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

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

MARTIN DANNENFELSER, Staff Director

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

COMMISSIONER ASSISTANTS PRESENT:
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
KIMBERLY SCHULD
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(9:40 a.m.)

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

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

COMMISSIONER MELENDEZ: Yes. Commissioner Melendez here.

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

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

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

COMMISSIONER GAZIANO: So moved.

COMMISSIONER YAKI: The original agenda.

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

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

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

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

COMMISSIONER YAKI: Well, okay.

CHAIRMAN REYNOLDS: Do you have any additional questions?

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

CHAIRMAN REYNOLDS: Oh, I apologize. We will -- if you have any questions as we go along, I know its going to be a struggle to follow.
COMMISSIONER YAKI: I would prefer to keep to the original agenda until Commissioner Kirsanow joins.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: I second the motion.

CHAIRMAN REYNOLDS: Well questions.

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

COMMISSIONER YAKI: Chair Reynolds?

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

COMMISSIONER MELENDEZ: That's fine.

(Off the record comments.)

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

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

COMMISSIONER YAKI: There are items on the original agenda with which I have no problem being present for, and I can't speak for Commissioner Melendez, but I think we can go through the briefing
report, and the updates that are coming on. But to the extent that we are voting on motions, I prefer, with the exception of the MEPA Briefing Report, I prefer that we have Commissioner Kirsanow present for the purposes of ensuring a quorum for that vote.

CHAIRMAN REYNOLDS: We have a quorum.

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

CHAIRMAN REYNOLDS: Okay. My recommendation is that we move forward with the amended agenda. Is there a particular item on here, I mean, it seems to me that the agenda has been rearranged. We're not talking about new items, so —
COMMISSIONER YAKI: No, but the priority of the items, obviously means that votes on certain things will come up at a time when we know Commissioner Kirsanow will not be present. I would like -- if you would like an amendment to the amended agenda, I would like to postpone any vote on any motion until Commissioner Kirsanow joins us.

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

COMMISSIONER YAKI: Yes.

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

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

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

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

CHAIRMAN REYNOLDS: Okay. Just to be clear. My suggestion is that we move forward with the vote on the amended agenda. I plan to vote for it,
and if Commission Yaki, and any other Commissioner
would like to defeat the quorum, it's their
prerogative. There is no new issue on the agenda.
It's been rearranged. There is no argument that
Commissioner Yaki has been presented with materials
that he has not had an opportunity to review. This is
all about battle tactics. So, any other comments?

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

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

COMMISSIONER YAKI: What I assume is that
if you wish to enact those parts of your agenda with
which I vehemently disagree, you will have the
foresight to gather the five votes that are necessary
in order to have quorum, to have that vote go forward, at which point I will then participate. But I am not going to, by my inaction or passivity, allow you to push forward, especially at a time when it appears that the -- despite many attempts at bipartisan cooperation that have failed, at this point, I really have no choice left but to say, if you wish to get these things through, it is incumbent upon you, as the Chair, to make sure that your five votes are here, and present. And I will not be a party to contributing to your ability to get these things done.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

COMMISSIONER YAKI: I oppose.

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

COMMISSIONER YAKI: Not yet.

CHAIRMAN REYNOLDS: Okay.

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

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

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

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

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

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

CHAIRMAN REYNOLDS: No.
COMMISSIONER MELENDEZ: Okay. Just rearranging the order. Is that, basically, what you're doing.

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER MELENDEZ: Okay.

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

COMMISSIONER YAKI: The first three items?

CHAIRMAN REYNOLDS: Yes.

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

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

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

CHAIRMAN REYNOLDS: That is a -- that is -- the conversation could take us there.
COMMISSIONER YAKI:  Well, at that point, Commissioner Melendez and I may take a brief holiday.

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

COMMISSIONER MELENDEZ:  Yes.

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

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

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

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

COMMISSIONER MELENDEZ:  Yes.
COMMISSIONER GAZIANO: Well, then we can proceed.

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

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

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

COMMISSIONER MELENDEZ: All right.

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

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

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

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

(Whereupon, the proceedings went off the record at 9:55:18 a.m., and went back on the record at 10:09:27 a.m.)
CHAIRMAN REYNOLDS: Okay. We are back in session. We have a quorum. Commissioner Kirsanow has joined us. Commissioners Melendez and Yaki, they have rejoined us. At this point, I will turn it over to the General Counsel. Could you please -

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

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

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR DANNENFELSER: We voted on the amended agenda.

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

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

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

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

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

MR. BLACKWOOD: This is David Blackwood. For the three items mentioned, the justification for
closing the meeting is as follows. The motion regarding Special Assistants is covered under Exemption Two and Six. Exemption Two is when a meeting relates to the internal personnel rules and practices of the Commission, and Exemption Six, when a meeting might involve disclosing information of a personal nature, where that disclosure might constitute a clearly unwarranted invasion of personal privacy.

With regard to items Two and -

COMMISSIONER YAKI: I have a question on that.

MR. BLACKWOOD: Sure.

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

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

COMMISSIONER YAKI: Well, given that the agenda was somewhat blank on the details of this, I find it highly surprising that there would actually be discussion of a single individual. My understanding was that it was a generic discussion of this issue,
which, by itself, I'm not too sure why it would be in closed session, since anything affecting this has a direct and obvious impact on our budget. And why we'd retreat in a closed session on a general discussion of this, is, I think, quite puzzling. But now that I learned that there may actually be individuals involved, which I don't understand, because we didn't do this the last time we talked about these discussions with the Office of Personnel Management, I object to going into closed session on that particular item.

