

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, JUNE 11, 2010

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The Commission convened in Room 540 at 624  
Ninth Street, Northwest, Washington, D.C. at 9:30

a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)  
ABIGAIL THERNSTROM, Vice Chairman  
TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner  
PETER N. KIRSANOW, Commissioner  
ASHLEY L. TAYLOR, JR., Commissioner  
MICHAEL YAKI, Commissioner  
MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC  
MARGARET BUTLER  
CHRISTOPHER BYRNES  
DEMETRIA DEAS  
LILLIAN DUNLAP  
PAMELA A. DUNSTON, Chief, ASCD

PETER MINARIK, Chief, RPCU  
EMMA MONROIG, Solicitor  
LENORE OSTROWSKY  
JOHN RATCLIFFE, Chief, Budget and Finance  
EILEEN RUDERT  
KIMBERLY TOLHURST  
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SCHMAUCH

KIMBERLY SCHULD

AGENDA

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P R O C E E D I N G S

(12:37 p.m.)

CHAIRMAN REYNOLDS: This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is 12:37 Eastern Daylight Time on June 11th, 2010.

Commissioners Kirsanow, Taylor, Heriot, Gaziano, Thernstrom and Yaki are present at the Commission at 624 9th Street, N.W., Room 540, Washington, D.C. where the meeting is being held. I am presiding by phone. Commissioner Melendez could not participate today.

I. APPROVAL OF AGENDA

The first item on the agenda is the approval of the agenda. I move that we approve the agenda. Is there a second?

COMMISSIONER GAZIANO: Second, Gaziano.

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

VICE CHAIR THERNSTROM: Oh, I don't even have it in front of me. Hold on. Come back to me.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

1 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Yaki.

4 COMMISSIONER YAKI: Okay.

5 CHAIRMAN REYNOLDS: Commissioner Taylor.

6 COMMISSIONER TAYLOR: Yes.

7 CHAIRMAN REYNOLDS: And I also vote for  
8 it. Vice Chair Thernstrom.

9 VICE CHAIR THERNSTROM: Well, I'll vote  
10 yes. I wish we had moved the discussion of the  
11 Concept Paper, the Asian American students up earlier,  
12 but too late for me, I suppose, to make that request.  
13 Oh, I didn't have the microphone on. I'm sorry.

14 II. PROGRAM PLANNING

15 CHAIRMAN REYNOLDS: Okay, but I heard you.  
16 Next item, the May 29th, 2010 meeting ended before we  
17 could conclude our approval of the final two  
18 recommendations on the Educational Effectiveness of  
19 Historically Black Colleges and Universities briefing  
20 report. We will now consider these two  
21 recommendations. I move that the Commission approve  
22 Recommendation Two, which reads as follows: "State  
23 government should allocate funds to HBCUs and non-  
24 HBCUs based on racially neutral criteria." Is there  
25 a second?

1 COMMISSIONER GAZIANO: Second.

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

4 VICE CHAIR THERNSTROM: Get back to me  
5 again.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano.

7 COMMISSIONER GAZIANO: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Heriot.

9 COMMISSIONER HERIOT: Yes.

10 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

11 COMMISSIONER KIRSANOW: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: No.

14 CHAIRMAN REYNOLDS: Commissioner Taylor.

15 COMMISSIONER TAYLOR: Abstain.

16 CHAIRMAN REYNOLDS: I vote for it. Vice  
17 Chair Thernstrom.

18 VICE CHAIR THERNSTROM: Abstain.

19 CHAIRMAN REYNOLDS: Okay. We have two  
20 abstentions, one vote against, and the remaining votes  
21 support the motion. The motion passes.

22 Next up is Recommendation Three, which  
23 reads as follows: "Researcher should carefully study  
24 the success of HBCUs to learn how other schools can  
25 emulate their best practices." Is there a second?

1 COMMISSIONER GAZIANO: Second.

2 CHAIRMAN REYNOLDS: Discussion? Okay.

3 Vice Chair Thernstrom.

4 VICE CHAIR THERNSTROM: Abstain.

5 CHAIRMAN REYNOLDS: Commissioner Gaziano.

6 COMMISSIONER GAZIANO: Yes.

7 CHAIRMAN REYNOLDS: Commissioner Heriot.

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Yaki.

12 COMMISSIONER YAKI: Abstain.

13 CHAIRMAN REYNOLDS: Commissioner Taylor.

14 COMMISSIONER TAYLOR: Yes.

15 CHAIRMAN REYNOLDS: I also vote for the

16 motion. We have two abstentions, the remaining

17 Commissioners supported the motion. The motion

18 passes.

19 Next up is approval of the briefing report

20 Encouraging Minority Students to Pursue Science,

21 Technology, Engineering, and Math Careers, also known

22 as STEM. I move that the Commission approve for

23 publication Part A of the report produced by staff

24 reflecting commissioner and panelist inputs on the

25 briefing the Commission held on September 12th, 2008

1 on Encouraging Minority Students to Pursue Science,  
2 Technology, Engineering and Math Careers.

3 Part A, as distributed in draft form to  
4 Commissioners contains a briefing overview and summary  
5 of the issue, and why the Commission chose to conduct  
6 this briefing, a summary of proceeding consisting of  
7 synopses of panelists' oral statements during the  
8 briefing, and a synopsis of the question and answer  
9 session.

10 And, finally, copies of the panelists'  
11 written statements. Under this motion, if the  
12 majority of the Commission votes to adopt Part A of  
13 the briefing report, the Commission will then open  
14 discussion on Part B. If Part A fails to obtain a  
15 majority vote, then, obviously, there's no need to  
16 discuss Part B.

17 Commissioner concurring and dissenting  
18 statements on this report will be due on July 11th.  
19 Any rebuttals by August 11th. The time line for  
20 Commissioner statements and rebuttals for the HBCU  
21 report will run concurrently, and be due at the same  
22 time as those for the STEM report. Is there a second?

23 COMMISSIONER GAZIANO: Second.

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



1 VICE CHAIR THERNSTROM: Abstain.

2 CHAIRMAN REYNOLDS: Commissioner Gaziano.

3 COMMISSIONER GAZIANO: Yes.

4 CHAIRMAN REYNOLDS: Commissioner Heriot.

5 COMMISSIONER HERIOT: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Yaki.

9 COMMISSIONER YAKI: No.

10 CHAIRMAN REYNOLDS: Commissioner Taylor.

11 COMMISSIONER TAYLOR: Yes.

12 CHAIRMAN REYNOLDS: I vote for it. We  
13 have one abstention, one vote against the motion. The  
14 motion passes.

15 Okay. Part B as distributed in draft form  
16 to Commissioners contains the Commission findings and  
17 recommendations. Under this motion, the Commission  
18 will vote individually on each finding and  
19 recommendation. Those findings and recommendations  
20 receiving a majority vote will be included in the  
21 report with a vote tally, and a sentence explaining  
22 any opposition vote for that item.

23 I move that the Commission approve Finding  
24 One, which reads as follows: "Science, Technology,  
25 Engineering, and Mathematics graduates are important

1 to the U.S. economy because they enable the United  
2 States to maintain its preeminence in the STEM field."  
3 Is there a second?

4 COMMISSIONER HERIOT: Second, Heriot.

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

7 VICE CHAIR THERNSTROM: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano.

9 COMMISSIONER GAZIANO: Yes.

10 CHAIRMAN REYNOLDS: Commissioner Heriot.

11 COMMISSIONER HERIOT: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

13 COMMISSIONER KIRSANOW: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Yaki.

15 COMMISSIONER YAKI: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Taylor.

17 COMMISSIONER TAYLOR: Yes.

18 CHAIRMAN REYNOLDS: I also support it. We  
19 have a unanimous vote.

20 I move that the Commission approve Finding  
21 Two, which reads as follows: "Regardless of the racial  
22 or ethnic background, college freshmen exhibit equally  
23 substantial degrees of interest in pursuing STEM  
24 careers. But despite this interest, Black and  
25 Hispanic students are less likely to major in or

1 obtain a doctoral degree in STEM disciplines than are  
2 Whites and Asians." Is there a second?

3 COMMISSIONER HERIOT: Mr. Chairman, I have  
4 what I think is a friendly amendment, just to correct  
5 something that I think otherwise might be somewhat  
6 misinterpreted.

7 CHAIRMAN REYNOLDS: Okay. What is it?

8 COMMISSIONER HERIOT: My proposed finding  
9 would be, "Black and Hispanic High School seniors  
10 exhibit about the same degree of interest in pursuing  
11 STEM careers as White students (Asian students are  
12 still more interested). But despite these initially  
13 high levels of interest, Black and Hispanic students  
14 are less likely to major in -- I'm sorry, are less  
15 likely to obtain a degree in STEM disciplines than are  
16 Whites and Asians."

17 CHAIRMAN REYNOLDS: Okay. I accept it as  
18 a friendly amendment. Discussion?

19 VICE CHAIR THERNSTROM: For the initial  
20 assertion, Black and Hispanic seniors exhibit the same  
21 degree of interest, we are simply relying on the  
22 Sander, and Sander alone.

23 COMMISSIONER HERIOT: Actually, there are  
24 lots of studies that show this. I've seen several. I  
25 can't cite them to you right now, but I don't think

1 this is -

2 VICE CHAIR THERNSTROM: Well, I mean, I  
3 doubt the truth of that. I'm sorry. And -

4 COMMISSIONER HERIOT: Then you're the only  
5 one.

6 VICE CHAIR THERNSTROM: I'm the only one  
7 in the entire world. Okay. Fine. I'm delighted to  
8 be the only one in the entire world that has a doubt  
9 about something, but that's okay.

