

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, MAY 28, 2010

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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

## C-O-N-T-E-N-T-S

AGENDA ITEM	PAGE
I. Approval of Agenda	8
II. State Advisory Committee Issues	10
- Colorado SAC	10
- Louisiana SAC	12
- Oregon SAC	16
III. Program Planning	30
- Approval of Briefing Report on Health Care Disparities	32
- Approval of Findings & Recommendations on Educational Effectiveness of Historically Black Colleges & Universities Briefing Report	32
IV. Adjourn	

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

2 11:42 a.m.

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

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

12 Chairman Reynolds, you may begin.

13 CHAIRPERSON REYNOLDS: Thank you.

14 The meeting will come to order. This is a  
15 meeting of the U.S. Commission on Civil Rights. It is  
16 11:42 a.m. Eastern Standard Time on March 28th, 2010.

17 We're having a telephonic meeting with all  
18 commissioners participating from different locations.

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

24 I want to call the names of the remaining  
25 commissioners to confirm that we have a quorum.

1 Commissioner Gaziano?

2 COMMISSIONER GAZIANO: Here.

3 CHAIRPERSON REYNOLDS: Commissioner  
4 Kirsanow?

5 COMMISSIONER KIRSANOW: Here.

6 CHAIRPERSON REYNOLDS: Commissioner  
7 Heriot?

8 COMMISSIONER HERIOT: Here.

9 CHAIRPERSON REYNOLDS: Commissioner  
10 Taylor? Commissioner Taylor?

11 COMMISSIONER TAYLOR: Yes. Can you hear  
12 me?

13 CHAIRPERSON REYNOLDS: I do now.

14 COMMISSIONER TAYLOR: Okay.

15 CHAIRPERSON REYNOLDS: And Commissioner  
16 Yaki?

17 COMMISSIONER YAKI: Here.

18 CHAIRPERSON REYNOLDS: Okay. Commissioner  
19 Yaki is on the line. A quorum is present. Is the  
20 Staff Director present?

21 STAFF DIRECTOR DANNENFELSER: Present.

22 CHAIRPERSON REYNOLDS: Is the Court  
23 Reporter on the line?

24 THE REPORTER: Present.

25 CHAIRPERSON REYNOLDS: Excellent. Okay.

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

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

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

20 Phyllis McClure was a long-time civil  
21 rights activist and advocate who spent her day as  
22 champion of Brown's Promise of Equal Educational  
23 Opportunities for the Poor and Disadvantaged. She  
24 joined the NAACP Legal Defense and Education Fund in  
25 1969 and while there exposed a widespread misuse by

1 school districts of federal funds under Title I of the  
2 Elementary and Secondary Education Act of 1965.

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

12 Her work led to reform of the system and  
13 greater federal oversight. Before her work with the  
14 NAACP Legal Defense Fund, Ms. McClure worked in the  
15 Department of Health, Education, and Welfare's Office  
16 of Civil Rights on Desegregation Enforcement. And she  
17 transferred to the U.S. Commission on Civil Rights in  
18 1966.

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

24 In 1978, Congress passed a joint  
25 resolution to commemorate Asian American Heritage Week

1 during the first week of May. This week was chosen  
2 because it commemorated two important anniversaries:  
3 first, the arrival of the first Japanese emigrant to  
4 America on May 7th, 1843; and the completion of the  
5 Transcontinental Railroad, which used many Chinese  
6 laborers, on May 10th, 1869.

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

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

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

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

24 I. APPROVAL OF AGENDA

25 CHAIRPERSON REYNOLDS: At this point we



1 will proceed to approve the agenda. I move that --  
2 well, I would like to amend it. So I would start off  
3 by offering four amendments to the agenda.

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

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

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

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

18 Is there a second?

19 COMMISSIONER GAZIANO: Second.

20 CHAIRPERSON REYNOLDS: Discussion?

21 (No response.)

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

24 COMMISSIONER GAZIANO: Yes.

25 CHAIRPERSON REYNOLDS: Commissioner

1 Kirsanow?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRPERSON REYNOLDS: Commissioner

4 Heriot?

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

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

11 Commissioner Yaki? Commissioner Yaki?

12 COMMISSIONER YAKI: Yes?

13 CHAIRPERSON REYNOLDS: Yes?

14 COMMISSIONER YAKI: Yes, yes, yes.

15 CHAIRPERSON REYNOLDS: Okay. Commissioner

16 Taylor?

17 COMMISSIONER TAYLOR: Aye.

18 II. STATE ADVISORY COMMITTEE ISSUES

19 CHAIRPERSON REYNOLDS: The motion passes.

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

22 COLORADO SAC

23 CHAIRPERSON REYNOLDS: I move that the  
24 Commission recharter the Colorado State Advisory  
25 Committee. Under this motion, the Commission appoints

1 the following individuals to that Committee based on a  
2 recommendation to the Staff Director: Mary Celeste;  
3 Kyle Conrad; Jessica Corry; John Cruzat, Jr.; Barry  
4 Fagin; Vernard Gant; Krista Kafer; Elizabeth Krupa;  
5 Valery Pech Orr; Jerry Otero; and William Pendley.

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

13 Is there a second?

14 COMMISSIONER GAZIANO: Second.

15 CHAIRPERSON REYNOLDS: Discussion?

16 (No response.)

17 CHAIRPERSON REYNOLDS: Commissioner  
18 Gaziano, how do you vote?

19 COMMISSIONER GAZIANO: Aye.

20 CHAIRPERSON REYNOLDS: Commissioner --

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

25 CHAIRPERSON REYNOLDS: Okay.



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

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

14                   Is there a second?

15                   COMMISSIONER GAZIANO: Second.

16                   CHAIRPERSON REYNOLDS: Discussion?

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

21                   COMMISSIONER HERIOT: Mr. Chairman, this  
22 is Gail.

23                   CHAIRPERSON REYNOLDS: Yes?

24                   COMMISSIONER HERIOT: I'm concerned about  
25 recommendations that I have been making to the SACs.

1 For example, with Ohio, I had recommended Jonathon  
2 Adler. He informed me that he got an e-mail from a  
3 staff member, I believe on a Friday afternoon,  
4 basically informing him for the first time that he had  
5 been recommended for this and telling him to get his  
6 application in by Monday.

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

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

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

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

22 CHAIRPERSON REYNOLDS: Well, we have a  
23 process issue that I will look into, but I also want  
24 to make it clear that commissioners, their  
25 recommendations carry weight, but we don't have -- our

1 recommendations don't necessarily get on the slate.

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

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

11 STAFF DIRECTOR DANNENFELSER: Mr. Chair?

12 CHAIRPERSON REYNOLDS: Yes?

13 STAFF DIRECTOR DANNENFELSER: This is the  
14 Staff Director. I would just ask as a process issue  
15 if commissioners or the special assistants could  
16 direct recommendations to the Office of the Staff  
17 Director, to myself and preferably copy Chris Byrnes.

18 And then we could follow up with the regional office  
19 as well.

20 CHAIRPERSON REYNOLDS: Let's take this  
21 stuff offline.

22 STAFF DIRECTOR DANNENFELSER: Okay.

23 CHAIRPERSON REYNOLDS: We'll look into it  
24 and see what happened and see what we can do to avoid  
25 this going forward.

1 Any other comments for this particular  
2 SAC?

3 (No response.)

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

6 COMMISSIONER GAZIANO: Yes.

7 CHAIRPERSON REYNOLDS: Commissioner  
8 Kirsanow?

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRPERSON REYNOLDS: Commissioner  
11 Heriot?

12 COMMISSIONER HERIOT: Yes.

13 CHAIRPERSON REYNOLDS: Commissioner Yaki?

14 COMMISSIONER YAKI: No.

15 CHAIRPERSON REYNOLDS: Commissioner  
16 Taylor?

17 COMMISSIONER TAYLOR: Yes.

18 CHAIRPERSON REYNOLDS: I vote for it also.

19 Commissioner Yaki is the voter against the slate.

20 The remaining commissioners voted for it. It passes.

21 OREGON SAC

22 CHAIRPERSON REYNOLDS: Next up is Oregon.

23 I move that the Commission recharter the Oregon State  
24 Advisory Committee. Under this motion, the Commission  
25 appoints the following individuals to that SAC:



1 Beverly Bolensky Dean, Ross Day, Richard Elfering,  
2 Thompson Faller, William Harbaugh, Marilyn Johnston,  
3 Christina Martin, Andrea Meyer, Kristian Roggendorf,  
4 David Swanson, Glenn Thurow, and Russ Walker.

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

11 Is there a second? Is there a second?

12 COMMISSIONER TAYLOR: Commissioner Taylor.

13 Second.

14 CHAIRPERSON REYNOLDS: Discussion?

15 COMMISSIONER YAKI: It's Commissioner  
16 Yaki.

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

19 CHAIRPERSON REYNOLDS: Why?

20 COMMISSIONER YAKI: Why? Because I am  
21 still troubled by his answer, by his written response,  
22 in the materials and his written response to our  
23 questioning, which I thought was rather silly given  
24 that he simply -- no one has been talking about  
25 appealing the Civil Rights Act, and that he clearly

1 simply just gave a wrong answer, which is no answer at  
2 all.

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

5 CHAIRPERSON REYNOLDS: Well, I moved --

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

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

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

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

24 CHAIRPERSON REYNOLDS: Commissioner Yaki,  
25 I'm just trying to find out what the value is in

1 severing him. If you're going to vote against the  
2 whole slate, let's just have a discussion and vote.

3 COMMISSIONER YAKI: No. I don't want  
4 anyone being able to say that they voted for the whole  
5 slate. I want a specific vote on this particular guy.

6 Under Robert's Rules, I can demand a severance  
7 without a second, and I am doing so.

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

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

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

14 COMMISSIONER YAKI: Check in Robert's  
15 Rules, Gaziano. Check in Robert's Rules.

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

19 CHAIRPERSON REYNOLDS: Folks, folks.

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

22 CHAIRPERSON REYNOLDS: People, people.

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

25 CHAIRPERSON REYNOLDS: Commissioner Yaki?

1                   COMMISSIONER YAKI:  It's a privileged  
2 motion.

3                   CHAIRPERSON REYNOLDS:  Commissioner Yaki,  
4 you made your point.

5                   Is the Parliamentarian on the line?

6                   THE PARLIAMENTARIAN:  Yes.

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

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

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

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

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

23                   COMMISSIONER YAKI:  Well, to me all the  
24 time is if someone wanted to do it, they did it.  And  
25 we're doing it.  I'm simply exercising that right.  We

1 could spend more time arguing about it or we could  
2 just do it.

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

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

10 CHAIRPERSON REYNOLDS: Yes.

11 COMMISSIONER YAKI: I think we are.

12 CHAIRPERSON REYNOLDS: Commissioner  
13 Gaziano?

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

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

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

20 CHAIRPERSON REYNOLDS: Commissioner Yaki?

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

23 COMMISSIONER HERIOT: That's not true.

24 COMMISSIONER YAKI: If someone asks --

25 CHAIRPERSON REYNOLDS: Commissioner Yaki?

1                   COMMISSIONER YAKI:  If someone asks for  
2                   it, you can do it.

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

5                   THE PARLIAMENTARIAN:  Yes.

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

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

11                  COMMISSIONER KIRSANOW:  Can't hear.

12                  CHAIRPERSON REYNOLDS:  Okay.  Very good.  
13                  Commissioner Gaziano, how do you vote?

14                  COMMISSIONER GAZIANO:  What are we voting  
15                  on?

16                  CHAIRPERSON REYNOLDS:  Whether to sever  
17                  Mr. Walker.

18                  COMMISSIONER GAZIANO:  Whether to sever.  
19                  I vote to sever.

20                  CHAIRPERSON     REYNOLDS:           Commissioner  
21                  Kirsanow?

22                  COMMISSIONER KIRSANOW:  Sever.

23                  CHAIRPERSON     REYNOLDS:           Commissioner  
24                  Heriot?

25                  COMMISSIONER HERIOT:     I vote against

1 severing.

2 CHAIRPERSON REYNOLDS: Commissioner Yaki?

3 COMMISSIONER YAKI: Sever.

4 CHAIRPERSON REYNOLDS: Commissioner  
5 Taylor?

6 COMMISSIONER TAYLOR: Aye.

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

12 So let's start with the group first.  
13 Comments? Questions?

14 (No response.)

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

17 COMMISSIONER GAZIANO: Aye.

18 CHAIRPERSON REYNOLDS: Commissioner  
19 Kirsanow?

20 COMMISSIONER KIRSANOW: Aye.

21 CHAIRPERSON REYNOLDS: Commissioner  
22 Heriot?

23 COMMISSIONER HERIOT: What are we voting  
24 on?

25 CHAIRPERSON REYNOLDS: On the group of

1 candidates. We have severed Mr. Walker.

2 COMMISSIONER HERIOT: I vote yes.

3 CHAIRPERSON REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: Abstain.

5 CHAIRPERSON REYNOLDS: Mr. Taylor?

6 COMMISSIONER TAYLOR: Aye.

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

11 Next up Mr. Walker. Discussion?

12 COMMISSIONER YAKI: Yes. This is  
13 Commissioner Yaki.

14 I don't believe that we sent the right  
15 question to Mr. Walker to the fact that he simply  
16 parroted back Rand Paul's rather limp response that he  
17 doesn't intend to vote for a repeal of the Civil  
18 Rights Act, minorities talking about the repeal, the  
19 1964 Civil Rights Act.