COMMISSIONER GAZIANO: Mr. Chair.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER GAZIANO: I don't know if it will come up, but there might be a discussion on the relative job performance, or job qualifications of some of our special assistants, as compared to other employees who are at similar GS levels, so I think Exemption Two alone justifies going into Executive Session, but I think it might implicate the justification of Number Six, as well, if the discussion goes there. But I certainly suggest that we allow whatever management personnel, who can discuss the budget implications, could certainly stay in the Executive Session.
COMMISSIONER YAKI: Well, this is Commissioner Yaki. Commissioner Gaziano's statement troubles me even more, because if we are now, possibly, delving into comparative discussions between our Special Assistants and other employees of the Commission, that should have been part of the notice, as well. It has not been, and I will be moving to sever this particular item for a separate vote.

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

MR. BLACKWOOD: Again, this is David Blackwood. As to the other two items relating to the status of the Title IX and 2010 Enforcement Report, there are items, frankly, I think that we can talk about outside Executive Session, but, as a matter of practice, as far as getting through this meeting, the idea was to let's talk about everything in Executive Session that we can. And then those items that we can talk openly, we can do after that. But for the purposes of those two meetings -- those two items, raise Exemption Nine and Exemption Ten relating to actually how we might operate, since subpoenas have been discussed with regard to both projects, and as with regard to the 2010 report, it's already been
authorized that that part of the meeting should be closed. That does not mean every single item about those two projects must occur in Executive Session, but it makes sense to have them in Executive Session all at one time.

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

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

CHAIRMAN REYNOLDS: Right.

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

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

MR. BLACKWOOD: Yes.

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

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

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER YAKI: I don't -- again, I become more puzzled by Commissioner Gaziano's remarks, because if there is a discussion about whether we
should or not, shouldn't that debate be held in the open, rather than in secret, when the -- and the particularities, if they are non-disclosable, should be more proper a subject for Executive Session. But the whole question of whether there should be disclosure or non-disclosure, I think is more appropriate for the public to be part of rather than for us to debate outside the public eye.

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

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

CHAIRMAN REYNOLDS: Okay. All in favor.

COMMISSIONER GAZIANO: All in favor of what?

COMMISSIONER YAKI: The motion regarding the Special Assistants.

CHAIRMAN REYNOLDS: He's moving to sever.
COMMISSIONER TAYLOR: What would that mean in this context, if we sever these -

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

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

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

COMMISSIONER YAKI: It is correct.

COMMISSIONER GAZIANO: Let's just vote as -

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

CHAIRMAN REYNOLDS: That's fine.

COMMISSIONER YAKI: Okay.

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

COMMISSIONER TAYLOR: Second.
CHAIRMAN REYNOLDS: We've had the discussion. All in favor, please say aye.

COMMISSIONER YAKI: Roll call.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain, also.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: I abstain.

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

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

CHAIRMAN REYNOLDS: Well, wait.

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

CHAIRMAN REYNOLDS: That's up next. All in favor, please say aye.
(Chorus of ayes.)

COMMISSIONER YAKI: Roll call.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: What was the motion, again?

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

COMMISSIONER HERIOT: No, to go into Special Session.

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

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

COMMISSIONER YAKI: Executive Session on the Special Assistant.

CHAIRMAN REYNOLDS: That's right.

COMMISSIONER MELENDEZ: I would oppose.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: The motion passes.

COMMISSIONER YAKI: Did you take my vote?

CHAIRMAN REYNOLDS: What's your vote?

COMMISSIONER YAKI: No.

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

CHAIRMAN REYNOLDS: I'm sorry.
COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER GAZIANO: Commissioner Gaziano votes yes.

COMMISSIONER TAYLOR: Yes. Commissioner Taylor.

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

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

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

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

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

MR. BLACKWOOD: For the next items, they will change the script about who can stay. But for this particular item -- I'm sorry, and the Parliamentarian, as well.
(Whereupon, the proceedings went off the record to commence Closed Session, and went back on the record to resume Open Session at 11:53:14 a.m.)

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

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

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

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

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

The second change on page 5 is the proposed time line. I would like to approve all of the Discovery Plan documents subject to further amendment of this proposed time limit. And the two things that I'd like to see adjusted for us to take back up after we all supply our input to the Staff Director and General Counsel, is the possibility we may decide to have, instead of one hearing, two
hearings, and depending on when those -- that hearing, or hearings are, we may not want to -- the original Concept Paper called for us to do it in two hearings, a second hearing in March, which isn't reflected in the time line.

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

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER HERIOT: Second.

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

COMMISSIONER YAKI: What were you going to ask?

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

COMMISSIONER YAKI: Okay. I'll wait until after that.
MR. BLACKWOOD: I have no objection to any of those changes. I just wanted to make sure that we're not just adopting the Discovery Plan, but the project outline, and the hearing proposal, as well.

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

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

There are people in Philadelphia, such as the voter -- the Registrar of Voters, or Superintendent of Elections, or what have you, who could be present at such a hearing. And, more importantly, having an open public hearing has the ability to raise attention level, and bring forth people who we do not know of at this time, who may have been witnesses, or participants, who can testify as to what exactly, in their mind, went on, and what its effect was on their ability to vote. And I would have called for having a section of just open
testimony during a hearing in Philadelphia to ensure that such things would occur. So, the lack of any commitment to a hearing on this issue in Philadelphia troubles me, and for the two reasons I stated before, I will be voting against this.

