

## U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, SEPTEMBER 11, 2009

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

## PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)

ABIGAIL THERNSTROM, Vice Chairman

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

ARLAN D. MELENDEZ, Commissioner

ASHLEY L. TAYLOR, JR., Commissioner (via phone)

MICHAEL YAKI, Commissioner

MARTIN DANNENFELSER, Staff Director

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STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC

TERESA BROOKS

CHRISTOPHER BYRNES

PAMELA A. DUNSTON, Chief, ASCD

ROBERT LERNER, Asst. Deputy Staff Director

TINALOUISE MARTIN, Director, OM

EMMA MONROIG, Solicitor

LENORE OSTROWSKY

KIMBERLY TOLHURST

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

JOHN MARTIN

ALISON SCHMAUCH

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P R O C E E D I N G S

9:32 A.M.

CHAIRMAN REYNOLDS: Good morning. This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is a little after 9:30 a.m. Eastern Standard Time on September 11, 2009.

The meeting is being held in Washington, D.C. I am participating, obviously, by phone. All Commissioners are present with the exception of Commissioner Taylor.

Since I am not there, will someone please confirm that that's accurate?

COMMISSIONER KIRSANOW: That's accurate.

**Approval of Agenda**

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

COMMISSIONER KIRSANOW: So moved.

CHAIRMAN REYNOLDS: Second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

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

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

(Laughter.)

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

12           CHAIRMAN REYNOLDS: Have you spoken to  
13 Commissioner Taylor?

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

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

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

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

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1 COMMISSIONER YAKI: Yes.

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

7 CHAIRMAN REYNOLDS: Yes.

8 COMMISSIONER MELENDEZ: Okay.

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

11 COMMISSIONER MELENDEZ: Okay, thank you.

12 CHAIRMAN REYNOLDS: Okay, other changes?

13 COMMISSIONER YAKI: Call the question?

14 CHAIRMAN REYNOLDS: Are there additional  
15 amendments to the agenda?

16 COMMISSIONER YAKI: Call the question.

17 COMMISSIONER KIRSANOW: There are no  
18 others.

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

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

25 CHAIRMAN REYNOLDS: Okay. Our expert in

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1 Robert's Rules. Okay, do we need to vote on these  
2 changes?

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

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

8 COMMISSIONER YAKI: Move the agenda as  
9 amended.

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

13 COMMISSIONER YAKI: Second.

14 CHAIRMAN REYNOLDS: All in favor, please  
15 say aye.

16 Ayes

17 CHAIRMAN REYNOLDS: Any objections?

18 (No response.)

19 CHAIRMAN REYNOLDS: Any abstentions?

20 (No response.)

21 CHAIRMAN REYNOLDS: The motion passes  
22 unanimously.

23 **Approval of Minutes of August 7, 2009 Meeting**

24 CHAIRMAN REYNOLDS: Next up, approval of  
25 the minutes. The second item, agenda item, is the

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1 approval of the minutes of the meeting held on August  
2 7, 2009. I move to approve the minutes. Is there a  
3 second?

4 COMMISSIONER KIRSANOW: Second.

5 CHAIRMAN REYNOLDS: Discussion?

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

11 CHAIRMAN REYNOLDS: Okay.

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

17 COMMISSIONER YAKI: great.

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

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1 --

2 (Audio disruption.)

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

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

8 Ayes

9 CHAIRMAN REYNOLDS: Any objections? Any  
10 abstentions?

11 COMMISSIONER GAZIANO: I abstain.  
12 Gaziano.

13 COMMISSIONER HERIOT: I abstain too.

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

17 **Announcements**

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

25 We also honor the heroes who fought to

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

3 And I would also like to mention that at  
4 the time I was serving at the Department of Education  
5 and after September 11th, a few days later, there was  
6 a gentleman who sells ties on the corner of 3rd and C  
7 and he was a Sikh. And he started wearing a huge tie  
8 and it was basically an American flag. The fear of  
9 folks from the Middle East was palpable at that time.

10 It was not a good time for the country on a whole  
11 host of levels.

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

14 **Staff Director's Report**

15 STAFF DIRECTOR DANNENFELSER: Thank you,  
16 Mr. Chairman.

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

23 The DOJ voting rights enforcement in the  
24 2000 Presidential Election briefing report, as well as  
25 the No Child Left Behind briefing report, have also

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1 been sent to GPO for printing and delivery to Congress  
2 and the President.

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

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

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

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

22 Regarding library statistics, the library  
23 staff received 121 telephone inquiries, completed 60  
24 simple reference requests and performed 46 research  
25 projects of various sizes. An additional 88 research

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1 requests were completed utilizing automated search  
2 services.

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

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

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

24           The selecting official received nine  
25 eligible applicants for the position of chief budget

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1 officer in the Budget and Finance Division of the  
2 Office of Management. Six applicants were interviewed  
3 and reference checks are being conducted for several  
4 candidates. Staff also processed paperwork to bring  
5 on a new permanent Schedule C, Alison Schmauch. We  
6 welcome her officially now as opposed to an unofficial  
7 welcome, I guess, a while back.

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

14 Regarding the budget, I sent out a  
15 document last night to Commissioners and there are  
16 hard copies here if anybody needs them, regarding the  
17 use of the surplus funds. We did get \$340,000 as  
18 Commissioners are aware in the omnibus appropriations  
19 bill. And that was one of the things that allowed us  
20 to do move up the process of bringing on the special  
21 assistants. So we did bring on -- well, we did bring  
22 on or are in the process of bringing on three special  
23 assistants. We also made a number of purchases in the  
24 area of IT and those are broken out on the document  
25 here for a total of \$240,000.

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1           One of the main things is an IT  
2 maintenance contract. That is something that we have  
3 had in place and we did last year pay for that with  
4 end-of-the-year funds and we did this year again pay  
5 for that. That will take us into 2010, that service,  
6 but we were able to pay for it with these funds.

