U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, SEPTEMBER 11, 2009

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

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)
ABIGAIL THERNSTROM, Vice Chairman
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner (via phone)
MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director
STAFF PRESENT:
DAVID BLACKWOOD, General Counsel, OGC
TERESA BROOKS
CHRISTOPHER BYRNES
PAMELA A. DUNSTON, Chief, ASCD
ROBERT LERNER, Asst. Deputy Staff Director
TINALOUISE MARTIN, Director, OM
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
KIMBERLY TOLHURST

COMMISSIONER ASSISTANTS PRESENT:
ALEC DEULL
JOHN MARTIN
ALISON SCHMAUCH
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P R O C E E D I N G S

9:32 A.M.

CHAIRMAN REYNOLDS: Good morning. This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is a little after 9:30 a.m. Eastern Standard Time on September 11, 2009. The meeting is being held in Washington, D.C. I am participating, obviously, by phone. All Commissioners are present with the exception of Commissioner Taylor. Since I am not there, will someone please confirm that that's accurate?

COMMISSIONER KIRSANOW: That's accurate.

Approval of Agenda

CHAIRMAN REYNOLDS: Okay, the first item on the agenda is the approval of the agenda. Is there a motion to approve the agenda?

COMMISSIONER KIRSANOW: So moved.

CHAIRMAN REYNOLDS: Second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: Yes, this is Commissioner Yaki. Hello?

CHAIRMAN REYNOLDS: Yes, Commissioner Yaki. I was nodding in response.

(Laughter.)
COMMISSIONER YAKI: I indicated earlier, I thought it was going to be on the agenda, but it doesn't appear to be here a motion to add Commissioner Thernstrom to the Subcommittee on the National Conference. And to clarify, the Subcommittee is not bound to hold the conference by any particular date. My intent is to have this motion, however, in the absence of one of the Subcommittee members, Commissioner Taylor, whose input I would like on this motion, I may want to push this to the next either telephonic or regular meeting of the Commission.

CHAIRMAN REYNOLDS: Have you spoken to Commissioner Taylor?

COMMISSIONER YAKI: I tried to, but he's been on -- as has been described to me, a case that's gone off the rails. So it's been hard to get a hold of him as to which way he wants to go.

CHAIRMAN REYNOLDS: Okay. Well, first let's put it on the agenda.

COMMISSIONER YAKI: In other words, in the absence of Commissioner Taylor, I am going to ask this be put on a future agenda, but not today's.

CHAIRMAN REYNOLDS: Okay. Okay, so it's not on the agenda and we're asking that it be placed on the agenda at the next Commission meeting.
COMMISSIONER YAKI: Yes.

COMMISSIONER MELENDEZ: This is Commissioner Melendez. I believe on the teleconference call I had asked or last meeting I had asked for a full financial report at this meeting. Is that going to happen?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: That will be covered in the Staff Director's Report.

COMMISSIONER MELENDEZ: Okay, thank you.

CHAIRMAN REYNOLDS: Okay, other changes?

COMMISSIONER YAKI: Call the question?

CHAIRMAN REYNOLDS: Are there additional amendments to the agenda?

COMMISSIONER YAKI: Call the question.

COMMISSIONER KIRSANOW: There are no others.

CHAIRMAN REYNOLDS: Okay, I have one. I would like to table the discussion of the State Advisory Committees and that would be all from me.

COMMISSIONER GAZIANO: I would suggest that you just take it off the agenda, rather than move to table.

CHAIRMAN REYNOLDS: Okay. Our expert in
Robert's Rules. Okay, do we need to vote on these changes?

COMMISSIONER YAKI: Why don't you just ask if there are any objections?

CHAIRMAN REYNOLDS: Are there any objections? Hearing none. Okay. As we just discussed, bear with me.

COMMISSIONER YAKI: Move the agenda as amended.

CHAIRMAN REYNOLDS: Yes. Just bear with me. I’m fiddling around. Okay, I move to approve the agenda as amended.

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: All in favor, please say aye.

Ayes

CHAIRMAN REYNOLDS: Any objections?

(No response.)

CHAIRMAN REYNOLDS: Any abstentions?

(No response.)

CHAIRMAN REYNOLDS: The motion passes unanimously.

Approval of Minutes of August 7, 2009 Meeting

CHAIRMAN REYNOLDS: Next up, approval of the minutes. The second item, agenda item, is the
approval of the minutes of the meeting held on August 7, 2009. I move to approve the minutes. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: I would just note, this is Commissioner Yaki, that although not reflected in the minutes, there is a colloquy between -- never mind. I think that was the telephonic meeting. Never mind.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Point of privilege, Commissioner Yaki, I noticed the same error in the telephonic meeting and I hope that I've already sent the corrections, but you and I can confer afterward on that.

COMMISSIONER YAKI: Great.

CHAIRMAN REYNOLDS: Okay, and one other item regarding the August 7th minutes. On page two, two paragraphs up from the announcements heading, the sentence should be amended to read, "the Commission authorizes amending the June 12 meeting minutes to reflect that Commissioner Melendez abstained and Commissioner Yaki was absent for the vote to send a letter to the Department of Justice regarding the"
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(Audio disruption.)

COMMISSIONER GAZIANO: Do you want to repeat the last --

CHAIRMAN REYNOLDS: Well, I moved to approve the August 7th minutes, as amended. All in favor, please say aye.

Ayes

CHAIRMAN REYNOLDS: Any objections? Any abstentions?


COMMISSIONER HERIOT: I abstain too.

CHAIRMAN REYNOLDS: The motion passes. The record should reflect that Commissioners Heriot and Gaziano abstained.

Announcements

CHAIRMAN REYNOLDS: Next up is the announcements. Today, we remember the tragic terrorist attacks of September 11, 2001. One, we offer our condolences to all those who lost family and friends and we honor the police, fire fighters and other public servants who risked and in all too many cases lost their lives trying to save others.

We also honor the heroes who fought to

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rescue Flight 93 before it was driven into a field in Pennsylvania by the hijackers.

And I would also like to mention that at the time I was serving at the Department of Education and after September 11th, a few days later, there was a gentleman who sells ties on the corner of 3rd and C and he was a Sikh. And he started wearing a huge tie and it was basically an American flag. The fear of folks from the Middle East was palpable at that time. It was not a good time for the country on a whole host of levels.

Next up, Staff Director's Report. Mr. Staff Director, will you please discuss your report?

Staff Director's Report

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chairman.

Commissioners' concurring and dissenting statements, as well as rebuttal statements have been incorporated into the statutory report. The report has been sent to GPO and appears to be on track for delivery to Congress and the President by the end of the month.

The DOJ voting rights enforcement in the 2000 Presidential Election briefing report, as well as the No Child Left Behind briefing report, have also
been sent to GPO for printing and delivery to Congress and the President.

OGC is coordinating with the Justice Department on Jack Daly's lawsuit that has been filed in the U.S. District Court for the District of Columbia.

In the Office of Civil Rights Evaluation regarding their complaints processing during this past month reporting period, OCRE has received 165 written complaints, two walk-in complaints, 13 email complaints, 1 facsimile complaint, and 112 telephone complaints of which 44 were repeat calls. In total, staff received and processed 312 complaints.

The transparency report for the month of August was completed and forwarded. The third quarter report has been submitted to Commissioners regarding transparency issues.

The top page is visited and the top down loaded files on the Commission's website were noted in the printed copy of the Staff Director's report that as sent to Commissioners prior to this meeting.

Regarding library statistics, the library staff received 121 telephone inquiries, completed 60 simple reference requests and performed 46 research projects of various sizes. An additional 88 research
requests were completed utilizing automated search services.

Regarding publications, there were 302 written requests and 183 email requests for publications received during this period. Seven hundred and thirty-six publications were mailed and 60 different publications were requested. "Getting Uncle Same to Enforce Your Civil Rights" and a catalog of publications were the most requested publications. There were 52 requests for publications in process.

The annual financial audit is underway and three auditors are on site conducting reviews of the Agency's internal documentation. They have pulled several travel files, Office of Personnel folders, and dispersement files. They are also reviewing financial statements.

Regarding end-of-the-year closeout, wish list items have been approved and staff is currently working on processing the purchase requests for these items. GSA has given the Agency a deadline of September 18th to have all purchase orders completed and sent out in order to have them processed by the end of the fiscal year.

The selecting official received nine eligible applicants for the position of chief budget
officer in the Budget and Finance Division of the Office of Management. Six applicants were interviewed and reference checks are being conducted for several candidates. Staff also processed paperwork to bring on a new permanent Schedule C, Alison Schmauch. We welcome her officially now as opposed to an unofficial welcome, I guess, a while back.

The regions are actively involved in rechartering activities and we are expected several additional SAC packages to be submitted for consideration in the next few weeks. Several of the newly chartered SACs are planning meetings by the end of the month.

Regarding the budget, I sent out a document last night to Commissioners and there are hard copies here if anybody needs them, regarding the use of the surplus funds. We did get $340,000 as Commissioners are aware in the omnibus appropriations bill. And that was one of the things that allowed us to do move up the process of bringing on the special assistants. So we did bring on -- well, we did bring on or are in the process of bringing on three special assistants. We also made a number of purchases in the area of IT and those are broken out on the document here for a total of $240,000.
One of the main things is an IT maintenance contract. That is something that we have had in place and we did last year pay for that with end-of-the-year funds and we did this year again pay for that. That will take us into 2010, that service, but we were able to pay for it with these funds.

We also have a number of other things that we've done in terms of the human capital plan contract. That came in higher than we expected. When it was bid out, we had originally projected $40,000 for that contract, but the bid came in, the one that was the best bid came in at about $76,000. We are purchasing some computers and some other equipment to help us in that way. We also have done improvements to the building, as many of you have probably noticed that. And there were some expenses involved for bringing on laborers to help with packing heavy items and then unpacking and repositioning those items.

We rented crates, these large, heavy-duty plastic crates for packing people's personal items in their offices and we also have put in some protective things around the corners of the building on the hallways so that when people come off with carts and so on, if they bang into the walls straight off the elevators, or as they're going around corners that
they don't get damaged. So we have things of that nature also going to be having to take off these pictures on the wall in the conference room. Get those reframed. Put in some shelving to position them in the future. So we made a number of different purchases along those lines.

But at this point we also approved some additional staff travel in the regions. We got some new meetings on the agenda that weren't previously there. We've had some additional SACs approved. There were seven approved just recently, so there are some meetings in some of those states that have been put on the agenda for the end of this month.

So at this point I'll -- well, let me just say also, the Chairman mentioned in the previous meeting that we had identified some funds that were previously planned for 2010. And about $65,000 of those funds were related to IT and COOP, continuity of operations planning, so we moved the items in that area forward and paid for those with 2009 funds. We also got a lower bid in terms of the Memorandum of Understanding with the General Services Administration for our external accounting services, so that looks like it should free up some funds. So we do anticipate that we will have at least $100,000
available in FY 2010 to pay for expenses related to the National Conference.

