

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC MEETING

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FRIDAY, OCTOBER 30, 2009

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The Commission convened telephonically at 11:30 a.m. Eastern Daylight Time, GERALD A. REYNOLDS, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, 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  
CHRISTOPHER BYRNES  
PAMELA A. DUNSTON, Chief, ASCD  
ROBERT LERNER, Asst Staff Director for  
OCRE  
EMMA MONROIG, Solicitor  
LENORE OSTROWSKY  
EILEEN RUDERT  
KIMBERLY TOLHURST  
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY  
DOMINIQUE LUDVIGSON  
KIMBERLY SCHULD  
JOHN MARTIN  
ALISON SCHMAUCH

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

(11:38 a.m.)

CHAIRMAN REYNOLDS: We can get started.  
We have I guess five commissioners and possibly one  
phantom commissioner. Operator, could you please  
start the call, let the public in?

THE OPERATOR: Absolutely. Okay. Please  
go ahead. The call may now begin.

CHAIRMAN REYNOLDS: Okay. Good morning.  
This is Chairman Reynolds. It is 11:39 Eastern  
Daylight Time on October 30th, 2009. We are having a  
telephonic meeting with commissioners participating  
from different locations. I will call the name of  
each commissioner to determine if there is a quorum to  
hold the meeting. Vice Chair Thernstrom? Vice Chair  
Thernstrom?

(No response.)

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Here.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez?

(No response.)

1 CHAIRMAN REYNOLDS: Commissioner Yaki

2 COMMISSIONER YAKI: Here.

3 CHAIRMAN REYNOLDS: Commissioner Taylor?

4 COMMISSIONER TAYLOR: Here.

5 CHAIRMAN REYNOLDS: Okay. Is the Staff  
6 Director present?

7 STAFF DIRECTOR DANNENFELSER: Yes, sir.

8 CHAIRMAN REYNOLDS: Is the Court Reporter  
9 on the line?

10 THE REPORTER: Present.

11 CHAIRMAN REYNOLDS: Thank you. The  
12 meeting will come to order. To assist the Court  
13 Reporter, please identify yourself before making a  
14 statement. Whenever it is necessary to take a vote, I  
15 will call each of your names. Please answer by  
16 saying, "Yea," "Nay," or "Abstain."

17 I. APPROVAL OF AGENDA

18 CHAIRMAN REYNOLDS: I move that we approve  
19 the agenda. Is there a second?

20 COMMISSIONER GAZIANO: Second.

21 CHAIRMAN REYNOLDS: Discussion?

22 COMMISSIONER GAZIANO: Were there going to  
23 be some amendments to it?

24 CHAIRMAN REYNOLDS: Yes. I have several.  
25 I just wanted to see if anyone wanted to go first.

1                   Okay. Here are the amendments that I  
2 would like to make. I would like to amend the agenda  
3 so that the discussion of the new Black Panther Party  
4 project is the first item on the agenda and move the  
5 approval of the minutes so that it is taken up after  
6 our vote on a meeting calendar for 2010, making the  
7 update on the Title IX project the last item.

8                   Is there a second?

9                   COMMISSIONER GAZIANO: Second. Gaziano.

10                  CHAIRMAN REYNOLDS: Any other changes?

11                  (No response.)

12                  CHAIRMAN REYNOLDS: Discussion?

13                  (No response.)

14                  CHAIRMAN REYNOLDS: Okay. Commissioner  
15 Gaziano, how do you vote?

16                  COMMISSIONER GAZIANO: Yes.

17                  CHAIRMAN REYNOLDS: Commissioner Kirsanow?

18                  COMMISSIONER KIRSANOW: Yes.

19                  CHAIRMAN REYNOLDS: Commissioner Heriot?

20                  COMMISSIONER HERIOT: Yes.

21                  CHAIRMAN REYNOLDS: Commissioner Yaki?

22                  COMMISSIONER YAKI: No.

23                  CHAIRMAN REYNOLDS: Commissioner Taylor?

24                  COMMISSIONER TAYLOR: Yes.

25                  CHAIRMAN REYNOLDS: And I also vote in the

1 affirmative. Let the record reflect that Commissioner  
2 Yaki voted against the motion. The remaining  
3 commissioners voted in favor of the motion. The  
4 motion passes.

5 IV. PROGRAM PLANNING

6 - UPDATE ON PROPOSED HEARINGS FOR

7 FY 2010 ENFORCEMENT REPORT

8 CHAIRMAN REYNOLDS: Okay. Next up, we  
9 will have an update on the proposed hearings for the  
10 2010 enforcement report. Mr. Staff Director or the  
11 General Counsel, will you please provide an update on  
12 the progress of our enforcement report on the  
13 Department of Justice's dismissal of voter  
14 intimidation charges against members of the New Black  
15 Panther Party?

16 MR. BLACKWOOD: Yes, this is David  
17 Blackwood. Since --

18 COMMISSIONER GAZIANO: Can you speak up a  
19 little bit or get a little closer to the mike?

20 MR. BLACKWOOD: Yes. This is David  
21 Blackwood.

22 COMMISSIONER YAKI: This is Commissioner  
23 Yaki. I still can barely hear him.

24 CHAIRMAN REYNOLDS: Okay. David, we need  
25 you to get close to the mike and speak up.

1 MR. BLACKWOOD: I am trying a different  
2 microphone. Can you hear me now?

3 COMMISSIONER YAKI: This is Commissioner  
4 Yaki. That is not much better.

5 MR. BLACKWOOD: All I can tell you is the  
6 microphone is now about an inch from my mouth.

7 CHAIRMAN REYNOLDS: Okay. Well, project.

8 MR. BLACKWOOD: I will do my best. Since  
9 our last meeting, I have interviewed by telephone  
10 several witnesses who were present in Philadelphia.  
11 As a result of those interviews, it became clear, at  
12 least in my mind, that I think there is a need to  
13 change what I originally proposed and what was sent  
14 out as far as this meeting, the discovery plan and the  
15 hearing proposal, in this way.

16 Many of the witnesses that were present in  
17 Philadelphia were campaign workers who do not live in  
18 Philadelphia, nor are they within 100 miles of  
19 Philadelphia. Many seem to be from the New York or  
20 Connecticut area.