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

I don't want anyone -- well, let me just state that we should have a single rule that should be applied to individuals across the board, and if this
rule stays in place, I am uncomfortable with this rule. I think it is the wrong rule. I think that men standing outside with weapons in hand making threatening comments to individuals as they go to vote, I don't care what the race of the gentlemen wielding the billy clubs is. It's immaterial.

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

COMMISSIONER YAKI: Mr. Chair, actually, I don't think we do, because if you did, as you said, would reverse the race of the parties, you would have a situation that on numerous occasions, including instances where this Commission has written letters to the Department of Justice during the prior Administration about regarding voter intimidation, it may not have been a baton, but it was certainly threatening letters. I remember elections where there were documented reports of people taking down license plate numbers of people who were of -- who they thought were of suspected Latino descent, and saying they were going to report them to the INS.
I fully support the idea, I told you before, of a broader investigation into why, and whether or not the statute has or has not been enforced, and why not? But, because we are not doing that, because we are not broadening that issue, because we are not looking at the statute as a whole, and past practices of the Department of Justice where these sorts of allegations have been made in the past, and not been followed up on, that is why I disagree with the content and nature of this particular investigation, because we are only solely focusing on one particular instance, however egregious it may or may not have been. That is my objection. It is not the objection to whether or not this is a type of behavior that this Commission should be concerned about. It should, but whether -- but to say that in this particular instance we believe DOJ is wrong, and wrong only here, when we can certainly have, as I suggested in my alternate proposal, broaden the issue to go into questions about why other instances have been brought up by MALDEF, by other folks, were never investigated, or fully prosecuted by DOJ in the past, by administrations of either party, is, to me, a salient distinguishing point about what we are doing here.
COMMISSIONER GAZIANO: Mr. Chair.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

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

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

To put it in proper context, as the Discovery Plan and our Concept Paper that we have adopted show, it's their current position that that may be causing as much damage, if not more damage, for future enforcement than whatever specific actions they took in this case. So, I join Commissioner Yaki in wanting to look at all prior instances of voter
intimidation reported to the Department, and to look at as many of their prior investigations, as we can, so that we can judge whether the policy the Department is currently taking is a change of position. And that's the most significant thing I think this Commission is investigating.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: I mean, I just fundamentally disagree with that characterization. I think that the Discovery Plan pays lip service to the idea, but certainly the individuals and institutions who we're talking about for a hearing, I won't talk about the other subject, are certainly all limited to this particular circumstance. And, to me, to ratchet up this -- I think part of it misrepresents the fact. The fact is that the one individual who allegedly did carry the baton is the one against whom injunctive relief was accorded, and still stands, it stands in effect. But that notwithstanding, the clear import of this hearing is to simply engage in a second-guessing of one particular decision, rather than delving deeper into the overall issue of this statute, and its impact, and why it's only been enforced at a very low rate, given the reports that I have been privy to during my lifetime in public service. And it may be
that we talk a little bit about this in the Discovery Plan, but, certainly, the way this report is written, the way that witnesses are being looked at does not reflect that. If indeed it did, Commissioner Gaziano, I would be somewhat less displeased with the direction that it is going, because I still believe that the intent of this is not -- the real intent is not how it is being proposed publicly.

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

COMMISSIONER YAKI: Well, Commissioner Gaziano, I will hold you to that, because if there are ex-officials of the Department of Justice who would be critical to exploring the lack of enforcement in prior years, I hope that you will be as zealous in looking at all the remedies available to the Commission for
them, as you have been at the Department of Justice, as it exists today.

CHAIRMAN REYNOLDS: That smells like agreement -

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER YAKI: Yes. Thanks for the correction.

CHAIRMAN REYNOLDS: It was getting close.

COMMISSIONER GAZIANO: Are we ready to call the question?

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

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez.
COMMISSIONER MELENDEZ: One question. Did you say you're going to have one hearing or two? I'm not sure.

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

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

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

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

CHAIRMAN REYNOLDS: Yes.

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

COMMISSIONER YAKI: What are we talking about?

COMMISSIONER GAZIANO: The second -- the only change in the motion is that the entirety of Point Two in the motion is that it does not go into as much detail as the role of an attorney who's representing a deponent. Commissioner Heriot
suggested that that was unnecessary, and I agree it
was unnecessary.

CHAIRMAN REYNOLDS: Okay.

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

COMMISSIONER MELENDEZ: Okay.

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER GAZIANO: And that it be
approved.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: One, I would like
clarification on the record as to what reasonable
notice to Commissioners would be in terms of their
ability to attend a deposition, number one. And,
number two, I want to know why there is a time limit
on Commissioner questions with regard to their ability
to ask questions of a deponent.
COMMISSIONER GAZIANO: This was suggested to me by the General Counsel, that we put in something. It's just as far as -- the way I intend it, is that there's no limit to the total amount.

COMMISSIONER YAKI: Total time.

COMMISSIONER GAZIANO: The total time.

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

COMMISSIONER GAZIANO: It's just to be -

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

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

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

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

COMMISSIONER YAKI: It's a much greater imposition for someone from the West Coast, Mr. Chair.
CHAIRMAN REYNOLDS: I agree. You and Commissioner Heriot have to -- you have the greatest distance -

COMMISSIONER YAKI: And Commissioner Melendez.

