

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, APRIL 16, 2010

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:30 a.m., Gerald A. Reynolds, Chairperson, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairperson

(via telephone)

ABIGAIL THERNSTROM, Vice Chairman

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

(via telephone)

ARLAN D. MELENDEZ, Commissioner

(via telephone)

ASHLEY L. TAYLOR, JR., Commissioner

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
TERESA BROOKS
MARGARET BUTLER
CHRISTOPHER BYRNES, Director, RPCU
DEBRA CARR
IVY DAVIS
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
TINALOUISE MARTIN, Director, OM
PETER MINARIK
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
JOHN RATCLIFFE, Chief, Budget and Finance
KIMBERLY TOLHURST
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD

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P R O C E E D I N G S

(9:34 a.m.)

CHAIRPERSON REYNOLDS: Okay. Let's get started. Good morning. This is Chairman Reynolds. The meeting will come to the order. This is a meeting of the U.S. Commission on Civil Rights. It is 9:34 a.m. Eastern Standard Time on April 16, 2010.

Commissioner Kirsanow, Commissioner Melendez, and I are participating by phone. The rest of the Commissioners are present at 624 9 Street, N.W., Room 540, Washington, D.C., where the meeting is being held.

Before we start discussion of the agenda, I'd like to note the passing this week of Dr. Benjamin Hooks. Dr. Hooks had a distinguished and varied career as a judge, businessman, lawyer, and minister. He was a man of many firsts. He was among the first black lawyers in Tennessee practicing until he joined the ministry in 1956, and, thereafter, becoming the first black state trial judge in Tennessee since reconstruction.

Later, he also became the first black appointee to the Federal Communication Commission. Dr. Hooks was a World War II veteran, as well as a veteran of the Civil Rights Movement, and a member of

1 Dr. King's Southern Christian Leadership Conference.
2 He pioneered the NAACP-sponsored restaurant sit-ins,
3 and other boycotts of consumer items and services. He
4 was a member of the Tennessee Human Rights Commission,
5 and the State Discrimination Watchdog Agency.

6 He is, perhaps, best known for his work as
7 a former Executive Director of NAACP. Under his more
8 than 15-year leadership, he revitalized the
9 organization. He was a tireless advocate for the
10 advancement of blacks, and argued that family unity
11 was an essential component of their ability to partake
12 in the American dream. He was the recipient of many
13 awards honoring his civil rights contributions, and in
14 2007 was awarded the Presidential Medal of Freedom by
15 President Bush, the nation's highest civilian honor.
16 We express our gratitude for his tireless
17 contributions to civil rights, and offer our
18 sympathies to his family, who can rest assured that
19 Dr. Hooks' legacy will live on.

20 I would also like to note that this month
21 nd
22 marks the 42 anniversary of the passage of the Fair
23 Housing Act, a landmark piece of legislation signed
24 th
25 into law on April 11 , 1968. That law prohibits
discrimination in the sale, rental, and financing of
housing based on race, color, national origin, and

1 sex, disability, or family status.

2 Now, the first item on the agenda is the
3 Approval of the Agenda.

4 I. APPROVAL OF AGENDA

5 CHAIRPERSON REYNOLDS: Is there -- well, I
6 move that we approve it. Is there a second?

7 COMMISSIONER GAZIANO: Second.

8 CHAIRPERSON REYNOLDS: Okay. I would
9 propose a substitute motion. I'd like to make four
10 amendments to the agenda. The first is to move
11 consideration of the State Advisory Committees up on
12 the agenda to occur before Program Planning. The
13 second would be to table consideration of the South
14 Carolina State Advisory Committee to a subsequent
15 meeting. Third, I'd like to include an item under
16 Program Planning to appear after consideration of the
17 Concept Paper on the South Philadelphia High School
18 violence, to approve the proposed calendar year for
19 2011, basically, meeting schedule. And, finally, I'd
20 like to defer discussion of the SEC's response to our
21 document request regarding their Corporate Diversity
22 Disclosure Rule to a subsequent meeting. Do I have a
23 second?

24 COMMISSIONER KIRSANOW: Kirsanow, second.

25 COMMISSIONER GAZIANO: If you wouldn't

1 mind, could you just repeat where the State Advisory
2 Committees are going to go, again?

3 CHAIRPERSON REYNOLDS: It would occur
4 right after Approval of the Agenda.

5 COMMISSIONER GAZIANO: Okay.

6 VICE CHAIR THERNSTROM: Mr. Chairman, I
7 have to leave today at around 11:30, so if you put all
8 those SACS up front, it means that I will not be here
9 for the bulk of the business that I would think would
10 be more important, but it's up to you, obviously.

11 CHAIRPERSON REYNOLDS: Okay. I tried to -
12 -I've taken into account the fact that Commissioners
13 have to leave early sometimes. I try to put things
14 that require a vote up front. I hope that the -- I'm
15 fairly confident that we can get through the SACs
16 expeditiously, if everyone behaves themselves.

17 COMMISSIONER YAKI: Mr. Chair, in that
18 case, I would say that you should table the Colorado
19 SAC until another time.

20 CHAIRPERSON REYNOLDS: Okay. I accept
21 that as a friendly amendment.

22 COMMISSIONER YAKI: Right.

23 CHAIRPERSON REYNOLDS: Okay. All in
24 favor? Well, Commissioner Melendez, how do you vote?

25 COMMISSIONER MELENDEZ: Yes.

1 COMMISSIONER GAZIANO: Commissioner
2 Gaziano.
3 COMMISSIONER GAZIANO: Yes.
4 CHAIRPERSON REYNOLDS: Commissioner
5 Heriot.
6 COMMISSIONER HERIOT: Yes.
7 CHAIRPERSON REYNOLDS: Commissioner
8 Kirsanow. No, Commissioner Yaki.
9 COMMISSIONER YAKI: Aye.
10 CHAIRPERSON REYNOLDS: Vice Chair
11 Thernstrom.
12 VICE CHAIR THERNSTROM: Yes.
13 CHAIRPERSON REYNOLDS: Okay. It's
14 unanimous.
15 COMMISSIONER TAYLOR: I'm here, Gerry.
16 CHAIRPERSON REYNOLDS: Oh.
17 COMMISSIONER TAYLOR: Is my mic off?
18 CHAIRPERSON REYNOLDS: Okay. Thank you
19 for bringing yourself to my attention. Commissioner
20 Taylor, how do you vote?
21 COMMISSIONER TAYLOR: Aye.
22 CHAIRPERSON REYNOLDS: Okay. It's
23 unanimous. So, we will jump to the New Jersey State
24 Advisory Committee.

25 III. STATE ADVISORY COMMITTEE ISSUES

1 CHAIRPERSON REYNOLDS: I move that the
2 Commission recharter the New Jersey State Advisory
3 Committee. Under this motion, the Commission appoints
4 the following individuals to that Committee based on
5 recommendations of the Staff Director, Leanna Brown,
6 Richard Collier, Jr., Jane Durham, Sherine El-Abd,
7 Lora Fong, Brian Gaffney, John Hart, Shavar Jeffries,
8 Beth Jones, Lawrence Lustberg, Clement Price, Saulo
9 Santiago, Judd Serotta, Morris Smith, William
10 Stepheny, Frank Tinari, Jackson Toby, and Peter Woods.

11 Pursuant to this motion, the Commission appoints
12 William Stepheny as Chair. The members will serve as
13 uncompensated government employees. Under this
14 motion, the Commission authorizes the Staff Director
15 to execute the appropriate paperwork.

16 Is there a second?

17 COMMISSIONER TAYLOR: Second.

18 CHAIRPERSON REYNOLDS: Discussion?

19 COMMISSIONER YAKI: This is Commissioner
20 Yaki. I have a question for the Executive Director,
21 the Staff Director.

22 Is it my understanding that everyone on
23 the New Jersey SAC reapplied to be on the SAC?

24 STAFF DIRECTOR DANNENFELSER: I believe
25 that's the case. There was -- let me look at my note

1 here a second. There was one from the last time who
2 resigned after she had been appointed, and then she
3 subsequently got appointed to the Pennsylvania SAC.
4 And I believe all the remaining members -- there was
5 one other. There was one person who decided not to
6 come back.

7 COMMISSIONER YAKI: So, there were two
8 vacancies?

9 STAFF DIRECTOR DANNENFELSER: Well, the
10 limit is 19.

11 COMMISSIONER YAKI: How many of them are
12 there right now?

13 STAFF DIRECTOR DANNENFELSER: In this
14 package, there are 18.

15 COMMISSIONER YAKI: Well, the reason I
16 ask, Mr. Chair, is that, as you know, I pretty much
17 have made it a practice for the last few years not to
18 recommend anyone for SACs, because I have
19 philosophical problems with the way they've been
20 appointed. One person, however, did contact me asking
21 -- expressing her interest in this, and I passed that
22 on to the Staff Director to contact that person, and
23 that person did, indeed, apply. This is someone who
24 has been a senior media executive at MTV, and
25 Showtime, who's an Adjunct Professor at the Annenberg

1 School, who has been a leader in diversity, and other
2 sorts of programs in the media. She is someone who is
3 openly gay, and who has been a leader in gay and
4 lesbian issues, including with regard to issues such
5 as marriage and adoption in the State of New Jersey.
6 She's been involved in the New Jersey Civil Rights
7 community, and I just found it very odd that someone
8 with her credentials, her very strong credentials was
9 unable to make it onto this body. And if there is,
10 indeed, one vacancy available, I would ask that she be
11 included in this community, because she's someone who
12 on her own volition wanted to be involved in the New
13 Jersey State Advisory Committee, and I think that's
14 the kind of person who we would like to see as part of
15 what it is that we do.

16 CHAIRPERSON REYNOLDS: I guess two
17 questions come to mind. So, she's your
18 recommendation. Marty, will this individual upset the
19 balance as we defined it?

20 STAFF DIRECTOR DANNENFELSER: It would
21 move the Committee a little bit to the left, overall,
22 with its overall balance right now.

23 VICE CHAIR THERNSTROM: Mr. Chairman,
24 there are a lot of committees that are imbalanced, SAC
25 Committees that are imbalanced one way or another. I

1 do not think that should be a fatal objection.

2 CHAIRPERSON REYNOLDS: Well, we're trying
3 to fix the imbalance, and -

4 VICE CHAIR THERNSTROM: Well, we can't
5 always get perfect balance. I mean, if one person is
6 going to throw the whole balance off in a fatal way,
7 we're doing something wrong here.

8 CHAIRPERSON REYNOLDS: No, I mean -- I'm
9 not suggesting that it's possible to achieve perfect
10 people, and I'm not sure that I want to. In any
11 event, any other comments from other Commissioners?

12 COMMISSIONER MELENDEZ: Commissioner
13 Melendez. The gender balance, there's very few women,
14 as compared to men. Is that right, Staff Director?

15 STAFF DIRECTOR DANNENFELSER: I'd have to
16 check the number here, if you'd give me a minute,
17 Commissioner Melendez. I believe there are five women
18 on this package.

19 COMMISSIONER YAKI: Five out of how many?

20 STAFF DIRECTOR DANNENFELSER: Eighteen.

21 VICE CHAIR THERNSTROM: Eighteen. So,
22 there's already an imbalance of one sort of another.

23 COMMISSIONER YAKI: I would like to amend
24 the New Jersey SAC to nominate Joan Garry, the person
25 who I am referring to, to add her membership to the

1 New Jersey SAC.

2 COMMISSIONER GAZIANO: If that is going to
3 be considered, I'd like to postpone the SAC so that I
4 have a chance to review the applicant. I'm not,
5 necessarily, against it, although, I think this is a
6 somewhat liberally leaning SAC from my analysis to
7 begin with, but that wouldn't be the main reason. If
8 we're going to add people at meetings, you've got to
9 give other Commissioners a chance to review it.