21 As a result of the people I spoke with, it  
22 seems to me and the fact that many of them expressed  
23 an intention to or willingness to come to Washington  
24 to testify that I would suggest the following changes,  
25 that: one, the discovery that takes place in



1 Philadelphia could be done in the form of depositions,  
2 specifically geared, most, at least at this stage, I  
3 would propose to you, geared, towards members of the  
4 New Black Panther Party as well as any other  
5 individuals that we identify who are only in the  
6 Philadelphia area.

7 And by that, I would at this point say  
8 that I have identified Mr. and Mrs. Counts, who were  
9 actually within the polling place at the time as poll  
10 watchers. There may be other individuals, however,  
11 that I would identify who would testify at a  
12 deposition in Philadelphia without a hearing.

13 What I would suggest to you makes at least  
14 more physical sense is to move the hearing that was  
15 originally out of the picture in Philadelphia to the  
16 Washington office. And we can either combine them  
17 with a DOJ hearing or treat them as separate hearings,  
18 but I would just suggest to you that we could move it  
19 to Washington.

20 CHAIRMAN REYNOLDS: Any other items that  
21 you would like to update us on?

22 MR. BLACKWOOD: As far as there are some  
23 individuals with whom we have not had any success  
24 contacting yet. And that includes the videographer,  
25 who took many of the videos, portions of the videos,

1 that were on YouTube. He has made contact with us,  
2 but we haven't actually met to go through or interview  
3 him.

4 Other individuals, we are searching for  
5 addresses, but, even at this stage, we have sufficient  
6 witnesses who have directly observed the incidents  
7 that occurred in Philadelphia.

8 COMMISSIONER YAKI: This is Commissioner  
9 Yaki. I have some questions for the General Counsel.

10 CHAIRMAN REYNOLDS: Go ahead, Commissioner  
11 Yaki.

12 COMMISSIONER YAKI: I am a bit confused by  
13 what you just said. I thought you said that the  
14 Counts were people who were not poll watchers, but  
15 your discovery plan says that they were poll watchers.

16 MR. BLACKWOOD: I must have misspoken.  
17 The Counts were poll watchers. There are a variety of  
18 distinctions. There are people that are roving poll  
19 watchers. There are those who have certificates to  
20 actually physically be within the polling place.  
21 Those require someone to be a resident of  
22 Philadelphia. Mr. and Mrs. Counts fall into that  
23 latter category.

24 COMMISSIONER YAKI: And when you were  
25 talking about you were interviewing witnesses, were

1 they other poll watchers who were not situated within  
2 the Philadelphia area? They would, therefore, be  
3 outside the 100-mile radius?

4 MR. BLACKWOOD: Generally they are with  
5 one exception. We have one poll watcher who was "a  
6 roving poll watcher," who was a resident of  
7 Philadelphia, Mr. Chris Hill. He has indicated that  
8 he would be willing to come to Washington, D.C.

9 The other individuals, though, were  
10 campaign workers who showed up from out of state.  
11 They were outside the polling place but were not  
12 allowed in the polling place.

13 COMMISSIONER YAKI: Are you suggesting  
14 that we basically cancel the Philadelphia hearing?

15 MR. BLACKWOOD: No. What I am suggesting  
16 is shifting the Philadelphia hearing and we could  
17 actually stage it in Washington. As to those --

18 COMMISSIONER YAKI: Well, I have problems  
19 with the fact that shifting is based on basically  
20 self-referred discovery on the -- so are you saying  
21 that the members of the New Black Panther Party, you  
22 will simply interview them remotely through -- not  
23 remotely. You will go to Philadelphia and interview  
24 them via the deposition process? Is that what you  
25 were saying?

1 MR. BLACKWOOD: That is how I would  
2 propose the start-up. That time is spent on what we  
3 learn at the depositions.

4 COMMISSIONER YAKI: But they would be  
5 outside the 100-mile range if we were to have a  
6 hearing only in Washington, D.C., wouldn't they?

7 MR. BLACKWOOD: That is correct.

8 COMMISSIONER YAKI: So the commissioners,  
9 such as myself, would be deprived of the ability to  
10 give questions and answers to those folks if their  
11 only appearance is through the transcript of the  
12 interview. Is that correct?

13 COMMISSIONER GAZIANO: You could attend  
14 the deposition or they could come to a hearing  
15 somewhere else.

16 COMMISSIONER YAKI: Commissioner Gaziano,  
17 would you please allow Mr. Blackwood to answer the  
18 question.

19 COMMISSIONER GAZIANO: I'm sorry that I'm  
20 not constrained by your idiotic moods, Mr. Yaki.

21 CHAIRMAN REYNOLDS: Okay. Okay. Hold on,  
22 folks.

23 COMMISSIONER YAKI: I'm sorry, Mr. Chair.  
24 I would like that remark noted for its insane and  
25 utterly --

1                   CHAIRMAN REYNOLDS: All right. He hit you  
2 first. So get your shot in so we can move on.

3                   COMMISSIONER YAKI: No. He --

4                   COMMISSIONER GAZIANO: Then I get to get  
5 my shot in.

6                   COMMISSIONER YAKI: I am asking questions  
7 of the General Counsel. Commissioner --

8                   COMMISSIONER GAZIANO: And if you can't  
9 have a civil conversation, Michael, if you can't have  
10 a civil conversation without playing your little  
11 childish games, then --

12                  CHAIRMAN REYNOLDS: Commissioner Gaziano,  
13 he was speaking --

14                  COMMISSIONER YAKI: In keeping with his  
15 heroes in the Congress who like to interrupt people at  
16 any moment in time --

17                  COMMISSIONER GAZIANO: I did not interrupt  
18 you. I was supplying a response.

19                  CHAIRMAN REYNOLDS: Commissioner Gaziano,  
20 this is wasting time. Let's focus.

21                  COMMISSIONER YAKI: I am asking questions.

22                  CHAIRMAN REYNOLDS: Okay. Continue.

23                  COMMISSIONER YAKI: I am asking the  
24 General Counsel, are we basically limited, therefore,  
25 to the transcript of those witnesses for a Washington

1 hearing?

2 CHAIRMAN REYNOLDS: And the answer is?

3 MR. BLACKWOOD: This is David Blackwood.

4 Commissioner Yaki, first, you would have the right to

5 be at the deposition.