20 I think a more pertinent question to ask  
21 Mr. Walker would be the one that I sent around earlier  
22 this week, which goes specifically into whether or not  
23 he believes the federal government has any power to  
24 involve itself in hiring businesses to discriminate  
25 against someone on the basis of their race, color,



1 national origin, religion, gender, what have you.

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

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

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

15 CHAIRPERSON REYNOLDS: Do you have it  
16 handy?

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

19 CHAIRPERSON REYNOLDS: Okay.

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

23 CHAIRPERSON REYNOLDS: Yes.

24 STAFF DIRECTOR DANNENFELSER: No, I don't  
25 have that with me, but I guess we could go get it.

1                   CHAIRPERSON REYNOLDS: Okay. Well, that's  
2 probably not necessary. I read his e-mail. I thought  
3 that -- well, first of all, it is not clear to me that  
4 he is in any way hostile to civil rights, the notion  
5 that benefits and burdens should not be distributed on  
6 the basis of race, ethnicity.

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

10                   STAFF DIRECTOR DANNENFELSER: Mr. Chair?

11                   CHAIRPERSON REYNOLDS: I'm sorry?

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

15                   CHAIRPERSON REYNOLDS: Yes. Please read  
16 it.

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

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

25                   COMMISSIONER YAKI: This is Commissioner

1 Yaki.

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

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

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

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

25 I suspect very highly that his answer will

1 mirror what he says in his application, which is he  
2 doesn't think the federal government has a role there.

3 COMMISSIONER GAZIANO: Mr. Chairman,  
4 Commissioner Gaziano.

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

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

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

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

25 CHAIRPERSON REYNOLDS: Okay. I strongly

1 support the 1964 Civil Rights Act.

2 Any other comments?

3 (No response.)

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

6 COMMISSIONER GAZIANO: Let me pass.

7 CHAIRPERSON REYNOLDS: Commissioner  
8 Kirsanow?

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

11 CHAIRPERSON REYNOLDS: Okay. Commissioner  
12 Heriot?

13 COMMISSIONER HERIOT: I vote yes.

14 CHAIRPERSON REYNOLDS: Okay. Commissioner  
15 Yaki? Commissioner Yaki?

16 COMMISSIONER YAKI: Sorry. Sorry. Hit  
17 the mute again. Now there's a nurse in the room.  
18 Pass.

19 CHAIRPERSON REYNOLDS: Commissioner  
20 Taylor?

21 COMMISSIONER TAYLOR: Taylor abstains.

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

24 COMMISSIONER GAZIANO: Abstain.

25 CHAIRPERSON REYNOLDS: Commissioner

1 Kirsanow?

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

7 CHAIRPERSON REYNOLDS: Commissioner Yaki?

8 COMMISSIONER YAKI: No.

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

13 III. PROGRAM PLANNING  
14 APPROVAL OF BRIEFING REPORT ON  
15 HEALTH CARE DISPARITIES

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

21 Part A as distributed in draft form to  
22 commissioners contains an executive summary of the  
23 issue and why the Commission chose to conduct this  
24 briefing and copies of the panelists' written  
25 statements.

1 Is there a second?

2 COMMISSIONER TAYLOR: Taylor seconds.

3 CHAIRPERSON REYNOLDS: Thank you.

4 Discussion?

5 (No response.)

6 CHAIRPERSON REYNOLDS: Commissioner

7 Gaziano, how do you vote?

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRPERSON REYNOLDS: Commissioner

10 Kirsanow?

11 COMMISSIONER KIRSANOW: Abstain.

12 CHAIRPERSON REYNOLDS: Commissioner

13 Heriot?

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

16 CHAIRPERSON REYNOLDS: Part A.

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

21 CHAIRPERSON REYNOLDS: Correct.

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

24 CHAIRPERSON REYNOLDS: Okay. Commissioner  
25 Heriot?

1 COMMISSIONER HERIOT: I'll abstain.

2 CHAIRPERSON REYNOLDS: Commissioner Yaki?

3 COMMISSIONER YAKI: Abstain.

4 CHAIRPERSON REYNOLDS: Commissioner  
5 Taylor?

6 COMMISSIONER TAYLOR: Aye.

7 CHAIRPERSON REYNOLDS: I vote for it also.

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

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

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

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

23 These draft findings and recommendations  
24 were distributed to commissioners on behalf of  
25 Commissioner Heriot on April 15th, 2010 and again in



1 the Staff Director's meeting of May 6th and May 20th.

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

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

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

19 Is there a second?

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

23 STAFF DIRECTOR DANNENFELSER: Mr.  
24 Chairman?

25 CHAIRPERSON REYNOLDS: Yes?

1                   STAFF DIRECTOR DANNENFELSER:     Just a  
2 clarification on the second line of that finding  
3 before the word "historic"? Was it supposed to be the  
4 word "and" or "or"?

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

7                   STAFF DIRECTOR DANNENFELSER:     Right.  
8 Okay.

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

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

15                   CHAIRPERSON REYNOLDS:    Oh. That was the  
16 Staff Director.

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

19                   CHAIRPERSON REYNOLDS:     Commissioner  
20 Gaziano, how do you vote?

21                   COMMISSIONER GAZIANO:    Yes.

22                   CHAIRPERSON REYNOLDS:     Commissioner  
23 Kirsanow?

24                   COMMISSIONER KIRSANOW:    Yes.

25                   CHAIRPERSON REYNOLDS:     Commissioner

1 Heriot?

2 COMMISSIONER HERIOT: Yes.

3 CHAIRPERSON REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: Abstain.

5 CHAIRPERSON REYNOLDS: Commissioner  
6 Taylor?

7 COMMISSIONER TAYLOR: Yes.

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

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

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

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

24 Is there a second?

25 COMMISSIONER HERIOT: Second.

1 CHAIRPERSON REYNOLDS: Discussion?

2 (No response.)

3 CHAIRPERSON REYNOLDS: Commissioner  
4 Gaziano, how do you vote?

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRPERSON REYNOLDS: Commissioner  
7 Kirsanow?

8 COMMISSIONER KIRSANOW: Yes.

9 CHAIRPERSON REYNOLDS: Commissioner  
10 Heriot?

11 COMMISSIONER HERIOT: Yes.

12 CHAIRPERSON REYNOLDS: Commissioner Yaki?

13 COMMISSIONER YAKI: Abstain.

14 CHAIRPERSON REYNOLDS: Commissioner  
15 Taylor?

16 COMMISSIONER TAYLOR: Abstain.

17 CHAIRPERSON REYNOLDS: And I vote for it.

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

20 Next up I move that the following finding  
21 be adopted, "According to survey data collected by the  
22 National Study for Student Engagement, students at  
23 historically black colleges and universities report  
24 higher levels of engagement on some survey dimensions  
25 than their counterparts at non-HBCUs.

1 "For example, according to a 2004 and 2005  
2 National Study for Student Engagement survey from the  
3 survey data from 37 HBCUs, African American students  
4 reported more contact with faculty than at non-HBCUs.

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

9 Is there a second?

10 COMMISSIONER HERIOT: Second.

11 CHAIRPERSON REYNOLDS: Discussion?

12 (No response.)

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

15 COMMISSIONER GAZIANO: Yes.

16 CHAIRPERSON REYNOLDS: Commissioner  
17 Kirsanow?

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRPERSON REYNOLDS: Commissioner  
20 Heriot?

21 COMMISSIONER HERIOT: Yes.

22 CHAIRPERSON REYNOLDS: Commissioner Yaki?

23 COMMISSIONER YAKI: Abstain.

24 CHAIRPERSON REYNOLDS: Commissioner  
25 Taylor?

1 COMMISSIONER TAYLOR: Yes.

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

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

10 Is there a second?

11 COMMISSIONER HERIOT: Second.

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

14 (No response.)

15 CHAIRPERSON REYNOLDS: Commissioner  
16 Gaziano?

17 COMMISSIONER GAZIANO: Yes.

18 CHAIRPERSON REYNOLDS: Commissioner  
19 Kirsanow?

20 COMMISSIONER KIRSANOW: Yes.

21 CHAIRPERSON REYNOLDS: Commissioner  
22 Heriot?

23 COMMISSIONER HERIOT: Yes.

24 CHAIRPERSON REYNOLDS: Commissioner Yaki?

25 COMMISSIONER YAKI: Abstain.

1 CHAIRPERSON REYNOLDS: Commissioner  
2 Taylor?

3 COMMISSIONER TAYLOR: Aye.

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

7 Finding number 5, "HBCUs have an average  
8 graduation rate of 55 percent, which is lower than the  
9 63 percent average graduation rate for non-HBCUs.  
10 This may occur, in part, because of HBCUs' generally  
11 liberal admissions policies and their average student  
12 weekly academic profiles.

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

17 Is there a second?

18 COMMISSIONER HERIOT: Second.

19 CHAIRPERSON REYNOLDS: Discussion?

20 (No response.)

21 CHAIRPERSON REYNOLDS: Commissioner  
22 Gaziano?

23 COMMISSIONER GAZIANO: Yes.

24 CHAIRPERSON REYNOLDS: Commissioner  
25 Kirsanow?

1 COMMISSIONER KIRSANOW: Yes.

2 CHAIRPERSON REYNOLDS: Commissioner  
3 Heriot?

4 COMMISSIONER HERIOT: Yes.

5 CHAIRPERSON REYNOLDS: Commissioner Yaki?

6 COMMISSIONER YAKI: No.

7 CHAIRPERSON REYNOLDS: Commissioner  
8 Taylor?

9 COMMISSIONER TAYLOR: Yes.

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

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

18 "Many African American students granted  
19 preferential admission at elite non-HBCUs, even when  
20 they score well compared to national norms, are  
21 competitively disadvantaged and developed ability  
22 relative to their school's student body who are  
23 admitted without consideration of racial or ethnic  
24 preferences. Thus at some of these institutions,  
25 academically well-prepared non-Asian minority



1 students, including African Americans, have weaker  
2 performance and grades than might occur in settings  
3 where the competition is in line with their current  
4 academic preparation."

5 Is there a second?

6 COMMISSIONER HERIOT: Second.

7 CHAIRPERSON REYNOLDS: Discussion?

8 (No response.)

9 CHAIRPERSON REYNOLDS: Commissioner  
10 Gaziano?

11 COMMISSIONER GAZIANO: Yes.

12 CHAIRPERSON REYNOLDS: Commissioner  
13 Kirsanow?

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIRPERSON REYNOLDS: Commissioner  
16 Heriot?

17 COMMISSIONER HERIOT: Yes.

18 CHAIRPERSON REYNOLDS: Commissioner Yaki?

19 COMMISSIONER YAKI: No.

20 CHAIRPERSON REYNOLDS: Commissioner  
21 Taylor?

22 COMMISSIONER TAYLOR: Abstain.

23 CHAIRPERSON REYNOLDS: I vote for it. We  
24 have one abstention. We have one vote against it.

25 The remaining commissioners supported it. The motion

1 passes.

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

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

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

19 Is there a second?

20 COMMISSIONER HERIOT: Second.

21 CHAIRPERSON REYNOLDS: Discussion?

22 (No response.)

23 CHAIRPERSON REYNOLDS: Commissioner  
24 Gaziano?

25 COMMISSIONER GAZIANO: Yes.

1 CHAIRPERSON REYNOLDS: Commissioner  
2 Kirsanow?

3 COMMISSIONER KIRSANOW: Yes.

4 CHAIRPERSON REYNOLDS: Commissioner  
5 Heriot?

6 COMMISSIONER HERIOT: Yes.

7 CHAIRPERSON REYNOLDS: Commissioner Yaki?

8 COMMISSIONER YAKI: Abstain.

9 CHAIRPERSON REYNOLDS: Commissioner  
10 Taylor?

11 COMMISSIONER TAYLOR: Aye.

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

16 We move on now to recommendations. I move  
17 that the Commission approve all the recommendations.  
18 We'll start with recommendation 1, which reads,  
19 "Prospective African American college students and  
20 their families should consider the literature on  
21 student engagement at HBCUs when making college  
22 applications and matriculation decisions. African  
23 American students interested in STEM majors may also  
24 particularly wish to consider attending an HBCU so as  
25 to avoid including the negative effects of academic

1 mismatch that non-HBCUs have no interest in  
2 disclosing."

3 Is there a second?

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

6 COMMISSIONER HERIOT: Go ahead.

7 COMMISSIONER GAZIANO: Gail?

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

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

13 In the last sentence -- I'll read it. And  
14 then up to the point where I -- "African American  
15 students interested in STEM majors may also  
16 particularly wish to consider attending an HBCU."  
17 That's as much as it reads so far.

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

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

1 disclosing."

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

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

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

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

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

25 COMMISSIONER GAZIANO: Yes, the admitted

1 students or something like that.

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

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

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

8 COMMISSIONER YAKI: This is Commissioner  
9 Yaki.

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

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

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

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

21 COMMISSIONER YAKI: Was he at the HBCU  
22 hearing?

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

25 COMMISSIONER YAKI: I'm talking about the

1 HBCU.

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

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

6 COMMISSIONER HERIOT: And I think that's  
7 irrelevant.

8 CHAIRPERSON REYNOLDS: Is the answer no  
9 one?

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

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

14 COMMISSIONER YAKI: I think the answer is  
15 no one.

16 CHAIRPERSON REYNOLDS: Okay.

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

23 I have serious concerns about what has  
24 been done to this report and the injection of the  
25 Sanders' and others' viewpoint about academic mismatch

1 with regard to the HBCUs because that actually was not  
2 the point of the HBCU hearing.