Also, we are in the process of finalizing the drafting of the FY 2011 budget proposal. OMB has given us until the end of the month of September to submit that proposal. So we're in three budget cycles at one time really at this point in time, but the OMB guidance was that we should develop two different budget scenarios for FY 2011, one of them being a flat-line budget at the FY 2010 level and the other being a 5 percent reduction beyond the flat-line level for 2011. So we are developing proposals for your consideration that take in both of those scenarios.

COMMISSIONER GAZIANO: Does OMB ask executive branch agencies to prepare 5 percent cut budgets or is it just non-executive branch agencies like ours?

STAFF DIRECTOR DANNENFELSER: I'm not sure. I believe that is a pretty broad policy across the government.

COMMISSIONER GAZIANO: Would you just try to confirm that and give us an update?

STAFF DIRECTOR DANNENFELSER: The Director of Management has given me some indication that that's the case, but I will reconfirm that for you.
CHAIRMAN REYNOLDS: Mr. Melendez, you had a number of questions regarding the budget.

COMMISSIONER YAKI: Just one second, I'm --

COMMISSIONER GAZIANO: I had one or two other points, if they're conferring. Can I begin?

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: First of all, I wanted to thank the Staff Director for including the statistics on the web hits and I think it reveals two interesting things. First, just page views, it looks like there may be as many as 200,000, although some of them are sort of portal visits, so I'm not sure of the significance.

I haven't drilled down on the downloads yet. I am disappointed to see that my bio and picture does not appear to be among the top ten, unless I'm misreading these. But it is interesting to me to note again that, as I suspected, as we probably all suspected, the downloads far dwarf the number that our library was receiving otherwise in sending out and I'm glad of our statistics.

And it also suggests that the number one document, Uncle Sam has been the number one we've seen, "Getting Uncle Sam to Enforce Your Civil Rights"
has been the number one sent out for as long as I can remember, but it's number two. And number two, by some significant margin on the downloads. So I'm going to try to visit this a little bit more, but I think this gives us some other helpful information.

I have one other matter to raise, but I'll yield to Commissioner Melendez now.

COMMISSIONER MELENDEZ: Just a question.

Thank you, Todd.

As far as a process of surplus, I know that when it's a large amount I have a real concern if it's nearly $500,000 and over the years it seems like we always end up at the start of the last quarter with a huge surplus. What I'd like to see, and I'm not sure if it's possible, but that we have a more formalized process of approving that.

In other words, it actually becomes like a budget modification of the surplus build up. And then the Commission actually approves, if you come to us and you tell us well, we built up because we haven't hired a position or we've got $300,000 built up, then a formal modification would come in front of this Commission. We would vote as to where the allocation of the $300,000 surplus would actually go because it sounds right now it's kind of like we kind of give
full authority to just, if the surplus builds up, it's like just say well, go ahead and spend it and tell us about it after the fact.

It's kind of like -- it's not a very good way to do business, so that we'd have a -- if it was a few dollars, well, I don't have a problem with discretion of the Staff Director or anybody else spending the money, but if it gets to be a substantial amount, I would like to see a formal process where the modification came to us and you told us $300,000 left over, we got three months or a month to spend it, where would you like to see it go? And then that way we have some idea as to what the total IT cost is and where else we're talking about because at some point we still have the vacant positions having to do with special assistants.

We have the Western Region Director that we haven't filled. So at least at some point we can say where should we put this money and we can kind of vote on it and if I said I think it ought to go to a salary for a Western Region Director, we can all say let's raise our hands yes or no and you can tell us where the bulk of the money should go. But right now it just seems over the years we have this big build up and we kind of just -- it's kind of just informally
spent. And I'd like to see it a little more formal as to how we do these budget modifications, especially with large amounts of money. So that's the proposal I would have because it's an essential amount.

And the other thing is that if we keep historically having a surplus, at some point Congress will -- I think one time Congress said that we didn't spend it and it kind of hurt us because we had the surplus that we didn't really -- it was still sitting on the books by the time the end of the year ran out. So it would help us guard against that happening and in some way have more input from Commissioners to have a say in how this is allocated. That's just my thoughts on this. It's always a concern on this surplus build up.

CHAIRMAN REYNOLDS: Commissioner Melendez, you raise excellent points and if you don't mind, I'd like to add to your comments. I believe that there are a number of drivers in particular years that explain the budget surplus. But at bottom, I don't think that we do a good job of managing to our budget. We establish a budget and it's not clear to me that we actively manage to the budget throughout the year.

We throw out numbers and looking at the
actuals, the actuals being compared to what we budget, there is often a wide variance in lots of categories. So I'm hoping that the budget person that we bring on will help us do a better job of managing to the budget.

Another driver that I believe causes this issue is the fear of the Antideficiency Act. I think that institutionally there is a fear of violating that act and quite frankly because we don't do a good job of managing our budget, managing to our budget, that fear is justified.

One thing that the Commissioners can do to help us manage to a budget is to get our time in. And I am, as Ms. Martin can confirm this, I have been a offender of this issue, but I'm not alone. Although I'd like to report that I've done a much better job this year. But if we don't get in our time and if we wait until the end of the fiscal year to put in our hours, then it makes it hard for staff to manage to the budget because either -- there's just a big variable sitting out there. You can assume that all the Commissioners will put in their time. If you're wrong, you're going to wind up with a significant amount of money still sitting in the till.

So those are the comments I would like to
add to Commissioner Melendez' comments.

STAFF DIRECTOR DANNENFELSER: If I could just add one thing. I know that staff is very concerned about is also the travel vouchers. That is a particular topic with the auditors as well as something that over the years that the auditors have pointed to, so whatever can be done with staff and Commissioners all working together to try to keep the travel vouchers timely and to make sure that they're all accurate and well documented.

CHAIRMAN REYNOLDS: Well, Mr. Staff Director, have you given any consideration to sending out a monthly email to each Commissioner that provides a status update regarding the time and travel vouchers?

STAFF DIRECTOR DANNENFELSER: Well, we have sent out a few. We could do it on a more regular basis. We have sent out a few updates recently on the time, the Commissioners' billable hours, but we can try to get something together on the vouchers as well and then try to make these more regular distribution.

CHAIRMAN REYNOLDS: Well, I think that would be helpful, be gentle reminders and it will also help the Commissioners manage their hours.

COMMISSIONER GAZIANO: I'll confess to be
an offender in order to just ask another on the time
sheet delay, to ask another question. Not that it's a
good practice, but I assume that there are some
expenses incurred in the current fiscal year that can
be credited to once the fiscal year is passed, I
suppose you have some brief period to attribute
expenses incurred in that year to the -- let's say
we're in the second week of October, but there's some
Commission bill that you've just received for
something that was incurred earlier. Is there a way
to account for that?

STAFF DIRECTOR DANNENFELSER: There are
some bills that do come in late that we have. I'm
going to ask the Director of Management to come up and
to speak to that point more directly.

MS. MARTIN: We do receive late vouchers,
but purchase orders have to be on the books for those
vouchers. So if we get something in, the monies have
to be obligated in the system saying that we're
waiting to pay that. So we can't create a new
obligation in 2010 if it was for 2009.

COMMISSIONER GAZIANO: Understood. I just
wondered if there was any flexibility, but that
doesn't really diminish -- thank you very much for
your answer, but that really doesn't diminish the
point the Chairman was making either. So I'll try to be better, but I'd also like more periodic updates similar to what Commissioner Melendez has requested as well.

CHAIRMAN REYNOLDS: And also, Ms. Martin, am I correct in assuming that if I put -- if I work on Commission matters on the last day of the fiscal year, that that's not going to -- there's a procedure, a process in place so that shortly -- a few days into the next fiscal year and the first say two weeks in October, I would submit that time or is there a short cut off?

MS. MARTIN: There is a very short cutoff. You should submit it as soon as you work it. If it's September 30th, we're going to have to approve some hours for some of the Commissioners if we don't receive your vouchers by September 30th. So we'll be guessing as to how many hours you'll be putting in.

CHAIRMAN REYNOLDS: I'm not sure I understood you. Are you saying that we have to get all time in by the 30th or that there is a date in October by which we have to submit the time?

MS. MARTIN: You can submit it in October, but we'd like to know the hours by September 30th.

CHAIRMAN REYNOLDS: Okay.
COMMISSIONER GAZIANO: The problem is we can't -- unless we tell you exactly at the end of September 30th we won't know even three days before necessarily.

MS. MARTIN: Right, you can estimate.

COMMISSIONER GAZIANO: If we promise not to do any work for the last -- we can give you an estimate.

MS. MARTIN: An estimate would be good because we turn in our time a day before it's actually due, so on that Friday everyone is estimating that they'll either work 8 hours or not.

COMMISSIONER GAZIANO: And I appreciate that too. From my normal day job I can usually predict better how many hours I'm going to work. It's a little harder for me sometimes to predict with the Commission. I get some email from one of you and then I have to maybe want to react to it. But we'll do our best.

MS. MARTIN: Okay.

CHAIRMAN REYNOLDS: Other questions for the Staff Director?

COMMISSIONER MELENDEZ: I have another question. This is Commissioner Melendez.

In light of the 2011 budget rescission
that we're expecting are we expecting to hire anybody this year or next year as far as those key positions, the HR Director and Social Scientist for OCRE and I think any other special assistants? What's our plan for now and next year?

STAFF DIRECTOR DANNENFELSER: Well, regarding the Special Assistant, there is one Commissioner who is not, so we'll have to let that Commissioner decide. We did say that if he did decide to hire, we would find the money in the budget, so I think that would still be our policy going forward through 2010. And into 2011 as well.

We can use term appointments, other types of temporary authorities that would allow us to hire people in 2010, but would not necessarily lock us in in 2011, if we did wind up particularly with that revision budget, that 5 percent cut on top of the flat-line budget, so that is something to consider. But I think these are the type of issues that when we get to the 2011 budget which hopefully will be pretty soon, that Commissioners can discuss and ultimately make a decision on that going forward. But those are some of the kind of questions we are wrestling with right now in trying to prepare the final submission for the Commissioners to consider.
COMMISSIONER MELENDEZ: As far as the -- 
we had talked about a Deputy Staff Director. Is that 
kind of on hold until after the recision or are you 
still considering that?

STAFF DIRECTOR DANNENFELSER: Well, that's 
on hold right now and there's not -- again, that would 
probably be another type of matter that Commissioners 
will want to address, particularly as we look at the 
2011 budget.

