
10 through 12, none of which, in my opinion, is really  
11 significant in the legal context.

12           I've got to go back to what you said  
13 earlier and bring you back to your visit to Savannah  
14 State University and something Dr. Richardson was  
15 talking about earlier. Savannah State University  
16 right now is under significant threat because the  
17 State of Georgia is locating a program at a two-year  
18 public community college in close proximity to  
19 Savannah State duplicating --

20           VICE CHAIRMAN THERNSTROM: I didn't know  
21 that. Actually, I don't think that was occurring when  
22 we were there.

23           PROF. PIERCE: It is happening now. It is  
24 happening in Morgan State. It's happening at Kentucky

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1 State. It's happening at Bowie State. It's happening  
2 elsewhere, and when you talk about the voices arguing  
3 against HBCUs, you find them at the general assemblies  
4 and the state legislatures because higher education is  
5 very competitive now, and it is very costly. When  
6 you're sitting down in Albany or wherever at the state  
7 house and the legislator is beginning to debate how  
8 we're going to fund higher education of the state,  
9 they look around and they see all of these colleges.  
10 the easy pickings are the public black colleges.

11 And so that's where you will find your  
12 voices, and it's not so much an argument that we  
13 shouldn't have these black colleges, racially  
14 identifiable colleges because they're not segregated  
15 by law per se.

16 VICE CHAIRMAN THERNSTROM: Right.

17 PROF. PIERCE: They're segregated by  
18 choice, and so that's where you have that voice, and  
19 it's because Ohio State University needs money that  
20 Central State University has or the University of  
21 Mississippi needs money that Alcorn State has or the  
22 University of Georgia needs money that Savannah State  
23 has.

24 So state senator or state representatives

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1 in these various states, when they look around to  
2 legislate these bills, they look to say, "Well, we'll  
3 reduce the funding for the program at the historically  
4 black colleges and universities so that we can put it  
5 somewhere else. So we will back off of an agreement  
6 to enhance or strengthen historically black colleges  
7 and universities so that we have more money for the  
8 traditionally white institutions."

9 VICE CHAIRMAN THERNSTROM: But surely  
10 their public argument isn't interested in exactly, you  
11 know, what the argument sounds like. Their public  
12 argument isn't we need money.

13 PROF. PIERCE: No.

14 VICE CHAIRMAN THERNSTROM: So we can  
15 reduce the funds given the HBCUs.

16 What is the public argument? Is the  
17 public argument one about racially identifiable  
18 schools? Is that an element in the --

19 PROF. PIERCE: Oftentimes, and it's a  
20 misled argument in my opinion because, again, students  
21 who attend Savannah State University are not attending  
22 that university because they can't go to the  
23 University of Georgia now, but before that was the  
24 case.

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1 VICE CHAIRMAN THERNSTROM: Sure.

2 PROF. PIERCE: They attend Savannah State  
3 University because they know they will enter a  
4 nurturing environment where they have a higher  
5 likelihood of graduating. That is why they will  
6 attend the university.

7 Whereas the state senator or state  
8 representative will say, "Well, that's a segregated  
9 school. We should not be maintaining a black  
10 college."

11 Well, you're not maintaining a black  
12 college.

13 VICE CHAIRMAN THERNSTROM: So that's where  
14 that argument comes in is what you're saying, is that  
15 the state legislators' level.

16 PROF. PIERCE: It's at the state, and I  
17 submit, Madam Commissioner, that it is a pretext  
18 because what it is all about is competitiveness. It's  
19 reduced finances for higher education and where are  
20 you going to get the money from? You'll get it from  
21 the HBCU, and that is why you see increasing levels of  
22 program duplication in direct contradiction to  
23 establish federal policy and case law, duplicating  
24 programs in close proximity to an HBCU to water down

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1 and diminish the effectiveness of the HBCU and build  
2 up a traditionally white institution to help the  
3 argument for shutting down the black college.

4 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: I suggest based on  
6 some of this testimony that our next briefing is why  
7 is it that white institutions do such a pathetic job  
8 in educating given their vast increase in resources.

9 VICE CHAIRMAN THERNSTROM: Well, we can  
10 start with kindergarten on that question.

11 COMMISSIONER KIRSANOW: Dr. Sullivan, you  
12 had indicated you had responded to Commissioner  
13 Thernstrom in terms of why it is that -- and several  
14 of you did -- why it is that it appears that there are  
15 a greater number of graduates of historically black  
16 colleges that go on to get baccalaureate degrees or  
17 Master's degrees. My question is a little bit  
18 different than that.

19 Given that today a Bachelor's degree is  
20 similar to what a high school diploma would have been  
21 maybe 40 years ago, it seems almost imperative that  
22 you go on to secondary or get postgraduate education.

23 But then what strikes me also is there is a  
24 disproportionate number of black graduates that go on

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1 to, quote, unquote, the soft sciences, and everybody  
2 knows the guys in soft sciences are basically looking  
3 around saying, "Okay. What do I do now?"

4 PARTICIPANT: Like us.

5 COMMISSIONER KIRSANOW: Right, exactly.

6 (Laughter.)

7 COMMISSIONER KIRSANOW: What strikes me is  
8 -- and I think Mr. Merisotis made mention of STEM  
9 programs -- 40 percent of all graduate STEM degrees,  
10 black STEM degrees, come from historically black  
11 colleges. That's stunning.

12 And also I mentioned that depending on  
13 male or female, as many as the top 30 historically  
14 black colleges produce the most graduates that go on  
15 to STEM programs, doctoral programs.

16 Why do we find among historically black  
17 colleges a much greater concentration of students in  
18 STEM programs?

19 DR. SULLIVAN: Why are there more at  
20 historically black colleges?

21 COMMISSIONER KIRSANOW: Right, in STEM  
22 programs. I understand, you know, in terms of faculty  
23 involvement and everything, but why STEM as opposed  
24 to, say, the softer sciences? Do you have any idea?

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1 DR. SULLIVAN: I would only be speculating  
2 here. So I really can't answer that precisely, but  
3 again, my view would be the commitment of the faculty.

4 Xavier University sends more black students to  
5 medical school than any other institution in the  
6 country, black or white. Why is that? Because Xavier  
7 has marginal resources. The commitment of the  
8 faculty.

9 Now, there is a Professor Carmichael there  
10 who has been there for years who is well known among  
11 pre-medical people who spends an inordinate amount of  
12 time with those students there. So he and others like  
13 him at that institution are really credited for the  
14 success of that university.

15 It's not that they have more resources.  
16 In fact, they have less, but so far as the STEM  
17 program I really could not answer that.

18 MR. MERISOTIS: Another reason, I think,  
19 is that the majority of historically black colleges  
20 and universities are generally open access  
21 institutions, and what that suggests is that they're  
22 more market responsive, that is, that they're  
23 responding to the need of the community so that  
24 students come in and they say, "Okay. What can we do

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1 with these students to help them best serve this  
2 community, you know, the City of Norfolk, for  
3 example?" or what have you, and the key is to get them  
4 into the STEM fields because that's what that work  
5 force needs.

6 And as open enrollment institutions,  
7 you've got that opportunity. In other words, they are  
8 less rigid in their structures than other institutions  
9 might be.

10 Another example, by the way, that I wanted  
11 to mention outside of STEM that HBCUs get under  
12 credited for is the significant proportion of African  
13 American teachers in this country that are educated at  
14 HBCUs. Almost half of all African American teachers  
15 in our schools today were educated in an HBCU, and  
16 it's a stunning statistic that has never been  
17 adequately discussed in the debate about how do we  
18 narrow the gap at the K-12 level between a proportion  
19 of students of color and a proportion of teachers of  
20 color in our K-12 classrooms.

21 Certainly one of the answers has to be  
22 investment in HBCUs as a key pathway to success in  
23 educating teachers of color.

24 COMMISSIONER KIRSANOW: There have been a

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1 number of articles suggesting that at historically  
2 white colleges, for example, lack of interaction  
3 between black students and faculty is one of the  
4 reasons why black students don't go on to postgraduate  
5 programs and become professors, and so forth, and I  
6 think you indicated that there was much more  
7 interaction. Dr. Sullivan had indicated that.

8 But aside from that, another kind of  
9 subset, there's this dearth of black male  
10 undergraduates at white institutions. At some  
11 institutions 80 percent of the black student  
12 population is female, sometimes more than that, but at  
13 historically black colleges that figure is -- well, I  
14 don't know what the exact figure is. I know what the  
15 percentage is, but it seems to me to be much more --  
16 there's more parity.

17 Number one, why is that?

18 And, number two, again, with respect to  
19 STEM, there is a disproportionate number of black  
20 males in STEM programs at historically black colleges.

21 That's true in other institutions anyway, but it's  
22 astonishing at historically black colleges.

23 Any ideas?

24 DR. RICHARDSON: Well, we'd be less than

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1 candid and honest with you if we did not tell you that  
2 the black male issue is one that is perplexing us all,  
3 whether or not we're black institutions or white  
4 institutions. You are absolutely correct in saying  
5 that some of the student bodies now at our majority  
6 institutions may be 80-20, but even at our institution  
7 now, 58-42 at Morgan. So there is a major issue in  
8 terms of that.

9 If you go further into that, you're also  
10 going to find that some of our graduation rates are  
11 negatively affected by our black male population.  
12 We're not doing as well with them as we have done with  
13 the females for whatever reason. Okay?

14 But going back to this whole issue of STEM  
15 and the productivity of our historically black  
16 colleges, you've heard just all around the table the  
17 words "culture." That's the operative term here.  
18 Many of our institutions, black or white, have a list  
19 of programs that are designated to help minorities.  
20 You go to any white institution and you're going to  
21 find this long list.

22 But there are an appendage of programs,  
23 individual programs. What you have at historically  
24 black colleges is a culture. It's a culture that runs

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1 through the entire university, whether or not you're  
2 talking about the students themselves, the faculty,  
3 the staff, the community around them and all, that  
4 culture that says, "If you are serious and want to do  
5 this, no matter what your standardized test scores  
6 are, you can do this. If you resolve to do it, you  
7 can do it and we're here to help you every step of the  
8 way."

9 And we present to them -- you heard the  
10 issue of modeling. We said we came from the same  
11 places you came from, and if we could do it, you can  
12 do it. That's a powerful statement to make to  
13 somebody that knows that they came from the same  
14 place.

15 But our black colleges are more than what  
16 they produce in and of themselves. They are a  
17 catalyst of change for all of higher education. Let  
18 me just run one example to you. In 1980, less than  
19 one percent of the graduates in engineering in the  
20 State of Maryland were African American. We had  
21 graduate programs at Hopkins, Naval Academy,  
22 University of Maryland, all of them, one percent.

23 Today 19 percent of the graduates in  
24 engineering in the State of Maryland are African

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1 American. What made the difference?

2 Morgan State University got an engineering  
3 program in 1984. If you look at the total numbers  
4 that are produced, in 1981 we were talking 20, 21  
5 graduates in engineering were African American. Today  
6 we're talking about 150. About 100 of them are  
7 produced at Morgan, but look what happened at the  
8 other institutions.

9 Before it was to say that we don't have  
10 enough blacks that can do engineering. Now they say,  
11 "Let's find those blacks and get them in our  
12 engineering schools."

13 So it's not just the absolute numbers we  
14 have produced. It's that by our example, we force the  
15 issue on other higher education institutions that says  
16 if you are committed and you want to do this, you can  
17 do it.

18 CHAIRMAN REYNOLDS: Commissioner Taylor.

19 COMMISSIONER TAYLOR: Thank you.

20 And I want to give you all a sense of how  
21 I come to this issue. Given time I will perhaps  
22 adverse -- when I was in the Virginia Attorney  
23 General's Office, we were actually defending a matter,  
24 and we successfully resolved a case regarding a global

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1 review of our institutions of higher education in  
2 Virginia relative to program duplication and other  
3 issues that I know you all are very familiar with.

4 And what I learned through that process  
5 and what astonished me and what I saw as the driver  
6 was that very issue, one of program duplication. So I  
7 followed with interest through the press what happened  
8 in Maryland.

9 And you know, at my undergraduate  
10 institution we have a very strong graduate base, and  
11 we do a very good job of insuring that when we want a  
12 particular program, we think that program would help  
13 us attract the folks we want to attract. We're pretty  
14 successful in Virginia at least at getting that  
15 program.

16 Candidly, when I did the research for the  
17 historical black schools in Virginia, Norfolk State  
18 where my folks went and VSU, then I started looking  
19 around the country at other historical black colleges.

20 I saw many times when there were opportunities for a  
21 program of excellence, a novel program, that first  
22 engineering program that would really attract all of  
23 the folks all the schools were clamoring for, that new  
24 nursing program that everyone in the state recognized

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1 was needed and would attract the best and brightest  
2 from around the state.

3 It was a rare occurrence when I found that  
4 program to be placed at an historical black college,  
5 and for me at least, I kept coming back to that as the  
6 driver of so many other things, and the discussion I  
7 saw was not one of pretext in terms of people having  
8 an adversarial racial motive in the public hearings,  
9 but one of pure, raw economics in competition. They  
10 would say, "Well, this school has a better  
11 infrastructure. So it makes sense if we're going to  
12 invest \$2 million here to put it at this school rather  
13 than this other school which would have a difficult  
14 time really maximizing state resources."

15 And I didn't see people of bad will, but I  
16 did say to myself, you know, it seems as if you're  
17 having the discussion which I can answer the question  
18 if you're going to point to who started from the best  
19 baseline.

20 That's a long way of saying is there any  
21 state that has done a good job in this regard relative  
22 to program duplication. I just see that as driving so  
23 many things when you put that center of excellence at  
24 a school and you create the market force of saying,

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1 "Wow, I didn't realize there were so many bright  
2 people out there of color that could actually serve as  
3 competent engineers."

4 It does serve to expand the pool in the  
5 other institutions. I don't know how to change it.  
6 Has anyone done it well? Is there any state out there  
7 that you can point to?

8 PROF. PIERCE: I can name Oklahoma, to  
9 some degree Kentucky with the Master's in public  
10 administration. If you went to Kentucky State  
11 University at night time, it's an historically black  
12 institution. You would think you were at a  
13 traditionally white institution campus. It's the only  
14 state supported institution that offers a Master's in  
15 public administration in close proximity to the state  
16 capital of Frankfort. So if you work for the state  
17 government and you want to get a Master's in public  
18 administration, which is a good degree to have if you  
19 want to advance yourself, you've got to go to an HBCU.

20 Now, what would happen if the University  
21 of Kentucky right up the road were to put in a  
22 Master's of public administration to duplicate that  
23 program in close proximity? It's basically apartheid  
24 all over again.