10 COMMISSIONER HERIOT: Mr. Chairman, we are
11 required by law to charter 51 SACS every two years.
12 We've just deferred two out of the four that we are
13 supposed to be doing here. If we are to keep up with
14 this, and we haven't been, we should be chartering two
15 SACS at every meeting. And I don't see much point
16 here in delaying the approval of this SAC. If
17 Commissioner Yaki wants to propose the name as an
18 addition at the next meeting -

19 (Simultaneous speaking.)

20 COMMISSIONER HERIOT: Can I finish?

21 CHAIRPERSON REYNOLDS: Is that right,
22 Marty?

23 STAFF DIRECTOR DANNENFELSER: I'm sorry,
24 Mr. Chairman. I couldn't hear you.

25 CHAIRPERSON REYNOLDS: Am I correct in

1 assuming that she submitted her application?

2 STAFF DIRECTOR DANNENFELSER: Yes, she
3 did.

4 COMMISSIONER HERIOT: But I haven't seen
5 it.

6 CHAIRPERSON REYNOLDS: No, I understand
7 that.

8 COMMISSIONER YAKI: Mr. Chair, I -

9 CHAIRPERSON REYNOLDS: I propose that we
10 vote on the New Jersey SAC as it's currently
11 configured with the understanding that after the
12 information regarding this individual that
13 Commissioner Yaki has sponsored, that we vote on this
14 individual. And I will say now that unless there's
15 something outrageous about this candidate, I will be
16 supporting her.

17 COMMISSIONER GAZIANO: What is the -- may
18 I ask, Mr. Chair, Staff Director, what is the maximum
19 number, I've forgotten, that we can have on a SAC?

20 STAFF DIRECTOR DANNENFELSER: Nineteen.

21 COMMISSIONER GAZIANO: So, we cannot add
22 this person and do any other balancing. I just want
23 to --

24 COMMISSIONER YAKI: I always thought you
25 were against balancing.

1 COMMISSIONER GAZIANO: No, we want
2 ideological diversity, and ideological balance.

3 COMMISSIONER YAKI: Sounds to me like
4 you're playing with numbers. I just thought that was
5 something that you believed in.

6 COMMISSIONER GAZIANO: I'm not sure where
7 you get that.

8 COMMISSIONER YAKI: Perhaps, your right.

9 Okay. Why don't we just do that. Mr.
10 Chair -

11 CHAIRPERSON REYNOLDS: I'm sorry?

12 COMMISSIONER YAKI: Let just do what you
13 said.

14 CHAIRPERSON REYNOLDS: Okay. Commissioner
15 Melendez, how do you vote?

16 COMMISSIONER MELENDEZ: Yes.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Gaziano.

19 COMMISSIONER GAZIANO: Yes.

20 CHAIRPERSON REYNOLDS: Commissioner
21 Heriot.

22 COMMISSIONER HERIOT: Yes.

23 CHAIRPERSON REYNOLDS: Commissioner
24 Kirsanow.

25 COMMISSIONER KIRSANOW: Yes.

1 CHAIRPERSON REYNOLDS: Commissioner Yaki.

2 COMMISSIONER YAKI: Abstain.

3 CHAIRPERSON REYNOLDS: Vice Chair
4 Thernstrom.

5 VICE CHAIR THERNSTROM: Yes.

6 CHAIRPERSON REYNOLDS: I didn't forget
7 about you, Commissioner Taylor.

8 COMMISSIONER TAYLOR: Yes.

9 CHAIRPERSON REYNOLDS: Okay. We have on
10 abstention.

11 VICE CHAIR THERNSTROM: And may I request
12 that the information about this candidate is sent out
13 expeditiously, so that nobody can say we haven't had
14 time to look at the application properly.

15 COMMISSIONER YAKI: I have the application
16 here. I'll give it to the Staff Director.

17 STAFF DIRECTOR DANNENFELSER: I have extra
18 copies that I'll get around to people right now.

19 COMMISSIONER YAKI: Let's move on.

20 CHAIRPERSON REYNOLDS: Okay. I move that
21 the Commission recharter Washington State Advisory
22 Committee. Under this motion, the Commission appoints
23 the following individuals to that Committee based on
24 the recommendation of the Staff Director, Luther
25 Adams, Joseph Backholm, Tony Benegas, Robin Boehler,

1 Duane French, Dan Goldaber, Paul Guppy, Julie Nelson,
2 Camille Pauley, Maria Rodriguez Salazar, Eileen
3 Sobjack, Rita Zawaideh. Under this motion, the
4 Commission appoints Paul Guppy as Chair of the
5 rechartered Washington State Advisory Committee.
6 These meetings will serve as uncompensated government
7 employees. Under this motion, the Commission
8 authorizes the Staff Director to execute the
9 appropriate paperwork for this appointment.

10 Is there a second?

11 COMMISSIONER TAYLOR: Second.

12 CHAIRPERSON REYNOLDS: Discussion?

13 Commissioner Melendez, how do you vote?

14 COMMISSIONER MELENDEZ: I'll abstain.

15 CHAIRPERSON REYNOLDS: Commissioner

16 Gaziano.

17 COMMISSIONER GAZIANO: Pass.

18 CHAIRPERSON REYNOLDS: Commissioner

19 Heriot.

20 COMMISSIONER HERIOT: Yes.

21 CHAIRPERSON REYNOLDS: Commissioner

22 Kirsanow.

23 COMMISSIONER KIRSANOW: Abstain.

24 CHAIRPERSON REYNOLDS: Commissioner Yaki.

25 COMMISSIONER YAKI: No.

1 CHAIRPERSON REYNOLDS: Vice Chair
2 Thernstrom.

3 VICE CHAIR THERNSTROM: Abstain.

4 CHAIRPERSON REYNOLDS: Commissioner
5 Taylor.

6 COMMISSIONER TAYLOR: Aye.

7 CHAIRPERSON REYNOLDS: And I vote for it
8 also. We have -

9 COMMISSIONER GAZIANO: I'll add, I just
10 passed. Now I will vote. Aye.

11 CHAIRPERSON REYNOLDS: Okay. I'm sorry.
12 I thought you voted for it. Okay. We have three
13 abstentions. Commissioner Yaki voted against this
14 plate. The motion passes.

15 II. PROGRAM PLANNING

16 CHAIRPERSON REYNOLDS: Okay. I move that
17 the Commission approve for publication Part A of the
18 report produced by Staff, and reflecting Commissioner
19 and panelist's input on the briefing the Commission

th
20 held on November 9 , 2007 on Discrimination Against
21 Native Americans in Border Towns. Part A, as
22 distributed in draft to the Commission contains a
23 briefing overview, a summary of the issue, and why the
24 Commission chose to conduct this briefing, a summary
25 of the proceedings consisting of a synopses of

1 panelist's oral statements during the briefing, and a
2 synopsis of the Question and Answer sessions, and
3 copies of the panelist's written statements. Under
4 the motion, if the majority of the Commission votes to
5 adopt Part A of the briefing report, the Commission
6 will then open discussion on Part B. If Part A fails
7 to obtain a majority, discussion of Part B becomes
8 moot.

9 This bifurcated vote is taken pursuant to
10 the policy that the Commission adopted on April 13
11 of 2007. Is there a second? Is there a second?

12 COMMISSIONER YAKI: I'll second it.

13 CHAIRPERSON REYNOLDS: Discussion?
14 Commissioner Melendez, how do you vote?

15 COMMISSIONER YAKI: This is Part A.
16 Right?

17 CHAIRPERSON REYNOLDS: Yes.

18 COMMISSIONER MELENDEZ: I vote yes on Part
19 A.

20 CHAIRPERSON REYNOLDS: Commissioner
21 Gaziano.

22 COMMISSIONER GAZIANO: No.

23 CHAIRPERSON REYNOLDS: Commissioner
24 Heriot.

25 COMMISSIONER HERIOT: Pass.

1 CHAIRPERSON REYNOLDS: Commissioner
2 Kirsanow.

3 COMMISSIONER KIRSANOW: Yes.

4 CHAIRPERSON REYNOLDS: Commissioner Yaki.

5 COMMISSIONER YAKI: Yes.

6 CHAIRPERSON REYNOLDS: Vice Chair
7 Thernstrom.

8 VICE CHAIR THERNSTROM: Yes.

9 CHAIRPERSON REYNOLDS: Commissioner
10 Taylor.

11 COMMISSIONER TAYLOR: Yes.

12 CHAIRPERSON REYNOLDS: And I vote for it,
13 also, so we go back to Commissioner Heriot.

14 COMMISSIONER HERIOT: Abstain.

15 CHAIRPERSON REYNOLDS: Okay. The motion
16 passes.

17 Next up is Part B. I want to save some
18 time. Through conversations, I don't believe that
19 there is sufficient support for Part B. I'd like to
20 see whether my guess is correct, by just opening this
21 up for discussion. Okay.

22 COMMISSIONER MELENDEZ: This is
23 Commissioner Melendez. Are there some areas of the
24 recommendations that were troubling?

25 CHAIRPERSON REYNOLDS: That information I

1 was not able to glean. But, in any event, we will do
2 this the hard way. I will read each finding, and each
3 recommendation, and we will vote each one up or down.

4 COMMISSIONER YAKI: Mr. Chair -

5 COMMISSIONER HERIOT: Nobody's made a
6 motion.

7 COMMISSIONER YAKI: Mr. Chair, this is
8 Commissioner Yaki. Since there are no amendments to
9 the actual language that have been circulated from
10 what has appeared in our binders, I would suggest that
11 we -- in the interest of time, we can waive the
12 reading, and simply vote on each finding as it goes
13 through.

14 (Simultaneous speaking.)

15 VICE CHAIR THERNSTROM: Two people talking
16 at the same time does not work, and you and Gail have
17 both consistently interrupted the Chair. I would like
18 to hear the Chair out each time, if he wants to speak.

19 COMMISSIONER GAZIANO: And I have a point
20 of order which is a priority to be recognized. And I
21 resent the false characterization, Ms. Vice Chair.
22 Let us establish -- Mr. Chair -

23 CHAIRPERSON REYNOLDS: Allow me to defend
24 myself. Commissioners, I guess they would be Heriot
25 and Gaziano, do you have concern about what I just

1 recommended?

2 COMMISSIONER GAZIANO: Let me speak just
3 first to the procedural matter. I think it is silly
4 that we could not at least consider the motion that
5 Commissioner Yaki offered. But when it has been
6 offered before, we had been told that our AIs do not
7 permit such, obviously, appropriate waiving of
8 individual reading, that we must consider each
9 individually. And I've always thought, of course, that
10 this Commission can waive AIs, or take exceptions to
11 AIs. But I just want to establish on the record
12 whether the Commission feels it has the authority to
13 even consider such an outrageous motion, as has been
14 characterized in the past, that we would ever consider
15 findings as officially read, when we don't actually
16 read them into the record. You know, if there is
17 support for that, let's establish this for all time.