6 COMMISSIONER YAKI: Would I -- I'm sorry.

7 Go ahead.

8 MR. BLACKWOOD: Now, the way past practice

9 has been, as I understand it, at the Commission, one,

10 commissioners have a right to be at any deposition.

11 Two, after I have finished my questions, commissioners

12 are allowed time to ask any questions that they have.

13 So that is first.

14 Second, depending on what happens at the

15 deposition, yes, if we didn't shift the hearing to

16 Washington, they would be outside the 100-mile range.

17 It all depends in my mind what happens at the

18 deposition.

19 As we know, in the original litigation,

20 these individuals did not even file a response. So I

21 am somewhat -- frankly, I think it makes sense to

22 proceed with depositions first to see if they will

23 even respond to our subpoenas.

24 COMMISSIONER YAKI: Well, I have two

25 comments on that assuming Commissioner Gaziano doesn't

1 try and interrupt me.

2 CHAIRMAN REYNOLDS: You got your shot  
3 already.

4 COMMISSIONER YAKI: One is -- I am sorry,  
5 Mr. Chairman. I withdraw the remark.

6 One, if you were going through the  
7 deposition way, I would request that any dates,  
8 proposed dates, that you schedule for this -- I am  
9 giving notice that I have an interest in attending and  
10 possibly asking questions, number one. So I would  
11 like any date to be coordinated so that it could  
12 possibly work with my schedule, number one.

13 Number two, I am still not sure whether or  
14 not this is appropriate given the fact that the  
15 limited discovery that we seem to have seems to be fed  
16 to us by those who have an interest in reprosecuting  
17 this case because, as far as I can see, every single  
18 fact witness with the exception of anyone who happened  
19 to be actually on the YouTube video of individuals  
20 from the Republican Party -- and we have very few, if  
21 any.

22 And I want to know what the discovery is  
23 for that people from the affected precinct who were  
24 actually voters as well as the fact that I think it is  
25 important that the Election Day operations director,

1 who is identified as John Giordano, also be part of  
2 any Philadelphia-based process that is in place  
3 because I am not comfortable reading the discovery  
4 plan that there is any attempt to ascertain a complete  
5 set of facts other than those with people who already  
6 have a large axe to grind in an election that they  
7 lost.

8 CHAIRMAN REYNOLDS: Mr. Blackwood, I  
9 assume that your efforts to secure witnesses has not  
10 been biased by the political affiliations or  
11 ideologies of the individuals who were witnesses of  
12 the incident that occurred in Philadelphia. Is that  
13 right?

14 COMMISSIONER YAKI: Mr. Chairman, this is  
15 Commissioner Yaki. Let me say I am not insinuating at  
16 all.

17 CHAIRMAN REYNOLDS: Well, I just --

18 COMMISSIONER YAKI: I am simply saying he  
19 is acting on information provided to him by others on  
20 the Commission.

21 CHAIRMAN REYNOLDS: I understand that.

22 COMMISSIONER YAKI: It seems to be rather  
23 self-preferred. And I am wondering what we are doing  
24 beyond this to contact a broader section of  
25 individuals.



1 CHAIRMAN REYNOLDS: Well, Commissioner  
2 Yaki, that is where my question was leading.

3 COMMISSIONER YAKI: I apologize.

4 CHAIRMAN REYNOLDS: Mr. Blackwood, would  
5 you care to respond?

6 COMMISSIONER YAKI: I didn't want to  
7 insinuate that Mr. Blackwood was conducted any biased  
8 interviews.

9 CHAIRMAN REYNOLDS: Well, I just want to  
10 put the issue squarely on the table.

11 MR. BLACKWOOD: This is David Blackwood.  
12 I can tell you, Commissioner Yaki, you are correct in  
13 that the leads tended to come from one party because  
14 that was the nature of the incident. It was  
15 Republican operatives were showing up at poll watchers  
16 when we made the report.

17 That said, our plan is to, either myself  
18 or other individuals from OGC, go to Philadelphia,  
19 check some of the paper record with regard to other  
20 individuals that were at the polling place.

21 Specifically we know for a fact that there  
22 were Democratic poll watchers there. There should be  
23 records with the Board of Elections as to who these  
24 individuals are. And it absolutely is part of our  
25 plan to identify them and try to talk with them, but I

1       couldn't give you a name because I don't know who it  
2       is.

3                       We also know that on the video, in talking  
4       to the witnesses, at one time there is a woman there  
5       who is identified by the other witnesses as a  
6       Democratic campaign worker. She was observed right  
7       next to the or right behind the new Black Panther  
8       individuals. Obviously we would like to talk to her.

9       But I don't have any contact information.

10                      COMMISSIONER YAKI: Thank you. Thank you  
11       very much, Mr. Chair. And I would just simply urge  
12       the General Counsel to continue those efforts in order  
13       to ensure as much as possible that we have, again, the  
14       complete set of facts.

15                      To me, if we are going to do this, it  
16       would seem odd that we not go to Philadelphia simply  
17       because, one, our presence there alone may actually  
18       encourage others to come forward and speak who we're  
19       having trouble talking to; secondly, there may be some  
20       logistical issues involved with what schedule there  
21       may be for depositions.

22                      Then, again, if, indeed, the fact that  
23       there may be more than just two or three individuals  
24       potentially in Philadelphia we would wish to speak to  
25       on the record, at some point we may reach a critical

1 mass where a hearing is required.

2 And, again, I am referring to the fact  
3 that I think that the Election Day operations director  
4 -- I don't know if the Philadelphia police officers  
5 generally have authority to travel to Washington, D.C.

6 And when you add those and when you start adding  
7 potential other individuals, including voters who were  
8 there at the time, I would not want us to just --

9 CHAIRMAN REYNOLDS: Commissioner Yaki, we  
10 are not going to vote on this matter yet. I am just  
11 putting --

12 COMMISSIONER YAKI: I just want to put  
13 that out there.

14 CHAIRMAN REYNOLDS: Yes. I understand.  
15 Mr. Blackwood has made a recommendation. We will mull  
16 it over. And we will have to raise this issue again.