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1           That's why FAMU right across the street  
2 from Florida State University right now and they have  
3 two engineering duplicate programs. Well, who's going  
4 to get the most?

5           The State of Oklahoma, by placing the  
6 School of Physical Therapy at Langston University, an  
7 historical black university. I gave the commencement  
8 speech there once. Dr. Holloway invited me down.  
9 Most of the students who were graduating getting that  
10 degree in physical therapy were white. They didn't  
11 care they were at an HBCU. They were getting a degree  
12 which was much more valuable because the state  
13 insurance association recognized physical therapy as a  
14 coverable expense, and now they're going to make some  
15 money.

16                           (Laughter.)

17           PROF. PIERCE: But there are some states  
18 where dollars are tight now. Georgia is one of them.  
19 Maryland is one of them. Ohio is definitely one of  
20 them. Tennessee is definitely one of them. Dollars  
21 are tight in higher education, and you've been there.  
22 You've seen it.

23                           What was your Attorney General's name? I  
24 had to stare the guy down once.

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1 COMMISSIONER TAYLOR: Jim Petro?

2 PROF. PIERCE: No.

3 COMMISSIONER TAYLOR: In Virginia?

4 PROF. PIERCE: In Virginia.

5 COMMISSIONER TAYLOR: Was it Earley or  
6 Gilmore?

7 PROF. PIERCE: Earley, Earley. He didn't  
8 win, did he?

9 COMMISSIONER TAYLOR: Be careful. I was  
10 leading that team.

11 (Laughter.)

12 PROF. PIERCE: Yeah, yeah, yeah, stared  
13 him down. He didn't blink an eye, and there was a  
14 group of African American legislators who were calling  
15 for me, begging me to come down there. Virginia  
16 actually did a pretty decent job.

17 COMMISSIONER TAYLOR: Yeah, ultimately I  
18 think we did.

19 PROF. PIERCE: Yes, you did. You did.

20 Norfolk State is a very well run  
21 institution. I was there a little while ago  
22 recruiting students.

23 Again, it's where you have the states that  
24 are having economic troubles, and this goes back to

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1 answer your question, Madam Commissioner. The voice  
2 that you hear out, when they say, "Well, you shouldn't  
3 have this," it's competition. The dollars are tight,  
4 and when you look at the weak ones, you go, "Pick an  
5 HBCU." You can pick a Savannah State or Fort Valley  
6 or what's the other one that's a public one in  
7 Georgia, Albany State?

8 PARTICIPANTS: Albany State.

9 PROF. PIERCE: Albany State. You can  
10 pick on them. You can pick on Alabama A&M and Alabama  
11 State. You can pick on Tennessee State to some  
12 degree. You definitely can pick on University of  
13 Arkansas at Pine Bluff. You used to could pick on  
14 Jackson State. Jackson State is flourishing now  
15 because of the Ayes case.

16 But the action right now is at the state  
17 assembly, the legislature. That's where you're going  
18 to have your greatest threat or your greatest  
19 champions for HBCUs.

20 VICE CHAIRMAN THERNSTROM: Although you  
21 didn't answer the other part of my question, which is  
22 I couldn't remember exactly what the fight, at the  
23 time of the Fordice decision, but my strong impression  
24 was that within the civil rights community, the black

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1 community, there was also a significant split in view.

2 PROFESSOR PIERCE: Clearly, and there is.

3 I didn't know that until I got to OCR, and I found  
4 that out because you have your -- I'll just say it.  
5 The NAACP, particularly the legal defense and  
6 education funding fought the K-12 cases and then moved  
7 on to the other cases.

8 Let's be honest. We're not the champions  
9 of the Fordice case. They were not. They're my  
10 friends, but they were not because they --

11 VICE CHAIRMAN THERNSTROM: That's what I  
12 thought.

13 PROFESSOR PIERCE: -- see a difference of  
14 philosophy.

15 VICE CHAIRMAN THERNSTROM: Yes.

16 PROFESSOR PIERCE: We argued this, what,  
17 just last month down in New Orleans in a panel  
18 discussion. My good friend Teddy Shaw, who is now the  
19 executive director of the Legal Defense Fund. Yes, we  
20 do have our differences there because the thought, the  
21 concern is that -- and I think Justice Thomas said  
22 this and then aired his decision, his concurring  
23 opinion.

24 On one hand, we do not want to create

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1 HBCUs as, he said "enclaves", for the black community.

2 Yet, at the same time, Justice Thomas did say, to his  
3 credit, he did say it's wrong for the very  
4 institutions that have carried the burden of  
5 segregation, meaning the HBCUs, to now suffer the  
6 burden of desegregation.

7 So, if you want to desegregate or you want  
8 to remove these vestiges of the past practice of  
9 segregation, which the Supreme Court said you have to  
10 do, it's wrong to do it by shutting down or merging  
11 the HBCUs, which is still an argument -- to merge and  
12 shut down the HBCUs, and it's federal policy now on  
13 the table. Tell me if I'm wrong here. Unless you all  
14 changed it in my absence. Was that the Office for  
15 Civil Rights would strictly scrutinize any state  
16 effort to close or merge an historical black college  
17 or university in the desegregation process.

18 And as long as you have these outstanding  
19 Title VI violations, merging or closing HBCUs, a  
20 public HBCU, will be strictly scrutinized. And the  
21 reason why you have to say that is because we are  
22 realists here, and we know that state higher education  
23 dollars are tight, and there may be a time where  
24 public colleges may have to be merged or closed.

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1                   CHAIRMAN REYNOLDS:   Isn't there a train  
2 wreck coming down the road here?   I mean, you talk  
3 about the chase for the dollars and the fact that, in  
4 many state houses, many states are dealing with  
5 shrinking revenue sources.   A few overlays -- we have  
6 a social security crisis, we have an even larger  
7 Medicare crisis looming, and we have an aging  
8 population.   Aren't these financial constraints just  
9 going to grow in time?

10                   And then you look at the fact that both  
11 public and private HBCUs depend heavily on state and  
12 federal dollars, dollars that will be shrinking over  
13 time.   Is there any conversations amongst HBCUs to  
14 come up with a different funding model?

15                   DR. RICHARDSON:       Well, let me just  
16 respond.   I think the budget situation is one that we  
17 have to contend with, but it seems to me that in times  
18 of fiscal constraints, we have to look to the most  
19 efficient ways for delivering quality education.

20                   One of the most efficient ways is by  
21 having complementary systems of higher education,  
22 where the institutions constituting those systems --  
23 complement one another and do not duplicate one  
24 another.   I mean, there is a portion of it that, of

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1 course, has to be duplicated, and that's that core  
2 liberal arts part of it, but beyond that, there are  
3 ways of building strengths in institutions that  
4 complement one another.

5 And that's the whole notion about -- you  
6 determine those high-demand, unique programs that one  
7 state needs to build a kind of work force that it  
8 needs, and then you distribute that across the  
9 institutions in a way that, if someone wanted to get a  
10 quality program, the best in the state, they go to  
11 institutions A, B, and C, and not A through S. Or ten  
12 institutions as opposed to three, four institutions  
13 that are geographically dispersed throughout the  
14 state.

15 And so, in getting a complementary system,  
16 you get an efficient model for doing things. What we  
17 have done now is -- going to your issue in question --  
18 is we've created, during the latter part of the  
19 seventies and early eighties, began to act on the  
20 notion of a complementary system, doing away with the  
21 dual system of higher education.

22 But after we started those programs,  
23 engineering at Morgan was one of them, then we began  
24 -- we didn't, first of all, fully invest in those so

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1 that they became the only and the best of the kind  
2 that you could find, and before they invested in  
3 those, they then duplicated them at the nearby white  
4 institution and built them bigger and better with  
5 bigger facilities.

6 You can't do that. That argues against  
7 efficiency in higher education. So one solution to  
8 this whole notion of budget constraint is greater  
9 efficiency in the way we distribute programs across  
10 the universe of institutions, which is the whole issue  
11 of program duplication and non-duplication.

12 CHAIRMAN REYNOLDS: Commissioner Yaki has  
13 been quite patient. Commissioner Yaki?

14 COMMISSIONER YAKI: Yes. Thank you very  
15 much, Mr. Chair, and thank you very much, this very  
16 distinguished panel. My question kind of goes at the  
17 whole issue of duplication and resource allocation. I  
18 guess I would just like to -- here's more elaboration  
19 about -- in the -- my experience was with the UC  
20 system in California, which is, as you probably know,  
21 is oversubscribed, people being turned away for two  
22 years and going to community colleges, what have you.

23 Now, they are all talking about how we'll  
24 designate different campuses to do different kinds of

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1 things rather than have everyone have engineering,  
2 everyone have architecture, and in -- for the --  
3 hasn't there been, one, any discussion amongst the  
4 HBCs about becoming -- trying to become the  
5 specialists in one or the other kind of area amongst  
6 the HBCs as a pool -- the pool within the state,  
7 number one, and then, number two, how does the  
8 allocation process work its way out, at a state level,  
9 in terms of does a state just consciously say, well,  
10 we're going to put in a new engineering school, and we  
11 are going to put it right here, and oh, it just  
12 happens to be across the road from North Carolina  
13 Central, or something like that.

14 Is that basically what's going on right  
15 now, and if so, is there -- are there Title VI  
16 implications that we should be looking at or  
17 encouraging OCR to look at?

18 PROFESSOR PIERCE: I'll answer that latter  
19 -- I would defer to Dr. Richardson or anyone else for  
20 the first one in terms of discussion amongst the  
21 HBCUs. Dr. Richardson with respect to collaborations  
22 for a particular specialty and things of that nature.

23 But as far as the latter -- and again, I  
24 point to the general assemblies and the political

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1 nature of it. When the general assembly for the state  
2 of Georgia is in session, come up with this budget on  
3 higher education, and it is being -- and members of  
4 the leaders of these committees are being lobbied by  
5 the powerful University of Georgia, or Georgia Tech,  
6 they don't have much competition with the folks who  
7 support Albany State and Fort Valley, the public  
8 Historically Black Colleges and Universities in that  
9 state.

10 So if the economic predictors say that the  
11 state of Georgia would do well to increase more  
12 mechanical engineers, to produce more mechanical  
13 engineers, Georgia Tech is going to say, well, we can  
14 do that. Or what about the good folks up at Savannah,  
15 across the street from Savannah State University,  
16 let's put a mechanical engineering program up there.

17 Savannah State and Albany, they get left  
18 out of those conversations. That's just the way it  
19 is, sir. They just get left out of those  
20 conversations. It's just that. Now, does that have  
21 Title VI implications? Absolutely.

22 The Adams case? *Adams v. Richardson*,  
23 *Adams v. Caliafano*? Both cited program duplication as  
24 a remnant of apartheid, as a remnant of segregation,

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1 and violated federal policy to -- in support of equal  
2 protection for people of color attending publicly  
3 supported institutions of higher education.

4 The Supreme Court said the same thing in  
5 the Ayers decision. Ayers, of course, was at a lower  
6 level, a circuit court level, but it's the same thing  
7 at the Supreme Court level. And the United States  
8 Department of Education's Office for Civil Rights  
9 incorporated what was said in Adams and in Ayers into  
10 federal policy and said that program duplication is a  
11 no-no because it supports segregation; it's a  
12 violation of Title VI.

13 It is indicative of a violation of Title  
14 VI. Clear.

15 COMMISSIONER YAKI: And is the enforcement  
16 going on?

17 PROFESSOR PIERCE: No.

18 COMMISSIONER YAKI: That's my question.

19 PROFESSOR PIERCE: No, no. And that's a  
20 problem.

21 DR. RICHARDSON: Let me just say more  
22 about why is it indicative of not enforcing it and the  
23 fact that it is a very -- has very negative impact on  
24 the desegregation of higher education.

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1                   During the early seventies, Morgan State  
2 University, for example, was the institution that was  
3 unique in that it had many of the graduate programs in  
4 the Baltimore area, and it was the only institution,  
5 and notwithstanding the -- of the required resources,  
6 it was the only institution offering several  
7 programs.

8                   As a result, slightly over fifty percent  
9 of the students in the graduate programs were white.  
10 Ten years later, after all the duplication and the  
11 refusal to invest in it, that same graduate program is  
12 overwhelmingly black. This is raising the issue on  
13 the MBA.

14                   Now, that is deliberate. I mean, because  
15 otherwise, one would not support the development of  
16 all of these programs without having invested here.  
17 It is a matter of institutional ambition rather than  
18 state need.

19                   And you've got to start, when you are  
20 talking about a higher education system, you talk  
21 about, first, with state needs. What are the work  
22 force needs? What are the needs in terms of the  
23 larger community? And we had distributed programs  
24 based on that across the universe of institutions.

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1                   Now, we are coming back without having  
2 properly financed and funded those. We are building  
3 them next door. It's institutional ambition now  
4 taking priority over the state need and the state  
5 commitment to this.

6                   COMMISSIONER YAKI: I mean, have you  
7 contacted OCR? I mean, what are the responses that  
8 you are getting when you talk about lack of  
9 enforcement? What is it that --

10                  DR. RICHARDSON: Well, I'll just comment  
11 in terms of Maryland on this, and then Raymond can  
12 also. But you also raise the issue, and I'll come  
13 back to this, you raise the issue of have the black  
14 colleges got together to talk about how they would  
15 distribute areas of strength across it.

16                  The issue is not within the black college  
17 community. All of them are under-resourced. It is a  
18 disparity between the black colleges and the white  
19 colleges, in terms of the resource base. So it's not  
20 an issue within the black college community; it's  
21 within the total higher education community.

22                  Now, OCR is in the process of reviewing or  
23 will be reviewing what has taken place in Maryland,  
24 what -- where that will lead, I have no idea what

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1 their findings will be. What I am simply saying here  
2 is here you had an institution that, when it did  
3 operate, no matter the under-resourcing of that  
4 institution, it still had a very large white  
5 population at the graduate level in particular and  
6 reasonable representation at the undergraduate.

7           Once you started the duplication without  
8 having developed these programs to their best and the  
9 largest, then that white population moved away. To  
10 me, we are worse off now on the issue of desegregation  
11 than we were before when it comes to looking at the  
12 black institution.

13           Again, we put so much focus on whether or  
14 not our white institutions now have black students as  
15 opposed to whether or not we have now given students a  
16 choice to go to black institutions or white  
17 institutions without having to sacrifice quality of  
18 life on the campus or quality of program. And that's  
19 what the final measure has to be.

20           COMMISSIONER YAKI: So one really quick  
21 question in follow-up. And this is just my own  
22 curiosity. Last month, we had a briefing from my old  
23 friend and nemesis, Ward Connerly, on the census, and  
24 I think what has happened to the UC system in terms of

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1 African-American students is, I think, a national  
2 shame.