COMMISSIONER MELENDEZ: Okay, and then 
what changes do you anticipate, intend to make to the 
2010 budget as compared to the version that we had to 
approve as Commissioners?

STAFF DIRECTOR DANNENFELSER: Well, the 
main things which I mentioned a little earlier would 
be that we move forward $65,500 that was for IT and 
COOP-related purchases, we move that forward and made 
those purchases in 2009. We got a lower estimate from 
GSA for our external accounting services.

Now we do have an area that are optional 
services. We cut back on our fixed services with GSA, 
partly in anticipation of the new Budget Director 
coming on board that perhaps more could be done in 
house that we wouldn't have to utilize some services 
from GSA. But it is possible that we might use some
of those optional services so even so if we use even
half of the optional services available, we would
still have a savings of probably at least $40,000 in
that particular area.

And then we may be able to on printing and
Federal Express and things like that, might be able to
come down a little bit.

COMMISSIONER MELENDEZ: Okay, the other
thing was the conference, because that's another
change as far as sounds like we're going to be using
2010 money to pay for that. Have we included that
into any changes for 2010?

STAFF DIRECTOR DANNENFELSER: Well, that
could be accommodated by these other things that I
just mentioned that particularly the IT and COOP
things by themselves, a little more than $65,000. The
lower number that we received from GSA, again, between
those two things that puts you over $100,000 which was
a number that was mentioned during the last meeting as
a ballpark figure for the national conference.

COMMISSIONER MELENDEZ: Since it sounds
like we're going to be making some changes to the 2010
beyond what we approved and submitted to Congress, I'd
like to just let you work closely with us on it as
Commissioners and if we wanted to either have a
subgroup that wanted to work with you, would you be
open to doing that as we kind of monitor 2010, even
2011, how we're going to basically help your budget, 
all these changes?

CHAIRMAN REYNOLDS: Before we go down that 
road, Commissioner Melendez, I need to think about it 
some more and I'd like to have -- after I've given it 
some more thought have some conversations with you 
about forming a subcommittee.

COMMISSIONER MELENDEZ: Okay, all right.
Thank you.

COMMISSIONER GAZIANO: I have one other 
matter I'd like to raise.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: Since it's a 
financial matter, I think just more of an information 
item because it's within the Staff Director's 
discretion, but I'll let the other Commissioners know 
that while the -- I think they know the White House 
did indicate some sort of accommodation in approving 
Special Assistants.

Today is my Special Assistant's last day. 
He has not been approved. I hope that we do have 
some assurance that they -- but they've been telling 
us they're moving on it. I hope it comes through
today. If it does not, I have asked the Staff Director to follow through what I believe we all discussed so that he does not have a lapse in pay.

I also found out somewhat into the process, by the way, his -- the application has been pending for a little over three months. And in that three-month period, two of the months he's been on some sort of payroll with us, but I found out that he did not receive any benefits. This Administration has wanted to have universal health coverage for everyone, but my Staff Assistant has been denied it, so I'm going to ask -- I don't know whether this approval will come through in -- if it doesn't come through today, one extra day, three days or 30 days, but I would like the Staff Director to use the authority to hire as a consultant and hopefully, although he will be reporting officially to the Staff Director, assign him to assist me, continue to assign him to assist me.

I would also ask for an additional amount that I think is also justified by his former pay grade in the Federal Government so that he can buy his own health insurance during this period that the White House is delaying. I don't know if you need to comment. We can talk off-line, but I wanted to make the other Commissioners aware of my request.
CHAIRMAN REYNOLDS: Well, I'd like to commend staff, especially David, for the efforts that have been made to get this mess straightened out. Judging by the email traffic, David is in daily contact with the Executive Branch trying to get this issue sorted out and unless I have missed an email, I believe that there is no dispute that this is just a matter of execution.

David, is that characterization accurate?

MR. BLACKWOOD: This is David Blackwood. It's actually a mystery. The assurances we have gotten from the White House Counsel's Office is that it is simply a matter of execution, but we have asked specifically is there a problem that we can address and we have never gotten a response that there is a problem. But we have gotten many, many assurances that it will just be a day or so and it hasn't happened.

CHAIRMAN REYNOLDS: Okay, Marty, we need a Plan B so that one of our Special Assistants does not turn into a pumpkin. I know that we do have some discretion in this matter and we should use it to the maximum extent permitted by law.

Other questions for the Staff Director?

COMMISSIONER MELENDEZ: Last question.
Commissioner Melendez. Marty, did you say -- just so I'm clear that we probably won't be hiring anybody in 2010?

STAFF DIRECTOR DANNENFELSER: No, I think that we can hire people, but in terms of caution for 2011, it might be advisable to look at one-year term appointments or temporary hiring authorities that could be renewed if we don't get the recision budget in 2011, but that would give us some flexibility to not continue those particular positions if it was necessary to make savings in the area of personnel for 2011.

COMMISSIONER MELENDEZ: Okay, at what point would we know which one of these would be the one that's going to be hired, because obviously we won't hire all of these. So I'd just like to know which one do you have your eye on bringing on first, if you could hire one?

STAFF DIRECTOR DANNENFELSER: Well, I don't have a firm decision on that. I think there is some areas that we do have some voids and I would like to see those voids addressed, but as far as the exact position or the nature of how to address those voids, I think we'd have to make a decision on that pretty soon, but I don't have a hard and fast decision at
CHAIRMAN REYNOLDS: Other questions?

COMMISSIONER YAKI: Commissioner Yaki. I just wanted to commend Commissioner Gaziano for his concern for his Special Assistant's healthcare in that, of course, if healthcare legislation reform passes in the Congress, this Special Assistant would have had the benefit of the public option to purchase healthcare.

CHAIRMAN REYNOLDS: He still would have needed a job to pay for it.

COMMISSIONER YAKI: Any precondition barring his ability to purchase it.

CHAIRMAN REYNOLDS: All right, before this turns into an ugly town hall meeting --

(Laughter.)

COMMISSIONER YAKI: Bring on your tea party.

Discussion of 2010 Statutory Report Topic Ideas

CHAIRMAN REYNOLDS: Next on the agenda is the statutory report topic. During the August 7th business meeting, we discussed a number of possible topics for the 2010 enforcement report including proposals for investigations of the enforcement of
Title IX, I'm sorry, Title VII in police, fire, and municipal employment in light of the Supreme Court's decision in Ricci. And that was proposed by Vice Chair Thernstrom.

The second item is whether certain public and private moderately-selective, coed, liberal arts schools discriminate against women in violation of Title IX in their admissions policy in order to ensure a balanced gender ratio. That was submitted by Commissioner Heriot.

The third topic is the funding, staffing, and workload levels of federal civil rights enforcement agencies as well as their institutional capacity that go to address civil rights violations. That was submitted by Commissioner Melendez.

The fourth item is the Department of Justice's decision to drop voter intimidation charges against members of the New Black Panther Party and against the impact on future voter intimidation claims. That was submitted by Commissioner Gaziano.

The fifth item is the rise of racism on college campuses which was submitted by Commissioner Yaki.

And finally, employment discrimination based on age during this economic crisis. That was
submitted by Commissioner Melendez.

Sounds like papers on most of these topics have been distributed and within the past week we received additional or amended concept papers from Commissioners Yaki and Gaziano regarding the proposals. At our last meeting, we agreed that we would select the 2010 Enforcement Report topic at this meeting. Do any Commissioners who have issued proposals wish to expand upon their concept papers and I'll start with Commissioners Gaziano and Yaki, since you folks submitted your concept papers between our last meeting and this one.

Commissioner Yaki, would you like to expand on your proposal?

COMMISSIONER YAKI: Thank you very much, Mr. Chair. This proposal was, as you note, soon it will be submitted early. It was submitted over a week ago.

CHAIRMAN REYNOLDS: I'm sorry, Commissioner Yaki, could you please speak into the mic?

COMMISSIONER YAKI: My mic is right here.

CHAIRMAN REYNOLDS: Okay, could you increase the volume?

COMMISSIONER YAKI: Could I increase my
CHAIRMAN REYNOLDS: Yes. Pretend that you are actively pissed with me.

COMMISSIONER YAKI: In that case I would get very, very quiet indeed.

CHAIRMAN REYNOLDS: That would be a departure from past practice.

COMMISSIONER YAKI: Actually, there are two issues, one is a procedural issue. Given that we have a wide range of potential topics here, I am rather uncomfortable moving forward without the participation of the full Commission. I think that Commissioner Taylor's presence is required before we can take a vote on what we are going to choose. I would just like to make that point.

With regard to this, this is something as I mentioned before, I had concerns about for quite some years, mainly around the rise of, as Alec Deull, my Special Assistant has been helping me on this, the rise of racist, insensitive, bigoted, what you want to call it, incidents, activities, and in some cases assaults on college campuses. And there's clusters of that that occur around, for example, the observation of Martin Luther King Jr. Day or theme parties, whether they're in dorms, sororities or what have you,
eating clubs, that make fun of or stereotype ethnic minorities moving on to actual incidents of racial slurs and physical assaults on students.

And this topic is to sort of burrow down a little bit on that and discuss what are the issues regarding limitations that appear to be institutional, whether by legislation or by the nature of universities to enforcement of civil rights in these areas and whether or not what recommendations we may choose to make with regard to combatting this issue.

Certainly, we have a model in place in our own Commission with regard to the anti-Semitic activity on campuses that was documented in a briefing two or three years ago in which this Commission expended substantial sums of money working on a public outreach campaign on that issue. I think we need to drill down a little bit deeper and understand what enforcement is or is not available, why is it available? If it is available, why is it not being used? What are barriers to this? What kind of education campaigns are most useful and essentially lend the moral authority of the Commission to address an issue that I think is experiencing an uptick and continuing to experience and uptick in the coming years.
So that's basically the narrative of what it is that I'd like to do. I'd like to see Commission support, but again I believe that all these topics are important enough that the full Commission should be a party to this. And in the absence of Commissioner Taylor makes me want to move to put these over to the next meeting of the full Commission.

CHAIRMAN REYNOLDS: Okay, before we get to that issue, and that issue being whether this is put over to the next business meeting, Commissioner Yaki, some of the examples provided in your concept paper are just horrible, but one of the things I struggled with is the interplay between the enforcement of civil rights and also the need to protect freedom of expression. And is your concept paper going to include a discussion of the tension between the two protections?

COMMISSIONER YAKI: Absolutely. Absolutely. When we're talking about speech or speech plus or conduct, that is speech or conduct that is offensive, but not -- I mean there's a question of whether or not when there are certain kinds of activities by themselves threatening in more than just an offensive way and I think that's one of the discussions that I want to delve into.
If you create an atmosphere of fear or poison the well, so to speak, because of certain types of activities. If you engage in slave weeks or gangster weeks or immigrant weeks where people dress as janitorial staff, etcetera, there certain is a very significant speech element in there. The question is though to what extent does that create a chilling atmosphere for full participation, academic expression, and a nonhostile environment for the people whose ethnicity or race is being made fun of.

