

## U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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OPEN SESSION

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FRIDAY, NOVEMBER 20, 2009

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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  
 TODD F. GAZIANO, Commissioner  
 GAIL L. HERIOT, Commissioner  
 PETER N. KIRSANOW, Commissioner (via telephone)  
 ARLAN D. MELENDEZ, Commissioner (via telephone)  
 ASHLEY L. TAYLOR, JR., Commissioner  
 MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

## STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC  
 TERESA BROOKS  
 CHRISTOPHER BYRNES, Attorney/Advisor to the OSD  
 DEMETRIA DEAS  
 PAMELA A. DUNSTON, Chief, ASCD  
 ROBERT LERNER, Asst. Staff Director, OCRE  
 TINALOUISE MARTIN, Director, OM  
 LENORE OSTROWSKY  
 KIMBERLY TOLHURST  
 MAHA JWEIED

## COMMISSIONER ASSISTANTS PRESENT:

TIM FAY  
 DOMINIQUE LUDVIGSON  
 JOHN MARTIN  
 ALISON SCHMAUCH  
 KIMBERLY SCHULD

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A G E N D A

APPROVAL OF AGENDA ..... 3

PROGRAM PLANNING .....

MANAGEMENT & OPERATIONS .....

STATE ADVISORY COMMITTEE ISSUES ..... 64

APPROVAL OF SEPTEMBER 24, OCTOBER 8, OCTOBER 15,  
AND OCTOBER 30 MEETING MINUTES .....

STAFF DIRECTOR'S REPORT .....

ADJOURN ..... 91

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

(9:40 a.m.)

CHAIRMAN REYNOLDS: Okay. I guess we'll start off with -- it's an amended agenda. We'll have to vote on it, but if the vote -- if the amendment is passed, then we thought it would be easier to follow along with this amended agenda.

Pete will be joining us later by phone. Is Commissioner Melendez participating by phone?

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here.

CHAIRMAN REYNOLDS: Very good. Okay. And I understand that Vice Chair Thernstrom will not be participating. Is that so? Okay. We can get started.

Good morning. This is Chairman Reynolds. This meeting will come to order. It's a meeting of the U.S. Commission on Civil Rights. It is 9:37 Eastern Standard Time on November 20<sup>th</sup>. Commissioner Melendez is participating by telephone. Vice Chair Thernstrom is not present. Commissioner Kirsanow will be joining us later. The other Commissioners are present at 624 9<sup>th</sup> Street, N.W., Room 540, Washington, D.C.

**Approval of Agenda****NEAL R. GROSS**

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1 CHAIRMAN REYNOLDS: The first item on the  
2 agenda is the approval of the Agenda. Is there a  
3 motion to approve the agenda?

4 COMMISSIONER GAZIANO: So moved.

5 COMMISSIONER YAKI: The original agenda.

6 COMMISSIONER GAZIANO: Or do you just want  
7 to move to substitute.

8 CHAIRMAN REYNOLDS: Yes. I'll move to  
9 substitute the agenda with the document that was  
10 distributed earlier, the one entitled "Amended Meeting  
11 Agenda."

12 COMMISSIONER YAKI: Point of information.  
13 When is Commissioner Kirsanow joining us?

14 CHAIRMAN REYNOLDS: He said that he would  
15 try to join us as soon as he could.

16 COMMISSIONER YAKI: Well, okay.

17 CHAIRMAN REYNOLDS: Do you have any  
18 additional questions?

19 COMMISSIONER MELENDEZ: Commissioner  
20 Melendez. I don't have the amended agenda. I just  
21 have the original, I believe.

22 CHAIRMAN REYNOLDS: Oh, I apologize. We  
23 will -- if you have any questions as we go along, I  
24 know its going to be a struggle to follow.

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1 COMMISSIONER YAKI: I would prefer to keep  
2 to the original agenda until Commissioner Kirsanow  
3 joins.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER GAZIANO: I second the  
6 motion.

7 CHAIRMAN REYNOLDS: Well questions.

8 COMMISSIONER GAZIANO: Can someone email  
9 Commissioner Melendez the amended motion, I mean, the  
10 amended agenda?

11 COMMISSIONER YAKI: Chair Reynolds?

12 COMMISSIONER GAZIANO: Yes. Commissioner  
13 Melendez, someone is going to try to email you the  
14 amended agenda.

15 COMMISSIONER MELENDEZ: That's fine.

16 (Off the record comments.)

17 COMMISSIONER GAZIANO: We could stay  
18 available until Pete does join us.

19 CHAIRMAN REYNOLDS: That is true. Okay.  
20 Commissioner Yaki, what's the rationale for wanting to  
21 stick with the original agenda?

22 COMMISSIONER YAKI: There are items on the  
23 original agenda with which I have no problem being  
24 present for, and I can't speak for Commissioner  
25 Melendez, but I think we can go through the briefing

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1 report, and the updates that are coming on. But to  
2 the extent that we are voting on motions, I prefer,  
3 with the exception of the MEPA Briefing Report, I  
4 prefer that we have Commissioner Kirsanow present for  
5 the purposes of ensuring a quorum for that vote.

6 CHAIRMAN REYNOLDS: We have a quorum.

7 COMMISSIONER YAKI: Well, like I said, if  
8 we move this all around, and start putting some of  
9 these motions with which I have particular issues  
10 with, my point -my request is going to be, and I  
11 can't speak for Commission Melendez, but my intent is  
12 to ask if Commissioner Kirsanow is present. If he is  
13 not, I am going to invoke a quorum question before  
14 each of those items in which I may not be present for  
15 the vote. And I do not know if Commissioner Melendez,  
16 may or may not be, but if he is not, either, then we  
17 will not have quorum. So, I think for the purposes of  
18 ensuring that we move along in a timely manner,  
19 sticking with the original agenda is probably the most  
20 expedient way to conduct business at this time.

21 CHAIRMAN REYNOLDS: Okay. My  
22 recommendation is that we move forward with the  
23 amended agenda. Is there a particular item on here, I  
24 mean, it seems to me that the agenda has been  
25 rearranged. We're not talking about new items, so -

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1 COMMISSIONER YAKI: No, but the priority  
2 of the items, obviously means that votes on certain  
3 things will come up at a time when we know  
4 Commissioner Kirsanow will not be present. I would  
5 like -- if you would like an amendment to the amended  
6 agenda, I would like to postpone any vote on any  
7 motion until Commissioner Kirsanow joins us.

8 CHAIRMAN REYNOLDS: So, you will vote if  
9 Commissioner Kirsanow is present.

10 COMMISSIONER YAKI: Yes.

11 CHAIRMAN REYNOLDS: But you will not, if  
12 he is absent.

13 COMMISSIONER YAKI: No, I have no -- as I  
14 have said before, it is not my intention, nor my  
15 desire to provide the majority of the quorum that they  
16 need in order to vote on things that I have vehement  
17 objections to.

18 CHAIRMAN REYNOLDS: Unless Commissioner  
19 Kirsanow is present, in which case -

20 COMMISSIONER YAKI: Unless you have a  
21 quorum -- unless you have your five members in quorum  
22 and present here, that is exactly correct.

23 CHAIRMAN REYNOLDS: Okay. Just to be  
24 clear. My suggestion is that we move forward with the  
25 vote on the amended agenda. I plan to vote for it,

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1 and if Commission Yaki, and any other Commissioner  
2 would like to defeat the quorum, it's their  
3 prerogative. There is no new issue on the agenda.  
4 It's been rearranged. There is no argument that  
5 Commissioner Yaki has been presented with materials  
6 that he has not had an opportunity to review. This is  
7 all about battle tactics. So, any other comments?

8 COMMISSIONER YAKI: I'd like to say, this  
9 is not about battle tactics. This is about the fact  
10 that should you choose to move forward with your  
11 agenda, which I disagree with, I presume that you will  
12 have the foresight to ensure that the five members of  
13 your coalition are present in order to effectuate that  
14 vote.

15 COMMISSIONER REYNOLDS: During a recent  
16 meeting, you claimed that you have a right to defeat  
17 quorum. You cited Robert's Rules, that it's  
18 appropriate. And, at the time, you indicated that you  
19 had no concern. You felt that you were doing -- that  
20 defeating quorum was appropriate under Robert's Rules,  
21 and I assume that you still feel that way.

22 COMMISSIONER YAKI: What I assume is that  
23 if you wish to enact those parts of your agenda with  
24 which I vehemently disagree, you will have the  
25 foresight to gather the five votes that are necessary

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1 in order to have quorum, to have that vote go forward,  
2 at which point I will then participate. But I am not  
3 going to, by my inaction or passivity, allow you to  
4 push forward, especially at a time when it appears  
5 that the -- despite many attempts at bipartisan  
6 cooperation that have failed, at this point, I really  
7 have no choice left but to say, if you wish to get  
8 these things through, it is incumbent upon you, as the  
9 Chair, to make sure that your five votes are here, and  
10 present. And I will not be a party to contributing to  
11 your ability to get these things done.

12 CHAIRMAN REYNOLDS: Okay. We've had our  
13 discussion. All in favor please say aye.

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Objections?

16 COMMISSIONER YAKI: I oppose.

17 CHAIRMAN REYNOLDS: The motion passes. At  
18 this point, are you going to leave?

19 COMMISSIONER YAKI: Not yet.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER YAKI: Are we to approve  
22 Minutes, or anything like that?

23 CHAIRMAN REYNOLDS: They are on the  
24 agenda. It is Item 5 on the amended agenda.

25 COMMISSIONER YAKI: Okay.

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1 CHAIRMAN REYNOLDS: Okay. So, let's see  
2 how long the party lasts, how long it lasts. Okay.  
3 So, under the amended agenda, the first item would be  
4 the motion regarding the Special Assistant GS Level,  
5 and update of the status of the Title IX Project, then  
6 an update of the status of the 2010 Enforcement  
7 Report. Those will be the first three items on the  
8 agenda, in that order. All parts of each of those  
9 will require us to go into closed session. I'd also  
10 like to move consideration of the MEPA Report to  
11 appear as the last item under Program Planning, after  
12 our discussion of Vice Chair Thernstrom proposed  
13 change to the Title IX Briefing Report currently  
14 pending publication. Finally, I'd like to move that  
15 the -- well, we've already done that.

16 COMMISSIONER YAKI: That's already in the  
17 amended agenda. Why would you -

18 CHAIRMAN REYNOLDS: You're right. So, the  
19 SAC Rechartering will appear as roman numeral III.  
20 So, that is the order. Commissioner Melendez, if you  
21 need me to go over that once again, just let me know.

22 COMMISSIONER MELENDEZ: Is there anything  
23 deleted in the first agenda that's been taken off the  
24 agenda.

25 CHAIRMAN REYNOLDS: No.

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1 COMMISSIONER MELENDEZ: Okay. Just  
2 rearranging the order. Is that, basically, what  
3 you're doing.

4 CHAIRMAN REYNOLDS: That's correct.

5 COMMISSIONER MELENDEZ: Okay.

6 CHAIRMAN REYNOLDS: Okay. The first three  
7 items will require us to go into closed session  
8 pursuant to Commission regulations implementing the  
9 Sunshine Act. The General Counsel and Deputy  
10 Parliamentarian please certify that the meeting can be  
11 closed pursuant to Commission regulations.

12 COMMISSIONER YAKI: The first three items?

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER YAKI: Why the -- I can  
15 understand, perhaps, number one, but two and three?

16 CHAIRMAN REYNOLDS: Yes. There's -- what  
17 is it, Exemption 9, there will be a discussion of the  
18 issuance of subpoenas. Okay.

19 COMMISSIONER YAKI: That's not going to be  
20 -and in terms - what do you mean by there's going to  
21 be a discussion on the issuance of subpoenas? Are we  
22 going to be talking about people who we are going to  
23 be subpoenaing? What is exactly the -

24 CHAIRMAN REYNOLDS: That is a -- that is -  
25 - the conversation could take us there.

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1                   COMMISSIONER YAKI: Well, at that point,  
2 Commissioner Melendez and I may take a brief holiday.

3                   CHAIRMAN REYNOLDS: Commissioner Melendez,  
4 does he speak for you?

5                   COMMISSIONER MELENDEZ: Yes.

6                   CHAIRMAN REYNOLDS: Okay. All right.  
7 Since the holiday has started, how brief will this  
8 holiday be? We have to read the tea leaves, if he  
9 takes his shades and his materials, that indicates  
10 that it's going to be a long -

11                  COMMISSIONER YAKI: Well, the holiday is  
12 regarding the first three motions, the first three  
13 items in which you wish to go into closed session. I  
14 would suggest that when Commissioner Kirsanow joins, I  
15 would be more than happy to join you in closed session  
16 for those three items. But to the extent you want to  
17 go into closed session right now, I am not going to  
18 participate.

19                  CHAIRMAN REYNOLDS: Okay. At this point,  
20 let's see if we can raise Mr. Kirsanow. And, if not,  
21 I think I've wasted a bit of time.

22                  COMMISSIONER GAZIANO: Commissioner  
23 Melendez, are you still on the line?

24                  COMMISSIONER MELENDEZ: Yes.

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1 COMMISSIONER GAZIANO: Well, then we can  
2 proceed.

3 COMMISSIONER MELENDEZ: Well, if Mr. Yaki  
4 is leaving, then I'll probably talk to him -- I'll  
5 probably leave, too, and talk to him about the issues.