18 COMMISSIONER YAKI: Mr. Chair, this is
19 Commissioner Yaki. I mean, my view is that it would
20 be -- there would have been no objection to it. If
21 there was -- I believe that if there is objection, and
22 people want something read, it goes under unanimous
23 consent rule. But it is my sense, somehow, that we
24 could have unanimously dispensed with it. But if the
25 AIs prevent that, Mr. Chair, then the AIs prevent is.

1 I was just trying to save us some time.

2 CHAIRPERSON REYNOLDS: Folks, I understand
3 the urge to engage in old payback, but let's move
4 beyond that.

5 COMMISSIONER GAZIANO: No, it's not -- Mr.
6 Chair, it's not Payback. I'd actually like to -

7 (Simultaneous speaking.)

8 VICE CHAIR THERNSTROM: Once again, you've
9 interrupted him. Can I hear him?

10 CHAIRPERSON REYNOLDS: A discussion of
11 what's required in order to deviate from our AIs. We
12 can have a discussion on that point, but let's have it
13 -- let's make that a separate point, if you don't
14 mind.

15 COMMISSIONER GAZIANO: Mr. Chair, it is
16 not payback. I'd actually like to establish the
17 principle that Commissioner Yaki seems to be backing
18 down from. I would be happy to establish -- I'm not
19 sure that I -- I don't think I do agree with him, that
20 if the AIs speak to this, it has to be unanimous. I
21 disagree with that position. I'm just saying it's
22 necessary to raise the point so that we're not somehow
23 just making an exception to this particular briefing
24 report, and that won't apply in the future.

25 CHAIRPERSON REYNOLDS: Commissioner

1 Gaziano, let me apologize. You are right. I should
2 not have characterized your position as payback. It
3 is legitimate. And I also agree with you that I don't
4 --well, I don't believe that unanimous consent is
5 required to deviate from an AI. I'm just suggesting
6 that if we want to have this conversation about our
7 procedures, I would prefer to have it at a later date.

8 And I'd like to just address the issue that's before
9 us on the merits, if we can.

10 COMMISSIONER GAZIANO: Okay. That's
11 acceptable to me, too, but -

12 (Simultaneous speaking.)

13 CHAIRPERSON REYNOLDS: -- our procedures
14 to another day, if someone feels strongly enough to
15 raise it again. I'll take that as a yes.

16 Okay. Discussion?

17 COMMISSIONER HERIOT: Discussion of what?
18 What's the motion?

19 COMMISSIONER GAZIANO: Discussion of what?
20 We don't know what the -- whether the motion -

21 CHAIRPERSON REYNOLDS: I'm sorry. Okay.
22 I treated Commissioner Yaki's statement as a motion.
23 I seconded the motion, and I'm just -

24 COMMISSIONER HERIOT: What is the motion?

25 CHAIRPERSON REYNOLDS: To treat -- to

1 waive the requirement that we read each finding and
2 recommendation into the record.

3 COMMISSIONER HERIOT: There is no motion
4 yet to adopt anything here.

5 COMMISSIONER GAZIANO: By the way, I
6 thought that's what we were deferring. We were
7 deferring whether that type of a motion is possible.
8 How about I make a different motion, so that we can
9 still have the discussion. I move that because the --
10 well, I move that we don't adopt findings and
11 recommendations, and Commissioner statements for this
12 report. We publish it as we have some others on the
13 internet, or website, or some other means that I don't
14 -- the reason for my motion is -- and the reason for
15 voting against Part A, is while the testimony was
16 somewhat interesting, I couldn't make heads or tails
17 of it. It didn't seem to really present views that we
18 could really make findings and recommendations on, or
19 statements.

20 I'm always interested in Native American
21 issues, and would be equally open to further concrete
22 investigations in this area. I just don't think
23 reading it over that it's worthy of publication
24 statements, and supports findings and recommendations.

25 So, that's my reasoning for moving to suspend with

1 approval of findings and recommendations.

2 COMMISSIONER HERIOT: And statements?

3 COMMISSIONER GAZIANO: And statements.

4 CHAIRPERSON REYNOLDS: Is there a second?

5 COMMISSIONER HERIOT: Second.

6 CHAIRPERSON REYNOLDS: Discussion?

7 COMMISSIONER MELENDEZ: Yes. This is
8 Commissioner Melendez here. You know, we have the
9 issue on all these briefings that they don't really do
10 us any good. We're kind of wasting our time, I think,
11 if we -- and if the findings and recommendations were
12 controversial, I think then we could probably waive
13 those, but I don't think -- in my opinion, they're
14 kind of broad, anyway. They're not really issues
15 where we would get in a debate on -- I don't think
16 there's a real problem in having these
17 recommendations. In fact, they could probably be more
18 in-depth, so I just don't see why we would include
19 these findings and recommendations. Otherwise, it
20 just becomes a useless effort, in my opinion.

21 CHAIRPERSON REYNOLDS: Comments?

22 VICE CHAIR THERNSTROM: Well, there is a
23 general problem, it seems to me, with the findings and
24 recommendations, and it extends beyond that. I mean,
25 useless is a good word. Yes, they're useless, whether

1 we vote on them or not on them. And, especially
2 useless when they come years after the briefing. I
3 mean, this whole process has become laughable.

4 CHAIRPERSON REYNOLDS: Any other comments?

5 COMMISSIONER YAKI: Yes, this is
6 Commissioner Yaki. I mean, I just -- my position on
7 briefing reports I think is pretty well known; and
8 that is, I never thought they were vehicles for
9 extended policy recommendations given the very limited
10 nature, scope, and number of witnesses and record that
11 are usually part of any briefing report. So, to that
12 extent, I, actually, support Commissioner Gaziano, but
13 only to the extent that it is a rule, rather than the
14 exception. To the extent that he does it as an
15 exception rather than a rule, I vehemently oppose it,
16 because then we're simply picking and choosing based
17 on someone's ideological affinity to take an issue
18 they decide is something that, based on a thin record,
19 that they can then go further with, I think is
20 inappropriate, and I think undermines the credibility
21 of the Commission. So, as for this report, and every
22 other briefing report, I believe that findings and
23 recommendations should not be part of it, and let's
24 move on.

25 CHAIRPERSON REYNOLDS: Commissioner

1 Melendez, how do you vote?

2 COMMISSIONER MELENDEZ: I'll abstain.

3 COMMISSIONER TAYLOR: It's your motion.

4 COMMISSIONER GAZIANO: It's my motion to
5 forego Part B and Commissioner statements with this
6 report.

7 COMMISSIONER TAYLOR: Right.

8 COMMISSIONER HERIOT: Am I being asked to
9 vote?

10 CHAIRPERSON REYNOLDS: Commissioner
11 Gaziano.

12 COMMISSIONER GAZIANO: Yes.

13 CHAIRPERSON REYNOLDS: Commissioner
14 Heriot.

15 COMMISSIONER HERIOT: Yes.

16 CHAIRPERSON REYNOLDS: Commissioner
17 Kirsanow.

18 COMMISSIONER KIRSANOW: Abstain.

19 CHAIRPERSON REYNOLDS: Commissioner Yaki.

20 COMMISSIONER YAKI: Abstain.

21 CHAIRPERSON REYNOLDS: I'm sorry?

22 COMMISSIONER YAKI: Abstain.

23 CHAIRPERSON REYNOLDS: Vice Chair
24 Thernstrom.

25 VICE CHAIR THERNSTROM: Abstain.

1 CHAIRPERSON REYNOLDS: Commissioner
2 Taylor.

3 COMMISSIONER TAYLOR: I abstain.

4 CHAIRPERSON REYNOLDS: All right. I think
5 I will abstain, also. Okay. The motion passes.

6 COMMISSIONER GAZIANO: What was the vote,
7 2-0?

8 CHAIRPERSON REYNOLDS: Yes, 2-0.

9 COMMISSIONER GAZIANO: Okay.

10 CHAIRPERSON REYNOLDS: Okay. HBCU.

11 VICE CHAIR THERNSTROM: Maybe we can find
12 something else to all abstain on.

13 CHAIRPERSON REYNOLDS: I'm sorry?

14 VICE CHAIR THERNSTROM: Maybe we can find
15 something else for most of us to abstain on.

16 CHAIRPERSON REYNOLDS: Next up is the
17 Approval of the Commission's Findings and
18 Recommendations for the Briefing Report on the
19 Educational Effectiveness of Historically Black
20 Colleges and Universities. The Commission will vote
21 individually on each finding and recommendation.
22 Those findings and recommendations receiving a
23 majority vote will be included in the report, with a
24 vote tally and a sentence explaining any opposition
25 vote for that item. A substitute version of the

1 findings and recommendations emailed to all
2 Commissioners yesterday.

3 Okay. I move that the Commission approve
4 Finding One, which is a Historically Black College or
5 University is a college or university that existed
6 before 1964, that has a historic, and a contemporary
7 mission of educating African Americans while being
8 open to all students. There are currently 103 HBCUs
9 in the United States , 40 public four-year colleges
10 and universities, 49 are private, the remaining 14 are
11 two-year colleges, 11 of which are public and
12 private). Is there a second?

13 COMMISSIONER HERIOT: Second.

14 CHAIRPERSON REYNOLDS: Discussion?

15 COMMISSIONER YAKI: This is Commissioner
16 Yaki. I got these late yesterday in transit. I have
17 not had a chance to go over them. They are
18 substantively different than what the Staff has
19 prepared. It contains references and cross-references
20 to parts of the record that I have not had a chance to
21 go over, and I would like this pushed off until the
22 next meeting, so I can review it.

23 CHAIRPERSON REYNOLDS: Okay. I understand
24 your position, Commissioner Yaki. Would the
25 Commissioners be amenable to a poll vote on this

1 issue?

2 VICE CHAIR THERNSTROM: I have a question,
3 Mr. Chairman. What version are we voting on here? I
4 thought we were voting on the Staff -

5 COMMISSIONER YAKI: He was reading from
6 the other one, from Commissioner Heriot's.

7 VICE CHAIR THERNSTROM: You said that we
8 were -- unless I misunderstood something, that we were
9 voting on what was in our briefing book. If that's
10 not true, then, of course, we haven't had time, since
11 it came in at the last moment.

12 CHAIRPERSON REYNOLDS: Yes. I, actually -
13 - well, I'm past that moment. I don't disagree -I
14 have objection to -- I'm concerned with Commissioner
15 Yaki's request. I'm asking the Commissioners would
16 they be amendable to having a poll vote on this issue,
17 if that's the appropriate term.

18 COMMISSIONER HERIOT: What is a poll vote?

19 CHAIRPERSON REYNOLDS: I'm sorry?

20 COMMISSIONER HERIOT: What do you mean?

21 COMMISSIONER GAZIANO: See where we're
22 leaning.

23 CHAIRPERSON REYNOLDS: No, I'm sorry. I
24 guess, I'm using the incorrect terminology.
25 Essentially, after everyone reviews the document we

1 would just take this vote via email.

2 COMMISSIONER HERIOT: Oh, that's fine with
3 me, or we could do it on the telephone.

4 COMMISSIONER YAKI: Mr. Chair, this is
5 Commissioner Yaki.

6 CHAIRPERSON REYNOLDS: Yes.

7 COMMISSIONER YAKI: I think that it is a
8 disservice to the transparency of this Commission if
9 we simply read this, and then simply vote on it
10 without any substantive discussion on the record for
11 anyone to understand why the vote was one way or
12 another, why certain Commissioners voted one way or
13 another. I'm very uncomfortable with a notational
14 vote for findings and recommendations -

15 CHAIRPERSON REYNOLDS: And than you for
16 providing me with the correct language.

17 COMMISSIONER GAZIANO: Mr. Chair, in this
18 circumstances, I would want to hear from Commissioner
19 Heriot, who proposed them, but I don't think there's a
20 problem in just deferring the discussion to either a
21 telephone meeting, or our next in-person business
22 meeting.