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

COMMISSIONER YAKI: Three. Commissioner Melendez, as well.

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

COMMISSIONER YAKI: And Commissioner Melendez makes three.

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

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

(Laughter.)

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

COMMISSIONER YAKI: That's how the Commission tends to work right now, so -
CHAIRMAN REYNOLDS: Okay. With that clarification, I think that you raise a good point. I think that the dates selected were selected with the — well, I believe, and the General Counsel will correct me if I get it wrong, that these dates were selected to increase the probability that he had something to report at the December in-person meeting. And, in any event, it is an imposition for those Commissioners who would like to participate, but I think that weighing all of the cost and benefits, this may be the best of some bad choices.

COMMISSIONER YAKI: If Commissioner Heriot, Melendez, and I choose to require a charter jet, would that be —

CHAIRMAN REYNOLDS: Well, you can ask.

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

CHAIRMAN REYNOLDS: I support Commissioner Yaki's request, and I ask all the Commissioners to try
to be flexible. Sometimes we dig our heels in, in terms of our schedule. Having said that, though, I support Commissioner Yaki's comments 100 percent.

Okay. Where are we, folks?

COMMISSIONER GAZIANO: Call the question of approving the motion.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

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

COMMISSIONER TAYLOR: Oh, yes. As you all may recall, we formed a Subcommittee for purposes of providing the Chair with some input on his proposal in terms of timing and substance of our National
Conference, and to ensure that we had the -- created an opportunity for participation from both sides of the aisle, in terms of the Subcommittee. I think it's fair to say that, at this point, it does not appear that the Subcommittee will produce any changes to the Chairman's initial recommendation, but having said that, I think the process of forming a Subcommittee was a good idea, and a worthwhile effort. But, substantively, I think we are right back to where we started, Mr. Chair, and that is your initial vision, and recommendation. So, with that, I would actually turn it back to you, unless Mr. Yaki, who as a member of the Subcommittee, has anything to add in terms of changes.

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

CHAIRMAN REYNOLDS: Could you elaborate on the lack of bipartisanship?
COMMISSIONER YAKI: With other certain statements made by the Chair during the time, we -

CHAIRMAN REYNOLDS: No.

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

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

COMMISSIONER YAKI: Well, I would say thank you very much for the compliments, Commissioner Taylor. They're always welcome, but I would say that the mere fact that the Subcommittee, which I chose not to participate in, met and decided not to make any changes, and did not then seek any other input, just reinforces my point, no offense to how you run your work. So, let's just move forward, and agree that
we're going to disagree on this until it happens, or
if it happens.

CHAIRMAN REYNOLDS: Okay. All right.

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

(Laughter.)

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

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

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

CHAIRMAN REYNOLDS: Okay. Is there a
second?

COMMISSIONER MELENDEZ: Second.

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

COMMISSIONER YAKI: Yes. I think that
certainly this is something that has been discussed in
more than one meeting, to put it below the State
Advisory Committees is, I think, not -- I think any
more than we change the agenda around to move any of
the other items around, I think that this is a
discussion item that can be taken care of rather
quickly, and I'd just like to get it done.
CHAIRMAN REYNOLDS: Well, I think that there are certain Commissioners -- this item is important to certain Commissioners who may be tempted to deny us a quorum, and by putting it at the end of the agenda increases the probability that they will stick around.

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

CHAIRMAN REYNOLDS: Well, actually -

COMMISSIONER YAKI: But the fact -

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

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

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: Excuse me, Mr. Chair. This is Commissioner Melendez. I have another commitment at 1:00 your time, so I only can be on for
another half hour, about 10 minutes to get to the other meeting, so I just wanted to let you know. It has nothing to do with breaking quorum. I just have to leave in a half hour.

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

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

CHAIRMAN REYNOLDS: Okay.

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

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

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

COMMISSIONER GAZIANO: We'll have Pete still on the line.
CHAIRMAN REYNOLDS: Okay. Okay. Whoa, whoa, whoa. On October 12th, the Staff Director sent us a list of potential 2010 briefing topics ranked in accordance with the preferences of the Commissioners. On October 16th, at the October 16th meeting we postponed approval of the topics for the next briefing. It was decided that project proposals would be prepared for the three topics that had greatest support based on the consensus that developed at the October 16th meeting. These topics were -- the first one is racially and religiously-based incidents at U.S. college and university campuses. The second, employment discrimination on the basis of age, in the context of the economic crisis. And the third, regulatory and other barriers to entrepreneurship that impede business startups.

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

The first topic, racially and religiously-based incidents on U.S. college and university campuses, this is for a briefing that would address
the issue of racially and religiously-based incidents on U.S. college and university campuses. It would attempt to determine how frequently such incidents occur, and examine the policies that administrators have put into place to respond to such incidents.

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

COMMISSIONER TAYLOR: Correct.

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

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

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

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

CHAIRMAN REYNOLDS: Okay. The second topic is a proposal for a briefing on employment discrimination on the basis of age in the context of the economic crisis, which was an idea circulated by
Commissioner Melendez, originally, and supported by Commissioner Kirsanow. This briefing would examine what impact the economic crisis has had on workers covered by the Age Discrimination In Employment Act. As part of this project, the Commission will explore whether older workers are less commonly employed than in earlier years, as compared with their younger counterparts, whether related complaints and lawsuits have increased during the recent economic crisis, other factors underlying any such entries, and how the Equal Employment Opportunity Commission, which enforces the ADEA, has addressed such concerns. The briefing will analyze these questions in light of recent Supreme Court decisions governing the ADEA.