6 CHAIRMAN REYNOLDS: Commissioner Yaki has  
7 returned. I believe that he promptly would like to  
8 communicate with you.

9 COMMISSIONER YAKI: Commissioner Melendez,  
10 I will now call you off line, so you can recuse  
11 yourself from the conference right now.

12 COMMISSIONER MELENDEZ: All right.

13 CHAIRMAN REYNOLDS: You need to take care  
14 of that before you leave.

15 Okay. So, we will adjourn for as long as  
16 it takes, and we may adjourn for the day.

17 COMMISSIONER HERIOT: No, I came all the  
18 way from California, and we're going to hold this  
19 meeting. We can possibly raise a quorum.

20 CHAIRMAN REYNOLDS: Yes, we're going to  
21 try to raise Pete from the dead.

22 (Whereupon, the proceedings went off the  
23 record at 9:55:18 a.m., and went back on the record at  
24 10:09:27 a.m.)

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1 CHAIRMAN REYNOLDS: Okay. We are back in  
2 session. We have a quorum. Commissioner Kirsanow has  
3 joined us. Commissioners Melendez and Yaki, they have  
4 rejoined us. At this point, I will turn it over to  
5 the General Counsel. Could you please -

6 COMMISSIONER YAKI: We haven't voted on  
7 this yet.

8 STAFF DIRECTOR DANNENFELSER: Oh, we  
9 haven't voted?

10 CHAIRMAN REYNOLDS: Okay.

11 STAFF DIRECTOR DANNENFELSER: We voted on  
12 the amended agenda.

13 COMMISSIONER GAZIANO: The question is, do  
14 we have to vote to go into closed session.

15 STAFF DIRECTOR DANNENFELSER: What do we  
16 need, him to explain?

17 CHAIRMAN REYNOLDS: I just want you to  
18 walk us through the rationale, and just affirm that we  
19 are going into closed session for proper reasons.

20 MR. BLACKWOOD: Sure. For the three items  
21 mentioned -

22 COMMISSIONER GAZIANO: Are you on the  
23 record? Do you have a microphone?

24 MR. BLACKWOOD: This is David Blackwood.  
25 For the three items mentioned, the justification for

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1 closing the meeting is as follows. The motion  
2 regarding Special Assistants is covered under  
3 Exemption Two and Six. Exemption Two is when a  
4 meeting relates to the internal personnel rules and  
5 practices of the Commission, and Exemption Six, when a  
6 meeting might involve disclosing information of a  
7 personal nature, where that disclosure might  
8 constitute a clearly unwarranted invasion of personal  
9 privacy.

10 With regard to items Two and -

11 COMMISSIONER YAKI: I have a question on  
12 that.

13 MR. BLACKWOOD: Sure.

14 COMMISSIONER YAKI: Commissioner Yaki.  
15 Why Item Six? I mean, I thought this was a generic  
16 discussion of GS levels, rather than anything that  
17 would mention any specific individual.

18 MR. BLACKWOOD: My understanding is  
19 otherwise. But, if it was simply a generic  
20 discussion, no, the exemptions would not apply.

21 COMMISSIONER YAKI: Well, given that the  
22 agenda was somewhat blank on the details of this, I  
23 find it highly surprising that there would actually be  
24 discussion of a single individual. My understanding  
25 was that it was a generic discussion of this issue,

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1 which, by itself, I'm not too sure why it would be in  
2 closed session, since anything affecting this has a  
3 direct and obvious impact on our budget. And why we'd  
4 retreat in a closed session on a general discussion of  
5 this, is, I think, quite puzzling. But now that I  
6 learned that there may actually be individuals  
7 involved, which I don't understand, because we didn't  
8 do this the last time we talked about these  
9 discussions with the Office of Personnel Management,  
10 I object to going into closed session on that  
11 particular item.

12 COMMISSIONER GAZIANO: Mr. Chair.

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER GAZIANO: I don't know if it  
15 will come up, but there might be a discussion on the  
16 relative job performance, or job qualifications of  
17 some of our special assistants, as compared to other  
18 employees who are at similar GS levels, so I think  
19 Exemption Two alone justifies going into Executive  
20 Session, but I think it might implicate the  
21 justification of Number Six, as well, if the  
22 discussion goes there. But I certainly suggest that  
23 we allow whatever management personnel, who can  
24 discuss the budget implications, could certainly stay  
25 in the Executive Session.

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1                   COMMISSIONER YAKI:       Well, this is  
2 Commissioner Yaki. Commissioner Gaziano's statement  
3 troubles me even more, because if we are now,  
4 possibly, delving into comparative discussions between  
5 our Special Assistants and other employees of the  
6 Commission, that should have been part of the notice,  
7 as well. It has not been, and I will be moving to  
8 sever this particular item for a separate vote.

9                   CHAIRMAN REYNOLDS: Okay. Well, let's get  
10 to the motion. And before doing that, let's allow the  
11 General Counsel to finish his comments.

12                  MR. BLACKWOOD:       Again, this is David  
13 Blackwood. As to the other two items relating to the  
14 status of the Title IX and 2010 Enforcement Report,  
15 there are items, frankly, I think that we can talk  
16 about outside Executive Session, but, as a matter of  
17 practice, as far as getting through this meeting, the  
18 idea was to let's talk about everything in Executive  
19 Session that we can. And then those items that we can  
20 talk openly, we can do after that. But for the  
21 purposes of those two meetings -- those two items,  
22 raise Exemption Nine and Exemption Ten relating to  
23 actually how we might operate, since subpoenas have  
24 been discussed with regard to both projects, and as  
25 with regard to the 2010 report, it's already been

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1 authorized that that part of the meeting should be  
2 closed. That does not mean every single item about  
3 those two projects must occur in Executive Session,  
4 but it makes sense to have them in Executive Session  
5 all at one time.

6 COMMISSIONER YAKI: Question on that  
7 particular issue, Mr. Chair. Does -- is a discussion  
8 of whether we have actually issued any subpoenas  
9 subject to the non-disclosure rules?

10 COMMISSIONER GAZIANO: I think that's one  
11 thing we should discuss in Executive Session.

12 CHAIRMAN REYNOLDS: Right.

13 COMMISSIONER GAZIANO: That's one of the  
14 matters I wanted to raise in -- whether they should.

15 CHAIRMAN REYNOLDS: Mr. General Counsel,  
16 are you finished?

17 MR. BLACKWOOD: Yes.

18 CHAIRMAN REYNOLDS: Okay. If that's the  
19 case, then I move that -

20 COMMISSIONER YAKI: Why would we discuss  
21 that in secret? I don't understand.

22 CHAIRMAN REYNOLDS: I'm sorry?

23 COMMISSIONER YAKI: I don't -- again, I  
24 become more puzzled by Commissioner Gaziano's remarks,  
25 because if there is a discussion about whether we

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1 should or not, shouldn't that debate be held in the  
2 open, rather than in secret, when the -- and the  
3 particularities, if they are non-disclosable, should  
4 be more proper a subject for Executive Session. But  
5 the whole question of whether there should be  
6 disclosure or non-disclosure, I think is more  
7 appropriate for the public to be part of rather than  
8 for us to debate outside the public eye.

9 CHAIRMAN REYNOLDS: You may very well be  
10 right. I intend to rely on the General Counsel to  
11 make sure that we carve up these issues appropriately.  
12 And the argument that you just made, it resonates with  
13 me. But, in the final analysis, I will turn to the  
14 General Counsel, and ask whether a particular issue is  
15 in or out.

16 COMMISSIONER YAKI: I move to sever the  
17 motions regarding the Special Assistants from the  
18 other two items. It's a -- it doesn't require a  
19 second.

20 CHAIRMAN REYNOLDS: Okay. All in favor.

21 COMMISSIONER GAZIANO: All in favor of  
22 what?

23 COMMISSIONER YAKI: The motion regarding  
24 the Special Assistants.

25 CHAIRMAN REYNOLDS: He's moving to sever.

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1 COMMISSIONER TAYLOR: What would that mean  
2 in this context, if we sever these -

3 COMMISSIONER GAZIANO: Well, it doesn't --  
4 we can still vote on whether it's severable, even if  
5 -

6 COMMISSIONER YAKI: No, you can't. On a  
7 vote, a motion to sever is non-debatable -

8 COMMISSIONER GAZIANO: Oh, I'll allow it  
9 anyway. I'm not sure that's right, but I don't care.

10 COMMISSIONER YAKI: It is correct.

11 COMMISSIONER GAZIANO: Let's just vote as  
12 -

13 COMMISSIONER YAKI: It's the same if we  
14 vote on the motion -- would you please stop  
15 interrupting me. If you would just vote on the motion  
16 to -- on the Special Assistant separately, that's all  
17 I'm asking for. And then we vote on the other two  
18 combined.

19 CHAIRMAN REYNOLDS: That's fine.

20 COMMISSIONER YAKI: Okay.

21 CHAIRMAN REYNOLDS: Okay. The first two  
22 issues -- the Title IX project and the update on the  
23 enforcement report. I move that we go into closed  
24 session to discuss these topics. Is there a second?

25 COMMISSIONER TAYLOR: Second.

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1 CHAIRMAN REYNOLDS: We've had the  
2 discussion. All in favor, please say aye.

3 COMMISSIONER YAKI: Roll call.

4 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
5 how do you vote?

6 COMMISSIONER KIRSANOW: Abstain.

7 CHAIRMAN REYNOLDS: Commissioner Melendez,  
8 how do you vote?

9 COMMISSIONER MELENDEZ: Abstain, also.

10 CHAIRMAN REYNOLDS: Commissioner Heriot.

11 COMMISSIONER HERIOT: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Gaziano.

13 COMMISSIONER GAZIANO: Yes.

14 COMMISSIONER TAYLOR: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Yaki.

16 COMMISSIONER YAKI: I abstain.

17 CHAIRMAN REYNOLDS: Okay. I vote in favor  
18 of the motion. The motion passes.

19 COMMISSIONER GAZIANO: I move to go into  
20 Special Session regarding -

21 CHAIRMAN REYNOLDS: Well, wait.

22 COMMISSIONER GAZIANO: -- Special  
23 Assistant GS Level, and to handle that first.

24 CHAIRMAN REYNOLDS: That's up next. All  
25 in favor, please say aye.

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1 (Chorus of ayes.)

2 COMMISSIONER YAKI: Roll call.

3 CHAIRMAN REYNOLDS: Commissioner Melendez.

4 COMMISSIONER MELENDEZ: What was the  
5 motion, again?

6 CHAIRMAN REYNOLDS: To sever the  
7 discussion of the Special Assistant.

8 COMMISSIONER HERIOT: No, to go into  
9 Special Session.

10 COMMISSIONER YAKI: No, to go into Special  
11 Session on Special Assistants.

12 CHAIRMAN REYNOLDS: Oh, I'm sorry. Yes.

13 COMMISSIONER YAKI: Executive Session on  
14 the Special Assistant.

15 CHAIRMAN REYNOLDS: That's right.

16 COMMISSIONER MELENDEZ: I would oppose.

17 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN REYNOLDS: The motion passes.

20 COMMISSIONER YAKI: Did you take my vote?

21 CHAIRMAN REYNOLDS: What's your vote?

22 COMMISSIONER YAKI: No.

23 COMMISSIONER HERIOT: You didn't take my  
24 vote either.

25 CHAIRMAN REYNOLDS: I'm sorry.

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1 COMMISSIONER HERIOT: Yes.

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER GAZIANO: Commissioner  
4 Gaziano votes yes.

5 COMMISSIONER TAYLOR: Yes. Commissioner  
6 Taylor.

7 CHAIRMAN REYNOLDS: Pete, I believe you  
8 voted. Am I right?

9 COMMISSIONER KIRSANOW: Yes. I was the  
10 first one you asked.

11 CHAIRMAN REYNOLDS: Okay. All right.  
12 There you have it. At this point, Mr. General  
13 Counsel, who stays in, and who -- who can stay in, and  
14 who leaves?

15 MR. BLACKWOOD: I would say the only  
16 people that should stay are TinaLouise Martin,  
17 obviously, the Commissioners, myself, the Staff  
18 Director, and that's it.

19 COMMISSIONER GAZIANO: And that's for the  
20 first item. Others may come in for the next two?

21 MR. BLACKWOOD: For the next items, they  
22 will change the script about who can stay. But for  
23 this particular item -- I'm sorry, and the  
24 Parliamentarian, as well.

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1 (Whereupon, the proceedings went off the  
2 record to commence Closed Session, and went back on  
3 the record to resume Open Session at 11:53:14 a.m.)

4 COMMISSIONER GAZIANO: Mr. Chair, would  
5 you mind relating what the substance was with regard  
6 to the first item on Special Assistant GS level?

7 CHAIRMAN REYNOLDS: Okay. Since that  
8 motion was amended by Commissioner Taylor,  
9 Commissioner Taylor, would you mind summarizing?

10 COMMISSIONER TAYLOR: Sure. That we voted  
11 to ask Ms. Martin to create a job description for a  
12 Special Assistant that would rise to a GS-14, and to  
13 take all appropriate action, including, if necessary,  
14 submitting that new job description to OPM. And,  
15 also, to ask the Staff Director to conduct a similar  
16 review, to the type of review that led to this  
17 recommendation with respect to the career staff  
18 positions, and to report back to the Commission on  
19 both points.