17 COMMISSIONER GAZIANO: Mr. Chairman?

18 CHAIRMAN REYNOLDS: Yes?

19 COMMISSIONER GAZIANO: This is Todd  
20 Gaziano. I would like to offer a motion at this time.

21 CHAIRMAN REYNOLDS: Please go ahead.

22 COMMISSIONER GAZIANO: It is the motion  
23 that I circulated, but for the record, it is  
24 relatively short. I suppose I should read it into the  
25 record --

1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER GAZIANO: -- unless there is  
3 unanimous consent that we --

4 CHAIRMAN REYNOLDS: Please read it into  
5 the record.

6 COMMISSIONER GAZIANO: Okay. And then let  
7 me speak to the motion immediately afterward if it is  
8 seconded. Pursuant to the Commission's authority  
9 under 42 USC section 1975(a) and 45 CFR section 7024  
10 and in furtherance of our investigation of the  
11 implications of DOJ's actions in the new Black Panther  
12 Party litigation for enforcement of section 11(b) of  
13 the Voting Rights Act, I move to authorize the  
14 Chairman to subpoena any of the individuals listed in  
15 the two draft hearing proposals prepared by the  
16 General Counsel dated October 21, 2009 and any other  
17 individuals the General Counsel and the Discovery  
18 Subcommittee identify who are similarly situated to  
19 the witnesses identified in the draft hearing  
20 proposals or who fall within one of the categories  
21 identified below to appear as specified in the  
22 subpoena to give deposition and/or hearing testimony  
23 and produce written or other matter called for in the  
24 subpoenas.

25 The five categories are: one, former

1 defendants in the New Black Panther Party NBPP  
2 litigation; two, individuals with information about  
3 the events in Philadelphia; three, former and current  
4 DOJ personnel with knowledge of the NBPP litigation;  
5 four, custodians of records at DOJ regarding past VRA  
6 section 11(b) allegations, investigations, and related  
7 documents; and, five, others with potential relevant  
8 information about the DOJ actions in the NBPP  
9 litigation.

10 CHAIRMAN REYNOLDS: This is Chairman  
11 Reynolds. I second the motion.

12 Please continue, Commissioner Gaziano.

13 COMMISSIONER GAZIANO: This is obviously a  
14 helpful step. It may have been already implicit in  
15 the votes that we have previously taken initiating  
16 this, but I think it is good for the record for the  
17 Commission to authorize you to issue the subpoenas.

18 And I think that I want to sort of second  
19 the notion that the General Counsel just explained.  
20 We have been working with him on some of the issues  
21 that would be involved and costly decisions to rent a  
22 hotel, having a hearing in Philadelphia. It certainly  
23 makes more sense to find out what deposition evidence  
24 there is and then for the rest of the Commission to be  
25 informed by that and then make a decision on the

1 hearing.

2 CHAIRMAN REYNOLDS: Well --

3 COMMISSIONER GAZIANO: But, regardless of  
4 the hearing issue, this is certainly a simple step to  
5 further the investigation.

6 CHAIRMAN REYNOLDS: Additional comments?

7 COMMISSIONER YAKI: This is Commissioner  
8 Yaki. One, I am not too sure about the cost issue  
9 because I am certain that there are going to be a  
10 number of commissioners who are going to want to  
11 attend any potential deposition in Philadelphia for --

12 CHAIRMAN REYNOLDS: Gentlemen, let's punt  
13 this particular issue. The location of the deposition  
14 and the hearings, that issue is not on the table  
15 today. We have a recommendation. Once we have had an  
16 opportunity to give it some thought, we can put it on  
17 the agenda and have a full-blown discussion.

18 Right now we have a motion on the table.  
19 And I would like to stay focused on the motion.

20 COMMISSIONER YAKI: I was just addressing  
21 one of the rationales for the motion. But, that being  
22 the case, I find this motion extremely problematic. I  
23 find that especially number five is just a scatter  
24 shot, carte blanche standard. I am not too sure  
25 whether it would pass any muster whatsoever in terms

1 of specificity.

2 And my question actually is at the General  
3 Counsel, which is, have we had in the past such broad  
4 and rather vague authority granted for subpoenas or  
5 are we required under the statute or under any other  
6 applicable law to be a little more specific in terms  
7 of determining the standard of what is potentially  
8 relevant information, what is "information," how are  
9 we going to identify that, and then how are we going  
10 to prioritize to whom these subpoenas are going to.

11 MR. BLACKWOOD: This is General Counsel  
12 again. In answer to your question, number one, as I  
13 understand the motion as adopted by reference, the  
14 list of witnesses that we have specifically identified  
15 as to past practice, I can tell you that we have  
16 scoured the agency with regard to past practices. We  
17 haven't found anything with regard to this specific  
18 issue.

19 In reviewing the motion yesterday, I did  
20 look at the statute in our CFRs. And I didn't see the  
21 issue, frankly, addressed. So I do believe the  
22 Commission has the authority and discretion to pass on  
23 the authority of identifying it as they will.

24 That said, obviously I will be working  
25 with the subcommittee that was authorized by the

1 Commission before any subpoenas would be issued.

2 COMMISSIONER YAKI: This is Commissioner  
3 Yaki. Did I just understand you to say that this was  
4 limited to people who have been identified so far?

5 MR. BLACKWOOD: No. The wording  
6 obviously, what you just said, is broader than that,  
7 but it did encompass as well the specific individuals  
8 identified. And there aren't any other individuals  
9 that I am aware of currently.

10 I assume that part of the motion was that  
11 we would not keep coming back and saying, "Now we have  
12 another one given the timing or the --

13 COMMISSIONER YAKI: Excuse me. But who is  
14 going to determine the potentially relevant standard,  
15 as stated in number 5 of Commissioner Gaziano's memo?  
16 Is it going to be you? Is it going to be  
17 Commissioner Gaziano? Who is it?

18 MR. BLACKWOOD: Well, as a practical  
19 matter, first I would identify the individuals, the  
20 informal process. Obviously I would confirm that with  
21 the Subcommittee that has been identified. And,  
22 frankly, then the Chair also has the power because  
23 only he can sign subpoenas.

24 CHAIRMAN REYNOLDS: Any other comments?

25 COMMISSIONER YAKI: So what you are



1 telling me, then, is that the Subcommittee and the  
2 Chair have sole discretion to determine, not the  
3 Commission as a whole, what is potentially relevant?

4 MR. BLACKWOOD: I assume that is the  
5 purpose of the motion as to whether the Commission is  
6 delegating that authority.