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

19           We rented crates, these large, heavy-duty  
20 plastic crates for packing people's personal items in  
21 their offices and we also have put in some protective  
22 things around the corners of the building on the  
23 hallways so that when people come off with carts and  
24 so on, if they bang into the walls straight off the  
25 elevators, or as they're going around corners that

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1 they don't get damaged. So we have things of that  
2 nature also going to be having to take off these  
3 pictures on the wall in the conference room. Get  
4 those reframed. Put in some shelving to position them  
5 in the future. So we made a number of different  
6 purchases along those lines.

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

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

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1 available in FY 2010 to pay for expenses related to  
2 the National Conference.

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

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

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

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

23 STAFF DIRECTOR DANNENFELSER: The Director  
24 of Management has given me some indication that that's  
25 the case, but I will reconfirm that for you.

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1 CHAIRMAN REYNOLDS: Mr. Melendez, you had  
2 a number of questions regarding the budget.

3 COMMISSIONER YAKI: Just one second, I'm  
4 --

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

7 CHAIRMAN REYNOLDS: Okay.

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

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

23 And it also suggests that the number one  
24 document, Uncle Sam has been the number one we've  
25 seen, "Getting Uncle Sam to Enforce Your Civil Rights"

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1 has been the number one sent out for as long as I can  
2 remember, but it's number two. And number two, by  
3 some significant margin on the downloads. So I'm  
4 going to try to visit this a little bit more, but I  
5 think this gives us some other helpful information.

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

8 COMMISSIONER MELENDEZ: Just a question.  
9 Thank you, Todd.

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

17 In other words, it actually becomes like a  
18 budget modification of the surplus build up. And then  
19 the Commission actually approves, if you come to us  
20 and you tell us well, we built up because we haven't  
21 hired a position or we've got \$300,000 built up, then  
22 a formal modification would come in front of this  
23 Commission. We would vote as to where the allocation  
24 of the \$300,000 surplus would actually go because it  
25 sounds right now it's kind of like we kind of give

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1 full authority to just, if the surplus builds up, it's  
2 like just say well, go ahead and spend it and tell us  
3 about it after the fact.

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

17 We have the Western Region Director that  
18 we haven't filled. So at least at some point we can  
19 say where should we put this money and we can kind of  
20 vote on it and if I said I think it ought to go to a  
21 salary for a Western Region Director, we can all say  
22 let's raise our hands yes or no and you can tell us  
23 where the bulk of the money should go. But right now  
24 it just seems over the years we have this big build up  
25 and we kind of just -- it's kind of just informally

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1 spent. And I'd like to see it a little more formal as  
2 to how we do these budget modifications, especially  
3 with large amounts of money. So that's the proposal I  
4 would have because it's an essential amount.

5 And the other thing is that if we keep  
6 historically having a surplus, at some point Congress  
7 will -- I think one time Congress said that we didn't  
8 spend it and it kind of hurt us because we had the  
9 surplus that we didn't really -- it was still sitting  
10 on the books by the time the end of the year ran out.

11 So it would help us guard against that happening and  
12 in some way have more input from Commissioners to have  
13 a say in how this is allocated. That's just my  
14 thoughts on this. It's always a concern on this  
15 surplus build up.

16 CHAIRMAN REYNOLDS: Commissioner Melendez,  
17 you raise excellent points and if you don't mind, I'd  
18 like to add to your comments. I believe that there  
19 are a number of drivers in particular years that  
20 explain the budget surplus. But at bottom, I don't  
21 think that we do a good job of managing to our budget.

22 We establish a budget and it's not clear to me that  
23 we actively manage to the budget throughout the year.

24

25 We throw out numbers and looking at the

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1 actuals, the actuals being compared to what we budget,  
2 there is often a wide variance in lots of categories.

3 So I'm hoping that the budget person that we bring on  
4 will help us do a better job of managing to the  
5 budget.

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

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

25 So those are the comments I would like to

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1 add to Commissioner Melendez' comments.

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

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

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

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

25 COMMISSIONER GAZIANO: I'll confess to be

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

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

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

22 COMMISSIONER GAZIANO: Understood. I just  
23 wondered if there was any flexibility, but that  
24 doesn't really diminish -- thank you very much for  
25 your answer, but that really doesn't diminish the

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1 point the Chairman was making either. So I'll try to  
2 be better, but I'd also like more periodic updates  
3 similar to what Commissioner Melendez has requested as  
4 well.

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

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

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

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

25 CHAIRMAN REYNOLDS: Okay.

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

5                   MS. MARTIN: Right, you can estimate.

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

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

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

20                   MS. MARTIN: Okay.

21                   CHAIRMAN REYNOLDS: Other questions for  
22 the Staff Director?

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

25                   In light of the 2011 budget rescission

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1 that we're expecting are we expecting to hire anybody  
2 this year or next year as far as those key positions,  
3 the HR Director and Social Scientist for OCRE and I  
4 think any other special assistants? What's our plan  
5 for now and next year?

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

13 We can use term appointments, other types  
14 of temporary authorities that would allow us to hire  
15 people in 2010, but would not necessarily lock us in  
16 in 2011, if we did wind up particularly with that  
17 recession budget, that 5 percent cut on top of the  
18 flat-line budget, so that is something to consider.  
19 But I think these are the type of issues that when we  
20 get to the 2011 budget which hopefully will be pretty  
21 soon, that Commissioners can discuss and ultimately  
22 make a decision on that going forward. But those are  
23 some of the kind of questions we are wrestling with  
24 right now in trying to prepare the final submission  
25 for the Commissioners to consider.

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1                   COMMISSIONER MELENDEZ:   As far as the --  
2                   we had talked about a Deputy Staff Director.  Is that  
3                   kind of on hold until after the recision or are you  
4                   still considering that?

5                   STAFF DIRECTOR DANNENFELSER:  Well, that's  
6                   on hold right now and there's not -- again, that would  
7                   probably be another type of matter that Commissioners  
8                   will want to address, particularly as we look at the  
9                   2011 budget.

10                  COMMISSIONER MELENDEZ:   Okay, and then  
11                  what changes do you anticipate, intend to make to the  
12                  2010 budget as compared to the version that we had to  
13                  approve as Commissioners?