3           The question is I've been wondering where  
4 they've been going, and I'm just wondering if there  
5 has been any up-tick at all in HBCU enrollment from  
6 students who are now no longer -- who have been no  
7 longer getting into the bigger institutions because of  
8 challenges by this group or that group to affirmative  
9 action policies and missions policies, that kind of  
10 thing.

11           PROFESSOR PIERCE: I don't know. I do  
12 recall, when Mr. Connerly was making his advances,  
13 that the argument that he and others were making was  
14 that those students, particularly those students of  
15 color, the African-American students, would not be  
16 locked out of the UC system, they would drop down to  
17 the UC Richmonds and those, the other colleges and  
18 universities.

19           Whether or not that has translated into an  
20 increase in student enrollment at the HBCUs, I would  
21 not know that. I wouldn't think so because you are  
22 going across, you know, the plains to get all the way  
23 to, you know, the populations where you find our  
24 HBCUs, but if I could respond to your first question

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1 about response to OCR.

2 I mean, I'm still a member of the club  
3 with Ken and Jerry, so I'm not going to mercifully  
4 beat up on our agency here, and I will say this also.

5 The Office for Civil Rights and the Department of  
6 Education, as the chairman and the director know, has  
7 limited resources for huge demand.

8 I can remember when I got there was -- and  
9 you all I'm sure have faced the same thing -- well,  
10 you know, there is a demand for Title IX, women  
11 athletics. The higher education, not just in  
12 participation but in scholarships. I mean, with the  
13 rising rate of students in this nation who do not have  
14 English as their primary language, as their first  
15 language. We've got to do something about that.

16 The disability issue continues. We still  
17 have colleges and K-12 institutes and schools  
18 throughout this country that have doorways that are 17  
19 inches wide, and wheelchairs are 24 inches wide. I  
20 mean, there was plenty of work, and where are you  
21 going to put your resources?

22 So, I have that sympathy, you know, for  
23 the Office for Civil Rights. But what is going on is,  
24 from what I understand, and again, I'm not there, but

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1 what is going on is reports. Reports are coming in  
2 from the state, so this is what we're doing, and OCR,  
3 I guess, is they are reading the reports, so I guess  
4 monitoring is going on.

5 But when you have a clear violation, when  
6 you see that a doctoral program and education is being  
7 located across the street from Morgan State. Or you  
8 are taking a public community college and beefing up a  
9 business school across the street from Savannah State.

10 Atlanta commissioner, you know Savannah State. It  
11 sits on beautiful land.

12 VICE CHAIRMAN THERNSTROM: Gorgeous.

13 PROFESSOR PIERCE: People want that land.

14 Let's just be honest. That's right up the road from  
15 Hilton Head. Down the road from Hilton Head, and we  
16 know the history of Hilton Head, so let's just be  
17 honest with what's going on there.

18 VICE CHAIRMAN THERNSTROM: And they use  
19 the waterfront, of course, for educational purposes.

20 PROFESSOR PIERCE: Two HBCUs that have  
21 that type of view. That's Hampton and Savannah State,  
22 and Savannah State is just a sitting duck, and I just  
23 believe that is going to happen.

24 VICE CHAIRMAN THERNSTROM: Oh, that's so

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1 interesting.

2 PROFESSOR PIERCE: It's going to happen  
3 one day. If something doesn't happen, it is the  
4 placement of programs in close proximity to HBCUs in  
5 direct violation of established federal civil rights  
6 policy and case law that is a major issue, and there  
7 is no enforcement of that issue. There just clearly  
8 is no enforcement.

9 And one other thing. When Dr. Sullivan  
10 and Dr. Richardson talk about these large numbers, and  
11 Commissioner Kirsanow said the same thing in terms of  
12 the success for HBCUs in producing students, keep in  
13 mind, it may be an historical black college or  
14 university, but they are still falling under the --  
15 there are no historically black accreditation  
16 associations.

17 So it's the same disciplines that Yale  
18 School of Medicine standards have to meet are the same  
19 for the American Medical Association. I have the same  
20 for the American Bar Association that my friends up  
21 the road in Duke have and Chapel Hill.

22 And you are talking about the successes in  
23 terms of desegregation and integration? I have a law  
24 school now that is fifty percent white. Fifty percent

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1 African-American. Yet, throughout the -- and that is  
2 a success story for desegregation. That is a success  
3 story, but throughout the history of this law school,  
4 there have been repeated attempts to close it down and  
5 move it to Charlotte as it has become more and more  
6 successful.

7 CHAIRMAN REYNOLDS: Dr. Sullivan.

8 DR. SULLIVAN: Mr. Chairman, if I could  
9 make this statement. I certainly agree with the  
10 discussion that has been underway here, but I would  
11 like to voice this concern, and I know the health  
12 profession better than the rest of higher education.  
13 We, as a nation, are under-investing in education, and  
14 what I see happening now is competition for the scarce  
15 resources that are made available.

16 And I and a lot of others in the higher  
17 education community and broader are very concerned  
18 about that. Specifically, we have a shortage of  
19 nurses in this country. That shortage has been for a  
20 number of years, but there is no effort underway to  
21 respond to that.

22 We have a pending shortage of physicians.  
23 The Association of the American Medical Colleges put  
24 out a white paper only about three months ago

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1 proposing there should be a thirty percent increase in  
2 the percentage of physicians trained in this country.

3 We graduate 16,000 physicians from the nation's  
4 medical schools, but there are 22,000 physicians who  
5 start post-graduate training every year.

6 These are foreign medical graduates who  
7 fill those positions. So it means that we are not  
8 training enough physicians to fill the post-graduate  
9 training physicians. It also raises questions for us  
10 as the most affluent nation on earth. Many of these  
11 foreign graduates come from poor countries.

12 I was in Malawi last November and learned  
13 that of 11 million people in that country, they have  
14 92 physicians. There are more Malawian physicians in  
15 the United Kingdom and in Canada and in the United  
16 States than in Malawi. So my concern, which is  
17 perhaps a little beyond this discussion is the fact  
18 that we, as a nation, really are compromising our  
19 future.

20 We are not training enough engineers, and  
21 we go right down the list. So, clearly, we want to  
22 see equitable distribution of the resources that are  
23 available, but in a larger sense, we need to have more  
24 resources because these, if we don't, this lack of

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1 investment in our nation's future really is going to  
2 compromise our future in a great extent, so I simply  
3 wanted to make that comment that what we need, as a  
4 nation, going beyond the issue of equity, is really  
5 more investment in our future.

6 CHAIRMAN REYNOLDS: Okay, just -- okay,  
7 last question from Commissioner Kirsanow, provided  
8 that Commissioner Braceras doesn't have a question  
9 since you haven't asked a question.

10 VICE CHAIRMAN THERNSTROM: I think Dr. Kim  
11 had her hand raised.

12 COMMISSIONER KIRSANOW: Let me ask Dr. Kim  
13 a question. Maybe she will just follow up on that.

14 VICE CHAIRMAN THERNSTROM: Okay.

15 COMMISSIONER KIRSANOW: Actually, I am  
16 going to ask a couple of questions. One specific, one  
17 in general. The specific one to Dr. Kim is I think  
18 you indicated that early earnings rates between HBCU  
19 grads and traditional white college grads are  
20 comparable. Is there any -- I think there is --  
21 Professor Sorenzano, I think his name is, who says  
22 that predictive indicators would indicate that grads  
23 from historically black colleges make 38% more money  
24 than you would think they would make as compared to

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1 their white college graduate comparatives.

2 Is there any data with respect to  
3 longitudinally? Further down the road, how HBCU grads  
4 fare in terms of earnings?

5 PROFESSOR KIM: This is a very good  
6 question. I have just finished a study on career  
7 earnings. We don't have data to track graduates'  
8 earning beyond nine years. We should collect some  
9 data beyond the nine-year follow-up. Without data,  
10 there is not much we can explain.

11 CHAIRMAN REYNOLDS: Okay. You wanted to  
12 say something, also.

13 PROFESSOR KIM: Thank you. It appears the  
14 panel and commissioners have several questions related  
15 to STEM graduates and high productivity of HBCU  
16 graduates. I will speculate and add a comment based  
17 on my data analysis.

18 The role models at HBCUs are critical.  
19 African American TAs and professors in engineering,  
20 math, and science at HBCUs provide special role  
21 models. In addition, based on my study, a much higher  
22 percentage of African-American students (about 1.5  
23 times) got involved in professors' research during  
24 their undergraduate years.

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1           This indicates not only the importance of  
2 involvement and encouragement by faculty members for  
3 black students, but also suggest that white  
4 institutions may not include these African-American  
5 students in the scientific inquiry process as much as  
6 they should.

7           The HBCU effectiveness issue is not  
8 necessarily answered by what and how well HBCUs do.  
9 It is also related to what and how white institutions  
10 do for their minority students.

11           Students who attend a particular  
12 institution experience a unique campus culture, for  
13 example, black-dominant culture of white-dominant  
14 culture. The culture can also be integrated into  
15 classroom interaction between professors and students.

16           I have not found good studies connecting power,  
17 culture, and teaching techniques. I think that  
18 dominant culture on campus and the dynamics of  
19 inclusiveness and exclusiveness may partially explain  
20 the effectiveness and productivity of HBCUs.

21           CHAIRMAN REYNOLDS: Okay. Well, one --

22           COMMISSIONER KIRSANOW: One more, I had a  
23 general listed question

24           CHAIRMAN REYNOLDS: You're killing me,

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1 you're killing me.

2 COMMISSIONER KIRSANOW: I'd like to answer  
3 Michael's question with respect of black students went  
4 after prop 209 and went to UC Riverside, UC Davis, UC  
5 San Diego, and the graduation rates actually went up.

6 But the general question is -- and I suspect I know  
7 the answer to this, and it very often comes back to  
8 mind, but for anyone who wants to, or all of you, if  
9 there -- if you can identify two of the principle  
10 impediments or threats to continued vitality of HBCUs,  
11 and on the other hand, two policy initiatives that you  
12 think may be recommended to enhance the continued  
13 vitality or viability of HBCUs.

14 DR. RICHARDSON: Well, let me respond.  
15 One is, I think is, moving back to a concept of  
16 complementarity in our institutions. That is the non-  
17 duplication of the programs. The second is continued  
18 pursuing the policy of enhancement of black colleges  
19 to the point of comparability imperative with their  
20 white counterparts. I think they are absolutely  
21 important.

22 And the third is an effort that is not new  
23 to us in the black colleges, but trying to get that  
24 greater investment in our black colleges that Lou

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1 Sullivan just spoke about. He was speaking about it  
2 in the macro, in terms of all of higher education, but  
3 certainly when it comes to historically black  
4 colleges.

5 Many of the research grants and whatnot  
6 that come from our federal government, we all know  
7 that if you are going to build a viable, strong  
8 graduate program with research opportunities for  
9 students, undergraduate and graduate, much of the  
10 resources of that comes from the federal government.

11 So, increasing the investment from our  
12 federal government, making our state colleges and  
13 universities, historically black colleges and  
14 universities, more privy to those dollars.

15 The issue that was mentioned over here by  
16 Commissioner Taylor here, when he said oftentimes  
17 those decisions are based on whether or not there is  
18 an infrastructure. Well, if you never build the  
19 infrastructure, it will never be there, so it's a  
20 vicious circle there, and it continues to go on and  
21 on.

22 So, we've got to have something special --  
23 for that investment. And look in terms of the return  
24 on that investment in terms of these higher numbers in

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1 the STEM areas, in terms of the numbers of students  
2 that are then going from a minority group,  
3 particularly African-American, in the cases of the  
4 historically black colleges.

5 So, those three things, I would say, would  
6 be very, very important in terms of the increased  
7 viability of our institutes.

8 PROFESSOR PIERCE: Greatest threat?  
9 Program duplication. The greatest things you could do  
10 to support the vitality of HBCUs? The agency that is  
11 created to address federal civil rights policy issues,  
12 the Office for Civil Rights, in this case, Department  
13 of Education, were it to enforce the federal civil  
14 rights laws with respect to HBCUs, particularly those  
15 seven states now that have outstanding Title VI  
16 violations.

17 There are seven states right now that have  
18 been found in violation of Title VI of the 1964 civil  
19 rights act, one by Clarence Thomas in 1982, the state  
20 of Ohio, they are still in outstanding violation.  
21 They have not been corrected.

22 If those seven states were addressed, I  
23 would think that nationally, states would look to that  
24 and say, okay, let's look at what we are doing in

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1 terms of duplicating programs. And the reason why  
2 Virginia was the last on the list of those seven is  
3 because you have the least problems.

4 The first one on the list was Ohio.  
5 Second was Florida, and then Maryland.

6 MR. MERISOTIS: I think the two biggest  
7 threats are clearly the declining availability of  
8 financial resources. It's got to be on the list. The  
9 -- as is institutions are serving increasingly  
10 educationally and economically disadvantaged students,  
11 they are having to fight this battle with one hand  
12 tied behind their back.

13 The second is the broader cultural  
14 problem. Historically black colleges are the only  
15 group of institutions in this country whose right to  
16 exist is questioned daily by members of the public,  
17 and it is very difficult, as institutions, to continue  
18 to function when your right to exist is questioned.

19 Nobody questions the right for the  
20 University of California to exist, for community  
21 colleges, what have you, but HBCUs are the one group  
22 whose right to exist is challenged, and that's a  
23 serious problem for HBCUs.

24 Too biggest things we can do, particularly

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1 in terms of federal policy. Significant increase in  
2 support for Title III and the higher education act,  
3 strengthening institutions. That has been a big  
4 aspect of the success that we've seen in historically  
5 black colleges and universities in the last two  
6 decades, and that needs significant strengthening.

7 And secondly, increasing financial aid,  
8 particularly grant aid for students. Financial aid is  
9 the driver of so much of the success of what happens  
10 at these institutions. These institutions serve  
11 students that are about twice as economically  
12 disadvantaged as students in other institutions.

13 CHAIRMAN REYNOLDS: Okay. We could  
14 continue this conversation, obviously, for a few days,  
15 but unfortunately, we have to finish up some business  
16 that we didn't complete yesterday. I would like to  
17 thank all of the panelists. Your contributions were  
18 greatly appreciated. So, let's take a five-minute  
19 break, a quick five-minute break, and then resume.

20 (Whereupon, the matter went off the record  
21 briefly.)

22 CHAIRMAN REYNOLDS: Okay, we are going to  
23 -- hold on, here. Okay, we are going to complete the  
24 work that we didn't complete yesterday. Commissioner

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1 Yaki, I've been looking for a reason to use the gavel  
2 for a while, but I think you are about to give it to  
3 me, so I just --

4 (Laughter.)