10 CHAIRMAN REYNOLDS: Any other comments?  
11 Vice Chair Thernstrom, how do you vote?

12 VICE CHAIR THERNSTROM: No.

13 CHAIRMAN REYNOLDS: Commissioner Gaziano.

14 COMMISSIONER GAZIANO: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Heriot.

16 COMMISSIONER HERIOT: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Yaki.

20 COMMISSIONER YAKI: No.

21 CHAIRMAN REYNOLDS: Commissioner Taylor.

22 COMMISSIONER TAYLOR: Abstain.

23 CHAIRMAN REYNOLDS: And I vote for it. We  
24 have two nos, one abstention, the remaining  
25 Commissioners voted in support of it. The motion

1 passes.

2 Okay. I move that the Commission approve  
3 Finding Three, which reads as follows -

4 COMMISSIONER GAZIANO: Mr. Chairman, I had  
5 a substitution that I can pass out for the last  
6 sentence. I think that John emailed that to you, and  
7 Commissioner Melendez. Do you want me to read that as  
8 a friendly amendment?

9 CHAIRMAN REYNOLDS: Okay. How about this,  
10 let me -

11 COMMISSIONER GAZIANO: Or do you want to  
12 read the -

13 CHAIRMAN REYNOLDS: -- original into the  
14 record, and then offer your friendly amendment.

15 COMMISSIONER GAZIANO: And I'm also  
16 passing out what I will propose as an amendment to  
17 Five at the same time. Can you -

18 CHAIRMAN REYNOLDS: Okay.

19 COMMISSIONER GAZIANO: -- pass this down  
20 the way.

21 CHAIRMAN REYNOLDS: Okay. While that's  
22 being done, data presented to the Commission showed  
23 that success in STEM majors depends on both the  
24 student's absolute entry academic credentials, and on  
25 the student's entering academic credentials relative

1 to other students in the class. The latter phenomenon  
2 is commonly called mismatch.

3 Commissioner Gaziano, you would like to  
4 replace the last sentence.

5 COMMISSIONER GAZIANO: With two other  
6 sentences consistent with the body of the report that  
7 explained a little bit more. The last sentence would  
8 be replaced with, "When a student is in a class in  
9 which his or her entry credentials are significantly  
10 different from the median student, the student is  
11 'mismatched' for that class." New sentence, "This  
12 mismatch causes a loss of learning either because the  
13 positively mismatched student is not challenged by the  
14 material, or because the negatively mismatched student  
15 feels overwhelmed by the speed at which the material  
16 is being taught."

17 CHAIRMAN REYNOLDS: I accept it as a  
18 friendly amendment. Discussion? Oh, I'm sorry. Is  
19 there a second?

20 COMMISSIONER HERIOT: Second.

21 CHAIRMAN REYNOLDS: Discussion? Vice  
22 Chair Thernstrom.

23 VICE CHAIR THERNSTROM: Abstain.

24 CHAIRMAN REYNOLDS: Commissioner Gaziano.

25 COMMISSIONER GAZIANO: Yes.

1 CHAIRMAN REYNOLDS: Commissioner Heriot.

2 COMMISSIONER HERIOT: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Yaki.

6 COMMISSIONER YAKI: No.

7 CHAIRMAN REYNOLDS: Commissioner Taylor.

8 COMMISSIONER TAYLOR: Abstain.

9 CHAIRMAN REYNOLDS: I vote for it. We  
10 have two abstentions, one vote against the motion.  
11 The remaining Commissioners voted in favor of it. The  
12 motion passes.

13 Okay. I move - this is Finding Four. I  
14 move that the Commission approve it. Finding Four  
15 reads as follows: "Data presented to the Commission  
16 indicated that racial or ethnic discrimination in  
17 college was not a substantial factor in Black and  
18 Hispanic college students' disproportionate attrition  
19 from STEM majors. The evidence showed that when Black  
20 and White students have the same academic index  
21 scores, Black students are more likely than White  
22 students to receive a STEM degree." Is there a  
23 second?

24 COMMISSIONER GAZIANO: Second.

25 CHAIRMAN REYNOLDS: Vice Chair -- I'm

1       sorry. Discussion? Vice Chair Thernstrom.

2                   VICE CHAIR THERNSTROM: Abstain.

3                   CHAIRMAN REYNOLDS: Commissioner Gaziano.

4                   COMMISSIONER GAZIANO: Yes.

5                   CHAIRMAN REYNOLDS: Commissioner Heriot.

6                   COMMISSIONER HERIOT: Yes.

7                   CHAIRMAN REYNOLDS: Commissioner Kirsanow.

8                   COMMISSIONER KIRSANOW: Yes.

9                   CHAIRMAN REYNOLDS: Commissioner Yaki.

10                  COMMISSIONER YAKI: Abstain.

11                  CHAIRMAN REYNOLDS: Commissioner Taylor.

12                  COMMISSIONER TAYLOR: Abstain.

13                  CHAIRMAN REYNOLDS: I'm sorry?

14                  COMMISSIONER TAYLOR: Abstain.

15                  CHAIRMAN REYNOLDS: And I vote it. Three  
16 abstentions, remaining Commissioners voted for it.

17 The motion passes.

18                  Next up is Finding Five. I move that we  
19 approve Finding Five.

20                  COMMISSIONER GAZIANO: Mr. Chairman, I  
21 sent a complete substitute for that, I hope, by email,  
22 but I just circulated it. Can I read as an offered  
23 friendly amendment?

24                  CHAIRMAN REYNOLDS: Go ahead.

25                  COMMISSIONER GAZIANO: Okay. "The



1 practice of racial and ethnic preferences is one way  
2 in which Black and Hispanic students may be admitted  
3 to a college or university at which their entering  
4 academic credentials are significantly lower than  
5 those of their peers. When top tier colleges and  
6 universities use racial and ethnic preferences to  
7 recruit and admit minority students with academic  
8 credentials that are significantly below their median,  
9 but match the median of lower tier colleges, the  
10 resulting mismatch at the top tier institutions has a  
11 cascading effect through many lower tiers, as each  
12 tier engages in racial and ethnic preferences to  
13 recruit and admit Black and Hispanic students who do  
14 not match the mean in its respective tier. Although  
15 the consequences of this cascading mismatch is not the  
16 principal reason for the current disparities between  
17 Black and Hispanics, and White and Asians in STEM (see  
18 Finding Three regarding absolute credentials), it is  
19 a significant reason. There are fewer Black and  
20 Hispanic physicians, scientists, and engineers today  
21 than there would have been if colleges and  
22 universities had not recruited and admitted Black and  
23 Hispanic students with significantly lower academic  
24 credentials than their average student."

25 CHAIRMAN REYNOLDS: Okay. Is there a

1 second?

2 COMMISSIONER HERIOT: Second.

3 CHAIRMAN REYNOLDS: Discussion?

4 COMMISSIONER YAKI: Yes. This is  
5 Commissioner Yaki. I just -- I'm not going to speak  
6 to every single Finding and Recommendation to this  
7 report, because to do so would take all day, but I do  
8 want to say with regard to this finding, which, to me,  
9 is the central core of what the majority seeks to put  
10 in this report, that for us to engage in this kind of  
11 extreme conclusory statement at a hearing that was  
12 almost two years ago, and for which there was a  
13 significant imbalance of evidence presented either  
14 before or after, is yet another sad commentary on the  
15 abuse of the briefing process. And I will fervently  
16 oppose this in both here today, and in my Commissioner  
17 statement. That's all I wanted to say.

18 CHAIRMAN REYNOLDS: Okay. Any other  
19 comments? Okay. In response to Commissioner Yaki's  
20 statement, there's no aspect in life that I can think  
21 of where two competitors -- we can have two  
22 competitors where one is substantially better prepared  
23 than the other, and the other competitor that has  
24 qualifications that are not as strong wins. Many of  
25 these students are from disadvantaged backgrounds.

1 They have to take out student loans. They're placed  
2 in a situation where the data contained in many  
3 admissions office shows that they're going to  
4 struggle. All the folks in the admission office  
5 understand that, when you come in and your credentials  
6 are a standard deviation away from the mean, that  
7 despite all of the remedial courses and all of the  
8 help, that it's still going to be a struggle. Many of  
9 these students do not make it. They are saddled with  
10 loans. They don't have a degree, but they have a  
11 debt. I think that the institutions are taking care  
12 of the institution's interest, as opposed to looking  
13 out for the welfare of the students. To be fair, and  
14 as a compromise, I think that if universities would  
15 just release more data letting students know, based on  
16 historical data, how they are likely to fare, that at  
17 least these students, and the prospective students and  
18 their families, would have more information upon which  
19 to make a decision. They may still elect to accept an  
20 offer of admission, despite the fact that their  
21 preparation is not as strong, but at least they will  
22 make the decision with full knowledge of what the  
23 likely consequences are, based on historical data.

24 I mean, it is a matter of principle for  
25 me, but it's a consumer protection issue. Let these

1 families, let these prospective students know what  
2 they're getting into. Teachers teach -- I mean, the  
3 pace of the class is geared towards the middle  
4 oftentimes, and when that does not occur, when your  
5 preparation puts you at the bottom of the pack,  
6 regardless of your race, regardless of your ethnicity,  
7 you are likely to struggle, and in many instances you  
8 are likely to eventually flunk out or withdraw out of  
9 frustration, so there's no political agenda here.  
10 This is a fairness argument. These students and these  
11 families deserve better.