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

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

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

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

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

24 CHAIRPERSON REYNOLDS: Commissioner Yaki?

25 COMMISSIONER YAKI: -- quite clearly.



1 CHAIRPERSON REYNOLDS: Commissioner Yaki,  
2 if I understand you, you're saying that you don't know  
3 when the information was entered into the record.

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

8 CHAIRPERSON REYNOLDS: I'm asking you --

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

14 I am objecting because I understand that  
15 you can't reach outside of the record if you so want.

16 And I would say that it's fine. I would say that's  
17 fine for commissioner statements, not for the body of  
18 a report where we follow certain rules and procedures  
19 in terms of when --

20 CHAIRPERSON REYNOLDS: Commissioner Yaki?

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

23 CHAIRPERSON REYNOLDS: Commissioner Yaki?

24 COMMISSIONER YAKI: That's all.

25 CHAIRPERSON REYNOLDS: I'm just trying to

1 make sure I understand what you are saying. You're  
2 saying that you don't know when this information was  
3 entered into the record. And, by implication, you  
4 don't know if it was entered into the record during  
5 the period when the record was open or if it was  
6 slipped in after.

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

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

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

24 COMMISSIONER GAZIANO: Well, I have --

25 COMMISSIONER YAKI: -- that I believe will

1 not continue in the future beyond the end of this  
2 year.

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

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

11 CHAIRPERSON REYNOLDS: Commissioner Yaki?  
12 Commissioner Yaki?

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

15 CHAIRPERSON REYNOLDS: Commissioner Yaki?

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

19 CHAIRPERSON REYNOLDS: Commissioner Yaki?

20 COMMISSIONER YAKI: If you get it back --

21 CHAIRPERSON REYNOLDS: Commissioner Yaki,  
22 I have listened to you. I have not interrupted you.  
23 You don't know when the information was entered into  
24 the record. You don't know if anything that was done  
25 was inappropriate. And if that is the case --

1 COMMISSIONER YAKI: The Commission --

2 CHAIRPERSON REYNOLDS: If that is the  
3 case, if you would like to look into it, that's fine.

4 But to suggest that Commissioners Gaziano and Heriot  
5 have done something that is inappropriate in the  
6 absence of any evidence I think is problematic.

7 COMMISSIONER GAZIANO: Mr. Chairman?

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

14 COMMISSIONER GAZIANO: Mr. Chair? Mr.  
15 Chair?

16 CHAIRPERSON REYNOLDS: You accused --

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

25 But I'm telling you right now this was not

1 the original intention. This was not the original  
2 scope. And I absolutely stand by my statement that  
3 Commissioners Heriot and Gaziano are hijacking it for  
4 their own personal political viewpoint.

5 STAFF DIRECTOR DANNENFELSER: Mr. Chair?

6 CHAIRPERSON REYNOLDS: Yes?

7 STAFF DIRECTOR DANNENFELSER: This is the  
8 Staff Director.

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

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

19 CHAIRPERSON REYNOLDS: Yes?

20 COMMISSIONER GAZIANO: I think most of the  
21 previous objections are offensive and ridiculous.  
22 But, maybe more importantly, whatever our supposed  
23 rules are that we can put aside if a majority of us  
24 choose to about linking findings only to the record  
25 and ignoring anything that we actually know in our

1 heads, I think it's also rather silly to suggest that  
2 when the Commission is making recommendations to  
3 Congress and to the Executive Branch, that we are not  
4 allowed to use our own independent knowledge, which is  
5 the reason we were put on the Commission.

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

9 CHAIRPERSON REYNOLDS: Well, and --

10 COMMISSIONER HERIOT: Mr. Chairman?

11 CHAIRPERSON REYNOLDS: Commissioner  
12 Heriot?

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

21 We are supposed to be taking what we know  
22 about civil rights and what we know about the issues  
23 and making them part of a report. The notion that  
24 some earlier Commission many years ago may have held a  
25 briefing for a purpose, you know, maybe they did it to

1 impress Jodie Foster. I don't know. But it doesn't  
2 matter.

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

5 CHAIRPERSON REYNOLDS: And I'll --

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

10 COMMISSIONER GAZIANO: The objection --

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

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

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

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

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

24 COMMISSIONER HERIOT: Why don't you give  
25 it a try because I've got --

1                   COMMISSIONER YAKI: It could be e-mailed  
2 -- point of order. Hold on. Is this going to be  
3 e-mailed out? Is this going to be e-mailed out?

4                   COMMISSIONER GAZIANO: No, it will not be.  
5 Let's just agree to it on the phone since this is a  
6 phone meeting. We do it orally at meetings, too.

7                   CHAIRPERSON REYNOLDS: Okay.

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

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

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

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

19                   COMMISSIONER YAKI: These phone meetings  
20 --

21                   COMMISSIONER HERIOT: -- this to delay.

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

25                   CHAIRPERSON REYNOLDS: Commissioner Yaki?



1 COMMISSIONER YAKI: When you're making  
2 these kinds of --

3 CHAIRPERSON REYNOLDS: Commissioner Yaki?

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

6 CHAIRPERSON REYNOLDS: Commissioner Yaki,  
7 we are amending --

8 COMMISSIONER YAKI: -- demeaning the  
9 Commission, --

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

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

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

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

21 CHAIRPERSON REYNOLDS: Operation?

22 COMMISSIONER HERIOT: No, no. What we  
23 want to do is start with the other, "attending a  
24 college or university at which their academic  
25 credentials match those of other students."

1                   COMMISSIONER GAZIANO: "So that they avoid  
2 experiencing the negative effects of academic mismatch  
3 that non-HBCUs have no interest in disclosing."

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

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

9                   COMMISSIONER HERIOT: Period.

10                  COMMISSIONER GAZIANO: Period.

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

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

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

20                  COMMISSIONER GAZIANO: That works for me.

21                  COMMISSIONER HERIOT: Let me read it out  
22 loud here. "African American students interested in  
23 STEM majors may also particularly wish to consider  
24 attending a college or a university, including an  
25 HBCU, at which their academic credentials match those

1 of the typical student so that they avoid experiencing  
2 the negative effects of academic mismatch."

3 COMMISSIONER GAZIANO: Call the question.

4 CHAIRPERSON REYNOLDS: All right.

5 Commissioner Gaziano, how do you vote?

6 COMMISSIONER GAZIANO: Yes.

7 CHAIRPERSON REYNOLDS: Is the operator on  
8 the line?

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

11 CHAIRPERSON REYNOLDS: Is the operator on  
12 the line?

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

15 CHAIRPERSON REYNOLDS: Okay. Commissioner  
16 Gaziano?

17 COMMISSIONER GAZIANO: Yes.

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

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

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

1 COMMISSIONER GAZIANO: I see.

2 (Laughter.)

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

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

8 CHAIRPERSON REYNOLDS: Failure to  
9 communicate.

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

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

25 I am very grateful that that will come to

1 an end sooner, rather than later.

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

5 Commissioner Gaziano, how do you vote?

6 COMMISSIONER GAZIANO: Yes for the third  
7 time.

8 CHAIRPERSON REYNOLDS: Commissioner  
9 Kirsanow?

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

12 CHAIRPERSON REYNOLDS: Okay. Commissioner  
13 Heriot?

14 COMMISSIONER HERIOT: Yes.

15 CHAIRPERSON REYNOLDS: Commissioner Yaki?

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

18 CHAIRPERSON REYNOLDS: Commissioner  
19 Taylor?

20 COMMISSIONER TAYLOR: Abstain.

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

24 STAFF DIRECTOR DANNENFELSER: Mr. Chair, I  
25 believe we've lost quorum.

1 CHAIRPERSON REYNOLDS: Why?

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

4 CHAIRPERSON REYNOLDS: So there is  
5 Gaziano, Heriot.

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

8 CHAIRPERSON REYNOLDS: Okay. Well, to be  
9 continued.

10 COMMISSIONER HERIOT: Okay.

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

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

18 CHAIRPERSON REYNOLDS: No. Everything  
19 else requires a vote.

20 COMMISSIONER HERIOT: Okay.

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

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

25 CHAIRPERSON REYNOLDS: No. Actually, I am

1 wrong. There is one item left. And that is an update  
2 on the Title IX project.

3 COMMISSIONER GAZIANO: Could I also just  
4 -- maybe it's more of a point of information. Since  
5 we didn't get to the calendar, I asked that April, I  
6 think it's -- let me see whether it's 8 or 9 -- April  
7 8 be substituted for April 15th, also since it's more  
8 closer to the midpoint of March 11 and May 15.

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

14 STAFF DIRECTOR DANNENFELSER: I think we  
15 night have been looking at when Easter fell that year.

16 So I have to go back and look at that.

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

19 STAFF DIRECTOR DANNENFELSER: When Easter  
20 came that year.

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

25 STAFF DIRECTOR DANNENFELSER: I think,

1 then, we were looking at what happened with the -- I  
2 think we had a telephonic meeting in that month also,  
3 that perhaps the telephonic meeting -- I guess we  
4 could still do the telephonic meeting whenever. And  
5 it might be three weeks in between.

6 COMMISSIONER HERIOT: Yes. That's fine.

7 COMMISSIONER GAZIANO: Yes. I'd prefer  
8 that. Thanks.

9 STAFF DIRECTOR DANNENFELSER: Okay.

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

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

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

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

25 CHAIRPERSON REYNOLDS: Okay. Fine. Let



1 me rephrase it. Let's also postpone a discussion of  
2 the update on Title IX until the next meeting, when we  
3 have a quorum.

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

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

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<b>A</b>				
<b>ability</b> 40:21	<b>Adler</b> 14:2	<b>America</b> 8:4	<b>Asian</b> 7:20,22,25 8:9,13 9:10	<b>background</b> 4:8 11:23
<b>able</b> 4:22 19:4 45:11	<b>administrations</b> 6:13	<b>American</b> 7:20,25 8:10,13 9:10	<b>aside</b> 53:23	<b>Barry</b> 11:3
<b>absence</b> 52:6	<b>admission</b> 40:15,19 42:13	35:13,17,19 37:3 37:6,8 39:15	<b>asked</b> 27:20 28:6,9 34:13 49:4 52:10	<b>based</b> 11:1 26:23 27:2,6 44:20
<b>absolutely</b> 52:19 53:2	<b>admissions</b> 39:11 44:20 45:22,23	40:15,18 42:3,7,8 42:10,16,18 43:19	59:19 63:5	<b>basic</b> 54:14 64:15
<b>abstain</b> 6:5 24:4 28:8 29:24 30:2 31:11 32:1,3 35:4 36:13,16 37:23 38:25 41:22 43:8 61:20	<b>admitted</b> 40:23 45:22,25	43:23 44:14 56:12 57:17 58:12,22	<b>asking</b> 46:15,16 47:4 49:8,22 50:8 51:10,13	<b>basically</b> 14:4
<b>abstained</b> 24:8	<b>adopted</b> 9:5 36:21	<b>Americans</b> 33:13 35:11 41:1 42:15	<b>asks</b> 21:24 22:1	<b>basis</b> 24:25 26:6 27:23
<b>abstaining</b> 43:13	<b>advised</b> 8:17	<b>amount</b> 28:10,22	<b>assert</b> 50:8	<b>bastardization</b> 60:11
<b>abstains</b> 29:21	<b>advisers</b> 8:17	<b>Andrea</b> 17:3	<b>assist</b> 4:11	<b>began</b> 6:8
<b>abstention</b> 30:3 38:3 39:5 41:24 61:22	<b>Advisory</b> 3:4 10:18 10:24 11:8 13:2 13:10 16:24 17:7 18:23 25:5,8 28:17	<b>anniversaries</b> 8:2	<b>assistance</b> 4:9	<b>beginning</b> 33:22
<b>abstentions</b> 30:10 32:8 36:18 43:14	<b>advocate</b> 6:21	<b>answer</b> 6:5 17:21 18:1,1 22:7 25:8 27:25 28:10,20,21 47:8,12,14	<b>assistants</b> 2:7 15:15	<b>behalf</b> 32:24
<b>absurd</b> 21:17	<b>affect</b> 45:8	<b>anticipate</b> 33:6	<b>assume</b> 31:19	<b>believe</b> 14:3,9,10 22:9 24:14 25:13 26:7 27:11,21 46:19,19 50:25 53:11,15 54:19 60:18 61:25 63:24 64:16,20
<b>academic</b> 38:8 39:12 40:16 41:4 42:12 43:25 44:24 45:16,20 46:12 47:25 57:20,24 58:2,8,15,25 59:2	<b>African</b> 33:13 35:12,16,19 37:3 37:5,7 39:15 40:14,18 41:1 42:3,6,8,10,15,16 42:18 43:19,22 44:14 56:12 57:17 58:12,22	<b>anyway</b> 18:9,10	<b>assumption</b> 54:7 54:15,16	<b>believes</b> 24:23 25:3
<b>academically</b> 35:16 40:25	<b>afternoon</b> 14:3	<b>appealing</b> 17:25	<b>attack</b> 9:10	<b>benefits</b> 26:5
<b>acceptable</b> 28:15	<b>age</b> 6:16,18	<b>appears</b> 42:17	<b>attend</b> 42:7 45:24	<b>best</b> 6:11 42:17
<b>accusations</b> 52:18	<b>agenda</b> 3:2,3 8:24 9:1,3 13:19 62:16	<b>applicant</b> 45:21	<b>attendance</b> 39:14	<b>better</b> 63:21 64:24
<b>accused</b> 52:16	<b>agendas</b> 50:23 60:23	<b>application</b> 14:6 28:1	<b>attended</b> 48:9	<b>Beverly</b> 17:1
<b>Act</b> 6:17,19 7:2 17:25 24:18,19 26:18 27:9 29:1	<b>ago</b> 20:19 46:11 48:20 54:24 55:7 60:17	<b>applications</b> 43:22	<b>attending</b> 43:24 44:16 45:19 57:19 57:23 58:24	<b>beyond</b> 51:1
<b>activist</b> 6:21	<b>afternoon</b> 14:3	<b>applies</b> 28:24 54:6	<b>attention</b> 60:22	<b>bigotry</b> 26:21
<b>activists</b> 6:9	<b>age</b> 6:16,18	<b>appoint</b> 13:3	<b>attorney</b> 6:10 8:17	<b>bit</b> 28:7
<b>actual</b> 45:24	<b>agenda</b> 3:2,3 8:24 9:1,3 13:19 62:16	<b>appointed</b> 15:10	<b>AUDREY</b> 2:6	<b>black</b> 3:10 7:9,10 9:16 32:11,16 33:10 36:23
<b>add</b> 9:5 14:16,18 44:9	<b>agendas</b> 50:23 60:23	<b>appointment</b> 11:12 13:13	<b>August</b> 33:6	<b>BLACKWOOD</b> 2:2
<b>addition</b> 44:18,21	<b>ago</b> 20:19 46:11 48:20 54:24 55:7 60:17	<b>appoints</b> 10:25 11:7 13:9 16:25 17:6	<b>authored</b> 6:14	<b>body</b> 40:22 49:17
<b>additional</b> 9:13 53:14 55:22	<b>agree</b> 56:5	<b>appropriate</b> 13:13 17:10 21:5 25:11	<b>authorize</b> 13:12	<b>Bolensky</b> 17:1
<b>additions</b> 47:19 48:5	<b>ahead</b> 44:6	<b>approval</b> 3:3,8,9 8:24 30:14 32:10 32:13	<b>authorizes</b> 11:10 17:9	<b>Bourg</b> 13:4
<b>Adjourn</b> 3:12	<b>ALEC</b> 2:9	<b>approve</b> 9:1 18:11 30:17 33:9 43:17	<b>average</b> 39:7,9,11 45:16	<b>Branch</b> 54:3
	<b>ALISON</b> 2:10	<b>April</b> 32:25 63:5,6 63:7,12,21	<b>avoid</b> 15:24 43:25 44:23 58:1,7 59:1	<b>briefing</b> 3:8,11 30:14,19,24 32:12 32:15 54:18,25
	<b>allowed</b> 54:4	<b>arguing</b> 18:4 21:1	<b>aye</b> 10:17 11:19 23:6,17,20 24:6 31:23 32:6 39:3 43:11	<b>brought</b> 50:10,12
	<b>amend</b> 9:2	<b>arrival</b> 8:3	<b>a.m</b> 1:7 4:2,16	<b>Brown's</b> 6:22
	<b>amending</b> 57:7	<b>ASCD</b> 2:3		<b>burdens</b> 26:5
	<b>amendment</b> 33:21 59:19	<b>ASHLEY</b> 1:11	<b>B</b>	<b>Bush</b> 8:9
	<b>amendments</b> 9:3,4 13:19		<b>Bachelor's</b> 39:16	<b>business</b> 33:7
			<b>back</b> 4:10 14:13 24:16 51:20 53:9 63:16	<b>businesses</b> 24:24