7 COMMISSIONER HERIOT: Yes. I don't think  
8 there is anything out of the ordinary about delegating  
9 such authority. I would call the question.

10 CHAIRMAN REYNOLDS: Okay. Commissioner  
11 Gaziano, how do you vote?

12 COMMISSIONER GAZIANO: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Heriot?

16 COMMISSIONER HERIOT: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Yaki?

18 COMMISSIONER YAKI: No.

19 CHAIRMAN REYNOLDS: Commissioner Taylor?

20 COMMISSIONER TAYLOR: Yes.

21 CHAIRMAN REYNOLDS: And I vote yes also.  
22 Commissioner Yaki voted against the motion. The  
23 remaining commissioners voted for it. The motion  
24 passes.

25 III. MANAGEMENT AND OPERATIONS

1 - APPROVAL OF CALENDAR OF 2010 COMMISSION MEETINGS

2 CHAIRMAN REYNOLDS: Okay. Next up. On  
3 October 9th, the Staff Director sent a list of  
4 potential dates for Commission meetings during 2010.  
5 He sent an updated list on October 22nd. That  
6 includes teleconference dates, in addition to  
7 in-person meeting dates.

8 As is our typical practice, in-person  
9 meetings, business meetings, will start at 9:30  
10 Eastern Standard Time. And teleconference will be  
11 scheduled for 11:30 Eastern Standard Time.

12 Obviously selecting these meeting dates  
13 does not preclude adjustments, additions, and  
14 deletions of meeting dates throughout the year, as is  
15 necessary to accommodate Commission business and other  
16 projects.

17 I move to adopt the suggested dates for  
18 phone and in-person Commission meetings for calendar  
19 year 2010. Is there a second?

20 COMMISSIONER HERIOT: Second.

21 CHAIRMAN REYNOLDS: Discussion?

22 COMMISSIONER YAKI: I just do not  
23 understand why we have these telephonic meetings and  
24 we can't get our business done in a regular fashion.

25 COMMISSIONER HERIOT: The fact that you

1 walk out on meetings to defeat a quorum has a lot to  
2 do with it.

3 COMMISSIONER YAKI: I would just like to  
4 --

5 CHAIRMAN REYNOLDS: All right, folks.  
6 Let's let Commissioner Yaki continue.

7 COMMISSIONER YAKI: I am sorry.  
8 Commissioner Heriot, were you referring perhaps to my  
9 practice of attempting to use my own parliamentary  
10 procedure?

11 I suppose that, you know, you would find  
12 it objectionable since it is against you, but I would  
13 simply say that I don't believe that the schedule of  
14 telephonic meetings is necessary. I think that it is  
15 premature to require them.

16 And I think that what it does, it is a  
17 self-fulfilling prophecy in terms of our being or not  
18 being able to get anything done at our normal  
19 meetings. I mean, if you want to talk about how our  
20 meetings are run, Commissioner Heriot, maybe we can  
21 talk about the fact that we still continue to get  
22 motions the day before Commission meetings, which  
23 gives some commissioners very little time in which to  
24 thoroughly analyze them or not.

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

1 COMMISSIONER YAKI: I object to the --

2 CHAIRMAN REYNOLDS: I understand that you  
3 would prefer, that you have a strong preference, that  
4 these teleconferences not take place. You have  
5 expressed your views in prior meetings. And we  
6 understand your position.

7 Commissioner Gaziano, how do you vote?

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Heriot?

12 COMMISSIONER HERIOT: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Yaki?

14 COMMISSIONER YAKI: No.

15 CHAIRMAN REYNOLDS: Commissioner Taylor?

16 COMMISSIONER TAYLOR: Yes.

17 CHAIRMAN REYNOLDS: I, too, vote in favor  
18 of the motion. So it is one vote against. That vote  
19 is Commissioner Yaki's.

20 COMMISSIONER YAKI: Mr. Chair?

21 CHAIRMAN REYNOLDS: Yes?

22 COMMISSIONER YAKI: I would like to make a  
23 motion from the floor, a very simple motion that has  
24 been discussed before.

25 CHAIRMAN REYNOLDS: Well --

1                   COMMISSIONER YAKI: I do not think that it  
2 requires a great amount of intellectual disposition or  
3 would cause any surprise to anyone. If we are going  
4 to go ahead and do this, it makes no sense whatsoever  
5 for our special assistants to be put on the public  
6 side of the call, rather than the commissioners' side  
7 of the call. When you think about the fact that staff  
8 in the meeting present in D.C. are on the  
9 commissioners' side of the call as well and our staff  
10 if they are present at that meeting are on the  
11 commissioners' side of the call, why our staff  
12 participating remotely cannot be on the commissioners'  
13 side of the call I think is unfair.

14                   And I would ask that, going forward,  
15 special assistants be allowed to participate on the  
16 commissioners' side of the call.

17                   CHAIRMAN REYNOLDS: Is there a second?

18                   COMMISSIONER GAZIANO: Mr. Chairman, I  
19 would be interested to hear the moving Commissioner's  
20 reasoning. Our staff, most of our special assistants  
21 normally do not speak at meetings. They just listen,  
22 regardless of where they sit. So I might depending on  
23 the rationale.

24                   COMMISSIONER YAKI: Well, the rationale is  
25 that: a) they are our special assistants; b) there

1 are going to be times -- and perhaps it was before  
2 your time, Commissioner Gaziano, and before your time,  
3 Commissioner Heriot -- where we will be on a remote  
4 phone call. And the question would be asked.

5 And it is a heck of a lot easier to try  
6 and clarify what may or may not have happened or get  
7 information to a special assistant than sit there and  
8 try to e-mail them separately, rather than simply say,  
9 you know, blank, Joe, James, or whatever, "Did we do  
10 this? Do you have a record of that in your notes?  
11 Can you pull that out?" or whatever.

12 I mean, it just seems ridiculous that only  
13 by virtue of being in the D.C. office is a special  
14 assistant afforded an opportunity to be on the  
15 commissioners' side of the call.

16 And if we are going to be doing this more  
17 and more, the fact of the matter is that there are  
18 going to be times when someone is going to be asking  
19 their special assistant for some information.

20 And, rather than go through 300 channels  
21 or if you are in a location where you only have access  
22 by phone and your BlackBerry doesn't work, you may be  
23 in some remote location, where you are dialling in,  
24 and there is no other way to communicate with your  
25 special assistant, other than through the open phone

1 lines.

