U.S. COMMISSION ON CIVIL RIGHTS

MEETING

FRIDAY, MAY 28, 2010

The Commission convened by teleconference at 11:30 a.m., Eastern Daylight Time, Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner
MARTIN DANNENFELSER, Staff Director
STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
MARGARET BUTLER
CHRISTOPHER BYRNES, Director, RPCU
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MAJA JWEIDE
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
KIMBERLY TOLHURST
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD
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11:42 a.m.

THE OPERATOR: Good morning. My name is Melissa, and I will be your conference operator today. At this time, I would like to welcome everyone to the Commission meeting.

All lines have been placed on mute to prevent any background noise. If you should need assistance during the call, please press *0 on your telephone keypad. An operator will come back on the line to assist you. Thank you.

Chairman Reynolds, you may begin.

CHAIRPERSON REYNOLDS: Thank you.

The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is 11:42 a.m. Eastern Standard Time on March 28th, 2010. We're having a telephonic meeting with all commissioners participating from different locations.

Vice Chair Thernstrom and Commissioner Melendez have indicated that they will not participate in today's meeting. I've also received word that Commissioner Yaki may not be able to participate as well.

I want to call the names of the remaining commissioners to confirm that we have a quorum.
Commissioner Gaziano?

COMMISSIONER GAZIANO: Here.

CHAIRPERSON REYNOLDS: Commissioner

Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRPERSON REYNOLDS: Commissioner

Heriot?

COMMISSIONER HERIOT: Here.

CHAIRPERSON REYNOLDS: Commissioner

Taylor? Commissioner Taylor?

COMMISSIONER TAYLOR: Yes. Can you hear me?

CHAIRPERSON REYNOLDS: I do now.

COMMISSIONER TAYLOR: Okay.

CHAIRPERSON REYNOLDS: And Commissioner

Yaki?

COMMISSIONER YAKI: Here.

CHAIRPERSON REYNOLDS: Okay. Commissioner

Yaki is on the line. A quorum is present. Is the Staff Director present?

STAFF DIRECTOR DANNENFELSER: Present.

CHAIRPERSON REYNOLDS: Is the Court Reporter on the line?

THE REPORTER: Present.

CHAIRPERSON REYNOLDS: Excellent. Okay.
If a commissioner wants to make a statement, please identify yourself first. When it is necessary to take a vote, the procedure that I will use, I will call out the name of each commissioner. The commissioner should answer "Yes," "No," or "Abstain." After the voting is concluded, I will read out the tally to get confirmation that it's correct.

Before I began, I would like to note the passing this month of two civil rights activists: the former Secretary of Labor Willard Wirtz, an attorney and law professor, whose work is best known for time as Secretary of Labor during the Kennedy and Johnson administrations from 1962 to 1969.

During his tenure, he authored the Wirtz Report, an important contribution to the understanding of age discrimination. The report was mandated by Congress in the Civil Rights Act of 1964 and became the foundation of the Age Discrimination and Employment Act.

Phyllis McClure was a long-time civil rights activist and advocate who spent her day as champion of Brown's Promise of Equal Educational Opportunities for the Poor and Disadvantaged. She joined the NAACP Legal Defense and Education Fund in 1969 and while there exposed a widespread misuse by
school districts of federal funds under Title I of the Elementary and Secondary Education Act of 1965.

In a co-authored report, McClure found that while such funding was meant to expand educational opportunities for the nation's neediest students, millions of Title I dollars were being used by school districts to make unrelated purchases and to continue racial segregation in some cases by providing black children free food, medical care, clothing, and shoes if they remained in predominantly black school districts.

Her work led to reform of the system and greater federal oversight. Before her work with the NAACP Legal Defense Fund, Ms. McClure worked in the Department of Health, Education, and Welfare's Office of Civil Rights on Desegregation Enforcement. And she transferred to the U.S. Commission on Civil Rights in 1966.

I also note that the President has proclaimed May 2010 Asian American and Pacific Islander Heritage Month to commemorate the contributions of people of Asian and Pacific Islander descent in the United States.

In 1978, Congress passed a joint resolution to commemorate Asian American Heritage Week
during the first week of May. This week was chosen because it commemorated two important anniversaries: first, the arrival of the first Japanese emigrant to America on May 7th, 1843; and the completion of the Transcontinental Railroad, which used many Chinese laborers, on May 10th, 1869.

In 1990, Congress voted to expand it from a week to a month-long celebration. And in May 1992, President George H. W. Bush designated May to be Asian Pacific American Heritage Month.

During this month, employees are encouraged to take time to recognize and celebrate the rich contributions of Asian American and Pacific Islanders to the history and development of the United States.

Everyone knows this, but I was recently advised that Maha Jweide, one of our attorney advisers in OGC, will be leaving us on June 4th for a position at the U.S. Department of Justice.

I would like to commend Ms. Jweide for her fine work during her years here and wish her well in her new position. Maha, thank you for your valuable service.

I. APPROVAL OF AGENDA

CHAIRPERSON REYNOLDS: At this point we
will proceed to approve the agenda. I move that -- well, I would like to amend it. So I would start off by offering four amendments to the agenda.

I move that the following amendments be adopted. The first is to add the rechartering of the Louisiana SAC after reconsideration of the Colorado SAC.

The second, at Vice Chair Thernstrom's request, I would like to postpone consideration of her concept paper on the attack on Asian American students at South Philadelphia High School to a later date.

Third, I would like to postpone consideration of an additional nominee to the New Jersey SAC.

And, finally, I move to postpone discussion of the New Black Panther Party enforcement report.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner
Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes with a footnote that I had suggested somebody for the Louisiana SAC. And somehow that got neglected. And I would like to put that person forth again.

CHAIRPERSON REYNOLDS: Okay. We'll look into it.

Commissioner Yaki? Commissioner Yaki?

COMMISSIONER YAKI: Yes?

CHAIRPERSON REYNOLDS: Yes?

COMMISSIONER YAKI: Yes, yes, yes.

CHAIRPERSON REYNOLDS: Okay. Commissioner Taylor?

COMMISSIONER TAYLOR: Aye.

II. STATE ADVISORY COMMITTEE ISSUES

CHAIRPERSON REYNOLDS: The motion passes.

CHAIRPERSON REYNOLDS: Okay. First up would be the SACs.