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

COMMISSIONER KIRSANOW: The description is, I think, substantially sufficient. I'd just like to say that the Gross case appears to be a very important one, and it's one that I believe is currently subject to some deliberations in Congress to amend certain legislative provisions so that Gross would be effectively overturned. But I think that this is a topic that is timely, and it's one that the
Commission really hasn't studied in great detail in the last number of years.

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

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

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

CHAIRMAN REYNOLDS: In Vice Chair Thernstrom's stead?

COMMISSIONER GAZIANO: Yes. I think all three proposals are well done, and I hope that we can advance, whichever ones we don't choose, that we can keep on the top of the list. I certainly think that this one is important and worthy, and I'm aware of
several state SACs who have taken up and studied this issue, and that that's one advantage to sort of drawing on their work, and figuring out what we can add at the Commission level.

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

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

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

COMMISSIONER TAYLOR: Commissioner Melendez, this is Commissioner Taylor. And the emphasis would be placed on really both racial and religious discrimination, and the targeting of certain groups on college campuses. We make reference to in the Concept Paper, the 2007 incident at the U.S. Coast Guard Academy, where some cadets reported finding nooses among their belongings, and the incident in the same year at the University of Maryland where a noose was found outside of an African American Cultural
Center. But we would also explore the incidents of reverse racism, as they may be reported.

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

COMMISSIONER TAYLOR: I co-opted ideas.

COMMISSIONER YAKI: As it works out, as with everything in this Commission lately, this has deviated substantially from where I wanted to go. The offhand remark about interest groups having less reliable data will remain, to me, salient, as we examine everyone who comes and testifies before us in the future, about all data that they present, because I find that to be highly objectionable and offensive
characterization of groups who come before us, whether they're on the left, right, center, whatever.

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

CHAIRMAN REYNOLDS: I have the answer.

COMMISSIONER YAKI: So, the fact is, is that as much as I had loved this project, as it goes
forward, I am less inclined, and have not made up my mind to support it going forward.

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

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

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

COMMISSIONER HERIOT: What do you mean support?

COMMISSIONER TAYLOR: That's the first topic?
CHAIRMAN REYNOLDS: Well, I'm -

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

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

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

COMMISSIONER HERIOT: Yes, in a sense.

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

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

COMMISSIONER TAYLOR: I vote for my proposal.

COMMISSIONER HERIOT: I vote for it, too. I'm not sure. I mean, I don't have strong feelings on this.
COMMISSIONER GAZIANO: I think I do, but subject to persuasion.

CHAIRMAN REYNOLDS: I need you to sort of like -

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

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

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

CHAIRMAN REYNOLDS: No.

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

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

CHAIRMAN REYNOLDS: Okay. Let's just continue down the road that we were on, despite your superior approach. Next up -
COMMISSIONER GAZIANO: Do we have Commissioner Melendez' and your input?

CHAIRMAN REYNOLDS: Commissioner Melendez.

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

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

CHAIRMAN REYNOLDS: Okay. Got you down -

COMMISSIONER HERIOT: We're taking our poll.

CHAIRMAN REYNOLDS: Okay. You're down, I have Yaki.
COMMISSIONER YAKI: I made a motion. Commissioner Melendez, do you second my motion to make employment discrimination the first topic?

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: What's your favorite topic?

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

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

COMMISSIONER GAZIANO: I did, but I just want to explain that I'm attracted, Commissioner Melendez and others, to the age discrimination. I just didn't think it was quite fleshed out enough, to me, and so if it comes up again, just studying, what is it, BLM, I've got the initials wrong, data didn't seem specific enough, to me. Commissioner Taylor's proposal seemed a little bit more definite, and doable, but if there was a little bit more development as to the methodology of the age discrimination, or if there were studies that kind of nailed some of these things down, then that might make it more appropriate for -- to advance on our briefing schedule.
CHAIRMAN REYNOLDS: Okay. And my favorite topic is the one that was recommended by Vice Chair Thernstrom. However, I'm going to support Commissioner Melendez' motion, only because he's a gentleman, and he has caused me the least amount of grief when I look at all of you.

(Laughter.)

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

COMMISSIONER YAKI: No.

STAFF DIRECTOR DANNENFELSER: Yes.

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

COMMISSIONER YAKI: I said no.

CHAIRMAN REYNOLDS: Okay. That's all right.

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

CHAIRMAN REYNOLDS: You're confusing me.

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

CHAIRMAN REYNOLDS: Commissioners Melendez, Yaki, Kirsanow, and Reynolds voted in favor
of the employment discrimination on the basis of age, in the context of an economic crisis proposal.

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

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

(Laughter.)

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

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

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

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

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

COMMISSIONER YAKI: We just did.
COMMISSIONER HERIOT: No, we just voted on which was our favorite.

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

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

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

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

COMMISSIONER YAKI: And to approve its accompanying Concept Paper.

CHAIRMAN REYNOLDS: Yes. Is there a second?

COMMISSIONER TAYLOR: Second.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Pete?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes.
CHAIRMAN REYNOLDS: Unanimous vote. Will reporters in the audience please take this down. It doesn't happen too often.

(Laughter.)

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

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

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Thank you. Discussion? Yes?

COMMISSIONER YAKI: I'm voting against it, because all the research that I have found, probably from interest groups that have no credibility according to Commissioner Taylor, show that the model
survey is not appropriate in any instance, anyway. As I voted against the report, I will vote against -

CHAIRMAN REYNOLDS: Well, this -

COMMISSIONER YAKI: Discussion.