20 CHAIRMAN REYNOLDS: Okay. Next up, we'll  
21 have discussion of the Discovery Plan associated with  
22 the New Black Panther Party case. Commissioner  
23 Gaziano, you had some comments for us?

24 COMMISSIONER GAZIANO: Yes. I think the  
25 Discovery Plan that was distributed is in good order.

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1 I'd like to make two minor amendments to the project  
2 outline of those. And one is on page 2, where it  
3 says, "The purpose of this study then is to", I would  
4 like to change that to, "The purpose of this study  
5 then may include to". And the reason why is,  
6 sometimes we may not -- we don't know at the outset  
7 the level of cooperation from the Department of  
8 Justice, and certain witnesses. We don't know yet how  
9 easy it's going to be to get all of the information  
10 that we're hoping to do. And I don't want to -- we  
11 can always amend these plans late, but I'd like it to  
12 be clear at the outset. Sometimes we've had  
13 disappointments later, when something someone hoped  
14 was mentioned in the Discovery Plan wasn't in the  
15 final report. This particular project is especially  
16 subject to uncertainty with regard, whether we're  
17 going to get everything we want.

18 The second change on page 5 is the  
19 proposed time line. I would like to approve all of  
20 the Discovery Plan documents subject to further  
21 amendment of this proposed time limit. And the two  
22 things that I'd like to see adjusted for us to take  
23 back up after we all supply our input to the Staff  
24 Director and General Counsel, is the possibility we  
25 may decide to have, instead of one hearing, two

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1 hearings, and depending on when those -- that hearing,  
2 or hearings are, we may not want to -- the original  
3 Concept Paper called for us to do it in two hearings,  
4 a second hearing in March, which isn't reflected in  
5 the time line.

6 And, also, I'd like to move back, I think,  
7 when the report may -- depending on that, when the  
8 report may be given to Commissioners, when it's sent  
9 out for Agency review. I think some of that at the  
10 end could be compressed a little bit, and have  
11 simultaneous agency review while we're reviewing the  
12 subsequent draft. So, for those reasons, I'd like to  
13 move to approve the Discovery Plan with those two --  
14 with that one modification, and subject to revision  
15 to the time line.

16 CHAIRMAN REYNOLDS: Is there a second?

17 COMMISSIONER HERIOT: Second.

18 CHAIRMAN REYNOLDS: Okay. At this point,  
19 I'd ask -- Commissioner Yaki?

20 COMMISSIONER YAKI: What were you going to  
21 ask?

22 CHAIRMAN REYNOLDS: I was going to ask the  
23 General Counsel for his reaction.

24 COMMISSIONER YAKI: Okay. I'll wait until  
25 after that.

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1 MR. BLACKWOOD: I have no objection to any  
2 of those changes. I just wanted to make sure that  
3 we're not just adopting the Discovery Plan, but the  
4 project outline, and the hearing proposal, as well.

5 CHAIRMAN REYNOLDS: Commissioner Yaki.

6 COMMISSIONER YAKI: Yes. I just want to  
7 reiterate two points. One, I continue to be troubled  
8 by the fact that we are expending an inordinate amount  
9 of time and resources on a single shot investigation  
10 on a lightly used statute that, apparently, has no  
11 enforcement power, other than injunctive relief, when  
12 there are broader issues on voter intimidation that  
13 could be looked at by this Commission. I really -- I  
14 have said before, I'll say it again, I do not see how  
15 we can possibly extrapolate from this single isolated  
16 incident anything that has serious policy consequences  
17 for the enforcement of civil rights, especially, voter  
18 intimidation, as a whole. We are, essentially,  
19 spending, as I said, an amount of time and resources  
20 equal to being, essentially, our own Special  
21 Prosecutor, by choosing to redo, and reinvestigate  
22 something in which decisions are still under review by  
23 the Department of Justice, number one.

24 Number two, to the extent that this is  
25 going forward, because I cannot individually stop this

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1 from going forward, I remain troubled by the fact that  
2 this -- we are not specifically calling for a hearing  
3 in Philadelphia. It just seems to me that if the  
4 locus of witnesses' attention and activity, and  
5 possible voter intimidation occurred in a section of  
6 Philadelphia, that this Commission should, as a matter  
7 of fact, and I think in terms of precedent in the  
8 past, should go to that area, because we cannot  
9 possibly believe that through self-selected researches  
10 on the internet, Lexis Nexis, what have you, and the  
11 volunteering of people to come and testify in  
12 Washington, D.C., can possibly substitute for having a  
13 hearing in the environ of the area of Philadelphia in  
14 which the alleged voter intimidation occurred.

15 There are people in Philadelphia, such as  
16 the voter -- the Registrar of Voters, or  
17 Superintendent of Elections, or what have you, who  
18 could be present at such a hearing. And, more  
19 importantly, having an open public hearing has the  
20 ability to raise attention level, and bring forth  
21 people who we do not know of at this time, who may  
22 have been witnesses, or participants, who can testify  
23 as to what exactly, in their mind, went on, and what  
24 its effect was on their ability to vote. And I would  
25 have called for having a section of just open

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1 testimony during a hearing in Philadelphia to ensure  
2 that such things would occur. So, the lack of any  
3 commitment to a hearing on this issue in Philadelphia  
4 troubles me, and for the two reasons I stated before,  
5 I will be voting against this.

6 CHAIRMAN REYNOLDS: All right.  
7 Commissioner Yaki, I won't provide a comprehensive  
8 response, but what happened in this case, and the  
9 decision that was made at the -- well, the various  
10 decisions that were made at the Department of Justice  
11 are troubling. I think that you changed the facts a  
12 bit, and you changed the race of the individuals. And  
13 I think that we would all be in perfect agreement that  
14 something went horribly wrong at the Department of  
15 Justice. I think that it's important that we  
16 investigate to find out what the original  
17 recommendation was, that we determine what were the  
18 factors that led to a decision that ignored the  
19 recommendation -- apparently, it ignored the  
20 recommendation of the career staff, and look at the  
21 potential harm that this precedent could set for  
22 future offenders.

23 I don't want anyone -- well, let me just  
24 state that we should have a single rule that should be  
25 applied to individuals across the board, and if this

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1 rule stays in place, I am uncomfortable with this  
2 rule. I think it is the wrong rule. I think that men  
3 standing outside with weapons in hand making  
4 threatening comments to individuals as they go to  
5 vote, I don't care what the race of the gentlemen  
6 wielding the billy clubs is. It's immaterial.

7 So, bottom line is, I think that this is  
8 an important issue. I think that we need to get a  
9 better understanding of what went on at DOJ. So, we,  
10 once again, disagree on the value of this  
11 investigation.

12 COMMISSIONER YAKI: Mr. Chair, actually, I  
13 don't think we do, because if you did, as you said,  
14 would reverse the race of the parties, you would have  
15 a situation that on numerous occasions, including  
16 instances where this Commission has written letters to  
17 the Department of Justice during the prior  
18 Administration about regarding voter intimidation, it  
19 may not have been a baton, but it was certainly  
20 threatening letters. I remember elections where there  
21 were documented reports of people taking down license  
22 plate numbers of people who were of -- who they  
23 thought were of suspected Latino descent, and saying  
24 they were going to report them to the INS.

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1 I fully support the idea, I told you  
2 before, of a broader investigation into why, and  
3 whether or not the statute has or has not been  
4 enforced, and why not? But, because we are not doing  
5 that, because we are not broadening that issue,  
6 because we are not looking at the statute as a whole,  
7 and past practices of the Department of Justice where  
8 these sorts of allegations have been made in the past,  
9 and not been followed up on, that is why I disagree  
10 with the content and nature of this particular  
11 investigation, because we are only solely focusing on  
12 one particular instance, however egregious it may or  
13 may not have been. That is my objection. It is not  
14 the objection to whether or not this is a type of  
15 behavior that this Commission should be concerned  
16 about. It should, but whether -- but to say that in  
17 this particular instance we believe DOJ is wrong, and  
18 wrong only here, when we can certainly have, as I  
19 suggested in my alternate proposal, broaden the issue  
20 to go into questions about why other instances have  
21 been brought up by MALDEF, by other folks, were never  
22 investigated, or fully prosecuted by DOJ in the past,  
23 by administrations of either party, is, to me, a  
24 salient distinguishing point about what we are doing  
25 here.

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1 COMMISSIONER GAZIANO: Mr. Chair.

2 CHAIRMAN REYNOLDS: Commissioner Gaziano.

3 COMMISSIONER GAZIANO: I just want the  
4 record to reflect that the Discovery Plan that we're  
5 about to vote on does quite clearly call to put this  
6 particular litigation in context, and quite clearly  
7 calls for all of the information the Department has on  
8 every report and prior investigation, and that is  
9 exactly what we are voting on, and that's exactly what  
10 we're planning on doing.

11 And with regard to the relevance, though,  
12 of this particular litigation, I would call attention  
13 to the front page story in the "Washington Times"  
14 yesterday, where a Department official is quoted as  
15 saying, still maintaining that the facts and law did  
16 not support any further action in this case. So, it's  
17 not just that they seem to have made a mistake in  
18 judgment in most Americans' view about this case.

19 To put it in proper context, as the  
20 Discovery Plan and our Concept Paper that we have  
21 adopted show, it's their current position that that  
22 may be causing as much damage, if not more damage, for  
23 future enforcement than whatever specific actions they  
24 took in this case. So, I join Commissioner Yaki in  
25 wanting to look at all prior instances of voter

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1 intimidation reported to the Department, and to look  
2 at as many of their prior investigations, as we can,  
3 so that we can judge whether the policy the Department  
4 is currently taking is a change of position. And  
5 that's the most significant thing I think this  
6 Commission is investigating.

7 CHAIRMAN REYNOLDS: Commissioner Yaki.

8 COMMISSIONER YAKI: I mean, I just  
9 fundamentally disagree with that characterization. I  
10 think that the Discovery Plan pays lip service to the  
11 idea, but certainly the individuals and institutions  
12 who we're talking about for a hearing, I won't talk  
13 about the other subject, are certainly all limited to  
14 this particular circumstance. And, to me, to ratchet  
15 up this -- I think part of it misrepresents the fact.  
16 The fact is that the one individual who allegedly did  
17 carry the baton is the one against whom injunctive  
18 relief was accorded, and still stands, it stands in  
19 effect. But that notwithstanding, the clear import of  
20 this hearing is to simply engage in a second-guessing  
21 of one particular decision, rather than delving deeper  
22 into the overall issue of this statute, and its  
23 impact, and why it's only been enforced at a very low  
24 rate, given the reports that I have been privy to  
25 during my lifetime in public service. And it may be

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1 fine that we talk a little bit about this in the  
2 Discovery Plan, but, certainly, the way this report is  
3 written, the way that witnesses are being looked at  
4 does not reflect that. If indeed it did, Commissioner  
5 Gaziano, I would be somewhat less displeased with the  
6 direction that it is going, because I still believe  
7 that the intent of this is not -- the real intent is  
8 not how it is being proposed publicly.

9 COMMISSIONER GAZIANO: As the Concept  
10 Paper I drafted shows, I would join you in seeking  
11 expert witnesses at any hearing that involves DOJ on  
12 the discussion of their prior actions. I will join  
13 you, and I will urge other Commissioners to join us in  
14 seeking prior DOJ officials, expert witnesses, and  
15 others to place this in the proper context. But I  
16 hope we do get discovery from the Department of  
17 Justice, and they don't stonewall us, so that we will  
18 be able to see direct evidence of how they've handled  
19 those prior cases that you're interested in.

20 COMMISSIONER YAKI: Well, Commissioner  
21 Gaziano, I will hold you to that, because if there are  
22 ex-officials of the Department of Justice who would be  
23 critical to exploring the lack of enforcement in prior  
24 years, I hope that you will be as zealous in looking  
25 at all the remedies available to the Commission for

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1       them, as you have been at the Department of Justice,  
2       as it exists today.

3                   CHAIRMAN REYNOLDS:       That smells like  
4       agreement -

5                   COMMISSIONER YAKI:   No.

6                   CHAIRMAN REYNOLDS:   Okay.

7                   COMMISSIONER YAKI:   Yes.   Thanks for the  
8       correction.

9                   CHAIRMAN REYNOLDS:   It was getting close.

10                  COMMISSIONER GAZIANO:   Are we ready to  
11       call the question?

12                  CHAIRMAN REYNOLDS:   We're stumbling in the  
13       right direction.   Yes.   Okay.   Commissioner Heriot.

14                  COMMISSIONER HERIOT:   Yes.

15                  CHAIRMAN REYNOLDS:   Commissioner Gaziano.

16                  COMMISSIONER GAZIANO:   Yes.

17                  CHAIRMAN REYNOLDS:   Commissioner Taylor.

18                  COMMISSIONER TAYLOR:   Yes.

19                  CHAIRMAN REYNOLDS:   Commissioner Yaki.

20                  COMMISSIONER YAKI:   No.

21                  CHAIRMAN REYNOLDS:   Commissioner Kirsanow.

22                  COMMISSIONER KIRSANOW:   Yes.

23                  CHAIRMAN REYNOLDS:   Commissioner Melendez.

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1 COMMISSIONER MELENDEZ: One question. Did  
2 you say you're going to have one hearing or two? I'm  
3 not sure.