5 CHAIRMAN REYNOLDS: Okay, folks, if we  
6 want to get out of here at a decent hour, we are going  
7 to have to be efficient. On December 16, 2005, the  
8 commission held a briefing on disparity studies as  
9 evidence of discrimination in federal contracting.

10 The event was the commission's fact-  
11 finding effort to evaluate the research that the  
12 government relies on to form the foundation of  
13 affirmative action and federal procurement.

14 On March 23, 2006, the staff director sent  
15 you, via email, a draft of the disparity studies  
16 report as directed by the commission staff then  
17 prepared the report, compiling witness statements, a  
18 summary of the discussion, and proposed findings and  
19 recommendations.

20 This report was distributed in draft forms  
21 to the commissioners on March 30, 2006. The March 30  
22 version included changes requested after review by Dr.  
23 Sitrow and Ayres. May I have a motion to approve the  
24 publication of the disparities briefing report?

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1 COMMISSIONER YAKI: So move.

2 CHAIRMAN REYNOLDS: Is there a second?

3 COMMISSIONER YAKI: Second.

4 CHAIRMAN REYNOLDS: Discussion.

5 COMMISSIONER KIRSANOW: Did you move to  
6 second yourself?

7 COMMISSIONER YAKI: Yes.

8 (Laughter.)

9 COMMISSIONER YAKI: Well, he was mad at me  
10 for talking, so I thought I would just get it going.

11 (Laughter.)

12 CHAIRMAN REYNOLDS: Discussion.

13 COMMISSIONER KIRSANOW: Mr. Chair, I just  
14 had a couple of questions. First of all, going to  
15 page 79, finding number three under National Disparity  
16 Studies, it says the three national studies of  
17 disparities --

18 CHAIRMAN REYNOLDS: I'm sorry. I'm sorry.

19 COMMISSIONER KIRSANOW: Page 79.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER KIRSANOW: Finding three.

22 CHAIRMAN REYNOLDS: Finding three?

23 COMMISSIONER KIRSANOW: Yes, under  
24 National Disparity Studies. At least, that's what I

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1 have on my draft.

2 CHAIRMAN REYNOLDS: Okay. I have a  
3 different pagination. Okay, go ahead.

4 COMMISSIONER KIRSANOW: Okay. It says --  
5 let's see what it says. Three national studies of  
6 disparities Department of Justice 1996 appendix to its  
7 guidance, and the Urban Institutes' meta-analysis. The  
8 Department of Commerce's benchmark studies are  
9 outdated and inappropriate, and I'm not sure that  
10 that's merited by what was adduced at the hearing. In  
11 terms of the Department of Commerce.

12 We had conflicting testimony, I think, on  
13 that issue, and Dr. -- what's his name, Ayres, I  
14 think --

15 COMMISSIONER BRACERAS: Ayres.

16 COMMISSIONER KIRSANOW: Ayres said --

17 COMMISSIONER YAKI: My classmate.

18 COMMISSIONER KIRSANOW: -- that the  
19 Department of Commerce's study is -- needs to be  
20 updated but isn't necessarily outdated. He said that  
21 they had changed their metrics that they had used, so  
22 it -- to a capacity study, so it seems to me that it  
23 is something that is maybe evergreen.

24 So, but I'm not sure it's outdated. I

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1 would move that we change outdated to updated -- or  
2 should be updated. That the Department of Commerce  
3 study should be updated.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER KIRSANOW: I'm not sure it's  
6 inappropriate either.

7 CHAIRMAN REYNOLDS: Okay, so this is in  
8 the form of a motion, and I'll second it. Discussion;  
9 does anyone disagree?

10 VICE CHAIRMAN THERNSTROM: I don't have a  
11 problem with that, I just don't know what the  
12 difference between being -- updating is.

13 CHAIRMAN REYNOLDS: If you don't disagree  
14 --

15 COMMISSIONER BRACERAS: So it should be  
16 updated to serve?

17 COMMISSIONER KIRSANOW: Yes, updated --  
18 wait -- to serve as basis for federal policy or agency  
19 action.

20 COMMISSIONER BRACERAS: Okay.

21 COMMISSIONER KIRSANOW: Okay.

22 MR. MARCUS: Just for clarification.

23 COMMISSIONER KIRSANOW: Strike  
24 inappropriate.

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1                   Mr. MARCUS: This is for all three of the  
2 studies --

3                   COMMISSIONER KIRSANOW: No, just  
4 Department of Commerce. Just Department of Commerce.  
5 So the way it would work is -- because the other ones,  
6 there is support for it in the testimony.

7                   COMMISSIONER BRACERAS: Oh, okay.

8                   COMMISSIONER KIRSANOW: So it would read,  
9 I guess, let me think. The three national studies of  
10 disparities in Department of Justice 1996 appendix to  
11 its guidance, and the Urban Institutes' meta-analysis  
12 are outdated and inappropriate now to serve as a  
13 basis. The Department of Commerce's benchmark studies  
14 need to be updated to serve as a basis for federal  
15 policy. That's somewhat awkward and cumbersome, but  
16 that's --

17                  VICE CHAIRMAN THERNSTROM: We don't need  
18 the second to serve. Just need to be updated period.

19                  CHAIRMAN REYNOLDS: Yes.

20                  COMMISSIONER KIRSANOW: That's fine.

21                  CHAIRMAN REYNOLDS: Anything else?

22                  COMMISSIONER KIRSANOW: Yes.

23                  VICE CHAIR THERNSTROM: so the --

24                  COMMISSIONER YAKI: And I just wanted, on

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1 that particular motion, at least there is also a  
2 conflict on the urban institute meta-analysis,  
3 Constance Sitrow actually did say the study approach  
4 is useful and needs to be updated but did not say it  
5 was inappropriate.

6 COMMISSIONER BRACERAS: Well, why don't we  
7 just leave it as is and say that all three should be  
8 updated.

9 COMMISSIONER YAKI: I'd prefer that.

10 COMMISSIONER BRACERAS: I don't think it's  
11 contradictory -

12 CHAIRMAN REYNOLDS: well

13 COMMISSIONER KIRSANOW: No, it's not.

14 CHAIRMAN REYNOLDS: I guess, my concern is  
15 that -- how old is this data? How does this data  
16 change the whole?

17 COMMISSIONER KIRSANOW: Five years for  
18 Department of Commerce has been -- was the testimony.  
19 It's five years old.

20 CHAIRMAN REYNOLDS: But we want to change  
21 -- if I understand Commissioner Yaki, he wants to  
22 change it for each of the three studies. So basically  
23 to say that the three needs to be updated.

24 COMMISSIONER YAKI: Well, I just wanted to

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1 point out that Constance Sitrow, who is the -- I would  
2 say the independent person on the panel, did make the  
3 conclusion that the urban institute meta-analysis may  
4 have -- may be a little outdated, but the study  
5 approach was useful and could continue to be useful  
6 with continued new data. So I didn't want that to say  
7 it was inappropriate either.

8 COMMISSIONER BRACERAS: Actually, this is  
9 nit-picky, but to say it should be updated is more  
10 than -- of a recommendation than a finding. Right?  
11 To say that it is outdated is to state a fact. Once  
12 you start saying something should be done, it's not a  
13 finding anymore.

14 COMMISSIONER KIRSANOW: That's true.

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

16 VICE CHAIRMAN THERNSTROM: Aside from the  
17 fact that to say something -- that something is  
18 outdated is to say it needs updated, and the separate  
19 point here, inappropriate to serve as a basis for  
20 federal policy -- that is a finding that is really  
21 separate from the issue of needing updating.

22 I mean, if it is literally inappropriate  
23 for the use that it is made or if they are  
24 inappropriate for the uses that are made, that is a

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1 separate point. It is not simply covered by the  
2 outdated.

3 COMMISSIONER KIRSANOW: I'm not sure it's  
4 inappropriate, though. I don't know that we deduced  
5 any evidence that they are inappropriate --

6 VICE CHAIRMAN THERNSTROM: Whatever. They  
7 are two separate points here. They can't be put under  
8 the same -- under the umbrella of the same word.

9 CHAIRMAN REYNOLDS: At least one of the  
10 panelists pointed out what he felt were significant  
11 flaws in each of the studies. He pointed out  
12 strengths in the Commerce study, but he also pointed  
13 out certain flaws.

14 COMMISSIONER KIRSANOW: I agree with you.  
15 I think George LaNue did that. My concern is this.  
16 If we are making findings, and I know we are not an  
17 adjudicatory agency, I'm not sure that we make  
18 credibility determinations. I'm not sure to what  
19 extent we credit one person over another person when  
20 the data, the testimony that's given, is based to a  
21 large extent on opinion. We've got conflicting  
22 opinion.

23 CHAIRMAN REYNOLDS: Well, I --

24 COMMISSIONER BRACERAS: May I speak to

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1 that? As a procedural matter, I think that is  
2 incorrect. When we have a briefing, we strive to  
3 bring in people of different perspectives, and I would  
4 hope that the testimony would not be 100% consistent  
5 across our panelists.

6 So if we are going to be in the business  
7 of making findings at all, certainly part of our job  
8 in making the findings is to credit the testimony of  
9 one witness over another. There may be areas where  
10 there is unanimity among the panelists, and that's  
11 even stronger support for a finding.

12 But I think it is perfectly alright if we  
13 democratically vote to do so to credit the testimony  
14 of one witness, even if it's in complete disagreement  
15 with the testimony of the rest of the panel. That is  
16 our choice as a deliberative body.

17 CHAIRMAN REYNOLDS: Yes, I agree, and to  
18 add to that, I guess I'm just a little hypothetical.  
19 I mean you know, David Duke is sitting down here  
20 giving me his views on civil rights, I think that we  
21 have an obligation to give his testimony whatever  
22 credit it deserves --

23 COMMISSIONER YAKI: And then laugh  
24 privately.

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1 CHAIRMAN REYNOLDS: -- and I suspect that  
2 the other members of the panel, I would probably give  
3 more weight to what they had to say.

4 COMMISSIONER KIRSANOW: I agree with you,  
5 except that that's in apposite. There is a  
6 fundamental quality of difference between expression  
7 of opinion and expression of fact. We are making  
8 findings of fact. If somebody says, if one individual  
9 says there are 15 apples, and nobody contradicts that,  
10 and then we come up and say there are not 15 apples,  
11 then that's different.

12 Now, if somebody says, I think that it is  
13 a nice day, and somebody else says it's not a nice  
14 day, then we can credit whomever we want because it's  
15 an expression of opinion.

16 COMMISSIONER BRACERAS: Right, but the  
17 expression of whether or not something is appropriate  
18 or inappropriate is a subjective determination much  
19 more akin to your second example. So, in other words,  
20 if they are not saying there are 15 apples or 12  
21 apples, that's not the debate. The question of  
22 whether or not a particular study is an appropriate --  
23 is an appropriate study to be used by the federal  
24 government is a subjective determination.

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1                   COMMISSIONER KIRSANOW:     You're exactly  
2 right, but then I go back to my initial premise, and  
3 that is I didn't see any evidence adduced in the  
4 record about the appropriateness or inappropriateness  
5 of the Department of Commerce study, and that's why I  
6 think --

7                   COMMISSIONER BRACERAS:     Did George LaNue  
8 speak to that?

9                   COMMISSIONER KIRSANOW:     I think he did. I  
10 think everybody spoke to --

11                  COMMISSIONER BRACERAS:     Okay, but did he  
12 say --

13                  COMMISSIONER KIRSANOW:     -- the Department  
14 of Commerce study, but nobody said it was  
15 inappropriate.

16                  COMMISSIONER BRACERAS:     I don't think you  
17 -- first of all, that's another issue. I mean, I  
18 don't think you need to use the exact word. If the  
19 essence of George LaNue's testimony was that it's  
20 inappropriate, the fact, you know, whether or not he  
21 said that buzzword is irrelevant. We all know what  
22 inappropriate means --

23                  COMMISSIONER YAKI:         We abuse the word  
24 outdated --

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1                   COMMISSIONER BRACERAS: I guess my concern  
2 is not with Commissioner Kirsanow's particular concern  
3 about this finding. I'm sure we can work together to  
4 come up with a formulation that will satisfy  
5 Commissioner Kirsanow, and I'm willing to do that, but  
6 my concern as a policy matter going forward in terms  
7 of how we analyze these reports and how we decide  
8 whether or not we support them -- I feel very strongly  
9 that we, as a commission, are able -- should be able  
10 to select out testimony that we choose to credit, and  
11 we should be able to reformulate that into our own  
12 words without necessarily having to --

13                   COMMISSIONER KIRSANOW: I don't dispute  
14 that except that we can't create our own testimony. I  
15 didn't see any testimony about the appropriateness of  
16 any given --

17                   CHAIRMAN REYNOLDS: No, that's the  
18 conclusion that at least some of the commissioners, I  
19 presume -- that's a conclusion that some commissioners  
20 have reached.

21                   COMMISSIONER KIRSANOW: Well, then, if  
22 that's the --

23                   COMMISSIONER BRACERAS: We are entitled to  
24 reach conclusions.

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1 COMMISSIONER KIRSANOW: Conclusions, but  
2 these are fact-findings.

3 COMMISSIONER YAKI: I mean, the fact is  
4 that, if we really want to get nitpicky, the fact is  
5 that George LaNue has been DQ'd from a number of  
6 disparity study cases because he is not qualified to  
7 comment on them.

8 COMMISSIONER TAYLOR: What's DQ'd?

9 COMMISSIONER YAKI: Disqualified as an  
10 expert witness.

11 COMMISSIONER BRACERAS: My point -- my  
12 point is a larger point having nothing to do with  
13 George LaNue or this particular document, so let's  
14 just stick to that for a minute because we could go  
15 back and forth on it whether you think George LaNue is  
16 a credible witness or not, and some people here will  
17 and some people here won't, and that's fine.

18 But it's a larger question of whether or  
19 not the Commission, as a body, should be making  
20 findings that are, in effect, our conclusions that we  
21 glean from the testimony. And I think -- excuse me --  
22 I think that that is a perfectly appropriate function.

23 COMMISSIONER KIRSANOW: I think it's  
24 appropriate, but I think we've got to -- if we are

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1 going to come up with conclusions, they better be  
2 based on testimony from the hearing, and I don't know  
3 that anyone said that use of these metrics is  
4 inappropriate.

5 In fact, George LaNue talks at length  
6 about these things. He said they need -- they need to  
7 be ticked, they need to be revised, but use of the  
8 base documents is not inappropriate.