2 COMMISSIONER GAZIANO: I might support the  
3 motion, but I just wonder if we could put it off to  
4 the next meeting to think about it, discuss it.

5 COMMISSIONER HERIOT: I would like to  
6 consider these issues later, instead of right now.

7 COMMISSIONER YAKI: Consider what issues,  
8 Commissioner Heriot? You were the one who blocked my  
9 special assistant from joining a meeting the other  
10 day.

11 COMMISSIONER HERIOT: Because we were  
12 under the impression that special assistants were not  
13 supposed to be on the call.

14 COMMISSIONER YAKI: I am not saying they  
15 are going to be there --

16 COMMISSIONER HERIOT: You seem to be  
17 acknowledging it yourself.

18 COMMISSIONER YAKI: -- they're going to be  
19 there speaking. They're there as a resource to us  
20 should we need it. And I can tell you right now that  
21 there are times, there have been times when --

22 CHAIRMAN REYNOLDS: Commissioner --

23 COMMISSIONER HERIOT: I know there are  
24 times when you want your special assistant to be on  
25 the call so they know about whether or not we are able

1 to raise a quorum so you will know whether to get back  
2 on the call. If we got --

3 CHAIRMAN REYNOLDS: Commissioner, can we  
4 --

5 COMMISSIONER HERIOT: That is what your --

6 CHAIRMAN REYNOLDS: Commissioner Heriot?  
7 Okay, folks. Commissioner Yaki, at this point, it  
8 appears as if you do have some support from  
9 Commissioner Gaziano. He has asked whether you would  
10 be willing to postpone this particular motion. Will  
11 you postpone?

12 COMMISSIONER HERIOT: You don't need to  
13 ask him that. It hasn't been seconded.

14 COMMISSIONER YAKI: Commissioner Heriot,  
15 you are such a bundle of charm in the morning. It  
16 really is --

17 CHAIRMAN REYNOLDS: Okay. Commissioner  
18 Yaki, will you --

19 COMMISSIONER YAKI: I would say I am  
20 raising this as an issue. I would like it to be  
21 placed on the agenda as a motion at the next in-person  
22 meeting of the Commission.

23 CHAIRMAN REYNOLDS: Okay. Very good. Mr.  
24 Staff Director, please make sure that it is on the  
25 agenda for the November 6th meeting.



1           II. APPROVAL OF MINUTES OF SEPTEMBER 3,  
2           SEPTEMBER 11, SEPTEMBER 24, OCTOBER 8, AND  
3           OCTOBER 16 MEETINGS

4           CHAIRMAN REYNOLDS: Okay. The next item  
5           is the approval of the minutes of the meetings held on  
6           September 3rd, September 11th, September 24th, October  
7           8th, and October 16th of 2009.

8           I move that each set of these minutes be  
9           approved. Is there a second?

10          COMMISSIONER GAZIANO: Second. I would  
11          like to make a minor amendment to one of them.

12          CHAIRMAN REYNOLDS: Okay. Please allow me  
13          to go first in terms of the amendments. I have  
14          several. And it is possible that your concern will be  
15          taken care of with my amendments.

16          The first item, I would like to make a  
17          change to the September 3rd set of minutes. Kim  
18          Schuld is listed as a commissioner assistant  
19          participant in the second paragraph, but she reports  
20          that she was not present for that meeting. So her  
21          name should be deleted from the list.

22          Second, under the section titled "State  
23          Advisory Committee Issues," on page 2, number 2, the  
24          second paragraph, dealing with the Hawaii SAC  
25          rechartering, I would like the first sentence of the

1 second paragraph of that section to read as follows,  
2 "The commissioners voted to table consideration of  
3 Daphne Barbee-Wooten indefinitely unless she can  
4 establish that the racially offense remarks that she  
5 is reported in various news accounts to have made  
6 called to our attention by Commissioner Gaziano are  
7 inaccurate."

8 Furthermore, the third sentence of that  
9 paragraph should be "The commissioners agree to  
10 consider Ms. Barbee-Wooten's application at the  
11 October 2009 meeting pending a response from Ms.  
12 Barbee-Wooten regarding the news accounts of her  
13 purported remarks."

14 Any other changes to the September 3rd set  
15 of minutes?

16 COMMISSIONER GAZIANO: No. That satisfies  
17 my concern.

18 CHAIRMAN REYNOLDS: Okay. Commissioner  
19 Gaziano, how do you vote?

20 COMMISSIONER GAZIANO: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Heriot?

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

1 Commissioner Yaki?

2 COMMISSIONER YAKI: Abstain.

3 CHAIRMAN REYNOLDS: Commissioner Taylor?

4 Commissioner Taylor?

5 (No response.)

6 CHAIRMAN REYNOLDS: Okay. We have four  
7 votes in favor, one vote by Commissioner Yaki. It is  
8 an abstention. The motion passes.

9 Okay. Next up. Next up are, let's see,  
10 the September 11th meetings -- the minutes, rather. I  
11 don't know why I keep making that mistake. Here are  
12 the changes I would like to make.

13 In the paragraph under the approval of the  
14 minutes of the August 7th, 2009 meeting, I would like  
15 the first sentence revised to add an "s" to Panther  
16 and include the words "voter intimidation" before  
17 "issue" and change the word "issue" to "case" towards  
18 the first sentence in that paragraph. So that the  
19 sentence would read as follows, "The Commission  
20 amended the language at page 2 to reflect that  
21 Commissioner Melendez abstained and Commissioner Yaki  
22 was absent for the vote to send a letter to the  
23 Department of Justice on the Black Panthers voter  
24 intimidation case."

25 Additionally, I believe the last sentence

1 of this section, entitled "Staff Director's Report,"  
2 should be amended so it reads as follows,  
3 "Commissioner Melendez requested the formation of a  
4 subcommittee to deal with modifications to the 2010  
5 budget."

6 Any additional changes, discussion with  
7 regard to the September 11th minutes?

8 (No response.)

9 CHAIRMAN REYNOLDS: Okay. Commissioner  
10 Gaziano, how do you vote?

11 COMMISSIONER GAZIANO: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

13 COMMISSIONER KIRSANOW: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Heriot?

15 COMMISSIONER HERIOT: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Yaki?

17 COMMISSIONER YAKI: Abstain.

18 CHAIRMAN REYNOLDS: Commissioner Taylor?

19 (No response.)

