The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:30 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

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

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

STAFF PRESENT:

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

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

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SCHMAUCH

KIMBERLY SCHULD
AGENDA

I. Approval of Agenda. ................................. 4

II. Program Planning. ................................. 5

III. Staff Director's Report .......................... 67

IV. Adjourn ........................................... 73
CHAIRMAN REYNOLDS: This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is 12:37 Eastern Daylight Time on June 11th, 2010.

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

I. APPROVAL OF AGENDA

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

COMMISSIONER GAZIANO: Second, Gaziano.

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

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

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

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

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

II. PROGRAM PLANNING

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

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

VICE CHAIR THERNSTROM: Get back to me again.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Abstain.

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

VICE CHAIR THERNSTROM: Abstain.

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

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

CHAIRMAN REYNOLDS: Discussion? Okay.

Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: I also vote for the motion. We have two abstentions, the remaining Commissioners supported the motion. The motion passes.

Next up is approval of the briefing report Encouraging Minority Students to Pursue Science, Technology, Engineering, and Math Careers, also known as STEM. I move that the Commission approve for publication Part A of the report produced by staff reflecting commissioner and panelist inputs on the briefing the Commission held on September 12th, 2008.
on Encouraging Minority Students to Pursue Science, Technology, Engineering and Math Careers.

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

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

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

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion? Vice Chair Thernstrom, how do you vote?
VICE CHAIR THERNSTROM: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

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

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

I move that the Commission approve Finding One, which reads as follows: "Science, Technology, Engineering, and Mathematics graduates are important
to the U.S. economy because they enable the United States to maintain its preeminence in the STEM field."

Is there a second?

COMMISSIONER HERIOT: Second, Heriot.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

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

I move that the Commission approve Finding Two, which reads as follows: "Regardless of the racial or ethnic background, college freshmen exhibit equally substantial degrees of interest in pursuing STEM careers. But despite this interest, Black and Hispanic students are less likely to major in or
obtain a doctoral degree in STEM disciplines than are Whites and Asians." Is there a second?

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

CHAIRMAN REYNOLDS: Okay. What is it?

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

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

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

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

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

COMMISSIONER HERIOT: Then you're the only
one.

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

CHAIRMAN REYNOLDS: Any other comments?

Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Abstain.

CHAIRMAN REYNOLDS: And I vote for it. We
have two nos, one abstention, the remaining
Commissioners voted in support of it. The motion
Okay. I move that the Commission approve Finding Three, which reads as follows -

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

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

COMMISSIONER GAZIANO: Or do you want to read the -

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

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

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: -- pass this down the way.

CHAIRMAN REYNOLDS: Okay. While that's being done, data presented to the Commission showed that success in STEM majors depends on both the student's absolute entry academic credentials, and on the student's entering academic credentials relative
to other students in the class. The latter phenomenon is commonly called mismatch.

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

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

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

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion? Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.
CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Abstain.

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

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

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Vice Chair -- I'm
sorry. Discussion? Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Abstain.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER TAYLOR: Abstain.

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

The motion passes.

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

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

CHAIRMAN REYNOLDS: Go ahead.

COMMISSIONER GAZIANO: Okay. "The
practice of racial and ethnic preferences is one way
in which Black and Hispanic students may be admitted
to a college or university at which their entering
academic credentials are significantly lower than
those of their peers. When top tier colleges and
universities use racial and ethnic preferences to
recruit and admit minority students with academic
credentials that are significantly below their median,
but match the median of lower tier colleges, the
resulting mismatch at the top tier institutions has a
cascading effect through many lower tiers, as each
tier engages in racial and ethnic preferences to
recruit and admit Black and Hispanic students who do
not match the mean in its respective tier. Although
the consequences of this cascading mismatch is not the
principal reason for the current disparities between
Black and Hispanics, and White and Asians in STEM (see
Finding Three regarding absolute credentials), it is
a significant reason. There are fewer Black and
Hispanic physicians, scientists, and engineers today
than there would have been if colleges and
universities had not recruited and admitted Black and
Hispanic students with significantly lower academic
credentials than their average student."