4 CHAIRMAN REYNOLDS: I don't believe that a  
5 decision has been made on that point yet.

6 COMMISSIONER MELENDEZ: Okay. Just for  
7 the record, I'd like to just wrap it up in one  
8 hearing. I'd abstain on this.

9 CHAIRMAN REYNOLDS: Okay. And I vote in  
10 favor of the motion, so the motion passes.

11 COMMISSIONER GAZIANO: May I propose  
12 another motion that I circulated via email?

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER GAZIANO: I'm going to pass  
15 out another copy of it. Commissioner Melendez, the  
16 only change from the version that I circulated on the  
17 phone and the version I'm passing out now is that Item  
18 2 in the motion is now one sentence instead of two.

19 COMMISSIONER YAKI: What are we talking  
20 about?

21 COMMISSIONER GAZIANO: The second -- the  
22 only change in the motion is that the entirety of  
23 Point Two in the motion is that it does not go into as  
24 much detail as the role of an attorney who's  
25 representing a deponent. Commissioner Heriot

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1 suggested that that was unnecessary, and I agree it  
2 was unnecessary.

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER GAZIANO: So all of Part Two  
5 says, "Witnesses subpoenaed to provide deposition  
6 testimony may appear with an attorney of their  
7 choosing, and may request short breaks to consult with  
8 their attorney, as appropriate."

9 COMMISSIONER MELENDEZ: Okay.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER GAZIANO: I move that this be  
12 entered into the record, as if it were read.

13 CHAIRMAN REYNOLDS: Is there a second?

14 COMMISSIONER TAYLOR: Second.

15 CHAIRMAN REYNOLDS: Discussion?

16 COMMISSIONER GAZIANO: And that it be  
17 approved.

18 CHAIRMAN REYNOLDS: Commissioner Yaki.

19 COMMISSIONER YAKI: One, I would like  
20 clarification on the record as to what reasonable  
21 notice to Commissioners would be in terms of their  
22 ability to attend a deposition, number one. And,  
23 number two, I want to know why there is a time limit  
24 on Commissioner questions with regard to their ability  
25 to ask questions of a deponent.

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1                   COMMISSIONER GAZIANO: This was suggested  
2 to me by the General Counsel, that we put in  
3 something. It's just as far as -- the way I intend  
4 it, is that there's no limit to the total amount.

5                   COMMISSIONER YAKI: Total time.

6                   COMMISSIONER GAZIANO: The total time.

7                   COMMISSIONER YAKI: That's only 10 minute  
8 rounds each.

9                   COMMISSIONER GAZIANO: It's just to be -

10                  COMMISSIONER YAKI: It's to cycle through  
11 in 10 minutes, but you can recycle again, if you want  
12 to.

13                  COMMISSIONER GAZIANO: Correct. It's just  
14 so that -

15                  COMMISSIONER YAKI: With that  
16 clarification, I understand. I still want  
17 clarification of what constitutes reasonable notice,  
18 given that there are some Commissioners who live some  
19 distance away, and for whom flights during the holiday  
20 season are going to be extremely difficult to obtain.

21                  CHAIRMAN REYNOLDS: Well, I believe that  
22 the date selected is an imposition on all of the  
23 Commissioners who intend to participate.

24                  COMMISSIONER YAKI: It's a much greater  
25 imposition for someone from the West Coast, Mr. Chair.

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1 CHAIRMAN REYNOLDS: I agree. You and  
2 Commissioner Heriot have to -- you have the greatest  
3 distance -

4 COMMISSIONER YAKI: And Commissioner  
5 Melendez.

6 CHAIRMAN REYNOLDS: That's true, but you  
7 two have the greatest distance to cover.

8 COMMISSIONER YAKI: Three. Commissioner  
9 Melendez, as well.

10 CHAIRMAN REYNOLDS: Well, I said you two  
11 have the greatest distance cover. I think it stands  
12 as an accurate statement.

13 COMMISSIONER YAKI: And Commissioner  
14 Melendez makes three.

15 COMMISSIONER HERIOT: It's actually harder  
16 to fly out of Reno, than it is to fly out of San Diego  
17 or San Francisco.

18 COMMISSIONER YAKI: It's much harder to  
19 fly out of Reno. You have to fly backwards to fly  
20 forwards.

21 (Laughter.)

22 CHAIRMAN REYNOLDS: All right. Thank you  
23 for the clarification.

24 COMMISSIONER YAKI: That's how the  
25 Commission tends to work right now, so -

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1                   CHAIRMAN REYNOLDS:     Okay.     With that  
2 clarification, I think that you raise a good point. I  
3 think that the dates selected were selected with the -  
4 - well, I believe, and the General Counsel will  
5 correct me if I get it wrong, that these dates were  
6 selected to increase the probability that he had  
7 something to report at the December in-person meeting.  
8 And, in any event, it is an imposition for those  
9 Commissioners who would like to participate, but I  
10 think that weighing all of the cost and benefits, this  
11 may be the best of some bad choices.

12                   COMMISSIONER YAKI:        If Commissioner  
13 Heriot, Melendez, and I choose to require a charter  
14 jet, would that be -

15                   CHAIRMAN REYNOLDS:   Well, you can ask.

16                   COMMISSIONER YAKI:   And it will be denied,  
17 so don't worry about it. We're more fiscally  
18 responsible than that, anyway. But I would request  
19 that we attempt to give not just notice, but timely,  
20 as soon as is humanly possible, notice about any  
21 changes, modifications, what have you, because once --  
22 for us, on the West Coast, we set things in motion,  
23 it becomes a production in order to get from A to B.

24                   CHAIRMAN REYNOLDS:   I support Commissioner  
25 Yaki's request, and I ask all the Commissioners to try

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1 to be flexible. Sometimes we dig our heels in, in  
2 terms of our schedule. Having said that, though, I  
3 support Commissioner Yaki's comments 100 percent.

4 Okay. Where are we, folks?

5 COMMISSIONER GAZIANO: Call the question  
6 of approving the motion.

7 CHAIRMAN REYNOLDS: Commissioner Heriot.

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Gaziano.

10 COMMISSIONER GAZIANO: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Taylor.

12 COMMISSIONER TAYLOR: Aye.

13 CHAIRMAN REYNOLDS: Commissioner Yaki.

14 COMMISSIONER YAKI: No.

15 CHAIRMAN REYNOLDS: Commissioner Melendez.

16 COMMISSIONER MELENDEZ: No.

17 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN REYNOLDS: And I support the  
20 motion. All right. Mr. Taylor, would you provide us  
21 with an update on the National Conference.

22 COMMISSIONER TAYLOR: Oh, yes. As you all  
23 may recall, we formed a Subcommittee for purposes of  
24 providing the Chair with some input on his proposal in  
25 terms of timing and substance of our National

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1 Conference, and to ensure that we had the -- created  
2 an opportunity for participation from both sides of  
3 the aisle, in terms of the Subcommittee. I think it's  
4 fair to say that, at this point, it does not appear  
5 that the Subcommittee will produce any changes to the  
6 Chairman's initial recommendation, but having said  
7 that, I think the process of forming a Subcommittee  
8 was a good idea, and a worthwhile effort. But,  
9 substantively, I think we are right back to where we  
10 started, Mr. Chair, and that is your initial vision,  
11 and recommendation. So, with that, I would actually  
12 turn it back to you, unless Mr. Yaki, who as a member  
13 of the Subcommittee, has anything to add in terms of  
14 changes.

15 COMMISSIONER YAKI: Mr. Yaki declined to  
16 appear in the Subcommittee, as you know, because  
17 Commissioner Thernstrom was not allowed to  
18 participate, as well. Being the two dissenting  
19 Commissioners of different points of view, one  
20 Democrat, one Republican, we, nevertheless, felt that  
21 a more bipartisan spirit needed to be shown in the  
22 formation of the Subcommittee. That being not the  
23 case, and with other certain statements made -

24 CHAIRMAN REYNOLDS: Could you elaborate on  
25 the lack of bipartisanship?

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1 COMMISSIONER YAKI: With other certain  
2 statements made by the Chair during the time, we -

3 CHAIRMAN REYNOLDS: No.

4 COMMISSIONER YAKI: I'm not in a position  
5 to endorse what I thought was a faulty proposition  
6 going forward, so that's where we are. As you say,  
7 back to where we were, which is exactly where I  
8 thought we were going to be, given the way in which  
9 the Subcommittee's charter was ordered by the Chair.

10 COMMISSIONER TAYLOR: Let me state for the  
11 record that by adding Commissioner Yaki to the  
12 Subcommittee, and given his demonstrated ability to  
13 impact the process, be quick on his feet, and  
14 articulate views of himself and others very clearly, I  
15 thought that adding him to the Subcommittee was a good  
16 idea, and I thought it allowed meaningful input on a  
17 bipartisan basis.

18 COMMISSIONER YAKI: Well, I would say  
19 thank you very much for the compliments, Commissioner  
20 Taylor. They're always welcome, but I would say that  
21 the mere fact that the Subcommittee, which I chose not  
22 to participate in, met and decided not to make any  
23 changes, and did not then seek any other input, just  
24 reinforces my point, no offense to how you run your  
25 work. So, let's just move forward, and agree that

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1 we're going to disagree on this until it happens, or  
2 if it happens.

3 CHAIRMAN REYNOLDS: Okay. All right.

4 COMMISSIONER TAYLOR: Is there another  
5 Subcommittee you want me to participate in?

6 (Laughter.)

7 COMMISSIONER YAKI: I'd like to move to  
8 amend the agenda.

9 CHAIRMAN REYNOLDS: Okay. What do you  
10 have in mind?

11 COMMISSIONER YAKI: I want to move up the  
12 discussion on Item 4 to right now.

13 CHAIRMAN REYNOLDS: Okay. Is there a  
14 second?

15 COMMISSIONER MELENDEZ: Second.

16 CHAIRMAN REYNOLDS: Discussion? Would you  
17 care to -- I mean, is there reason?

18 COMMISSIONER YAKI: Yes. I think that  
19 certainly this is something that has been discussed in  
20 more than one meeting, to put it below the State  
21 Advisory Committees is, I think, not -- I think any  
22 more than we change the agenda around to move any of  
23 the other items around, I think that this is a  
24 discussion item that can be taken care of rather  
25 quickly, and I'd just like to get it done.

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1 CHAIRMAN REYNOLDS: Well, I think that  
2 there are certain Commissioners -- this item is  
3 important to certain Commissioners who may be tempted  
4 to deny us a quorum, and by putting it at the end of  
5 the agenda increases the probability that they will  
6 stick around.

7 COMMISSIONER YAKI: Well, you know what,  
8 Mr. Chair, that is an interesting reading of what it  
9 is I'm trying to do.

10 CHAIRMAN REYNOLDS: Well, actually -

11 COMMISSIONER YAKI: But the fact -

12 CHAIRMAN REYNOLDS: -- I wasn't referring  
13 to you.

14 COMMISSIONER YAKI: But the fact of the  
15 matter is, is that -- of course you were. But the  
16 fact of the matter is, is that -- and I take no  
17 offense at that. Since something of such importance  
18 to you was elevated to the first priority, I just  
19 wanted something that, to me, is a minuscule  
20 ministerial duty, could be taken up. But if you don't  
21 want to, fine, let's just keep on rolling.

22 CHAIRMAN REYNOLDS: Okay.

23 COMMISSIONER MELENDEZ: Excuse me, Mr.  
24 Chair. This is Commissioner Melendez. I have another  
25 commitment at 1:00 your time, so I only can be on for

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1 another half hour, about 10 minutes to get to the  
2 other meeting, so I just wanted to let you know. It  
3 has nothing to do with breaking quorum. I just have  
4 to leave in a half hour.

5 CHAIRMAN REYNOLDS: Commissioner Melendez,  
6 is this an important issue to you, the motion to  
7 permit the Commissioner's Special Assistant to join  
8 Commissioners on the line for telephonic meetings?

9 COMMISSIONER MELENDEZ: It's -- my  
10 position is, it's fine. If you want to know my  
11 position now, I don't have a -- when Richard was here,  
12 I didn't have a problem with him being on the line.

13 CHAIRMAN REYNOLDS: Okay.

14 COMMISSIONER GAZIANO: For the reason  
15 stated, I'd prefer to keep it in the agenda where it  
16 was. Commissioners who at this very meeting walked  
17 out to deny a quorum -

18 CHAIRMAN REYNOLDS: All right. Let's --  
19 okay. We're going to keep it where it is. On  
20 October -

21 COMMISSIONER YAKI: You keep on talking,  
22 1:00 is going to come and go, Commissioner Gaziano.

23 COMMISSIONER GAZIANO: We'll have Pete  
24 still on the line.

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1                   CHAIRMAN REYNOLDS:   Okay.   Okay.   Whoa,  
2                   whoa,   whoa.   On October 12<sup>th</sup>, the Staff Director sent  
3                   us a list of potential 2010 briefing topics ranked in  
4                   accordance with the preferences of the Commissioners.  
5                   On October 16<sup>th</sup>, at the October 16<sup>th</sup> meeting we  
6                   postponed approval of the topics for the next  
7                   briefing. It was decided that project proposals would  
8                   be prepared for the three topics that had greatest  
9                   support based on the consensus that developed at the  
10                  October 16<sup>th</sup> meeting. These topics were -- the first  
11                  one is racially and religiously-based incidents at  
12                  U.S. college and university campuses. The second,  
13                  employment discrimination on the basis of age, in the  
14                  context of the economic crisis. And the third,  
15                  regulatory and other barriers to entrepreneurship that  
16                  impede business startups.