23 CHAIRPERSON REYNOLDS: Okay.

24 VICE CHAIR THERNSTROM: And I would
25 request that it be an in-person business meeting,

1 because these telephonic meetings do not meet the
2 criteria that Commissioner Yaki just spelled out.

3 CHAIRPERSON REYNOLDS: Well, I am on the
4 phone now, and things are going okay.

5 VICE CHAIR THERNSTROM: Yes, I know, but
6 the telephonic meetings, in general, really are not
7 the same as -- when we're all on the telephone, not
8 the same as a public meeting.

9 CHAIRPERSON REYNOLDS: That is correct,
10 but I do believe that the public will be able to
11 understand the rationale behind anyone's vote, any of
12 the Commissioners who would care to discuss their
13 reasoning.

14 VICE CHAIR THERNSTROM: Well, I would like
15 to move that we defer it until the last -- next in-
16 person meeting.

17 COMMISSIONER YAKI: I'll second that.

18 CHAIRPERSON REYNOLDS: Okay. Well, Vice
19 Chair Thernstrom, rather than taking a vote, does
20 anyone have a concern with pushing this out to our
21 next in-person meeting?

22 COMMISSIONER GAZIANO: I have no concern,
23 except that I don't want to endorse the principle that
24 we can't, when we want to, take up findings and
25 recommendations on telephone meetings. But, with that

1 understanding, I'm happy that this be deferred to the
2 next in-person meeting.

3 CHAIRPERSON REYNOLDS: Okay. Very good.
4 Unless there's an objection, that's what we'll do.

5 COMMISSIONER YAKI: Thank you, Mr. Chair.

6 CHAIRPERSON REYNOLDS: Okay. Next up,
th

7 exhibits, Youngstown, Ohio. At the March 12 , 2010
8 meeting, the Commission postponed consideration of
9 Commissioner Kirsanow's proposed letter to Members of
10 the City Council of Youngstown, Ohio regarding the
11 Police and Fire Department's use of racially
12 bifurcated test results in hiring. Commissioner
13 Kirsanow's letter was included in the meeting binder

th
14 sent to Commissioners on April 8 , 2010, and
15 circulated it again on behalf of Commissioner Gaziano
16 with some minor edits. I move to approve the letter,
17 as amended, for sending to the leaders of the
18 Youngstown City Council. Is there a second?

19 COMMISSIONER GAZIANO: Second.

20 CHAIRPERSON REYNOLDS: Discussion?

21 COMMISSIONER YAKI: Why?

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

24 COMMISSIONER MELENDEZ: No.

25 CHAIRPERSON REYNOLDS: Commissioner

1 Gaziano.
2 COMMISSIONER GAZIANO: Yes.
3 CHAIRPERSON REYNOLDS: Commissioner
4 Heriot.
5 COMMISSIONER HERIOT: Yes.
6 CHAIRPERSON REYNOLDS: Commissioner
7 Kirsanow.
8 COMMISSIONER KIRSANOW: Yes.
9 CHAIRPERSON REYNOLDS: Okay. Commissioner
10 Yaki.
11 COMMISSIONER YAKI: No, and I'll be
12 sending a letter expressing my opposition to the
13 Commission's position on this.
14 CHAIRPERSON REYNOLDS: Vice Chair
15 Thernstrom.
16 VICE CHAIR THERNSTROM: Yes.
17 CHAIRPERSON REYNOLDS: Commissioner
18 Taylor.
19 COMMISSIONER TAYLOR: Yes.
20 CHAIRPERSON REYNOLDS: And I vote for it,
21 also. Okay. The motion passes.
22 Okay. Included in the materials that was
23 -- materials in your binders, there is a briefing
24 proposal dated April 8, 2010 on -- it's entitled Anti-
25 Asian Violence in South Philadelphia High School.

1 This was prepared by Vice Chair Thernstrom. Vice
2 Chair Thernstrom, would you care to discuss your
3 proposal?

4 VICE CHAIR THERNSTROM: I really did
5 discuss it last time, and I don't have the proposal
6 right in front of me. Hold on a minute. I really did
7 discuss it last time. This is -- it's, once again,
8 the Pew, I believe it was Pew, has come out with a
9 report on the level of disorder. It's not simply
10 violence, it's also disruptive disorder in urban --
11 particularly, urban high schools, so not confined to
12 them.

13 In other words, this is not a one-off, the
14 South Philadelphia horrendous facts in South
15 Philadelphia. This is a national problem that is too
16 little discussed in literature on education. This is
17 hardly ever brought up, and yet disorder and violence
18 in the schools means little learning takes place. And
19 disorder has -- sometimes it can be the kind of
20 intergroup violence that we saw in South Philadelphia,
21 sometimes it can be intragroup violence, sometimes it
22 can be just gratuitous whatever, and the disorder
23 ranges from just randomly walking in and out of
24 classrooms, running up and down halls, gangs meeting
25 for one reason or another in a threatening manner,

1 kids not being safe walking to and from school. And
2 the South Philadelphia is -- the situation is so
3 common, it's so much part of the educational landscape
4 that it's like the weather, and nobody reports it.

5 But it finally got so bad in South Philadelphia, and
6 it was so ugly, and it was inter-ethnic, or
7 interracial, more accurately, that it got some press.

8 And I think that this is a topic we should have long
9 ago addressed. Again, it's not isolated. It's not a
10 one-off, and it's a real civil rights issue.

11 In the Philadelphia context, specifically,
12 the Asian students were denied a safe -- have for a
13 long time been denied a safe learning environment,
14 really. But, you know, again, the safe learning
15 environment is something we cannot expect in too many
16 schools. And when you ask parents, as all the major
17 pollsters have done at one time or another, what is it
18 that -- why are you so in favor, for instance, of
19 school choice? Why do you favor charter schools? Why
20 those, when the voucher question is brought up, why do
21 you favor vouchers? The first answer involves school
22 safety, not learning, not the quality of teachers, but
23 school safety. So, this is an extremely important
24 topic, and it's one that I would like to see us
25 address.

1 CHAIRPERSON REYNOLDS: Comments?

2 COMMISSIONER GAZIANO: Mr. Chair, I'd like
3 to just ask a question or two of either the Vice
4 Chair, for our own Staff. I think this is pretty
5 promising, and I'm favorably disposed, but I'm not
6 sure whether we might want to define a few of the
7 facts or proceedings a little bit more before we set
8 up what our briefing or impression might be on this.
9 And my principal question is, there's a -- I can't
10 find it, but I read this earlier, that the Department
11 of Justice had referred the matter to the English
12 Language section of the Civil Rights Division. Do you
13 know -

14 MR. FAY: Educational Opportunity section.

15 COMMISSIONER GAZIANO: Okay. Educational
16 Opportunities Section. That seems to be a odd
17 referral, and maybe a matter that we want to spend a
18 little bit more time on, if that's the case, because
19 then our investigation is not just on the facts, but
20 what the DOJ is doing about it, whether that's an
21 appropriate referral. But my other question is
22 whether they haven't also referred it to another
23 section of DOJ, and I wonder if we could have someone
24 from Staff, if we don't know the answer to that,
25 confirm with DOJ that fact first, and then might be

1 able to know whether we really should be focusing more
2 on DOJ, as well as the facts on the ground. Is that
3 possible?

4 STAFF DIRECTOR DANNENFELSER: We can look
5 into that and see what information we can provide the
6 Commissioners.

7 COMMISSIONER GAZIANO: Because if the DOJ
8 is doing a great job on this, then we might want to do
9 our own investigation, but it would take on a slightly
10 different flavor. If DOJ is engaging in what seems to
11 us to be inadequate or irregular conduct, then we'd
12 want to make that a little bit more of the focus of
13 our investigation.

14 VICE CHAIR THERNSTROM: I'm perfectly open
15 to that suggestion. I would say that since this has
16 been going on for years, and not simply under this
17 Administration, obviously, but previous
18 administrations, where the DOJ has really not provided
19 sufficient attention to the problem. Whatever the
20 answer is, they've been delinquent, but I'm happy to
21 go down that road. It would be nice to throw -- in
22 other words, we can throw in a little history here.

23 COMMISSIONER GAZIANO: Not just history,
24 but you might want to focus what our Staff's resources
25 are going to be, and the type of witnesses that we're

1 going to call, instead of just investigating
2 Philadelphia, that we look a little bit more into what
3 DOJ is, and has been doing on it.

4 VICE CHAIR THERNSTROM: That's fine with
5 me.

6 COMMISSIONER GAZIANO: Okay.

7 COMMISSIONER HERIOT: What about the issue
8 of Secretary Duncan's discussion of disparate impact
9 and school discipline? Does that go with this?

10 VICE CHAIR THERNSTROM: I wouldn't know
11 yet. I mean, I -- you know, we're at stage one here,
12 but, certainly it's possible.

13 COMMISSIONER HERIOT: Because there may be
14 more coming from the Department of Education on that
15 issue shortly, but I would think that it works pretty
16 well with the general issue in the Concept Paper.

17 COMMISSIONER YAKI: Mr. Chair, this is
18 Commissioner Yaki. I have been following closely the
19 events in South Philadelphia, obviously, with members
20 of the Asian-American legal community, and civil
21 rights community, and all that, how this relates to
22 perceived civil rights violations on their part. I
23 think what's important is that -- what I see from
24 this, what Commissioner Thernstrom has proposed, is
25 something that, I think, has had, I would say -- I

1 wouldn't say kid gloves, I would say blind eye by any
2 number of different agencies, including school
3 districts, themselves, for many years. And I think
4 it's important that we not start leaping to what are
5 the deficiencies of the current Department of Justice,
6 or what have you, or the Secretary of Education, and
7 make sure that we have a well-grounded, well-
8 researched bibliography and data on this issue, and on
9 the problem, as described by Commissioner Thernstrom,
10 because that is, I think, probably the most effective,
11 and the most powerful means by which to then elevate
12 it to any additional level. To simply say well, let's
13 look at this one instance, and what DOJ is doing with
14 this one, or that one, I think begs the question of
15 let's ensure that we remain true to what Commissioner
16 Thernstrom has been talking about, which is much more
17 -- a problem that's much more endemic to public high
18 schools in this country, especially in urban centers.

19 And it is certainly worthy of the attention of this
20 Commission, and is right within the sweet spot and
21 wheelhouse of what this Commission should be, and is
22 charged with looking at. And I would not want us to
23 divert too far from that in pursuit of any individual
24 tact of what someone may have done with one instance
25 or another. There is a baseline of data here, and

1 information that we should be putting together. And I
2 support Commissioner Thernstrom's proposal.

3 VICE CHAIR THERNSTROM: Thank you. I
4 agree with what you just said.

5 CHAIRPERSON REYNOLDS: Okay. A lot has
6 just been said. I recommend that the Staff Director
7 working with Vice Chair Thernstrom and other
8 Commissioners, that the Concept Paper incorporates in
9 coherent fashion the discussion that we just had, and
10 see if we can present a document that would be ready
11 to vote on.