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

20                  Now we do have an area that are optional  
21                  services.  We cut back on our fixed services with GSA,  
22                  partly in anticipation of the new Budget Director  
23                  coming on board that perhaps more could be done in  
24                  house that we wouldn't have to utilize some services  
25                  from GSA.  But it is possible that we might use some

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1 of those optional services so even so if we use even  
2 half of the optional services available, we would  
3 still have a savings of probably at least \$40,000 in  
4 that particular area.

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

8 COMMISSIONER MELENDEZ: Okay, the other  
9 thing was the conference, because that's another  
10 change as far as sounds like we're going to be using  
11 2010 money to pay for that. Have we included that  
12 into any changes for 2010?

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

21 COMMISSIONER MELENDEZ: Since it sounds  
22 like we're going to be making some changes to the 2010  
23 beyond what we approved and submitted to Congress, I'd  
24 like to just let you work closely with us on it as  
25 Commissioners and if we wanted to either have a

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1 subgroup that wanted to work with you, would you be  
2 open to doing that as we kind of monitor 2010, even  
3 2011, how we're going to basically help your budget,  
4 all these changes?

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

10 COMMISSIONER MELENDEZ: Okay, all right.  
11 Thank you.

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

14 CHAIRMAN REYNOLDS: Yes.

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

22 Today is my Special Assistant's last day.  
23 He has not been approved. I hope that we do have  
24 some assurance that they -- but they've been telling  
25 us they're moving on it. I hope it comes through

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1 today. If it does not, I have asked the Staff  
2 Director to follow through what I believe we all  
3 discussed so that he does not have a lapse in pay.

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

19 I would also ask for an additional amount  
20 that I think is also justified by his former pay grade  
21 in the Federal Government so that he can buy his own  
22 health insurance during this period that the White  
23 House is delaying. I don't know if you need to  
24 comment. We can talk off-line, but I wanted to make  
25 the other Commissioners aware of my request.

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1 CHAIRMAN REYNOLDS: Well, I'd like to  
2 commend staff, especially David, for the efforts that  
3 have been made to get this mess straightened out.  
4 Judging by the email traffic, David is in daily  
5 contact with the Executive Branch trying to get this  
6 issue sorted out and unless I have missed an email, I  
7 believe that there is no dispute that this is just a  
8 matter of execution.

9 David, is that characterization accurate?

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

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

24 Other questions for the Staff Director?

25 COMMISSIONER MELENDEZ: Last question.

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1 Commissioner Melendez. Marty, did you say -- just so  
2 I'm clear that we probably won't be hiring anybody in  
3 2010?

4 STAFF DIRECTOR DANNENFELSER: No, I think  
5 that we can hire people, but in terms of caution for  
6 2011, it might be advisable to look at one-year term  
7 appointments or temporary hiring authorities that  
8 could be renewed if we don't get the recision budget  
9 in 2011, but that would give us some flexibility to  
10 not continue those particular positions if it was  
11 necessary to make savings in the area of personnel for  
12 2011.

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

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

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1 this moment.

2 CHAIRMAN REYNOLDS: Other questions?

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

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

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

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

16 (Laughter.)

17 COMMISSIONER YAKI: Bring on your tea  
18 party.

19 **Discussion of 2010 Statutory**

20 **Report Topic Ideas**

21 CHAIRMAN REYNOLDS: Next on the agenda is  
22 the statutory report topic. During the August 7th  
23 business meeting, we discussed a number of possible  
24 topics for the 2010 enforcement report including  
25 proposals for investigations of the enforcement of

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1 Title IX, I'm sorry, Title VII in police, fire, and  
2 municipal employment in light of the Supreme Court's  
3 decision in Ricci. And that was proposed by Vice  
4 Chair Thernstrom.

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

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

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

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

24 And finally, employment discrimination  
25 based on age during this economic crisis. That was

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1 submitted by Commissioner Melendez.

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

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

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

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

22 COMMISSIONER YAKI: My mic is right here.

23 CHAIRMAN REYNOLDS: Okay, could you  
24 increase the volume?

25 COMMISSIONER YAKI: Could I increase my

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1 volume?

2 CHAIRMAN REYNOLDS: Yes. Pretend that you  
3 are actively pissed with me.

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

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

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

16 With regard to this, this is something as  
17 I mentioned before, I had concerns about for quite  
18 some years, mainly around the rise of, as Alec Deull,  
19 my Special Assistant has been helping me on this, the  
20 rise of racist, insensitive, bigoted, what you want to  
21 call it, incidents, activities, and in some cases  
22 assaults on college campuses. And there's clusters of  
23 that that occur around, for example, the observation  
24 of Martin Luther King Jr. Day or theme parties,  
25 whether they're in dorms, sororities or what have you,

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1 eating clubs, that make fun of or stereotype ethnic  
2 minorities moving on to actual incidents of racial  
3 slurs and physical assaults on students.

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

11 Certainly, we have a model in place in our  
12 own Commission with regard to the anti-Semitic  
13 activity on campuses that was documented in a briefing  
14 two or three years ago in which this Commission  
15 expended substantial sums of money working on a public  
16 outreach campaign on that issue. I think we need to  
17 drill down a little bit deeper and understand what  
18 enforcement is or is not available, why is it  
19 available? If it is available, why is it not being  
20 used? What are barriers to this? What kind of  
21 education campaigns are most useful and essentially  
22 lend the moral authority of the Commission to address  
23 an issue that I think is experiencing an uptick and  
24 continuing to experience and uptick in the coming  
25 years.

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1           So that's basically the narrative of what  
2           it is that I'd like to do. I'd like to see Commission  
3           support, but again I believe that all these topics are  
4           important enough that the full Commission should be a  
5           party to this. And in the absence of Commissioner  
6           Taylor makes me want to move to put these over to the  
7           next meeting of the full Commission.

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

18          COMMISSIONER        YAKI:            Absolutely.  
19          Absolutely. When we're talking about speech or speech  
20          plus or conduct, that is speech or conduct that is  
21          offensive, but not -- I mean there's a question of  
22          whether or not when there are certain kinds of  
23          activities by themselves threatening in more than just  
24          an offensive way and I think that's one of the  
25          discussions that I want to delve into.