12 COMMISSIONER YAKI: Well, Mr. Chair, this  
13 is Commissioner Yaki. I would say that there are some  
14 parts of what you said I agree with, and other parts  
15 which I vehemently disagree. And I think that there  
16 is at least one panelist who would disagree with this  
17 conclusion, although he was not certainly as strong or  
18 as forceful and he could have been, and I'll just note  
19 that in my dissenting statement. But I can just say  
20 that it may be a consumer protection issue, but  
21 there's also, I think, some accountability by the  
22 institutions, as well, in terms of their willingness  
23 or ability to provide the resources to these students  
24 to enable them to succeed, because I think that there  
25 are a lot of these young men and women who have the

1 intelligence and the potential to do great things, and  
2 whether the university fails them is a much different  
3 question than whether or not they have failed.

4 CHAIRMAN REYNOLDS: Well, when you're  
5 saddled with a debt, and you don't have a degree, I  
6 mean, that's the reality for many students. If you  
7 get into MIT, you should be in the top 3 percent in  
8 terms of your quantitative skills. If you're a Brown  
9 student, they'll take you if you're in the top 10  
10 percent. Now, if you're in the top 10 percent, you're  
11 going to do well at Harvard, but you're not going to  
12 do well at MIT. If students are placed in  
13 institutions where they're -- if they're treated like  
14 other students are treated, universities do not make  
15 a habit of making exceptions for Asian students.

16 Commissioner Yaki, there may be some areas  
17 where we can agree on this point, but the bottom line  
18 is, for me, is that the institutions have taken care  
19 of their interest at the expense of many of the  
20 students that they admit whose credentials suggest,  
21 based on historical data, that they're not going to  
22 fare well. That is inherently unfair, in my view.

23 COMMISSIONER YAKI: Like I said, we'll  
24 debate this further in our Commissioner statements.  
25 I fundamentally disagree with the notion that while

1 we're -- that offering a consumer protection point of  
2 view is hardly what I think to be in keeping with what  
3 could be a much better mission with regard to this  
4 topic by the U.S. Commission on Civil Rights. But we  
5 agree to disagree, Mr. Chair, and let's continue.

6 COMMISSIONER GAZIANO: Call the question,  
7 please.

8 CHAIRMAN REYNOLDS: One last question.  
9 Commissioner Yaki, would you have concerns with  
10 maintaining these admission policies, but yet  
11 providing more transparency to the families and the  
12 students?

13 COMMISSIONER YAKI: Mr. Chair, I'm going  
14 to -- rather than get into debates on a record that  
15 I need -- I'm going to be reviewing for my  
16 Commissioner statement, I would just simply say let's  
17 move on. We have some fundamental differences here,  
18 and they go far beyond simply one of the consumer  
19 aspect that you're talking about. I understand and  
20 appreciate what you're saying, Mr. Chair, but we just  
21 have a fundamental disagreement on exactly how the  
22 Commission should have tilted at this particular  
23 windmill.

24 CHAIRMAN REYNOLDS: Okay. Any other  
25 comments? Vice Chair Thernstrom, how do you vote?

1 VICE CHAIR THERNSTROM: Abstain.

2 CHAIRMAN REYNOLDS: Commissioner Gaziano.

3 COMMISSIONER GAZIANO: Yes.

4 CHAIRMAN REYNOLDS: Commissioner Heriot.

5 COMMISSIONER HERIOT: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Yaki.

9 COMMISSIONER YAKI: No.

10 CHAIRMAN REYNOLDS: Commissioner Yaki.

11 COMMISSIONER YAKI: I said no.

12 CHAIRMAN REYNOLDS: Oh, okay. Sorry about  
13 that. Commissioner Taylor.

14 COMMISSIONER TAYLOR: Abstain.

15 CHAIRMAN REYNOLDS: I vote for it. We  
16 have two abstentions, one vote against. The motion  
17 passes.

18 Okay. Finding Six, I move that it be  
19 approved. The finding reads as follows: "The high  
20 STEM major attrition rate of students with credential  
21 deficits indicates that many students and their  
22 parents may be unaware of the significance of mismatch  
23 for student's success in STEM fields because of the  
24 lack of institution transparency." Is there a second?

25 COMMISSIONER GAZIANO: Second.

1 CHAIRMAN REYNOLDS: Discussion? Vice  
2 Chair Thernstrom.

3 VICE CHAIR THERNSTROM: Abstain.

4 CHAIRMAN REYNOLDS: Commissioner Gaziano.

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Heriot?

7 COMMISSIONER HERIOT: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

9 COMMISSIONER KIRSANOW: Abstain.

10 CHAIRMAN REYNOLDS: I'm sorry?

11 COMMISSIONER KIRSANOW: Abstain.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: No.

14 CHAIRMAN REYNOLDS: Commissioner Taylor.

15 COMMISSIONER TAYLOR: Yes.

16 CHAIRMAN REYNOLDS: I vote for it, also.

17 We have two abstentions, one vote against the motion.

18 The motion is approved.

19 Finding Seven, I move that the Commission  
20 approve it. The motion reads as follows: "One  
21 panelist indicated that some graduate students that  
22 have intensive support programs have been successful  
23 in ameliorating the effects of a moderate degree of  
24 mismatch." Is there a second?

25 COMMISSIONER GAZIANO: Second. What



1 panelist indicated that?

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

4 VICE CHAIR THERNSTROM: I abstain. One  
5 panelist indicated -- I abstain.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano.

7 COMMISSIONER GAZIANO: I think it's fair  
8 to note that, so I'll vote yes, even though I think a  
9 further study needs to be done on the degree of  
10 amelioration, the degree of mismatch.

11 CHAIRMAN REYNOLDS: Commissioner Heriot.

12 COMMISSIONER HERIOT: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Yaki.

16 COMMISSIONER YAKI: No.

17 CHAIRMAN REYNOLDS: Commissioner Taylor.

18 COMMISSIONER TAYLOR: Abstain.

19 CHAIRMAN REYNOLDS: I vote for it. We  
20 have two abstentions, one vote against the motion.  
21 The motion passes.

22 We move on to recommendations. The first  
23 recommendation reads as follows: "A college or  
24 university should not admit any students with a large  
25 deficit in academic credentials relative to its median

1 students. Such policies place students at a high risk  
2 of failure." Is there a second?

3 COMMISSIONER GAZIANO: Second.

4 CHAIRMAN REYNOLDS: Discussion?

5 COMMISSIONER YAKI: Does this include  
6 athletic programs?

7 CHAIRMAN REYNOLDS: Very good question.

8 COMMISSIONER GAZIANO: It said academic,  
9 but -- oh, you mean athletes who are -- I would say  
10 yes.

11 COMMISSIONER YAKI: And how do we define  
12 "large?" Is there a definition for large? I didn't  
13 see one in the briefing papers.

14 VICE CHAIR THERNSTROM: Large deficits,  
15 yes.

16 COMMISSIONER GAZIANO: There was some  
17 discussion of that both in the report and the  
18 testimony.

19 COMMISSIONER YAKI: What is it?

20 COMMISSIONER GAZIANO: Different people  
21 can attribute -

22 COMMISSIONER YAKI: Then if different  
23 people attribute that it's really vague.

24 CHAIRMAN REYNOLDS: Well, as a friendly  
25 amendment, I would prefer to use the word

1 "significant," rather than large. And I do agree with  
2 Commissioner Gaziano that there is some subjectivity  
3 in determining how large is large, how significant is  
4 significant. Is it one standard deviation, is it two?  
5 I think that that's a point that could be debated by  
6 the various admissions offices, and we could have  
7 admission offices reaching different conclusions. But  
8 I still think that, if this were enacted, it would be  
9 a step in the right direction.

10 COMMISSIONER GAZIANO: Professor Elliott  
11 spends a considerable amount of time in his testimony  
12 to us describing that. I think he most often uses the  
13 word "significant," but I'm not certain of that, but  
14 I think we're at least safe in using that word.

15 VICE CHAIR THERNSTROM: But there are many  
16 schools that have -- that want to admit students with  
17 a diversity of skills, a violinist who happens to be  
18 great, but whose academic record is not the same as --  
19 is below the median, an athlete, somebody in theater,  
20 whatever. I mean, this just assumes that the  
21 disparities are also race and ethnicity. It's not  
22 true.

23 COMMISSIONER HERIOT: No, it doesn't  
24 assume that. It doesn't say that at all.

25 VICE CHAIR THERNSTROM: Well, okay. If it

1 doesn't assume -

2 COMMISSIONER HERIOT: It's actually  
3 careful not to say that.

4 VICE CHAIR THERNSTROM: Well, otherwise,  
5 the college or university should not admit any student  
6 with a large deficit. I mean, college admissions  
7 should -- college and universities should admit  
8 students who have skills other than perfect SAT -

9 COMMISSIONER GAZIANO: I would disagree.

10 COMMISSIONER HERIOT: I disagree, when the  
11 piccolo player has a large deficit, they should just  
12 do without a piccolo player in the orchestra.

13 COMMISSIONER GAZIANO: And I think the  
14 university is being narrow-minded if they think  
15 somehow this person will add some piccolo playingness,  
16 but that subjects -

17 COMMISSIONER YAKI: All right. Let's get  
18 into college -

19 COMMISSIONER GAZIANO: -- them to failure.

20 COMMISSIONER HERIOT: Athletes are being  
21 taken advantage of.

22 (Simultaneous speech.)