CHAIRMAN REYNOLDS: Okay. Is there a
second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: Yes. This is

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

CHAIRMAN REYNOLDS: Okay. Any other
comments? Okay. In response to Commissioner Yaki's
statement, there's no aspect in life that I can think
of where two competitors -- we can have two
competitors where one is substantially better prepared
than the other, and the other competitor that has
qualifications that are not as strong wins. Many of
these students are from disadvantaged backgrounds.
They have to take out student loans. They're placed in a situation where the data contained in many admissions office shows that they're going to struggle. All the folks in the admission office understand that, when you come in and your credentials are a standard deviation away from the mean, that despite all of the remedial courses and all of the help, that it's still going to be a struggle. Many of these students do not make it. They are saddled with loans. They don't have a degree, but they have a debt. I think that the institutions are taking care of the institution's interest, as opposed to looking out for the welfare of the students. To be fair, and as a compromise, I think that if universities would just release more data letting students know, based on historical data, how they are likely to fare, that at least these students, and the prospective students and their families, would have more information upon which to make a decision. They may still elect to accept an offer of admission, despite the fact that their preparation is not as strong, but at least they will make the decision with full knowledge of what the likely consequences are, based on historical data.

I mean, it is a matter of principle for me, but it's a consumer protection issue. Let these
families, let these prospective students know what they're getting into. Teachers teach -- I mean, the pace of the class is geared towards the middle oftentimes, and when that does not occur, when your preparation puts you at the bottom of the pack, regardless of your race, regardless of your ethnicity, you are likely to struggle, and in many instances you are likely to eventually flunk out or withdraw out of frustration, so there's no political agenda here. This is a fairness argument. These students and these families deserve better.

COMMISSIONER YAKI: Well, Mr. Chair, this is Commissioner Yaki. I would say that there are some parts of what you said I agree with, and other parts which I vehemently disagree. And I think that there is at least one panelist who would disagree with this conclusion, although he was not certainly as strong or as forceful and he could have been, and I'll just note that in my dissenting statement. But I can just say that it may be a consumer protection issue, but there's also, I think, some accountability by the institutions, as well, in terms of their willingness or ability to provide the resources to these students to enable them to succeed, because I think that there are a lot of these young men and women who have the
intelligence and the potential to do great things, and
whether the university fails them is a much different
question than whether or not they have failed.

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

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

COMMISSIONER YAKI: Like I said, we'll
debate this further in our Commissioner statements.
I fundamentally disagree with the notion that while
we're -- that offering a consumer protection point of view is hardly what I think to be in keeping with what could be a much better mission with regard to this topic by the U.S. Commission on Civil Rights. But we agree to disagree, Mr. Chair, and let's continue.

COMMISSIONER GAZIANO: Call the question, please.

CHAIRMAN REYNOLDS: One last question.

Commissioner Yaki, would you have concerns with maintaining these admission policies, but yet providing more transparency to the families and the students?

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

CHAIRMAN REYNOLDS: Okay. Any other comments? Vice Chair Thernstrom, how do you vote?
VICE CHAIR THERNSTROM: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: I said no.

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

COMMISSIONER TAYLOR: Abstain.

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

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

COMMISSIONER GAZIANO: Second.
CHAIRMAN REYNOLDS: Discussion? Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Abstain.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: I vote for it, also.

We have two abstentions, one vote against the motion. The motion is approved.

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

COMMISSIONER GAZIANO: Second. What
panelist indicated that?

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

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

CHAIRMAN REYNOLDS: Commissioner Gaziano.

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

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Abstain.

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

We move on to recommendations. The first recommendation reads as follows: "A college or university should not admit any students with a large deficit in academic credentials relative to its median
students. Such policies place students at a high risk of failure." Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: Does this include athletic programs?

CHAIRMAN REYNOLDS: Very good question.

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

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

VICE CHAIR THERNSTROM: Large deficits, yes.

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

COMMISSIONER YAKI: What is it?

COMMISSIONER GAZIANO: Different people can attribute -

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

CHAIRMAN REYNOLDS: Well, as a friendly amendment, I would prefer to use the word
"significant," rather than large. And I do agree with Commissioner Gaziano that there is some subjectivity in determining how large is large, how significant is significant. Is it one standard deviation, is it two? I think that that's a point that could be debated by the various admissions offices, and we could have admission offices reaching different conclusions. But I still think that, if this were enacted, it would be a step in the right direction.