CHAIRMAN REYNOLDS: Okay.

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

COMMISSIONER GAZIANO: Striking it.

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

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor.

COMMISSIONER TAYLOR: Aye.

CHAIRMAN REYNOLDS: Commissioner Melendez.

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

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

COMMISSIONER YAKI: Well, since I'm agnostic about anything that deals with a section report that I don't support, anyway, I'm going to abstain.
CHAIRMAN REYNOLDS: Okay. I vote to support it. Commissioner Kirsanow.

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

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

COMMISSIONER YAKI: How so?

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

COMMISSIONER GAZIANO: We've got six.

COMMISSIONER YAKI: Commissioner Melendez -

COMMISSIONER MELENDEZ: I have to leave in 10 minutes.

COMMISSIONER HERIOT: Another 10 minutes.

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

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

COMMISSIONER YAKI: The question is, can we move to the motion regarding Commissioners' Special Assistants, or shall we let Commissioner Melendez get
to his meeting, because the MEPA Briefing Report is
going to take more than 10 minutes of our time.

CHAIRMAN REYNOLDS: That is true. That is true.

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

State Advisory Committee Issues

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

COMMISSIONER MELENDEZ: Yes.

COMMISSIONER GAZIANO: Yes, we voted.

CHAIRMAN REYNOLDS: We voted.

COMMISSIONER HERIOT: Let's do it. Iowa.

CHAIRMAN REYNOLDS: Okay. Great State of Iowa. Bear with me. Okay. I move that the Commission recharter the Iowa State Advisory Committee under this motion. The Commission appoints the following individuals to that committee, based on the recommendation of the Staff Director, George Neumann, Nancy Boettger, Joe Coulter, Francesca Galarrage, Kathleen Law, Sheryl Leonard, Isaiah McGee, Beverly
Kopper, Cynthia Miller, Leonard Sandler, Michael Sandler, Donald Racheter. I've mangled someone's name. Pursuant to this motion, the Commission appoints George Neumann as Chair of the rechartered Iowa State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork. Is there a second?

COMMISSIONER TAYLOR: Second.

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

(Chorus of yes.)

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Commissioner Melendez, how do you vote?

COMMISSIONER MELENDEZ: Abstain.

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

I move that the Commission recharter the Massachusetts State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based on the
recommendations of the Staff Director, David Harris, Giovanni Alvarez, Negroti Robert, Ben Ezra, Karen Blum, Gregory Coat, Martha Davis, Christopher Edwards, Charles Glenn, Ronald Marlowe, Eva Malona, Alison Finley, Elbert Roberston, David Schaeffer, Shivon Sweeney, Greer Swisten, and Quoc Tran, and Angelia Wackhere. Pursuant to this motion, the Commission appoints David Harris as the Chair of the rechartered Massachusetts State Advisory Committee. These commissions will serve as uncompensated government employees. Under the motion, the Commission authorizes the Staff Director to execute the appropriate paperwork. Is there a second?

COMMISSIONER TAYLOR: Second.

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

COMMISSIONER TAYLOR: Aye.

COMMISSIONER GAZIANO: Abstain.

COMMISSIONER HERIOT: Abstain.

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

COMMISSIONER HERIOT: No, I should state for the record that concerns have been raised to me that the roster is not politically balanced. I don't know whether that's true or not personally, because I
haven't had the opportunity to review the list, so that's why I'm abstaining.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes.

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

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

COMMISSIONER YAKI: Well, that basically sums it up. The fact is, is that there's a strange dichotomy in that if you have a Special Assistant in the room at the time, there is the ability to ask a question of them to find some research, or provide some data on some point that you had, rather than trying to deal with the fact that delay with either a Blackberry or a phone, it's not meant to have the Special Assistant sit there and interrupt our work.
But mainly there to be a resource to us, should we require it, and it's as simple as that.

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

COMMISSIONER YAKI: Versus?

CHAIRMAN REYNOLDS: Commissioners who are not.

COMMISSIONER YAKI: Why?

CHAIRMAN REYNOLDS: Well -

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

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

COMMISSIONER YAKI: But the fact of the matter is, is that as what happened in the last time that this happened, there occurred discussions on the line that, nevertheless, remain -- are allowed for the purposes of the Sunshine Act, so long as no action was taken. That being the case, that discussion is going on, and for whatever reason, if a Commissioner has to
leave for some family emergency, or what have you, the fact is that having a Special Assistant who can listen in on the conversations is equitable, because if, indeed, the objection is someone who is on the line may not be on the line, that rule somehow does not seem to extend if they happen to be in the same room here during a call that is being made. And that anomaly would just impel someone who knew they had to leave early, or knew that there was something going on, to send a Special Assistant to this office to sit in and listen to it. So, rather than deal with that, let's just face the reality of our Special Assistants should be allowed to listen in during all parts of the conference, and be available for questioning or research on particular topics, as they go forward.

CHAIRMAN REYNOLDS: Okay.

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

CHAIRMAN REYNOLDS: The reason is that certain Commissioners, mentioning no names to protect the guilty, have systematically attempted to deny
quorum to the Commission. And it seems to me that the motion that's being entertained right now would assist those unnamed Commissioners in gauging when they should come back on the line, to keep them abreast of what's going on.

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

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

COMMISSIONER YAKI: I'm sorry.