CHAIRMAN REYNOLDS: Before getting to whether we actually vote today, are there other questions for Commissioner Yaki?

(No response.)

Hearing none, Commissioner Yaki has raised Commissioner Taylor's absence as an issue in terms of going forward. I have had recent conversations with Commissioner Taylor and I do not believe based on those conversations that he would have a problem moving forward today, but would any other Commissioner like to weigh in?

COMMISSIONER GAZIANO: I would note that we were -- I thought we were slated to vote last month. We had most of these concept papers in one form or another last month. I was a little
disappointed that we put it over, as the record will reflect to this month, but for a variety of reasons, including that the clock is ticking again for our enforcement report, given the understanding Commissioners had we couldn't even extend the period, the normal 30-day comment/rebuttal period. I think that it's unfortunate that Commissioner Taylor isn't here, but that we should move forward for all those reasons and select one or more topics today.

VICE CHAIR THERNSTROM: Mr. Chair, it's Abigail, Commissioner Thernstrom.

This huge list of topics, are they all Statutory Report suggestions? I mean we've got an awful lot of topics on the table here and that fact alone, as well as Commissioner Taylor's absence makes me believe that we would be well served by taking some more time to think about this.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: Can you answer my question first. Are all these topics Statutory Report topics?

CHAIRMAN REYNOLDS: We would, I believe, pick from amongst these topics. We would narrow it down. Yes, of the six topics, from the six topics, we
would pick the Enforcement Report or Statutory Report, however you want to call it.

Was that Commissioner Heriot?

COMMISSIONER HERIOT: Yes, it was. I don't actually feel that the number of topics is all that large. It's a fairly short list. I think some of them fit the enforcement report better than others. But given that my understanding is that we were going to be picking a topic last month and I was very disappointed that it was put over to this month. I really don't think given that we tend to finish this report at the last moment, that it is a good idea to put it off for another month.

VICE CHAIR THERNSTROM: Mr. Chairman, we only tend to finish reports at the last moment because we tend to vote on reports that are too complicated, that have manageability, therefore difficulty. If we picked a topic that was manageable, it could be done in the remaining time.

COMMISSIONER HERIOT: Even our simple, briefing reports tend to take much, much longer than --

VICE CHAIR THERNSTROM: That is because Commissioners tend to hold them up.

COMMISSIONER HERIOT: I don't think so.
CHAIRMAN REYNOLDS: Folks, let's -- do we need to vote on this? I don't believe there is a consensus to post on a vote on these issues, but do we need to vote on it?

COMMISSIONER HERIOT: There's no formal motion.

COMMISSIONER GAZIANO: There's no formal motion, unless Commissioner Yaki wants to make one.

CHAIRMAN REYNOLDS: It's an invitation.

COMMISSIONER GAZIANO: Could we discuss some of the other topics first?

CHAIRMAN REYNOLDS: Sure. Okay, Commissioner Gaziano, would you care to expand on your proposal?

COMMISSIONER GAZIANO: Sure. There's two sort of updates that I want to mention. There are -- by the way, in passing, I will say I find merit, some merit in all six topics and there are certainly issues to manage in all six as well, including the one I'm proposing. But one of the issues that I don't think that we will need to manage, but isn't, I think, a serious one is the recent communication from the Office of Intergovernmental Affairs, Director Portia Robertson, that because the Department has opened up an Office of Professional Responsibility...
Investigation, the last sentence of the letter is "accordingly, the Department will not provide further responses until the review is complete." That is a non sequitur in my mind.

And I think that the only update is that the Department suggesting that we wait for the OPR investigation and what I suggest is that we remind them if this topic is approved, that we really have facts to determine with fact witnesses in Philadelphia and they're not suggesting otherwise, but that we stressed in our last letter to them that we are interested in the comparables. We want to look at the type of investigations the Department has opened and closed in the past, whether they were dismissed, whether they were settled, whether charges were filed or not, and that we also have a different, the Office of Professional Responsibility is looking -- their task is to look at potential ethics, legal ethics violations, but I don't understand, none of us knows the significance of why the Department opened this investigation.

Others can comment or not, but as we move forward with our investigation, we will and we should be sensitive to any specific concerns that the Department expresses, but we have an independent need
to examine the merits of the decision and I think that that is completely consistent with whatever the Department's interest is in referring matters to OPR.

The other matter, I'll just re-urge from the last meeting, we did commit to expand our investigation into this matter. The matter that we committed to expand is an enforcement matter and one that is central to our jurisdiction. And given that we have committed to this investigation anyway and it fits the definition of an enforcement matter, I think that there's a lot of reasons that we should move forward with it, with the intention that it will be our enforcement report for the year.

VICE CHAIR THERNSTROM: Mr. Chairman, I have an alternative proposal, since there's a little bit of disagreement. I'm not sure how much on the vote today.

CHAIRMAN REYNOLDS: I'm sorry, I'm not following you. Are you referring to --

VICE CHAIR THERNSTROM: Whether to take a vote today on these topics.

We could have an email poll next week ranking these topics and then followed by a short phone meeting, but getting a sense of where we are, I'm really swimming in my head on all these topics. I
would like more time to think about it. I think an
electronic poll ranking the topics and then going
forward from there would procedurally make more sense.

CHAIRMAN REYNOLDS: Well, this issue has
been postponed at least on one occasion and --

VICE CHAIR THERNSTROM: I'm only talking
about a postponement of a week, let's say, where we
get a chance to get some poll ranking.

COMMISSIONER GAZIANO: If we have a
majority for one or more topics, then I'm not sure
what the point is.

COMMISSIONER HERIOT: Last time we were
told we would decide and that we just put it off until
one more meeting. That meeting is here.

COMMISSIONER YAKI: This is Commissioner
Yaki. I just find it very interesting that people are
stating as if our failure to make a decision at the
last meeting was tantamount to some abdication of duty
when if I recall correctly, one of the reasons that we
pushed this off was because briefing papers and
concept papers were being given to us two to three
days before the actual meeting.

And so when people at that time, when the
Commission as a whole decided that it would make more
sense to allow people more people to digest it rather
than a day or two and at that time I said that I had a
topic and I would give people ample time to review it,
i.e., I sent this out over a week ago to ensure that
that happened, that it was not because there was some
hue and cry that somehow we had missed the opportunity
to do it last week.

These are very complicated, this is a very
complicated issue. I have very serious questions
about and possible modifications, for example, to the
concept paper of Commissioner Gaziano which I started
working on this week, mainly because Commissioner
Gaziano's revised concept paper came out, I believe,
what, Monday or Tuesday of this week. So I only had a
day or so to respond to that.

So this idea that there's some talismanic
rush to judgment to get this thing out I think is
belied by the very facts of where we are today and
again, this is and should be an iterative process.
I've frequently made that point on other issues as
well. Having gotten Commissioner Gaziano's concept
paper, revised concept paper, just only on Tuesday,
working with my special assistant and others, I only
managed to pull together a modified version of that
which I'll be happy to distribute today or later, so
we can all have more time to review it.
But as is, I continue to express my reservations that while you may have had a conversation with Mr. Taylor, Mr. Taylor is sometimes hard to reach. I have not been able to have an extended discussion with him about this and would wish to hear his views on these before we go to a vote.

CHAIRMAN REYNOLDS: Well, as I said before, I don't believe that there is consensus, a consensus to postpone a vote. And I don't believe there's a consensus for the compromise offered by Commissioner Thernstrom. I could be wrong. If you want to vote on this, let's vote on it.

COMMISSIONER YAKI: Commissioner -- Chair Reynolds, I would like to ask for a short recess to call you off line. Five minutes.

CHAIRMAN REYNOLDS: That's fine.

COMMISSIONER GAZIANO: Could I ask for the opportunity to talk to you after you talk to Commissioner Yaki?

(Laughter.)

COMMISSIONER HERIOT: And could I ask for the opportunity to talk to you after you talk to Commissioner Gaziano?

(Laughter.)

VICE CHAIR THERNSTROM: You'll be glad to
hear I don't want to talk to you.

(Laughter.)

CHAIRMAN REYNOLDS: Todd, do you still have the number in your phones?

COMMISSIONER GAZIANO: I do. Please provide it to Commissioner Yaki.

COMMISSIONER GAZIANO: I will. So we're going to break. I'll go along with the break for recess, if you will subject yourself to these multiple telephone calls, Mr. Chairman?

CHAIRMAN REYNOLDS: Yes, I will.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN REYNOLDS: Okay.

(Off the record.)

CHAIRMAN REYNOLDS: Okay, folks, I have had several conversations. I want to proceed. Thus far, Commissioners Gaziano and Yaki have had an opportunity to expand on their proposals. I want to give the other Commissioners the same courtesy. After that, we will take up the issue of how we proceed.

At this point, Vice Chair Thernstrom, would you like to expand on your proposal?

VICE CHAIR THERNSTROM: Oh dear, my papers -- get back to me. I have to find my --

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER GAZIANO: Can I just add one point in response to what Commissioner Yaki said in response to mine? I certainly am -- it is an iterative process. Once we adopt it --

CHAIRMAN REYNOLDS: Whoa, could we just wait? Before the gunfight starts, I want to give the other Commissioners an opportunity to discuss -- and I know this issue has already been raised, but I think that this will go better, at least for the other Commissioners who have something to say about their own proposals, if we just postpone that piece for discussion.

Mr. Melendez?

COMMISSIONER MELENDEZ: Yes. As you know, I submitted my proposal which was funding and staffing and workload levels of the federal agencies. And as I pointed out before the Commission in years 2003, 2004, and 2005, had basically initiated some work along those lines. In 2005, they did a report called "Funding Federal Civil Rights Enforcement, the President's 2006 Request." And they collected and reviewed data relevant to the Agency's goals and output evaluation factors. So basically, it's seeing if the federal agencies have adequate funding to actually do their job to basically make sure that...
they're enforcing civil rights. That's basically my proposal which was submitted.

The only other thing I mentioned the last time was doing something along the lines of age discrimination in these tough economic times and that was something we had just talked a little bit about. But that was my proposal. I guess I'm still voting for mine.

(Laughter.)

VICE CHAIR THERNSTROM: Mr. Chairman, I've found my Title VII proposal.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I'm sorry for the delay. My papers were disorderly.

CHAIRMAN REYNOLDS: That's fine.