9 CHAIRMAN REYNOLDS: Ian Ayres actually  
10 wrote it.

11 VICE CHAIRMAN THERNSTROM: I think you're  
12 wrong on this. On what LaNue said.

13 CHAIRMAN REYNOLDS: I think we need to  
14 move this along.

15 COMMISSIONER KIRSANOW: Let's move along.

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER BRACERAS: What formulation  
18 would --

19 COMMISSIONER KIRSANOW: Let's just move it  
20 --

21 COMMISSIONER BRACERAS: -- satisfy your  
22 concern.

23 COMMISSIONER KIRSANOW: -- let's leave it  
24 as -- it doesn't satisfy me because the -- I agree in

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1 substance with what the document says, but I don't  
2 agree with the manner in which the documents were  
3 created. So that's --

4 COMMISSIONER BRACERAS: Why is that?

5 COMMISSIONER KIRSANOW: Because I think  
6 that we've got a briefing report that purports to be  
7 of the same ilk as a statutory report, but we're not  
8 putting it through the same type of ringer that we put  
9 a statutory report through.

10 COMMISSIONER BRACERAS: Well, that's a  
11 different issue, so --

12 COMMISSIONER KIRSANOW: But that's right  
13 --

14 CHAIRMAN REYNOLDS: Folks, folks, come on.  
15 If we are going to make our flights --

16 COMMISSIONER KIRSANOW: Move on.

17 CHAIRMAN REYNOLDS: Yes.

18 VICE CHAIRMAN THERNSTROM: Commissioner,  
19 let's just accept the current language.

20 COMMISSIONER KIRSANOW: Let's go. I'm not  
21 going to make a change to that.

22 CHAIRMAN REYNOLDS: Next issue. Any  
23 comments? Any further comments?

24 COMMISSIONER KIRSANOW: I've got a lot of

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1       them, but I'm just going to let them go.

2                   CHAIRMAN REYNOLDS:     Okay, well, let's  
3       vote. All in favor, say aye.

4                   (Chorus of ayes.)

5                   CHAIRMAN REYNOLDS: All in opposition?

6                   VICE CHAIRMAN THERNSTROM: That face --

7                   COMMISSIONER YAKI: You're using the word  
8       -- I'm waiting for the A-word.

9                   CHAIRMAN REYNOLDS: Okay, abstentions?

10                  COMMISSIONER MELENDEZ: I'm abstaining. I  
11       wasn't here for that one.

12                  CHAIRMAN REYNOLDS: Okay.

13                  COMMISSIONER KIRSANOW: I'm abstaining  
14       also.

15                  CHAIRMAN REYNOLDS: Okay. Alright, please  
16       let the record reflect that Commissioners Kirsanow,  
17       Yaki, and Melendez abstain, and the remaining  
18       commissioners voted in favor. Therefore, the motion  
19       passes. First Commissioner Braceras and then  
20       Commissioner Kirsanow.

21                  COMMISSIONER BRACERAS: Maybe now is not  
22       the time because we have flights to make and other  
23       things like that, but I do think Commissioner Kirsanow  
24       raises a good point, and it's a larger point about

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1 what the goal is of putting out a briefing report, and  
2 some of the briefing reports that we've put out did  
3 not have findings and recommendations attached to  
4 them, and now they've started to do that, and I think  
5 that is a discussion that --

6 COMMISSIONER KIRSANOW: We need to have  
7 them.

8 COMMISSIONER BRACERAS: But I think we  
9 need to have it globally as opposed to with respect to  
10 a specific document --

11 COMMISSIONER KIRSANOW: I agree. I  
12 just --

13 COMMISSIONER BRACERAS: -- my point, and I  
14 --

15 COMMISSIONER KIRSANOW: -- I just think --

16 COMMISSIONER BRACERAS: -- think we should  
17 discuss that.

18 COMMISSIONER KIRSANOW: -- we need to  
19 address that, and I would say, having said that, that  
20 I thought that the findings and recommendations in  
21 this report were more closely tethered to the facts  
22 deduced in the hearing than were the findings and  
23 recommendations of yesterday's consideration.

24 But that -- the basis for my abstention is

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1 the process and how we are getting findings and  
2 recommendations in a briefing report as opposed to a  
3 statutory report. I fundamentally or intuitively  
4 agree with what is contained in the findings and  
5 recommendations, but I'm concerned about the process  
6 that led us to that point.

7 COMMISSIONER BRACERAS: Okay --

8 CHAIRMAN REYNOLDS: Commissioner Yaki?

9 COMMISSIONER BRACERAS: -- well, we should  
10 have that discussion.

11 COMMISSIONER YAKI: I just have a quick  
12 question. What is the -- what was the deadline for  
13 the descents in the Hawaii case?

14 CHAIRMAN REYNOLDS: Did we establish?

15 MR. MARCUS: I believe --

16 COMMISSIONER YAKI: It was ten days.

17 CHAIRMAN REYNOLDS: Two weeks?

18 MR. MARCUS: -- that the consensus was  
19 that the two weeks be from yesterday.

20 COMMISSIONER YAKI: Was it two weeks or  
21 ten days?

22 VICE CHAIRMAN THERNSTROM: Two weeks.

23 COMMISSIONER KIRSANOW: I thought it was  
24 ten days.

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1 COMMISSIONER YAKI: Okay.

2 CHAIRMAN REYNOLDS: I believe I said two  
3 weeks.

4 COMMISSIONER YAKI: Seeing that there's  
5 no, I think, urgency to the disparity studies  
6 briefing, being that dissent is being put out as  
7 quickly, can we push that off so they are not due --  
8 it's not due the same day?

9 CHAIRMAN REYNOLDS: I'm not following.

10 COMMISSIONER YAKI: This is the dissent --

11 VICE CHAIRMAN THERNSTROM: Two weeks from  
12 today.

13 COMMISSIONER YAKI: -- the same time as  
14 the Hawaii one.

15 COMMISSIONER BRACERAS: He wants  
16 additional time for this one.

17 COMMISSIONER YAKI: Because I don't have a  
18 staff person.

19 VICE CHAIRMAN THERNSTROM: Yes, let's do  
20 three weeks on that one.

21 COMMISSIONER YAKI: Three weeks, no, no,  
22 no, no.

23 VICE CHAIRMAN THERNSTROM: You want four?

24 COMMISSIONER YAKI: Yes, because I just

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1 can't --

2 COMMISSIONER BRACERAS: Yes, I think  
3 that's --

4 VICE CHAIRMAN THERNSTROM: All right,  
5 that's fine.

6 COMMISSIONER YAKI: Thank you. Okay.

7 CHAIRMAN REYNOLDS: Okay, so -- but you  
8 have no objections to the document being placed on the  
9 website? Okay. Alright. Next up. Oh, this is going  
10 to be fun.

11 VICE CHAIRMAN THERNSTROM: I do want to  
12 second what Commissioner Braceras said. I want on the  
13 agenda, in fact, for the future that we discussed  
14 exactly the nature of the briefing reports and the  
15 question of blurring the difference between a  
16 statutory and a briefing --

17 COMMISSIONER BRACERAS: Well, we can do it  
18 at the working group level, too, with the --

19 COMMISSIONER YAKI: Strategic thing-a-ma-  
20 jiggy.

21 CHAIRMAN REYNOLDS: Ok, Alright. Next up  
22 is annual program planning. In order to facilitate  
23 the discussion and approval of commission projects for  
24 part of fiscal years 2007 and 2008, the staff director

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1 recommended that commissioners follow a procedure  
2 similar to the one followed for the May 2005 planning  
3 meeting in selecting potential projects.  
4 Specifically, that process as commissioners to rank  
5 potential projects in order to streamline the process  
6 of developing a slate of potential candidates. Well,  
7 potential projects.

8 On March 3, 2006, the staff director  
9 invited each commissioner to submit a list of -- a  
10 list containing up to five of his or her top  
11 preferences in -- for potential 2008 statutory reports  
12 and up to five of his or her top preferences for  
13 potential briefings for 2007 and 2008, ranking them in  
14 order of preference with one being the highest, two  
15 the second highest, et cetera, by March 8, 2006, in  
16 preparation for the March 10, 2006 business meeting.

17 The Office of the Staff Director's staff  
18 would then assign points to each proposal selected by  
19 each commissioner, weighing them according to how high  
20 each commissioner places his or her -- places on his  
21 or her list. For example, five points for a number  
22 one choice, four points for a number two choice, et  
23 cetera.

24 If commissioners selected five or more

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1 briefing -- five briefings or reports, the Office of  
2 Staff Director would assign a half a point for every  
3 briefing or report ranked below five. Each  
4 commissioner's -- all commissioners, rather, submitted  
5 rankings by March 9, 2006, during the business meeting  
6 held on March 10, 2006.

7           However, commissioners voted to table  
8 discussion on potential projects for fiscal years 2007  
9 and 2008 to allow for a better-informed discussion of  
10 the projects and so that they could have more time to  
11 discuss additional projects. As a result, on Friday,  
12 March 22, 2006, the Office of the Staff Director again  
13 asked commissioners to rank their preferences  
14 following the procedures used in the March 9th round  
15 of rankings.

16           This time, however, commissioners would  
17 not necessarily be bound by their previous rankings,  
18 and the previous Office of Staff Director tabulations  
19 of commissioner preferences would be discarded. Six  
20 commissioners responded with rankings during this  
21 second round.

22           The Office of Staff Director advised those  
23 commissioners that did not respond in time that staff  
24 would rely on previous rankings -- on their previous

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1 rankings of March 9 to determine those preferences  
2 unless those commissioners responded otherwise. As  
3 these commissioners had not responded otherwise, the  
4 staff used the previous March 9 rankings.

5 It should be noted that the staff could  
6 not locate Commissioner Taylor's rankings of potential  
7 briefings but was able to locate his rankings of  
8 potential statutory reports for 2008. Thus, the  
9 ranking of potential statutory reports reflects all  
10 commissioners' submissions, but the rankings of  
11 potential briefings reflect only those of six  
12 commissioners.

13 The Office of Staff Director has tabulated  
14 the results of this ranking, and they are as follows.

15 Now, what I am talking about now is --

16 COMMISSIONER KIRSANOW: You let Price  
17 Waterhouse do this?

18 (Laughter.)

19 COMMISSIONER YAKI: I was about to say,  
20 this is more boring than the freaking Academy Awards,  
21 Ken.

22 CHAIRMAN REYNOLDS: Now, I looked at all  
23 of this, and I said is it -- do we need to do --

24 COMMISSIONER YAKI: Can't we just waive in

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1 and read --

2 CHAIRMAN REYNOLDS: -I said we need to get  
3 this into the record somehow.

4 COMMISSIONER YAKI: I move to waive the  
5 reading and submit it to the record.

6 VICE CHAIRMAN THERNSTROM: I agree. Waive  
7 the readings.

8 CHAIRMAN REYNOLDS: Okay, well, let's get  
9 down to business, then. For the 2008 statutory  
10 reports, the top vote-getter was Religious  
11 Discrimination and Prisoners' Rights with 23 points.  
12 Racial Profiling was next with 18 points. Federal  
13 Agency Emergency Preparedness for People with  
14 Disabilities came in with 8 points, and Evaluation of  
15 the Effectiveness of Federal Agency Implementation --  
16 the bottom line is --

17 COMMISSIONER BRACERAS: That's for  
18 reports?

19 CHAIRMAN REYNOLDS: Yes, that's for  
20 statutory reports. So, let me just -- Vice Chair  
21 Thernstrom.

22 VICE CHAIRMAN THERNSTROM: Well, I frankly  
23 felt utterly paralyzed looking at the list for the  
24 following reason: we need so much, it seems to me, of

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1 -- well, at least for me, how I weighed these various  
2 topics reflected my concern about the fact that we no  
3 longer have Terri Dickinson. We don't know who we're  
4 going to hire. We don't know, you know, the strength,  
5 frankly, the social science quantitative strength of  
6 the person who will replace her, and some of these  
7 topics do require a level of expertise, so I felt that  
8 we may or may not have.

9           And I thought, for instance, on No Child  
10 Left Behind, I would have placed it perhaps first,  
11 except I need to know what our staff capabilities are,  
12 so, you know, my rankings were basically worthless.  
13 That's where I come out.

14           CHAIRMAN REYNOLDS: Okay, well, to add to  
15 that, I -- looking at the rankings, I had not so much  
16 concerns but surprise. I just don't have a strong  
17 sense that we all had enough data to give us comfort  
18 in these rankings. That's just a feeling. But, in  
19 any event, be that as it may, this is what we came up  
20 with.

21           We have a ranking. We're not locked into  
22 this, but this is the methodology we used last year,  
23 and it more or less worked. We can stick with that  
24 methodology, or we can entertain discussions of, you

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1 know, of a different approach. Okay, we have --

2 VICE CHAIRMAN THERNSTROM: Can somebody  
3 spell out exactly what the question, since it is the  
4 number one, exactly what the questions are with  
5 respect to religious discrimination and prisoner  
6 rights to give me a sense of whether this is a topic  
7 that really justifies the designation of our annual  
8 statutory reports?

9 CHAIRMAN REYNOLDS: Well, you raise an  
10 interesting -- well, personally, that's not my -- I  
11 didn't vote for it, but I'm assuming that there is a  
12 consensus that this be the statutory report.

13 COMMISSIONER KIRSANOW: I didn't vote for  
14 it.

15 VICE CHAIRMAN THERNSTROM: I didn't vote  
16 for it.

17 CHAIRMAN REYNOLDS: Okay, this is.

18 COMMISSIONER KIRSANOW: So somebody gave  
19 it really high marks.

20 COMMISSIONER MELENDEZ: I voted for it.

21 COMMISSIONER YAKI: I voted for it.

22 VICE CHAIRMAN THERNSTROM: As the number  
23 one?

24 COMMISSIONER YAKI: Yes. And Ashley did.

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1 And then Ashley asked me for my vote, so I gave it to  
2 him.

3 (Laughter.)

4 VICE CHAIRMAN THERNSTROM: But you always  
5 do.

6 CHAIRMAN REYNOLDS: I'm surprised you  
7 didn't sell the votes.

8 (Laughter.)

9 COMMISSIONER YAKI: Actually, when I was  
10 looking at this, I thought it probably would have  
11 helped, but it would have killed more trees to have  
12 actually had the staff write-ups, because I had a  
13 feeling this was going to happen.

14 VICE CHAIRMAN THERNSTROM: Yes, right.

15 COMMISSIONER YAKI: Talk to us, Ashley.

16 VICE CHAIRMAN THERNSTROM: Well, I do need  
17 to have -- and Ashley is a good person to do it. To  
18 justify --

19 COMMISSIONER TAYLOR: What I had in my  
20 mind, at least --

21 VICE CHAIRMAN THERNSTROM: I mean, this is  
22 our annual statutory report. This isn't a rich enough  
23 topic to justify that.