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

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

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

VICE CHAIR THERNSTROM: Well, okay. If it
doesn't assume -

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

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

COMMISSIONER GAZIANO: I would disagree.

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

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

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

COMMISSIONER GAZIANO: -- them to failure.

COMMISSIONER HERIOT: Athletes are being taken advantage of.

(Simultaneous speech.)

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

COMMISSIONER YAKI: Let's just vote.
COMMISSIONER HERIOT: It's okay with me.

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

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes. Are we substituting significant?

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

COMMISSIONER YAKI: I would just say gigantic.

CHAIRMAN REYNOLDS: Okay. I -

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

COMMISSIONER YAKI: Infinitely large.

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

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

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

CHAIRMAN REYNOLDS: Commissioner Yaki.
COMMISSIONER YAKI: This is hugely ridiculous. No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Abstain.

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

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

STAFF DIRECTOR DANNENFELSER: No, it doesn't.

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

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

CHAIRMAN REYNOLDS: Okay. The motion falls.

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

COMMISSIONER HERIOT: You're on Two?

STAFF DIRECTOR DANNENFELSER: Yes. He needs a second.
COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

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

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

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

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

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

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

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

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

COMMISSIONER GAZIANO: Second.

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

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

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

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

VICE CHAIR THERNSTROM: Well, so -
CHAIRMAN REYNOLDS: Are you saying that

truth is a bad thing?

VICE CHAIR THERNSTROM: I'm saying let the

colleges, whatever criteria they have admit the

students they want to admit, let the students go to

those colleges, or not go to these colleges. But this

really is saying well, you may have been admitted, but

be warned.

CHAIRMAN REYNOLDS: Isn't that better than

what we have now, where these kids are going in not

knowing the significant burdens that they have that

are not shared by many of their classmates?

VICE CHAIR THERNSTROM: I think it's -- it

may be, I'm not sure.

CHAIRMAN REYNOLDS: Well, it seems to me

that -

VICE CHAIR THERNSTROM: It's a two-edged

sword.

CHAIRMAN REYNOLDS: Oh, I don't think so.

I think that more information is always better than

less information, especially major life shaping

moments, and this is one of them. Where you go to

school is extremely important, and if you were put in

a situation where historical data says that there's a

high probability that you are going to flunk out, that
is something that I would want to know, that is something that I would want to know for my children. And I think that most parents would want to know if their children were in a category where it's likely that the savings that they've put aside for their children would be wasted, or the money borrowed by these kids would not result in a college degree. I mean, this is essential information, it seems to me.

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

COMMISSIONER HERIOT: Not their demographic programs.

COMMISSIONER KIRSANOW: Academic.

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

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

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

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

VICE CHAIR THERNSTROM: Poor analogy.

COMMISSIONER GAZIANO: So, I would suggest that that ought to apply to institutions of higher learning that are taking these people's tuitions, and misserving some of them.

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

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

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

VICE CHAIR THERNSTROM: Well, I think that's the status quo.
COMMISSIONER HERIOT: No, it's not.

CHAIRMAN REYNOLDS: Do you think that -

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

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

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

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

COMMISSIONER YAKI: This is Commissioner Yaki. I don't think a percentage means a tinker's difference to a family, or to a young kid deciding to
go to college. I think that all you're doing -

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

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

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

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

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

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

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

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

CHAIRMAN REYNOLDS: He hasn't said anything yet.
VICE CHAIR THERNSTROM: I think he did.

CHAIRMAN REYNOLDS: What?

COMMISSIONER YAKI: Well, Commissioner -- Mr. Chair, I think you're so busy jumping, talking over me that you didn't hear what I said.

CHAIRMAN REYNOLDS: What did you say?

COMMISSIONER YAKI: Would you like me to say it?

CHAIRMAN REYNOLDS: No.

(Laughter.)

COMMISSIONER YAKI: Well, then don't ask what did I say, because if you don't ask what I say, I won't tell you that what I would have said is that --

CHAIRMAN REYNOLDS: As I said, I would like to finish the exchange with Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I just said, Commissioner Yaki started to say what I would have said, and I would like to turn it over to give him some time to answer it, since he was answering it extremely well.

COMMISSIONER GAZIANO: Abby yields to --

CHAIRMAN REYNOLDS: Commissioner Yaki, I don't think that Commissioner -- that Vice Chair
Thernstrom wants to continue the conversation.