12 COMMISSIONER YAKI: Great.

13 VICE CHAIR THERNSTROM: That's fine with
14 me.

15 COMMISSIONER YAKI: Let's move on.

16 CHAIRPERSON REYNOLDS: Okay. Next up is
17 our calendar for 2011 for meetings. Earlier this
18 week, the Staff Director submitted a proposed
19 Commission Meeting Calendar for 2011 calendar year.
20 In-person meetings will begin at 9:30 Eastern Standard
21 Time, telephonic meetings will start at 11:30 Eastern
22 Standard Time to accommodate our West Coast
23 Commissioners, as is our current practice. I move to
24 adopt the Commissioner Meeting Schedule as circulated.
25 Is there a second?

1 COMMISSIONER MELENDEZ: Commissioner
2 Melendez here. I haven't received the proposed
3 schedule.

4 CHAIRPERSON REYNOLDS: Okay. Marty, did
5 you circulate this document? Did it come from you?

6 STAFF DIRECTOR DANNENFELSER: Yes, it was
7 sent to all Commissioners by email.

8 COMMISSIONER MELENDEZ: And when was that?

9 STAFF DIRECTOR DANNENFELSER: I believe it
10 was on Wednesday.

11 COMMISSIONER MELENDEZ: Okay. I just
12 checked my email, and I don't find it on there.

13 CHAIRPERSON REYNOLDS: Okay.

14 STAFF DIRECTOR DANNENFELSER: Let me see
15 if I have it with me, that I can try to resend it to
16 you.

17 CHAIRPERSON REYNOLDS: That being the
18 case, let's table discussion of the calendar.

19 COMMISSIONER GAZIANO: Mr. Chair, maybe we
20 need to table the vote, but could I just inquire about
21 one possible change, so that we could have a brief
22 discussion of it, anyway?

23 CHAIRPERSON REYNOLDS: Sure.

24 COMMISSIONER GAZIANO: On April, I would
 th th
25 prefer the 8 , rather than the 15 , and that does

1 seem to be closer to the equal interval between March
th
2 11 and May 13. But does that -- doing it on the 8 ,
th
3 rather than the 15 , present an issue that anyone is
4 aware of?

5 STAFF DIRECTOR DANNENFELSER: No, we were
6 in-between those two dates.

7 COMMISSIONER GAZIANO: You're right, it's
8 close, but I would -- it happens close to my
9 daughter's spring break. I don't know if that
10 presents an issue for anyone.

11 STAFF DIRECTOR DANNENFELSER: I think the
12 issue there was the telephonic meeting, if the
13 telephonic meeting were to come two weeks later, that
14 would be on Good Friday, and I think that's we went to
th
15 the 15 , so that we would not have the telephonic
16 meeting -

17 COMMISSIONER GAZIANO: But we could,
18 perhaps, still have the telephonic meeting whenever
19 you schedule it.

20 STAFF DIRECTOR DANNENFELSER: That's true.

21 COMMISSIONER GAZIANO: Okay.

22 COMMISSIONER YAKI: Mr. Chair, this is
23 Commissioner Yaki. I have two statements to make
24 about this. One, I think it's extremely premature a
25 year out when we are going to have, according to the

1 schedule provided by the General Counsel, two, three,
2 possibly four new Commissioners coming on board toward
3 the end of the year, number one. Number two, and just

th

4 my own gut sense, on April 8 , I believe that is
5 probably smack dab in the heart of when this city is
6 turned upside down by Cherry Blossom sniffers. And it
7 is extremely difficult to deal with flights, and
8 hotels during that period of time, just as an aside.

9 If someone, for example, needed to make a last minute
10 change in plans, that date earlier would be -- make it
11 very difficult. But I understand Commissioner Gaziano
12 wanting to deal with the spring break issue for his
13 children, and I absolutely respect his desire and
14 willingness to do that, and want to accommodate that,
15 as well. I just want to point that second factor out.

16 But as for the first factor, I just have serious
17 problems with trying to do a calendar this far out for
18 next year on any number of different levels.

19 And I would, also, just like to point out
20 that for reasons that I do not understand, in previous
21 years, we have always listed the meeting dates for the
22 Commission on the Commission website. When you go on
23 to the Commission website right now, the only meeting
24 dates that come up for 2010 are the meetings that have
25 previously been held. I don't think that helps people

1 who want to attend, or want to know about when we meet
2 in the future plan their schedule. And, certainly, it
3 means, for me, I'm constantly having to try and find
4 the email with the dates on it, rather than simply
5 referring to the website, where they should be.

6 VICE CHAIR THERNSTROM: Mr. Chairman, let
7 me also say that I've been confused a couple of times
8 about the dates they've gotten on the website, and
9 then been a little bit -

10 COMMISSIONER YAKI: Because they're the
11 2009 dates.

12 VICE CHAIR THERNSTROM: Yes. I was
13 flabbergasted by the fact that all of the 2010 dates
14 aren't there. But, I also have to say it doesn't
15 matter what I vote on the April meeting today. I
16 mean, as of January, the calendar will probably be
17 torn up. I mean, what are we doing voting on this
18 entire calendar in April, and in all the years, if I'm
19 not mistaken, that I have been on this Commission, we
20 have never voted this early on the subsequent year.
21 And it is particularly absurd in that any vote is so
22 meaningless.

23 COMMISSIONER HERIOT: Mr. Chairman, my
24 problem is that academic conferences get scheduled
25 more than a year out, so I'm already getting inquiries

1 for 2011. And that's why I believe we should, indeed,
2 set our schedule early; that is, it doesn't have to be
3 today, but it should be by next month. It's true that
4 we're going to have some problems with people coming
5 on board next year, but they're not going to be coming
6 on board until December, and we, obviously, have to be
7 setting these dates long before then. So, I would
8 strongly prefer that we do it either today, or next
9 month, because, otherwise, I'm having to hold dates,
10 and it's very, very inconvenient for people involved
11 with projects that I'm involved with.

12 VICE CHAIR THERNSTROM: But whatever dates
13 --again, I reiterate, whatever dates we vote on are
14 not established dates. They are -

15 COMMISSIONER HERIOT: The presumption will
16 be in favor of other dates that's been established.
17 People will try to work around them.

18 VICE CHAIR THERNSTROM: I think so.
19 They're going to have to work -- we're going to have
20 to work with the people who come on new to this
21 Commission, and we will have to have the courtesy to
22 say to them what dates work for you, and do these
23 dates work for you? So, I do not think these are
24 dates -- you know, you can vote them, or not vote for
25 them, but I don't think that they're meaningful.

1 CHAIRPERSON REYNOLDS: Okay. Since I
2 won't be here -

3 (Simultaneous speaking.)

4 COMMISSIONER GAZIANO: Gerry, have you not
5 requested a reappointment from the President? Or
6 maybe you can talk off the record on that, but I'm
7 hopeful that if you seek it, he will appoint you.

8 CHAIRPERSON REYNOLDS: All right. Yes,
9 let's have that off the record discussion. Okay,
10 folks, what are we doing here?

11 VICE CHAIR THERNSTROM: We are tabling the
12 question of the calendar for next year for the moment.

13 COMMISSIONER GAZIANO: Yes. My own
14 thought is that whether they're meaningful or not, if
15 some of us think they're helpful, we should consider
16 it sooner, rather than later.

17 COMMISSIONER HERIOT: Well, Mr. Chairman,
18 once we vote them in, they're obviously meaningful,
19 because then we'd have to have a motion to withdraw
20 them. So, it's really very helpful for me to be able
21 to tell people that I work with on other projects that
22 I am likely, very likely to be free for a program of
23 theirs. So, yes, I would like to do this soon.

24 VICE CHAIR THERNSTROM: Mr. Staff
25 Director, when in the past have we voted the next

1 calendar year's meetings, the schedule? I do not
2 believe it's ever been as early as this.

3 COMMISSIONER HERIOT: I think we did it in
4 September last time.

5 STAFF DIRECTOR DANNENFELSER: Yes, I think
6 usually about August or September.

7 VICE CHAIR THERNSTROM: Well, that's a
8 long way from April.

9 COMMISSIONER HERIOT: Yes, but it's before
10 the new members come, so the new member problem
11 doesn't apply.

12 VICE CHAIR THERNSTROM: Nevertheless, I
13 mean, I just don't -- I'm sorry, I just -- with all
14 due respect, I think this is too early a discussion.

15 CHAIRPERSON REYNOLDS: Okay, folks. Gail,
16 are you comfortable with tabling this?

17 COMMISSIONER HERIOT: Until next month,
18 sure. I've got no problem with that.

19 CHAIRPERSON REYNOLDS: Okay.

20 VICE CHAIR THERNSTROM: And we'll have the
21 same objections next month.

22 COMMISSIONER HERIOT: Well, then I will
23 object.

24 CHAIRPERSON REYNOLDS: We will vote on
25 whether to move forward or not. Okay. Would the

1 Staff Director please report on the Staff Level
2 Meeting with the EEOC officials concerning the
3 Commission's request for documents related to their
4 civil rights -- related to the Agency's Civil Rights
5 Enforcement.

6 STAFF DIRECTOR DANNENFELSER: Thank you,
7 Mr. Chairman. At this point, I'd like to ask Attorney
8 Advisor, Chris Byrnes, to come to the table and give
9 us a briefing on that topic.

10 MR. BYRNES: Thank you, Mr. Chairman, and
11 Mr. Staff Director.

12 As the Staff Director mentioned in his
13 rd
14 memorandum of March 23 , he, the General Counsel, and
15 I met with staff from the EEOC to discuss the
16 responses to our clearinghouse requests for documents
17 related to Civil Rights Enforcement. I'm going to
18 provide a very brief summary of their responses to
19 each category of documents that the Commission has
20 requested.

21 The EEOC has provided an Excel spreadsheet
22 listing the case information, case number, court in
23 which actions were filed for all of their civil
24 filings for the first two quarters of fiscal year
25 2010. So, this corresponds to the complaints and
motions to intervene that we requested. The EEOC has

1 promised to provide these spreadsheets in the future
2 on a quarterly basis.

3 They have provided all Amicus and
4 appellate briefs filed during the first two quarters
5 of fiscal year 2010. Again, they have promised to
6 provide these as they are filed. They will provide
7 any new regulation, rule, or sub-regulatory policy
8 guidance issued or proposed, as they are issued or
9 proposed. So far, they have provided all the notices
10 of proposed rulemakings that they have issued since
11 st

11 October 1 , 2009.

12 The EEOC's General Counsel, however, is
13 adamant in refusing to provide non-confidential
14 settlement agreements, reasoning that such publication
15 may adversely affect their litigation posture. The
16 EEOC did not cite any non-disclosure obligation to
17 support this decision. Indeed, they had acknowledged
18 that they had posted these in the past. Instead, they
19 have indicated that we are free to contact the new
20 chair of the EEOC, Jacqueline Berry, to appeal this
21 decision.

22 Now, with respect to the final categories
23 of documents that we requested, these would be all
24 letters of determination finding cause and a systemic
25 basis, all Commissioners charges alleging

1 discrimination of a systemic nature, and all letters
2 of determination indicating the expansion of an
3 individual charge into a class proceeding. The EEOC's
4 position is that these documents cannot be made public
5 pursuant to the confidentiality provisions of Title 7
6 of the Civil Rights Act of 1964; that is, unless they
7 are used in a lawsuit; that is, that they are inserted
8 into the record, or the same charges are recited in
9 the pleadings. Now, it was the EEOC's opinion that
10 redaction of personally identifiable information from
11 these documents would render them virtually useless to
12 the public.