24 CHAIRMAN REYNOLDS: Well, I approach it

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1 differently. I approach it as there is a hierarchy,  
2 or there are other things on here that arguably should  
3 be ranked before that. The answer obviously, for me,  
4 is yes. The answer obviously, for you, is no. But  
5 anyway.

6 COMMISSIONER YAKI: I mean, there are two  
7 clear things that set themselves apart from the rest  
8 of the pack. Racial profiling and the prisoners'  
9 rights one. Right? I mean, if you got eight points,  
10 that means that maybe you got one person giving you  
11 five and then a couple of other people giving you a  
12 half or a four or a three ranking. So in terms of the  
13 -- where priorities are, it's pretty clear that's  
14 between those two.

15 If there was a third priority that wasn't  
16 there, Mr. Chairman, and you want to bring it up --

17 CHAIRMAN REYNOLDS: No, quite frankly, I  
18 make these comments, but at the end of the day, I am  
19 more than -- I feel comfortable sticking with the  
20 methodology we used last year, and this got 23 points,  
21 and so -- Vice Chair Thernstrom.

22 VICE CHAIRMAN THERNSTROM: Well, I would  
23 be much more enthusiastic about this topic if we could  
24 broaden it, like as in segregation, discrimination,

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1 and the rights of the incarcerated, I mean, so we get  
2 in the whole question of segregating prisoners on the  
3 basis of race.

4 COMMISSIONER TAYLOR: Of race.

5 CHAIRMAN REYNOLDS: Well, there was an  
6 email that was circulated with this request, I  
7 believe.

8 VICE CHAIRMAN THERNSTROM: It might have  
9 come from there, I don't know.

10 COMMISSIONER BRACERAS: And so the topic  
11 would be discrimination in prisons generally?

12 VICE CHAIRMAN THERNSTROM: Segregation and  
13 discrimination --

14 COMMISSIONER BRACERAS: So religious,  
15 racial --

16 VICE CHAIRMAN THERNSTROM: Yes, but, I  
17 mean, you know, there is a very interesting and  
18 important question revolving around --

19 COMMISSIONER BRACERAS: the Johnson case?

20 VICE CHAIRMAN THERNSTROM: Yes, I mean,  
21 the segregation of prisoners. I would like to broaden  
22 the description, and then, at the end of the day, if  
23 for resource and other reasons, we need to narrow it,  
24 let's do the narrowing at that point.

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1                   COMMISSIONER TAYLOR: Well, Mr. Chairman,  
2 I guess I start in my thinking on this topic, I am  
3 guided by first of all, what I have before me, and  
4 that is our options.

5                   CHAIRMAN REYNOLDS: Good point.

6                   COMMISSIONER TAYLOR: And we only, in my  
7 view it appears to me that we only have two viable  
8 options. The racial profiling or religious  
9 discrimination in prisoner rights. I don't see, I  
10 guess in this respect I am agreeing with Commissioner  
11 Yaki, I don't argue against a theoretical,  
12 hypothetical statutory report. I argue against what  
13 we have before us, and as -- what I compare what I  
14 have before me, racial discrimination and a component  
15 of that being related to prison rights is far and away  
16 our best option for this reason.

17                   I think the --

18                   VICE CHAIRMAN THERNSTROM: You mean  
19 religious discrimination?

20                   COMMISSIONER TAYLOR: Religious  
21 discrimination, rather. The establishment clause of  
22 jurisprudence is -- this is a topic I think we should  
23 jump into directly. It is shifting ground, whether  
24 you are talking about the state contracting questions.

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1 We have on the street now a federal RFP from the  
2 administration asking for a single faith unit in  
3 federal prisons, and you have states, at least 12  
4 states that have issued similar SFPs.

5 The whole question of providing a secular  
6 service and a sectarian group offering to provide that  
7 secular service but doing so at a reduced rate because  
8 the supporters of that sectarian group have said we  
9 will donate our own time and energy for the  
10 opportunity to, for example, serve in a soup kitchen,  
11 giving us, in our view, the opportunity to share the  
12 light of Christ in that soup kitchen and whether or  
13 not that violates the establishment clause, whether or  
14 not that state entity can simply say if your point of  
15 providing the secular service is that you believe it  
16 is an opportunity to share the light of Christ, we are  
17 therefore going to prevent you from bidding on that  
18 service, even though it is providing a purely secular  
19 service.

20 To me, that is a critical question, and it  
21 is one that is pending in a variety of contexts,  
22 whether it be prisons or state covenant contracting  
23 generally.

24 CHAIRMAN REYNOLDS: You should have

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1 updated the contract paper that says this is all new

2 --

3 COMMISSIONER BRACERAS: That seems more to  
4 do with faith-based initiatives than with  
5 discrimination against prisoners.

6 COMMISSIONER TAYLOR: This is why it's  
7 broader because the issue of faith-based groups  
8 providing secular services is different than faith-  
9 based initiatives. For example, in most states, what  
10 they have requested is they -- it's happening more in  
11 the prison context than other contexts, but they have  
12 said we want you to come in and provide us with a pre-  
13 release program in this prison.

14 Operate this prison. Provide a purely  
15 secular service. You then have sectarian groups  
16 saying we want to provide the secular service. So  
17 it's not a faith-based initiative at all. The  
18 question is whether or not Christians and other folks  
19 of faith can participate in providing purely secular  
20 services.

21 Quite frankly, most of the government  
22 entities are surprised when they receive a response  
23 from a secular or a sectarian organization. They  
24 don't anticipate the response, they don't understand

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1 what is going on in the faith community, that more  
2 members of faith have decided that by participating in  
3 the public square this way, it's a way to share, in  
4 their words, the light of Christ, but by doing so  
5 through providing a purely secular service.

6 And that is when some states, California  
7 for example, they simply said that if you are a  
8 religious organization, you can't apply because we  
9 don't believe you can provide this secular service  
10 without prostheletizing. And that's the -- that's the  
11 question I have in mind, and it's much broader than a  
12 faith-based initiative.

13 CHAIRMAN REYNOLDS: So this is, I mean,  
14 that is, as Commissioner Braceras pointed out, that is  
15 -- it's quantitatively -- qualitatively different from  
16 religious discrimination or just discrimination.

17 COMMISSIONER TAYLOR: Right. It really --  
18 it's more a question of the conditions under which a  
19 person of faith can participate in public square or  
20 public service when the point of the government's  
21 request is not to provide a sectarian service but a  
22 purely secular service, but the group or individual  
23 offering to provide that secular service is a person  
24 of faith, and they provide it from a faith

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1 perspective. What does that mean? What does the  
2 establishment clause permit?

3 CHAIRMAN REYNOLDS: Okay --

4 COMMISSIONER TAYLOR: Those are the  
5 questions that --

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

7 COMMISSIONER KIRSANOW: This is really  
8 intriguing and interesting, and I'm not opposed to it,  
9 just an observation. It seems to be a somewhat  
10 narrowly-crafted issue for a statutory report, which  
11 traditionally has a more broader impact. Border  
12 rights, for example, has a national impact.

13 And I'm wondering whether it is something  
14 that is appropriate for a statutory report where we  
15 are trying to address issues and send a message to the  
16 nation as a whole. It's federal policy. It's an  
17 intriguing issue -- I'd like to address it at some  
18 point, but I'm conflicted as to whether it merits a  
19 statutory report.

20 COMMISSIONER YAKI: Or just a briefing.

21 COMMISSIONER TAYLOR: Right.

22 CHAIRMAN REYNOLDS: Any other comments?

23 VICE CHAIRMAN THERNSTROM: Well, can it be  
24 crafted in a way -- I mean, that's what I was

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1 addressing my remarks to before. Can it be crafted in  
2 a way that would turn it into a statutory report by  
3 defining the prisoner rights question more broadly.

4 STAFF DIRECTOR MARCUS: If the  
5 commissioners wanted to, one option would be to fold  
6 it into a broader religious discrimination issue, so  
7 it would deal with the topic that Commissioner Taylor  
8 discussed together with issues raised by Muslim groups  
9 who feel they have been discriminated against and  
10 other religious groups. So it could be coupled with  
11 other religious discrimination --

12 COMMISSIONER KIRSANOW: That's, in fact,  
13 when I looked at it, I had almost presumed it had to  
14 do with --

15 COMMISSIONER YAKI: Yes, so did I.

16 COMMISSIONER KIRSANOW: -- Muslim  
17 chaplains, access to Muslim chaplains --

18 COMMISSIONER YAKI: I think it does,  
19 actually.

20 COMMISSIONER KIRSANOW: -- people taking  
21 peyote, things of that nature --

22 COMMISSIONER TAYLOR: It does. It  
23 actually does because you have a situation where some  
24 states have said the reason we have to reject your

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1 response to providing the secular service is that we  
2 don't have similar responses from other faiths, so  
3 that if we accept your response, we are limited to  
4 that single faith, and then we are in violation of the  
5 establishment clause because we can't offer the  
6 service because we haven't received response from the  
7 other faiths, so that was -- I'm sorry, that was part  
8 of the discussion.

9 VICE CHAIRMAN THERNSTROM: So can you --  
10 can you give a different title to this so that those  
11 of us who are concerned about precisely what  
12 Commissioner Kirsanow articulated a few minutes ago --

13 CHAIRMAN REYNOLDS: Well, if -- couldn't  
14 we broaden it by just simply deleting "religious," and  
15 under discrimination, we would look at various types  
16 of discrimination, including these issues that Ashley  
17 just discussed?

18 COMMISSIONER YAKI: I don't think -- you  
19 mean just changing discrimination and prisoner rights?

20 CHAIRMAN REYNOLDS: Yes.

21 COMMISSIONER YAKI: As someone who has  
22 done some of this work in his past, that is a gigantic

23 COMMISSIONER KIRSANOW: -- would swallow -

24 -

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1 VICE CHAIRMAN THERNSTROM: Yes --

2 COMMISSIONER YAKI: -- gigantic topic. It  
3 would just be too huge.

4 CHAIRMAN REYNOLDS: Okay, well, what --  
5 what other proposals, then? We are merely talking --  
6 it sounds like we are going to have to go back to the  
7 drawing board and do some thinking on what the --

8 COMMISSIONER YAKI: Statutory --

9 CHAIRMAN REYNOLDS: -- contours would be.  
10 I think that we have a, you know, we have the broad  
11 outlines of a statutory topic, but just -- we need to  
12 do some thinking about what the focus --

13 COMMISSIONER YAKI: I don't know if we  
14 have, I mean, I don't know if we have a broad outline  
15 for a statutory topic. I think that we have a very  
16 narrow outline, specific outline, that becomes a  
17 briefing where you can invite someone from a state  
18 correctional institute, someone from a religious  
19 faith-based organization, someone from the Department  
20 of Corrections, what have you, and sort of -- and get  
21 it out there.

22 But I'm just wondering if it were a  
23 statutory report, if we start extending the tentacles  
24 out, then we really are talking more an examination of

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1 the establishment clause and faith-based initiatives,  
2 and that's a whole different topic.

3 VICE CHAIRMAN THERNSTROM: Well, it does  
4 seem to me that if we could agree that there is a  
5 topic there and then -- and that that's going to be  
6 our statutory report, but we need to redefine it, and  
7 of course, it doesn't mean that we cannot have a  
8 briefing as well on the question, as we did with  
9 voting rights, that we would be ahead in this process  
10 today. We would have said, okay, we're going to work  
11 that topic out so it is a truly a statutory report.

12 COMMISSIONER YAKI: Well, we need to get  
13 this done for the budget, right?

14 STAFF DIRECTOR MARCUS: We do, and we're  
15 at least two to three months behind, so we really have  
16 our backs against the wall in preparing it.

17 COMMISSIONER KIRSANOW: I'll just voice my  
18 preference. My preference would be I want to do  
19 justice to what Ashley's main concern is, or main  
20 topic is. I don't want to diffuse or -- I'm sorry,  
21 kind of make this a more amorphous topic or larger  
22 topic because I think it gets lost. But for that  
23 reason, I think it makes more sense to have this as a  
24 bang-up briefing as opposed to a statutory report

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1 because I do think that the subject matter is more  
2 narrow than we traditionally have for a statutory  
3 report.

4 I know it's gotten the most votes, so I'm  
5 not going to oppose it or anything, but it's just a  
6 suggestion.

7 VICE CHAIRMAN THERNSTROM: And you can't  
8 imagine defining this in such a way that would have --

9 COMMISSIONER YAKI: Can I just say  
10 something about the votes because, actually, I did  
11 vote for this I think as my second choice, and it was  
12 based on -- my reading of the description was a little  
13 bit different than I think I'm hearing about it now.

14 Maybe I'm wrong, but -- or maybe I just  
15 didn't read it all that carefully because I thought of  
16 it as what you did, which is the whole issue and what  
17 we talked about, Abby, at one point, which is a whole  
18 issue of religious segregation access to -- access to  
19 people of your particular faith, services, diet,  
20 things like that that go into traditional "prisoners"  
21 rights type issues versus access to prisons to -- on  
22 behalf of faith-based groups, which is where Ashley is  
23 coming from, which I think is also a good topic but  
24 not quite, quite frankly, what I voted for --

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1                   COMMISSIONER MELENDEZ: The reason I voted  
2 for it was because in the Nevada State Prison, we are  
3 actually dealing with the issue on Native Americans on  
4 actually putting sweat lodges on the ground, and they  
5 just closed those down, and it was a religious issue  
6 on whether or not you could do that or it violated the  
7 prisoners' rights to religion on putting those sweat  
8 lodges on -- and so it was just an issue, that's why I  
9 actually voted for it.

10                   COMMISSIONER YAKI: So we may have 23  
11 points that have no consensus whatsoever.

12                   VICE CHAIRMAN THERNSTROM: But  
13 Commissioner Yaki, can you rephrase -- I mean, I --  
14 this is potentially a very good topic. Can you  
15 rephrase it in such a way that for you it's a  
16 statutory report?

17                   COMMISSIONER YAKI: Well, I would say -- I  
18 would just say the issue of access to religious -- to  
19 religious services and access by religious -- by  
20 faith-based organizations to prisons might be a worthy  
21 topic.

22                   I mean, there you are talking about the  
23 inside and the outside. You are talking from the  
24 viewpoint of prisoners who are interested in

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1 practicing their religion, and then you are talking  
2 about from the viewpoint of organizations that Ashley  
3 is talking about who want to participate in the prison  
4 life and bring their particular viewpoint or religious  
5 prosthelization or whatever you want to call it, or  
6 just simply secular type service, as part of what they  
7 feel is their mission to help with prisoners.

8 I think you could -- you can look at  
9 inside the wall and outside the wall and maybe make --

10 VICE CHAIRMAN THERNSTROM: Give us some  
11 precise wording. We are, as Ken said, up against a  
12 wall.

13 COMMISSIONER YAKI: Why am I the guy --

14 (Laughter.)