20 CHAIRMAN REYNOLDS: I vote in favor of the  
21 motion. So Commissioner Yaki abstained. The  
22 remaining commissioners voted in favor. The motion  
23 passes.

24 Next up, the --

25 COMMISSIONER YAKI: I would like to have a

1 quorum call.

2 CHAIRMAN REYNOLDS: Okay. Commissioner  
3 Yaki?

4 COMMISSIONER YAKI: Present.

5 CHAIRMAN REYNOLDS: Commissioner Heriot?

6 COMMISSIONER HERIOT: Here.

7 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

8 COMMISSIONER KIRSANOW: Here.

9 CHAIRMAN REYNOLDS: Commissioner Gaziano?

10 COMMISSIONER GAZIANO: Here.

11 CHAIRMAN REYNOLDS: Commissioner Taylor?

12 (No response.)

13 CHAIRMAN REYNOLDS: Okay. We have a  
14 quorum.

15 COMMISSIONER YAKI: Commissioner Yaki is  
16 leaving the conference.

17 CHAIRMAN REYNOLDS: I am not surprised.

18 All right. Sudden business, Commissioner Yaki, or  
19 parliamentary tactics?

20 COMMISSIONER HERIOT: Do we have to ask?

21 COMMISSIONER GAZIANO: Let the record  
22 reflect. What should the record reflect, Mr.  
23 Chairman?

24 CHAIRMAN REYNOLDS: Well --

25 COMMISSIONER GAZIANO: That as soon as

1 Commissioner Yaki's presence or lack thereof would  
2 deny us a quorum, he leaves.

3 CHAIRMAN REYNOLDS: Well, it is well  
4 within his right to engage in these type of tactics,  
5 but it is also perfectly clear that it has a corrosive  
6 effect on our relationship. And there are moments  
7 where he would like the support for certain things  
8 that he is doing. And these types of tactics do not  
9 help his cause.

10 In any event --

11 COMMISSIONER GAZIANO: We can't, I  
12 suppose, vote on any further minutes, but do you think  
13 we can continue the discussion if other commissioners  
14 can stay on at least of the program planning for the  
15 sex discrimination?

16 CHAIRMAN REYNOLDS: That is correct. We  
17 will finish up the minutes at a later date since that  
18 requires a vote.

19 IV. PROGRAM PLANNING (Continued)

20 - UPDATE ON FY 2010 PROJECT ON SEX DISCRIMINATION  
21 IN HIGHER EDUCATION ADMISSIONS

22 CHAIRMAN REYNOLDS: Mr. Staff Director,  
23 would you please provide an update on the 2010 project  
24 on sex discrimination in higher education admissions?

25 STAFF DIRECTOR DANNENFELSER: Thank you,

1 Mr. Chairman.

2 Last evening I sent around a list that was  
3 prepared by Dr. Lerner regarding a sample of colleges  
4 and universities within a 100-mile radius of the  
5 Commission headquarters that we could seek information  
6 from, also a broader list of the colleges and  
7 universities from which that sample was drawn.

8 I would like to at this point ask Dr.  
9 Lerner to elaborate on his methodology in choosing  
10 that sample and also about where he stands with  
11 gathering this information.

12 DR. LERNER: Thank you, Mr. Chairman, Mr.  
13 Staff Director. This is Robert Lerner.

14 Basically so I think the samples are --

15 COMMISSIONER HERIOT: We can't hear you.

16 STAFF DIRECTOR DANNENFELSER: Can't hear.

17 DR. LERNER: Sorry. I will try and do  
18 this a little louder. Basically there are two  
19 strategies one can use -- is that better?

20 COMMISSIONER HERIOT: Yes.

21 DR. LERNER: Okay.

22 -- in selecting a sample. One is what I  
23 call a sampling strategy of discovery, which is to  
24 look for schools that might have some likelihood of  
25 discriminating against women admissions.

1           In effect, this is what we have done. And  
2 there are some reasons to do that. First of all, that  
3 was the procedure outlined in the concept paper as we  
4 interpreted it.

5           And, second of all, it was also our own  
6 initial thought about the best way to proceed. It  
7 wasn't immediately obvious, for example, that all  
8 institutions discriminate in their admissions policies  
9 against women. So we want to try to see if we can  
10 find someone. Some actually will do so obviously. Of  
11 course, we don't know which ones until we actually get  
12 the data.

13           In any event, this is really a sampling  
14 strategy of discovery used in response to the  
15 question, can we find anything here at all? As I  
16 said, samples are the things that the Staff Director  
17 -- pieces of information that the Staff Director and  
18 staff -- that include the list of schools from which  
19 we sample and the actual sampling that we did  
20 yesterday of the schools that we would like to go on  
21 and subpoena.

22           The second strategy, very briefly, is one  
23 of inference. This is where you think you have a  
24 reasonable hypothesis as to what types of schools are  
25 doing what in terms of actually discriminating and to



1 formally test that hypothesis.

2 For example, you might have a hypothesis  
3 that public schools are less likely to discriminate  
4 against women in private schools, or that less  
5 selective schools are likely to discriminate, and so  
6 on.

7 What this sampling strategy would do is  
8 require, to use the technical, stratification, because  
9 schools of each type would be explicitly included in  
10 the design.

11 Without going into great detail, we  
12 decided not to do this because our reading of the  
13 original intent was, in fact, that we should pick  
14 those schools as a matter for discovery, schools that  
15 we thought were most likely to discriminate. And  
16 that's why the simplest way to do that is to follow  
17 the strategy, as I said, of discovery. So this is  
18 what we did.

19 Now, perhaps in selecting the sample,  
20 there are essentially two parts. The first part is to  
21 have the Staff Director indicate the design, list the  
22 schools from which the selection will be made. The  
23 second part is to actually select the schools.

24 The design, this is the list. It is sort  
25 of an unusual list sustained by the fact that, of

1 course, we planned on institutions that are four-year  
2 and it contained four-year undergraduate colleges or  
3 are four-year undergraduate colleges. I mean, there  
4 are institutions that have to be located within our  
5 subpoena range. Of course, that is within 100 miles  
6 of the Commission's headquarters. This is a little  
7 bit tricky.