13 The Commission could request, at a
14 minimum, that the EEOC provide on a monthly basis the
15 following summary information, the number of letters
16 of determination finding cause and a systemic basis
17 issued broken down by type of discrimination, such as
18 race, sex, national origin, religion, retaliation,
19 disability, age, and the Equal Pay Act. The number of
20 Commissioner's charges filed alleging discrimination
21 of a systemic nature, again broken down into the same
22 categories. And, finally, the number of letters of
23 determination issued indicating the expansion of an
24 individual charge into a class proceeding, again
25 broken down the same way.

1 The EEOC already provides this information
2 to the public on an annual basis. A review of the
3 Commission's prior publications on EEOC Civil Rights
4 Enforcement indicates that the EEOC has provided us
5 aggregated data in the past, such as what I just
6 described in response to our interrogatories. If
7 Commissioners feel that such information would not
8 satisfy our original clearinghouse request, the
9 Commission could request the EEOC redact personally
10 identifiable information from the letters and charges,
11 and provide the redacted copies to us, leaving aside
12 the judgment of whether they feel those documents
13 would be particularly useful to the public.

14 I'd be happy to answer any questions you
15 might have.

16 CHAIRPERSON REYNOLDS: Questions? Okay.
17 Mr. Byrnes, thank you, and I'd also like to thank the
18 EEOC for providing some of the information that we
19 requested. I'm hopeful that through continued
20 discussions we can narrow the areas of dispute.

21 COMMISSIONER GAZIANO: Mr. Chair, I would
22 just like to second that. I'm glad that our Staff was
23 able to convince them that their previous responses
24 were wholly inadequate, and that they've even agreed
25 to that. I think there may be some areas, given the

1 substance of their response, where we can work some
2 accommodations. Some of their answers still, from
3 prior reports I've gotten, or the written report we
4 all got, are indefensible, but there may be some ways
5 that we can work out accommodations, so I just thank
6 the Staff, and suggest that we need to keep working
7 with the EEOC to convince it to do the right thing.

8 CHAIRPERSON REYNOLDS: And, also, to
9 recognize when they make legitimate arguments.

10 COMMISSIONER GAZIANO: Certainly, some of
11 them may be based on, at least, reasonable grounds
12 that we can accommodate, and still get the information
13 at the Commission level. There's a disclosure issue
14 that, at least, we need to discuss with them further.

15 CHAIRPERSON REYNOLDS: Any other comments,
16 questions, statements?

17 Okay. Next up, I'd like to talk about a
18 timetable for getting the Briefing Reports out. As
19 you're aware, the Commission has a number of pending
20 reports, some of which are ready for Commissioner's
21 review. We need to set some timetables to get these
22 documents moved to completion. Mr. Staff Director,
23 please tell me how many reports are pending, and the
24 status of each of these reports.

25 STAFF DIRECTOR DANNENFELSER: Thank you,

1 Mr. Chairman.

2 The Blaine Briefing Report is pending, the
3 Blaine Amendments Briefing Report, and that was
4 th
5 submitted to Commissioners on March 9 , but that is
6 one that we need to set a timetable for a comment
7 period. The English In The Workplace Briefing Report
8 is pending. The Office of General Counsel submitted
9 th
10 that to the Office of Staff Director on March 12 of
11 this year. We, subsequently, had a legal sufficiency
12 review that has raised some additional issues that we
13 are trying to sort out working with OGC and the Office
14 of the Staff Director, so we do expect to get that
15 resolved within -

16 COMMISSIONER GAZIANO: Can you describe
17 that in any way? What is the legal -

18 STAFF DIRECTOR DANNENFELSER: Just, I
19 think, really characterizing how the EEOC has handled
20 this issue. That seems to be a point of how to
21 characterize that in the report. There's also an
22 issue, another time factor that we believe that
23 because the EEOC would be mentioned pretty prominently
24 in this report, that we need to provide an affected
25 agency review for the EEOC, so that would probably be
a few weeks that we would have to wait for their
response on that particular draft report.

1 we vote on the report by May 28 during a telephonic
2 meeting, that we have -- yes, I know, Vice Chair
3 Thernstrom. And that we have concurring and
th
4 dissenting statements by June 28 , and, finally,
th
5 rebuttals by July 28 , 2010.

6 And let me just go through the other two
7 briefing reports, and then we can just open this up
8 for discussion. I also recommend that we vote on
9 findings and recommendations for the HBCUs on May
th
10 14 , concurring and dissenting statements will be due
th
11 on July 11 , and will be concurrently reviewed, and
th
12 then the rebuttal for HBCUs will be due August 11 .
13 That, too, will be written concurrently with STEM.

14 And, finally, for STEM, the 30-day review
rd
15 would start on May 3 . The period would end on June
st th
16 1 . We would have a vote on the report June 11 ,
17 concurring and dissenting statements would be due on
th th
18 July 11 , with rebuttals due on the 11 . So, I open
19 it up for discussion.

20 COMMISSIONER TAYLOR: Mr. Chairman, as to
21 the Health Care Disparities report, which was
22 circulated just a few weeks ago, I appreciate the
23 valiant effort at summarizing this. I think this is
24 a, frankly, difficult topic to summarize for the
25 Staff. What I would propose is that we adopt a

1 somewhat streamlined version to -- frankly, I want to
2 make sure this gets out the door and is useful to the
3 public. So, what I would propose we would do, at
4 least with respect to this Briefing Report, is that we
5 would summarize even more the summary, so that it's
6 more than introduction, and then we would focus on the
7 panelist's written statements. Particularly, in your
8 positions talk it's very difficult to, I think,
9 properly summarize what they have said, and be fair to
10 characterizations. And I want to be true to both
11 sides in this. And then to attach the transcript as
12 an appendix or a link on the electronic version. And
13 this explains my abstaining on the prior vote. And
14 then to allow Commissioners to submit statements in
15 accordance with the time lines, Mr. Chairman, you just
16 set out, but let the Commissioners submit statements
17 on this. And, hopefully, we will be able to get some,
18 if not findings, some recommendations that we can all
19 agree on, but I would propose that somewhat
20 streamlined process, at least as to this report.

21 VICE CHAIR THERNSTROM: Mr. Chairman, you
22 know, as you know, there have been -- now four years
23 have past since the briefing on HBCUs. And on the
24 question of STEM, as well, there have been a lot of
25 developments, there's been a lot of literature. I

1 mean, this is so stale, it's not to be believed. And
2 I think either we publish these reports with some
3 additional acknowledgment of the work that has been
4 done on these subjects, or we just don't bother. I
5 mean, it's, frankly, shameful that we have let this
6 kind of time pass. And it renders these reports a
7 little absurd. I mean, I just saw new data on the
8 question of minorities in STEM concentrations the
9 other day. I can't remember where it was, easy to dig
10 up.

11 CHAIRPERSON REYNOLDS: This subsequent
12 data, and this always occurs, does it contradict the
13 work that's contained in our report?

14 VICE CHAIR THERNSTROM: Well, I would have
15 to look at what the subsequent data are. I didn't
16 bother to do so. But, I mean, the problem is that
17 letting this kind of time go by is really -- makes
18 this Commission into something much less useful than
19 it should be.

20 CHAIRPERSON REYNOLDS: Vice Chair
21 Thernstrom, you have two issues, at least two issues
22 on the table, the timeliness of the reports, and then
23 there's the more substantive issue that you've thrown
24 on the table. If you're saying that subsequent
25 research, and the data that's out there now is

1 inconsistent with what we have in our document, I
2 mean, that argument resonates with me. But if I
3 understand you right, you're saying that you don't
4 know if that's the case.

5 VICE CHAIR THERNSTROM: I don't know. I
6 have not looked at the data. It's possible that it
7 reinforces the case. But, in any case, it would be --
8 by the time we're now putting this out, not to
9 acknowledge subsequent events with the HBCUs, and
10 subsequent research with respect to STEM, is -

11 CHAIRPERSON REYNOLDS: Absurd.

12 VICE CHAIR THERNSTROM: Well, it's
13 delinquent.

14 CHAIRPERSON REYNOLDS: Any other comments?

15 COMMISSIONER YAKI: Yes, this is
16 Commissioner Yaki. With regard to Health Disparities,
17 I would just like to, in terms of the ripeness,
18 staleness, ready for cultivation, or whatever you may
19 want to call it of the report, I would just note that
20 one of the agencies that testified on that, the Agency
21 for Health Research and Quality, just put out, I
22 believe, two days ago its annual disparities report,
23 so we should ensure that any -- if it's simply
24 tracking and just adding to current data that was part
25 of the Health Care Disparities analysis, we should, at

1 least, take a look at that to ensure, if there's
2 consistency, or if there's inconsistency from what --
3 or new data that needs to be incorporated, we should
4 take a look at that.

5 CHAIRPERSON REYNOLDS: Other comments?

6 COMMISSIONER YAKI: One more comment, Mr.
7 Chair. This is Commissioner Yaki. I believe when --
8 because I don't have -- I can't access it on the
9 calendar, when is our meeting in August?

10 VICE CHAIR THERNSTROM: There aren't
11 usually meetings in August.

12 COMMISSIONER YAKI: I know, but when is
13 our meeting scheduled for this August?

14 STAFF DIRECTOR DANNENFELSER: August 12 .
15

16 CHAIRPERSON REYNOLDS: Staff Director, do
17 you have the calendar available?

18 STAFF DIRECTOR DANNENFELSER: It's August
19 th
20 12 .

21 COMMISSIONER YAKI: I just, from a
22 th
23 logistical point of view, August 12 is -
24 th

25 COMMISSIONER HERIOT: August 13 .

COMMISSIONER YAKI: Yes. From a
logistical point of view, I am not a big fan of our
rebuttals being due basically the same week, and
travel week as Commission meetings. And I think you

1 have two separate things balancing on August 11 .
2 That's just a point I'd like to make.

3 COMMISSIONER GAZIANO: Mr. Chair.

4 CHAIRPERSON REYNOLDS: Yes.

5 COMMISSIONER GAZIANO: First of all, I
6 think it's helpful to layout the longer view, but I
7 didn't know if you were going to require a vote, but
8 we can always modify by a week or so. We usually do
9 that when we're adopting Part B, so I would also ask,
10 unless there's some further discussion. I assume this
11 could be reduced to writing and sent to us.

12 But, the other point I wanted to make is,
13 I certainly endorse the approach Commissioner Taylor
14 suggested for completing the Health Disparities
15 report, and just -- I don't know that we need to -- it
16 doesn't sound -- it sounds like everyone's in
17 agreement with that. I don't know whether we need a
18 vote on that, or not.

19 CHAIRPERSON REYNOLDS: Okay. So, folks,
20 the dates that I just laid out, let's -- well, I'm
21 sure you can all correct me if I've gotten it wrong,
22 but, I mean, we will work towards these dates with the
23 understanding that, as has been the case in the past,
24 where we have to build in some flexibility, we will
25 consider that, but these are the dates that we are

1 marching towards.