27:22	16:10,13,15,18,22	<b>choices</b> 35:20	8:2	26:25,25 28:3,4
<b>BUTLER</b> 2:2	17:14,19 18:5,13	<b>choose</b> 53:24	<b>commenced</b> 50:17	29:5,6,7,9,11,13
<b>Byrnes</b> 2:3 15:17	18:24 19:8,19,22	<b>chose</b> 30:23	<b>commend</b> 8:20	29:14,15,16,19,21
<b>C</b>	19:25 20:3,11,21	<b>chosen</b> 8:1	<b>comment</b> 30:5 60:4	29:23,24,25 30:2
<b>calendar</b> 62:14	21:3,10,12,20,25	<b>Chris</b> 15:17	<b>commentators</b>	30:7,8,19 31:2,6,8
63:5	22:3,6,12,16,20	<b>Christina</b> 17:3	35:22	31:9,11,12,14,17
<b>call</b> 4:9,24 6:3	22:23 23:2,4,7,15	<b>CHRISTOPHER</b>	<b>comments</b> 16:1	31:22,24 32:1,2,3
49:11 59:3	23:18,21,25 24:3	2:3	23:13 29:2	32:4,6,25 33:20
<b>called</b> 21:17 59:21	24:5,7 25:10,15	<b>circulate</b> 63:12	<b>commission</b> 1:1,7	34:5,10,19,21,22
<b>campaign</b> 27:17	25:19,23 26:1,11	<b>circulated</b> 63:10	4:6,15 7:17 10:24	34:24,25 35:2,3,4
<b>candidate</b> 20:14	26:15,22 28:25	<b>circumstances</b> 21:5	10:25 11:6,10	35:5,7,25 36:3,5,6
30:5	29:4,7,11,14,19	<b>civil</b> 1:1 4:15 6:9,17	13:3,8 16:23,24	36:8,9,11,12,13
<b>candidates</b> 24:1	29:22,25 30:7,9	6:20 7:16,17 15:4	17:5,9 18:19	36:14,16 37:10,13
<b>Capaldi</b> 13:4	30:16 31:3,6,9,12	17:25 24:17,19	20:19 25:4,8	37:15,16,18,19,21
<b>care</b> 3:8 7:9 30:15	31:16,21,24 32:2	25:4 26:4,18 27:8	28:18 30:17,23	37:22,23,24 38:1
<b>carry</b> 14:25	32:4,7,13 33:25	29:1 54:22	32:17 43:17 49:10	38:11,12,15,17,18
<b>case</b> 20:15 51:7,25	34:9,15,19,22,25	<b>clarification</b> 26:7	52:1 54:2,5,17,24	38:20,21,23,24,25
52:3 65:4	35:3,5,8 36:1,3,6	34:2	57:9 60:24	39:1,3,18,21,23
<b>cases</b> 7:8	36:9,12,14,17	<b>clarify</b> 31:17	<b>commissioner</b> 1:10	39:24 40:1,2,4,5,6
<b>caused</b> 42:13	37:11,13,16,19,22	<b>clause</b> 58:5	1:10,11,11,12 2:7	40:7,9 41:6,9,11
<b>celebrate</b> 8:12	37:24 38:2,12,15	<b>clear</b> 14:24 26:3	4:19,22 5:1,2,3,5	41:12,14,15,17,18
<b>celebration</b> 8:8	38:18,21,24 39:1	<b>clearly</b> 17:25 48:25	5:6,8,9,10,11,14	41:19,20,22 42:20
<b>Celeste</b> 11:2	39:4,19,21,24	<b>closed</b> 47:22 48:20	5:15,17,18 6:1,4,4	42:23,25 43:1,3,4
<b>CEOs</b> 35:13	40:2,5,7,10 41:7,9	49:22 64:13	9:19,22,24,25	43:6,7,8,9,11,13
<b>certain</b> 42:14 49:18	41:12,15,18,20,23	<b>closer</b> 63:8,22	10:2,3,5,11,11,12	44:4,6,7,8,10 45:2
<b>certainly</b> 14:9	42:21,23 43:1,4,7	<b>clothing</b> 7:9	10:14,15,17 11:14	45:10,14,17,23,25
<b>Chair</b> 4:19 9:8 11:7	43:9,12 46:2 47:8	<b>collected</b> 36:21	11:17,19,20,21,22	46:4,8,8,13,15,17
13:9 15:11 17:6	47:12,16 48:11,24	<b>college</b> 33:10,11	12:1,5,7,9,10,12	46:21,25 47:2,4,6
26:10,13 48:16	49:1,8,20,23,25	42:7 43:19,21	12:13,15,16,17,18	47:14,17 48:11,16
50:8 52:8,14,15	51:3,11,15,19,21	44:19 45:19 57:19	12:20,23 13:15,17	48:17,24,25 49:1
52:24 53:5,17	52:2,16 53:6,19	57:24 58:14,24	13:21,24 14:14,17	49:4,9,17,20,21
59:14 61:11,24	54:9,11 55:5,17	<b>colleges</b> 3:11 32:12	15:2 16:4,6,7,9,10	49:23,24 50:7,24
<b>Chairman</b> 1:8,9	56:7,25 57:3,6,10	32:16 33:15,17	16:12,13,14,15,17	50:25 51:3,8,11
4:12 11:22 13:21	57:14,21 59:4,7	36:23	16:19 17:12,12,15	51:12,13,15,16,19
20:18 28:3 33:24	59:11,15 60:3,8	<b>color</b> 24:25 27:23	17:15,20 18:3,6,8	51:20,21 52:1,7,8
47:11 52:7 54:10	61:2,8,12,15,18	<b>Colorado</b> 3:5 9:6	18:14,16,24 19:3	52:14,17 53:17,18
<b>CHAIRPERSON</b>	61:21 62:1,4,8,11	10:22,24 11:8	19:10,12,13,14,16	53:20 54:10,11,13
4:13 5:3,6,9,13,15	62:18,21,25 64:10	12:2	19:20,23,25 20:1	55:6,10,11,13,14
5:18,22,25 8:25	64:18,25	<b>COLTEN</b> 2:8	20:3,7,9,13,17,23	55:17,19,21,21,24
9:20,22,25 10:3,9	<b>champion</b> 6:22	<b>come</b> 4:10,14 48:9	21:8,11,12,14,16	56:1,4,8,12,14,16
10:13,15,19,20,23	<b>chance</b> 56:9	49:6 51:5 60:20	21:18,20,21,23,24	56:18,19,21,22,25
11:15,17,20,25	<b>chances</b> 39:16	60:25 61:2,3,4	21:25 22:1,6,11	57:1,3,4,6,8,12,16
12:7,10,13,16,18	<b>changing</b> 57:4,10	<b>comfortable</b> 26:23	22:13,14,18,20,22	57:22 58:1,4,6,9
12:21 13:1,16,23	<b>Check</b> 19:14,15	<b>coming</b> 27:15	22:23,25 23:2,3,4	58:10,11,16,18,20
14:12,22 15:5,12	<b>Chief</b> 2:3	<b>commemorate</b> 7:21	23:6,8,16,17,18	58:21 59:3,5,6,9
15:20,23 16:4,7	<b>children</b> 7:9	7:25	23:20,21,23 24:2	59:13,15,17,18,21
	<b>Chinese</b> 8:5	<b>commemorated</b>	24:3,4,6,8,12,13	59:24 60:1,3,5,10