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1           If you create an atmosphere of fear or  
2           poison the well, so to speak, because of certain types  
3           of activities. If you engage in slave weeks or  
4           gangster weeks or immigrant weeks where people dress  
5           as janitorial staff, etcetera, there certain is a very  
6           significant speech element in there. The question is  
7           though to what extent does that create a chilling  
8           atmosphere for full participation, academic  
9           expression, and a nonhostile environment for the  
10          people whose ethnicity or race is being made fun of.

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

14                           (No response.)

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

22                           COMMISSIONER GAZIANO: I would note that  
23          we were -- I thought we were slated to vote last  
24          month. We had most of these concept papers in one  
25          form or another last month. I was a little

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1 disappointed that we put it over, as the record will  
2 reflect to this month, but for a variety of reasons,  
3 including that the clock is ticking again for our  
4 enforcement report, given the understanding  
5 Commissioners had we couldn't even extend the period,  
6 the normal 30-day comment/rebuttal period. I think  
7 that it's unfortunate that Commissioner Taylor isn't  
8 here, but that we should move forward for all those  
9 reasons and select one or more topics today.

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

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

18 COMMISSIONER HERIOT: Mr. Chairman?

19 CHAIRMAN REYNOLDS: Yes.

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

23 CHAIRMAN REYNOLDS: We would, I believe,  
24 pick from amongst these topics. We would narrow it  
25 down. Yes, of the six topics, from the six topics, we

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1 would pick the Enforcement Report or Statutory Report,  
2 however you want to call it.

3 Was that Commissioner Heriot?

4 COMMISSIONER HERIOT: Yes, it was. I  
5 don't actually feel that the number of topics is all  
6 that large. It's a fairly short list. I think some  
7 of them fit the enforcement report better than others.

8 But given that my understanding is that we were going  
9 to be picking a topic last month and I was very  
10 disappointed that it was put over to this month. I  
11 really don't think given that we tend to finish this  
12 report at the last moment, that it is a good idea to  
13 put it off for another month.

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

20 COMMISSIONER HERIOT: Even our simple,  
21 briefing reports tend to take much, much longer than  
22 --

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

25 COMMISSIONER HERIOT: I don't think so.

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1 CHAIRMAN REYNOLDS: Folks, let's -- do we  
2 need to vote on this? I don't believe there is a  
3 consensus to post on a vote on these issues, but do we  
4 need to vote on it?

5 COMMISSIONER HERIOT: There's no formal  
6 motion.

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

9 CHAIRMAN REYNOLDS: It's an invitation.

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

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

15 COMMISSIONER GAZIANO: Sure. There's two  
16 sort of updates that I want to mention. There are --  
17 by the way, in passing, I will say I find merit, some  
18 merit in all six topics and there are certainly issues  
19 to manage in all six as well, including the one I'm  
20 proposing. But one of the issues that I don't think  
21 that we will need to manage, but isn't, I think, a  
22 serious one is the recent communication from the  
23 Office of Intergovernmental Affairs, Director Portia  
24 Robertson, that because the Department has opened up  
25 an Office of Professional Responsibility

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1 Investigation, the last sentence of the letter is  
2 "accordingly, the Department will not provide further  
3 responses until the review is complete." That is a  
4 non sequitur in my mind.

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

22 Others can comment or not, but as we move  
23 forward with our investigation, we will and we should  
24 be sensitive to any specific concerns that the  
25 Department expresses, but we have an independent need

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1 to examine the merits of the decision and I think that  
2 that is completely consistent with whatever the  
3 Department's interest is in referring matters to OPR.

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

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

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

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

22 We could have an email poll next week  
23 ranking these topics and then followed by a short  
24 phone meeting, but getting a sense of where we are,  
25 I'm really swimming in my head on all these topics. I

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1 would like more time to think about it. I think an  
2 electronic poll ranking the topics and then going  
3 forward from there would procedurally make more sense.

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

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

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

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

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

23 And so when people at that time, when the  
24 Commission as a whole decided that it would make more  
25 sense to allow people more people to digest it rather

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1 than a day or two and at that time I said that I had a  
2 topic and I would give people ample time to review it,  
3 i.e., I sent this out over a week ago to ensure that  
4 that happened, that it was not because there was some  
5 hue and cry that somehow we had missed the opportunity  
6 to do it last week.

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

15           So this idea that there's some talismanic  
16 rush to judgment to get this thing out I think is  
17 belied by the very facts of where we are today and  
18 again, this is and should be an iterative process.  
19 I've frequently made that point on other issues as  
20 well. Having gotten Commissioner Gaziano's concept  
21 paper, revised concept paper, just only on Tuesday,  
22 working with my special assistant and others, I only  
23 managed to pull together a modified version of that  
24 which I'll be happy to distribute today or later, so  
25 we can all have more time to review it.

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1           But as is, I continue to express my  
2           reservations that while you may have had a  
3           conversation with Mr. Taylor, Mr. Taylor is sometimes  
4           hard to reach. I have not been able to have an  
5           extended discussion with him about this and would wish  
6           to hear his views on these before we go to a vote.

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

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

16          CHAIRMAN REYNOLDS: That's fine.

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

20                               (Laughter.)

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

24                               (Laughter.)

25          VICE CHAIR THERNSTROM: You'll be glad to

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1 hear I don't want to talk to you.

2 (Laughter.)

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

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

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

11 CHAIRMAN REYNOLDS: Yes, I will.

12 COMMISSIONER GAZIANO: Okay.

13 CHAIRMAN REYNOLDS: Okay.

14 (Off the record.)

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

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

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

25 CHAIRMAN REYNOLDS: Commissioner Melendez?

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

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

13                   Mr. Melendez?

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

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1 they're enforcing civil rights. That's basically my  
2 proposal which was submitted.

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

9 (Laughter.)

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

12 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

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

15 CHAIRMAN REYNOLDS: That's fine.

16 VICE CHAIR THERNSTROM: Obviously, the  
17 Ricci decision was enormously important and obviously  
18 enforcement of Title VII. The law has not been  
19 clarified to say the least. It has been somewhat  
20 clarified, but it's a mess. It remains a mess. And  
21 the question, one of the questions on the table, it  
22 seems to me that would be worth exploring for the  
23 Commission is in what ways do Title VII enforcement  
24 actions in other cities differ from those that gave  
25 rise to the Ricci case. If they do differ, of course,

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1 then we have an interesting question of the degree to  
2 which or in what ways Ricci applies to whatever cities  
3 are doing in the way of Title VII enforcement.