VICE CHAIR THERNSTROM: Obviously, the Ricci decision was enormously important and obviously enforcement of Title VII. The law has not been clarified to say the least. It has been somewhat clarified, but it's a mess. It remains a mess. And the question, one of the questions on the table, it seems to me that would be worth exploring for the Commission is in what ways do Title VII enforcement actions in other cities differ from those that gave rise to the Ricci case. If they do differ, of course,
then we have an interesting question of the degree to which or in what ways *Ricci* applies to whatever cities are doing in the way of Title VII enforcement.

And I think this a very manageable topic. We can gather information from representative, local, municipal employers, demographic data, racial disparities in employment by selected employers, how these are being addressed, observable differences between employers who are under court supervision, those who are not, and such differences may include testing selection methods, levels of disparity, number of employees, length of time that those municipal employees have been operating under the court's supervision, how close among those who have been so operating, how close are they to racial parity today? In other words, what's the impact of that court supervision.

Levels of disparity of police, fire, municipal employment today as compared to data presented by the Commission's 1969 report that was entitled "For All the People, By All the People, a Report on Equal Opportunity in State and Local Government Employment." The manner in which the EEOC's Uniform Guidelines in employment selection -- by the way, I regard those guidelines as really bad,
are being interpreted regarding disparate impact with regard to employment tests, extent to which guidelines which were codified in 1978, a little while ago now, the extent to which they may be out of date in light of modern research and methods of employment testing employment and I think that's the answer there. It's very clear they are out of date and it's worthwhile saying exactly how and what's happened to employment testing in the interim years.

Examples of best practices, extent to which race, ethnicity and/or sex are considered in the hiring and promotion and what are preferences based upon on those characteristics should be considered in light of the Ricci decision. And I go through the method of my proposed methodology, speakers from EEOC, speakers from public policy organizations, plaintiff and defense attorneys, speakers from advocacy groups and so forth.

This seems to me an important and doable topic and one on which the Commission could get together. And I am very concerned about the divisions within this Commission. I would like to see us work together in a more collegial and productive way. It's, I think, distressing to me and I think to some others at least that I wouldn't call the atmosphere
here collegial. Maybe we could find a topic on which
we could work together in agreement that this really
opened a lot of interesting and important questions
up.

That's my pitch, Mr. Chairman, and thank
you very much for giving me the time to make it.

CHAIRMAN REYNOLDS: Commissioner Herriot?
I'm sorry, before I go down the line,
questions, comments?

(No response.)

CHAIRMAN REYNOLDS: Hearing none,
Commissioner Heriot.

COMMISSIONER HERIOT: The topic that I
prepared a proposal for is gender discrimination in
liberal arts schools essentially. What I'd like to do
is find out whether it's true or not, as has been
alleged in recent years, that some particularly mid-
level liberal arts schools are discriminating against
women in their admissions policies because they feel
that otherwise they would not be able to get enough
male students. I think this is a very serious issue.
I think it's something we're not sure of the facts on
and that's one of the reasons that I am very much in
favor of doing this particular proposal because I
think factually it's hard-edged.
We can establish yes or no, whether schools are -- whether particular schools that we select for our study, whether they are lowering admission standards for men or whether they're not. And given that those are facts in dispute, I think that's dead center of what we should be doing as the United States Commission on Civil Rights.

It also helps that this issue is not one that is an issue for the left or the right. I think that this is an issue where people should be able to agree that we need to check out the facts, find out whether that's, in fact, what's happening. We may have different views about what ought to be done about it, but this is an issue that I think that can unite the Commission since it does involve a fact issue that is in dispute. And it happens to be one that we can resolve pretty easily. I think some of the other proposals are much more complicated, have many more moving parts and have the potential to become too large for the Commission to handle.

This one is bite-sized, I believe. We can actually -- we can pull this off and at the end of the year know that we have found the facts correctly.

I know people were concerned about Commissioner Taylor's absence, but I've received an
email in which Commissioner Taylor says that this
project was the one that was his favorite. So at
least as of this morning, Commissioner Taylor's
favorite topic was the Title IX topic.

I guess that's it.

CHAIRMAN REYNOLDS: Okay, questions,
comments?

COMMISSIONER GAZIANO: I want to comment
on that proposal. I think that that proposal, as well
as my own, should be adopted by the Commission today
to go forward because I think the two are both
compatible. I agree with Commissioner Heriot that
this is both an important and a very manageable topic
that she has outlined and it is one that staff and
OCRE are familiar and able to handle while the New
Black Panther Party investigation that we are already
committed to will rely primarily on the General
Counsel's staff. And so I can -- both of them might
be enforcement reports.

Certainly, the New Black Panther one is an
enforcement -- potential enforcement report, but we
might have two enforcement reports this year. This
will allow us to issue -- one is our -- or possibly
two, but with regard to Commissioner Yaki's comments,
I don't think the concept paper is self-executing in
many respects.

I was going to propose a motion or two, if it is adopted, and Commissioner -- let the record reflect that Commissioner Thernstom is leaving the room. Commissioner Thernstom, why are you leaving the room?

VICE CHAIR THERNSTROM: I really have got something I need to get to and I think you'll be fine without me.

COMMISSIONER HERIOT: Let the record reflect that Commissioners Yaki and Melendez are also gathering their papers.

COMMISSIONER GAZIANO: I move that we adopt both the New Black Panther proposal and the Title IX proposal for this year.

CHAIRMAN REYNOLDS: I second it.

Discussion?

COMMISSIONER HERIOT: Let the record reflect that Commissioner Yaki has left the room. Commissioner Melendez is leaving the room, this in connection with an earlier threat to defeat a quorum at this meeting.

Let the record further reflect that although they complained that Commissioner Taylor was not present and they cared about his input, they did
not seem very interested to learn that Commissioner Taylor, in fact, prefers my proposal to theirs.

CHAIRMAN REYNOLDS: In addition, going back to collegiality, Vice Chair Thernstrom brought that issue up a few minutes ago and my only quibble with her at the time was that it's not the topics that causes the tension. It's personalities. And this effort to defeat the quorum is -- including support in this support. That's not what I think of collegiality, my definition.

COMMISSIONER GAZIANO: Will the chair permit a couple of minutes to try to see if we can convince Vice Chair Thernstrom to return? She's left her materials at the table.

CHAIRMAN REYNOLDS: I'll hang on.

COMMISSIONER HERIOT: I'm making an effort to raise Commissioner Taylor, as well.

(Off the record.)

COMMISSIONER GAZIANO: I just told Commissioner Taylor what the motion was and to remind you that the Commission move forward with both the Title IX and the New Black Panther Party projects as outlined in the Commission papers. And that we may issue one or two enforcement reports based on those projects.
CHAIRMAN REYNOLDS: Do we have a quorum?

COMMISSIONER HERIOT: We do, yes.

CHAIRMAN REYNOLDS: All right, so Todd, you had made a motion. Would you care to make it again? Or have you already --

COMMISSIONER KIRSANOW: He's made the motion. I seconded it.

CHAIRMAN REYNOLDS: Okay, if that's the case then, all in favor, please say aye.

Ayes

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER HERIOT: Although I wanted to comment on it. If it's okay for me to comment after the vote, I think the flexibility that this allows us is a really good thing. If either of these reports doesn't turn out to be really good for enforcement, the other report will be there and another good thing about it is the division of labor. The Title IX issue can be dealt with by OCRE where as the New Black Panther Party issue is a better one for the General Counsel's Office. And so I think it will work very well.

CHAIRMAN REYNOLDS: And let me add to that by saying that, Gail, your proposal is quite good and in the past you have argued in favor of proposals that
were tightly drawn and I think yours is a good example of what you've been pushing for.

COMMISSIONER HERIOT: Let me add that what I anticipate is that neither of these reports is going to be a giant battleship the way our previous yearly reports have been, that they should both be, they'll be as large as they need to be and we have to be flexible there, but we shouldn't start out assuming that they are going to be giant volumes that will take until late summer. Because one of the problems we've run into in the past is reports that don't even -- the first draft isn't finished until such time where it's really too late to restructure and it ends up being completely staff driven, and as I've said before, the eight members of the Commission, that's the Commission, and we should be driving our projects, not the staff.

COMMISSIONER KIRSANOW: Mr. Chairman, I just want to make sure that the record reflects that we had five ayes to the motion. There are only five people on the Commission present. I did not hear any nays or abstentions. So I presume the motion passes, correct?

CHAIRMAN REYNOLDS: Yes, indeed.

CHAIRMAN REYNOLDS: Okay.
COMMISSIONER GAZIANO: Can I make one more quick motion while we have the five members?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: First, a request, then the motion. The request is that the chair send a letter back to the Attorney General that acknowledges the September 9 letter of the head of Intergovernmental Public Liaison explaining why it is that we are respectful of their referral to OPR and we will carefully deal with any issues as may arise, as we pursue our own investigation. And I think you certainly have authority to explain that without a vote, but if you prefer a vote, we can.

Let me pause there. Does any Commissioner object to my request or does the chair, are you satisfied with that?

CHAIRMAN REYNOLDS: I am.

COMMISSIONER GAZIANO: Then my motion is that pursuant to the concept paper on the New Black Panther Party matter that we've adopted, that the chair appoint the Discovery Subcommittee that was suggested in it. I volunteer to serve and I recommend that there be a member of each of the two major political parties on the Discovery Subcommittee since I am neither.
CHAIRMAN REYNOLDS: Peter, would you care to serve?

COMMISSIONER KIRSANOW: I would.

CHAIRMAN REYNOLDS: And we will visit with the Democrats --

COMMISSIONER KIRSANOW: Commissioner Yaki just entered the room.

CHAIRMAN REYNOLDS: Okay, is he participating?

COMMISSIONER HERIOT: He appears to be, now that we have a quorum without him, it's not necessary for him to be on the outside.

COMMISSIONER GAZIANO: My motion, subject to any further refinements at subsequent meeting is that the subcommittee be approved, the Discovery Subcommittee be approved and I suppose it's Commissioner Kirsanow and I, Commissioner Taylor -- I mean Commissioner Yaki, are you willing to serve?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Is Commissioner Melendez in the room?

COMMISSIONER YAKI: Commissioner Melendez is not in the room and from what I understand he is unwilling to serve as well.

CHAIRMAN REYNOLDS: Do you have his proxy
on this issue?

COMMISSIONER YAKI: As much as you had proxies earlier in your statements regarding your conversations with other Commissioners, Mr. Chair.

CHAIRMAN REYNOLDS: I never claimed to have anyone's proxy.

COMMISSIONER YAKI: And neither have I.

CHAIRMAN REYNOLDS: Okay, that's clear. So you will visit with Commissioner Melendez to see if he's willing to serve. If not, we'll move forward.

COMMISSIONER GAZIANO: I want to vote on the motion for at least two of the three to go forward.

COMMISSIONER YAKI: What is this motion?

COMMISSIONER GAZIANO: For the Discovery Subcommittee?