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

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

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Mr. Chair, thank you for allowing me to say just a few words on the subject. I mean, what I was trying to say before is that what this recommendation would do, I think has two impacts. One is, I think, none, and the two, it's harmful. The none is that in some respects, all you're simply doing is telling an individual what his or her odds may be. But I think a young person looking to go to college, looking to excel, looking to better his or her life, is going to take -- doesn't really care about what the odds are, because the fact is, if this person has been disadvantaged throughout most of their life, they've been up against those
odds, anyway. And when you -- and if you were to say well, you know, 20 percent made it through, I'm going to take my bet, I'm going to be one of the 20 percent, number one.

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

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

COMMISSIONER KIRSANOW: Mr. Chair -

CHAIRMAN REYNOLDS: Commissioner Yaki, I'm trying to offer a compromise. We have this corrosive debate over racial and ethnic admission policies in college. You know, if I were a public policy maker, I would offer the compromise, fine, keep it. Just give the people who are interested in the data the information, and let them make their own decisions. I'm not saying -- for purposes of this discussion, I'm saying we will keep the system that is cherished by some. The only difference is that we will just have a little more Sunshine for those intrepid souls who are not afraid of the data, who are interested in knowing as much as possible. For those who don't want the information, then they don't have to get it, under
the proposal that I'm carrying around in my head. So, it's -- why not empower parents and prospective students with as much information as possible -

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

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

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

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

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

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

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

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

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

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

Second, we do have evidence that was adduced, as I recall, during the hearing. I believe it was from Professor Bernstein who, contrary to the statement that most students wouldn't care, indicated
that at least one student cared significantly given
that she was admitted without given her -- without
being given this information that we're contemplating
here, and she spent two years at the University of
Colorado Law School struggling through, and then ended
up flunking out after she had spent tens of thousands
of dollars in tuition. And I think it's also
intuitive to note, and I'll say from my own
perspective, after spending $200,000 on my daughter's
education, a similar amount on my son's education, I'd
like that information. And number four is, I don't
know of too many students who, if they are in the
lower quartile, poor minority students, are so daunted
by the prospect of seeing this that they're going to
say oh, my gosh, I can't make it. Contrary to Claude
Steele, I don't think that minority students are
simple hothouse flowers that can't take this
information, deal with it, make their own judgments.
And, more importantly, their parents, and whoever is
financing them, making judgments in that regard, I do
think that universities sometimes, not all the time,
but on occasion use minority students as mascots.
Here's how many minority students we have, don't look
at what our graduation numbers are. Again, this is
something that's also applicable to some sports
programs, let them -- if they're such hothouse flowers, that they can't take this kind of data, they're not going to fare too well in the broader society, anyway. So, I do think that this is something we should move forward on, but I would entertain leaving this until we have a conference call to rough out the edges of this, and make it clear that it's information that's available, but not, necessarily, automatically sent out. And it's available to everybody, regardless of what quartile they place within.

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

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

COMMISSIONER GAZIANO: Exactly. That's why
we would recommend -

CHAIRMAN REYNOLDS: I agree.

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

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

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

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

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

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

COMMISSIONER TAYLOR: I second that substitute motion.

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

COMMISSIONER HERIOT: Mr. Chairman, I
assume we can't do statements, so you're moving the statement schedule, as well.

CHAIRMAN REYNOLDS: Yes.

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

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

(Laughter.)

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

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

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

CHAIRMAN REYNOLDS: Okay.

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

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

COMMISSIONER GAZIANO: Well, your suggestion that we agreed to was that we open everything up again at the next hearing, and we just have a lot of briefing reports, and we've got a lot of other business. And it's always possible that someone
can reopen the vote on Part A until we publish this sucker. It's also possible that they could reopen the findings, but let's just, as an instruction to each other -

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

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

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: Commissioner Yaki, I'm sorry.

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

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

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

COMMISSIONER YAKI: I am sorry, I'm still reeling over the word that the Chairman just used on
the open record.

(Laughter.)

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

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

COMMISSIONER GAZIANO: Recommendations.

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

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

COMMISSIONER HERIOT: No, no, no.

COMMISSIONER GAZIANO: And I reserve the right to be convinced by you, too, so I will be open to that. I will be open to changing every finding if
you give a good reason, but let's try to concentrate
on the recommendations.