15 VICE CHAIRMAN THERNSTROM: You've done  
16 more work than anybody on this commission on the  
17 question of prisoner's rights, and so I'm looking at  
18 you because you've --

19 COMMISSIONER YAKI: It wasn't my first  
20 choice.

21 (Laughter.)

22 COMMISSIONER YAKI: Here, why don't you  
23 give me a couple of minutes, and why don't we move on?

24 VICE CHAIRMAN THERNSTROM: Well, okay,

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1 let's move on. Can we move on to the briefings?

2 CHAIRMAN REYNOLDS: Okay, yes, indeed. All  
3 right, the top vote-getter for the briefings -- how  
4 many briefings for -- okay. Okay, the first nine  
5 bullet points --

6 VICE CHAIRMAN THERNSTROM: Where does it  
7 end? Count for me.

8 CHAIRMAN REYNOLDS: Religious  
9 discrimination.

10 VICE CHAIRMAN THERNSTROM: Yes, religious  
11 discrimination is the cutoff, although there is almost  
12 no point difference between religious discrimination  
13 and community reinvestment and corporate diversity.

14 CHAIRMAN REYNOLDS: That is true. Okay,  
15 so if we limit ourselves to the first nine, that would  
16 end with religious discrimination in K-12 schools. If  
17 you are not going to -- if you are going to expand the  
18 review to the community reinvestment act and corporate  
19 diversity because those two have four points each  
20 versus the five points that the religious  
21 discrimination got, then that's the -- those are the  
22 choices that we have to make.

23 VICE CHAIRMAN THERNSTROM: I would say  
24 that however we describe the -- whatever language that

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1 Commissioner Yaki comes up with that it would be very  
2 useful to do what we did with voting rights and to  
3 have a briefing as well.

4 CHAIRMAN REYNOLDS: Well --

5 VICE CHAIRMAN THERNSTROM: That wasn't  
6 raised --

7 CHAIRMAN REYNOLDS: Okay.

8 VICE CHAIRMAN THERNSTROM: -- but I think  
9 it's a good idea.

10 CHAIRMAN REYNOLDS: Okay, well hold on  
11 that. Do we have an open slot for that?

12 MR. MARCUS: I'm sorry, for what?

13 CHAIRMAN REYNOLDS: To have a briefing for  
14 the statutory report?

15 MR. MARCUS: Yes, I think that it is a  
16 very good practice, and we should -- keep one open.

17 COMMISSIONER YAKI: I would say just one  
18 thing, which is the briefing should only focus on one  
19 part --

20 VICE CHAIRMAN THERNSTROM: That's fine,  
21 but I think that it is --

22 COMMISSIONER YAKI: -- because --

23 VICE CHAIRMAN THERNSTROM: -- nice to have  
24 a little bit of --

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1 COMMISSIONER YAKI: -- I'm drafting is  
2 more meatier.

3 VICE CHAIRMAN THERNSTROM: That's fine.  
4 We'll focus on one part --

5 COMMISSIONER YAKI: Even though I may not  
6 vote for it.

7 VICE CHAIRMAN THERNSTROM: -- but it does  
8 enrich our understanding to have a briefing.

9 COMMISSIONER TAYLOR: I agree.

10 VICE CHAIRMAN THERNSTROM: So let us  
11 somehow, as we pick these briefings --

12 COMMISSIONER TAYLOR: Reserve a spot.

13 VICE CHAIRMAN THERNSTROM: -- reserve a  
14 spot.

15 CHAIRMAN REYNOLDS: Oh, so this -- so --  
16 okay. All right, I have some additional information,  
17 folks. We need to fill up some slots in 2007 with  
18 briefings, and so the idea is that the first three  
19 bullet points ending in The Effect of No Child Left  
20 Behind on Minority Achievement, that those would be  
21 the three briefings for 2007. I mean, if we approve  
22 that, then we would have 2007 -- we would have all the  
23 briefings for 2007.

24 Then, for 2008, we would just look at

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1 everything up until Corporate Diversity?

2 STAFF DIRECTOR MARCUS: Give us another  
3 eight, which would leave room for one to coincide with  
4 the statutory report and give us an extra two that  
5 would be open for emerging issues.

6 VICE CHAIRMAN THERNSTROM: Good. Because  
7 I think there is a consensus on having a briefing on  
8 that corner of the statutory issue.

9 CHAIRMAN REYNOLDS: Okay, so, at this  
10 point, do we need any additional discussion, or do we  
11 want to just stick with our methodology and vote?

12 VICE CHAIRMAN THERNSTROM: Let's vote. On  
13 2007.

14 CHAIRMAN REYNOLDS: Okay. Okay --

15 VICE CHAIRMAN THERNSTROM: Let's do them  
16 separately. Vote on 2007.

17 CHAIRMAN REYNOLDS: Okay, then the motion  
18 is -- I move that the -- that Discrimination Against  
19 Native Americans in Border Towns and Title IX  
20 Athletics: Accommodating Interest and Abilities, and  
21 finally, The Effect of No Child Left Behind on  
22 Minority Achievements -- on the Minority Achievement  
23 Gap be approved as briefings for 2007. Is there a  
24 second?

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1 VICE CHAIRMAN THERNSTROM: I will second  
2 it, but I would like to take out the word minorities  
3 since that covers Asians as well, and there is not an  
4 achievement gap with respect to Asians, so just on the  
5 achievement gap.

6 CHAIRMAN REYNOLDS: Well --

7 COMMISSIONER YAKI: Why are you leaving  
8 out my wiretapping? I'm busy writing this.

9 VICE CHAIRMAN THERNSTROM: That's going in  
10 2008.

11 CHAIRMAN REYNOLDS: Next vote.

12 VICE CHAIRMAN THERNSTROM: Next vote.

13 COMMISSIONER YAKI: Why is it going in  
14 2008?

15 VICE CHAIRMAN THERNSTROM: Because we need  
16 only three in 2007. We took the top three.

17 CHAIRMAN REYNOLDS: Right.

18 COMMISSIONER YAKI: But they scored  
19 exactly the same.

20 CHAIRMAN REYNOLDS: Well -- okay, okay.  
21 That's true.

22 COMMISSIONER KIRSANOW: What were the top  
23 three again? I don't have my materials.

24 COMMISSIONER YAKI: There's a top four.

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1 CHAIRMAN REYNOLDS: Of the -- what the  
2 debate, apparently, involves The Effect of No Child  
3 Left Behind on -- Abby wants The Achievement Gap, and  
4 the other option is Domestic Wiretapping and the War  
5 on Terror, both --

6 COMMISSIONER KIRSANOW: What --

7 VICE CHAIRMAN THERNSTROM: Discrimination  
8 against Native Americans in Border Towns that got the  
9 top vote. Title IX Athletics: Accommodating  
10 Interests and Abilities, got the second highest. So  
11 then the next two, which got the same number of votes  
12 are No Child Left Behind and Domestic Wiretapping and  
13 the War on Terror.

14 COMMISSIONER YAKI: And so we only have  
15 three slots available for next year?

16 STAFF DIRECTOR MARCUS: We could do a  
17 fourth, it would just take away one emerging issue.

18 VICE CHAIRMAN THERNSTROM: All right,  
19 let's do four. Let's do four. Let's do four. So the  
20 domestic wiretapping --

21 COMMISSIONER YAKI: -- I'm gonna stop  
22 writing here --

23 VICE CHAIR THERNSTROM: Let's do four.

24 CHAIRMAN REYNOLDS: So the motion is

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1 amended so that it includes domestic wiretapping as a  
2 briefing for 2007. Any additional discussion?

3 VICE CHAIRMAN THERNSTROM: Well, as I  
4 said, I would like minority -- just the achievement  
5 gap. We all know what it means, but minority suggests  
6 it is white versus all minorities, and it is not white  
7 versus all minorities.

8 COMMISSIONER TAYLOR: A friendly perhaps  
9 amendment. How about the effect of the no child left  
10 behind act on minorities because doesn't it require  
11 the gathering of data on some minorities that may not  
12 have a gap, per se, but it still requires localities  
13 and states to collect the data? Or are we just  
14 focusing on the achievement gap?

15 VICE CHAIRMAN THERNSTROM: I thought we  
16 were focusing on the achievement gap.

17 COMMISSIONER TAYLOR: If we are, then  
18 forget everything I've said.

19 VICE CHAIRMAN THERNSTROM: And no child  
20 left behind is all about the gap. That's what the  
21 preamble states.

22 COMMISSIONER KIRSANOW: Practically  
23 speaking, there is still a gap, though, between Asians  
24 and everybody else, so --

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: I think we are getting  
3 wrapped around the axle unnecessarily. In any event,  
4 whatever we happen to -- whatever we wind up calling  
5 it, all in favor of the first four bullet points that  
6 have already been read into the record, please say  
7 aye.

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: All in opposition?

10 (No response.)

11 CHAIRMAN REYNOLDS: Abstentions?

12 (No response.)

13 CHAIRMAN REYNOLDS: The motion passes  
14 unanimously.

15 VICE CHAIRMAN THERNSTROM: Great, so --  
16 oh, wait, we are adding the statutory --

17 CHAIRMAN REYNOLDS: Commissioner Yaki?

18 COMMISSIONER YAKI: Yes, this is my first  
19 crack at the statutory report, which is an examination  
20 of the role that the free exercise and establishment  
21 clause play in the (a) administration and management  
22 in federal and state prisons and (b) the individual  
23 religious rights and needs of prisoners. To this end,  
24 the statutory report will focus on the role that

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1 federal and state law regulations and prison  
2 administrators act in the conduct of something  
3 religious services in prison so by calling the ability  
4 of faith-based organizations who bid for an access,  
5 traditional programs for prisoners, and participate in  
6 traditional programs for prisoners, and so by calling  
7 in the question of accommodating -- accommodation or  
8 discrimination of an inmate's religious preferences or  
9 needs.

10 VICE CHAIRMAN THERNSTROM: Start over.

11 CHAIRMAN REYNOLDS: Yes, that was a lot.

12 VICE CHAIRMAN THERNSTROM: Yes.

13 COMMISSIONER YAKI: Well.

14 VICE CHAIRMAN THERNSTROM: Slowly.

15 COMMISSIONER YAKI: An examination of the  
16 role that the free exercise and establishment clauses  
17 play in the (a)administration and management of  
18 federal and state prisons and (b)the individual  
19 religious rights and needs of prisoners, period. To  
20 this end --

21 COMMISSIONER KIRSANOW: You can stop right  
22 there.

23 COMMISSIONER YAKI: Oh, okay.

24 COMMISSIONER KIRSANOW: I think you really

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1 could.

2 VICE CHAIRMAN THERNSTROM: Let's just stop  
3 right there.

4 COMMISSIONER YAKI: Okay.

5 CHAIRMAN REYNOLDS: I'm assuming that this  
6 discussion will also involve the security concerns  
7 that wardens have in making these decisions --

8 COMMISSIONER YAKI: That's why I said, to  
9 this end, the statutory report will focus on the role  
10 that federal and state law, regulations, and  
11 administrators have in the conduct or allowance of  
12 religious services --

13 CHAIRMAN REYNOLDS: Okay, I just wanted to  
14 make sure we were all on the same page.

15 COMMISSIONER YAKI: -- the ability of  
16 faith-based organizations to participate in  
17 traditional programs for prisoners, which is what you  
18 are talking about, and the question of accommodation  
19 or discrimination of inmates religious preferences or  
20 needs.

21 VICE CHAIRMAN THERNSTROM: Actually, for  
22 the -- I changed my mind -- the further language is  
23 important. Let's not cut it off. Let's have the  
24 whole kit and caboodle.

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1 COMMISSIONER YAKI: Is that okay?

2 VICE CHAIRMAN THERNSTROM: Yes, it's good.

3 COMMISSIONER YAKI: Can I vote against it  
4 now?

5 (Laughter.)

6 (SIDE CONVERSATION BETWEEN REYNOLDS AND  
7 MARCUS)

8 VICE CHAIR THERNSTROM: You can do  
9 whatever your contrarian self -

10 COMMISSIONER YAKI: One of the first cases  
11 I ever brought as a law student was against then-  
12 attorney general Joe Lieberman in Connecticut, for the  
13 Connecticut prison system, and that was at Yale Law  
14 School.

15 They are silly enough to allow first-years  
16 to practice law in Connecticut.

17 COMMISSIONER KIRSANOW: Actually practice?  
18 Really?

19 COMMISSIONER YAKI: Yes, you can -- I  
20 mean, you have to have a supervising attorney, but you  
21 can file lawsuits, argue motions, take depositions, do  
22 the whole thing. I mean, do full trials. But Joe  
23 Lieberman and I were busy fighting over prisoners'  
24 rights issues. It was a cottage industry, the whole

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1 prisoners' rights issue.

2 CHAIRMAN REYNOLDS: Okay, for 2008,  
3 basically --

4 VICE CHAIRMAN THERNSTROM: Wait a minute.  
5 Have we voted on this?

6 CHAIRMAN REYNOLDS: Oh, I'm sorry, the  
7 statutory report. Okay, let's vote on the statutory  
8 report as amended by the wonderful draftsmanship from  
9 Commissioner Yaki. All in favor of the statutory  
10 report as amended, say aye.

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: All in opposition?

13 (No answer.)

14 CHAIRMAN REYNOLDS: Abstentions?

15 (No answer.)

16 CHAIRMAN REYNOLDS: Please let the record  
17 reflect that the motion passes unanimously. Next up,  
18 bouncing back to briefings but for 2008. We would be  
19 looking at starting at racial profiling, U.S.  
20 Department of Justice remedies through race conscious  
21 admission and financial aid in higher education.

22 VICE CHAIRMAN THERNSTROM: Have we -- have  
23 we -- we need to inject part of the statutory -- some  
24 corner of the statutory report into the list of

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1 briefings.

2 CHAIRMAN REYNOLDS: We reserve a slot.

3 VICE CHAIRMAN THERNSTROM: You have  
4 reserved a slot?

5 CHAIRMAN REYNOLDS: Yes.

6 VICE CHAIRMAN THERNSTROM: Okay.

7 COMMISSIONER YAKI: Okay, I move that.

8 CHAIRMAN REYNOLDS: Is there a second?

9 VICE CHAIRMAN THERNSTROM: Wait a minute,  
10 where does it end now? At corporate diversity?

11 CHAIRMAN REYNOLDS: No, race conscious  
12 admission.

13 VICE CHAIRMAN THERNSTROM: At race  
14 conscious admissions? We're down to there. Where are  
15 we? Is that the cut off?