61:5,6,8,10,12,14 61:15,16,17,18,20 62:6,10,15,20,23 63:3,17,21 64:6,7 <b>commissioners</b> 4:18,25 12:23 14:24 15:15 16:20 18:20 23:10 24:9 30:22 32:24 33:4 39:6 40:12 41:25 43:14 48:6,12 52:4,18 53:3,13 60:14 62:3 <b>Commission's</b> 32:14 <b>Committee</b> 3:4 10:18,25 11:1,8 13:2,10 16:24 17:7 18:23 28:17 <b>Committees</b> 25:5 <b>communicate</b> 60:9 <b>comparable</b> 38:6 <b>compared</b> 40:20 <b>competition</b> 41:3 <b>competitively</b> 40:21 <b>complete</b> 60:10 62:13 <b>completely</b> 60:11 <b>completion</b> 8:4 <b>composition</b> 20:20 <b>concept</b> 9:10 <b>concern</b> 14:15 20:12 <b>concerned</b> 13:24 <b>concerns</b> 47:23 <b>concluded</b> 6:6 65:7 <b>concurrently</b> 33:3 <b>concurring</b> 33:4 <b>conduct</b> 30:23 <b>conducted</b> 38:6 <b>conference</b> 4:4 <b>confirm</b> 4:25 12:8 <b>confirmation</b> 6:7 <b>confirmed</b> 14:20 <b>confused</b> 31:15 <b>Congress</b> 6:17 7:24	8:7 54:3 60:19 <b>congressmen</b> 35:13 <b>conjunction</b> 60:14 <b>Conrad</b> 11:3 <b>consider</b> 43:20,24 44:16 45:18 57:19 58:13,23 <b>consideration</b> 9:9 9:13 40:23 <b>contact</b> 37:4 <b>contacted</b> 14:11,20 <b>contains</b> 30:22 <b>contemporary</b> 33:12 <b>context</b> 46:12 <b>continue</b> 7:8 51:1 <b>continued</b> 62:9 <b>contribution</b> 6:15 <b>contributions</b> 7:22 8:13 <b>convened</b> 1:7 <b>conversation</b> 64:20 <b>converted</b> 47:18 <b>copied</b> 14:10 <b>copies</b> 30:24 <b>copy</b> 15:17 26:13 <b>correct</b> 6:7 22:7 31:21 52:23 <b>correction</b> 34:10 <b>Corry</b> 11:3 <b>Counsel</b> 2:2 <b>counter</b> 45:11 <b>counterparts</b> 36:25 <b>Court</b> 5:22 34:12 <b>cover</b> 48:15 <b>co-authored</b> 7:3 <b>crammed</b> 60:23 <b>create</b> 20:14 40:16 56:23,23 <b>creates</b> 20:13 <b>credentials</b> 45:6 57:25 58:15,25 <b>Cruzat</b> 11:3 <b>current</b> 41:3 <b>currently</b> 33:14 55:14 56:10,10 <b>customs</b> 35:21	<b>C-O-N-T-E-N-T-S</b> 3:1 <hr/> <b>D</b> <hr/> <b>danger</b> 50:20 <b>DANNENFELS...</b> 1:13 5:21 12:3 15:11,13,22 25:13 25:17,20,24 26:10 26:12,17 33:23 34:1,7 46:6,18,23 47:10 53:5,7 61:24 62:2 63:14 63:19,25 64:9,14 64:23 <b>darkness</b> 48:15 <b>data</b> 36:21 37:3 <b>date</b> 9:11 50:21 63:13 <b>dates</b> 63:10 <b>David</b> 2:2 17:4 <b>day</b> 6:21 17:1 62:14 <b>Daylight</b> 1:7 <b>days</b> 35:15 <b>deal</b> 27:10 <b>dealing</b> 55:12 <b>Dean</b> 17:1 <b>deciding</b> 33:6 <b>decisions</b> 43:22 <b>DeCuir</b> 13:5 <b>Defense</b> 6:24 7:14 <b>degree</b> 39:16 42:8 <b>degrees</b> 35:17 42:4 <b>delay</b> 56:17,21 <b>demand</b> 19:6,11 <b>demeaning</b> 57:8 <b>Department</b> 7:15 8:19 <b>descent</b> 7:23 <b>Desegregation</b> 7:16 <b>designated</b> 8:9 <b>designed</b> 27:10 56:15,16 <b>designing</b> 56:18 <b>desiring</b> 35:17 <b>DEULL</b> 2:9 <b>developed</b> 40:21	<b>development</b> 8:14 <b>differences</b> 38:8 <b>different</b> 4:18 20:19 47:19 52:12 60:12 <b>differential</b> 39:15 <b>dimensions</b> 36:24 <b>direct</b> 15:16 54:18 <b>direction</b> 54:19 <b>director</b> 1:13 2:3 5:20,21 11:2,10 12:3 13:12 15:11 15:13,14,17,22 17:9 25:11,13,17 25:20,24 26:10,12 26:17 33:23 34:1 34:7,16,17 46:5,6 46:7,18,23 47:10 49:5 52:11 53:5,7 53:8,12 61:24 62:2,11 63:11,14 63:19,25 64:9,11 64:14,23 <b>Director's</b> 33:1 <b>disadvantaged</b> 6:23 40:21 <b>disclosing</b> 44:2 45:1 58:3 <b>discriminate</b> 24:24 45:4,5,7 <b>discriminating</b> 27:23 <b>discrimination</b> 6:16,18 27:10 42:15 <b>discuss</b> 64:15 <b>discussion</b> 9:16,20 11:15 13:16 17:14 19:2 24:11 27:13 31:4 36:1 37:11 38:13 39:19 41:7 42:21 54:16 59:19 60:19 64:12,15 65:1 <b>discussions</b> 17:18 <b>Disparities</b> 3:8 30:15	<b>disproportionately</b> 40:14 42:2 <b>dissenting</b> 33:4 <b>distinguished</b> 35:10 <b>distributed</b> 26:5 30:21 32:24 <b>districts</b> 7:1,7,11 <b>documents</b> 56:9 <b>doing</b> 19:7 20:25 50:21 56:13 57:5 <b>dollars</b> 7:6 <b>Dr</b> 38:7 <b>draft</b> 30:21 32:23 <b>dragging</b> 28:12 <b>due</b> 30:3 33:5 48:18 <b>DUNSTON</b> 2:3 <b>duty</b> 55:14 <hr/> <b>E</b> <hr/> <b>earlier</b> 24:21 54:24 <b>Easter</b> 63:15,19,23 <b>Eastern</b> 1:7 4:16 <b>easy</b> 19:24 <b>educating</b> 33:12 40:13 <b>Education</b> 6:24 7:2 7:15 <b>educational</b> 3:10 6:22 7:5 32:11,15 <b>effect</b> 39:15 <b>effectiveness</b> 3:10 32:11,15 <b>effects</b> 43:25 44:23 58:2,8 59:2 <b>effort</b> 26:19 <b>Elementary</b> 7:2 <b>Elfering</b> 17:1 <b>elite</b> 40:19 <b>Elizabeth</b> 11:4 <b>emigrant</b> 8:3 <b>EMMA</b> 2:5 <b>employees</b> 8:11 11:9 13:11 17:8 <b>Employment</b> 6:19 <b>encouraged</b> 8:12 <b>enemy</b> 28:21
--	--	--	---	---

**enforcement** 7:16  
9:16 28:19  
**engagement** 36:22  
36:24 37:2 43:21  
**engineering** 42:4  
**engineers** 42:8  
**enter** 48:12  
**entered** 49:3 50:3,4  
50:13 51:23  
**entirely** 47:19  
52:12  
**entitled** 22:10  
**entitles** 28:17  
**Equal** 6:22  
**eradicate** 26:20  
**ethnic** 40:23  
**ethnicity** 26:6  
**Etienne** 14:7  
**eventually** 15:8  
**evidence** 52:6  
**exactly** 31:15 48:18  
60:6,16,17  
**example** 14:1 37:1  
**examples** 27:15  
**Excellent** 5:25  
**execute** 11:11  
13:12 17:10  
**executive** 30:22  
54:3 64:17  
**exercising** 20:25  
**existed** 33:11  
**expand** 7:4 8:7  
**experiencing** 44:23  
58:2,7 59:1  
**explain** 42:17  
**explaining** 32:21  
**exposed** 6:25  
**expression** 59:23  
**e-mail** 14:2,8 25:21  
25:22 26:2 53:10  
53:13  
**e-mailed** 56:1,3,3

---

**F**


---

**F** 1:10  
**fact** 24:15 52:20  
**faculty** 37:4,7

**Fagin** 11:4  
**Failure** 60:8  
**fair** 28:10,22  
**Faller** 17:2  
**families** 43:20  
**far** 44:17  
**favor** 12:8 20:9  
24:9 30:11 36:18  
**FAY** 2:9  
**federal** 7:1,13  
24:23 25:6 27:11  
27:21 28:2,19,23  
**feel** 46:3  
**fell** 63:15  
**fewer** 38:5  
**fields** 42:5  
**finally** 9:15  
**find** 18:25 45:12  
**finding** 32:18 34:2  
36:20 38:4 39:7  
40:13  
**findings** 3:9 31:18  
31:20,23 32:10,14  
32:18,23 33:8,9  
53:24  
**fine** 8:21 22:8  
49:16,17 52:3  
64:6,25  
**finish** 51:17  
**first** 6:2 8:1,3,3 9:5  
10:20 14:4 23:12  
26:3 33:8,9 48:13  
**fly** 57:5  
**folks** 19:19,19  
20:11 62:14 65:4  
**follow** 15:18 49:18  
**following** 9:4 11:1  
13:3 16:25 33:9  
36:20  
**folly** 50:20  
**food** 7:9  
**footnote** 10:5  
**force** 50:15  
**foregoing** 65:6  
**forgot** 12:1  
**form** 30:21  
**formally** 35:20

**former** 6:10  
**forth** 10:8  
**Forty** 33:15,21  
**Forty-nine** 33:16  
**forward** 15:25  
**FOSHEE** 2:4  
**Foster** 55:1  
**found** 7:3 38:7  
40:17  
**foundation** 6:18  
**four** 9:3 36:18  
50:16 55:7 62:6  
**four-year** 33:15  
**frame** 49:12  
**free** 7:9 48:12  
**Friday** 1:5 14:3  
63:23  
**friendly** 33:21  
**front** 25:18  
**fruitful** 54:20  
**fulfill** 60:13  
**full** 60:23  
**Fund** 6:24 7:14  
**funding** 7:4 38:5  
**funds** 7:1  
**further** 45:3,9  
**future** 21:4 35:23  
51:1

---

**G**


---

**Gail** 1:10 13:22  
14:14 44:7  
**Gant** 11:4,7  
**Garda** 13:5  
**Gaziano** 1:10 5:1,2  
9:19,23,24 11:14  
11:18,19 12:8,9  
13:15,17,20 14:14  
16:5,6 18:8 19:12  
19:15,16 20:7  
21:13 22:13,14,18  
23:16,17 28:3,4  
29:5,6,23,24 31:7  
31:8,17,22 34:10  
34:20,21 36:4,5  
37:14,15 38:13,16  
38:17 39:22,23

41:10,11 42:24,25  
44:4,7,10 45:10  
45:17,25 48:6  
50:24 52:4,7,14  
52:18 53:3,17,18  
53:20 55:10,13,18  
55:21 56:4,12  
57:16 58:1,6,10  
58:16,20 59:3,5,6  
59:13,16,17,21  
60:1 61:5,6 62:5  
62:23 63:3,17,21  
64:7  
**gender** 25:1 27:24  
**General** 2:2  
**generally** 38:4  
39:10  
**gentleman** 34:14  
**George** 8:9  
**Gerald** 1:8,9  
**Ghetti** 13:5  
**give** 55:24  
**given** 17:23 28:13  
48:19  
**Glenn** 17:4,6  
**go** 18:21 25:25 44:6  
45:3,9 62:22  
63:16 64:13,17  
**goes** 24:22  
**going** 15:25 19:1  
27:19 29:9 45:8  
56:2,3 59:13,18  
60:6  
**good** 4:3 22:12  
28:21 30:4 55:15  
62:14 65:5  
**government** 11:9  
13:11 17:8 24:23  
27:8,11 28:2  
56:24 57:13  
**government's**  
27:21  
**grades** 41:2  
**graduated** 35:11  
**graduates** 42:18  
**graduating** 40:14  
**graduation** 39:8,9

**granted** 40:18  
**granting** 42:13  
**grateful** 60:25  
**greater** 7:13  
**Greg** 13:4  
**Griffith** 13:6  
**Grimsal** 13:4,9  
**group** 23:12,25  
**guess** 25:25 64:3  
**guy** 19:5  
**Gwendolyn** 13:6

---

**H**


---

**H** 8:9  
**Hamilton** 13:6  
**handy** 25:16  
**happened** 15:24  
64:1  
**Harbaugh** 17:2  
**harbors** 27:6  
**hard** 30:5  
**HBCU** 33:2 39:14  
42:9 43:24 44:16  
45:19 46:21 47:1  
47:5 48:2 57:19  
58:14,25  
**HBCUs** 33:14  
35:18,22 37:3,6  
38:4,9 39:7,10  
40:13 42:2,7,11  
42:17 43:21 45:13  
48:1 49:6  
**heads** 54:1  
**Health** 3:8 7:15  
30:15  
**hear** 5:11 22:11  
59:24  
**hearing** 23:15  
46:10,12,17,22  
47:5,18,21 48:2,8  
49:7,13 50:11,12  
50:17 52:22 60:11  
**held** 30:19 50:16  
54:24  
**help** 19:17  
**herd** 21:6 59:10,22  
**Heriot** 1:10 5:7,8