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

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

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

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

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

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

COMMISSIONER YAKI: No, someone from the
majority.

COMMISSIONER HERIOT: Someone from the
majority.

CHAIRMAN REYNOLDS: Someone from the majority.

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

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

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

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

STAFF DIRECTOR DANNENFELSER: It's in there.
COMMISSIONER GAZIANO: Oh, I didn't see that circulated. Sorry. I didn't get the re-recirculated. Thank you.

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

CHAIRMAN REYNOLDS: Yes.

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

COMMISSIONER GAZIANO: I hope not.

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

COMMISSIONER GAZIANO: We should never plan.

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

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

CHAIRMAN REYNOLDS: Right. I mean, if you're right, it changed, no problem. We may have new Commissioners, but that doesn't, necessarily, mean
that they are going to have an objection with the dates. We just don't know. And since we don't know, we will have a plan in place with the understanding that that plan could change come January, or sooner.

Any other comments?

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

CHAIRMAN REYNOLDS: Any other comments?

Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Taylor.

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

COMMISSIONER HERIOT: We're still hoping
you'll be reappointed, Commissioner Taylor.

CHAIRMANT REYNOLDS: Well, since the possibility exists that I would be reappointed -

(Laughter.)

CHAIRMANT REYNOLDS: -- I am going to vote for it.

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

CHAIRMANT REYNOLDS: That's a possibility, also. Okay.

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

MR. BLACKWOOD: This is David Blackwood. Staff has begun drafting the report. At the same time, there are still some outstanding matters first with regard to Malik Zulu Shabazz. As you all are aware, the Justice Department is representing the Commission with regard to the subpoena, but the short of it is we do intend to serve Mr. Shabazz at some point, and take his deposition before the report is completed. At the same time, today I was contacted by a representative for J. Christian Adams. As has been publicly acknowledged, Mr. Adams was served with a subpoena by the Commission in December of 2009. I
will send a copy of the email I have received, but in substance it reads Mr. Adams wants to relieve any obligation he has under the subpoena, and provide whatever information he can to the extent he is able. And it requests that I please contact his counsel. I will do so, and I will notify everyone what results from that conversation. But I will send the email around as soon as this meeting is over. That is all I have.

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

MR. BLACKWOOD: No, it did not.

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

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: And the General Counsel and others may want to comment. You know, the stonewalling delayed our obtaining of a lot of information. Then the blizzard, the Thousand Year Blizzard delayed our hearing further, then some more stonewalling delayed our hearing. I think this is a very important -- he is a very important witness. He's someone we subpoenaed in the very early stages,
but I also am very mindful of the schedule, so I would suggest that we do what we reasonably can to take his testimony soon, as soon as practical.

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

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

Other comments? All right.

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

CHAIRMAN REYNOLDS: To the next in-person
business meeting.

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

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

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

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

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

We have received data from 15 of the 19 schools. Virginia Union has submitted data. Staff believes the responses to be somewhat complete. We have requested from Virginia Union, or will request, I should say, further clarification on some technical aspects of their data. The Chairman is contacting the four objecting schools to set up meetings to discuss any further accommodation of our requests. We have
received responses to our interrogatories from the Departments of Education and Justice. And we have submitted a follow-up letter to the Office for Civil Rights of the Department of Education requesting some additional data, and some clarifications to their response.

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

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

CHAIRMAN REYNOLDS: Questions? Comments?

Okay. I have a question for you. Do you have a firm handle of -- I know that we have this transition because of the passing of Dr. Lerner. But at this point, do you have a handle on what has been accomplished, and how much work needs to be done in order to complete this project?

MR. BYRNES: At this point, that's still a little bit in doubt. There seem to be issues with
the coding and recoding of the data that Dr. Lerner had taken home with him, so we're sort of sifting through that at the moment.

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

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

CHAIRMAN REYNOLDS: I'm sorry?

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

CHAIRMAN REYNOLDS: Okay. Next up -

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

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

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

COMMISSIONER HERIOT: Yes. There should be no drafting preliminary reports, or I don't think even really going much further until we get the
answers, to what degree is there discrimination going on. Because until we know that, we don't know how we're going to form this report.

CHAIRMAN REYNOLDS: Okay. Next up is--

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

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

Mr. Staff Director.