23 VICE CHAIR THERNSTROM: Probably, Yo-Yo Ma  
24 would not have gone to Harvard.

25 COMMISSIONER YAKI: Let's just vote.

1 COMMISSIONER HERIOT: It's okay with me.

2 CHAIRMAN REYNOLDS: Okay. If there are no  
3 other comments, Vice Chair Thernstrom, how do you  
4 vote?

5 VICE CHAIR THERNSTROM: No.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano.

7 COMMISSIONER GAZIANO: Yes. Are we  
8 substituting significant?

9 COMMISSIONER HERIOT: I would prefer  
10 large, Mr. Chairman.

11 COMMISSIONER YAKI: I would just say  
12 gigantic.

13 CHAIRMAN REYNOLDS: Okay. I -

14 VICE CHAIR THERNSTROM: Why don't you just  
15 say unmeasurable?

16 COMMISSIONER YAKI: Infinitely large.

17 CHAIRMAN REYNOLDS: Okay. Let's stick  
18 with the original language. Commissioner Heriot.

19 CHAIRMAN REYNOLDS: Commissioner Heriot.

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

22 COMMISSIONER KIRSANOW: I abstain. I do  
23 think that we need greater precision with respect to  
24 what large or significant means.

25 CHAIRMAN REYNOLDS: Commissioner Yaki.

1 COMMISSIONER YAKI: This is hugely  
2 ridiculous. No.

3 CHAIRMAN REYNOLDS: Commissioner Taylor.

4 COMMISSIONER TAYLOR: Abstain.

5 CHAIRMAN REYNOLDS: I also abstain for the  
6 reason expressed by Commissioner Kirsanow. The motion  
7 passes.

8 COMMISSIONER HERIOT: No, it doesn't, not  
9 without your vote, Jerry.

10 STAFF DIRECTOR DANNENFELSER: No, it  
11 doesn't.

12 CHAIRMAN REYNOLDS: Okay. Hold on, what  
13 do we have?

14 STAFF DIRECTOR DANNENFELSER: 2-2-3. Two  
15 for, two against, three abstain at the moment.

16 CHAIRMAN REYNOLDS: Okay. The motion  
17 falls.

18 Recommendation Two, I move that it be  
19 approved. "High School guidance counselors should  
20 counsel students considering STEM majors in college  
21 about the significance of mismatch." Is there a  
22 second?

23 COMMISSIONER HERIOT: You're on Two?

24 STAFF DIRECTOR DANNENFELSER: Yes. He  
25 needs a second.

1 COMMISSIONER HERIOT: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 COMMISSIONER TAYLOR: Question. I wonder  
4 if it would make sense along the lines, Mr. Chairman,  
5 of your discussion with Commissioner Yaki to change  
6 counsel to, perhaps, advise, and then rather than  
7 mismatch as a phrase, advise them of the facts, that  
8 is the profile issue we've talked about, and use the  
9 precise consumer protection language that I think we  
10 seem to have some agreement on.

11 CHAIRMAN REYNOLDS: Yes, I think that  
12 Commissioner Gaziano has some language that unpacks  
13 this term "mismatch." I would be comfortable in using  
14 the language that Commissioner Gaziano used.

15 COMMISSIONER GAZIANO: It may not be easy  
16 to do right now. Let me just see if there is any  
17 interest or possibility that for both One and Two that  
18 we could spend some time and not to try to do it as we  
19 sit here, because we have a few other items on the  
20 agenda. Do other Commissioners have a concern about  
21 possibly taking that up in our next telephonic, trying  
22 to redraft, circulate?

23 COMMISSIONER HERIOT: Yes. Mr. Chairman,  
24 I think we can revive number one, and get you on  
25 board. And we might as well do Two, and get as many

1 people as possible.

2 CHAIRMAN REYNOLDS: Okay. So, what's the  
3 precise course of action here. Are we talking about  
4 tabling discussion of the remaining recommendations,  
5 or just one, or two?

6 COMMISSIONER HERIOT: Yes, let's do the  
7 remaining.

8 COMMISSIONER GAZIANO: No, let's go see if  
9 we have agreement on Three, Four, and Five. If  
10 there's significant agreement on Three, Four, and  
11 Five, we'll just hold off on One and Two.

12 CHAIRMAN REYNOLDS: Okay. Next up would  
13 be Recommendation Three. I move that it be approved.  
14 Here's the language, "Each student's right to decide  
15 for him or herself in consultation with parents and  
16 advisors which school to attend based on available  
17 evidence should be respected. To that end, colleges,  
18 universities, and schools with STEM programs should  
19 customarily disclose to each accepted student whose  
20 academic index will place them in the bottom quartile  
21 of the class, that student's expected college grade  
22 point average, and the range of error. They should  
23 also customarily disclose to each student interested  
24 in STEM majors the school's track record for  
25 graduating students with similar academic indices in



1       STEM majors." Is there a second?

2                   COMMISSIONER GAZIANO: Second.

3                   COMMISSIONER KIRSANOW: A friendly  
4 amendment. I would say that you disclose to every  
5 student, regardless of what quartile they place  
6 within.

7                   CHAIRMAN REYNOLDS: Anyone have an  
8 objection? Okay. Discussion?

9                   VICE CHAIR THERNSTROM: You know, can I  
10 just say -- all the discussion about Claude Steele's  
11 stereotype threat, which I actually don't think is a  
12 very good theory, it's got a lot of holes in it, but,  
13 nevertheless, which an awful lot of people sign onto,  
14 most people sign onto, I mean, talk about racheting up  
15 the threat of internalizing stereotypes. This seems  
16 a proposal designed to do that.

17                   CHAIRMAN REYNOLDS: I don't understand.  
18 Why would you say that? This information would be  
19 sent to the student and the student would be able to  
20 use this information in deciding whether to accept the  
21 offer of admission. The information of how the  
22 student compares to other students, that would not be  
23 publicly disclosed, and that's not the intention of  
24 this recommendation.

25                   VICE CHAIR THERNSTROM: Well, so -

1                   CHAIRMAN REYNOLDS: Are you saying that  
2 truth is a bad thing?

3                   VICE CHAIR THERNSTROM: I'm saying let the  
4 colleges, whatever criteria they have admit the  
5 students they want to admit, let the students go to  
6 those colleges, or not go to these colleges. But this  
7 really is saying well, you may have been admitted, but  
8 be warned.

9                   CHAIRMAN REYNOLDS: Isn't that better than  
10 what we have now, where these kids are going in not  
11 knowing the significant burdens that they have that  
12 are not shared by many of their classmates?

13                  VICE CHAIR THERNSTROM: I think it's -- it  
14 may be, I'm not sure.

15                  CHAIRMAN REYNOLDS: Well, it seems to me  
16 that -

17                  VICE CHAIR THERNSTROM: It's a two-edged  
18 sword.

19                  CHAIRMAN REYNOLDS: Oh, I don't think so.  
20 I think that more information is always better than  
21 less information, especially major life shaping  
22 moments, and this is one of them. Where you go to  
23 school is extremely important, and if you were put in  
24 a situation where historical data says that there's a  
25 high probability that you are going to flunk out, that

1 is something that I would want to know, that is  
2 something that I would want to know for my children.  
3 And I think that most parents would want to know if  
4 their children were in a category where it's likely  
5 that the savings that they've put aside for their  
6 children would be wasted, or the money borrowed by  
7 these kids would not result in a college degree. I  
8 mean, this is essential information, it seems to me.

9 VICE CHAIR THERNSTROM: Give up, kid. The  
10 demographic profile of kids like you show you're  
11 probably going to flunk out.

12 COMMISSIONER HERIOT: Not their  
13 demographic programs.

14 COMMISSIONER KIRSANOW: Academic.

15 VICE CHAIR THERNSTROM: Or academic, it's  
16 academic.

17 COMMISSIONER KIRSANOW: You don't  
18 necessarily go to Harvard or Yale, maybe you go to San  
19 Diego State or some other place.

20 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
21 would you be more comfortable if the students could  
22 ask for this information, so that way those who fear  
23 knowing their standing in relation to their -- to the  
24 other students wouldn't have to look at this data, or  
25 those who had an interest in getting as much

1 information to make a -

2 COMMISSIONER GAZIANO: Mr. Chairman, most  
3 consumer -- when we decide for fair lending  
4 requirements that every prospective homeowner be  
5 provided some information, we don't say only those  
6 homeowners who really want to know what a stupid  
7 decision they're making. We say that the lender  
8 should disclose what the true cost of the loan is  
9 going to be.

10 VICE CHAIR THERNSTROM: Poor analogy.

11 COMMISSIONER GAZIANO: So, I would suggest  
12 that that ought to apply to institutions of higher  
13 learning that are taking these people's tuitions, and  
14 mis-serving some of them.

15 CHAIRMAN REYNOLDS: Well, I apologize,  
16 folks. As you know, I'm on the phone. Vice Chair  
17 Thernstrom, did you respond to my question?

18 VICE CHAIR THERNSTROM: Now I can't  
19 remember what your question was.

20 CHAIRMAN REYNOLDS: If this were -- if  
21 parents had a right to receive this information, but  
22 it wasn't sent to them automatically, would that be  
23 okay?

24 VICE CHAIR THERNSTROM: Well, I think  
25 that's the status quo.

1 COMMISSIONER HERIOT: No, it's not.

2 CHAIRMAN REYNOLDS: Do you think that -

3 COMMISSIONER HERIOT: They don't have a  
4 right to this.

5 CHAIRMAN REYNOLDS: Do you think that  
6 admissions offices across the country -

7 VICE CHAIR THERNSTROM: I think any  
8 admissions office that has admitted a kid, and the kid  
9 is concerned about his or her prospects at the school,  
10 can talk to the admissions office, look, I've gotten  
11 acceptance from you, but I have an acceptance from  
12 other places, and here are my concerns. I mean,  
13 admissions offices talk to admitted students all the  
14 time.

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
16 that's not my question. I mean, what I'm talking  
17 about is getting data -- for example, based on the  
18 historical data that you folks have been collecting  
19 for, say 60 years, looking at someone with my academic  
20 profile, what percentage of folks who are similar to  
21 me graduate? Give me the number. What's the  
22 percentage?