2 STAFF DIRECTOR DANNENFELSER: Mr. Chair.

3 CHAIRPERSON REYNOLDS: Yes.

4 STAFF DIRECTOR DANNENFELSER: This is the
5 Staff Director. I just want to clarify something with
6 respect to Commissioner Taylor's proposal, and the
7 timetable that you're proposing. If the clock is
8 starting today on the Commissioner review period for
9 Health Disparities, and we are going to shrink the
10 summary of the report to something along the lines of
11 an introduction, is the proposal then that
12 Commissioners will submit proposals on how that
13 language should be -

14 COMMISSIONER TAYLOR: No, my proposal is
15 that the time period should apply to the Commissioner
16 statements, so for purposes of crafting a statement
17 you, essentially, should be reviewing the written
18 submissions, the transcript. And, again, my hope is
19 that the introduction will not be controversial, so
20 that Commissioners shouldn't be delayed in drafting a
21 statement waiting for the introduction, because the
22 point is to make the introduction, again, not
23 controversial. So, the time line I would like to see
24 imposed would relate to the Commissioner's statements,
25 at least as to the Health Care Disparity Report.

1 STAFF DIRECTOR DANNENFELSER: But, I
2 guess, I just want to clarify what should be happening
3 during this next month between now and May 14 .

4 COMMISSIONER TAYLOR: In my mind, the
5 Commissioner statements would be due May 14 .

6 VICE CHAIR THERNSTROM: Mr. Staff
7 Director, can you send around -

8 STAFF DIRECTOR DANNENFELSER: Well, the
9 Chairman proposed that we vote on May 28 on a
10 telephonic meeting on May 28 .

11 COMMISSIONER GAZIANO: Well, I suppose
12 that you would put together that -- an alternative to
13 Commissioner Taylor, that you would put together
14 exactly what he has described and circulate to us. We
15 can begin writing our statements -

16 COMMISSIONER TAYLOR: Right. And we would
17 vote on that on the 28 .

18 COMMISSIONER GAZIANO: We would vote on
19 that at Part A.

20 COMMISSIONER TAYLOR: Correct.

21 STAFF DIRECTOR DANNENFELSER: But will
22 there be just an up or down vote, basically, by the
23 Commissioners without a comment period then on the
24 introduction? We'll send out an introduction, and --

25 COMMISSIONER TAYLOR: That would be my

1 intention.

2 STAFF DIRECTOR DANNENFELSER: Okay.

3 COMMISSIONER TAYLOR: That the
4 introduction would be fashioned in a way that it
5 shouldn't prompt much debate. It's an introduction,
6 and prepared written statements.

7 STAFF DIRECTOR DANNENFELSER: And we will
8 forego what is now in there as the summary of the
9 proceedings, and so on.

10 COMMISSIONER TAYLOR: Correct. Correct.

11 VICE CHAIR THERNSTROM: Mr. Staff
12 Director, could you send around very soon, as soon as
13 possible, these dates that we've just talked about?

14 STAFF DIRECTOR DANNENFELSER: The dates
15 for the review of the reports?

16 VICE CHAIR THERNSTROM: Yes.

17 STAFF DIRECTOR DANNENFELSER: Yes, we'll
18 get that out today.

19 COMMISSIONER YAKI: Mr. Chair, this is
20 Commissioner Yaki. I have no idea what Commissioner
21 Taylor just talked about. I do not understand -

22 COMMISSIONER TAYLOR: I was going to make
23 a motion.

24 COMMISSIONER YAKI: I do not understand
25 what he means by Commissioner statements going before

1 we've adopted findings and recommendations. I don't
2 understand how -

3 COMMISSIONER TAYLOR: No, it would be in
4 lieu of. It wasn't -- I wasn't suggesting we would
5 have findings and recommendations. My thought is that
6 we submit the Commissioner statements. And, frankly,
7 I would then, in my own mind, after looking at it,
8 determine whether or not I would want to propose
9 findings and recommendations, but I may not. And that
10 just may end the matter. If we can't -- my sense is
11 that if we can't -- if I don't sense a consensus
12 forming fairly quickly on the findings and
13 recommendations, they tend to go nowhere, and so I
14 would look at the prepared statements, look at the
15 Commissioner statements, and determine in my mind
16 whether it made sense to even advocate for a Part B to
17 include findings and recommendations, and it may not.

18 COMMISSIONER YAKI: So, what you're saying
19 is that there's also just the possibility that there
20 may be no -- if there is no Part B, there may be no
21 Commissioner statements, anyway. I guess, I'm just --
22 I'm at a loss to understand why you want Commissioner
23 statements first out of the box, when, generally, they
24 relate to actions that the -

25 COMMISSIONER TAYLOR: Because it hasn't

1 worked in the past, so I'm trying to change the order.

2 I'm trying to get Commissioners to focus, and comment
3 on what the panelists have said. And if, in my mind,
4 then I see something that is worth trying to develop a
5 consensus around, then I would make that effort. But
6 it hasn't seemed to work to try to recommend findings
7 and recommendations first, so if -- and, again, I'm
8 very comfortable, if we end up with a short summary,
9 the panelist statements, and then submissions from the
10 Commissioners, to me, I'm very comfortable with that.

11 And that may end the matter.

12 STAFF DIRECTOR DANNENFELSER: Can we
13 clarify, again, then under your proposal, what is the
14 date for Commissioner statements?

th

15 COMMISSIONER TAYLOR: The 14 .

16 STAFF DIRECTOR DANNENFELSER: Of May.

17 COMMISSIONER TAYLOR: Of May.

18 STAFF DIRECTOR DANNENFELSER: And is there
19 a rebuttal period?

20 COMMISSIONER GAZIANO: Oh, I maybe
21 misunderstood earlier. Unless you -- I'd probably
22 want a little bit more time to read the -- reread the
23 statements and think about it. And I, certainly, like
24 your possible suggested order, but that we might want
25 statements, and rebuttal. So, the next order, if it's

1 all right, is to -- having the Staff assemble the
2 report in the manner that you've suggested. We'll
3 approve it, or not approve it on what was it, May
4 th
28 , or what date -

5 th
STAFF DIRECTOR DANNENFELSER: The 28 .
6 That's what the Chairman proposed.

7 th
COMMISSIONER GAZIANO: May 28 . Okay.
8 And then we can, at some point, whether it's before
9 then, or after then, agree to the statement, and
10 rebuttal period.

11 COMMISSIONER YAKI: When is the meeting in
12 May, again?

13 STAFF DIRECTOR DANNENFELSER: The in-
14 th
person meeting is May 14 .

15 COMMISSIONER YAKI: So, we have statements
16 due the same day that we're here. I just can't -- I
17 just don't think that's -

18 COMMISSIONER GAZIANO: Is it possible,
19 since we're going to abbreviate the report, that we
20 actually vote on it, Mr. Chair, on the May 14 meeting?

21 CHAIRPERSON REYNOLDS: I'm sorry. Please
22 repeat your question.

23 COMMISSIONER GAZIANO: Since we're not
24 going to be summarizing the statements, and there's
25 less for Commissioners to comment on, the only thing

1 that Commissioners could really comment on is the
2 introduction, which is going to be non-controversial.

3 Could we, potentially, have the Staff send that to us
4 in the next week, or however long it takes, and then

th

5 vote on Part A on May 14 ?

6 CHAIRPERSON REYNOLDS: Yes.

7 COMMISSIONER GAZIANO: Okay. And then we
8 can set -

9 CHAIRPERSON REYNOLDS: This is going to be
10 slimmed down, so there's less material to review.

11 COMMISSIONER GAZIANO: Or at least nothing
12 to object to, since it's the people's own statement.
13 And then we can decide on the Commissioner statement
14 and rebuttal period at the May 14 meeting.

15 COMMISSIONER YAKI: That's not what you
16 wanted.

17 COMMISSIONER GAZIANO: Will you accept
18 that as a friendly amendment?

19 COMMISSIONER TAYLOR: I will accept that
20 as a friendly amendment, yes.

21 COMMISSIONER YAKI: Okay. That will be
22 much better, from my point of view.

23 VICE CHAIR THERNSTROM: So, there's going
24 to be some rhetorical fluff out up front that nobody
25 can object to.

1 COMMISSIONER TAYLOR: Correct.

2 COMMISSIONER HERIOT: An Executive Summary
3 is what we're talking about. Right? Like, a three to
4 five-page piece of -- three to five-page. Is that
5 what we're thinking of, Commissioner Taylor?

6 COMMISSIONER TAYLOR: Yes. And I would
7 not characterize it as rhetorical fluff.

8 VICE CHAIR THERNSTROM: Real substantive
9 stuff. Right?

10 COMMISSIONER YAKI: It will be the fluffer
11 nutter of fluff.

12 COMMISSIONER GAZIANO: Non-controversial
13 Executive Summary.

14 COMMISSIONER YAKI: Correct.

15 VICE CHAIR THERNSTROM: That will be
16 immensely useful for the public to read.

17 COMMISSIONER YAKI: Which I bet will not
18 be non-controversial.

19 CHAIRPERSON REYNOLDS: Okay, folks, next
20 up, the next item is an update on the National Civil
21 Rights Conference. The Concept Paper has been revised
22 taking into account some of the Commissioner's
23 submitted comments, as well as their comment during
24 meetings. For example, several Commissioners have
25 recommended that we have fewer panelists on each panel

1 to lengthen the amount of time that each panelist has
 2 to discuss their point of view. In recent months,
 3 I've met with a number of potential panelists, and
 4 they are relaying a high level of interest in the
 5 proposed event. The Staff Director has convened a
 6 Staff Working Group to jumpstart activity on the
 7 logistics of the conference. For example, securing a
 8 venue, and ensuring that we are in a position to -- to
 9 insure that we follow our procurement rules.

10 The main item is to settle on a date for
 11 the event, and the dates that I propose are in late
 12 August, early September. And the dates for August,
 13 would include, I believe -- well, I don't believe, the

th th th th th th
 14 17 , 18 , 19 , or 24 , 25 , and 26 . And the -

15 COMMISSIONER GAZIANO: I'm sorry. Could
 16 you slow down?

th th th
 17 CHAIRPERSON REYNOLDS: The 7 , 8 , 9 ,

th th th
 18 14 , 15 , or 16 . Staff Director has advised that

19 for budget in fiscal year closeout purposes, that
 th

20 holding the event by September 9 would be
 21 preferable. So, at this point, the dates that I just
 22 threw out, comments?

23 STAFF DIRECTOR DANNENFELSER: Mr. Chair,
 24 could you repeat the dates? I think not everyone was
 25 able to get them down the first time.

1 CHAIRPERSON REYNOLDS: In August, we're
 th th th th th th
2 looking at the 17 , 18 , 19 , 24 , 25 , or 26 .

 th th th
3 In September, we're looking at the 7 , 8 , 9 ,
 th th th
4 14 , 15 , or 16 .

5 COMMISSIONER GAZIANO: Mr. Chair, I
6 suppose I'll begin. I could probably plan around
7 almost any of these, but since, if people are like me,
8 and people in Washington, any of the times in August
9 may conflict with family vacations, or academic, or
10 scholarly trips, and whatever, so that I suspect that
11 any of the September dates would be better for most
12 speakers, and most participants.

13 Notwithstanding the difficulty in closing
 th
14 out the calendar, I also tend to think that the 14 ,
 th th
15 15 , and 16 may be the earliest of those dates,
16 would be better. Sometimes, the sort of first week
17 after ---Labor Day is late this year, is it not?

18 COMMISSIONER TAYLOR: I believe it is,
19 yes.

20 COMMISSIONER GAZIANO: Yes. The first
21 week after Labor Day also seems not ideal, so I would
22 want to hear from other Commissioners, but I think the
 th th th
23 14 , 15 , and 16 might be better. And I would be
24 willing to defer to the Chair, if the Chair wants that
25 deference, to figure out what the best of those dates

1 are.