16 CHAIRMAN REYNOLDS: Right here.

17 VICE CHAIRMAN THERNSTROM: That's the last  
18 one.

19 CHAIRMAN REYNOLDS: Yes. Okay, is there a  
20 second?

21 COMMISSIONER YAKI: Second.

22 VICE CHAIRMAN THERNSTROM: Second.

23 COMMISSIONER YAKI: Oh, I moved it, so I  
24 can't second, sorry.

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1 VICE CHAIRMAN THERNSTROM: I'll second it.

2 CHAIRMAN REYNOLDS: Discussion?

3 (No response.)

4 CHAIRMAN REYNOLDS: All in favor, say aye.

5 (Chorus of ayes.)

6 CHAIRMAN REYNOLDS: All in opposition?

7 (No response.)

8 CHAIRMAN REYNOLDS: Abstentions?

9 (No response.)

10 CHAIRMAN REYNOLDS: The motion passes  
11 unanimously.

12 VICE CHAIRMAN THERNSTROM: I can't believe  
13 it.

14 CHAIRMAN REYNOLDS: Okay. Okay.

15 VICE CHAIRMAN THERNSTROM: Nothing like  
16 having planes to catch.

17 CHAIRMAN REYNOLDS: Hold on a moment.

18 COMMISSIONER TAYLOR: Focuses the mind.

19 VICE CHAIRMAN THERNSTROM: Focuses the  
20 mind.

21 COMMISSIONER TAYLOR: That's right.

22 COMMISSIONER YAKI: We should probably get  
23 in the airport lounge.

24 COMMISSIONER KIRSANOW: Maybe we ought to

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1 schedule --

2 VICE CHAIRMAN THERNSTROM: I was just  
3 thinking that.

4 COMMISSIONER KIRSANOW: Concentrates the  
5 mind.

6 VICE CHAIRMAN THERNSTROM: Right.

7 CHAIRMAN REYNOLDS: Okay. I'm a little  
8 confused, but you won't be surprised by that. Oh, I  
9 see. Okay, yes. Next up, we will discuss whether to  
10 conduct a briefing in Omaha, Nebraska, to review a  
11 recently-passed Nebraska statute that would apparently  
12 divide the Omaha school district into three separate  
13 districts along racial lines on April 13, 2006.

14 Governor David Heineman signed a  
15 legislative bill 10/24, which takes effect July 2008.  
16 It divides the Omaha school districts into three  
17 districts, one predominantly white, one mostly black,  
18 and the other largely Hispanic.

19 Now, the supporters of the OSD argue that  
20 minority control of the school board and of the  
21 budgetary process will be an advantage for minority  
22 communities and have a positive effect on students and  
23 the education quality.

24 Some legal scholars claim that Senator

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1 Chambers amendment went against *Brown v. Board of*  
2 *Education*.

3 COMMISSIONER KIRSANOW: Some?

4 (Laughter.)

5 CHAIRMAN REYNOLDS: Just trying to be  
6 fair. I'm assuming there's at least one person out  
7 there that supports them. Vice Chair Thernstrom?

8 VICE CHAIRMAN THERNSTROM: Question, which  
9 -- of timing. July, so this is going to be after it  
10 goes into effect. It's also going to be --

11 CHAIRMAN REYNOLDS: No, it goes into  
12 effect in 2008.

13 VICE CHAIRMAN THERNSTROM: Oh, it goes  
14 into effect in 2008? Okay. Misunderstood. It is  
15 also at a time when everybody connected with education  
16 disappears because they all have such a cushy job.  
17 Strike that from the record.

18 COMMISSIONER YAKI: I have a schedule  
19 problem. I am scheduled to be on this coast that  
20 week, but not in the middle of the country.

21 COMMISSIONER KIRSANOW: What date again?

22 CHAIRMAN REYNOLDS: I don't know, but --

23 COMMISSIONER YAKI: It's Friday the 28th.

24 VICE CHAIRMAN THERNSTROM: It's Friday the

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1 28th.

2 CHAIRMAN REYNOLDS: What about moving the  
3 date? I mean, we can always move the date on which --

4 COMMISSIONER YAKI: Would you -- I would  
5 rather have it during the school year, wouldn't you?

6 VICE CHAIRMAN THERNSTROM: I would much  
7 rather have it during the school year. Really, I'm  
8 serious. The whole education establishment --

9 COMMISSIONER YAKI: July is kind of dead  
10 press month anyway.

11 VICE CHAIRMAN THERNSTROM: -- and people  
12 are gone. Now, I can't make the September meeting at  
13 all.

14 CHAIRMAN REYNOLDS: Okay, so we are  
15 looking -- okay, so September?

16 COMMISSIONER YAKI: No, she just said she  
17 can't make September.

18 VICE CHAIRMAN THERNSTROM: I can't make --  
19 please don't do this without me. I can't make it on  
20 September.

21 COMMISSIONER YAKI: October would be good.

22 COMMISSIONER TAYLOR: We could -- at no  
23 point in September?

24 VICE CHAIRMAN THERNSTROM: Well --

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1 COMMISSIONER TAYLOR: We could change the  
2 date if we are not --

3 VICE CHAIRMAN THERNSTROM: Oh, yes, I  
4 can't make it on the current -- the -- it's -- when is  
5 it scheduled for? September 15th, I believe. I can't  
6 make that. And this is a topic that really interests  
7 me, so I beg of you.

8 COMMISSIONER YAKI: The question is, to  
9 get the maximum number of educators and other people,  
10 would it be more -- would it be better to hold it on,  
11 I hate to say this, a Saturday? When educators are  
12 not in school or not in classes, and otherwise, we'll  
13 just get the principal -- you know, we'll just get --

14 CHAIRMAN REYNOLDS: At this point, I  
15 haven't given too much thought about who we would  
16 invite, but Senator Chambers definitely would be  
17 someone. Someone from maybe the AG's office --

18 COMMISSIONER YAKI: Okay.

19 CHAIRMAN REYNOLDS: A community leader. I  
20 don't know. I -- well, I guess I don't know -- well,  
21 what do you have in mind in terms of --

22 COMMISSIONER YAKI: No, I was just --

23 CHAIRMAN REYNOLDS: -- educators --

24 COMMISSIONER YAKI: No, I was just

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1 thinking that this is, I think, a nice moment of the  
2 commission where we're all kind of getting together to  
3 go in there and go -- and say some interesting things  
4 to people. I'm just wondering if -- Ashley's  
5 laughing. To be quite honest, if we did it on a  
6 Saturday, when there is more opportunity for parents  
7 and other people to come and watch and attend, it  
8 would be interesting. And then, number two, it gets  
9 in the Sunday paper.

10 CHAIRMAN REYNOLDS: Well, personally,  
11 that's better for me. A Saturday. So I don't know  
12 what's --

13 VICE CHAIRMAN THERNSTROM: All right, I'm  
14 out of pocket from the 11th of September to the 18th  
15 of September. I can't make anything on those days.

16 COMMISSIONER TAYLOR: Can I just make a  
17 recommendation? If we vote -- if we decide today that  
18 it is something we want to do, we can leave the  
19 scheduling to the staff director to communicate with  
20 us, and that's a detail we can work out rather than  
21 all getting our calendars out.

22 COMMISSIONER YAKI: Yes, you can do a  
23 phone poll.

24 COMMISSIONER TAYLOR: If we decide --

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1 COMMISSIONER YAKI: Let's do a phone poll  
2 -- as you can see, I'm moving my --

3 (Laughter.)

4 CHAIRMAN REYNOLDS: Okay, folks, are we  
5 ready to vote on this issue, with the understanding  
6 that the date would be decided at a later date?

7 VICE CHAIRMAN THERNSTROM: And that you  
8 will not have it the days I can't make it.

9 CHAIRMAN REYNOLDS: Within reason, we are  
10 going to work with you.

11 VICE CHAIRMAN THERNSTROM: I just told you  
12 what the dates are, so a week there.

13 CHAIRMAN REYNOLDS: All right.

14 COMMISSIONER TAYLOR: You have our moral  
15 commitment.

16 CHAIRMAN REYNOLDS: All right, all in  
17 favor, say aye.

18 (Chorus of ayes.)

19 CHAIRMAN REYNOLDS: All in opposition?

20 (No answer.)

21 CHAIRMAN REYNOLDS: Abstentions?

22 (No answer.)

23 CHAIRMAN REYNOLDS: The motion passes  
24 unanimously.

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1 COMMISSIONER KIRSANOW: You know we may  
2 want to make it a hearing so we can exercise appeal --

3 VICE CHAIRMAN THERNSTROM: Do we want to  
4 make a what?

5 COMMISSIONER KIRSANOW: Make it a hearing  
6 so we can exercise subpoena power? --

7 CHAIRMAN REYNOLDS: All right, we can  
8 consider that. Okay, a few quick things. As you  
9 pack, please listen. Several commissioners have sent  
10 letters with their concerns about the petition for  
11 renewal of recognition by the ABA to the U.S.  
12 Department of Education concerning accreditation  
13 throughout the United States of programs and legal  
14 education.

15 I'm going to skip all the rest of that.  
16 The bottom line is that two letters -- the two letters  
17 were sent out. The original letter was sent out March  
18 8 by Vice Chair Thernstrom, a second letter sent out  
19 March 20 by Commissioners Kirsanow, Braceras, Taylor,  
20 and me. All -- is there -- I move that these letters  
21 be placed on the website. Is there a second?

22 COMMISSIONER KIRSANOW: Second.

23 CHAIRMAN REYNOLDS: Discussion?

24 COMMISSIONER YAKI: Can we amend that to

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1 also include the letter that Commissioner Yaki and  
2 Melendez will be sending as well?

3 CHAIRMAN REYNOLDS: Actually, that was the  
4 next motion, but let's collapse it all in.

5 VICE CHAIRMAN THERNSTROM: Second.

6 CHAIRMAN REYNOLDS: As amended, yes.  
7 Okay, all in favor?

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: All in opposition?

10 (No answer.)

11 CHAIRMAN REYNOLDS: Abstentions?

12 (No answer.)

13 CHAIRMAN REYNOLDS: The motion passes  
14 unanimously. Okay, State Advisory Committee, we have  
15 two retiring packages, one from Florida, one from  
16 Kentucky. I presume that everyone has carefully  
17 reviewed the information, and I move that --

18 COMMISSIONER YAKI: Commissioner, the one  
19 concern I had is that Kentucky is eight men, three  
20 women.

21 CHAIRMAN REYNOLDS: I'm sorry?

22 COMMISSIONER YAKI: Kentucky is eight men,  
23 three women.

24 COMMISSIONER KIRSANOW: My understanding

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1 is that's the demographics --

2 (Laughter.)

3 CHAIRMAN REYNOLDS: Moving right along.  
4 Commissioner Yaki -- but the second comment is that I  
5 noticed the same thing and made a comment to the staff  
6 director. I would be mindful of that issue.

7 VICE CHAIRMAN THERNSTROM: Who cares?

8 CHAIRMAN REYNOLDS: Well, Commissioner  
9 Yaki and me.

10 COMMISSIONER YAKI: Yes.

11 CHAIRMAN REYNOLDS: In any event, I move  
12 that the Commission re-charter the Florida State  
13 Advisory Committee. Is there a second?

14 COMMISSIONER YAKI: Second.

15 CHAIRMAN REYNOLDS: All in favor?

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Any in opposition?

18 (No answer.)

19 CHAIRMAN REYNOLDS: Any abstentions?

20 (No answer.)

21 CHAIRMAN REYNOLDS: Okay. Okay, I have  
22 been told that I have to read the names into the  
23 record. So for the Florida sect, the members would be  
24 Judith Albertelli, Juanita Alvarez-Mainster, Frances

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1 Bohnsack, Clint Cline, Elena Flom, Wilfredo Gonzalez,  
2 Charles Hearn, Walter Hill, J. Robert McClure,  
3 Elizabeth Rodriguez, Frank Shaw III, Alan Williams,  
4 and Sofian Zakkout.

5 STAFF DIRECTOR MARCUS: And Elena Flom as  
6 chair?

7 CHAIRMAN REYNOLDS: And Elena Flom will be  
8 the new chair of the Florida SAC. Okay, I move that -  
9 -

10 STAFF DIRECTOR MARCUS: And the members  
11 will serve uncompensated.

12 CHAIRMAN REYNOLDS: And the members will  
13 serve uncompensated, as has been the rule forever.

14 VICE CHAIRMAN THERNSTROM: And we wave  
15 goodbye to Commissioner Yaki.

16 CHAIRMAN REYNOLDS: Okay, hold on, hold  
17 on. I need your vote.

18 COMMISSIONER YAKI: Why? We've got --

19 CHAIRMAN REYNOLDS: Okay. Okay, here we  
20 go.

21 CHAIRMAN YAKI: Unless I go over here and  
22 Peter jumps out the door behind me.

23 CHAIRMAN REYNOLDS: Well that's a  
24 possibility. Okay, I move that we -- the Kentucky

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1 State Advisory Committee. The members will be Troy  
2 Body, Richard Clay, Betty Griffin, J. Blaine Hudson,  
3 Vickie Maley, John McCarthy, Linda McCray -- alright,  
4 I'll skip that one for now. William Summers V, Tom --  
5 Phil Tom, Jim Waters, and Osi Onyekwuluje. That was  
6 my attempt. I apologize for mangling the gentleman's  
7 name.

8 Is there a second?

9 VICE CHAIRMAN THERNSTROM: Second.

10 CHAIRMAN REYNOLDS: Okay, yes, and J.  
11 Blaine Hudson will serve as chair, and the new members  
12 will serve as uncompensated government employees. All  
13 in favor?

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Any in opposition?

16 (No response.)

17 CHAIRMAN REYNOLDS: What did I forget?  
18 Okay, and under these -- okay, let me finish. Any in  
19 opposition?

20 VICE CHAIRMAN THERNSTROM: No.

21 CHAIRMAN REYNOLDS: Any abstentions?

22 VICE CHAIRMAN THERNSTROM: No.

23 CHAIRMAN REYNOLDS: Okay, one last thing.

24 I move that we authorize the staff director to

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1 execute the appropriate paperwork for these  
2 appointments. Is there a second?

3 COMMISSIONER KIRSANOW: Second.

4 CHAIRMAN REYNOLDS: Okay, all in favor?

5 (Chorus of ayes.)

6 CHAIRMAN REYNOLDS: Any in opposition?

7 COMMISSIONER KIRSANOW: No.

8 CHAIRMAN REYNOLDS: Abstentions?

9 (No response.)

10 CHAIRMAN REYNOLDS: Let's -- we need to  
11 carefully book our flights in the future so that we  
12 are short on time. I like the efficiency that these  
13 deadlines impose on us. Folks, thank you.

14 (Whereupon, at 1:11 p.m., the foregoing  
15 matter was adjourned.)

16

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