4 And I think this a very manageable topic.

5 We can gather information from representative, local,  
6 municipal employers, demographic data, racial  
7 disparities in employment by selected employers, how  
8 these are being addressed, observable differences  
9 between employers who are under court supervision,  
10 those who are not, and such differences may include  
11 testing selection methods, levels of disparity, number  
12 of employees, length of time that those municipal  
13 employees have been operating under the court's  
14 supervision, how close among those who have been so  
15 operating, how close are they to racial parity today?

16 In other words, what's the impact of that court  
17 supervision.

18 Levels of disparity of police, fire,  
19 municipal employment today as compared to data  
20 presented by the Commission's 1969 report that was  
21 entitled "For All the People, By All the People, a  
22 Report on Equal Opportunity in State and Local  
23 Government Employment." The manner in which the  
24 EEOC's Uniform Guidelines in employment selection --  
25 by the way, I regard those guidelines as really bad,

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1 are being interpreted regarding disparate impact with  
2 regard to employment tests, extent to which guidelines  
3 which were codified in 1978, a little while ago now,  
4 the extent to which they may be out of date in light  
5 of modern research and methods of employment testing  
6 employment and I think that's the answer there. It's  
7 very clear they are out of date and it's worthwhile  
8 saying exactly how and what's happened to employment  
9 testing in the interim years.

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

19 This seems to me an important and doable  
20 topic and one on which the Commission could get  
21 together. And I am very concerned about the divisions  
22 within this Commission. I would like to see us work  
23 together in a more collegial and productive way.  
24 It's, I think, distressing to me and I think to some  
25 others at least that I wouldn't call the atmosphere

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1 here collegial. Maybe we could find a topic on which  
2 we could work together in agreement that this really  
3 opened a lot of interesting and important questions  
4 up.

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

7 CHAIRMAN REYNOLDS: Commissioner Heriot?

8 I'm sorry, before I go down the line,  
9 questions, comments?

10 (No response.)

11 CHAIRMAN REYNOLDS: Hearing none,  
12 Commissioner Heriot.

13 COMMISSIONER HERIOT: The topic that I  
14 prepared a proposal for is gender discrimination in  
15 liberal arts schools essentially. What I'd like to do  
16 is find out whether it's true or not, as has been  
17 alleged in recent years, that some particularly mid-  
18 level liberal arts schools are discriminating against  
19 women in their admissions policies because they feel  
20 that otherwise they would not be able to get enough  
21 male students. I think this is a very serious issue.  
22 I think it's something we're not sure of the facts on  
23 and that's one of the reasons that I am very much in  
24 favor of doing this particular proposal because I  
25 think factually it's hard-edged.

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1           We can establish yes or no, whether  
2 schools are -- whether particular schools that we  
3 select for our study, whether they are lowering  
4 admission standards for men or whether they're not.  
5 And given that those are facts in dispute, I think  
6 that's dead center of what we should be doing as the  
7 United States Commission on Civil Rights.

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

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

24           I know people were concerned about  
25 Commissioner Taylor's absence, but I've received an

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1 email in which Commissioner Taylor says that this  
2 project was the one that was his favorite. So at  
3 least as of this morning, Commissioner Taylor's  
4 favorite topic was the Title IX topic.

5 I guess that's it.

6 CHAIRMAN REYNOLDS: Okay, questions,  
7 comments?

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

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

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1 many respects.

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

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

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

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

16 CHAIRMAN REYNOLDS: I second it.  
17 Discussion?

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

23 Let the record further reflect that  
24 although they complained that Commissioner Taylor was  
25 not present and they cared about his input, they did

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1 not seem very interested to learn that Commissioner  
2 Taylor, in fact, prefers my proposal to theirs.

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

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

15 CHAIRMAN REYNOLDS: I'll hang on.

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

18 (Off the record.)

19 COMMISSIONER GAZIANO: I just told  
20 Commissioner Taylor what the motion was and to remind  
21 you that the Commission move forward with both the  
22 Title IX and the New Black Panther Party projects as  
23 outlined in the Commission papers. And that we may  
24 issue one or two enforcement reports based on those  
25 projects.

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1 CHAIRMAN REYNOLDS: Do we have a quorum?

2 COMMISSIONER HERIOT: We do, yes.

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

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

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

10 Ayes

11 CHAIRMAN REYNOLDS: Any objections?

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

23 CHAIRMAN REYNOLDS: And let me add to that  
24 by saying that, Gail, your proposal is quite good and  
25 in the past you have argued in favor of proposals that

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1 were tightly drawn and I think yours is a good example  
2 of what you've been pushing for.

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

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

24 CHAIRMAN REYNOLDS: Yes, indeed.

25 CHAIRMAN REYNOLDS: Okay.

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1                   COMMISSIONER GAZIANO: Can I make one more  
2 quick motion while we have the five members?

3                   CHAIRMAN REYNOLDS: Yes.

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

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

17                   CHAIRMAN REYNOLDS: I am.

18                   COMMISSIONER GAZIANO: Then my motion is  
19 that pursuant to the concept paper on the New Black  
20 Panther Party matter that we've adopted, that the  
21 chair appoint the Discovery Subcommittee that was  
22 suggested in it. I volunteer to serve and I recommend  
23 that there be a member of each of the two major  
24 political parties on the Discovery Subcommittee since  
25 I am neither.

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1 CHAIRMAN REYNOLDS: Peter, would you care  
2 to serve?

3 COMMISSIONER KIRSANOW: I would.

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

6 COMMISSIONER KIRSANOW: Commissioner Yaki  
7 just entered the room.

8 CHAIRMAN REYNOLDS: Okay, is he  
9 participating?

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

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

19 COMMISSIONER YAKI: No.

20 CHAIRMAN REYNOLDS: Is Commissioner  
21 Melendez in the room?

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

25 CHAIRMAN REYNOLDS: Do you have his proxy

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1 on this issue?