COMMISSIONER YAKI: What's a Discovery Subcommittee?

COMMISSIONER GAZIANO: Set forth in the concept paper --

COMMISSIONER YAKI: Is this your version of making the United States Commission on Civil Rights its own special prosecutor on this single, discrete case without any attempt at or even a fig leaf of fairness or broadening this to include other issues
that have been raised in the past regarding the
Division's inability to or unwillingness to enforce
voter intimidation cases that have been brought to
them by staff?

I'm a little unclear about the theory of
(a) what your Discovery Subcommittee is all about, and
(b) indeed the theory for this entire investigation,
given that the Department of Justice is conducting an
internal investigation and that Members of Congress
from the Republican Party seem to be quite satisfied
with that and are waiting for that before proceeding
to move any further. So I guess I'm at a loss to
understand exactly what it is you are trying to do.

And oh by the way, Mr. Chair, given the
lack of comity and any attempt at accommodation of
some serious concerns that have been brought by the
Democrats and one of the Independents on the
Commission --

CHAIRMAN REYNOLDS: Who is that
Independent?

COMMISSIONER YAKI: Former Independent, I
suppose, Commissioner Thernstrom, that I will in a day
or so be tendering my resignation to the Subcommittee
on the National Conference, unless Commissioner
Thernstrom is appointed to that Committee as well.
But just to be clear, I'm still --

CHAIRMAN REYNOLDS: Do you know if Commissioner Melendez is willing to act in your place?

COMMISSIONER YAKI: I could not possibly speak for him. The question that remains is to Commissioner Gaziano is exactly what is a Discovery Subcommittee going to do.

COMMISSIONER GAZIANO: To answer his question, no.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: It is simply a recognition of the sensitivity of this and among other reasons that the Commissioners on the Subcommittee can help bring to the Full Committee matters in a more timely manner on this investigation and the sensitivities connected with this investigation.

We want to be respectful of the Department and I think that the Subcommittee will help and show that level of respect. If the Department really does request accommodations as it cooperates with us in our investigation.

I call the question.

COMMISSIONER YAKI: Well, it seems to me if you were to show some respect on this particular issue, that you would take your cue from some of the
Members of Congress who in requesting this investigation by the Department of Justice resulting in the Office of Professional Responsibility referral, praise and decision of the Department and are waiting for the results before taking any action any further.

I do not understand --

COMMISSIONER GAZIANO: I have not heard from all Members of Congress --

COMMISSIONER YAKI: I believe I was speaking, Commissioner Gaziano. I only read what the Minority Leader said and the person instigating it from the Judiciary Committee, the Ranking Republican had a say on this as well as Senator Hatch. So I believe that obviously if you're referring to perhaps, you know, your good friend Congressman Joe Wilson, I can't possibly begin to deal with every single Member of Congress, but I will say that certainly the leadership has cited to let Justice use its independence arm in order to take a look at this further.

And the idea that the United States Commission on Civil Rights is willing to act as its own special prosecutor in this matter, because that's exactly what your proposal purports to do on a discrete, single case, upon which action has been
taken against at least one individual for a statute that has had very rare enforcement at all throughout different administrations where one can certainly point to any number of different times when questions have been raised about whether a decision may or may not have been politically motivated within the voting rights section, especially during the last administration.

The exclusion of that, the exclusion of anything that would attempt to show that this Commission has no bias, but an actual interest in the issue beyond that which your personal -- I want to choose my words carefully here. Your personal crusade regards is, you know, I think a sad commentary on the way that the Commission --

CHAIRMAN REYNOLDS: Okay, Commissioner Yaki --

COMMISSIONER YAKI: And why, Mr. Chair --

CHAIRMAN REYNOLDS: Commissioner Yaki, at this point --

COMMISSIONER YAKI: Mr. Chair, and why --

CHAIRMAN REYNOLDS: Other folks are waiting to --

COMMISSIONER YAKI: And why, Mr. Chair, why Commissioner Melendez and Commissioner Thernstrom
and I felt strongly enough to leave, given the fact that this was not --

CHAIRMAN REYNOLDS: Commissioner Yaki, we've been patient. We have provided you with a lot of leeway, but --

COMMISSIONER YAKI: I did not know -- I did not understand there was a time limit on my comments, but this again goes to show again that this Commission is not acting in any way responsibly in keeping with its mission, in a bipartisan manner, on behalf of the civil rights of the people of this country.

CHAIRMAN REYNOLDS: Commissioner Yaki --

COMMISSIONER YAKI: It's a partisan and political agenda and I will leave right now. Thank you very much.

CHAIRMAN REYNOLDS: Good-bye.

COMMISSIONER HERIOT: Mr. Chairman, I just want to point out that if there's someone behaving in a partisan manner at this meeting, it is Commissioner Yaki.

COMMISSIONER YAKI: I think a Republican walked out with me too.

COMMISSIONER GAZIANO: Call the question.

CHAIRMAN REYNOLDS: Well, no. Before we
call the question, I think that it's important to point out that throughout this discussion we said that we would be sensitive to the investigation, but I think that one item that has not been made clear, it's not clear to me that there is a conflict or a significant chance that we would in any way affect the investigation going on at DOJ. We are looking, in large part, at the standard that has been established in past cases, cases that are closed.

We are not looking at ethical violations, so in terms of a division of labor, I think that we have a clear law that will enable us to proceed in a manner that does not undermine the efforts going on at DOJ to determine if there have been ethical violations there.

So where were we?

COMMISSIONER KIRSANOW: Where we were, Mr. Chair, was Commissioner Gaziano had proposed a subcommittee consisting of himself, me, and Commissioner Yaki. Commissioner Yaki declined to participate. He moved, nonetheless, meaning Commissioner Gaziano, to consider himself and me for the Subcommittee and at such later time then possibly include another Commissioner, perhaps Commissioner Melendez may consider participating.
COMMISSIONER GAZIANO: If I could ask for a friendly amendment that I would leave the appointment of a Democrat Commissioner open to the chair at any time.

CHAIRMAN REYNOLDS: There's only one left.

COMMISSIONER GAZIANO: At any time that such member may change their mind and want to join the Subcommittee.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: So the Subcommittee would proceed until such time as any member of the Democratic Party expresses an interest and then you would be free to make that appointment.

CHAIRMAN REYNOLDS: That's fine with me, but I've got to tell you, my view is that if any Commissioner wants to boycott I think that boycott should be treated as a complete act and there should be no opportunity for an individual to parachute into a process that has been underway and developed.

I think that we should give members of -- Commissioners Yaki and Melendez an opportunity to consider whether -- at least Yaki an opportunity to reconsider his decision to boycott or at least to decline limitation to participate. We'll see what Commissioner Melendez has to say, but I am inclined
and once they've declined, they've declined.

   I think the potential to disrupt the process is significant by allowing people to parachute into the process midway.

   COMMISSIONER GAZIANO: I call for a vote unless there's something else?

   CHAIRMAN REYNOLDS: All in favor, please say aye.

   Ayes

   CHAIRMAN REYNOLDS: Any objections? Any abstentions? Motion passes.

   COMMISSIONER KIRSANOW: Mr. Chair?

   COMMISSIONER GAZIANO: Mr. Chair, a clarification.

   COMMISSIONER KIRSANOW: No clarification. I just simply want to make a brief statement and unfortunately, Commissioner Yaki is no longer here, but I think it's important for the record to respond to his statement with respect to the latest vote that we had.

   I disagree with his assessment that Commissioner Gaziano is on some type of personal crusade or acting as a special prosecutor. We don't have any enforcement authority and the manner in which Commissioner Gaziano's statutory reports/enforcement
report is couched, it is, as you stated, something that is driven toward the comparables and the standards that DOJ uses. It's not some type of "Jihad" against DOJ.

And in addition to that is the issue of a lack of comity. In every statutory report that I voted on in eight years, there's never been, to my recollection, there's never been a consensus. There's always someone who prefers some other report. All the reports that were proffered or all the topics that were proffered in this latest go around, I liked.

I particularly liked Commissioner Melendez' suggestion with respect to age discrimination in the current economic environment. I thought Commissioner Thernstrom's proposal was intriguing. All of them were splendid and as in past years, certain Commissioners have preferences for others and then a certain majority would coalesce around a particular topic. That's what occurred here and simply because we don't have unanimity does not necessarily mean that someone's concerns weren't taken into consideration or that somehow the process is being steamrolled. There was a majority. The majority voted for a particular topic and that passed.

Third, simply because Congress, and I'm
not sure congressman who had an interest in the
subject has now decided to stand down, but even if
that were the case, simply because Congress decides
that it's going to permit DOJ to conduct an
investigation internally doesn't necessarily preclude
us from pursuing our own charter and our own
investigation, if you want to call it that, into the
process.

And our investigation and our review is
different than that I believe Congress would take a
look at. But more importantly, several of us who are
litigators have done sexual harassment cases and very
often what we see pursuant to a Faragher and Ellerth
standard is we want the employer, for example, to
conduct its own internal investigation and it's
frankly required if you want to have the ability to
mitigate your potential damages, but that doesn't
preclude plaintiff or the EEOC from conducting an
investigation during the pendency of the internal
review. So it seems peculiar to me that simply
because DOJ is investigating itself now that puts
everything on hold.

I think, first of all, the investigations
are separate. They don't go down parallel tracks or
cover the same substantive manners and we are not
going to be trampling on their investigation as
Commissioner Gaziano indicated. I think we're going
to be very respectful and mindful of the fact that we
don't want to somehow compromise an investigation, but
nonetheless, I don't see how we could possibly do
that. But even so, I think it's imperative upon this
Commission to conduct an investigation of something of
great import and merit and it's within our charter.

Deprivation of voting rights, matters
pertaining to voting rights is clearly within our
wheelhouse and we should be doing this. And I would -
- and this is kind of ham handed, but that's
nonetheless the way in which I operate, but I would
say in response to Commissioner Yaki, if he doesn't
think that this is a meritorious subject, let's just
flip this around. What if there were Klansmen or
Aryan Brothers standing outside a polling station with
billy clubs in full dress, Nazi paraphernalia, Klan
paraphernalia and they were telling people you're
about to be ruled by a white man or you better vote a
certain way? And then the Department of Justice
proceeded on the prosecution of that and after
obtaining tantamount to default judgments and after
there is right now reported evidence that political
appointee intervenes and says shut this down, that the
prosecution is abandoned.

Would it be something of small import that this Commission shouldn't be investigating and I would remind everybody that in 1957 and 1958 when this Commission was being considered to be established, this is precisely the type of actions that caused the Commission to come into existence. And for us to abandon that now seems to me to be a wholesale abdication of our responsibilities.