10:4,5 12:14,15 13:21,24 14:17 15:2 16:11,12 18:3 21:8,16,23 22:24,25 23:9,22 23:23 24:2 29:12 29:13 31:13,14,25 32:1,25 33:20 34:5 35:1,2,25 36:10,11 37:10,20 37:21 38:11,22,23 39:18 40:3,4 41:6 41:16,17 42:20 43:5,6 44:6,8 45:2 45:14,23 46:13,17 47:2,6 48:6 52:4 52:18 53:3 54:10 54:12,13 55:19,22 55:24 56:16,21 57:22 58:4,9,11 58:18,21 59:9 61:13,14 62:5,6 62:10,15,20 64:6 <b>Heritage</b> 7:21,25 8:10 <b>high</b> 9:11 35:12 42:3 <b>higher</b> 36:24 <b>highly</b> 27:25 35:10 <b>hijack</b> 50:23 <b>hijacked</b> 51:4 <b>hijacking</b> 53:3 <b>hiring</b> 24:24 <b>historic</b> 33:12 34:3 <b>historically</b> 3:10 32:11,16 33:10 36:23 <b>history</b> 8:14 <b>Hit</b> 29:16 <b>hold</b> 56:2 62:21 <b>hope</b> 26:19 <b>hospital</b> 11:23 <b>hostile</b> 26:4 <b>House</b> 21:22	<b>ignoring</b> 53:25 <b>II</b> 3:4 10:18 <b>III</b> 3:7 30:13 <b>ill</b> 27:6 <b>implication</b> 50:3 <b>important</b> 6:15 8:2 47:3 64:21 <b>importantly</b> 53:22 <b>impress</b> 55:1 <b>impression</b> 20:13 20:14 <b>inappropriate</b> 51:25 52:5,10 54:17 <b>included</b> 31:19 32:20 <b>including</b> 35:12 41:1 43:25 58:14 58:24 <b>inconsistency</b> 44:25 <b>incorrect</b> 54:16,20 <b>independent</b> 54:4 <b>indicated</b> 4:20 <b>individual</b> 15:7,8 18:20,22 21:6 39:15 64:16 <b>individually</b> 32:17 <b>individuals</b> 11:1 13:3 16:25 28:24 <b>information</b> 28:11 28:22 42:16 48:12 48:19 49:3 50:2 51:4,17,23 52:10 53:14,15 63:4 64:21 <b>informed</b> 14:2 <b>informing</b> 14:4 <b>inject</b> 48:7 <b>injection</b> 47:24 <b>input</b> 30:19 <b>institution</b> 58:17 <b>institutions</b> 35:12 40:24 <b>intend</b> 18:14,16 24:17 26:24 <b>intention</b> 52:21,22	53:1 <b>intents</b> 60:12 <b>interest</b> 44:1,25 58:3 <b>interested</b> 14:19,21 43:23 44:15 56:13 57:18 58:12,22 <b>interference</b> 59:25 <b>interrupted</b> 51:22 57:17 <b>involve</b> 24:24 <b>involved</b> 27:12 37:7 <b>irrelevant</b> 47:7 <b>Islander</b> 7:21,22 <b>Islanders</b> 8:14 <b>issue</b> 14:23 15:14 21:4 30:23 55:15 <b>issued</b> 60:15,17 <b>issues</b> 3:4 10:18 14:13 18:11 54:22 <b>item</b> 3:2 32:22 63:1 <b>IV</b> 3:12 <b>IX</b> 63:2 64:12 65:2	<b>Kafer</b> 11:4 <b>Keep</b> 59:13 <b>Kennedy</b> 6:12 <b>keypad</b> 4:10 <b>Kim</b> 38:7 <b>KIMBERLY</b> 2:6 2:11 <b>kinds</b> 57:2 <b>Kirsanow</b> 1:11 5:4 5:5 10:1,2 12:11 12:12 16:8,9 20:9 20:10 22:11,21,22 23:19,20 29:8,9 30:1,2 31:10,11 34:23,24 36:7,8 37:17,18 38:19,20 39:25 40:1 41:13 41:14 43:2,3 61:9 61:10,17 62:3 <b>know</b> 15:3 19:21 22:7 27:18 28:6 28:11,14,20 45:15 45:15 47:11,13 48:18 49:2,10 50:2,4,18 51:23 51:24 52:21 53:25 54:21,22,25 55:1 <b>knowledge</b> 54:4 <b>known</b> 6:11 42:5 <b>knows</b> 8:16 <b>Krista</b> 11:4 <b>Kristian</b> 17:3 <b>Krupa</b> 11:4 <b>Kyle</b> 11:3	<b>laws</b> 28:19 <b>lawyers</b> 35:13 <b>leading</b> 35:21 <b>leaving</b> 8:18 <b>led</b> 7:12 <b>left</b> 63:1 <b>Legal</b> 6:24 7:14 <b>legally</b> 35:15 <b>LENORE</b> 2:5 <b>let's</b> 15:20 18:10,11 19:2 21:3,6 23:12 29:4 48:22 56:5 65:1 <b>levels</b> 36:24 <b>liberal</b> 39:11 <b>libertarians</b> 27:14 <b>limp</b> 24:16 <b>line</b> 4:11 5:19,23 20:5 22:4 34:2 41:3 59:8,12,25 <b>lines</b> 4:7 <b>linking</b> 53:24 <b>listen</b> 60:22 <b>listened</b> 51:22 <b>literature</b> 43:20 <b>little</b> 28:7 31:14 45:9 55:8,8,9 <b>locations</b> 4:18 <b>long-time</b> 6:20 <b>look</b> 10:9 14:12,23 15:23 30:5 52:3 56:9 63:16 <b>looking</b> 63:15,18 64:1 <b>Lorna</b> 13:4 <b>lost</b> 61:25 <b>loud</b> 58:22 <b>Louisiana</b> 3:5 9:6 10:6 12:25 13:2 13:10 14:8,15 <b>lower</b> 39:8
<hr/> <b>I</b> <hr/> <b>identify</b> 6:2 13:18	<hr/> <b>intend</b> 18:14,16 24:17 26:24 <b>intention</b> 52:21,22	<hr/> <b>J</b> <hr/> <b>James</b> 13:7 14:7 <b>Japanese</b> 8:3 <b>Jason</b> 13:5 <b>Jerry</b> 11:5 34:6 <b>Jersey</b> 9:14 <b>Jessica</b> 11:3 <b>Jodie</b> 55:1 <b>John</b> 2:10 11:3 <b>Johnson</b> 6:12 <b>Johnston</b> 17:2 <b>joined</b> 6:24 43:12 <b>joint</b> 7:24 <b>Jonathon</b> 14:1 <b>Jr</b> 1:11 11:3 <b>judges</b> 35:14 <b>July</b> 33:5 <b>June</b> 8:18 30:20 33:7 <b>Justice</b> 8:19 <b>Jweide</b> 2:4 8:17,20	<hr/> <b>L</b> <hr/> <b>L</b> 1:10,11 <b>Labor</b> 6:10,12 <b>laborers</b> 8:6 <b>lack</b> 42:16 <b>language</b> 57:15 <b>large</b> 40:14 <b>late</b> 50:21 <b>LATRICE</b> 2:4 <b>Laughter</b> 60:2 <b>law</b> 6:11 28:23 35:21	<hr/> <b>M</b> <hr/> <b>Maha</b> 8:17,22 <b>MAJA</b> 2:4 <b>majority</b> 32:19 53:23
		<hr/> <b>K</b> <hr/>		

**majors** 43:23 44:15  
 57:18 58:13,23  
**making** 13:25  
 43:21 54:2,23  
 57:1  
**mandated** 6:16  
 35:16  
**manipulated** 60:12  
**March** 4:16 63:8  
**MARGARET** 2:2  
**Marilyn** 17:2  
**Martin** 1:13 2:10  
 17:3  
**Mary** 11:2  
**match** 57:25 58:16  
 58:18,25  
**matches** 45:20  
**materials** 17:22  
**mathematics** 42:5  
**matriculation**  
 43:22  
**matter** 55:2 65:6  
**matters** 55:3 64:16  
**McClure** 6:20 7:3  
 7:14  
**mean** 14:9 50:20  
**meant** 7:4  
**median** 45:21  
**medical** 7:9  
**meeting** 1:3 4:6,14  
 4:15,17,21 33:1,7  
 56:6 63:13 64:2,3  
 64:4 65:2  
**meetings** 56:6,8,19  
 56:22  
**Melendez** 4:20  
**Melissa** 4:4  
**member** 14:3  
**members** 11:8  
 13:10 17:7 18:19  
 54:17 60:24  
**merry** 55:9  
**Meyer** 17:3  
**MICHAEL** 1:12  
**Michelle** 13:5  
**microphone** 11:22  
**middle** 45:6

**midpoint** 63:8  
**millions** 7:6  
**Minarik** 14:10  
**mind** 12:6  
**minimum** 14:16  
**minorities** 24:18  
**minority** 40:25  
 42:14  
**mirror** 28:1  
**misimpression**  
 52:23  
**mismatch** 40:17  
 42:12 44:1,24  
 46:12 47:25 58:2  
 58:8 59:2  
**mission** 25:4 33:12  
**misuse** 6:25  
**moment** 25:18  
 29:10  
**Monday** 14:6  
**MONROIG** 2:5  
**month** 6:9 7:21  
 8:10,11 64:2  
**months** 28:12  
 55:12  
**month-long** 8:8  
**morning** 4:3  
**motion** 10:19,25  
 11:6,10 12:24  
 13:8 16:24 17:5,8  
 18:6 19:17,23  
 20:2 21:9,14,17  
 21:19,21 23:8,8,9  
 23:10 24:9,10  
 32:9,9 36:19,19  
 38:3 39:5,6 40:11  
 41:25  
**move** 9:1,4,15  
 10:23 13:2 16:23  
 30:17 33:8 36:20  
 43:16,16  
**moved** 18:5  
**mute** 4:7 11:22  
 29:17  
**mysterious** 50:15

---

**N**

---

**N** 1:11  
**NAACP** 6:24 7:14  
**Nadia** 13:6  
**name** 4:3 6:4  
**names** 4:24 14:16  
**national** 25:1 27:24  
 36:22 37:2 40:20  
**nation's** 7:5  
**near** 45:21  
**necessarily** 15:1  
 28:16  
**necessary** 6:2  
 11:11 26:2  
**Nedzel** 13:6  
**need** 4:8 14:16 18:3  
 20:7 45:15,15  
 61:11 64:13  
**neediest** 7:5  
**Neely** 13:5  
**negative** 43:25  
 44:23 58:2,7 59:2  
**neglected** 10:7  
**never** 12:5 14:11  
 48:9  
**new** 8:22 9:13,16  
**Nicholas** 2:8 13:4  
**night** 63:15  
**noise** 4:8 11:23  
**Nolan** 13:6  
**nominee** 9:13  
**non-Asian** 40:25  
**non-debatable**  
 21:15  
**non-HBCU** 39:14  
**non-HBCUs** 36:25  
 37:4,8 38:6,9 39:9  
 40:17,19 42:13,15  
 44:1,25 58:3  
**non-votable** 21:15  
**normal** 31:22  
**norms** 40:20  
**note** 6:8 7:19 62:12  
**noted** 17:18  
**notion** 26:4 54:23  
**number** 38:4 39:7  
 52:12  
**numbers** 40:14

nurse 29:17

---

**O**

---

**object** 48:5  
**objecting** 49:14  
**objection** 54:8  
 55:10 63:9  
**objections** 53:21  
**obligation** 55:13  
**obtaining** 39:16  
**occur** 39:10 41:2  
**occurrence** 20:22  
**offensive** 53:21  
**offering** 9:3  
**office** 7:15 14:9,10  
 15:16,18  
**offline** 15:21  
**OGC** 2:2 8:18  
**oh** 13:19 34:15 44:5  
 46:23  
**Ohio** 14:1  
**Okay** 5:14,18,25  
 10:9,15,20 11:25  
 12:5,7 14:12  
 15:22 16:4 18:13  
 20:11 21:3 22:12  
 23:7,15 24:7  
 25:19 26:1,17,22  
 28:25 29:11,14,23  
 30:9,16 31:24  
 34:8,9,10,17  
 45:17 46:2 47:12  
 47:16 55:17 56:7  
 57:14 58:6,11  
 59:15 61:12,21,23  
 62:8,10,20 64:9  
 64:10,22,25  
**open** 33:13 49:21  
 50:5,15,16 56:23  
 57:13  
**opened** 48:22 51:6  
**Operation** 57:21  
**operator** 4:3,4,10  
 59:7,11  
**opportunities** 6:23  
 7:5  
**opportunity** 30:4

**oppose** 26:19  
**opposed** 42:14  
**opposite** 28:13  
**opposition** 32:21  
**options** 35:18  
**orally** 56:6  
**order** 4:14 33:2  
 56:2  
**Oregon** 3:6 12:4,5  
 16:21,22,23  
**origin** 25:1 27:24  
**original** 52:22 53:1  
 53:1  
**Orr** 11:5  
**OSTROWSKY** 2:5  
**Otero** 11:5  
**outcomes** 38:8  
**outside** 49:15  
**oversight** 7:13  
**overt** 42:14

---

**P**

---

**Pacific** 7:20,22  
 8:10,13  
**PAGE** 3:2  
**Palm** 63:23  
**PAMELA** 2:3  
**panelist** 30:19 38:7  
**panelists** 30:24  
**Panther** 9:16  
**paper** 9:10  
**paperwork** 11:11  
 13:13 17:10  
**Parliamentarian**  
 20:5,6 22:4,5,9  
**parliamentarily**  
 18:9  
**parroted** 24:16  
**part** 30:17,21 31:16  
 31:23 39:10 40:15  
 48:4 54:23  
**participate** 4:20,22  
**participating** 4:18  
**particular** 16:1  
 18:21 19:5 45:5  
 48:7 49:13  
**particularly** 43:24