17                  I'll provide a brief synopsis. I'll  
18                  provide a synopsis of each proposal, and ask the  
19                  primary sponsor of each proposal to elaborate further.  
20                  And then we will vote to select the Concept Paper that  
21                  will become the basis for a briefing in FY 2010, which  
22                  will be held in the February to March time frame.

23                  The first topic, racially and religiously-  
24                  based incidents on U.S. college and university  
25                  campuses, this is for a briefing that would address

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1 the issue of racially and religiously-based incidents  
2 on U.S. college and university campuses. It would  
3 attempt to determine how frequently such incidents  
4 occur, and examine the policies that administrators  
5 have put into place to respond to such incidents.

6 The Commission would subsequently make  
7 recommendations aimed at reducing the frequency and  
8 severity of such incidents, and to guide social  
9 scientists, hoping to gather better data on this  
10 topic. The sponsor, who I believe is Commissioner  
11 Taylor. Is that right?

12 COMMISSIONER TAYLOR: Correct.

13 CHAIRMAN REYNOLDS: Would you care to  
14 elaborate, or is that sufficient?

15 COMMISSIONER TAYLOR: I think that's  
16 sufficient for discussion.

17 CHAIRMAN REYNOLDS: Okay. Do we want to  
18 go through the other two first, or do we want to have  
19 discussion on this particular proposal now?

20 COMMISSIONER HERIOT: I'd kind of like to  
21 get them all out so we can discuss them.

22 CHAIRMAN REYNOLDS: Okay. The second  
23 topic is a proposal for a briefing on employment  
24 discrimination on the basis of age in the context of  
25 the economic crisis, which was an idea circulated by

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1 Commissioner Melendez, originally, and supported by  
2 Commissioner Kirsanow. This briefing would examine  
3 what impact the economic crisis has had on workers  
4 covered by the Age Discrimination In Employment Act.  
5 As part of this project, the Commission will explore  
6 whether older workers are less commonly employed than  
7 in earlier years, as compared with their younger  
8 counterparts, whether related complaints and lawsuits  
9 have increased during the recent economic crisis,  
10 other factors underlying any such entries, and how the  
11 Equal Employment Opportunity Commission, which  
12 enforces the ADEA, has addressed such concerns. The  
13 briefing will analyze these questions in light of  
14 recent Supreme Court decisions governing the ADEA.

15 Commissioner Kirsanow, would you care to  
16 elaborate on this topic, or is that description  
17 sufficient?

18 COMMISSIONER KIRSANOW: The description  
19 is, I think, substantially sufficient. I'd just like  
20 to say that the Gross case appears to be a very  
21 important one, and it's one that I believe is  
22 currently subject to some deliberations in Congress to  
23 amend certain legislative provisions so that Gross  
24 would be effectively overturned. But I think that  
25 this is a topic that is timely, and it's one that the

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1 Commission really hasn't studied in great detail in  
2 the last number of years.

3 CHAIRMAN REYNOLDS: Okay. And the third  
4 topic is for a briefing that would examine the  
5 regulatory, financial, contracting, and legal and  
6 other barriers that negatively impact smaller, less  
7 experienced business enterprises, especially the  
8 burden that excessive or unnecessary regulation places  
9 on would-be entrepreneurs. The briefing will focus  
10 particularly on barriers that are discriminatory, or  
11 that have a disparate impact on startup minority  
12 firms.

13 Vice Chair Thernstrom, this is her  
14 proposal. She is not here to elaborate on it. Is  
15 there anyone here who would like to comment on this  
16 proposal?

17 COMMISSIONER GAZIANO: Well, I just want  
18 to say that I -

19 CHAIRMAN REYNOLDS: In Vice Chair  
20 Thernstrom's stead?

21 COMMISSIONER GAZIANO: Yes. I think all  
22 three proposals are well done, and I hope that we can  
23 advance, whichever ones we don't choose, that we can  
24 keep on the top of the list. I certainly think that  
25 this one is important and worthy, and I'm aware of

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1 several state SACs who have taken up and studied this  
2 issue, and that that's one advantage to sort of  
3 drawing on their work, and figuring out what we can  
4 add at the Commission level.

5 CHAIRMAN REYNOLDS: Okay. All right. So,  
6 with the understanding that this vote does not mean  
7 that the proposals not selected are eliminated. Are  
8 we ready to vote?

9 COMMISSIONER MELENDEZ: This is  
10 Commissioner Melendez. Can somebody comment on the  
11 first one, because I know we did one similar on  
12 discrimination, and some of that. So, can somebody  
13 say a little bit about the first one?

14 CHAIRMAN REYNOLDS: We're having trouble  
15 with that mic.

16 COMMISSIONER TAYLOR: Commissioner  
17 Melendez, this is Commissioner Taylor. And the  
18 emphasis would be placed on really both racial and  
19 religious discrimination, and the targeting of certain  
20 groups on college campuses. We make reference to in  
21 the Concept Paper, the 2007 incident at the U.S. Coast  
22 Guard Academy, where some cadets reported finding  
23 nooses among their belongings, and the incident in the  
24 same year at the University of Maryland where a noose  
25 was found outside of an African American Cultural

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1 Center. But we would also explore the incidents of  
2 reverse racism, as they may be reported.

3 One of the things we noted in the Concept  
4 Paper is that there appears to be a lot of information  
5 and purported data provided by interest groups, but  
6 little information from what I would describe as  
7 objective sources, so that's one of the reasons that  
8 this Concept Paper was suggested. And it was also  
9 suggested again to examine all aspects of  
10 discrimination, and not pay short shrift to any of  
11 those. So, that is the thought.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: Yes. I just wanted to  
14 say that I appreciate the work that Commissioner  
15 Taylor did on my original proposal, which now,  
16 apparently, is Commissioner Taylor's proposal. But -

17 COMMISSIONER TAYLOR: I co-opted ideas.

18 COMMISSIONER YAKI: As it works out, as  
19 with everything in this Commission lately, this has  
20 deviated substantially from where I wanted to go. The  
21 offhand remark about interest groups having less  
22 reliable data will remain, to me, salient, as we  
23 examine everyone who comes and testifies before us in  
24 the future, about all data that they present, because  
25 I find that to be highly objectionable and offensive

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1 characterization of groups who come before us, whether  
2 they're on the left, right, center, whatever.

3 That being the case, because this has  
4 turned from what I thought would be a sober  
5 examination of increases in hate speech, and race-type  
6 acts. And, again, as this points out, maybe the idea  
7 of speech codes, whatever, we can deal with that  
8 later, but just documenting what I believe is, without  
9 question, an increase in racism on college campuses,  
10 where people use the Martin Luther King, Jr. holiday  
11 to denigrate Blacks and African Americans in this  
12 country, where Latinos are mocked in various ways. I  
13 wanted to -- I think part of our job is to bring forth  
14 and raise the level of consciousness of this country  
15 on these things, and now in the name of whatever it  
16 is, we're turning it into an issue of well, you know,  
17 kids will be kids, there are speech codes that don't  
18 work, whatever. I don't care. The fact is that what  
19 is it that's creating this climate of intolerance?  
20 What is there that's provoking this rise in this type  
21 of activity, and this type of verbiage.

22 CHAIRMAN REYNOLDS: I have the answer.

23 COMMISSIONER YAKI: So, the fact is, is  
24 that as much as I had loved this project, as it goes

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1 forward, I am less inclined, and have not made up my  
2 mind to support it going forward.

3 COMMISSIONER TAYLOR: Let me say that I  
4 don't disagree with a lot of what Commissioner Yaki  
5 has said. I would disagree as to how he characterized  
6 my remarks about the interest groups on all sides of  
7 these issues, since I tend to be skeptical when people  
8 present any information to me. I don't care where it  
9 comes from. But I'm not opposed to, what I heard was  
10 a narrowing of the focus of the briefing proposal.  
11 That doesn't do any violence to the concept,  
12 whatsoever, so I took that as constructive criticism  
13 in an effort to improve the product, and I think it  
14 could do so.

15 CHAIRMAN REYNOLDS: Okay. At this point,  
16 what I'd like to do is just call out each topic, and  
17 see which Commissioners support which topics, and then  
18 we'll tally the votes.

19 First up, racially and religiously-based  
20 incidents on college and university campuses. Who  
21 supports -

22 COMMISSIONER HERIOT: What do you mean  
23 support?

24 COMMISSIONER TAYLOR: That's the first  
25 topic?

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1 CHAIRMAN REYNOLDS: Well, I'm -

2 COMMISSIONER HERIOT: Who would regard  
3 that as the first choice?

4 CHAIRMAN REYNOLDS: Yes. As I said, this  
5 is not to eliminate the other two from future  
6 consideration, but to pick one of the three for the,  
7 what is it, February-March time frame.

8 COMMISSIONER GAZIANO: You're taking a  
9 sort of poll, and then we'll formulate a motion based  
10 on that poll. Correct?

11 COMMISSIONER HERIOT: Yes, in a sense.

12 COMMISSIONER YAKI: Mr. Chair, we have  
13 invested a considerable amount of time and energy in  
14 all these three topics. I would be much more  
15 comfortable with the -- whatever. Forget it. Just do  
16 what you're going to do.

17 CHAIRMAN REYNOLDS: Okay. Racially and  
18 religiously-based incidents on U.S. college and  
19 university campuses. Who supports it as the first  
20 topic to be considered?

21 COMMISSIONER TAYLOR: I vote for my  
22 proposal.

23 COMMISSIONER HERIOT: I vote for it, too.  
24 I'm not sure. I mean, I don't have strong feelings on  
25 this.

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1                   COMMISSIONER GAZIANO: I think I do, but  
2 subject to persuasion.

3                   CHAIRMAN REYNOLDS: I need you to sort of  
4 like -

5                   COMMISSIONER YAKI: Mr. Chair, why don't  
6 you simply ask of the three topics, is there a motion  
7 to have one be the first briefing topic in February.

8                   COMMISSIONER HERIOT: I think the method  
9 that the Chairman is using is much better to figure  
10 out which one really does have the most support, and  
11 then we'll have a motion, because otherwise it's just  
12 a shot in the dark.

13                   COMMISSIONER YAKI: Well, are we -- well,  
14 the question is, are we allowed multiple votes then?  
15 Like we all, like we like this one, and that one, and  
16 that one?

17                   CHAIRMAN REYNOLDS: No.

18                   COMMISSIONER HERIOT: We're just trying to  
19 figure out people's first choice.

20                   COMMISSIONER YAKI: Well, then my motion  
21 would be simpler, which is just of the three, which  
22 one would -

23                   CHAIRMAN REYNOLDS: Okay. Let's just  
24 continue down the road that we were on, despite your  
25 superior approach. Next up -

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1 COMMISSIONER GAZIANO: Do we have  
2 Commissioner Melendez' and your input?

3 CHAIRMAN REYNOLDS: Commissioner Melendez.

4 COMMISSIONER MELENDEZ: I'm voting for  
5 mine. I think that one of our directives is to look  
6 at race, color, religion, sex, age, and disability.  
7 And I know there has been a lot of work on race, and  
8 all those other things, but I think that we need to  
9 look at age, at some point because the economy and the  
10 impact of that, so I think it's something that we  
11 could all support, try to find something that wasn't  
12 real controversial for one thing, that bipartisan, we  
13 could move forward with something that we're all  
14 behind, so that's why I suggested it in the first  
15 place, so I have to support it.

16 CHAIRMAN REYNOLDS: Commissioner Yaki.

17 COMMISSIONER YAKI: I make a motion that  
18 we do the employment discrimination as the first  
19 topic.

20 CHAIRMAN REYNOLDS: Okay. Got you down -

21 COMMISSIONER HERIOT: We're taking our  
22 poll.

23 CHAIRMAN REYNOLDS: Okay. You're down, I  
24 have Yaki.

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1                   COMMISSIONER YAKI:     I made a motion.  
2 Commissioner Melendez, do you second my motion to make  
3 employment discrimination the first topic?

4                   CHAIRMAN REYNOLDS:   Commissioner Kirsanow?

5                   COMMISSIONER KIRSANOW:   Yes.

6                   CHAIRMAN REYNOLDS:   What's your favorite  
7 topic?

8                   COMMISSIONER KIRSANOW:   Well, geez, take a  
9 guess. I go with age discrimination.

10                  CHAIRMAN REYNOLDS:   Okay. I will -- I  
11 want to support Commissioner Yaki in his vote.

12                  COMMISSIONER GAZIANO:   I did, but I just  
13 want to explain that I'm attracted, Commissioner  
14 Melendez and others, to the age discrimination. I  
15 just didn't think it was quite fleshed out enough, to  
16 me, and so if it comes up again, just studying, what  
17 is it, BLM, I've got the initials wrong, data didn't  
18 seem specific enough, to me. Commissioner Taylor's  
19 proposal seemed a little bit more definite, and  
20 doable, but if there was a little bit more development  
21 as to the methodology of the age discrimination, or if  
22 there were studies that kind of nailed some of these  
23 things down, then that might make it more appropriate  
24 for -- to advance on our briefing schedule.