COMMISSIONER GAZIANO: Commissioner Kirsanow, I appreciate the comments, although I hardly -- I hope I don't really need any defense to the strange and unfair accusations that Commissioner Yaki made, but on behalf of all of us, I just want to remind the public that our last letter which received six signatures, pointed out to the Department that even though this was one case, it had the potential to significantly impact the enforcement of voter intimidation laws.

We also pointed out in that letter that not only was the dismissal likely to have far-reaching implications for the Department's enforcement of Voting Rights Act, but that their positions, their explanations so far had further aggravated the enforcement of voter intimidation, the rationales that

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they had offered had further undermined respect for the rule of law. And that is why an examination that's focused on this case can yield a lot of important information that is, of course, central to our jurisdiction.

CHAIRMAN REYNOLDS: Any other comments?

COMMISSIONER HERIOT: I guess I have a comment as well. First, I agree with Commissioner Kirsanow that this is dead center of our jurisdiction and in particular, our statute requires us to do one report that deals with enforcement. And sometimes we have done a report in response to that statutory duty that is somewhat related to enforcement and in truth, I have felt that we need more reports that are strongly enforcement related, so that we can be sure that we are doing what Congress wants us to do, issuing that kind of report. So I was very pleased that Commissioner Gaziano came up with an issue that does so well fit that.

I also believe that in terms of the politics of this particular incident, that this is not a left-right issue at all, that there are those who are very concerned about this particular incident making it impossible to enforce that provision of the law not just in cases that involve the New Black
Panther Party, but the next time it may really be a white supremacist group. And if we have a Department of Justice that goes on record saying this is no big deal and this should be dismissed, I don't see how this provision of the law can be enforced in any situation. That's why I think this is a dead serious issue.

CHAIRMAN REYNOLDS: Commissioner Heriot, I agree that this falls within our jurisdiction. It's not even a close call, but I think that if any of us had any serious concerns that we were about to undertake what undermined the investigation that's underway at DOJ, that we would exercise our discretion in amending and/or delaying what we're doing if we had serious concerns that we would undermine the investigation.

To date, there is no evidence that what we are about to do would conflict. As I said earlier, there's not much overlap.

COMMISSIONER HERIOT: But on the overlap issue I think we do have a duty to look at wrongdoing if that has occurred. And that's something that the DOJ investigation does not. But we have a duty to make sure that the law is being enforced appropriately, so I don't think that our jurisdiction
is completely different from the investigation. It's just that ours is much broader.

CHAIRMAN REYNOLDS: Right. I guess this is a conversation we can continue offline. I'm not sure that we disagree.

COMMISSIONER KIRSANOW: Mr. Chair?

CHAIRMAN REYNOLDS: In any event --

COMMISSIONER KIRSANOW: Mr. Chair, this is Commissioner Kirsanow. For the record, I think it's important to ascertain whether or not Commissioner Taylor, in fact, participated in the last vote with respect to the subcommittee. I didn't here --

COMMISSIONER TAYLOR: It should have been a vote recorded as an aye.

COMMISSIONER KIRSANOW: Okay, thank you, Commissioner Taylor.

Discussion of Potential FY 2010 Clearinghouse Reports and Briefings

CHAIRMAN REYNOLDS: Okay, next up, clearinghouse report. During the August 7th discussion on the statutory report, Vice Chair Thernstrom and Commissioner Heriot suggested that if the topics they propose were not selected as the subject of the statutory enforcement report, that those projects instead be considered as possible
Commission clearinghouse or briefing report topics.

I presume that other Commissioners whose topics were not selected would provide the same consideration. In order to complete a briefing or other project in the first quarter of the new fiscal year, we'll have to vote no later in the next in-person business meeting. If Commissioners have any ideas for briefings, please submit those to the Staff Director no later than two weeks before our August 17th in-person business meeting. The Commissioners should also be advised that we may have a briefing or other project involving our enforcement topic during the new fiscal year as is our customary practice.

So Mr. Staff Director, please compile all of the topic ideas that are already floating out there and those that are submitted by October 4th and please put them in a memorandum and circulate it to all Commissioners so that we can consider the topics at our next in-person business meeting.

**Briefing Report on Title IX in Intercollegiate Athletics**

CHAIRMAN REYNOLDS: Next up, the briefing report on Title IX in intercollegiate athletics, accommodating interests and abilities. At the July 10th business meeting, Commissioners decided to table
consideration of the draft briefing report on Title IX in intercollegiate athletics, accommodating interests and abilities. I move that the Commission approve for publication along with any concurring and dissenting statements submitted by any Commissioner by October 11th and any rebuttal statements submitted by any Commissioner within 30 days of the distribution of concurring and dissenting statements.

Part A of the report produced by staff and reflecting Commissioner and panelist input on the briefing the Commission held on May 11, 2007. Part A contained a brief overview and summary of the issue and why the Commission chose to conduct the briefing, the summary of the proceedings, consisting of synopses of panelists, oral statements during the briefing, and a synopsis of the Q & A session, as well as copies of panelists' written statements. Under the motion, if the majority of the Commission votes to adopt Part A of the briefing and the Commission will then open discussion of Part B. If Part A failed to obtain a majority of votes, discussion of Part B becomes moot.

Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?
COMMISSIONER GAZIANO: Call the question.

CHAIRMAN REYNOLDS: I'm sorry, what did you say?

COMMISSIONER GAZIANO: Call the question.

CHAIRMAN REYNOLDS: Okay, all in favor, please say aye.

Ayes

CHAIRMAN REYNOLDS: Any objections? Any abstentions? The motion passes unanimously.

Okay, Part B --

COMMISSIONER GAZIANO: Mr. Chairman --

CHAIRMAN REYNOLDS: -- contained submissions, 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 composition vote for that item.

I move that the Commission approve the first finding which reads as follows --

COMMISSIONER GAZIANO: Is it in order chair that if I move for unanimous consent to vote on them as if read, without reading them out loud?

CHAIRMAN REYNOLDS: Is there any objection
to that approach? Okay.

Proceed, Mr. Gaziano.

COMMISSIONER GAZIANO: I'm sorry, what's that?

CHAIRMAN REYNOLDS: Well, being that there's no objections, we're just going to --

COMMISSIONER GAZIANO: Voting individually though. So I move to adopt finding number one.

CHAIRMAN REYNOLDS: I thought you wanted to vote on all of them simultaneously.

COMMISSIONER GAZIANO: We may have slight amendments to one or two of them, I believe.

CHAIRMAN REYNOLDS: Do you want to deal with --

COMMISSIONER GAZIANO: Does anyone have objections to finding? Okay, I move at this time that we adopt all the proposed findings as stated in the written materials.

CHAIRMAN REYNOLDS: I second that motion.

Discussion?

(No response.)

All in favor, please say aye.

Ayes

CHAIRMAN REYNOLDS: Any objection? Any abstentions?
COMMISSIONER KIRSANOW: Kirsanow abstains.

CHAIRMAN REYNOLDS: Next up is the recommendations.

COMMISSIONER GAZIANO: I move we adopt recommendation number one.

CHAIRMAN REYNOLDS: Second. Discussion?

COMMISSIONER HERIOT: I second.

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

Ayes

Any objection? Any abstentions?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIRMAN REYNOLDS: Okay. I move that we adopt the second recommendation. Is there a second.

COMMISSIONER GAZIANO: Second with an amendment.

COMMISSIONER HERIOT: Hold on.

COMMISSIONER GAZIANO: I move in the second to last word just a really grammatical clarification, strike "other" and substitute "their perspectives" to show that we are interested and we believe female students -- it would read "since female students are fully capable of expressing interest in athletics or lack thereof, advocates for particular views on Title IX, compliance should not devalue or
dismiss their perspectives."

CHAIRMAN REYNOLDS: Okay, we're voting on the amendment, will be the motion as amended. All in favor, please say aye.

Ayes

CHAIRMAN REYNOLDS: Objections? Abstentions?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIRMAN REYNOLDS: I move that we adopt recommendation three. Is there a second?

COMMISSIONER GAZIANO: Second.

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

Ayes

CHAIRMAN REYNOLDS: Objections? Abstentions?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIRMAN REYNOLDS: I move that we approve recommendation four.

COMMISSIONER HERIOT: I've got some problems with four. I'm trying to reword it now.

COMMISSIONER GAZIANO: Could you speak up?

COMMISSIONER HERIOT: I thought it was a little bit too strongly worded for my taste. Maybe I'm wrong, but I didn't know that there was any
particular evidence that the NCAA has retaliated
against institutions, so I feel it's kind of stronger
than I would like it to be.

CHAIRMAN REYNOLDS: Would you be
comfortable if we replaced the word "retaliate" with
"discourage"?

COMMISSIONER HERIOT: I was thinking "the
NCAA should reconsider its objection to the model
survey and should not discourage" -- discourage will
work -- "and should not discourage educational
institutions from" -- hold on.

CHAIRMAN REYNOLDS: Okay. Let's vote on
the motion as amended.

COMMISSIONER HERIOT: I'm not sure I have
a complete sentence yet here.

CHAIRMAN REYNOLDS: All right.

COMMISSIONER HERIOT: "NCAA should
reconsider its objection to the model survey and
should not discourage educational institutions from
using student interest surveys or urge them to avoid."

COMMISSIONER GAZIANO: That sounds good to
me.

COMMISSIONER HERIOT: Hold on, just a
minute. I'm slow.

Yes, okay, that works. "The NCAA should
reconsider its objection to the model survey. It should not discourage educational institutions from using student interest surveys or urge them to avoid their use since college students are adults capable of assessing their own interest in sports." That works.

CHAIRMAN REYNOLDS: Okay, so as amended, let's vote on the motion. All in favor, please say aye.

Ayes

Objection? Abstentions?

COMMISSIONER KIRSANOW: Kirsanow.

CHAIRMAN REYNOLDS: Commissioner Taylor, how did you vote?

COMMISSIONER TAYLOR: I voted aye.

COMMISSIONER GAZIANO: So you voted aye for all of them?

COMMISSIONER TAYLOR: I thought we were on recommendation three.

COMMISSIONER HERIOT: We did four.

COMMISSIONER GAZIANO: I just didn't hear your vote on all those that have passed, have you been voting aye? I haven't heard?

COMMISSIONER TAYLOR: Correct, I'm sorry. I thought we were still on three.

COMMISSIONER HERIOT: Did you vote on four
or would you like to vote on four?

    COMMISSIONER TAYLOR: I would like to vote on four.

    COMMISSIONER GAZIANO: As amended.

    COMMISSIONER TAYLOR: Since I didn't hear the discussion, I thought we were on three. I'm going to abstain.

    CHAIRMAN REYNOLDS: Okay.

    STAFF DIRECTOR Dannenfelser: Mr. Chair, the Solicitor and the General Counsel just advised that we have a motion that the text of these findings and recommendations be submitted for the written record, be entered into the written record of the meeting.