44:16 45:18 48:5 57:18 58:13,23 <b>Party</b> 9:16 <b>pass</b> 29:6,10,18 <b>passed</b> 7:24 <b>passes</b> 10:19 12:24 16:20 23:8,11 24:10 32:9 35:9 36:19 38:3 39:6 40:12 42:1 43:15 61:23 <b>passing</b> 6:9 <b>Paul</b> 27:16 <b>Paul's</b> 24:16 <b>pay</b> 60:22 <b>Pech</b> 11:5 <b>Pendley</b> 11:5 <b>people</b> 7:22 15:3 19:22,22 50:18 64:15 <b>percent</b> 39:8,9 42:6 42:7 <b>percentages</b> 35:12 <b>perfect</b> 28:21 <b>performance</b> 41:2 <b>period</b> 50:5 51:5 53:11,14,16 58:9 58:10 <b>person</b> 10:8 19:11 25:3 27:18 <b>personal</b> 53:4 60:13,23 <b>personnel</b> 64:16,21 <b>person's</b> 28:7 <b>pertinent</b> 24:20 26:14 <b>pet</b> 55:8 <b>Peter</b> 1:11 14:10 <b>Philadelphia</b> 9:11 <b>phone</b> 56:5,6,11,19 56:22 <b>phrase</b> 55:22 <b>Phyllis</b> 6:20 <b>Ph.Ds</b> 42:10 <b>piece</b> 59:19 <b>placed</b> 4:7 <b>Planning</b> 3:7 30:13	<b>play</b> 35:22 <b>please</b> 4:9 6:1 12:8 22:3 26:15 52:23 57:15 62:12 <b>point</b> 8:25 15:9 18:4 20:4 44:14 45:9 48:2 56:2 63:4 <b>points</b> 27:16 <b>policies</b> 39:11 40:16 <b>political</b> 53:4 <b>pool</b> 45:22,22,24 <b>Poor</b> 6:23 <b>position</b> 8:18,22 21:22 <b>positive</b> 46:20 <b>possible</b> 44:20,24 <b>possibly</b> 44:11 <b>postpone</b> 9:9,12,15 65:1 <b>power</b> 24:23 <b>predominantly</b> 7:10 <b>prefer</b> 64:7 <b>preferably</b> 15:17 <b>preferences</b> 40:24 45:12 <b>preferential</b> 40:19 42:13 44:19 <b>preferred</b> 28:5,6 <b>prejudiced</b> 27:5 <b>preparation</b> 41:4 <b>preparedness</b> 45:20 <b>present</b> 1:8 2:1,7 5:19,20,21,24 <b>President</b> 7:19 8:9 <b>presiding</b> 1:8 <b>press</b> 4:9 <b>pretty</b> 48:3 <b>prevalence</b> 42:12 <b>prevent</b> 4:8 <b>previous</b> 53:12,21 <b>private</b> 27:22 28:24 33:16,18 <b>privileged</b> 20:1	<b>probably</b> 13:17 26:2 45:13 <b>problem</b> 54:15 <b>problematic</b> 52:6 <b>procedural</b> 18:11 <b>procedure</b> 6:3 <b>procedures</b> 49:18 <b>proceed</b> 9:1 <b>process</b> 14:23 15:14 <b>proclaimed</b> 7:20 <b>produce</b> 42:2 <b>produced</b> 30:18 <b>producers</b> 42:10 <b>producing</b> 42:18 <b>professor</b> 6:11 14:11,19 46:18 <b>professors</b> 35:13 <b>profile</b> 45:16 <b>profiles</b> 39:12 <b>Program</b> 3:7 30:13 <b>programs</b> 27:10 <b>project</b> 63:2 64:12 <b>projects</b> 37:7 55:9 <b>Promise</b> 6:22 <b>propose</b> 33:3 <b>proposed</b> 57:15 63:12 <b>Prospective</b> 43:19 <b>provide</b> 28:22 44:19 45:12 <b>provided</b> 26:8 28:10 <b>provides</b> 28:10 <b>providing</b> 7:8 <b>public</b> 33:15,18 <b>publication</b> 30:17 <b>purchases</b> 7:7 <b>purpose</b> 25:7 54:25 <b>purposes</b> 17:18 <b>Pursuant</b> 11:6 13:8 17:5 <b>put</b> 10:8 45:6 48:22 49:12 51:17 53:23 54:5,8,18 <b>P-R-O-C-E-E-D-...</b> 4:1	<b>p.m</b> 65:7 <hr/> <b>Q</b> <hr/> <b>qualified</b> 18:22 <b>question</b> 24:15,20 25:9 27:4,20 28:5 28:9 34:13 35:22 46:4 50:8 52:11 53:15 59:3,22 64:11 <b>questioning</b> 17:23 <b>questions</b> 18:18 23:13 62:24 <b>quickly</b> 52:9 <b>quiet</b> 22:3 <b>quite</b> 48:25 <b>quorum</b> 4:25 5:19 61:25 62:7,17 64:19,24 65:3 <b>quoting</b> 27:14 <hr/> <b>R</b> <hr/> <b>race</b> 24:25 26:6 27:23 44:20 <b>racial</b> 7:8 40:23 <b>racism</b> 26:21 <b>Railroad</b> 8:5 <b>raise</b> 44:11 <b>raised</b> 18:18 <b>Rand</b> 24:16 27:16 <b>rare</b> 20:22 <b>rate</b> 39:8,9 <b>reach</b> 49:15 <b>read</b> 6:6 25:12 26:2 26:14,15 44:13 58:21 <b>reading</b> 53:9 <b>reads</b> 43:18 44:17 <b>really</b> 30:4 <b>reason</b> 26:9 30:3 54:5 63:11 <b>reasonable</b> 28:16 <b>rebuttals</b> 33:5 <b>recall</b> 53:9 <b>receive</b> 42:3,8 63:9 <b>received</b> 4:21 <b>receiving</b> 32:19 <b>recharter</b> 10:24	16:23 <b>rechartered</b> 11:7 13:9 17:6 <b>rechartering</b> 9:5 <b>recognize</b> 8:12 <b>recollection</b> 49:5 50:9 52:12 <b>recommendation</b> 11:2 32:18 43:18 57:11 60:4 62:13 <b>recommendations</b> 3:10 13:25 14:25 15:1,3,16 31:18 31:20 32:10,14,19 32:23 43:16,17 54:2,7 <b>recommended</b> 14:1 14:5,7 <b>reconsideration</b> 9:6 <b>record</b> 18:21 25:12 28:15 46:14,16 47:3,20,21,21 48:13,19,20,21,23 49:3,12,15,21,22 50:3,4,5,14,14,16 51:5,24 53:24 54:18 <b>recs</b> 31:23 <b>reflecting</b> 30:18 <b>reform</b> 7:12 <b>regard</b> 27:22 48:1 49:6 52:20 <b>regional</b> 14:8 15:18 <b>regulation</b> 27:22 <b>regulations</b> 27:9 <b>reign</b> 61:3 <b>relates</b> 64:21 <b>relating</b> 53:10 <b>relative</b> 40:22 <b>release</b> 33:2 <b>relevant</b> 58:17 <b>religion</b> 25:1 27:24 <b>remained</b> 7:10 <b>remaining</b> 4:24 12:23 16:20 23:10 24:9 33:17 39:5
--	--	--	---	--



40:12 41:25 43:14 <b>remarks</b> 51:17 <b>remember</b> 46:11 <b>reopened</b> 50:15 53:13 <b>repeal</b> 24:17,18 26:19 <b>rephrase</b> 65:1 <b>report</b> 3:8,11 6:15 6:16 7:3 9:17 14:13 30:14,18 32:12,15,20 33:2 33:3,5,7 36:23 47:24 48:4,8 49:18 52:20 53:11 54:23 55:3,6,8 60:14,16,18 <b>reported</b> 37:4 <b>Reporter</b> 5:23,24 34:12,12,17 <b>reports</b> 50:21 55:15 <b>request</b> 9:9 <b>require</b> 18:7 62:16 <b>requires</b> 62:19 <b>research</b> 37:7 49:11 <b>resolution</b> 7:25 <b>resources</b> 38:5 <b>respect</b> 48:18 <b>respond</b> 52:9 <b>response</b> 9:21 11:16 16:3 17:21 17:22 23:14 24:16 29:3 31:5 36:2 37:12 38:14 39:20 41:8 42:22 <b>rest</b> 18:11,15 44:22 <b>retired</b> 50:19 <b>revisit</b> 21:4 <b>Reynolds</b> 1:8,9 4:12,13 5:3,6,9,13 5:15,18,22,25 8:25 9:20,22,25 10:3,9,13,15,19 10:20,23 11:15,17 11:20,25 12:7,10	12:13,16,18,21 13:1,16,23 14:12 14:22 15:5,12,20 15:23 16:4,7,10 16:13,15,18,22 17:14,19 18:5,13 18:24 19:8,19,22 19:25 20:3,11,21 21:3,10,12,20,25 22:3,6,12,16,20 22:23 23:2,4,7,15 23:18,21,25 24:3 24:5,7 25:10,15 25:19,23 26:1,11 26:15,22 28:25 29:4,7,11,14,19 29:22,25 30:7,9 30:16 31:3,6,9,12 31:16,21,24 32:2 32:4,7,13 33:25 34:9,15,19,22,25 35:3,5,8 36:1,3,6 36:9,12,14,17 37:11,13,16,19,22 37:24 38:2,12,15 38:18,21,24 39:1 39:4,19,21,24 40:2,5,7,10 41:7,9 41:12,15,18,20,23 42:21,23 43:1,4,7 43:9,12 46:2 47:8 47:12,16 48:11,24 49:1,8,20,23,25 51:3,11,15,19,21 52:2,16 53:6,19 54:9,11 55:5,17 56:7,25 57:3,6,10 57:14,21 59:4,7 59:11,15 60:3,8 61:2,8,12,15,18 61:21 62:1,4,8,11 62:18,21,25 64:10 64:18,25 <b>rich</b> 8:13 <b>Richard</b> 17:1 <b>ridiculous</b> 53:21 <b>right</b> 15:10 18:9	19:21 20:8,25 24:14 29:4 34:7 51:6 52:25 59:4 62:6 <b>rights</b> 1:1 4:15 6:9 6:17,21 7:16,17 15:4 17:25 24:18 24:19 25:4 26:4 26:18 27:9 29:1 54:22 <b>Robert</b> 13:5 <b>Robert's</b> 19:6,8,10 19:14,15,21 <b>Roggendorf</b> 17:3 <b>role</b> 25:6 27:8,8,9 27:21 28:2 35:22 <b>Rollins</b> 13:7 <b>room</b> 29:17 <b>Ross</b> 17:1 <b>RPCU</b> 2:3 <b>rules</b> 19:6,9,10,15 19:15,21 49:18 53:23 <b>ruling</b> 20:8 <b>running</b> 59:10,22 <b>Russ</b> 12:2 17:4,17	<b>S</b> <b>SAC</b> 3:5,5,6 9:6,7 9:14 10:6,22 12:25 13:4 15:9 15:10 16:2,21,25 30:12 <b>SACs</b> 10:21 13:25 <b>salient</b> 25:2 <b>Sanders</b> 46:19 47:25 49:11 <b>saying</b> 48:21 49:2 50:1,2,9 <b>says</b> 28:1 44:22 55:4 <b>schedule</b> 30:3 <b>SCHMAUCH</b> 2:10 <b>school</b> 7:1,7,10 9:11 45:5,7,7 <b>schools</b> 45:4,4,12 <b>school#s</b> 40:22	<b>SCHULD</b> 2:11 <b>science</b> 42:4,10,17 <b>scope</b> 52:22 53:2 <b>score</b> 40:20 <b>screw</b> 19:18 <b>second</b> 9:8,18,19 11:13,14 13:14,15 17:11,11,13 18:4 18:7,8,10 19:7 31:1 33:19,20 34:2 35:24,25 37:9,10 38:10,11 39:17,18 41:5,6 42:19,20 44:3,4 45:2 62:12 <b>Secondary</b> 7:2 <b>seconded</b> 13:18,19 19:13,16 20:8 <b>seconds</b> 13:18 31:2 <b>Secretary</b> 6:10,12 <b>section</b> 26:14 <b>see</b> 15:24,24 25:6,7 60:1 63:6 <b>segregated</b> 35:21 <b>segregation</b> 7:8 35:16 <b>sent</b> 14:10 24:14,21 25:21,21 53:12 <b>sentence</b> 32:21 33:22 44:13,22 <b>separate</b> 18:17 <b>serious</b> 47:23 <b>serve</b> 11:8 13:11 17:7 28:17 <b>service</b> 8:23 <b>serving</b> 55:15 <b>session</b> 64:13 <b>set</b> 27:16 <b>settings</b> 41:2 <b>sever</b> 17:17 18:7 19:23 21:5,14 22:16,18,19,22 23:3 <b>severance</b> 19:6,11 <b>severed</b> 24:1 <b>severing</b> 19:1 20:10 20:12 23:1	<b>share</b> 42:3 <b>shocked</b> 30:9 <b>shoes</b> 7:10 <b>show</b> 37:5 51:16,17 <b>sign</b> 61:11 <b>significant</b> 38:8 <b>signing</b> 61:16 <b>silly</b> 17:23 54:1 <b>similar</b> 28:9 <b>similarly</b> 39:13 42:9 <b>simply</b> 17:24 18:1 20:25 21:19 24:15 25:6 27:7 52:10 54:16 57:5 60:23 <b>single</b> 12:22 19:11 20:13 27:16 48:4 <b>situated</b> 39:13 <b>situation</b> 40:16 <b>six</b> 55:11 <b>slate</b> 12:22 14:15 15:1 16:19 18:15 18:17 19:2,5 24:8 <b>slipped</b> 50:6 <b>sly</b> 48:6 <b>society</b> 26:20 <b>Solicitor</b> 2:5 <b>somebody</b> 10:6 <b>soon</b> 14:18 61:4 <b>sooner</b> 61:1 <b>sorry</b> 11:21,21 26:11,12 29:16,16 38:13 46:24 63:17 <b>sound</b> 54:8 <b>South</b> 9:11 <b>special</b> 15:15 <b>specific</b> 19:5 <b>specifically</b> 24:22 <b>spelling</b> 33:21 <b>spend</b> 21:1 <b>spent</b> 6:21 <b>staff</b> 1:13 2:1 5:20 5:21 11:2,10 12:3 13:12 14:3 15:11 15:13,14,16,22 17:9 25:11,13,17 25:20,24 26:10,12
---	--	--	---	--	--