23 COMMISSIONER YAKI: This is Commissioner  
24 Yaki. I don't think a percentage means a tinker's  
25 difference to a family, or to a young kid deciding to

1 go to college. I think that all you're doing -

2 CHAIRMAN REYNOLDS: Commissioner Yaki, I'm  
3 trying to finish off an exchange with Vice Chair  
4 Thernstrom.

5 VICE CHAIR THERNSTROM: Yes. Well, I  
6 agree. I -

7 COMMISSIONER YAKI: No, I -- you asked her  
8 a question, and she's sitting there. I decided I  
9 would answer.

10 CHAIRMAN REYNOLDS: Again, Commissioner  
11 Yaki, I will gladly entertain any question that you  
12 have, but I'd like to finish my exchange with Vice  
13 Chair Thernstrom.

14 COMMISSIONER YAKI: I was simply jumping  
15 in the exchange. I apologize.

16 VICE CHAIR THERNSTROM: Well, I will allow  
17 Commissioner Yaki, because he's about to say what I  
18 would have said, and probably more eloquently.

19 CHAIRMAN REYNOLDS: So, you know what he's  
20 about to say?

21 VICE CHAIR THERNSTROM: Well, he's already  
22 said it, in part. That's how I know, not because I  
23 can read his mind.

24 CHAIRMAN REYNOLDS: He hasn't said  
25 anything yet.

1 VICE CHAIR THERNSTROM: I think he did.

2 CHAIRMAN REYNOLDS: What?

3 COMMISSIONER YAKI: Well, Commissioner --

4 Mr. Chair, I think you're so busy jumping, talking

5 over me that you didn't hear what I said.

6 CHAIRMAN REYNOLDS: What did you say?

7 COMMISSIONER YAKI: Would you like me to

8 say it?

9 CHAIRMAN REYNOLDS: No.

10 (Laughter.)

11 COMMISSIONER YAKI: Well, then don't ask

12 what did I say, because if you don't ask what I say,

13 I won't tell you that what I would have said is that -

14 -

15 CHAIRMAN REYNOLDS: As I said, I would

16 like to finish the exchange with Vice Chair

17 Thernstrom.

18 VICE CHAIR THERNSTROM: I just said,

19 Commissioner Yaki started to say what I would have

20 said, and I would like to turn it over to give him

21 some time to answer it, since he was answering it

22 extremely well.

23 COMMISSIONER GAZIANO: Abby yields to -

24 CHAIRMAN REYNOLDS: Commissioner Yaki, I

25 don't think that Commissioner -- that Vice Chair

1 Thernstrom wants to continue the conversation.

2 VICE CHAIR THERNSTROM: I'm fine with it,  
3 but I yield to Commissioner Yaki. That is a  
4 legitimate thing to do. He was starting to make the  
5 point about the meaning of these overall statistics to  
6 individual students.

7 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
8 you have done nothing improper. You can yield, that's  
9 proper.

10 VICE CHAIR THERNSTROM: All right. I am  
11 yielding to Commissioner Yaki. Thank you.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: Mr. Chair, thank you  
14 for allowing me to say just a few words on the  
15 subject. I mean, what I was trying to say before is  
16 that what this recommendation would do, I think has  
17 two impacts. One is, I think, none, and the two, it's  
18 harmful. The none is that in some respects, all  
19 you're simply doing is telling an individual what his  
20 or her odds may be. But I think a young person  
21 looking to go to college, looking to excel, looking to  
22 better his or her life, is going to take -- doesn't  
23 really care about what the odds are, because the fact  
24 is, if this person has been disadvantaged throughout  
25 most of their life, they've been up against those



1 odds, anyway. And when you -- and if you were to say  
2 well, you know, 20 percent made it through, I'm going  
3 to take my bet, I'm going to be one of the 20 percent,  
4 number one.

5           Number two, in terms of harmful, I think  
6 it goes directly to the idea that all we're doing is  
7 perpetuating fear, and deterrence for people who do  
8 have the potential, or the ability. We cannot  
9 possibly quantify what is in any single individual  
10 young person's mind, or ability. We do not know if  
11 that one person is going to be the next Yo-Yo Ma, is  
12 going to be the next Steve Jobs, is going to be the  
13 next Einstein. And, by the way, if we'd gone on  
14 testing, Einstein never would have made it into any of  
15 these universities, because he was a horrific student.  
16 So, the question is, is what are we doing, or we're  
17 simply creating a system where the United States  
18 Commission on Civil Rights is now asking people to  
19 tell you men and women of color, by the way, here are  
20 these grant odds, and you're not going to make it, so  
21 don't even try. Because that's what I'm hearing.  
22 That's what I hear from Richard Sander, that's what I  
23 heard time and time again from a lot of the  
24 presentations that we've had, these extremely biased  
25 presentations, I might add, on these issues. I mean,

1 we've now bastardized the poor HBCU report into  
2 something completely different than what we started  
3 out from.

4 And I would just simply, Mr. Chair, I  
5 understand your idea about consumer protection, the  
6 idea that there are kids out there who may be taking  
7 that gamble and coming up snake eyes, but I don't know  
8 if it's for us to say and legitimize a system that  
9 basically tells these kids you don't have a chance in  
10 the world.

11 COMMISSIONER KIRSANOW: Mr. Chair -

12 CHAIRMAN REYNOLDS: Commissioner Yaki, I'm  
13 trying to offer a compromise. We have this corrosive  
14 debate over racial and ethnic admission policies in  
15 college. You know, if I were a public policy maker,  
16 I would offer the compromise, fine, keep it. Just  
17 give the people who are interested in the data the  
18 information, and let them make their own decisions.  
19 I'm not saying -- for purposes of this discussion, I'm  
20 saying we will keep the system that is cherished by  
21 some. The only difference is that we will just have  
22 a little more Sunshine for those intrepid souls who  
23 are not afraid of the data, who are interested in  
24 knowing as much as possible. For those who don't want  
25 the information, then they don't have to get it, under

1 the proposal that I'm carrying around in my head. So,  
2 it's -- why not empower parents and prospective  
3 students with as much information as possible -

4 VICE CHAIR THERNSTROM: Mr. Chairman, do  
5 you think that schools should -

6 CHAIRMAN REYNOLDS: Hold on. Step back,  
7 and let them make a decision. Let's give them the  
8 respect that they deserve as young men and women, and  
9 their parents.

10 VICE CHAIR THERNSTROM: Mr. Chairman, do  
11 you think that schools should tell students what their  
12 IQ is?

13 CHAIRMAN REYNOLDS: If that was a part of  
14 the admissions process, my answer is yes.

15 VICE CHAIR THERNSTROM: Well, it certainly  
16 is very closely related to academic performance.

17 COMMISSIONER YAKI: I just want to -- Mr.  
18 Chair, Commissioner Kirsanow wants to speak. I just  
19 wanted to end our little colloquy by stating, I  
20 understand what it is you're trying to say. I don't  
21 know if that is -- if it were not in the context of  
22 this particular report, and the way the report has  
23 been written, and the way that the findings and  
24 recommendations have been written, I might have a  
25 different viewpoint in terms of how I would try and

1 create a compromise with you on this particular  
2 subject.

3 I understand what you're talking about.  
4 I understand the importance of it to young people in  
5 disadvantaged communities, in terms of whether they  
6 come out saddled with \$40,000 worth of debt and no  
7 significant job education. I mean, there's an  
8 aggregate issue, but there's also a micro  
9 individualized issue here that we have to be very  
10 sensitive to. But I would just say this, there's an  
11 inherent contradiction in even have the Recommendation  
12 Three if you have a Recommendation One, because  
13 Recommendation One, basically, says those kids should  
14 never be admitted, period. And then Recommendation  
15 Three says well, if they happen to be admitted, they  
16 should be told this, and this, and this. You can't  
17 have it both ways, because all the talk in this  
18 debate, in the discussions that we had on this issue,  
19 dealt with standard deviations, dealt with whatever it  
20 is, dealt with the word "significant." But if we're  
21 telling colleges already don't even admit him in the  
22 first place, why even bother having Recommendation  
23 Three? That's where I am saying -

24 COMMISSIONER HERIOT: Because they might  
25 not follow Recommendation One. That's not a hard one,

1 Commissioner Yaki.

2           COMMISSIONER YAKI: Well, then -- oh, I'm  
3 sorry. Was there a voice speaking? I didn't see the  
4 person recognized for a second. What I'm asking about  
5 -- what I'm saying, Mr. Commissioner, Mr. Chair, is  
6 that if you want to have a scattershot catchall,  
7 whatever it is, set of recommendations, go ahead, but  
8 this is a very different creature than what you are  
9 talking about. This report, and the way the briefing  
10 was conducted, is a very different creature than what  
11 you're talking about. And that's where I cannot  
12 support this report in any way, shape, or form.

13           COMMISSIONER KIRSANOW: Mr. Chair, my  
14 friendly amendment reconciles Recommendation One, and  
15 Recommendation Three, because Recommendation Three is  
16 amended to say that the information should be  
17 available to everyone, regardless of quartile. So,  
18 those individuals who wouldn't, necessarily, be  
19 admitted, frankly, anyone who is considered, or is  
20 admitted, would have this information available to  
21 them.