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1 CHAIRMAN REYNOLDS: Okay. And my favorite  
2 topic is the one that was recommended by Vice Chair  
3 Thernstrom. However, I'm going to support  
4 Commissioner Melendez' motion, only because he's a  
5 gentleman, and he has caused me the least amount of  
6 grief when I look at all of you.

7 (Laughter.)

8 CHAIRMAN REYNOLDS: There you have it.  
9 That's the one that has garnered the most votes, so do  
10 we need to have an official vote on this?

11 COMMISSIONER YAKI: No.

12 STAFF DIRECTOR DANNENFELSER: Yes.

13 CHAIRMAN REYNOLDS: I'm sorry.  
14 Commissioner Yaki said in response to my question?

15 COMMISSIONER YAKI: I said no.

16 CHAIRMAN REYNOLDS: Okay. That's all  
17 right.

18 STAFF DIRECTOR DANNENFELSER: Well, we do  
19 have to approve the Concept Paper, I believe.

20 CHAIRMAN REYNOLDS: You're confusing me.

21 STAFF DIRECTOR DANNENFELSER: We have to  
22 approve the Concept Paper, I think, so -

23 CHAIRMAN REYNOLDS: Commissioners  
24 Melendez, Yaki, Kirsanow, and Reynolds voted in favor

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1 of the employment discrimination on the basis of age,  
2 in the context of an economic crisis proposal.

3 COMMISSIONER GAZIANO: Can I change my  
4 vote with the understanding that it will be narrowed?  
5 I want to be in the majority.

6 COMMISSIONER YAKI: Then I'll switch my  
7 vote back.

8 (Laughter.)

9 COMMISSIONER YAKI: Because I'll be damned  
10 if I'm not -

11 CHAIRMAN REYNOLDS: Let's just leave it  
12 like it is, folks. Let's just leave it like it is.  
13 Okay.

14 COMMISSIONER YAKI: In the spirit of  
15 bipartisanship, go ahead, Commissioner Gaziano. Come  
16 over to our side.

17 COMMISSIONER GAZIANO: I want the record  
18 to reflect I'm happy with the choice of the majority,  
19 too. Just that I think that if we could refine it a  
20 little bit, it'll be an even more whiz bang briefing  
21 than it otherwise will be.

22 COMMISSIONER HERIOT: Well, have we  
23 adopted -- we haven't adopted the Concept Paper.

24 COMMISSIONER YAKI: We just did.

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1 COMMISSIONER HERIOT: No, we just voted on  
2 which was our favorite.

3 COMMISSIONER YAKI: That's, essentially,  
4 the same thing.

5 CHAIRMAN REYNOLDS: Okay, folks. All  
6 right. I move that -

7 STAFF DIRECTOR DANNENFELSER: They're  
8 saying we should have a formal vote over here.

9 CHAIRMAN REYNOLDS: Okay. The lawyers  
10 have intervened once again. Okay. I move to adopt as  
11 the first topic to be explored, the employment  
12 discrimination on the basis of age in the context of  
13 the economic crisis. Is there a second?

14 COMMISSIONER YAKI: And to approve its  
15 accompanying Concept Paper.

16 CHAIRMAN REYNOLDS: Yes. Is there a  
17 second?

18 COMMISSIONER TAYLOR: Second.

19 CHAIRMAN REYNOLDS: Discussion? Okay. Al  
20 in favor please say aye.

21 (Chorus of ayes.)

22 CHAIRMAN REYNOLDS: Pete?

23 COMMISSIONER KIRSANOW: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Melendez.

25 COMMISSIONER MELENDEZ: Yes.

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1                   CHAIRMAN REYNOLDS: Unanimous vote. Will  
2 reporters in the audience please take this down. It  
3 doesn't happen too often.

4   (Laughter.)

5                   COMMISSIONER YAKI: Don't break out the  
6 champagne yet, Mr. Chair.

7                   CHAIRMAN REYNOLDS: You're about to change  
8 your mind. Okay. Vice Chair Thernstrom has  
9 recommended a change to recommendation number three in  
10 the Title IX Briefing Report approved by Commissioners  
11 on September 11<sup>th</sup>, 2009. Commissioner Thernstrom is  
12 not here to describe her amendment. She moves to --  
13 well, I'll make the motion on her behalf. I move to  
14 eliminate the following language from Recommendation  
15 Three of the Title IX Briefing Report, and the  
16 following language is, "Accordingly, the model survey  
17 method should be tailored to represent the interest of  
18 both sexes." Is there a second?

19                   COMMISSIONER TAYLOR: Second.

20                   CHAIRMAN REYNOLDS: Thank you.  
21 Discussion? Yes?

22                   COMMISSIONER YAKI: I'm voting against it,  
23 because all the research that I have found, probably  
24 from interest groups that have no credibility  
25 according to Commissioner Taylor, show that the model

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1 survey is not appropriate in any instance, anyway. As  
2 I voted against the report, I will vote against -

3 CHAIRMAN REYNOLDS: Well, this -

4 COMMISSIONER YAKI: Discussion.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER YAKI: It's about the model  
7 survey language, and the model survey -

8 COMMISSIONER GAZIANO: Striking it.

9 CHAIRMAN REYNOLDS: Okay. All right. Any  
10 further discussion? Okay. Commissioner Heriot, how  
11 do you vote?

12 COMMISSIONER HERIOT: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Gaziano.

14 COMMISSIONER GAZIANO: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Taylor.

16 COMMISSIONER TAYLOR: Aye.

17 CHAIRMAN REYNOLDS: Commissioner Melendez.

18 COMMISSIONER MELENDEZ: No, I'm not sure.

19 No.

20 CHAIRMAN REYNOLDS: Okay. And just to be  
21 official, Commissioner Yaki?

22 COMMISSIONER YAKI: Well, since I'm  
23 agnostic about anything that deals with a section  
24 report that I don't support, anyway, I'm going to  
25 abstain.

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1 CHAIRMAN REYNOLDS: Okay. I vote to  
2 support it. Commissioner Kirsanow.

3 COMMISSIONER KIRSANOW: Yes. And I will  
4 be departing from the conference effective right now.

5 CHAIRMAN REYNOLDS: Okay. So, with that  
6 information, I do believe it's time to turn to  
7 Commissioner Yaki.

8 COMMISSIONER YAKI: How so?

9 CHAIRMAN REYNOLDS: How do the numbers  
10 stack up, folks?

11 COMMISSIONER GAZIANO: We've got six.

12 COMMISSIONER YAKI: Commissioner Melendez

13 -

14 COMMISSIONER MELENDEZ: I have to leave in  
15 10 minutes.

16 COMMISSIONER HERIOT: Another 10 minutes.

17 COMMISSIONER YAKI: Commissioner Melendez,  
18 who has to leave at 1, or may, for his convenience,  
19 need to leave earlier, so the question is,

20 COMMISSIONER GAZIANO: Do we want to go  
21 through this MEPA report?

22 COMMISSIONER YAKI: The question is, can  
23 we move to the motion regarding Commissioners' Special  
24 Assistants, or shall we let Commissioner Melendez get

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1 to his meeting, because the MEPA Briefing Report is  
2 going to take more than 10 minutes of our time.

3 CHAIRMAN REYNOLDS: That is true. That is  
4 true.

5 COMMISSIONER YAKI: So, the question is,  
6 what else do you wish to accomplish on this agenda  
7 before we lose quorum?

8 **State Advisory Committee Issues**

9 CHAIRMAN REYNOLDS: Okay. How about this  
10 as a compromise. Let's blow through the SACs. We  
11 have two SACs. Let's get through them, and deal with  
12 the Special Assistants issue. Is that acceptable to  
13 you?

14 COMMISSIONER MELENDEZ: Yes.

15 COMMISSIONER GAZIANO: Yes, we voted.

16 CHAIRMAN REYNOLDS: We voted.

17 COMMISSIONER HERIOT: Let's do it. Iowa.

18 CHAIRMAN REYNOLDS: Okay. Great State of  
19 Iowa. Bear with me. Okay. I move that the  
20 Commission recharter the Iowa State Advisory Committee  
21 under this motion. The Commission appoints the  
22 following individuals to that committee, based on the  
23 recommendation of the Staff Director, George Neumann,  
24 Nancy Boettger, Joe Coulter, Francesca Galarrage,  
25 Kathleen Law, Sheryl Leonard, Isaiah McGee, Beverly

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1 Kopper, Cynthia Miller, Leonard Sandler, Michael  
2 Sandler, Donald Racheter. I've mangled someone's  
3 name. Pursuant to this motion, the Commission  
4 appoints George Neumann as Chair of the rechartered  
5 Iowa State Advisory Committee. These members will  
6 serve as uncompensated government employees. Under  
7 this motion, the Commission authorizes the Staff  
8 Director to execute the appropriate paperwork. Is  
9 there a second?

10 COMMISSIONER TAYLOR: Second.

11 CHAIRMAN REYNOLDS: Discussion? All in  
12 favor, please say aye.

13 (Chorus of yes.)

14 CHAIRMAN REYNOLDS: Any objections?

15 COMMISSIONER YAKI: No.

16 CHAIRMAN REYNOLDS: Commissioner Melendez,  
17 how do you vote?

18 COMMISSIONER MELENDEZ: Abstain.

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow.  
20 Oh, I'm sorry, he dropped off. The motion passes. I  
21 also, just to be clear, voted in favor of the motion.

22 I move that the Commission recharter the  
23 Massachusetts State Advisory Committee. Under this  
24 motion, the Commission appoints the following  
25 individuals to that committee based on the

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1 recommendations of the Staff Director, David Harris,  
2 Giovanni Alvarez, Negroti Robert, Ben Ezra, Karen  
3 Blum, Gregory Coat, Martha Davis, Christopher Edwards,  
4 Charles Glenn, Ronald Marlowe, Eva Malona, Alison  
5 Finley, Elbert Roberston, David Schaeffer, Shivon  
6 Sweeney, Greer Swisten, and Quoc Tran, and Angelia  
7 Wackhere. Pursuant to this motion, the Commission  
8 appoints David Harris as the Chair of the rechartered  
9 Massachusetts State Advisory Committee. These  
10 commissions will serve as uncompensated government  
11 employees. Under the motion, the Commission  
12 authorizes the Staff Director to execute the  
13 appropriate paperwork. Is there a second?

14 COMMISSIONER TAYLOR: Second.

15 CHAIRMAN REYNOLDS: Discussion? All in  
16 favor, please say aye.

17 COMMISSIONER TAYLOR: Aye.

18 COMMISSIONER GAZIANO: Abstain.

19 COMMISSIONER HERIOT: Abstain.

20 CHAIRMAN REYNOLDS: Okay. This is going  
21 to be complicated.

22 COMMISSIONER HERIOT: No, I should state  
23 for the record that concerns have been raised to me  
24 that the roster is not politically balanced. I don't  
25 know whether that's true or not personally, because I

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1 haven't had the opportunity to review the list, so  
2 that's why I'm abstaining.

3 CHAIRMAN REYNOLDS: Commissioner Yaki.

4 COMMISSIONER YAKI: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Melendez.

6 COMMISSIONER MELENDEZ: Yes.

7 CHAIRMAN REYNOLDS: And I vote in favor of  
8 the motion, also.

9 Next up is Commissioner Yaki's motions to  
10 allow Commission Special Assistants to call in on the  
11 same line as Commissioners during Commission meetings,  
12 thereby enabling the Special Assistants to respond to  
13 questions from Commissioners, if so requested.  
14 Commissioner Yaki, would you like to speak to your  
15 motion?:

16 COMMISSIONER YAKI: Well, that basically  
17 sums it up. The fact is, is that there's a strange  
18 dichotomy in that if you have a Special Assistant in  
19 the room at the time, there is the ability to ask a  
20 question of them to find some research, or provide  
21 some data on some point that you had, rather than  
22 trying to deal with the fact that delay with either a  
23 Blackberry or a phone, it's not meant to have the  
24 Special Assistant sit there and interrupt our work.

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1 But mainly there to be a resource to us, should we  
2 require it, and it's as simple as that.

3 CHAIRMAN REYNOLDS: Would you entertain a  
4 friendly motion, basically, that prerogative would be  
5 extended to Commissioners who are on the line?

6 COMMISSIONER YAKI: Versus?

7 CHAIRMAN REYNOLDS: Commissioners who are  
8 not.

9 COMMISSIONER YAKI: Why?

10 CHAIRMAN REYNOLDS: Well -

11 COMMISSIONER YAKI: Why would you not be  
12 able to -- I mean -- let me just give a stark example  
13 of this. If this is meant to simply intimidate me  
14 from leaving a conference because of the fact that  
15 you have not secured five people for a vote on a  
16 particular item, you may do so, and -

17 CHAIRMAN REYNOLDS: I do not believe that  
18 we are capable of intimidating you.

19 COMMISSIONER YAKI: But the fact of the  
20 matter is, is that as what happened in the last time  
21 that this happened, there occurred discussions on the  
22 line that, nevertheless, remain -- are allowed for the  
23 purposes of the Sunshine Act, so long as no action was  
24 taken. That being the case, that discussion is going  
25 on, and for whatever reason, if a Commissioner has to

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1 leave for some family emergency, or what have you, the  
2 fact is that having a Special Assistant who can listen  
3 in on the conversations is equitable, because if,  
4 indeed, the objection is someone who is on the line  
5 may not be on the line, that rule somehow does not  
6 seem to extend if they happen to be in the same room  
7 here during a call that is being made. And that  
8 anomaly would just impel someone who knew they had to  
9 leave early, or knew that there was something going  
10 on, to send a Special Assistant to this office to sit  
11 in and listen to it. So, rather than deal with that,  
12 let's just face the reality of our Special Assistants  
13 should be allowed to listen in during all parts of the  
14 conference, and be available for questioning or  
15 research on particular topics, as they go forward.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER YAKI: Just as they are now.  
18 If I leave the room, you do not ask my Special  
19 Assistant to leave the room. If Commissioner  
20 Thernstrom is not here, we do not ask Mr. Fay to leave  
21 the room. Why should we do so on a telephone  
22 conference?