COLORADO SAC

CHAIRPERSON REYNOLDS: I move that the Commission recharter the Colorado State Advisory Committee. Under this motion, the Commission appoints
the following individuals to that Committee based on a recommendation to the Staff Director: Mary Celeste; Kyle Conrad; Jessica Corry; John Cruzat, Jr.; Barry Fagin; Vernard Gant; Krista Kafer; Elizabeth Krupa; Valery Pech Orr; Jerry Otero; and William Pendley.

Pursuant to this motion, the Commission appoints Vernard Gant as the Chair of the rechartered Colorado State Advisory Committee. Members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the necessary paperwork for the appointment.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Aye.

CHAIRPERSON REYNOLDS: Commissioner --

COMMISSIONER YAKI: I'm sorry. I'm sorry, Commissioner Mr. Chairman. My microphone was on mute because there is hospital noise in the background here.

CHAIRPERSON REYNOLDS: Okay.
COMMISSIONER YAKI: So I forgot to do it.

Is Colorado the one with Russ Walker in it?

STAFF DIRECTOR DANNENFELSER: No. That's Oregon.


CHAIRPERSON REYNOLDS: Okay. Commissioner Gaziano, please confirm that you voted in favor.

COMMISSIONER GAZIANO: I did.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: And I vote for it also. We have a single vote against the slate: Commissioner Yaki. The remaining commissioners voted for it. The motion passes.

LOUISIANA SAC
CHAIRPERSON REYNOLDS: Next up is the Louisiana State Advisory Committee. I move that the Commission appoint the following individuals to that SAC: Greg Grimsal, Lorna Bourg, Nicholas Capaldi, Jason DeCuir, Robert Garda, Michelle Ghetti, Neely Griffith, Gwendolyn Hamilton, Nadia Nedzel, Nolan Rollins, and James Stoner.

Pursuant to the motion, the Commission appoints Mr. Grimsal as the Chair of the rechartered Louisiana Advisory Committee. Yes, these members will serve as uncompensated government employees. And we also authorize the Staff Director to execute the appropriate paperwork for the appointment.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRPERSON REYNOLDS: Discussion?

COMMISSIONER GAZIANO: We should probably identify our seconds, by the way. I seconded the amendments to the agenda. Who seconded this one? Oh, Todd Gaziano.

COMMISSIONER HERIOT: Mr. Chairman, this is Gail.

CHAIRPERSON REYNOLDS: Yes?

COMMISSIONER HERIOT: I'm concerned about recommendations that I have been making to the SACs.
For example, with Ohio, I had recommended Jonathon Adler. He informed me that he got an e-mail from a staff member, I believe on a Friday afternoon, basically informing him for the first time that he had been recommended for this and telling him to get his application in by Monday.

I also recommended James Etienne Vietor for Louisiana. An e-mail did get to our regional office on that, I believe. I mean, it was certainly sent by Peter Minarik, I believe, copied that office. And Professor Vietor was never contacted.

CHAIRPERSON REYNOLDS: Okay. I will look into both of those issues and report back.

COMMISSIONER GAZIANO: Gail, do you have a concern with voting on the Louisiana slate? We can add names. What is the minimum we need on --

COMMISSIONER HERIOT: Yes. I would just as soon vote on it this time, but I would like to add Professor Vietor if he is interested. And no one has ever contacted him. So we have not yet confirmed that he is interested.

CHAIRPERSON REYNOLDS: Well, we have a process issue that I will look into, but I also want to make it clear that commissioners, their recommendations carry weight, but we don't have -- our
recommendations don't necessarily get on the slate.

COMMISSIONER HERIOT: Well, I think my recommendations tend to be people who actually know something about civil rights.

CHAIRPERSON REYNOLDS: No, I'm not suggesting that. I'm not suggesting that this individual isn't worthy or I'm not suggesting that this individual will not eventually make it onto the SAC. I just want to just make the point that none of us have the right to have someone appointed to a SAC.

STAFF DIRECTOR DANNENFELSER: Mr. Chair?

CHAIRPERSON REYNOLDS: Yes?

STAFF DIRECTOR DANNENFELSER: This is the Staff Director. I would just ask as a process issue if commissioners or the special assistants could direct recommendations to the Office of the Staff Director, to myself and preferably copy Chris Byrnes. And then we could follow up with the regional office as well.

CHAIRPERSON REYNOLDS: Let's take this stuff offline.

STAFF DIRECTOR DANNENFELSER: Okay.

CHAIRPERSON REYNOLDS: We'll look into it and see what happened and see what we can do to avoid this going forward.
Any other comments for this particular SAC?

(No response.)

CHAIRPERSON REYNOLDS: Okay. Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: I vote for it also. Commissioner Yaki is the voter against the slate. The remaining commissioners voted for it. It passes.

OREGON SAC

CHAIRPERSON REYNOLDS: Next up is Oregon. I move that the Commission recharter the Oregon State Advisory Committee. Under this motion, the Commission appoints the following individuals to that SAC:

Pursuant to the motion, the Commission appoints Glenn Thurow as Chair of this rechartered State Advisory Committee. The members will serve as uncompensated government employees. Under the motion, the Commission authorizes the Staff Director to execute the appropriate paperwork.

Is there a second? Is there a second?

COMMISSIONER TAYLOR: Commissioner Taylor. Second.

CHAIRPERSON REYNOLDS: Discussion?

COMMISSIONER YAKI: It's Commissioner Yaki.

I would like to sever Russ Walker for purposes noted in discussions.

CHAIRPERSON REYNOLDS: Why?

COMMISSIONER YAKI: Why? Because I am still troubled by his answer, by his written response, in the materials and his written response to our questioning, which I thought was rather silly given that he simply -- no one has been talking about appealing the Civil Rights Act, and that he clearly
simply just gave a wrong answer, which is no answer at all.

COMMISSIONER HERIOT: Don't you need a second before we start arguing the point?

CHAIRPERSON REYNOLDS: Well, I moved --

COMMISSIONER YAKI: Well, a motion to sever doesn't require a second.

COMMISSIONER GAZIANO: I'll second it anyway. I'm not sure what's right parliamentarily, but I'll second anyway. So let's not waste time on these procedural issues. Let's approve the rest and then vote on Mr. Walker.