22           Second, we do have evidence that was  
23 adduced, as I recall, during the hearing. I believe it  
24 was from Professor Bernstein who, contrary to the  
25 statement that most students wouldn't care, indicated

1 that at least one student cared significantly given  
2 that she was admitted without given her -- without  
3 being given this information that we're contemplating  
4 here, and she spent two years at the University of  
5 Colorado Law School struggling through, and then ended  
6 up flunking out after she had spent tens of thousands  
7 of dollars in tuition. And I think it's also  
8 intuitive to note, and I'll say from my own  
9 perspective, after spending \$200,000 on my daughter's  
10 education, a similar amount on my son's education, I'd  
11 like that information. And number four is, I don't  
12 know of too many students who, if they are in the  
13 lower quartile, poor minority students, are so daunted  
14 by the prospect of seeing this that they're going to  
15 say oh, my gosh, I can't make it. Contrary to Claude  
16 Steele, I don't think that minority students are  
17 simple hothouse flowers that can't take this  
18 information, deal with it, make their own judgments.  
19 And, more importantly, their parents, and whoever is  
20 financing them, making judgments in that regard, I do  
21 think that universities sometimes, not all the time,  
22 but on occasion use minority students as mascots.  
23 Here's how many minority students we have, don't look  
24 at what our graduation numbers are. Again, this is  
25 something that's also applicable to some sports

1 programs, let them -- if they're such hothouse  
2 flowers, that they can't take this kind of data,  
3 they're not going to fare too well in the broader  
4 society, anyway. So, I do think that this is  
5 something we should move forward on, but I would  
6 entertain leaving this until we have a conference call  
7 to rough out the edges of this, and make it clear that  
8 it's information that's available, but not,  
9 necessarily, automatically sent out. And it's  
10 available to everybody, regardless of what quartile  
11 they place within.

12 COMMISSIONER GAZIANO: Mr. Chair, it would  
13 certainly be better to have a recommendation that said  
14 the information would be available, if requested, but,  
15 again, in the Truth In Lending Act, you not only have  
16 to -- lenders all have to do it for the sub-prime  
17 borrower, but the sub-prime borrower actually has to  
18 sign and acknowledge that they got the information. I  
19 think it's certainly not necessary that students open  
20 this envelope, but for a university to provide this to  
21 everyone is a simpler way of administering it, and  
22 makes more sense to me.

23 VICE CHAIR THERNSTROM: And I can't  
24 imagine any university being willing to do that.

25 COMMISSIONER GAZIANO: Exactly. That's why

1 we would recommend -

2 CHAIRMAN REYNOLDS: I agree.

3 COMMISSIONER GAZIANO: -- that they do it,  
4 and then, perhaps -

5 VICE CHAIR THERNSTROM: A good reason I  
6 can't think of.

7 COMMISSIONER GAZIANO: And then, perhaps,  
8 legislative bodies who control public institutions  
9 will require them to do so.

10 COMMISSIONER YAKI: Mr. Chair, this is  
11 Commissioner Yaki. I just want to say that I did not  
12 know that the U.S. Commission on Civil Rights had  
13 become the U.S. Commission on Civil and Consumer  
14 Rights, and Truth In -- and the idea I find somewhat  
15 offensive, and this is just my own personal opinion.  
16 This is not something I'm going to generalize to the  
17 broad public, but the idea that there is some  
18 comparison between the students we were talking about,  
19 and sub-prime borrowers is really -- is very  
20 unsettling to me.

21 And, Mr. Chair, I have to leave in a few  
22 minutes, so if we want to run through this, or you can  
23 simply run over me on the vote, that would be great,  
24 so that we can get it on the record.

25 CHAIRMAN REYNOLDS: Okay. Folks, I would



1 prefer to table discussion of this completely. I  
2 mean, quite frankly, I think that Commissioner Yaki,  
3 especially, has made some points that have resonated  
4 with me. For example, to the extent that any of our  
5 recommendations want to constrain a school in terms of  
6 who it can admit, that is troubling. And I think that  
7 it -- well, I would appreciate more time to think  
8 about it, and an opportunity to present some revision.  
9 Through this discussion, I think that there are some  
10 areas where we may even be able to find a consensus  
11 across ideological lines. I'm hopeful, based on this  
12 conversation. That may not turn out to be the case,  
13 but I would -- unless there is -- if someone has an  
14 objection, that's fine, but I would say that we table  
15 the whole topic, and give ourselves a little bit more  
16 time to think about this. And folks can offer their  
17 revisions to the various findings of facts and  
18 recommendations, and we go at this again after having  
19 the benefit of this exchange.

20 COMMISSIONER TAYLOR: I second that  
21 substitute motion.

22 CHAIRMAN REYNOLDS: I'm interested in  
23 hearing from Commissioners Heriot, Yaki, and Vice  
24 Chair Thernstrom on my proposal.

25 COMMISSIONER HERIOT: Mr. Chairman, I

1       assume we can't do statements, so you're moving the  
2       statement schedule, as well.

3                   CHAIRMAN REYNOLDS:   Yes.

4                   VICE CHAIR THERNSTROM:  Mr. Chairman, I do  
5       not want to have this discussion in a telephonic  
6       meeting.  I do not like these telephonic meetings.  I  
7       don't think they're a good forum in which to have a  
8       back and forth.  I think people need to be able to see  
9       each other, look at one another, body language.

10                  CHAIRMAN REYNOLDS:  Well, I don't know  
11       what you're wearing today.

12                                   (Laughter.)

13                  VICE CHAIR THERNSTROM:  If it works for  
14       you, it's fine to come in on the phone, but it never  
15       works for me to have telephonic meetings.  I do not  
16       like them.  When you and I first discussed these  
17       telephonic meetings, and it was said that we just  
18       wanted to have them to wrap up some questions of the  
19       SACs, and Commissioner Heriot said well, let's not  
20       confine it to that.  And you and I both agree that  
21       these telephonic meetings were -- should be the rare  
22       exception, because they weren't very satisfactory.  
23       We can go back to that transcript.  Now they've become  
24       a regular part of the Commission's process.  I came on  
25       this Commission, as you know, in 2001, January.  We

1 never had telephonic meetings, for good reason, and I  
2 do not -- I think this is a complex issue, and it  
3 should not be discussed on a telephonic meeting.

4 CHAIRMAN REYNOLDS: Okay. Assuming that  
5 this were an in-person meeting, how would you respond?

6 VICE CHAIR THERNSTROM: I would put this  
7 off, absolutely. I think it's a very complicated  
8 issue.

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER GAZIANO: Mr. Chair, just one  
11 sort of clarification. I suppose the findings are  
12 always open for reconsideration, but I wouldn't,  
13 necessarily, want to assume that. I think they were  
14 all adopted with at least a couple of vote margin, so,  
15 I mean, obviously, if someone has a particular  
16 proposal they want to offer, they can always offer it,  
17 but why don't we concentrate whenever we take them up  
18 on the -- polishing the recommendations?

19 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
20 I'm not sure what you're asking for.

21 COMMISSIONER GAZIANO: Well, your  
22 suggestion that we agreed to was that we open  
23 everything up again at the next hearing, and we just  
24 have a lot of briefing reports, and we've got a lot of  
25 other business. And it's always possible that someone

1 can reopen the vote on Part A until we publish this  
2 sucker. It's also possible that they could reopen the  
3 findings, but let's just, as an instruction to each  
4 other -

5 CHAIRMAN REYNOLDS: So, Commissioner Yaki,  
6 I'm sorry, Commissioner Gaziano, are you suggesting  
7 that -

8 COMMISSIONER GAZIANO: Don't confuse me  
9 with Commissioner Yaki. He doesn't like that.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER GAZIANO: We just concentrate  
12 on the recommendations the next time we take up,  
13 whenever that is.

14 CHAIRMAN REYNOLDS: Commissioner Yaki, I'm  
15 sorry.

16 VICE CHAIR THERNSTROM: See, there is a  
17 point to your being in the room.

18 CHAIRMAN REYNOLDS: Well, no, this is a  
19 brain fart.

20 COMMISSIONER GAZIANO: We're both  
21 appointed by Speaker Pelosi. I understand, but we are  
22 on different sides of the table. I'm an Independent,  
23 Yaki is a knee-jerk Democrat.

24 COMMISSIONER YAKI: I am sorry, I'm still  
25 reeling over the word that the Chairman just used on

1 the open record.

2 (Laughter.)

3 COMMISSIONER YAKI: I move to strike that  
4 as a momentary lapse of -

5 CHAIRMAN REYNOLDS: Who was offended by  
6 that term? But, in any event, Commissioner Gaziano,  
7 are you suggesting that what we voted on, just let it  
8 ride, and just table the stuff that we didn't get to?

9 COMMISSIONER GAZIANO: Recommendations.

10 CHAIRMAN REYNOLDS: So, okay. How do  
11 folks feel about that?

12 COMMISSIONER YAKI: Mr. Chair, I would  
13 simply say this. This is Commissioner Yaki. I would  
14 say that I'm willing to discuss with you these issues.  
15 To the extent that any resolution, though, may have an  
16 impact on anything that we have approved previously,  
17 it's not that we would go out of our way to change  
18 everything previously but, if the natural flow of our  
19 discussions has any impact on those, I would say that  
20 you should reserve the right to revisit them, if in  
21 your discretion you think it necessary.

22 COMMISSIONER HERIOT: No, no, no.

23 COMMISSIONER GAZIANO: And I reserve the  
24 right to be convinced by you, too, so I will be open  
25 to that. I will be open to changing every finding if

1 you give a good reason, but let's try to concentrate  
2 on the recommendations.

3 COMMISSIONER YAKI: I think that's what I  
4 just said.

5 COMMISSIONER HERIOT: But only in  
6 accordance with ordinary Parliamentary procedure, Mr.  
7 Chairman. You can't reopen everything except under  
8 the Rules of Parliamentary procedure.

9 VICE CHAIR THERNSTROM: Oh, I'm very glad  
10 to hear this Commission is following Parliamentary  
11 procedure. That would be a first.