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

COMMISSIONER YAKI: And I think, Mr. Chair, that you show your unwillingness to recognize the reality of the situation, which is that in that simple instance, I want to ensure that my Special Assistant is here in the room for every single telephone conference meeting that you've scheduled, and, in which case, we -- which he has every right to do, and I won't instruct him to do so, that comes at considerably more expense to the Commission than if he were simply to participate on the Commissioner phone line. And, therefore, all you've done is really just
simply increase cost to this Commission, rather than recognize the reality of the situation, which is Commissioner Thernstrom is not here, and we are not asking Mr. Fay to leave. If Commissioner Heriot is not here, she's on the phone, we would not ask her person to leave the room here.

COMMISSIONER GAZIANO: Maybe we should.

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

COMMISSIONER HERIOT: These are open meetings.

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

CHAIRMAN REYNOLDS: Petty? Petty?

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

CHAIRMAN REYNOLDS: Petty?

COMMISSIONER YAKI: Petty and ridiculous.

CHAIRMAN REYNOLDS: Geez.

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

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

CHAIRMAN REYNOLDS: You're well within your rights to do this.
COMMISSIONER YAKI: And you are well within your right to get your five votes to get things done, and I can do nothing to prevent that.

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

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

CHAIRMAN REYNOLDS: I will second that motion.

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

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

CHAIRMAN REYNOLDS: Can we take a five minute break?
COMMISSIONER HERIOT: Can we vote on the Thernstrom thing, first?

CHAIRMAN REYNOLDS: Okay. This may benefit you -

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

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

CHAIRMAN REYNOLDS: Let's finish this.

COMMISSIONER HERIOT: Okay.

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

CHAIRMAN REYNOLDS: Commissioner Yaki's proposal.

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

CHAIRMAN REYNOLDS: Right.

COMMISSIONER HERIOT: What happens here is that it's routine. And, therefore, I'm not willing to
do something that will facilitate that. I think that
the analogy to the live meetings is inappropriate.
These meetings are open to the public. Of course,
they're open to the Special Assistants. What we're
talking about here, we're not talking about not
allowing the Special Assistants to be on the call.
We're not allowing them to be on the inner call.

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

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

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

CHAIRMAN REYNOLDS: Is that a friendly
amendment?
COMMISSIONER GAZIANO: -- Commissioner Yaki would -- that's my suggestion, if this motion fails. But I would support this motion if Commissioner Yaki were either to have accepted your friendly amendment, or to give us word that he would not routinely try to defeat quorum on routine matters.

COMMISSIONER HERIOT: Let the reflect Commissioner Yaki is laughing.

COMMISSIONER GAZIANO: Please don't interrupt.

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

COMMISSIONER GAZIANO: Please don't interrupt.

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

(Laughter.)

COMMISSIONER GAZIANO: It has been thrown around these meetings that defeating quorum is within rights. Whether it is or not, I think it is improper. I think it is improper when someone, the tax payers have paid to fly Commissioners here, for them to engage in that routine tactic, and I don't want to encourage it. But if the motion were amended to accept the Chairman's amendment, I would be happy with
it. Otherwise, I think that the inner call should not
include Commissioner Assistants who are -- whose
Commissioners are not on the call, whether they be in
person, or they be on the phone.

CHAIRMAN REYNOLDS: Commissioner Yaki.

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

The idea that this is routine is
laughable. If you were to look at any instance in
which quorum was lacking, you would see there would be
some issue that certainly, may be -- perhaps, may be
routine to you, may not be routine to me, or to the
people and the causes that I seek to represent on this
Commission. So, you may call it routine. I would
daresay I would have a very big quarrel with that, as
would be the people who I care about, and who I
believe are not being represented well at the United States Commission on Civil Rights. And I would say, further, that to attempt to extract from me some kind of promise of going along with the program in exchange for something as really routine, and in some ways trivial, as just allowing Special Assistants to be part of the proceeding, as they would be at any public meeting. And let us not forget, it's interesting the characterization that Commissioner Heriot made between this meeting and a teleconference, because the very reason why I vehemently oppose all these teleconferences is because they do not have the same character as a public meeting of the Commission. The public cannot so readily, and so easily attend and see what is going on, versus just simply calling in.

CHAIRMAN REYNOLDS: Commissioner Yaki, you make your -

COMMISSIONER YAKI: So, we can -

CHAIRMAN REYNOLDS: -- views perfectly clear.

COMMISSIONER YAKI: Commissioner Reynolds -

CHAIRMAN REYNOLDS: The value of teleconferences, and I just want to stick with -
COMMISSIONER YAKI: But the whole point of this is teleconferences, because the idea that somehow they're -

CHAIRMAN REYNOLDS: It's not.

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

CHAIRMAN REYNOLDS: Next?

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

CHAIRMAN REYNOLDS: I would hope -

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

CHAIRMAN REYNOLDS: I would hope -

COMMISSIONER YAKI: I mean, it is clear that whatever I'm doing is beginning to chafe you, and that pleases me to no end.
CHAIRMAN REYNOLDS: Okay. I'm happy to make you happy.

(Laughter.)

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

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

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

CHAIRMAN REYNOLDS: Okay.
COMMISSIONER YAKI: -- during the first three and a half years -

CHAIRMAN REYNOLDS: Commissioner Yaki -

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

CHAIRMAN REYNOLDS: Commissioner Yaki -

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

CHAIRMAN REYNOLDS: But -

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

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

COMMISSIONER YAKI: I'm sorry.