CHAIRPERSON REYNOLDS: Okay. So, Commissioner Yaki, so do you intend to vote for the rest of the slate?

COMMISSIONER YAKI: No, I don't intend to vote for the slate. I would like a separate vote on Mr. Walker because of questions having been raised by several members of the Commission. And I would like an individual vote on him so that the commissioners will go on record as do I think this particular individual, who is uniquely not qualified to be on the State Advisory Committee --

CHAIRPERSON REYNOLDS: Commissioner Yaki, I'm just trying to find out what the value is in
severing him. If you're going to vote against the whole slate, let's just have a discussion and vote.

COMMISSIONER YAKI: No. I don't want anyone being able to say that they voted for the whole slate. I want a specific vote on this particular guy. Under Robert's Rules, I can demand a severance without a second, and I am doing so.

CHAIRPERSON REYNOLDS: Under Robert's Rules, I would --

COMMISSIONER YAKI: Under Robert's Rules, I can demand a severance vote on every single person.

COMMISSIONER GAZIANO: I don't think you can, Commissioner Yaki, but I seconded --


COMMISSIONER GAZIANO: I seconded your motion. I'm trying to help you. Why are you trying to screw with me?

CHAIRPERSON REYNOLDS: Folks, folks.

COMMISSIONER YAKI: You're telling me I'm not right. I know Robert's Rules.

CHAIRPERSON REYNOLDS: People, people.

COMMISSIONER YAKI: The motion to sever is very easy --

CHAIRPERSON REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: It's a privileged motion.

CHAIRPERSON REYNOLDS: Commissioner Yaki, you made your point.

Is the Parliamentarian on the line?

THE PARLIAMENTARIAN: Yes.

COMMISSIONER GAZIANO: Why do we need a ruling on this right now if I have seconded it?

COMMISSIONER KIRSANOW: I'm in favor of severing also. Kirsanow here.

CHAIRPERSON REYNOLDS: Okay. Folks, here's my concern. I think that by severing it, it creates an impression, a single commissioner can create the impression, that somehow a candidate is somehow unqualified. That may or may not be the case, but --

COMMISSIONER YAKI: We have done it before, Mr. Chairman. We did it before two or three years ago when the Commission was under a different composition. And we did it all of the time.

CHAIRPERSON REYNOLDS: We did not do it all of the time. This is a rare occurrence.

COMMISSIONER YAKI: Well, to me all the time is if someone wanted to do it, they did it. And we're doing it. I'm simply exercising that right. We
I could spend more time arguing about it or we could just do it.

CHAIRPERSON REYNOLDS: Okay. Let's revisit the issue in the future as to whether it's a -- under what circumstances it is appropriate to sever an individual from the herd. Let's do it here. And we'll --

COMMISSIONER HERIOT: No. You can't like -- you have to vote on the motion.

CHAIRPERSON REYNOLDS: Yes.

COMMISSIONER YAKI: I think we are. Commissioner Gaziano?

COMMISSIONER YAKI: A motion to sever is non-debatable and non-votable.

COMMISSIONER HERIOT: Then why is it called a motion? That's absurd.

COMMISSIONER YAKI: Because you have to simply make it. It's like a motion --

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: It's like a motion for a position of the House.

COMMISSIONER HERIOT: That's not true.

COMMISSIONER YAKI: If someone asks --

CHAIRPERSON REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: If someone asks for it, you can do it.

CHAIRPERSON REYNOLDS: Please be quiet.
Is the Parliamentarian on the line?

THE PARLIAMENTARIAN: Yes.

CHAIRPERSON REYNOLDS: Is Commissioner Yaki correct? And if you don't know the answer, that's fine, too.

THE PARLIAMENTARIAN: No. I believe that he is not entitled to it. I think he --

COMMISSIONER KIRSANOW: Can't hear.

CHAIRPERSON REYNOLDS: Okay. Very good.

Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: What are we voting on?

CHAIRPERSON REYNOLDS: Whether to sever Mr. Walker.

COMMISSIONER GAZIANO: Whether to sever.

I vote to sever.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Sever.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I vote against
severing.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Sever.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Aye.

CHAIRPERSON REYNOLDS: Okay. I vote against the motion. The motion passes. Commissioner Heriot and myself voted against the motion. The remaining commissioners voted for it. The motion passes.

So let's start with the group first.

Comments? Questions?

(No response.)

CHAIRPERSON REYNOLDS: Okay. Hearing none, Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Aye.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Aye.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: What are we voting on?

CHAIRPERSON REYNOLDS: On the group of
candidates. We have severed Mr. Walker.

COMMISSIONER HERIOT: I vote yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Mr. Taylor?

COMMISSIONER TAYLOR: Aye.

CHAIRPERSON REYNOLDS: Okay. I vote for this slate as well. Commissioner Yaki abstained. The remaining commissioners voted in favor of the motion. The motion passes.

Next up Mr. Walker. Discussion?

COMMISSIONER YAKI: Yes. This is Commissioner Yaki.

I don't believe that we sent the right question to Mr. Walker to the fact that he simply parroted back Rand Paul's rather limp response that he doesn't intend to vote for a repeal of the Civil Rights Act, minorities talking about the repeal, the 1964 Civil Rights Act.

I think a more pertinent question to ask Mr. Walker would be the one that I sent around earlier this week, which goes specifically into whether or not he believes the federal government has any power to involve itself in hiring businesses to discriminate against someone on the basis of their race, color,
national origin, religion, gender, what have you.

That to me would be a much more salient view of whether or not this person actually believes in the mission of what the Civil Rights Commission and the State Advisory Committees is all about because if he simply is there to say, "I see no federal role at all," I see no purpose for him being on the State Advisory Commission. And he has yet to answer that question.

CHAIRPERSON REYNOLDS: Does anyone have -- well, would it be appropriate, Mr. Staff Director, to read Mr. Walker's statement into the record?

STAFF DIRECTOR DANNENFELSER: I believe it would be, yes.

CHAIRPERSON REYNOLDS: Do you have it handy?

STAFF DIRECTOR DANNENFELSER: I don't think I have it in front of me at the moment.

CHAIRPERSON REYNOLDS: Okay.

STAFF DIRECTOR DANNENFELSER: The one he sent by e-mail. Are you talking about the one he sent by e-mail?