12 CHAIRMAN REYNOLDS: Well, since we  
13 generally don't do it, let's just follow common sense.  
14 Okay. Commissioner Heriot, so basically you're saying  
15 that we should table the remaining items, what we  
16 voted on stands, and that's done.

17 COMMISSIONER HERIOT: There are  
18 circumstances under which questions can be reopened,  
19 but not under all circumstances.

20 CHAIRMAN REYNOLDS: Okay. I get you. So,  
21 someone from the minority would have to move to  
22 reopen.

23 COMMISSIONER YAKI: No, someone from the  
24 majority.

25 COMMISSIONER HERIOT: Someone from the

1 majority.

2 CHAIRMAN REYNOLDS: Someone from the  
3 majority.

4 COMMISSIONER YAKI: And since you voted  
5 yes on practically every single one, except one, that  
6 would be you, if you wanted to.

7 CHAIRMAN REYNOLDS: Yes. That's the one,  
8 that's the one I had in mind. Okay. I think I hear  
9 a consensus. We will table the discussion regarding  
10 the remaining recommendations, so that moves us to  
11 approval of the calendar for 2011.

12 The Staff Director circulated a proposed  
13 Commission meeting calendar for 2011, in-person  
14 meetings would continue to begin at 9:30 Eastern  
15 Standard Time, thereabouts, while telephonic meetings  
16 would start at 11:30 a.m. Eastern time to accommodate  
17 our West Coast Commissioners, as is our current  
18 practice. I move that the Commission adopt the meeting  
19 schedule, as circulated. Is there a second?

20 COMMISSIONER GAZIANO: With the friendly  
21 amendment that I've asked for three times, that the  
22 April meeting be April the 8th, rather than April the  
23 15th.

24 STAFF DIRECTOR DANNENFELSER: It's in  
25 there.

1                   COMMISSIONER GAZIANO: Oh, I didn't see  
2 that circulated. Sorry. I didn't get the re-  
3 recirculated. Thank you.

4                   VICE CHAIR THERNSTROM: Mr. Chairman, I've  
5 got a question.

6                   CHAIRMAN REYNOLDS: Yes.

7                   VICE CHAIR THERNSTROM: What is the point  
8 of these dates on the -- in January, whenever we meet  
9 in January, this list will be torn up.

10                  COMMISSIONER GAZIANO: I hope not.

11                  VICE CHAIR THERNSTROM: And unless the new  
12 Commissioners agree that these are the right dates,  
13 and they -- and the telephonic dates, if I have  
14 anything to say, and I assume I will have something to  
15 say, will be crossed off entirely. But this is a  
16 meaningless list, it's just meaningless.

17                  COMMISSIONER GAZIANO: We should never plan.

18                  VICE CHAIR THERNSTROM: We shouldn't plan  
19 when there's going to be -- there are going to be two  
20 new Commissioners.

21                  COMMISSIONER GAZIANO: If you're right, we  
22 can change it.

23                  CHAIRMAN REYNOLDS: Right. I mean, if  
24 you're right, it changed, no problem. We may have new  
25 Commissioners, but that doesn't, necessarily, mean



1 that they are going to have an objection with the  
2 dates. We just don't know. And since we don't know,  
3 we will have a plan in place with the understanding  
4 that that plan could change come January, or sooner.  
5 Any other comments?

6 VICE CHAIR THERNSTROM: I would be willing  
7 to vote for the first two dates, and then not beyond  
8 that. I think we owe it, as a matter of courtesy, to  
9 the new Commissioners not to have a calendar in place.

10 CHAIRMAN REYNOLDS: Any other comments?

11 Vice Chair Thernstrom, how do you vote?

12 VICE CHAIR THERNSTROM: No.

13 CHAIRMAN REYNOLDS: Commissioner Gaziano.

14 COMMISSIONER GAZIANO: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Heriot.

16 COMMISSIONER HERIOT: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Yaki.

20 COMMISSIONER YAKI: No.

21 CHAIRMAN REYNOLDS: Commissioner Taylor.

22 COMMISSIONER TAYLOR: I abstain, since I  
23 won't be here, and I feel uncomfortable voting on  
24 someone else's calendar.

25 COMMISSIONER HERIOT: We're still hoping

1 you'll be reappointed, Commissioner Taylor.

2 CHAIRMAN REYNOLDS: Well, since the  
3 possibility exists that I would be reappointed -

4 (Laughter.)

5 CHAIRMAN REYNOLDS: -- I am going to vote  
6 for it.

7 VICE CHAIR THERNSTROM: And that you will  
8 want to be reappointed, and are going to lobby for it.

9 CHAIRMAN REYNOLDS: That's a possibility,  
10 also. Okay.

11 Next up, update on the New Black Panther  
12 Party Enforcement Report. Mr. General Counsel, please  
13 provide us with an update.

14 MR. BLACKWOOD: This is David Blackwood.  
15 Staff has begun drafting the report. At the same  
16 time, there are still some outstanding matters first  
17 with regard to Malik Zulu Shabazz. As you all are  
18 aware, the Justice Department is representing the  
19 Commission with regard to the subpoena, but the short  
20 of it is we do intend to serve Mr. Shabazz at some  
21 point, and take his deposition before the report is  
22 completed. At the same time, today I was contacted by  
23 a representative for J. Christian Adams. As has been  
24 publicly acknowledged, Mr. Adams was served with a  
25 subpoena by the Commission in December of 2009. I

1 will send a copy of the email I have received, but in  
2 substance it reads Mr. Adams wants to relieve any  
3 obligation he has under the subpoena, and provide  
4 whatever information he can to the extent he is able.  
5 And it requests that I please contact his counsel. I  
6 will do so, and I will notify everyone what results  
7 from that conversation. But I will send the email  
8 around as soon as this meeting is over. That is all  
9 I have.

10 CHAIRMAN REYNOLDS: Okay. So, Mr. Adams  
11 is, apparently, willing to testify. We don't -- so,  
12 his communication did not indicate when he would be  
13 available.

14 MR. BLACKWOOD: No, it did not.

15 COMMISSIONER GAZIANO: May I ask -- or may  
16 I make a suggestion, or comment, Mr. Chairman?

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER GAZIANO: And the General  
19 Counsel and others may want to comment. You know, the  
20 stonewalling delayed our obtaining of a lot of  
21 information. Then the blizzard, the Thousand Year  
22 Blizzard delayed our hearing further, then some more  
23 stonewalling delayed our hearing. I think this is a  
24 very important -- he is a very important witness.  
25 He's someone we subpoenaed in the very early stages,

1 but I also am very mindful of the schedule, so I would  
2 suggest that we do what we reasonably can to take his  
3 testimony soon, as soon as practical.

4 And I would suggest that we do it, given  
5 that our prior practice was to not release deposition  
6 testimonies until we have hearing, that we try to  
7 schedule a public hearing to when Commissioners are  
8 available, and they can participate by phone, if they  
9 want to participate in questioning, and that we do so  
10 as soon as you can schedule it, and other  
11 Commissioners can attend.

12 CHAIRMAN REYNOLDS: I agree with you,  
13 Commissioner Gaziano. I think that he's willing to  
14 testify. I don't know what the scope of his testimony  
15 will look like, but I suspect that he is going to  
16 provide some insights as to the contours of 11B, which  
17 would be quite helpful. Any information he can  
18 provide, since he was such a central player in this  
19 event, would be beneficial to our report.

20 Other comments? All right.

21 VICE CHAIR THERNSTROM: Mr. Chairman, I  
22 can't stay, and this has gotten much later than I had  
23 hoped. And I would like to put the Philadelphia  
24 discussion off to another day.

25 CHAIRMAN REYNOLDS: To the next in-person

1 business meeting.

2 VICE CHAIR THERNSTROM: Right. In-person  
3 business meeting, absolutely.

4 CHAIRMAN REYNOLDS: And I will place it on  
5 the front end of the agenda.

6 VICE CHAIR THERNSTROM: Thank you very  
7 much. I appreciate it very much.

8 CHAIRMAN REYNOLDS: The next item is an  
9 update on the status of the Title IX Project. This  
10 discussion may contain some -- well, we may have to go  
11 into Executive Session. We'll see. Would the Acting  
12 Assistant Director for Civil Rights Evaluation please  
13 provide us with an update?

14 MR. BYRNES: Thank you, Mr. Chairman. I  
15 just want to remind Commissioners that if we discuss  
16 any personnel or contracting issues relating to this  
17 project, we'll have to go into closed session.

18 We have received data from 15 of the 19  
19 schools. Virginia Union has submitted data. Staff  
20 believes the responses to be somewhat complete. We  
21 have requested from Virginia Union, or will request,  
22 I should say, further clarification on some technical  
23 aspects of their data. The Chairman is contacting the  
24 four objecting schools to set up meetings to discuss  
25 any further accommodation of our requests. We have

1 received responses to our interrogatories from the  
2 Departments of Education and Justice. And we have  
3 submitted a follow-up letter to the Office for Civil  
4 Rights of the Department of Education requesting some  
5 additional data, and some clarifications to their  
6 response.

7 We have retrieved the documents and  
8 analyses that Dr. Lerner had taken home with him. So,  
9 I think overall, we are in a good position with having  
10 a lot of the data sort of sooner along in the process  
11 than we had anticipated.

12 Staff is preparing a discovery plan and  
13 outline for this project with time lines based on  
14 delivery a draft report to Commissioners in either  
15 September or October. So, I'd be happy to take any  
16 questions you might have.

17 CHAIRMAN REYNOLDS: Questions? Comments?  
18 Okay. I have a question for you. Do you have a firm  
19 handle of -- I know that we have this transition  
20 because of the passing of Dr. Lerner. But at this  
21 point, do you have a handle on what has been  
22 accomplished, and how much work needs to be done in  
23 order to complete this project?