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

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

7 COMMISSIONER YAKI: And neither have I.

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

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

14 COMMISSIONER YAKI: What is this motion?

15 COMMISSIONER GAZIANO: For the Discovery  
16 Subcommittee?

17 COMMISSIONER YAKI: What's a Discovery  
18 Subcommittee?

19 COMMISSIONER GAZIANO: Set forth in the  
20 concept paper --

21 COMMISSIONER YAKI: Is this your version  
22 of making the United States Commission on Civil Rights  
23 its own special prosecutor on this single, discrete  
24 case without any attempt at or even a fig leaf of  
25 fairness or broadening this to include other issues

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1 that have been raised in the past regarding the  
2 Division's inability to or unwillingness to enforce  
3 voter intimidation cases that have been brought to  
4 them by staff?

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

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

19 CHAIRMAN REYNOLDS: Who is that  
20 Independent?

21 COMMISSIONER YAKI: Former Independent, I  
22 suppose, Commissioner Thernstrom, that I will in a day  
23 or so be tendering my resignation to the Subcommittee  
24 on the National Conference, unless Commissioner  
25 Thernstrom is appointed to that Committee as well.

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1 But just to be clear, I'm still --

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

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

8 COMMISSIONER GAZIANO: To answer his  
9 question, no.

10 CHAIRMAN REYNOLDS: Okay.

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

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

22 I call the question.

23 COMMISSIONER YAKI: Well, it seems to me  
24 if you were to show some respect on this particular  
25 issue, that you would take your cue from some of the

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1 Members of Congress who in requesting this  
2 investigation by the Department of Justice resulting  
3 in the Office of Professional Responsibility referral,  
4 praise and decision of the Department and are waiting  
5 for the results before taking any action any further.

6 I do not understand --

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

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

21 And the idea that the United States  
22 Commission on Civil Rights is willing to act as its  
23 own special prosecutor in this matter, because that's  
24 exactly what your proposal purports to do on a  
25 discrete, single case, upon which action has been

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1 taken against at least one individual for a statute  
2 that has had very rare enforcement at all throughout  
3 different administrations where one can certainly  
4 point to any number of different times when questions  
5 have been raised about whether a decision may or may  
6 not have been politically motivated within the voting  
7 rights section, especially during the last  
8 administration.

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

16 CHAIRMAN REYNOLDS: Okay, Commissioner  
17 Yaki --

18 COMMISSIONER YAKI: And why, Mr. Chair --

19 CHAIRMAN REYNOLDS: Commissioner Yaki, at  
20 this point --

21 COMMISSIONER YAKI: Mr. Chair, and why --

22 CHAIRMAN REYNOLDS: Other folks are  
23 waiting to --

24 COMMISSIONER YAKI: And why, Mr. Chair,  
25 why Commissioner Melendez and Commissioner Thernstrom

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1 and I felt strongly enough to leave, given the fact  
2 that this was not --

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

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

13 CHAIRMAN REYNOLDS: Commissioner Yaki --

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

17 CHAIRMAN REYNOLDS: Good-bye.

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

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

24 COMMISSIONER GAZIANO: Call the question.

25 CHAIRMAN REYNOLDS: Well, no. Before we

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1 call the question, I think that it's important to  
2 point out that throughout this discussion we said that  
3 we would be sensitive to the investigation, but I  
4 think that one item that has not been made clear, it's  
5 not clear to me that there is a conflict or a  
6 significant chance that we would in any way affect the  
7 investigation going on at DOJ. We are looking, in  
8 large part, at the standard that has been established  
9 in past cases, cases that are closed.

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

16 So where were we?

17 COMMISSIONER KIRSANOW: Where we were, Mr.  
18 Chair, was Commissioner Gaziano had proposed a  
19 subcommittee consisting of himself, me, and  
20 Commissioner Yaki. Commissioner Yaki declined to  
21 participate. He moved, nonetheless, meaning  
22 Commissioner Gaziano, to consider himself and me for  
23 the Subcommittee and at such later time then possibly  
24 include another Commissioner, perhaps Commissioner  
25 Melendez may consider participating.

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1                   COMMISSIONER GAZIANO:  If I could ask for  
2   a friendly amendment that I would leave the  
3   appointment of a Democrat Commissioner open to the  
4   chair at any time.

5                   CHAIRMAN REYNOLDS:  There's only one left.

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

9                   CHAIRMAN REYNOLDS:  Okay.

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

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

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

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1 and once they've declined, they've declined.

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

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

7 CHAIRMAN REYNOLDS: All in favor, please  
8 say aye.

9 Ayes

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

12 COMMISSIONER KIRSANOW: Mr. Chair?

13 COMMISSIONER GAZIANO: Mr. Chair, a  
14 clarification.

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

21 I disagree with his assessment that  
22 Commissioner Gaziano is on some type of personal  
23 crusade or acting as a special prosecutor. We don't  
24 have any enforcement authority and the manner in which  
25 Commissioner Gaziano's statutory reports/enforcement

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1 report is couched, it is, as you stated, something  
2 that is driven toward the comparables and the  
3 standards that DOJ uses. It's not some type of  
4 "Jihad" against DOJ.

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

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

25 Third, simply because Congress, and I'm

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

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

23           I think, first of all, the investigations  
24 are separate. They don't go down parallel tracks or  
25 cover the same substantive matters and we are not

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1 going to be trampling on their investigation as  
2 Commissioner Gaziano indicated. I think we're going  
3 to be very respectful and mindful of the fact that we  
4 don't want to somehow compromise an investigation, but  
5 nonetheless, I don't see how we could possibly do  
6 that. But even so, I think it's imperative upon this  
7 Commission to conduct an investigation of something of  
8 great import and merit and it's within our charter.

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

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1 prosecution is abandoned.

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

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

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

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

6 CHAIRMAN REYNOLDS: Any other comments?

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

20 I also believe that in terms of the  
21 politics of this particular incident, that this is not  
22 a left-right issue at all, that there are those who  
23 are very concerned about this particular incident  
24 making it impossible to enforce that provision of the  
25 law not just in cases that involve the New Black

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1 Panther Party, but the next time it may really be a  
2 white supremacist group. And if we have a Department  
3 of Justice that goes on record saying this is no big  
4 deal and this should be dismissed, I don't see how  
5 this provision of the law can be enforced in any  
6 situation. That's why I think this is a dead serious  
7 issue.