CHAIRPERSON REYNOLDS: Yes.

STAFF DIRECTOR DANNENFELSER: No, I don't have that with me, but I guess we could go get it.
CHAIRPERSON REYNOLDS: Okay. Well, that's probably not necessary. I read his e-mail. I thought that -- well, first of all, it is not clear to me that he is in any way hostile to civil rights, the notion that benefits and burdens should not be distributed on the basis of race, ethnicity.

I believe that the clarification that he provided is more than sufficient. And, for that reason --

STAFF DIRECTOR DANNENFELSER: Mr. Chair?

CHAIRPERSON REYNOLDS: I'm sorry?

STAFF DIRECTOR DANNENFELSER: I'm sorry, Mr. Chair. I did just get a copy of his statement. I could read the pertinent section.

CHAIRPERSON REYNOLDS: Yes. Please read it.

STAFF DIRECTOR DANNENFELSER: Okay. It's "I strongly support the 1964 Civil Rights Act and would oppose any effort to repeal it. It is my hope that we can as a society eradicate any vestige of racism and bigotry."

CHAIRPERSON REYNOLDS: Okay. As I said, based on his statement, I am comfortable supporting it. And I intend to do so.

COMMISSIONER YAKI: This is Commissioner
Yaki.

I would say based on his statement, he hasn't said anything that anyone wouldn't say. The question is not whether I think Mr. Walker is prejudiced or not. I do not. I do not think he harbors any ill will or is unqualified based on that.

I simply think from his viewpoint as to the role of government, as to the role of the Civil Rights Act, as to the role of statute and regulations and programs designed to deal with discrimination, he does not believe that the federal government should be involved.

I have had this same discussion with several libertarians, all of whom seem to be quoting from the same examples as if they were coming from a single set of talking points from the Rand Paul campaign.

I just want to know if this person is going to do the same thing, hence why I wanted the question asked the way I did it, which was, what does he believe the federal government's role is with regard to the regulation of private businesses who may be discriminating on the basis of race, color, national origin, religion, or gender.

I suspect very highly that his answer will
mirror what he says in his application, which is he doesn't think the federal government has a role there.

COMMISSIONER GAZIANO: Mr. Chairman, Commissioner Gaziano.

I would have preferred that question to have been asked. I would have preferred to know a little bit more about this person's views. So I'm not sure if I may abstain.

But a similar question was asked. And the answer he provided provides a fair amount of information on his views. And I just don't know that it's worth dragging this out for months more.

If he had given an opposite statement, I would have voted against him, you know. Just for the record, I think that while it may be an acceptable and very reasonable view, it isn't one that necessarily entitles you to serve on a State Advisory Committee to a Commission that is supposed to be studying enforcement of federal laws.

I think that his answer did -- you know, the perfect is the enemy of the good. And his answer did provide a fair amount of information that he is not someone who is against all federal law as it applies to private individuals.

CHAIRPERSON REYNOLDS: Okay. I strongly
support the 1964 Civil Rights Act.

Any other comments?

(No response.)

CHAIRPERSON REYNOLDS: All right. Let's vote. Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Let me pass.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I think I'm going to pass for a moment also.

CHAIRPERSON REYNOLDS: Okay. Commissioner Heriot?

COMMISSIONER HERIOT: I vote yes.

CHAIRPERSON REYNOLDS: Okay. Commissioner Yaki? Commissioner Yaki?


CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Taylor abstains.

CHAIRPERSON REYNOLDS: I vote for him. Okay. Commissioner Gaziano?

COMMISSIONER GAZIANO: Abstain.

CHAIRPERSON REYNOLDS: Commissioner
Kirsanow?

COMMISSIONER KIRSANOW: Abstain. And the reason for my abstention is that due to my schedule, I have not had an opportunity to really take a good, hard look at this. I cannot comment on this candidate one way or another.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRPERSON REYNOLDS: I'm shocked. Okay. So what do we have? We have three abstentions. We have one vote against him and two votes in favor. He's on the SAC.

III. PROGRAM PLANNING

APPROVAL OF BRIEFING REPORT ON HEALTH CARE DISPARITIES

CHAIRPERSON REYNOLDS: Okay. Next up. I move that the Commission approve for publication part A of the report produced by staff and reflecting commissioner and panelist input on the briefing held on June 12th, 2009.

Part A as distributed in draft form to commissioners contains an executive summary of the issue and why the Commission chose to conduct this briefing and copies of the panelists' written statements.
Is there a second?

COMMISSIONER TAYLOR: Taylor seconds.

CHAIRPERSON REYNOLDS: Thank you.

Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I'm a little confused here. We're voting on exactly what?

CHAIRPERSON REYNOLDS: Part A.

COMMISSIONER GAZIANO: Let me clarify, too, because the findings and recommendations were included in one version. I assume that we're not voting on findings and recommendations.

CHAIRPERSON REYNOLDS: Correct.

COMMISSIONER GAZIANO: Just our normal part A without findings and recs. I vote aye on that.

CHAIRPERSON REYNOLDS: Okay. Commissioner Heriot?
COMMISSIONER HERIOT: I'll abstain.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Aye.

CHAIRPERSON REYNOLDS: I vote for it also.

We have three abstentions, three votes in support of the motion. The motion passes.

APPROVAL OF FINDINGS & RECOMMENDATIONS ON EDUCATIONAL EFFECTIVENESS OF HISTORICALLY BLACK COLLEGES & UNIVERSITIES BRIEFING REPORT

CHAIRPERSON REYNOLDS: Next up is approval of the Commission's findings and recommendations for the briefing report on the educational effectiveness of historically black colleges and universities.

The commission will vote individually on each finding and recommendation. Those findings and recommendations receiving a majority vote will be included in the report with a vote tally and a sentence explaining any vote in opposition for that item.

These draft findings and recommendations were distributed to commissioners on behalf of Commissioner Heriot on April 15th, 2010 and again in
the Staff Director's meeting of May 6th and May 20th.

In order to release the HBCU report concurrently with the STEM report, I propose that commissioners' concurring and dissenting statements to this report be due on July 11th. And rebuttals will be on August 11th. We anticipate deciding on the STEM report at the June 11th business meeting.