23 CHAIRMAN REYNOLDS: The reason is that  
24 certain Commissioners, mentioning no names to protect  
25 the guilty, have systematically attempted to deny

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1 quorum to the Commission. And it seems to me that the  
2 motion that's being entertained right now would assist  
3 those unnamed Commissioners in gauging when they  
4 should come back on the line, to keep them abreast of  
5 what's going on.

6 COMMISSIONER YAKI: Commissioner Reynolds,  
7 I think you're overstating things a bit, because -

8 CHAIRMAN REYNOLDS: Commissioner Yaki,  
9 just allow me to finish.

10 COMMISSIONER YAKI: I'm sorry.

11 CHAIRMAN REYNOLDS: Under different  
12 circumstances, I would have no problem with this. But  
13 with the games that we're playing, I'm not willing to  
14 support this.

15 COMMISSIONER YAKI: And I think, Mr.  
16 Chair, that you show your unwillingness to recognize  
17 the reality of the situation, which is that in that  
18 simple instance, I want to ensure that my Special  
19 Assistant is here in the room for every single  
20 telephone conference meeting that you've scheduled,  
21 and, in which case, we -- which he has every right to  
22 do, and I won't instruct him to do so, that comes at  
23 considerably more expense to the Commission than if he  
24 were simply to participate on the Commissioner phone  
25 line. And, therefore, all you've done is really just

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1 simply increase cost to this Commission, rather than  
2 recognize the reality of the situation, which is  
3 Commissioner Thernstrom is not here, and we are not  
4 asking Mr. Fay to leave. If Commissioner Heriot is  
5 not here, she's on the phone, we would not ask her  
6 person to leave the room here.

7 COMMISSIONER GAZIANO: Maybe we should.

8 COMMISSIONER YAKI: I mean, if you want to  
9 apply a rule that if a Commissioner -- once a  
10 Commissioner leaves a teleconference, their Special  
11 Assistant, who may be in this room, or another room,  
12 has to then depart -

13 COMMISSIONER HERIOT: These are open  
14 meetings.

15 COMMISSIONER YAKI: Yes, that's -- you can  
16 do so, but I think that you're being petty and  
17 ridiculous, and -

18 CHAIRMAN REYNOLDS: Petty? Petty?

19 COMMISSIONER YAKI: I think you are being  
20 petty and ridiculous.

21 CHAIRMAN REYNOLDS: Petty?

22 COMMISSIONER YAKI: Petty and ridiculous.

23 CHAIRMAN REYNOLDS: Geez.

24 COMMISSIONER YAKI: Absolutely.

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1                   CHAIRMAN REYNOLDS:     Okay.     When you  
2 attempt to deny us a quorum, I guess that is just  
3 grand strategy, and it's not being petty.

4                   COMMISSIONER YAKI:    If you wish for me to  
5 acknowledge the fact that your responsibility as a  
6 Chair to get the votes that you need to secure a  
7 majority vote on what you want, and my role in the  
8 minority is to do what I can to advance the causes  
9 that I represent, and the causes that I believe in,  
10 and if those causes are adversely effected by your  
11 ability to get majority votes, then what I do in  
12 pursuance of that within the law, and within  
13 parliamentary procedure, if you describe that as  
14 petty, well, then let me just refer you to examples  
15 throughout, including what's going on right now with  
16 some parties deciding, regardless of what the issue  
17 is, they're going to vote lockstep with zero defectors  
18 on certain types of legislation in order to force the  
19 other party to deal with it.    So, we can deal with  
20 this all you want.    If you want to call it petty, then  
21 call it petty.    To me, this is my role here -

22                   CHAIRMAN REYNOLDS:    You're well within  
23 your rights to do this.

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1 COMMISSIONER YAKI: And you are well  
2 within your right to get your five votes to get things  
3 done, and I can do nothing to prevent that.

4 CHAIRMAN REYNOLDS: Okay. I concede that  
5 you are well within your rights to do this. I do not  
6 believe that you have violated, implicated any rule.  
7 But, in any event -

8 STAFF DIRECTOR DANNENFELSER: Mr.  
9 Chairman, it was just pointed out to me that the  
10 motion that the Vice Chair proposed on the Title IX  
11 Report had a second part to it, and there's a request  
12 that we could add that second part to the motion that  
13 was adopted. And what that second part would be,  
14 would be that a copy of the model survey be included  
15 in the appendix of the final report on Title IX.

16 CHAIRMAN REYNOLDS: I will second that  
17 motion.

18 COMMISSIONER GAZIANO: I thought we  
19 already approved the whole motion.

20 STAFF DIRECTOR DANNENFELSER: Well, he  
21 read the motion as one sentence, previously, about  
22 deleting the one sentence.

23 CHAIRMAN REYNOLDS: Can we take a five  
24 minute break?

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1 COMMISSIONER HERIOT: Can we vote on the  
2 Thernstrom thing, first?

3 CHAIRMAN REYNOLDS: Okay. This may  
4 benefit you -

5 (Whereupon, the proceedings went off the  
6 record at 12:58:06 p.m., and went back on the record  
7 at 12:59:43 p.m.)

8 COMMISSIONER GAZIANO: I think we -- Ms.  
9 Heriot and I want to speak.

10 CHAIRMAN REYNOLDS: Let's finish this.

11 COMMISSIONER HERIOT: Okay.

12 COMMISSIONER HERIOT: I'm speaking on what  
13 issue now?

14 CHAIRMAN REYNOLDS: Commissioner Yaki's  
15 proposal.

16 COMMISSIONER HERIOT: Okay. I guess my  
17 view is that under normal circumstances, I would think  
18 of this as perfectly appropriate. But we do have a  
19 problem with some members purposely defeating quorums  
20 on a routine basis. In truth, I might not object to  
21 that, if it were reserved only for really, really,  
22 really important issues, but that's not the case.

23 CHAIRMAN REYNOLDS: Right.

24 COMMISSIONER HERIOT: What happens here is  
25 that it's routine. And, therefore, I'm not willing to

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1 do something that will facilitate that. I think that  
2 the analogy to the live meetings is inappropriate.  
3 These meetings are open to the public. Of course,  
4 they're open to the Special Assistants. What we're  
5 talking about here, we're not talking about not  
6 allowing the Special Assistants to be on the call.  
7 We're not allowing them to be on the inner call.

8 COMMISSIONER GAZIANO: Yes, let me just  
9 jump ahead. I think that Commissioner Yaki may have  
10 made a point, and I don't want him to encourage his  
11 Special Assistant to expend a lot of money to be here  
12 just to take advantage of some rule. I suggest that we  
13 -- actually, if we have an inner Commissioner call,  
14 that we do not have anyone other than Commissioners  
15 and Special Assistants who are on board, so we make  
16 sure that the phone setup is such, so that Special  
17 Assistants who are here, whose Commissioners are not  
18 on the call, cannot be in on the inner call. And then  
19 we make it even Steven, whether you're -

20 COMMISSIONER HERIOT: Yes, I've got no  
21 problem with that.

22 COMMISSIONER GAZIANO: -- participating.  
23 I would support this motion if -

24 CHAIRMAN REYNOLDS: Is that a friendly  
25 amendment?

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1                   COMMISSIONER GAZIANO:     -- Commissioner  
2 Yaki would -- that's my suggestion, if this motion  
3 fails.       But I would support this motion if  
4 Commissioner Yaki were either to have accepted your  
5 friendly amendment, or to give us word that he would  
6 not routinely try to defeat quorum on routine matters.

7                   COMMISSIONER HERIOT:     Let the reflect  
8 Commissioner Yaki is laughing.

9                   COMMISSIONER GAZIANO:     Please don't  
10 interrupt.

11                   COMMISSIONER YAKI:     Commissioner Heriot is  
12 a great tattletale, isn't she?

13                   COMMISSIONER GAZIANO:     Please don't  
14 interrupt.

15                   CHAIRMAN REYNOLDS:     Okay.   Hold it.   I  
16 have my rubber mallet.   Watch it.

17   (Laughter.)

18                   COMMISSIONER GAZIANO:     It has been thrown  
19 around these meetings that defeating quorum is within  
20 rights.   Whether it is or not, I think it is improper.  
21 I think it is improper when someone, the tax payers  
22 have paid to fly Commissioners here, for them to  
23 engage in that routine tactic, and I don't want to  
24 encourage it.   But if the motion were amended to  
25 accept the Chairman's amendment, I would be happy with

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1 it. Otherwise, I think that the inner call should not  
2 include Commissioner Assistants who are -- whose  
3 Commissioners are not on the call, whether they be in  
4 person, or they be on the phone.

5 CHAIRMAN REYNOLDS: Commissioner Yaki.

6 COMMISSIONER YAKI: Well, I just find it  
7 humorous that the previous speaker chooses to  
8 characterize what I do as a routine. It is not  
9 routine, at all. The fact of the matter is, is that  
10 now the majority chooses to order its agenda in a way  
11 that it seeks to be most advantageous for the most  
12 controversial portions of the agenda to be done in a  
13 way because they fear exactly what they claim that I'm  
14 going to do, which is to deal with some of these  
15 issues by, essentially, creating the situation where  
16 the Commission cannot deal with it.

17 The idea that this is routine is  
18 laughable. If you were to look at any instance in  
19 which quorum was lacking, you would see there would be  
20 some issue that certainly, may be -- perhaps, may be  
21 routine to you, may not be routine to me, or to the  
22 people and the causes that I seek to represent on this  
23 Commission. So, you may call it routine. I would  
24 daresay I would have a very big quarrel with that, as  
25 would be the people who I care about, and who I

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1 believe are not being represented well at the United  
2 States Commission on Civil Rights. And I would say,  
3 further, that to attempt to extract from me some kind  
4 of promise of going along with the program in exchange  
5 for something as really routine, and in some ways  
6 trivial, as just allowing Special Assistants to be  
7 part of the proceeding, as they would be at any public  
8 meeting. And let us not forget, it's interesting the  
9 characterization that Commissioner Heriot made between  
10 this meeting and a teleconference, because the very  
11 reason why I vehemently oppose all these  
12 teleconferences is because they do not have the same  
13 character as a public meeting of the Commission. The  
14 public cannot so readily, and so easily attend and see  
15 what is going on, versus just simply calling in.

16 CHAIRMAN REYNOLDS: Commissioner Yaki, you  
17 make your -

18 COMMISSIONER YAKI: So, we can -

19 CHAIRMAN REYNOLDS: -- views perfectly  
20 clear.

21 COMMISSIONER YAKI: Commissioner Reynolds  
22 -

23 CHAIRMAN REYNOLDS: The value of  
24 teleconferences, and I just want to stick with -

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1 COMMISSIONER YAKI: But the whole point of  
2 this is teleconferences, because the idea that somehow  
3 they're -

4 CHAIRMAN REYNOLDS: It's not.

5 COMMISSIONER YAKI: No, the idea that  
6 there is a distinction between a conference of the  
7 Commission via telephone, and a conference of the  
8 Commission in person, where -

9 CHAIRMAN REYNOLDS: Next?

10 COMMISSIONER YAKI: -- unless you're  
11 saying we're going to adopt a rule that when Mr.  
12 Taylor, who is not here, or may get off the phone, Kim  
13 has to jump out of the room, or Vice Chair Thernstrom  
14 is not here, he has to jump put of the room. Unless  
15 you apply that to all meetings, then this is simply  
16 just silly, and it's cutting off your nose to spite  
17 your face.

18 CHAIRMAN REYNOLDS: I would hope -

19 COMMISSIONER YAKI: Let's just proceed  
20 with the vote.

21 CHAIRMAN REYNOLDS: I would hope -

22 COMMISSIONER YAKI: I mean, it is clear  
23 that whatever I'm doing is beginning to chafe you, and  
24 that pleases me to no end.

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1                   CHAIRMAN REYNOLDS:   Okay.   I'm happy to  
2                   make you happy.

3   (Laughter.)

4                   CHAIRMAN REYNOLDS:   I would hope that  
5                   everyone understands that the respective parties,  
6                   major parties will someday be in the minority.   And I  
7                   would hope that people would understand that being in  
8                   the minority has consequences.   But, at the same time,  
9                   everyone has an opportunity to represent their  
10                  positions, to argue their positions passionately, and  
11                  to understand that this Democratic process, you don't  
12                  win all the time.   And in the not too distant future,  
13                  the Republicans will be in the minority, and I would  
14                  hope that we would make forceful arguments, that we  
15                  would allow votes to take place, and that we would not  
16                  routinely deny quorum because it looks like we were  
17                  going to lose.