24 MR. BYRNES: At this point, that's still  
25 a little bit in doubt. There seem to be issues with

1 the coding and recoding of the data that Dr. Lerner  
2 had taken home with him, so we're sort of sifting  
3 through that at the moment.

4 CHAIRMAN REYNOLDS: Okay. Well, just to  
5 put you on notice, at the next meeting the question  
6 you'll get from me is, do you have a good sense of  
7 what was done, and how much work remains.

8 MR. BYRNES: I'll anticipate having that  
9 at the next meeting.

10 CHAIRMAN REYNOLDS: I'm sorry?

11 MR. BYRNES: I will have that at the next  
12 meeting.

13 CHAIRMAN REYNOLDS: Okay. Next up -

14 COMMISSIONER HERIOT: Wait. Mr. Chairman,  
15 I'd like to ask a few things. My conception for this  
16 was that first we would have some sense of whether  
17 discrimination was going on at all or some of these  
18 schools, and then we would maintain some flexibility  
19 about what to do next. For example, if we find a lot  
20 of discrimination, then I would propose that we hold  
21 a briefing where we talk about that with some of the  
22 college presidents, or their nominees, about why they  
23 feel the need to discriminate, what the alternatives  
24 might be. I don't think we want to just produce a  
25 report without having this period where we try to

1 determine what to do next, based on our preliminary  
2 findings.

3 Also, another issue that may come up, or  
4 may not come up, I don't know, is whether the SAT has  
5 been modified in a way that favors female students, so  
6 that discrimination in favor of men is sort of the  
7 mirror image of that, sort of making -- moving things  
8 back to where they would have been had there been no  
9 SAT designed to favor women. I have no idea whether  
10 the facts that I've heard about the SAT being modified  
11 in that way are true. I think we haven't gotten to  
12 that point yet. So, I think we need to maintain a lot  
13 of flexibility what the ultimate product is going to  
14 be. We need to see what the data are showing before  
15 we decide what our next move is going to be.

16 CHAIRMAN REYNOLDS: Commissioner Heriot,  
17 I think that it's good that you reminded us that at  
18 the end of the day, the direction and the scope of  
19 this project will turn, in large part, on the data.  
20 And since we haven't completed our analysis, we, at  
21 this point, don't -- we haven't finalized the  
22 direction or the scope of the project.

23 COMMISSIONER HERIOT: Yes. There should  
24 be no drafting preliminary reports, or I don't think  
25 even really going much further until we get the



1       answers, to what degree is there discrimination going  
2       on. Because until we know that, we don't know how  
3       we're going to form this report.

4               CHAIRMAN REYNOLDS: Okay. Next up is--

5               MR. BYRNES: If I can just make one  
6       additional comment.

7               CHAIRMAN REYNOLDS: -- the Staff  
8       Director's report.

9               Mr. Staff Director.

10              III. STAFF DIRECTOR'S REPORT

11              STAFF DIRECTOR DANNENFELSER: Mr.  
12       Chairman, I think that Mr. Byrnes would like to  
13       elaborate just a little bit.

14              MR. BYRNES: The General Counsel can  
15       correct me if I'm wrong, but I think in order to  
16       publish the data and any analyses connected to it, we  
17       would have to introduce the data at a hearing. That's  
18       how it would be introduced into the record. So, the  
19       time line that we're building builds in a hearing.

20              COMMISSIONER HERIOT: We're not talk --  
21       not the data, but rather the results of the research.  
22       We're not going to introduce the data into -

23              MR. BYRNES: I think even to introduce the  
24       data, we would need -

25              COMMISSIONER HERIOT: Yes, but we don't

1 want to introduce individual data points into the  
2 record.

3 MR. BLACKWOOD: We haven't received  
4 individual data points. I mean, when you say  
5 individuals, I assume you mean individual students,  
6 which we haven't received, nor did we request. But to  
7 use any information, any data received pursuant to a  
8 subpoena, we must introduce it at a hearing. So, as  
9 Mr. Byrnes indicated, the time line is going to  
10 contemplate a hearing of some kind, which we can talk  
11 about as we get further down the road, but it does  
12 contemplate a hearing.

13 CHAIRMAN REYNOLDS: Okay. If there are no  
14 other questions or comments, Mr. Staff Director.

15 STAFF DIRECTOR DANNENFELSER: Thank you,  
16 Mr. Chairman.

17 On Tuesday, June 8th, I sent Commissioners  
18 a copy of the guidance we received from OMB regarding  
19 the Fiscal Year 2012 budget. We are being asked to  
20 submit a budget to OMB by September 13th that is 5  
21 percent below the level of our Fiscal Year 2011  
22 budget. While Congress has not yet finalized our  
23 Fiscal Year 2011 budget, the President's request was  
24 for the same \$9.4 million level we are operating under  
25 for Fiscal Year 2010. I am currently working with the

1 Associate Deputy Staff Director, the Director of  
2 Management, and our Budget Chief to draft a Fiscal  
3 Year 2012 budget proposal based on this OMB guidance,  
4 and that will subsequently be submitted for  
5 Commissioners' consideration.

6                   Regarding the annual audit, the solicit -  
7                   CHAIRMAN REYNOLDS: I'm sorry. Before you  
8 go on -

9                   STAFF DIRECTOR DANNENFELSER: Okay.

10                   CHAIRMAN REYNOLDS: Is this across the  
11 board 5 percent reduction?

12                   STAFF DIRECTOR DANNENFELSER: No, they --  
13 we have to decide where. They don't want you to do  
14 it across the board. I mean, it's an overall -- in  
15 terms of our number, it's a 5 percent reduction.

16                   CHAIRMAN REYNOLDS: No, I'm asking is each  
17 agency within the federal government being asked to  
18 reduce its budget by 5 percent?

19                   STAFF DIRECTOR DANNENFELSER: In general,  
20 unless you get a specific exemption, you're expected  
21 to do that. There may be some agencies that have  
22 Presidential priorities that will be given an  
23 exemption. I think the idea is to arrive at an overall  
24 5 percent reduction, and, therefore, the standard is  
25 for agencies to prepare a budget with a 5 percent

1 reduction, unless they get specific guidance to the  
2 contrary.

3 CHAIRMAN REYNOLDS: Okay. I've had this  
4 conversation with the Staff Director and some other  
5 members of the Staff but, looking at our budget over  
6 the last, I don't know, 10 to say, 15 years, with the  
7 exception of recent increases, our budget has remained  
8 flat over this period. What that means is that,  
9 essentially, our purchasing power has been eroded  
10 because of the -- just inflation. The cost of goods  
11 and services are increasing annually, yet our budget  
12 over this period of time has remained largely the  
13 same. And, as a result, we've gone from an agency that  
14 had over 100 employees to, I guess -- how many  
15 employees do we have now, Marty, in the 40s?

16 STAFF DIRECTOR DANNENFELSER: About 42, I  
17 believe.

18 CHAIRMAN REYNOLDS: Yes. So, Marty, when  
19 we have this discussion, I would also like you to  
20 prepare some analysis that looks at our purchasing  
21 power over the last 15 years, looking at what our  
22 annual budgets have been, and just having someone  
23 perform some analysis that will show the impact that  
24 a flat budget has had on our purchasing power over,  
25 say a 15-year period.

1                   STAFF DIRECTOR DANNENFELSER: Okay. We'll  
2 do some of that analysis.

3                   COMMISSIONER GAZIANO: Mr. Staff Director,  
4 let the record reflect that my position will be the  
5 same whenever we take up a budget, that we should give  
6 due consideration to the President's, OMB's kind  
7 suggestions to us, but as an independent agency in the  
8 Congressional Branch, we should act with our due  
9 independence, and submit a budget that we think is  
10 necessary and appropriate for this agency.

11                   STAFF DIRECTOR DANNENFELSER: Okay. Any  
12 other questions or comments on the budget topic?

13                   Regarding the annual audit, the  
14 solicitation for annual audit services closed on May  
15 12th, and the Staff has begun the process of reviewing  
16 proposals. Technical and cost evaluation panels have  
17 been meeting, and will continue to meet, and we expect  
18 them to make final recommendations by next week to the  
19 Contracting Officer.

20                   The Staff has been meeting regarding the  
21 National Civil Rights Conference, and we now are at a  
22 point where we have reached an agreement with the  
23 National Press Club to have the conference there on  
24 Tuesday, September 14th. We expect to receive a  
25 contract from the Press Club as soon as today, and

1 anticipate signing that by sometime next week. We are  
2 planning to have a meeting with an event planner next  
3 week, as well, so we have made a decision in that  
4 regard.

5 We are asking Commissioners to, as soon as  
6 possible, come up with some names of people that you  
7 would like to see invited to the conference, because  
8 what we would like to do is gather all those names,  
9 send out all those invitations, and we do have a limit  
10 in terms of the capacity, and the cost to the number  
11 of people that we can have attending the conference,  
12 but at some point, we may open it up to the general  
13 public. But we would like the Commissioners to first  
14 have an opportunity to invite those people that they  
15 feel are appropriate, so please get those invitations  
16 in to us as soon as possible.

17 CHAIRMAN REYNOLDS: Mr. Staff Director,  
18 did you mention the date?

19 STAFF DIRECTOR DANNENFELSER: Yes,  
20 Tuesday, September 14th.

21 COMMISSIONER GAZIANO: Can you put the mic  
22 back on the -- somehow it slipped. Okay.

23 CHAIRMAN REYNOLDS: Folks, we're done.

24 (Whereupon, the proceedings went off the  
25 record at 1:57 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Meeting

Before: US Commission on Civil Rights

Date: 06-11-10

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

*Neal R Gross*

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Court Reporter

**NEAL R. GROSS**

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