8 We were able to determine this by  
9 measuring the distance from our Zip Code to the  
10 institutions' Zip Codes using a device on the  
11 Department of Education's website called the College  
12 Navigator database, which gave us an initial list of  
13 institutions.

14 From this list, we -- this is a very large  
15 list. So from this list, we came up with the main  
16 institutions that we believed would be unsuitable for  
17 the project.

18 The first five institutions that we  
19 eliminated were those that were listed Peterson's  
20 Guide to Colleges, which, incidentally, our basic  
21 source for school selectivity that were in a sense  
22 noncompetitive. If school colleges are out of --  
23 essentially based on the admissions policies, we don't  
24 want them.

25 Second, we eliminated all religious

1 seminaries. When I say, "seminaries," I mean  
2 specifically institutions that are designed to train  
3 clergy, like seminaries for priests or for Orthodox  
4 rabbis. We do not mean religious schools governed by  
5 a religious group these are included in the sample  
6 list. If you can't speak to us, we have included them.

7 Third, we eliminated all institutions that  
8 enroll under 1,000 students. The thought here is  
9 simply that if you're talking about 250 students per  
10 class and 125 students. How will you do this?

11 You also wind up pretty much eliminating  
12 the last category of schools, which are private,  
13 for-profit institutions, which there are quite a few  
14 in the area. Most of them are nonselective or  
15 minimally selective. All of them are very small.

16 And this gave us the list of institutions  
17 from which we made the selection. That was the Excel  
18 charts, the one without lines in it and the one that  
19 we sent you last night.

20 Now, how do we select the schools? Here  
21 we follow again the strategy that was outlined in the  
22 concept paper. We cite the selected schools within  
23 the following categories: HBCUs since that was  
24 mentioned; private, non-religious, moderately  
25 selective colleges since that was specifically

1 mentioned; public moderately selective colleges;  
2 private moderately selective religious institutions;  
3 and, finally, last but not least, highly selective  
4 private institutions. That gave us five categories.  
5 We draw these institutions from this list that you  
6 have in front of you.

7 Basically, we selected the individual  
8 schools that you see in front of us. We decided we  
9 couldn't have a category for simply one institution.  
10 So we take the two private HBCUs and selected two  
11 public ones to go along with it given what I listed  
12 before.

13 We selected, of course, all the three most  
14 highly selective, private schools that were on the  
15 initial sampling list. Those are listed again in the  
16 categories.

17 We selected four public schools. And  
18 those we got from the larger list, a list of those  
19 schools on a random basis for non-religious private  
20 schools, also on a random basis; and, last but not  
21 least, the private religious schools.

22 As I said, those that were not  
23 specifically were all done on a random basis before  
24 bias or selectivity using SPSS statistical software  
25 which actually produces a random selection. And that

1 is how we wound up with the sample.

2 I just have it in my oral summary. I do  
3 have it, but I wasn't able to finish it in time to  
4 send it. So you can actually contemplate that as you  
5 are going to the lists.

6 CHAIRMAN REYNOLDS: Okay. Questions,  
7 comments?

8 COMMISSIONER HERIOT: Yes. I have a  
9 question. Why was the University of Richmond not  
10 selected given that it is the school that public  
11 accusations have been made about?

12 DR. LERNER: Only because the strategy  
13 that we have adopted adding institutions for  
14 categories. We just take them at random. And if it  
15 would show up, we selected it. And it turned out that  
16 Catholic University did show up. So they picked them.

17 It doesn't mean we couldn't edit. It  
18 would be perfectly reasonable to do so.

19 COMMISSIONER HERIOT: Yes, I would be  
20 inclined to add the University of Richmond since it is  
21 the institution that has been publicly accused of  
22 this.

23 DR. LERNER: Well, once they do that --  
24 and, as I said, it is perfectly legitimate to do so.  
25 But that is what we are acknowledging that we are

1 doing. That I think will be --

2 COMMISSIONER HERIOT: Oh, yes, yes. I  
3 mean, that is why I want to do it.

4 DR. LERNER: From a technical point of  
5 view, I have a problem with that. There was no  
6 conspiracy. It just happened to be the way  
7 randomization turned out. I thought in general  
8 randomization was a good way to deal with it because  
9 it would reduced bias. But I think it is perfect  
10 reasonable to make the suggestions you did.

11 Given that our approach is what I call a  
12 sampling strategy of discovery and suggested enough  
13 information about those particular institutions. So I  
14 am perfectly agreeable to doing what you suggest.

15 COMMISSIONER HERIOT: Okay. Then I would  
16 move to do that if we had a quorum. Do we need to  
17 move to do that or is that something that just can  
18 done informally.

19 CHAIRMAN REYNOLDS: We didn't vote on the  
20 original battle plan that Dr. Lerner just described.  
21 So I don't believe that we need a vote to change as  
22 long as there are no objections.

23 COMMISSIONER HERIOT: Yes. If we could  
24 entertain a motion to delete them next time?

25 CHAIRMAN REYNOLDS: Yes, yes. I mean, it

1 --

2 COMMISSIONER HERIOT: I doubt anyone will  
3 have any strong feelings.

4 COMMISSIONER GAZIANO: Sure. For what it  
5 is worth, I second Gail's reasoning, including  
6 University of Richmond.

7 CHAIRMAN REYNOLDS: Any other questions or  
8 comments?

9 STAFF DIRECTOR DANNENFELSER: This is the  
10 Staff Director. The concept paper spoke to private  
11 HBCUs. And we only found two private HBCUs that were  
12 in this 100-mile radius. So we took those two and  
13 then did a random selection on the -- I believe there  
14 were six public HBCUs. And we did a random selection  
15 and got two more of those.

16 So I just wanted to get a sense of whether  
17 that is something that the commissioners think is a  
18 good way to go.

19 COMMISSIONER HERIOT: That sounds fine to  
20 me.

21 STAFF DIRECTOR DANNENFELSER: And then  
22 with the elite institutions, the highly selective,  
23 there were only three. There were exactly three,  
24 which were Johns Hopkins, Georgetown, and Gettysburg  
25 College. So we just took those three.

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CHAIRMAN REYNOLDS: Okay. If there are no other questions, we will adjourn. Thank you.

(Whereupon, the foregoing matter was concluded at 12:28 p.m.)



|          |   |  |   |   |
|----------|---|--|---|---|
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