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

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

20 COMMISSIONER HERIOT: But on the overlap  
21 issue I think we do have a duty to look at wrongdoing  
22 if that has occurred. And that's something that the  
23 DOJ investigation does not. But we have a duty to  
24 make sure that the law is being enforced  
25 appropriately, so I don't think that our jurisdiction

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1 is completely different from the investigation. It's  
2 just that ours is much broader.

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

6 COMMISSIONER KIRSANOW: Mr. Chair?

7 CHAIRMAN REYNOLDS: In any event --

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

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

15 COMMISSIONER KIRSANOW: Okay, thank you,  
16 Commissioner Taylor.

17 **Discussion of Potential FY 2010**

18 **Clearinghouse Reports and Briefings**

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

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1 Commission clearinghouse or briefing report topics.

2 I presume that other Commissioners whose  
3 topics were not selected would provide the same  
4 consideration. In order to complete a briefing or  
5 other project in the first quarter of the new fiscal  
6 year, we'll have to vote no later in the next in-  
7 person business meeting. If Commissioners have any  
8 ideas for briefings, please submit those to the Staff  
9 Director no later than two weeks before our August  
10 17th in-person business meeting. The Commissioners  
11 should also be advised that we may have a briefing or  
12 other project involving our enforcement topic during  
13 the new fiscal year as is our customary practice.

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

20 **Briefing Report on Title IX in**

21 **Intercollegiate Athletics**

22 CHAIRMAN REYNOLDS: Next up, the briefing  
23 report on Title IX in intercollegiate athletics,  
24 accommodating interests and abilities. At the July  
25 10th business meeting, Commissioners decided to table

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1 consideration of the draft briefing report on Title IX  
2 in intercollegiate athletics, accommodating interests  
3 and abilities. I move that the Commission approve for  
4 publication along with any concurring and dissenting  
5 statements submitted by any Commissioner by October  
6 11th and any rebuttal statements submitted by any  
7 Commissioner within 30 days of the distribution of  
8 concurring and dissenting statements.

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

23 Is there a second?

24 COMMISSIONER KIRSANOW: Second.

25 CHAIRMAN REYNOLDS: Discussion?

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1 COMMISSIONER GAZIANO: Call the question.

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

4 COMMISSIONER GAZIANO: Call the question.

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

7 Ayes

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

10 Okay, Part B --

11 COMMISSIONER GAZIANO: Mr. Chairman --

12 CHAIRMAN REYNOLDS: -- contained  
13 submissions, findings and recommendations. Under this  
14 motion, the Commission will vote individually on each  
15 finding and recommendation. Those findings and  
16 recommendations receiving a majority vote will be  
17 included in the report with a vote tally and a  
18 sentence explaining any composition vote for that  
19 item.

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

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

25 CHAIRMAN REYNOLDS: Is there any objection

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1 to that approach? Okay.

2 Proceed, Mr. Gaziano.

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

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

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

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

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

13 CHAIRMAN REYNOLDS: Do you want to deal  
14 with --

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

19 CHAIRMAN REYNOLDS: I second that motion.  
20 Discussion?

21 (No response.)

22 All in favor, please say aye.

23 Ayes

24 CHAIRMAN REYNOLDS: Any objection? Any  
25 abstentions?

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1 COMMISSIONER KIRSANOW: Kirsanow abstains.

2 CHAIRMAN REYNOLDS: Next up is the  
3 recommendations.

4 COMMISSIONER GAZIANO: I move we adopt  
5 recommendation number one.

6 CHAIRMAN REYNOLDS: Second. Discussion?

7 COMMISSIONER HERIOT: I second.

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

10 Ayes

11 Any objection? Any abstentions?

12 COMMISSIONER KIRSANOW: Kirsanow.

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

15 COMMISSIONER GAZIANO: Second with an  
16 amendment.

17 COMMISSIONER HERIOT: Hold on.

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

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1 dismiss their perspectives."

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

5 Ayes

6 CHAIRMAN REYNOLDS: Objections?  
7 Abstentions?

8 COMMISSIONER KIRSANOW: Kirsanow.

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

11 COMMISSIONER GAZIANO: Second.

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

14 Ayes

15 CHAIRMAN REYNOLDS: Objections?  
16 Abstentions?

17 COMMISSIONER KIRSANOW: Kirsanow.

18 CHAIRMAN REYNOLDS: I move that we  
19 approve recommendation four.

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

22 COMMISSIONER GAZIANO: Could you speak up?

23 COMMISSIONER HERIOT: I thought it was a  
24 little bit too strongly worded for my taste. Maybe  
25 I'm wrong, but I didn't know that there was any

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1 particular evidence that the NCAA has retaliated  
2 against institutions, so I feel it's kind of stronger  
3 than I would like it to be.

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

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

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

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

16 CHAIRMAN REYNOLDS: All right.

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

21 COMMISSIONER GAZIANO: That sounds good to  
22 me.

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

25 Yes, okay, that works. "The NCAA should

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1 reconsider its objection to the model survey. It  
2 should not discourage educational institutions from  
3 using student interest surveys or urge them to avoid  
4 their use since college students are adults capable of  
5 assessing their own interest in sports." That works.

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

9 Ayes

10 Objection? Abstentions?

11 COMMISSIONER KIRSANOW: Kirsanow.

12 CHAIRMAN REYNOLDS: Commissioner Taylor,  
13 how did you vote?

14 COMMISSIONER TAYLOR: I voted aye.

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

17 COMMISSIONER TAYLOR: I thought we were on  
18 recommendation three.

19 COMMISSIONER HERIOT: We did four.

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

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

25 COMMISSIONER HERIOT: Did you vote on four

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1 or would you like to vote on four?