    CHAIRMAN REYNOLDS: I'm sorry?

    COMMISSIONER GAZIANO: I made such motion.

    CHAIRMAN REYNOLDS: Is there a second?

    COMMISSIONER Heriot: Second.

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

    Ayes

    Any objection? Any abstentions?

    COMMISSIONER Kirsanow: Kirsanow.

    CHAIRMAN REYNOLDS: Okay, Mr. Staff Director, would you please discuss the status of the
Commissioner Heriot: Could we do that last since that's just a discussion?

Chairman Reynolds: And OCR at the Department of Education regarding civil rights and enforcement activities.

Commissioner Gaziano: If we have no further motions, then I just want to alert Commissioners who may have other -- okay.

Chairman Reynolds: I'm sorry, continue.

Commissioner Heriot: I think we're done with motions.

Chairman Reynolds: We're done with the recommendations, if that's what you're referring to.

Commissioner Heriot: We don't have any further action item here is the point. I just wanted to make sure if we had an action item that we get that done right now.

Chairman Reynolds: I don't believe that we have any additional action items.

Commissioner Kirsanow: Mr. Chair, I just want to clarify for the record that my abstentions were an affliction of my inability to have studied these Title IX findings and recommendations as thoroughly as I would like.
CHAIRMAN REYNOLDS: Okay. Mr. Staff Director?

Update on Status of Document Request to Government Agencies Regarding their Civil Rights Enforcement Activities

STAFF DIRECTOR DANNENFELSER: Thank you, Mr. Chair. We have been following up with the four agencies which the requests were sent in April and those are the Department of Education, Department of Labor -- I'm sorry.

(Staff Director Dannenfelser adjusts microphone.)

We have been following up with the four agencies to which requests were sent on April 30th and those are the Department of Education, the Department of Labor, the Department of Justice, and the Equal Employment Opportunity Commission. We just this week received a number of documents from the Department of Justice and those have been sent to all Commissioners for their review.

We have been told for I think a couple of weeks now that Department of Education has a letter in a clearance process. We have not received a response from them yet, but we've been checking back within several day intervals with the Department of Education
so the situation is still the same there, that that letter is in clearance where we cannot have a firm date on when we might expect that letter.

The Acting Chair of the EEOC did send us a letter basically saying that they would not be able to comply with our request and that a good of the information we're interested in can be found on their website. So that is something that I have indicated to the Commissioners that would be helpful to have some input as to how Commissioners would like to respond to that response from the EEOC.

The Department of Labor, we've had frequent outreach there and one of the attorney advisors has spoken with the individual that Department of Labor designated as the point of contact and that person has indicated that they would be trying to get us some information and indicated that the manual that we had asked for was being revised. But so far we have not received the information from the Department of Labor. The particular person that they designated has indicated that she's very involved with the stimulus funding situation as far as hiring people to work on that project and to do many of the things that are involved in that. But unfortunately, we still have not received any particular documents.
from the Department of Labor, but we are continuing to
follow up with them on that request.

CHAIRMAN REYNOLDS: Questions, comments?

Hearing none, Mr. Staff Director, please discuss the
status of pending briefing reports.

Update on Status of Briefing Reports

STAFF DIRECTOR DANNENFELSER: Thank you,
Mr. Chair. I did send a document to Commissioners
yesterday afternoon that gives an update on the status
of the briefing reports. The Department of Justice
Voting Rights Enforcement for the 2008 U.S.
Presidential Election has been sent to GPO for
printing and distribution to Congress and the
President.

The Provision of Supplemental Educational
Services under the No Child Left Behind Act has also
been sent to GPO for printing and distribution to
Congress and the President.

The Covert Wiretapping in the War on
Terror was tabled at the May 15, 2009 business meeting
and that is one that the Chairman was authorized at
his discretion to place it on future agenda.

The Educational Effectiveness of
Historically Black Colleges and Universities is one
that there has been some sentiment expressed to hold
that particular report until the STEM briefing report is completed and to release those two reports jointly.

The STEM briefing report has been through the clearance process internally via editorial reviews and label sufficiency reviews and we are incorporating the final edits from those reviews. So that report should be ready to be sent to the Commissioners very soon.

The Title IX report, of course, was just approved by the Commission.

The Impact of Illegal Immigration on the Wages & Employment of Black Workers, that draft report has been finalized so that can be submitted to Commissioners at any point for their review.

The Multi-Ethnic Placement Act: Minorities in Foster Care and Adoption, that was sent to Commissioners earlier this week on September 8th. I did not include a time table for review with that report, but I think that is something that the Commissioners will want to consider what time table they would like to see to that report as well as other reports that they would like to consider in near term.

The School Choice, Blaine Amendments and anti-Catholicism briefing report is going through final edits in the Office of the General Counsel and
we expect it to be forwarded to the Office of the Staff Director during the week of September 14th and the editorial and legal sufficiency reviews should follow shortly thereafter.

The Discrimination Against Native Americans in Border Towns report was submitted for editorial and legal sufficiency reviews on September 8th and those individuals were asked to complete their reviews by September 22nd at which point we'll then have to incorporate whatever editorial changes are recommended. We'll have to consider them and incorporate them as appropriate.

The Specifying English as the Common Language of the Workplace: Every Employer's Right or Violation of Federal Law? That report has been prepared in rough draft form by the Office of the General Counsel and they have indicated that final editing will begin as soon as the statutory report is completed and that Blaine amendments report which was mentioned a few minutes ago, as soon as that is forwarded to Office of the Staff Director.

The Health Disparities Between Minorities and Non-Minorities is one in which the panelists' edits to the transcript have been incorporated and that transcript has been posted on the Commission's
website and that OCRE is currently working on the
draft of that report.

The other briefings, excuse me, the
statutory report on prisoners, religious freedom for
people in prison and of course, the one that was just
completed on the mortgage crisis, there were briefings
for those two reports, but we're not going to issue
separate reports related to those briefings, but we
will be putting materials related to those briefings
such as the witnesses' statements on the website with
a very brief explanation and then that will also link
people to the transcript for each briefing.

That completes my report, Mr. Chairman.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER HERIOT: I have a comment here.

Mr. Staff Director, would it be possible
for you to actually give us the dates that I think
will be far more important than the dates that you've
offered here. This report makes it look, for example,
like the report on the Impact on Illegal Immigration
on the Wages and Employment of Black Workers, we have
one date, April 4, 2008. And then it makes it look
like that somehow the Commissioner reviews are what's
holding this up. But in fact, that is very much not
the case.

What I would like to see is the date the
draft was finished. The date that it went to
editorial, through editorial and legal sufficiency
reviews, the date that it was given to the
Commissioners, and that's simply the date of the
briefing. What we're trying to do here is get a sense
of where the bottlenecks are and if the only date we
have is the date of the briefing that doesn't really
give us that information.

STAFF DIRECTOR DANNENFELSER: We can
provide some further dates along the way.

COMMISSIONER HериOT: Yes, I would very
much like to see at each point where -- how long it
took. From reading this, I have no idea how long
editorial and legal sufficiency reviews tend to take.
It's just not in this report.

The only thing that I know is that that
step is a step that must be taken and has been
completed for some of these, but not others. I need
to get a sense of how long these things tend to stay
with the original writer, how long they tend to be in
the process of editorial and legal sufficiency
reviews, what point they reach the Commission, and
then at what point they're put on the agenda. That's the sort of thing I need to know.

CHAIRMAN REYNOLDS: And that information will clear up this dispute amongst Commissioners over where the bottleneck is. In fact, earlier, I believe, Vice Chair Thernstrom suggested that reports are held up by Commissioner review. It's an empirical question, but it's a question that cannot be answered unless we have the information.

COMMISSIONER HERIOT: Yes, and one of the problems of this report is that it makes it look like it is the Commissioner reviews that are holding things up, but for example, this one for illegal immigration. I've not seen that report and yet I understand that it was written quite some time ago.

STAFF DIRECTOR DANNENFELSER: Well, I would disagree with that assessment. If you look down at the sentence at the bottom of that explanation it says a draft report has been finalized for submission to the Commissioners, so therefore it does not suggest that it's held up with the Commissioners because it does acknowledge that the report has not been sent to the Commissioners.

COMMISSIONER HERIOT: Others of them do not.
STAFF DIRECTOR DANNENFELSER: That is just a standard thing throughout the reports that have these parts of the process been completed and has that other part --

CHAIRMAN REYNOLDS: Mr. Staff Director, the larger point is the need for information regarding when certain portions of the process are completed.

COMMISSIONER HERIOT: I would very much like to know when the first draft is completed so that we need an extra line in here for that so that if it's the editorial and legal sufficiency reviews that are taking a long time, we'll be able to see that from this report. But the way it is now, it looks like the reports just somehow appear and there's no date for that, no suggestion as to whether or not -- not the editorial and legal sufficiency reviews are taking a long time. We just can't tell.

COMMISSIONER GAZIANO: And I don't think that you meant to be -- this is a little ambiguous and someone who gets this may not -- not that you intended it to be that way, but Commissioner reviews completed, no, they may look at that rather than the last sentence.

But I agree with the larger point. The larger point is that different reports may take longer
at different stages for good reasons, bad reasons or mix of reasons. But if we had -- if the chart was revised to have different -- those different dates reflected a different way, that will help us.

And I was going to suggest to other Commissioners that we schedule on an upcoming agenda, whether it's the next telephonic, that we have a discussion and we express our interest in which we would like to see sooner, rather than later, also to respond to the Staff Director's statement that we impose our own deadlines on review, whether they're flexible. Hopefully, they'll be somewhat more flexible than some other times when we've had to make them inflexible.

Just my own personal -- there are several that I'm interested in, but since it's near completion of the ones that are near completion, I'm particularly interested in the STEM report, but I'd like to perhaps schedule that for a subsequent call so that we can collectively go through and say which we are particularly -- we think are -- are especially timely to some other debate we're having. Obviously, the health care one is -- we might want to discuss, since that's a very important issue being debated elsewhere.

CHAIRMAN REYNOLDS: Other comments?
Hearing none, we are adjourned.

COMMISSIONER HERIOT: Wait, there's one item of business I wanted to mention.

I would like to have a report similar to the status and briefing reports on status of SACs. Could we get at our next meeting a list of the 51 SACs, when they were last chartered, when we can expect to -- but we need to know what's currently chartered, what is soon to expire, what's already expired so we know how many of these need to get done.

STAFF DIRECTOR DANNENFELSER: Yes, we can provide that.

CHAIRMAN REYNOLDS: I apologize, Commissioner Heriot. I jumped the gun. Any other comments, questions?

Okay, the meeting is adjourned.

(Whereupon, at 12:23 p.m., the meeting was concluded.)