These are the first findings. I move that we approve the following findings. The first one is "An historically black college or university is a college or university that existed before 1964 that has an historic or contemporary mission of educating African Americans while being open to all students."

"There are currently 103 HBCUs in the United States. Forty are public four-year colleges and universities. Forty-nine are private. The remaining 14 are 2-year colleges, 11 of which are public and 3 are private."

Is there a second?

COMMISSIONER HERIOT: Second with the friendly amendment of spelling out the word "Forty" at the beginning of the sentence.

STAFF DIRECTOR DANNENFELSER: Mr. Chairman?

CHAIRPERSON REYNOLDS: Yes?
STAFF DIRECTOR DANNENFELSER: Just a clarification on the second line of that finding before the word "historic"? Was it supposed to be the word "and" or "or"?

COMMISSIONER HERIOT: I think "and." But I think Jerry said "or."

STAFF DIRECTOR DANNENFELSER: Right. Okay.

CHAIRPERSON REYNOLDS: Okay. Thanks for the correction. Okay. Commissioner Gaziano, how do you vote?

THE REPORTER: This is the Court Reporter. Could I just ask who asked the question, the gentleman?

CHAIRPERSON REYNOLDS: Oh. That was the Staff Director.

THE REPORTER: The Staff Director. Okay. Thank you.

CHAIRPERSON REYNOLDS: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner
Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: And I vote for it also. It passes.

Next up, "Many distinguished and highly successful Americans have graduated from one of these institutions, including high percentages of African American congressmen, professors, CEOs, lawyers, and judges.

"Indeed, during the days of legally mandated segregation, academically talented African American students desiring university degrees often had few or no options other than HBCUs.

"Today's African American students have many more choices, among them universities formally segregated by law or customs, leading some commentators to question what role HBCUs should play now and in the future."

Is there a second?

COMMISSIONER HERIOT: Second.
CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Abstain.

CHAIRPERSON REYNOLDS: And I vote for it.

So we have two abstentions, four votes in favor of the motion. The motion passes.

Next up I move that the following finding be adopted, "According to survey data collected by the National Study for Student Engagement, students at historically black colleges and universities report higher levels of engagement on some survey dimensions than their counterparts at non-HBCUs."
"For example, according to a 2004 and 2005 National Study for Student Engagement survey from the survey data from 37 HBCUs, African American students reported more contact with faculty than at non-HBCUs.

"Other studies also show that African American students at HBCUs are more likely to be involved in faculty research projects than are African American students at non-HBCUs."

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Commissioner Taylor?


COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: And I vote for it also. We have one abstention. The motion passes.

Finding number 4, "Generally HBCUs have less funding and fewer support resources for their students than comparable non-HBCUs. A study conducted by one panelist, Dr. Kim, nonetheless, found no significant differences in academic outcomes between HBCUs and their wealthier non-HBCUs."

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRPERSON REYNOLDS: Commissioner Gaziano? I'm sorry. Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.
CHAIRPERSON REYNOLDS: Commissioner

Taylor?

COMMISSIONER TAYLOR: Aye.

CHAIRPERSON REYNOLDS: And I vote for the motion. We have one abstention. The remaining commissioners support the motion. It passes.

Finding number 5, "HBCUs have an average graduation rate of 55 percent, which is lower than the 63 percent average graduation rate for non-HBCUs. This may occur, in part, because of HBCUs' generally liberal admissions policies and their average student weekly academic profiles.

"However, for similarly situated students, attendance at an HBCU versus a non-HBCU has no differential effect on individual African American students' chances of obtaining a Bachelor's degree."

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRPERSON REYNOLDS: And I vote for it also. We have one vote against the motion. The remaining commissioners supported it. It passes.

Finding 6, "HBCUs succeed in educating and graduating disproportionately large numbers of African American students, in part, because their admission policies do not create the situation of academic mismatch often found at non-HBCUs.

"Many African American students granted preferential admission at elite non-HBCUs, even when they score well compared to national norms, are competitively disadvantaged and developed ability relative to their school's student body who are admitted without consideration of racial or ethnic preferences. Thus at some of these institutions, academically well-prepared non-Asian minority
students, including African Americans, have weaker performance and grades than might occur in settings where the competition is in line with their current academic preparation."

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRPERSON REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Abstain.

CHAIRPERSON REYNOLDS: I vote for it. We have one abstention. We have one vote against it. The remaining commissioners supported it. The motion
passes.

"HBCUs also produce a disproportionately high share of African American students who receive degrees in science, engineering, technologies, or mathematics, also known as STEM fields.

"Though only about 20 percent of African American college students attend HBCUs, 40 percent of all African American engineers receive their degree from an HBCU. Similarly, of the top 21 undergraduate producers of African American science Ph.Ds, 17 were HBCUs.

"The prevalence of academic mismatch caused by non-HBCUs granting preferential admission to certain minority students, as opposed to overt discrimination against African Americans at non-HBCUs or African American students' lack of information in science appears to best explain HBCUs' successes in producing African American STEM graduates."

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.
CHAIRPERSON REYNOLDS: Commissioner

Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON REYNOLDS: Commissioner

Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON REYNOLDS: Commissioner

Taylor?

COMMISSIONER TAYLOR: Aye.

CHAIRPERSON REYNOLDS: I have joined Commissioner Yaki in abstaining. We have two abstentions. The remaining commissioners voted for it. It passes.

We move on now to recommendations. I move that the Commission approve all the recommendations. We'll start with recommendation 1, which reads, "Prospective African American college students and their families should consider the literature on student engagement at HBCUs when making college applications and matriculation decisions. African American students interested in STEM majors may also particularly wish to consider attending an HBCU so as to avoid including the negative effects of academic
mismatch that non-HBCUs have no interest in disclosing."

Is there a second?

COMMISSIONER GAZIANO: I second, but I --
oh.

COMMISSIONER HERIOT: Go ahead.

COMMISSIONER GAZIANO: Gail?

COMMISSIONER HERIOT: If you've got something to add --

COMMISSIONER GAZIANO: Yes. Well, I possibly do. I just want to raise it because I'm not sure.

In the last sentence -- I'll read it. And then up to the point where I -- "African American students interested in STEM majors may also particularly wish to consider attending an HBCU."

That's as much as it reads so far.

I'm wondering about this addition, "or other college that does not provide preferential admissions based on race." That would be the possible addition.