2 COMMISSIONER TAYLOR: I would like to vote  
3 on four.

4 COMMISSIONER GAZIANO: As amended.

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

8 CHAIRMAN REYNOLDS: Okay.

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

15 CHAIRMAN REYNOLDS: I'm sorry?

16 COMMISSIONER GAZIANO: I made such motion.

17 CHAIRMAN REYNOLDS: Is there a second?

18 COMMISSIONER HERIOT: Second.

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

21 Ayes

22 Any objection? Any abstentions?

23 COMMISSIONER KIRSANOW: Kirsanow.

24 CHAIRMAN REYNOLDS: Okay, Mr. Staff  
25 Director, would you please discuss the status of the

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1 document request from the Department of Justice --

2 COMMISSIONER HERIOT: Could we do that  
3 last since that's just a discussion?

4 CHAIRMAN REYNOLDS: And OCR at the  
5 Department of Education regarding civil rights and  
6 enforcement activities.

7 COMMISSIONER GAZIANO: If we have no  
8 further motions, then I just want to alert  
9 Commissioners who may have other -- okay.

10 CHAIRMAN REYNOLDS: I'm sorry, continue.

11 COMMISSIONER HERIOT: I think we're done  
12 with motions.

13 CHAIRMAN REYNOLDS: We're done with the  
14 recommendations, if that's what you're referring to.

15 COMMISSIONER HERIOT: We don't have any  
16 further action item here is the point. I just wanted  
17 to make sure if we had an action item that we get that  
18 done right now.

19 CHAIRMAN REYNOLDS: I don't believe that  
20 we have any additional action items.

21 COMMISSIONER KIRSANOW: Mr. Chair, I just  
22 want to clarify for the record that my abstentions  
23 were an affliction of my inability to have studied  
24 these Title IX findings and recommendations as  
25 thoroughly as I would like.

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1 CHAIRMAN REYNOLDS: Okay. Mr. Staff  
2 Director?

3 **Update on Status of Document Request to**  
4 **Government Agencies Regarding their**  
5 **Civil Rights Enforcement Activities**

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

11 (Staff Director Dannenfelsler adjusts  
12 microphone.)

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

21 We have been told for I think a couple of  
22 weeks now that Department of Education has a letter in  
23 a clearance process. We have not received a response  
24 from them yet, but we've been checking back within  
25 several day intervals with the Department of Education

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1 so the situation is still the same there, that that  
2 letter is in clearance where we cannot have a firm  
3 date on when we might expect that letter.

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

12 The Department of Labor, we've had  
13 frequent outreach there and one of the attorney  
14 advisors has spoken with the individual that  
15 Department of Labor designated as the point of contact  
16 and that person has indicated that they would be  
17 trying to get us some information and indicated that  
18 the manual that we had asked for was being revised.  
19 But so far we have not received the information from  
20 the Department of Labor. The particular person that  
21 they designated has indicated that she's very involved  
22 with the stimulus funding situation as far as hiring  
23 people to work on that project and to do many of the  
24 things that are involved in that. But unfortunately,  
25 we still have not received any particular documents

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1 from the Department of Labor, but we are continuing to  
2 follow up with them on that request.

3 CHAIRMAN REYNOLDS: Questions, comments?  
4 Hearing none, Mr. Staff Director, please discuss the  
5 status of pending briefing reports.

#### 6 **Update on Status of Briefing Reports**

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

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

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

23 The Educational Effectiveness of  
24 Historically Black Colleges and Universities is one  
25 that there has been some sentiment expressed to hold

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1 that particular report until the STEM briefing report  
2 is completed and to release those two reports jointly.

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

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

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

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

23 The School Choice, Blaine Amendments and  
24 anti-Catholicism briefing report is going through  
25 final edits in the Office of the General Counsel and

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1 we expect it to be forwarded to the Office of the  
2 Staff Director during the week of September 14th and  
3 the editorial and legal sufficiency reviews should  
4 follow shortly thereafter.

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

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

22 The Health Disparities Between Minorities  
23 and Non-Minorities is one in which the panelists'  
24 edits to the transcript have been incorporated and  
25 that transcript has been posted on the Commission's

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1 website and that OCRE is currently working on the  
2 draft of that report.

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

13 That completes my report, Mr. Chairman.

14 COMMISSIONER HERIOT: Mr. Chairman?

15 CHAIRMAN REYNOLDS: Yes.

16 COMMISSIONER HERIOT: I have a comment  
17 here.

18 Mr. Staff Director, would it be possible  
19 for you to actually give us the dates that I think  
20 will be far more important than the dates that you've  
21 offered here. This report makes it look, for example,  
22 like the report on the Impact on Illegal Immigration  
23 on the Wages and Employment of Black Workers, we have  
24 one date, April 4, 2008. And then it makes it look  
25 like that somehow the Commissioner reviews are what's

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1 holding this up. But in fact, that is very much not  
2 the case.

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

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

14 COMMISSIONER HERIOT: Yes, I would very  
15 much like to see at each point where -- how long it  
16 took. From reading this, I have no idea how long  
17 editorial and legal sufficiency reviews tend to take.

18 It's just not in this report.

19 The only thing that I know is that that  
20 step is a step that must be taken and has been  
21 completed for some of these, but not others. I need  
22 to get a sense of how long these things tend to stay  
23 with the original writer, how long they tend to be in  
24 the process of editorial and legal sufficiency  
25 reviews, what point they reach the Commission, and

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1 then at what point they're put on the agenda. That's  
2 the sort of thing I need to know.

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

10 COMMISSIONER HERIOT: Yes, and one of the  
11 problems of this report is that it makes it look like  
12 it is the Commissioner reviews that are holding things  
13 up, but for example, this one for illegal immigration.

14 I've not seen that report and yet I understand that  
15 it was written quite some time ago.

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

24 COMMISSIONER HERIOT: Others of them do  
25 not.

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1           STAFF DIRECTOR DANNENFELSER: That is just  
2 a standard thing throughout the reports that have  
3 these parts of the process been completed and has that  
4 other part --

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

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

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

24           But I agree with the larger point. The  
25 larger point is that different reports may take longer

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1 at different stages for good reasons, bad reasons or  
2 mix of reasons. But if we had -- if the chart was  
3 revised to have different -- those different dates  
4 reflected a different way, that will help us.

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

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

25 CHAIRMAN REYNOLDS: Other comments?

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1 Hearing none, we are adjourned.

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

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

11 STAFF DIRECTOR DANNENFELSER: Yes, we can  
12 provide that.

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

16 Okay, the meeting is adjourned.

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

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