18                  I don't think that it is a healthy way to  
19                  do business.   It doesn't do anything in terms of  
20                  trying to improve our relationships.   It's just -- I  
21                  think that there's a better way of doing business.

22                  COMMISSIONER YAKI:   Commissioner Reynolds,  
23                  I agree with you.   I absolutely agree, 100 percent.  
24                  And if you notice -

25                  CHAIRMAN REYNOLDS:   Okay.

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1 COMMISSIONER YAKI: -- during the first  
2 three and a half years -

3 CHAIRMAN REYNOLDS: Commissioner Yaki -

4 COMMISSIONER YAKI: -- of my being on this  
5 Commission, this was not an issue.

6 CHAIRMAN REYNOLDS: Commissioner Yaki -

7 COMMISSIONER YAKI: Was it? Let me ask  
8 you that.

9 CHAIRMAN REYNOLDS: But -

10 COMMISSIONER YAKI: On the record, for the  
11 first three and a half -

12 CHAIRMAN REYNOLDS: What we've been doing  
13 a good job of, is allowing the Commissioner who is  
14 speaking to finish.

15 COMMISSIONER YAKI: I'm sorry.

16 CHAIRMAN REYNOLDS: We've been doing a  
17 great job.

18 COMMISSIONER YAKI: I apologize for that.

19 CHAIRMAN REYNOLDS: I understand if there  
20 is an issue that is a core principle. I understand if  
21 it's an issue that you just can't bring yourself to  
22 participate in the conversation. I get it. But  
23 oftentimes, we're not talking about that type of  
24 situation.

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1 COMMISSIONER YAKI: Give me an example,  
2 Mr. Chair, please. Please tell me a point on the  
3 agenda where -

4 CHAIRMAN REYNOLDS: Okay. Fine. We did  
5 not add a single new item to the agenda. It was  
6 rearranged, so everything that was going to be  
7 discussed, that we had planned to discuss, it was on  
8 the agenda.

9 COMMISSIONER YAKI: Did you discuss it?  
10 Was it discussed?

11 CHAIRMAN REYNOLDS: Hear me out. You  
12 threatened -- well, you didn't threaten, you denied us  
13 a quorum because you didn't like the way the agenda  
14 was organized.

15 COMMISSIONER YAKI: No, I didn't like -

16 CHAIRMAN REYNOLDS: I consider that -

17 COMMISSIONER YAKI: That's erroneous.

18 CHAIRMAN REYNOLDS: Okay. Maybe I  
19 misunderstood what happened. Okay.

20 COMMISSIONER YAKI: No, I -- I mean, the  
21 fact is, is that there were items on that agenda, with  
22 which I vehemently disagree, which I believe are being  
23 -- are a misuse and abuse of the Commission process.  
24 That is my feeling. But let me just say this in  
25 reference to a previous remark you made.

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1           For three and a half years on this  
2 Commission, I acted with -- in a very bipartisan way  
3 with Commissioner Braceras. Think about it. Think  
4 about the committees I served on with Commissioner  
5 Braceras, Commissioner Taylor in the past,  
6 Commissioner Redenbaugh, others. That -- if there has  
7 been a change, Mr. Chair, it is up to you and try and  
8 ascertain, which you have yet to do, why that is the  
9 case. And the fact of the matter is, is that if and  
10 when this Commission changes in terms of composition,  
11 it is my fervent hope that whatever job the new Chair  
12 does or does not do, will be done in a way so as to  
13 prevent the kind of tactics that I have been forced to  
14 engage in, because of the way that the Commission now  
15 operates.

16           If you were to seek out and call me up,  
17 which you have not done in a long time, to discuss  
18 this in some detail -- in fact, the last time that we  
19 did talk was about precisely some of these issues,  
20 which then never manifested themselves. We could --  
21 this might be different. But that is not the case.  
22 Everyone has to adapt to new and changed  
23 circumstances. I am doing that, you are doing that,  
24 and it is -- we have a difference of opinion as to  
25 whether or not what I choose to do -- and let me tell

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1 you this, I am not the one who is not here that causes  
2 a quorum problem. Let's put that out there right now.

3 CHAIRMAN REYNOLDS: No, you were the one -

4 COMMISSIONER YAKI: But I am not the  
5 person who is absent that causes the quorum problem.  
6 If you have quorum, I am here. If you have the  
7 ability to get your five folks together, I am here,  
8 and will participate, as I have done today. But it is  
9 not my responsibility, as I said to you before, for  
10 each and every Commissioner's desire to show up, or  
11 not show up, to participate, or not participate. My  
12 clear choice, because, as you know, I enjoy doing  
13 this, is to participate. The only reason I do not, is  
14 because of how things have been going at the  
15 Commission lately.

16 We can discuss that offline, if you wish,  
17 but, certainly, do not think for a moment that I do  
18 this in any way, cavalier, petty, or casual fashion.  
19 It is quite the contrary, Mr. Chair. I will always be  
20 here when there is a quorum. I have one of the best  
21 attendance records of Commissioners here, and this is  
22 a Commission that I passionately believe in. And the  
23 causes that I believe I'm here to represent, I  
24 passionately believe in, as well. So, that being the  
25 case, here we are.

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1                   CHAIRMAN REYNOLDS:    Okay.    We do agree  
2                   that we have a difference of opinion.    In my view, it  
3                   is improper to flex your muscle, and deny us a quorum  
4                   unless it's an important issue.

5                   COMMISSIONER YAKI:       Well, we agree to  
6                   disagree.    We define important differently, I suppose.  
7                   We do.

8                   COMMISSIONER GAZIANO:    I think we've lost  
9                   quorum recently on SAC recharterings.    We've lost  
10                  quorum on -

11                  CHAIRMAN REYNOLDS:    Okay.    We have one  
12                  item left to vote on, I believe.    Could someone remind  
13                  -- oh, Special Assistants.    That's what I'd like to  
14                  do. Okay.

15                  COMMISSIONER GAZIANO:    Can I just let the  
16                  record reflect what the vote is on.    It's not that  
17                  Special Assistants can come and go, whether it's  
18                  teleconference or not teleconference, live or on the  
19                  phone, when we are actually meeting in a quorum.    The  
20                  only issue we're voting on is during times when the  
21                  Commissioners are in a sub-conference, telephone  
22                  conference waiting for an official meeting to begin,  
23                  who shall be on the line.

24                  COMMISSIONER YAKI:       Point of parliamentary  
25                  privilege to the General Counsel.    Let me bring up the

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1 situation that happened at the last conference. At  
2 the last conference, quorum was lost; nevertheless,  
3 discussion continued on the Title IX report. In that  
4 instance, should discussion have ceased? Because a  
5 discussion did continue, and there was interchange  
6 with Mr. Lerner about aspects of the report, and the  
7 discovery process therein. What then is the  
8 characterization of that meeting? Is it a "sub-  
9 conference", which everyone should be kicked out? Is  
10 it just Commissioners casually chatting? That has no  
11 bearing, because that's significantly different than  
12 the way it was carried out at the last conference, as  
13 I have been reported by those who were there.

14 MR. BLACKWOOD: Again, this is David  
15 Blackwood. They are discussions. There's nothing  
16 that prohibits such discussions. No binding decisions  
17 can come out of any discussions that are not held when  
18 a quorum exists.

19 COMMISSIONER YAKI: So, in that case, the  
20 - I guess I am at a loss to understand the  
21 distinction, because if, for example, we're in a  
22 hearing, and we have been at hearings where there have  
23 been two Commissioners. I think that when we did  
24 Nebraska, there were only three. It was Commissioner  
25 Melendez, myself, and Commissioner Taylor. It was

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1 clear at that point we lacked quorum to make a  
2 decision; nevertheless, we still continued on, and it  
3 was a public meeting.

4 MR. BLACKWOOD: Correct.

5 COMMISSIONER YAKI: So, how do we  
6 distinguish between that and what you're talking  
7 about, if they are, indeed, having conversations with  
8 staff, or with potential witnesses, or outside  
9 consultants, that other Commissioners are not privy  
10 to. How do we make that distinction?

11 MR. BLACKWOOD: Number one, the hearing  
12 that you all -- that was held in Nebraska, and I was  
13 there, as well, was collecting information. No motion  
14 was being voted on. You don't need a quorum to do it.  
15 It had been previously authorized by the Commission,  
16 so, therefore, it could occur.

17 COMMISSIONER YAKI: Okay.

18 MR. BLACKWOOD: In fact, no Commissioners  
19 could have been there, and still it could have  
20 occurred. Not much would have happened. That said,  
21 all right. If the quorum ends at a meeting like this,  
22 and Commissioners want to talk among themselves, so be  
23 it. What they could have also done is said let's go  
24 offline, stayed right here and just chatted among  
25 themselves, and no one would have thought about it.

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1 What they can't do is direct, or pass a motion, or  
2 anything like that. So, whether the discussion is  
3 still online, of it was a telephone meeting and they  
4 continued to talk among each other, because it was  
5 simply easier to talk on an existing open line, so be  
6 it. They simply can't order directives. That's the  
7 only difference.

8 COMMISSIONER YAKI: Still it's rather  
9 confusing. But hey, whatever you want to do, Mr.  
10 Chair, I'm -- I simply was trying to make things more  
11 efficient and fair. If you choose not to do that,  
12 that's fine with me. Let's just get it over with, and  
13 get out of here.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER TAYLOR: What are we voting  
16 on, again?

17 CHAIRMAN REYNOLDS: Commissioner Yaki's  
18 motion.

19 COMMISSIONER HERIOT: Do we need to vote  
20 on it?

21 COMMISSIONER YAKI: I want to vote on it.

22 CHAIRMAN REYNOLDS: He didn't withdraw it.

23 COMMISSIONER YAKI: I'm not going to  
24 withdraw.

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1                   COMMISSIONER TAYLOR: Describe the motion  
2 again. Is it only limited to telephone meetings when  
3 we are -- when a quorum is not even relevant, because  
4 we're in a Subcommittee context, so no decisions are  
5 being made. The public, unlike a live meeting, can't  
6 hear, because that portion of the mic hasn't been  
7 turned on. The question is whether Special Assistants  
8 can participate in that discussion, which is not  
9 relevant to whether or not we have a quorum.

10                   CHAIRMAN REYNOLDS: When their principal  
11 is not on the line, or present.

12                   COMMISSIONER TAYLOR: Correct.

13                   MR. BLACKWOOD: I believe there's one  
14 other scenario, which is if you went into Executive  
15 Session, and say all right, in this particular  
16 instance, Commissioner Thernstrom is not on, would Mr.  
17 Fay be allowed to listen in on an Executive Session,  
18 that all the other Special Assistants were able to  
19 listen to. Because, as I understand it, there are two  
20 -- it's a bifurcated telephone system.

21                   COMMISSIONER TAYLOR: That's right.

22                   MR. BLACKWOOD: So, would Mr. Fay be able  
23 to listen to that?

24                   COMMISSIONER TAYLOR: The question is  
25 would we bring them onto the Commissioner lines, which

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1 are always live, versus keeping them on the public  
2 side.

3 COMMISSIONER GAZIANO: We're unlikely to  
4 go into Executive Session on the telephone.

5 COMMISSIONER TAYLOR: Is that the issue?

6 MR. BLACKWOOD: It is a possibility.

7 COMMISSIONER HERIOT: We can leave that  
8 issue open for -

9 COMMISSIONER YAKI: We have done Executive  
10 Session on the telephone, and given what we approve  
11 today, the likelihood of it possibly coming up again  
12 is very high, I would suppose. If the General Counsel  
13 needed to talk to the Commission regarding, especially  
14 Item One when we went into Executive Session, it does  
15 raise a very important issue.

16 COMMISSIONER GAZIANO: I would vote at  
17 that time to allow Special Assistants to listen in,  
18 whether their Commissioner, if we were in Executive  
19 Session, but regular proceeding, for all Special  
20 Assistants to listen in on regardless, so that would  
21 be my position when that issue comes up.

22 COMMISSIONER TAYLOR: So, that means we  
23 need to amend the motion. Right?

24 COMMISSIONER HERIOT: No, we could do that  
25 later.

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1 COMMISSIONER YAKI: Have fun.

2 CHAIRMAN REYNOLDS: Are we ready to vote?

3 All in favor please say aye.

4 COMMISSIONER YAKI: Aye.

5 CHAIRMAN REYNOLDS: Abstentions.

6 COMMISSIONER TAYLOR: Taylor.

7 CHAIRMAN REYNOLDS: Objections?

8 COMMISSIONER GAZIANO: No.

9 COMMISSIONER HERIOT: No. Although, I  
10 would be happy to reconsider my vote -

11 CHAIRMAN REYNOLDS: Three nos.

12 CHAIRMAN REYNOLDS: -- if Commissioner  
13 Yaki were to commit to stop his routine walking out of  
14 meetings.

15 CHAIRMAN REYNOLDS: Okay. Let's adjourn  
16 before there is a response. The rubber mallet is  
17 coming down.

18 (Laughter.)

19 COMMISSIONER YAKI: I'll get my response  
20 in at the next meeting.

21 (Whereupon, the proceedings went off the  
22 record at 1:19:23 p.m.)

23

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