And then the rest of the sentence says that "They avoid experiencing the negative effects of academic mismatch." And then this is the possible inconsistency, "that non-HBCUs have no interest in
disclosing."

COMMISSIONER HERIOT: Wait a second, though. I want to go further into that. It's not just schools that don't discriminate but schools, even if a school does discriminate, a particular student has credentials that would put them in the middle of that school, the school might discriminate, but it's not going to affect that student. So maybe we want to go a little further with your point.

COMMISSIONER GAZIANO: Sure. Do you have a counter? Now, it's true that they may not be able to find out how many schools provide preferences, but there are probably a few other than the HBCUs --

COMMISSIONER HERIOT: Yes. They don't need to know. What they need to know is what the average academic profile of a student is there.

COMMISSIONER GAZIANO: Okay. Then maybe it should be "may particularly wish to consider attending an HBCU or other college in which their academic" -- what should we say, "preparedness matches the" or "as near the median of the applicant or the admitted pool, the admissions pool"? How would you --

COMMISSIONER HERIOT: Not the admissions pool but the actual students who attend.

COMMISSIONER GAZIANO: Yes, the admitted
students or something like that.

CHAIRPERSON REYNOLDS: Okay. How does everyone feel about that?

COMMISSIONER YAKI: I have a question for the Staff Director.

STAFF DIRECTOR DANNENFELSER: Yes? This is the Staff director.

COMMISSIONER YAKI: This is Commissioner Yaki.

Which witnesses at this hearing, which was so many years ago I can't remember, testified about academic mismatch in the context of this hearing?

COMMISSIONER HERIOT: There are things in the record on this. They weren't actually --

COMMISSIONER YAKI: I'm not asking about the record. I'm asking about who testified at the hearing, Commissioner Heriot, which you were not at.

STAFF DIRECTOR DANNENFELSER: Professor Sanders, I believe, did. And I'm not -- I believe he did, but I'm not positive about that.

COMMISSIONER YAKI: Was he at the HBCU hearing?

STAFF DIRECTOR DANNENFELSER: Oh. I'm sorry. He was at STEM.

COMMISSIONER YAKI: I'm talking about the
HBCU.

COMMISSIONER HERIOT: Well, what's important is what is in the record.

COMMISSIONER YAKI: I'm asking who testified about this at the HBCU hearing.

COMMISSIONER HERIOT: And I think that's irrelevant.

CHAIRPERSON REYNOLDS: Is the answer no one?

STAFF DIRECTOR DANNENFELSER: I don't know, Mr. Chairman.

CHAIRPERSON REYNOLDS: Okay. The answer is he does not know.

COMMISSIONER YAKI: I think the answer is no one.

CHAIRPERSON REYNOLDS: Okay.

COMMISSIONER YAKI: And, thus, three years later, we have converted a hearing on this into something entirely different through "additions to the record" that I'm not too sure were actually in the record at the time that the record for this hearing had closed.

I have serious concerns about what has been done to this report and the injection of the Sanders' and others' viewpoint about academic mismatch
with regard to the HBCUs because that actually was not
the point of the HBCU hearing.

So that is why I am voting no on pretty
much every single part of this report and why I
particularly object to the additions being written on
the sly here by Commissioners Gaziano and Heriot that
would seem to inject even more of their particular
viewpoints into this report on a hearing that they
have never attended in which this subject did not come
up.

CHAIRPERSON REYNOLDS: Commissioner Yaki,
commissioners are free to enter information into the
record. It is not the first time that it has been
done. And it is not the last. And it was not done
under the cover of darkness.

COMMISSIONER YAKI: Well, Mr. Chair, this
is Commissioner Yaki.

With all due respect, I don't know exactly
when this information came into the record given that
the record closed some three years ago.

Now, if you're saying that the record has
been opened for three years, then let's put that on
the record --

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: -- quite clearly.
CHAIRPERSON REYNOLDS: Commissioner Yaki, if I understand you, you're saying that you don't know when the information was entered into the record.

COMMISSIONER YAKI: That's why I asked the Staff Director. My recollection is that this subject with regard to HBCUs did not come up during that hearing.

CHAIRPERSON REYNOLDS: I'm asking you --

COMMISSIONER YAKI: And with the Commission that we had at the time, I do not know if the Sanders research if you want to call it that was put into the record within the time frame for that particular hearing.

I am objecting because I understand that you can't reach outside of the record if you so want. And I would say that it's fine. I would say that's fine for commissioner statements, not for the body of a report where we follow certain rules and procedures in terms of when --

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: -- the record is open and when the record is closed. That's all I'm asking.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: That's all.

CHAIRPERSON REYNOLDS: I'm just trying to
make sure I understand what you are saying. You're saying that you don't know when this information was entered into the record. And, by implication, you don't know if it was entered into the record during the period when the record was open or if it was slipped in after.

COMMISSIONER YAKI: And that's why I'm asking the question, Mr. Chair. I did not assert that it did or did not. I'm saying that my recollection is that none of this was ever brought up during the hearing.

If it was brought up after the hearing, I wanted to make sure that it was entered into the record during the time that the record was actually open unless by some mysterious force, we reopened that record or held it open for the three or four years that it has been since this hearing commenced. And at least two people I know who testified have since retired and gone elsewhere.

I mean, this is the danger and the folly of doing reports that are so late and so out of date that they become vehicles for others with other agendas to hijack --

COMMISSIONER GAZIANO: Well, I have --

COMMISSIONER YAKI: -- that I believe will
not continue in the future beyond the end of this year.

CHAIRPERSON REYNOLDS: Commissioner Yaki, if it were hijacked, that information very well could have come in during the period when the record was opened if I understand you right. And if that is the case --

COMMISSIONER YAKI: Then tell me. Then tell me. Then tell me. Then tell me. That's all I'm asking.

CHAIRPERSON REYNOLDS: Commissioner Yaki? Commissioner Yaki?

COMMISSIONER YAKI: I'm asking is for you to --

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Just show it. Let me finish my remarks. Show me the information. Put it out there.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: If you get it back --

CHAIRPERSON REYNOLDS: Commissioner Yaki, I have listened to you. I have not interrupted you. You don't know when the information was entered into the record. You don't know if anything that was done was inappropriate. And if that is the case --
COMMISSIONER YAKI: The Commission --

CHAIRPERSON REYNOLDS: If that is the case, if you would like to look into it, that's fine. But to suggest that Commissioners Gaziano and Heriot have done something that is inappropriate in the absence of any evidence I think is problematic.