2 COMMISSIONER HERIOT: Mr. Chairman.

3 CHAIRPERSON REYNOLDS: Yes.

4 COMMISSIONER HERIOT: I can do any of
th th th

5 those dates except the 7 , 8 , and 9 of September.

th th

6 So, as long as it's not scheduled for the 7 , 8 ,
th

7 or 9 , any of the other dates you mentioned work for
8 me.

9 CHAIRPERSON REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: Mr. Chair, Rosh
th th

11 Hashanah is September 8 and 9 . I was just
12 informed of that, just for you to know. I have a
13 longstanding family reunion vacation the last two
14 weeks of August.

15 VICE CHAIR THERNSTROM: Mr. Chairman, I'm
16 a little confused here. We earlier talked about the
17 necessity of setting the calendar for next year a year
18 ahead of time because there are so many potential
19 conflicts with people's schedules, and now we're
20 talking about a conference in August or September,
21 where it would seem to me that the same point might
22 apply.

23 COMMISSIONER HERIOT: Which side are you
24 on? I thought you were the one to schedule late, now
25 you're the one to schedule early?

1 VICE CHAIR THERNSTROM: Well, I -- look,
2 frankly -

3 CHAIRPERSON REYNOLDS: Well, Vice Chair
4 Thernstrom, do you have a state -- do you have a
5 preference in terms of the dates that have been
6 presented?

7 VICE CHAIR THERNSTROM: No, Mr. Chairman,
8 I do not.

9 CHAIRPERSON REYNOLDS: Commissioner
10 Taylor.

11 VICE CHAIR THERNSTROM: He's not here.

12 COMMISSIONER GAZIANO: He has stepped out.

13 COMMISSIONER YAKI: Elvis has left the
14 building.

15 COMMISSIONER MELENDEZ: I have a question.
16 This is Commissioner Melendez. How many days -- is
17 this a two-day event, or what?

18 CHAIRPERSON REYNOLDS: A one-day event.

19 COMMISSIONER MELENDEZ: So, we're picking
20 like either a Friday or a Thursday, is that what we're
21 doing?

22 COMMISSIONER YAKI: It's midweek.

23 CHAIRPERSON REYNOLDS: Right now, we're
24 looking at the dates that have been proposed. Thus
25 far, the preference has been for the late September

1 dates.

2 STAFF DIRECTOR DANNENFELSER: They're all
3 Tuesday, Wednesday, Thursday dates, I believe. Is
4 that correct, Mr. Chairman?

5 CHAIRPERSON REYNOLDS: I would have to
6 pull my calendar up. The 15 , 16 , and 17 of
7 September.

8 STAFF DIRECTOR DANNENFELSER: You said
9 14 , 15 , 16 , I thought, wasn't it?

10 COMMISSIONER YAKI: I thought you said
11 15 , 16 , 17 .

12 COMMISSIONER GAZIANO: No, I thought it
13 was 14, 15, 16.

14 CHAIRPERSON REYNOLDS: 14 , 15 , and
15 16 of September.

16 COMMISSIONER GAZIANO: Yes, that is a
17 Tuesday, Wednesday, Thursday. And if no one has a
18 strong preference between those, I would suggest
19 leaving it to the Chair to tell us which of those
20 three days he is able to secure the most number of
21 speakers and the best venue.

22 CHAIRPERSON REYNOLDS: Yes, and that
23 flexibility will be required because of those two
24 issues, securing venue, and having a little bit of
25 flexibility in terms of the invited panelists. All

1 right.

2 COMMISSIONER MELENDEZ: I have another
3 question. Commissioner Melendez. Do we ever
4 determine the cost of this for the budget?

5 CHAIRPERSON REYNOLDS: I forget what the
6 number is, I apologize. But, and, Marty, correct me
7 if I'm wrong, that we have sufficient money to cover
8 the expense associated with the conference.

9 STAFF DIRECTOR DANNENFELSER: Yes, Mr.
10 Chairman. I believe we're probably talking in the
11 neighborhood of \$125,000, give or take some, but we
12 would have sufficient funds to cover that.

13 CHAIRPERSON REYNOLDS: Next item, update
14 on the status of the 2010 Enforcement Report. Mr.
15 General Counsel, you're up.

16 MR. BLACKWOOD: With regard to the hearing
17 set for next Friday, just, generally, I can report
18 that things are proceeding. The structure remains
19 roughly the same as before. We're trying to, if
20 anything, trying to streamline it to expedite
21 completion. I do need, though, at some point to -- in
22 fact, at this point, need to go into closed session to
23 discuss a conversation I had yesterday with the
24 Department of Justice.

25 CHAIRPERSON REYNOLDS: Okay. Mr. Staff

1 Director, walk me through the procedure for going into
2 closed session. Do we want to save that until the
3 end? Would it be possible, David, that we get through
4 all the other items that you'd like to discuss, and
5 save that for last, or does it make more sense to --
6 for us to get the new information?

7 MR. BLACKWOOD: No, I think we can save it
8 to last. It's probably technically easier to do that.

9 VICE CHAIR THERNSTROM: Unless it's going
10 to be within the next 20 minutes, I will not be here,
11 but that's okay.

12 MR. BLACKWOOD: I think it would make
13 sense to wait until then.

14 CHAIRPERSON REYNOLDS: Mr. General
15 Counsel, please carry on.

16 MR. BLACKWOOD: I have nothing else to
17 add, other than what I need to discuss in closed
18 session.

19 CHAIRPERSON REYNOLDS: Okay. One other
20 item, for this event, Commissioners who are interested
21 --well, each Commissioner will be provided with an
22 opportunity to make a two-minute statement, and those
23 who want to make a statement, two-minute statements,
24 that's fine. Those who don't, that's fine, too. At
25 this point, Marty, what do we need to do to go into

1 closed session?

2 MR. BLACKWOOD: Well, do you want to talk
3 about the other matters first?

4 STAFF DIRECTOR DANNENFELSER: Do you have
5 any other items that you want to cover on the agenda?

6 CHAIRPERSON REYNOLDS: Okay. I'm with you
7 now. Bear with me.

8 COMMISSIONER GAZIANO: Do you want to
9 discuss Title IX first?

10 CHAIRPERSON REYNOLDS: Yes. Dr. Lerner,
11 please provide us with an update on Title IX projects.

12 VICE CHAIR THERNSTROM: I don't believe
13 he's here.

14 STAFF DIRECTOR DANNENFELSER: He's not
15 able to join us today, Mr. Chairman, but I'm going to
16 ask the General Counsel, who has been dealing with
17 some of the related issues with regard to subpoenas
18 and the like, if there are some things he can talk
19 about in open session, which I believe is the case.

20 MR. BLACKWOOD: Yes. This is about Title
21 IX, for those who just came back in. We're going to
22 address in closed session later. With regard to Title
23 IX, the status is that we have received the data we
24 were requesting from the 10 schools that I discussed
25 previously. We have one school that has been

1 delinquent, but asked for a continuance, and we have
2 four schools that have indicated that they will not
3 provide the data. And those are being handled
4 directly, as far as entering into negotiations, with
5 the assistance of the Chair, as far as trying to
6 resolve those differences.

7 With regard to the data, itself, Dr.
8 Lerner has indicated that he believes -- much of the
9 data has already been input, and that he is working on
10 analyzing -- beginning the analyzing of the data that
11 we have from the 10 schools, and I believe he
12 indicated that he thought he would be completed in
13 that task by the end of June.

14 STAFF DIRECTOR DANNENFELSER: That's
15 correct.

16 MR. BLACKWOOD: As far as the other
17 schools, keep in mind that of 10 schools, which I term
18 the consortium that agreed to bargain together, most
19 of them provided the data timely several weeks, but
20 there are additional document requests that were
21 outstanding, and those are due by next Friday, April

rd

22 the 23 . I have no indication from any of them that
23 they will need additional time. And that is the
24 report.

25 CHAIRPERSON REYNOLDS: Questions?

1 Comments?

2 Okay. Next up, Mr. Staff Director, your
3 report, please.

4 IV. STAFF DIRECTOR'S REPORT

5 STAFF DIRECTOR DANNENFELSER: Thank you,
6 Mr. Chairman.

7 I don't really have anything to add to the
8 report that was circulated. Part of it dealt with the
9 Briefing Reports, and we've already had the discussion
10 with respect to the Briefing Reports. So, at this
11 point, I would just like to see if Commissioners have
12 any questions.

13 CHAIRPERSON REYNOLDS: Hearing none, it's
14 time go to closed session.

15 COMMISSIONER GAZIANO: What is the basis?
16 Do you say that on the record?

17 MR. BLACKWOOD: I can say that it -- the
18 ongoing negotiations that we have had with the
19 Department of Justice with regard to our subpoena, to
20 Department officials, and also discovery information
21 that -- the dispute regarding those, the response
22 there.

23 COMMISSIONER GAZIANO: And who should
24 stay?

25 MR. BLACKWOOD: The Special Assistants and

1 the Commissioners can stay, as well as Ms. Tolhurst.

2 STAFF DIRECTOR DANNENFELSER: I'd like to
3 request that the two Attorney Advisors in the Office
4 of Staff Director be able to stay, as well.

5 MR. BLACKWOOD: That's fine, because there
6 are some issues that will carry over to OSD, as well.

7 CHAIRPERSON REYNOLDS: Okay.

8 MR. BLACKWOOD: Somebody has to make a
9 motion to go into closed session.

10 COMMISSIONER YAKI: So moved.

11 CHAIRPERSON REYNOLDS: Second.

12 Discussion? Commissioner Melendez, how do you vote?

13 COMMISSIONER MELENDEZ: Yes.

14 CHAIRPERSON REYNOLDS: Commissioner
15 Gaziano.

16 COMMISSIONER GAZIANO: Yes.

17 CHAIRPERSON REYNOLDS: Commissioner
18 Heriot.

19 COMMISSIONER HERIOT: Yes.

20 CHAIRPERSON REYNOLDS: Commissioner
21 Kirsanow.

22 COMMISSIONER KIRSANOW: Yes.

23 CHAIRPERSON REYNOLDS: Commissioner Yaki.

24 COMMISSIONER YAKI: Yes.

25 CHAIRPERSON REYNOLDS: Commissioner --

1 Vice Chair Thernstrom.

2 COMMISSIONER GAZIANO: Stepped away.

3 CHAIRPERSON REYNOLDS: Commissioner
4 Taylor.

5 COMMISSIONER GAZIANO: Stepped away.

6 CHAIRPERSON REYNOLDS: Okay. I vote in
7 favor of the motion. The motion passes.

8 (Whereupon, the proceedings went off the
9 record at 11:16 a.m., and resumed at 11:32 a.m.)

10 V. ADJOURN

11 COMMISSIONER YAKI: Move to adjourn.

12 VICE CHAIR THERNSTROM: I second it.

13 COMMISSIONER TAYLOR: I vote no.

14 (Laughter.)

15 COMMISSIONER GAZIANO: Aye on adjourning.

16 VICE CHAIR THERNSTROM: I've got to get
17 out of here.

18 COMMISSIONER YAKI: That's the equivalent
19 of saying we adjourn.

20 VICE CHAIR THERNSTROM: We adjourn.

21 (Whereupon, the proceedings went off the
22 record at 11:33 a.m.)

23

24

25

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