26:17 30:18 33:1 33:23 34:1,7,16 34:17 46:5,6,7,18 46:23 47:10 49:5 52:11 53:5,7,8,12 61:24 62:2,11 63:11,14,19,25 64:9,10,14,23 <b>stand</b> 52:19 53:2 <b>Standard</b> 4:16 <b>start</b> 9:2 18:4 23:12 43:18 57:23 <b>State</b> 3:4 10:18,24 11:8 13:2 16:23 17:7 18:23 25:5,7 28:17 <b>statement</b> 6:1 25:12 26:13,23 27:2 28:13 53:2 <b>statements</b> 30:25 33:4 49:17 <b>States</b> 7:23 8:15 33:15 <b>statute</b> 27:9 <b>STEM</b> 33:3,6 42:5 42:18 43:23 44:15 46:24 57:18 58:13 58:23 <b>Stoner</b> 13:7 <b>strike</b> 58:4 <b>strongly</b> 26:18 28:25 <b>student</b> 36:22 37:2 39:11 40:22 43:21 45:5,8,16 58:19 59:1 <b>students</b> 7:6 9:10 33:13 35:17,19 36:22 37:3,6,8 38:6 39:13,16 40:15,18 41:1 42:3,7,14,16 43:19,23 44:15 45:24 46:1 56:13 57:17,25 58:12,17 58:22 <b>studies</b> 37:5	<b>study</b> 36:22 37:2 38:6 <b>studying</b> 28:18 <b>stuff</b> 15:21 <b>subject</b> 48:9 49:5 <b>submitted</b> 53:16 <b>submitting</b> 53:14 <b>substituted</b> 63:7 <b>succeed</b> 40:13 <b>successes</b> 42:17 <b>successful</b> 35:11 <b>sufficient</b> 26:8 <b>suggest</b> 52:4 54:1 <b>suggested</b> 10:6 <b>suggesting</b> 15:6,6,7 <b>summary</b> 30:22 <b>Summer</b> 53:12 <b>Sunday</b> 63:23 <b>support</b> 26:18 29:1 32:8 38:5 39:6 61:22 <b>supported</b> 40:12 41:25 <b>supporting</b> 26:23 <b>supposed</b> 28:18 34:3 53:22 54:21 <b>sure</b> 18:9 28:8 44:12 45:10 47:20 50:1,13 60:5 62:22 <b>survey</b> 36:21,24 37:2,3 <b>suspect</b> 27:25 <b>Swanson</b> 17:4 <b>system</b> 7:12	10:17 12:19,20 16:16,17 17:12,12 23:5,6 24:5,6 29:20,21,21 31:2 31:2 32:5,6 35:6,7 36:15,16 37:25 38:1 39:2,3 40:8,9 41:21,22 43:10,11 61:19,20 <b>technologies</b> 42:4 <b>teleconference</b> 1:7 <b>telephone</b> 4:10 <b>telephonic</b> 4:17 64:2,3,4 <b>tell</b> 51:8,9,9,9 <b>telling</b> 14:5 19:20 52:21,25 <b>tend</b> 15:3 <b>tenure</b> 6:14 <b>terms</b> 49:19 52:17 <b>terror</b> 61:3 <b>testified</b> 46:11,16 47:5 50:18 <b>thank</b> 4:11,13 8:22 12:6 31:3 34:18 <b>Thanks</b> 34:9 64:8 <b>Thernstrom</b> 4:19 <b>Thernstrom's</b> 9:8 <b>thing</b> 27:19 <b>things</b> 46:13 54:18 <b>think</b> 15:2 18:21 19:12 20:12 21:11 22:10 24:20 25:18 27:4,5,7 28:2,15 28:20 29:9 34:5,6 47:6,14 52:6 53:20 54:1,6,14 59:9,14 63:6,14 63:22,25 64:2 <b>third</b> 9:12 61:6 62:13 <b>Thompson</b> 17:2 <b>thought</b> 17:23 26:2 <b>three</b> 20:18 30:10 32:8,8 47:17 48:20,22 50:16 60:20 61:22 64:5	<b>Thurrow</b> 17:4,6 <b>TIM</b> 2:9 <b>time</b> 1:8 4:5,16 6:11 8:12 14:4,18 18:10 20:20,22,24 21:1 47:21 48:13 49:10,12 50:14 53:16 56:24,24 60:20 61:7 63:10 <b>Title</b> 7:1,6 63:2 64:12 65:2 <b>today</b> 4:4 <b>today's</b> 4:21 35:19 <b>Todd</b> 1:10 13:20 <b>TOLHURST</b> 2:6 <b>top</b> 42:9 <b>traffic</b> 53:10 <b>Transcontinental</b> 8:5 <b>transcripts</b> 53:10 <b>transferred</b> 7:17 <b>transparency</b> 56:23 57:12 <b>troubled</b> 17:21 <b>true</b> 21:23 45:11 <b>try</b> 55:23,25 <b>trying</b> 18:25 19:17 19:17 49:25 <b>turn</b> 55:3 <b>turned</b> 55:7 <b>two</b> 6:9 8:2 20:18 30:11 36:18 43:13 50:18 61:23 <b>typical</b> 58:19 59:1	<b>United</b> 7:23 8:14 33:15 <b>universities</b> 3:11 32:12,16 33:16 35:20 36:23 <b>university</b> 33:10,11 35:17 57:24 58:14 58:24 <b>unqualified</b> 20:15 27:6 <b>unrelated</b> 7:7 <b>update</b> 63:1 64:11 65:2 <b>use</b> 6:3 54:4 <b>useful</b> 55:4 <b>utility</b> 60:18,21 <b>U.S</b> 1:1 4:15 7:17 8:19
	<b>T</b>		<b>U</b>	<b>V</b>
	<b>take</b> 6:2 8:12 15:20 30:4 <b>taken</b> 52:20 <b>talented</b> 35:16 <b>talking</b> 17:24 24:18 25:21 27:16 46:25 56:17,18 <b>tally</b> 6:6 32:20 <b>Taylor</b> 1:11 5:10 5:10,11,14 10:16		<b>uncompensated</b> 11:9 13:11 17:8 <b>undergraduate</b> 42:9 <b>underlies</b> 54:7 <b>underlying</b> 54:15 <b>understand</b> 49:2 49:14 50:1 51:6 <b>understanding</b> 6:15 <b>uniquely</b> 18:22	<b>Valery</b> 11:5 <b>valuable</b> 8:22 <b>value</b> 18:25 <b>vehicles</b> 50:22 <b>Vernard</b> 11:4,7 <b>version</b> 31:19 <b>versus</b> 39:14 <b>vestige</b> 26:20 <b>Vice</b> 4:19 9:8 <b>Vietor</b> 14:7,11,19 <b>view</b> 25:3 28:16 <b>viewpoint</b> 27:7 47:25 53:4 <b>viewpoints</b> 48:8 60:13 <b>views</b> 28:7,11 <b>vote</b> 6:3 9:23 11:18 12:21,22 14:18 16:5,18 18:12,14 18:17,17,20 19:1 19:2,5,11 21:9 22:13,19,25 23:7 23:16 24:2,7,17 29:5,5,13,22 30:11 31:7,23 32:7,17,19,20,21 34:11,20 35:8

36:4,17 37:14 38:2 39:4 40:10 40:11 41:23,24 55:18 57:15 59:5 59:14,20 61:5,21 62:19 <b>voted</b> 8:7 12:8,23 16:20 19:4 23:9 23:10 24:9 28:14 43:14 <b>voter</b> 16:19 <b>votes</b> 30:11 32:8 36:18 <b>voting</b> 6:6 14:15 22:14 23:23 31:15 31:20 48:3	<b>Welfare's</b> 7:15 <b>well-prepared</b> 40:25 <b>weren't</b> 46:14 <b>we'll</b> 10:9 15:23 21:7 43:18 <b>we're</b> 4:17 20:25 31:15,19 55:19 59:19 61:23 <b>we've</b> 61:25 <b>widespread</b> 6:25 <b>Willard</b> 6:10 <b>William</b> 11:5 17:2 <b>William</b> 11:5 17:2 <b>Wirtz</b> 6:10,14 <b>wish</b> 8:21 43:24 44:16 45:18 57:18 58:13,23 <b>witnesses</b> 46:10 <b>wondering</b> 44:18 <b>word</b> 4:21 33:21 34:3,4 <b>work</b> 6:11 7:12,13 8:21 58:19 <b>worked</b> 7:14 <b>working</b> 55:20 <b>works</b> 58:20 <b>worth</b> 28:12 64:19 <b>worthy</b> 15:7 <b>wouldn't</b> 27:3 <b>WRIGHT</b> 2:6 <b>written</b> 17:21,22 30:24 48:5 <b>wrong</b> 18:1 63:1	24:13 26:25 27:1 29:15,15,16 30:7 30:8 32:2,3 35:3,4 36:12,13 37:22,23 38:24,25 40:5,6 41:18,19 43:7,8 43:13 46:4,8,9,15 46:21,25 47:4,14 47:17 48:11,16,17 48:24,25 49:1,4,9 49:20,21,23,24 50:7,25 51:3,8,11 51:12,13,15,16,19 51:20,21 52:1,8 52:17 55:6,11 56:1,8,14,18,19 56:22,25 57:1,3,4 57:6,8,12 59:18 59:24 60:3,5,10 61:15,16 62:3 <b>year</b> 51:2 63:13,15 63:20 <b>years</b> 8:21 20:19 46:11 47:17 48:20 48:22 50:16 54:24 55:7 60:17,20	<b>15th</b> 32:25 63:7,22 <b>16</b> 3:6 <b>17</b> 42:10 <b>1843</b> 8:4 <b>1869</b> 8:6 <b>1962</b> 6:13 <b>1964</b> 6:17 24:19 26:18 29:1 33:11 <b>1965</b> 7:2 <b>1966</b> 7:18 <b>1969</b> 6:13,25 <b>1978</b> 7:24 <b>1990</b> 8:7 <b>1992</b> 8:8	<b>63</b> 39:9
<hr/> <b>W</b> <hr/>				<hr/> <b>7</b> <hr/>
<b>W</b> 8:9 <b>wait</b> 45:2 52:8 55:19 62:15,15,15 <b>Walker</b> 12:2 17:4 17:17 18:12,18 22:17 24:1,11,15 24:21 27:4 <b>Walker's</b> 25:12 <b>want</b> 4:24 14:23 15:9 19:3,5 27:18 44:11 45:3,8 49:11,15 55:23 57:23 64:15 <b>wanted</b> 20:24 27:19 50:13 <b>wants</b> 6:1 <b>waste</b> 18:10 <b>way</b> 13:18 26:4 27:20 30:6 54:8 55:9 56:14 60:13 <b>weaker</b> 41:1 <b>wealthier</b> 38:9 <b>week</b> 7:25 8:1,1,8 24:22 <b>weekend</b> 65:5 <b>weekly</b> 39:12 <b>weeks</b> 64:5 <b>weight</b> 14:25 <b>welcome</b> 4:5	<b>24:13</b> 26:25 27:1 29:15,15,16 30:7 30:8 32:2,3 35:3,4 36:12,13 37:22,23 38:24,25 40:5,6 41:18,19 43:7,8 43:13 46:4,8,9,15 46:21,25 47:4,14 47:17 48:11,16,17 48:24,25 49:1,4,9 49:20,21,23,24 50:7,25 51:3,8,11 51:12,13,15,16,19 51:20,21 52:1,8 52:17 55:6,11 56:1,8,14,18,19 56:22,25 57:1,3,4 57:6,8,12 59:18 59:24 60:3,5,10 61:15,16 62:3 <b>year</b> 51:2 63:13,15 63:20 <b>years</b> 8:21 20:19 46:11 47:17 48:20 48:22 50:16 54:24 55:7 60:17,20	<b>15th</b> 32:25 63:7,22 <b>16</b> 3:6 <b>17</b> 42:10 <b>1843</b> 8:4 <b>1869</b> 8:6 <b>1962</b> 6:13 <b>1964</b> 6:17 24:19 26:18 29:1 33:11 <b>1965</b> 7:2 <b>1966</b> 7:18 <b>1969</b> 6:13,25 <b>1978</b> 7:24 <b>1990</b> 8:7 <b>1992</b> 8:8	<b>63</b> 39:9	
<hr/> <b>Z</b> <hr/>				<hr/> <b>8</b> <hr/>
<b>zebras</b> 59:10 <b>zero</b> 60:21				<b>8</b> 3:3 63:6,7 <b>8th</b> 63:12,21
<hr/> <b>0</b> <hr/>				<hr/> <b>9</b> <hr/>
<b>0</b> 4:9				<b>9</b> 63:6
<hr/> <b>1</b> <hr/>				
<b>1</b> 43:18 <b>10</b> 3:4,5 <b>10th</b> 8:6 <b>103</b> 33:14 <b>11</b> 33:17 63:8 <b>11th</b> 33:5,6,7 <b>11:30</b> 1:7 <b>11:42</b> 4:2,16 <b>12</b> 3:5 <b>12th</b> 30:20 <b>12:44</b> 65:7 <b>14</b> 33:17 <b>15</b> 63:8		<hr/> <b>2</b> <hr/>		
		<b>2-year</b> 33:17 <b>20</b> 42:6 <b>20th</b> 33:1 <b>2004</b> 37:1 <b>2005</b> 37:1 <b>2007</b> 53:12 <b>2009</b> 30:20 <b>2010</b> 1:5 4:16 7:20 32:25 <b>2011</b> 62:14 <b>21</b> 42:9 <b>28</b> 1:5 <b>28th</b> 4:16		
		<hr/> <b>3</b> <hr/>		
		<b>3</b> 33:18 <b>30</b> 3:7 <b>32</b> 3:8,9 <b>37</b> 37:3		
		<hr/> <b>4</b> <hr/>		
		<b>4</b> 38:4 <b>4th</b> 8:18 <b>40</b> 42:7		
		<hr/> <b>5</b> <hr/>		
		<b>5</b> 39:7 <b>55</b> 39:8		
		<hr/> <b>6</b> <hr/>		
		<b>6</b> 40:13 <b>6th</b> 33:1		