COMMISSIONER GAZIANO: Mr. Chairman?

COMMISSIONER YAKI: Wait. Mr. Chair, let me just quickly respond. One, I did not say that the information was inappropriate or not. I simply asked a question of the Staff Director, who did not have it, because my recollection was entirely different, number one.

COMMISSIONER GAZIANO: Mr. Chair? Mr. Chair?

CHAIRPERSON REYNOLDS: You accused --

COMMISSIONER YAKI: No. In terms of my accusations of Commissioners Gaziano and Heriot, I absolutely do stand by everything that I said with regard to the fact that they have taken a report that I know the intention of this -- if you're telling me that the intention and scope of the original hearing was this, then please correct my misimpression, Mr. Chair.

But I'm telling you right now this was not
the original intention. This was not the original scope. And I absolutely stand by my statement that Commissioners Heriot and Gaziano are hijacking it for their own personal political viewpoint.

STAFF DIRECTOR DANNENFELSER: Mr. Chair?

CHAIRPERSON REYNOLDS: Yes?

STAFF DIRECTOR DANNENFELSER: This is the Staff Director.

I do recall reading back through the transcripts and some of the e-mail traffic relating to this report. And there was a period, I believe in the Summer of 2007, when the previous Staff Director sent an e-mail out to commissioners in which he reopened the period for submitting additional information. And I believe that the information in question may have been submitted during that period of time.

COMMISSIONER GAZIANO: Mr. Chair? This is Commissioner Gaziano.

CHAIRPERSON REYNOLDS: Yes?

COMMISSIONER GAZIANO: I think most of the previous objections are offensive and ridiculous. But, maybe more importantly, whatever our supposed rules are that we can put aside if a majority of us choose to about linking findings only to the record and ignoring anything that we actually know in our
heads, I think it's also rather silly to suggest that when the Commission is making recommendations to Congress and to the Executive Branch, that we are not allowed to use our own independent knowledge, which is the reason we were put on the Commission.

So I just think that as it applies to recommendations, the assumption that underlies the objection is not a sound one. Let me put it that way.

CHAIRPERSON REYNOLDS: Well, and --

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRPERSON REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I'd like to say something as well here. And, again, I think the basic problem here is that the assumption underlying this discussion is simply incorrect. The assumption that it is inappropriate for members of the Commission to put things into the record or to direct a briefing in a direction that they believe is likely to be fruitful, that's incorrect.

We are supposed to be taking what we know about civil rights and what we know about the issues and making them part of a report. The notion that some earlier Commission many years ago may have held a briefing for a purpose, you know, maybe they did it to
impress Jodie Foster. I don't know. But it doesn't matter.

What matters is that we turn out a report that says something useful.

CHAIRPERSON REYNOLDS: And I'll --

COMMISSIONER YAKI: That report could have been turned out four years ago. Then you could have had your own little report on your own little pet projects and gone your own merry little way.

COMMISSIONER GAZIANO: The objection --

COMMISSIONER YAKI: All we have is six more months of dealing with this.

COMMISSIONER GAZIANO: The obligation we have now is a duty of each commissioner currently serving to issue reports that are as good as we can make them. That's it.

CHAIRPERSON REYNOLDS: Okay. Commissioner Gaziano, how do you vote?

COMMISSIONER HERIOT: Wait. We're still working on --

COMMISSIONER GAZIANO: Commissioner Heriot, do you have an additional phrase or do you want me to try?

COMMISSIONER HERIOT: Why don't you give it a try because I've got --
COMMISSIONER YAKI: It could be e-mailed -- point of order. Hold on. Is this going to be e-mailed out? Is this going to be e-mailed out?

COMMISSIONER GAZIANO: No, it will not be.

Let's just agree to it on the phone since this is a phone meeting. We do it orally at meetings, too.

CHAIRPERSON REYNOLDS: Okay.

COMMISSIONER YAKI: At meetings we often have a chance to look at many more documents other than what we may currently or not currently have on the phone.

COMMISSIONER GAZIANO: "African American students interested in doing" --

COMMISSIONER YAKI: We do it in a way that is designed to --

COMMISSIONER HERIOT: No. It's designed to delay. That's what you're talking about, Commissioner Yaki. You're talking about designing --

COMMISSIONER YAKI: These phone meetings --

COMMISSIONER HERIOT: -- this to delay.

COMMISSIONER YAKI: These phone meetings do not create transparency. They do not create open government. I've said it time and time again.

CHAIRPERSON REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: When you're making these kinds of --

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: -- changing on the fly, all you're simply doing is --

CHAIRPERSON REYNOLDS: Commissioner Yaki, we are amending --

COMMISSIONER YAKI: -- demeaning the Commission, --

CHAIRPERSON REYNOLDS: -- changing the recommendation on a --

COMMISSIONER YAKI: -- transparency, and open government even more.

CHAIRPERSON REYNOLDS: Okay. Can we have some proposed language to vote on, please?

COMMISSIONER GAZIANO: If I'm not interrupted again. "African American students interested in STEM majors may also particularly wish to consider attending an HBCU or other college in which their academic" --

CHAIRPERSON REYNOLDS: Operation?

COMMISSIONER HERIOT: No, no. What we want to do is start with the other, "attending a college or university at which their academic credentials match those of other students."
COMMISSIONER GAZIANO: "So that they avoid experiencing the negative effects of academic mismatch that non-HBCUs have no interest in disclosing."

COMMISSIONER HERIOT: Why don't we strike that last clause?

COMMISSIONER GAZIANO: Okay. So that it will end "So that they avoid experiencing the negative effects of academic mismatch."

COMMISSIONER HERIOT: Period.

COMMISSIONER GAZIANO: Period.

COMMISSIONER HERIOT: Okay. So what I would say is "African American students interested in STEM majors may also particularly wish to consider a college or a university, including an HBCU, at which their academic credentials.""

COMMISSIONER GAZIANO: "Match those of other students at the relevant institution."

COMMISSIONER HERIOT: "Match those of the typical student." Does that work?