III. STAFF DIRECTOR'S REPORT

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

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

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

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

COMMISSIONER HERIOT: Yes, but we don't
want to introduce individual data points into the record.

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

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

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

On Tuesday, June 8th, I sent Commissioners a copy of the guidance we received from OMB regarding the Fiscal Year 2012 budget. We are being asked to submit a budget to OMB by September 13th that is 5 percent below the level of our Fiscal Year 2011 budget. While Congress has not yet finalized our Fiscal Year 2011 budget, the President's request was for the same $9.4 million level we are operating under for Fiscal Year 2010. I am currently working with the
Associate Deputy Staff Director, the Director of Management, and our Budget Chief to draft a Fiscal Year 2012 budget proposal based on this OMB guidance, and that will subsequently be submitted for Commissioners' consideration.

Regarding the annual audit, the solicit -

CHAIRMAN REYNOLDS: I'm sorry. Before you go on -

STAFF DIRECTOR DANNENFELSER: Okay.

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

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

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

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

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

STAFF DIRECTOR DANNENFELSER: About 42, I believe.

CHAIRMAN REYNOLDS: Yes. So, Marty, when we have this discussion, I would also like you to prepare some analysis that looks at our purchasing power over the last 15 years, looking at what our annual budgets have been, and just having someone perform some analysis that will show the impact that a flat budget has had on our purchasing power over, say a 15-year period.
STAFF DIRECTOR DANNENFELSER: Okay. We'll do some of that analysis.

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

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

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

The Staff has been meeting regarding the National Civil Rights Conference, and we now are at a point where we have reached an agreement with the National Press Club to have the conference there on Tuesday, September 14th. We expect to receive a contract from the Press Club as soon as today, and
anticipate signing that by sometime next week. We are planning to have a meeting with an event planner next week, as well, so we have made a decision in that regard.

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

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

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

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

CHAIRMAN REYNOLDS: Folks, we're done.