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

COMMISSIONER YAKI: I apologize for that.

CHAIRMAN REYNOLDS: I understand if there is an issue that is a core principle. I understand if it's an issue that you just can't bring yourself to participate in the conversation. I get it. But oftentimes, we're not talking about that type of situation.
COMMISSIONER YAKI: Give me an example, Mr. Chair, please. Please tell me a point on the agenda where -

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

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

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

COMMISSIONER YAKI: No, I didn't like -

CHAIRMAN REYNOLDS: I consider that -

COMMISSIONER YAKI: That's erroneous.


COMMISSIONER YAKI: No, I -- I mean, the fact is, is that there were items on that agenda, with which I vehemently disagree, which I believe are being -- are a misuse and abuse of the Commission process. That is my feeling. But let me just say this in reference to a previous remark you made.
For three and a half years on this Commission, I acted with -- in a very bipartisan way with Commissioner Braceras. Think about it. Think about the committees I served on with Commissioner Braceras, Commissioner Taylor in the past, Commissioner Redenbaugh, others. That -- if there has been a change, Mr. Chair, it is up to you and try and ascertain, which you have yet to do, why that is the case. And the fact of the matter is, is that if and when this Commission changes in terms of composition, it is my fervent hope that whatever job the new Chair does or does not do, will be done in a way so as to prevent the kind of tactics that I have been forced to engage in, because of the way that the Commission now operates.

If you were to seek out and call me up, which you have not done in a long time, to discuss this in some detail -- in fact, the last time that we did talk was about precisely some of these issues, which then never manifested themselves. We could -- this might be different. But that is not the case. Everyone has to adapt to new and changed circumstances. I am doing that, you are doing that, and it is -- we have a difference of opinion as to whether or not what I choose to do -- and let me tell
you this, I am not the one who is not here that causes a quorum problem. Let's put that out there right now.

CHAIRMN REYNOLDS: No, you were the one -

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

We can discuss that offline, if you wish, but, certainly, do not think for a moment that I do this in any way, cavalier, petty, or casual fashion. It is quite the contrary, Mr. Chair. I will always be here when there is a quorum. I have one of the best attendance records of Commissioners here, and this is a Commission that I passionately believe in. And the causes that I believe I'm here to represent, I passionately believe in, as well. So, that being the case, here we are.
CHAIRMAN REYNOLDS: Okay. We do agree that we have a difference of opinion. In my view, it is improper to flex your muscle, and deny us a quorum unless it's an important issue.

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

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

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

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

COMMISSIONER YAKI: Point of parliamentary privilege to the General Counsel. Let me bring up the
situation that happened at the last conference. At
the last conference, quorum was lost; nevertheless,
discussion continued on the Title IX report. In that
instance, should discussion have ceased? Because a
discussion did continue, and there was interchange
with Mr. Lerner about aspects of the report, and the
discovery process therein. What then is the
characterization of that meeting? Is it a "sub-
conference", which everyone should be kicked out? Is
it just Commissioners casually chatting? That has no
bearing, because that's significantly different than
the way it was carried out at the last conference, as
I have been reported by those who were there.

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

COMMISSIONER YAKI: So, in that case, the
- I guess I am at a loss to understand the
distinction, because if, for example, we're in a
hearing, and we have been at hearings where there have
been two Commissioners. I think that when we did
Nebraska, there were only three. It was Commissioner
Melendez, myself, and Commissioner Taylor. It was
clear at that point we lacked quorum to make a
decision; nevertheless, we still continued on, and it
was a public meeting.

MR. BLACKWOOD: Correct.

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

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

COMMISSIONER YAKI: Okay.

MR. BLACKWOOD: In fact, no Commissioners
could have been there, and still it could have
occurred. Not much would have happened. That said,
all right. If the quorum ends at a meeting like this,
and Commissioners want to talk among themselves, so be
it. What they could have also done is said let's go
offline, stayed right here and just chatted among
themselves, and no one would have thought about it.
What they can't do is direct, or pass a motion, or anything like that. So, whether the discussion is still online, of it was a telephone meeting and they continued to talk among each other, because it was simply easier to talk on an existing open line, so be it. They simply can't order directives. That's the only difference.

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

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: What are we voting on, again?

CHAIRMAN REYNOLDS: Commissioner Yaki's motion.

COMMISSIONER HERIOT: Do we need to vote on it?

COMMISSIONER YAKI: I want to vote on it.

CHAIRMAN REYNOLDS: He didn't withdraw it.

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

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

COMMISSIONER TAYLOR: Correct.

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

COMMISSIONER TAYLOR: That's right.

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

COMMISSIONER TAYLOR: The question is would we bring them onto the Commissioner lines, which
are always live, versus keeping them on the public side.

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

COMMISSIONER TAYLOR: Is that the issue?

MR. BLACKWOOD: It is a possibility.

COMMISSIONER HERIOT: We can leave that issue open for -

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

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

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

COMMISSIONER HERIOT: No, we could do that later.
COMMISSIONER YAKI: Have fun.

CHAIRMAN REYNOLDS: Are we ready to vote?

All in favor please say aye.

COMMISSIONER YAKI: Aye.

CHAIRMAN REYNOLDS: Abstentions.

COMMISSIONER TAYLOR: Taylor.

CHAIRMAN REYNOLDS: Objections?

COMMISSIONER GAZIANO: No.

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

CHAIRMAN REYNOLDS: Three nos.

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

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

(Laughter.)

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

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