COMMISSIONER GAZIANO: That works for me.

COMMISSIONER HERIOT: Let me read it out loud here. "African American students interested in STEM majors may also particularly wish to consider attending a college or a university, including an HBCU, at which their academic credentials match those
of the typical student so that they avoid experiencing
the negative effects of academic mismatch."

COMMISSIONER GAZIANO: Call the question.

CHAIRPERSON REYNOLDS: All right.

Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON REYNOLDS: Is the operator on
the line?

COMMISSIONER HERIOT: No, but I think
there's a herd of zebras running by or something.

CHAIRPERSON REYNOLDS: Is the operator on
the line?

COMMISSIONER GAZIANO: Keep going, Mr.
Chair. I think we can just vote.

CHAIRPERSON REYNOLDS: Okay. Commissioner
Gaziano?

COMMISSIONER GAZIANO: Yes.

COMMISSIONER YAKI: Is there going to be a
discussion on this piece of amendment that we're asked
to vote on?

COMMISSIONER GAZIANO: I called the
question. There was some herd of something running
by, but there was no expression --

COMMISSIONER YAKI: I couldn't hear it
because I had interference on my line. So what --
COMMISSIONER GAZIANO: I see.

(Laughter.)

CHAIRPERSON REYNOLDS: Commissioner Yaki, would you like to comment on the recommendation?

COMMISSIONER YAKI: I'm not just sure exactly what is going on other than the -- what we have here is --

CHAIRPERSON REYNOLDS: Failure to communicate.

COMMISSIONER YAKI: -- complete bastardization of a hearing that had completely different intents and has been manipulated in such a way to fulfill the personal viewpoints of a few commissioners in conjunction with another report to be issued later.

This is exactly why this report should have been issued years ago. This is exactly why this report, which would have had some utility, I believe, in some of the discussion that Congress has had over the past three years if it had come out on time, but now its utility will be almost zero because no one will listen to this. No one will pay attention to it since it's simply crammed full of the personal agendas of members of this Commission.

I am very grateful that that will come to
an end sooner, rather than later.

CHAIRPERSON REYNOLDS: It will always come
to an end. Our reign of terror will come to an end
soon. And yours will come to an end after that.

Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes for the third
time.

CHAIRPERSON REYNOLDS: Commissioner
Kirsanow?

COMMISSIONER KIRSANOW: Yes. And, Mr.
Chair, I need to sign off now.

CHAIRPERSON REYNOLDS: Okay. Commissioner
Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No. And I am signing
off with Commissioner Kirsanow.

CHAIRPERSON REYNOLDS: Commissioner
Taylor?

COMMISSIONER TAYLOR: Abstain.

CHAIRPERSON REYNOLDS: Okay. I vote for
it. One abstention, one no, three for, in support.
It passes. Okay. Two more, and then we're done.

STAFF DIRECTOR DANNENFELSER: Mr. Chair, I
believe we've lost quorum.
CHAIRPERSON REYNOLDS: Why?

STAFF DIRECTOR DANNENFELSER: Commissioners Kirsanow and Yaki both got off.

CHAIRPERSON REYNOLDS: So there is Gaziano, Heriot.

COMMISSIONER HERIOT: Four. He's right. You don't have a quorum.

CHAIRPERSON REYNOLDS: Okay. Well, to be continued.

COMMISSIONER HERIOT: Okay.

CHAIRPERSON REYNOLDS: Mr. Staff Director, please make a note that we still have the second and third recommendation to complete as well as the calendar for 2011. Folks, have a good day.

COMMISSIONER HERIOT: Wait, wait, wait. Is there anything on the agenda that doesn't require a quorum?

CHAIRPERSON REYNOLDS: No. Everything else requires a vote.

COMMISSIONER HERIOT: Okay.

CHAIRPERSON REYNOLDS: But hold on. Let me go through to make sure.

COMMISSIONER GAZIANO: May I have questions? We didn't get --

CHAIRPERSON REYNOLDS: No. Actually, I am
wrong. There is one item left. And that is an update on the Title IX project.

COMMISSIONER GAZIANO: Could I also just -- maybe it's more of a point of information. Since we didn't get to the calendar, I asked that April, I think it's -- let me see whether it's 8 or 9 -- April 8 be substituted for April 15th, also since it's more closer to the midpoint of March 11 and May 15.

I didn't receive any objection to that. So the next time those dates are circulated, would you ask the Staff Director unless there's some reason not to do so that you circulate April 8th as the proposed meeting date next year?

STAFF DIRECTOR DANNENFELSER: I think we might have been looking at when Easter fell that year. So I have to go back and look at that.

COMMISSIONER GAZIANO: I'm sorry? You were looking at what?

STAFF DIRECTOR DANNENFELSER: When Easter came that year.

COMMISSIONER GAZIANO: April 8th is better for that, I think, than the -- the 15th is closer to Easter. It's the Friday before Palm Sunday, I believe.

STAFF DIRECTOR DANNENFELSER: I think,
then, we were looking at what happened with the -- I
think we had a telephonic meeting in that month also,
that perhaps the telephonic meeting -- I guess we
could still do the telephonic meeting whenever. And
it might be three weeks in between.

COMMISSIONER HERIOT: Yes. That's fine.
COMMISSIONER GAZIANO: Yes. I'd prefer
that. Thanks.

STAFF DIRECTOR DANNENFELSER: Okay.

CHAIRPERSON REYNOLDS: Okay. Mr. Staff
Director, question for you. Next up is an update of
the Title IX project. Can you have that discussion
without the need to go into closed session?

STAFF DIRECTOR DANNENFELSER: We could
have a basic discussion. If people want to discuss
individual personnel matters, I believe we will have
to go into executive.

CHAIRPERSON REYNOLDS: And we don't have a
quorum to do that. Is it worth having this
conversation? Because I do believe you have some
important information that relates to personnel.
Okay.

STAFF DIRECTOR DANNENFELSER: It might be
better to do that when we have a quorum.

CHAIRPERSON REYNOLDS: Okay. Fine. Let
me rephrase it. Let's also postpone a discussion of the update on Title IX until the next meeting, when we have a quorum.

That being the case, we are done. Folks, have a very good weekend.

(Whereupon, the foregoing matter was concluded at 12:44 p.m.)