(Whereupon, the proceedings went off the record at 1:57 p.m.)
deterrence 41:7
DEULL 2:8
deviation 19:6 27:4
deviations 44:19
Diego 35:19
difference 37:25
42:21
differences 22:17
different 14:10
21:2 26:20,22
27:7 42:2 43:25
45:8,10 52:22
direction 27:9
64:18,22
directly 41:6
Director's 3:11
65:8,10
disadvantaged
18:25 40:24 44:5
disagree 20:15,16
21:25 22:5 28:9
28:10
disagreement 22:21
disciplines 11:1,15
disclose 32:19,23
33:4 36:8
disclosed 33:23
discovery 62:12
discretion 53:21
discriminate 63:23
discrimination
15:16 63:17,20
64:6 65:1
discuss 8:16 53:14
61:15,24
discussed 50:16
51:3
discussion 4:18
5:10 6:2 7:2 8:14
8:24 10:5 11:18
14:18,21 16:1
18:3 24:1 25:2
26:4,17 31:2,5
32:4 33:8,10
42:19 49:1,9 50:5
55:9 60:24 61:10
68:19
discussions 44:18
53:19
disparities 17:16
27:21
disproportionate
15:18
dissenting 8:17
20:19
distributed 8:3
9:15
diversity 27:17
doctoral 11:1
documents 62:7
doing 38:1 40:19
41:6,16
dollars 46:7
DOMINIQUE 2:10
doubt 12:3,8 62:25
Dr 62:8,20 63:1
draft 8:3 9:15
62:14 67:2
drafting 58:15
64:24
due 8:18,21 69:6,8
DUNLAP 1:21
DUNSTON 1:21
D.C 1:9 4:10
EDUCATIONAL 5:18
effect 17:11
effectiveness 5:18
effects 24:23
EILEEN 1:24
Einstein 41:13,14
either 14:12 18:13
62:14
elaborate 65:13
elect 19:19
Elliott 27:10
eloquenty 38:18
else's 57:24
e-mail 16:21 59:1,7
e 13:6
EMMA 1:23
employees 68:14
68:15
empower 43:2
emulate 6:25
enable 10:1 20:24
enacted 27:8
Encouraging 7:20
8:1
ended 5:16 46:5
Enforcement 58:12
engage 18:10
engages 17:12
Engineering 7:21
8:2 9:25
engineers 17:20
entering 13:25 17:3
entertain 38:11
47:6
entire 12:7,8
equally 10:22
eroded 68:9
error 32:22
especially 34:21
49:3
essential 35:8
especially 68:9
ethnic 10:22 15:16
17:1,6,12 42:14
ethnocentrism 20:6
27:21
evaluation 61:12
69:16
event 53:6 60:19
70:2
eventually 20:8
everybody 47:10
evidence 15:19
18:13 32:17 45:22
exactly 22:21 47:25
example 37:17 49:4
63:19
excel 40:21
exception 50:22
68:7
exceptions 21:15
exchange 38:3,12
38:15 39:16 49:19
Executive 61:11
exemption 67:20
67:23
exhibit 10:22 11:10
11:20
exists 58:3
expect 69:17,24
expected 32:21
67:20
expense 21:19
explained 14:7
explaining 9:21
expressed 30:6
extent 49:4 53:15
59:4
extreme 18:11
extremely 34:23
39:22 41:24
eyes 42:7
E 4:1,1
earlier 5:11
early 59:25
Eastern 4:5 55:14
55:16
easy 31:15
economy 10:1
edges 47:7
education 44:7
46:10,10 62:2,4
Neal R. Gross & Co., Inc.
202-234-4433
ways 44:17
wearing 50:11
week 69:18 70:1,3
welfare 19:13
went 70:24
weren't 50:22
West 55:17
we'll 21:23 32:11
we're 22:1 27:14
41:6,16 44:20
46:3 52:20 57:25
63:2 65:3,19,20
65:22 70:23
we've 31:8 41:24
42:1 51:24 68:13
White 11:11 15:20
15:21 17:17
Whites 11:2,16
willing 47:24 53:14
57:6 59:11 60:13
willingness 20:22
windmill 22:23
wins 18:24
wish 5:10
withdraw 20:8
witness 59:24
women 20:25 41:19
43:8 64:9
wonder 31:3
word 26:25 27:13
27:14 44:20 52:25
words 40:14
work 62:22 63:7
working 66:25
works 50:13,15
world 12:7,8 42:10
worth 44:6
wouldn't 35:24
45:18,25 51:12
wrap 50:18
WRIGHT 1:25
written 8:11 43:23
43:24
wrong 65:15
Y
Yaki 1:16 4:8 5:3,4
6:12,13 7:11,12
9:8,9 10:14,15
12:19,20 15:5,6
16:9,10 18:4,5
20:12,13 21:16,23
22:9,13 23:8,9,10
23:11 24:12,13
25:15,16 26:5,11
26:19,22 28:17,25
29:11,16,25 30:1
31:5 37:23,24
38:2,7,11,14,17
39:3,7,11,19,24
40:3,11,12,13
42:12 43:17 45:1
45:2 48:10,11
49:2,23 52:5,9,14
52:23,24 53:3,12
53:13 54:3,23
55:4 57:19,20
Yaki's 18:19
Yale 35:18
Year 59:21 66:19
66:21,23,25 67:3
years 18:12 37:19
46:4 68:6,21
yield 40:3,8
yielding 40:11
yields 39:23
young 20:25 37:25
40:20 41:10 43:8
44:4
Yo-Yo 28:23 41:11
Z
Zulu 58:17
S
$200,000 46:9
$40,000 44:6
$9.4 66:24
1
1:57 70:25
8
8th 55:22 66:17
9
9th 4:9
9:30 1:9 55:14
10 21:9,10 68:6
100 68:14
11 1:5
11B 60:16
11th 4:6 8:18,19
11:30 55:16
12th 7:25 69:15
12:37 4:2,5
13th 66:20
14th 69:24 70:20
15 61:18 68:6,21
15th 55:23
15-year 68:25
19 61:18
2-2-3 30:14
20 41:2,3
2001 50:25
2008 7:25
2009 58:25
2010 1:5 4:6 5:16
66:25
2011 55:11,13
66:21,23
2012 66:19 67:3
29th 5:16
3 21:7
4 3:7
40s 68:15
42 68:16
5 3:9 66:20 67:11
67:15,18,24,25 540 1:9 4:9
6 60 37:19
624 1:9 4:9
67 3:11
7 73 3:13
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In the matter of: Meeting

Before: US Commission on Civil Rights

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